Dated: September 16, 1997.

Nancy-Ann Min DeParle,

Deputy Administrator, Health Care Financing Administration.

Approved: September 18, 1997.

Donna E. Shalala,

Secretary.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 387

[FHWA Docket No. MC–97–11]

RIN 2125–AE06

Qualifications of Motor Carriers To Self-Insure Their Operations and Fees To Support the Approval and Compliance Process

AGENCY: Federal Highway Administration (FHWA).

ACTION: Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: This action is being taken pursuant to the ICC Termination Act of 1995 (ICCTA), which, among other things, directs the Secretary of DOT to adopt regulations governing the standards to approve motor carriers as self-insurers. The FHWA proposes to examine the sufficiency of the existing requirements for self-insurance authorizations, as well as the need for additional fees for functions performed in addition to the processing of the initial application. More specifically, the FHWA is considering the need for fees to cover costs associated with processing multi-carrier applications and alterations to self-insurance authorizations, and for a monitoring fee to cover costs related to compliance responsibilities. The FHWA also requests public comment on the merits of continuing the self-insurance program and whether congressional action should be proposed to terminate the authorizations.

DATES: Comments must be received on or before November 24, 1997.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–97–11, Room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: John F. Grimm, Office of Motor Carriers, (202) 366–4039 or Stanley M. Braverman, Motor Carrier Law Division, Office of the Chief Counsel, (202) 358–7035; Federal Highway Administration, 400 Virginia Ave., SW, Suite 600, Washington, DC 20024. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The former Interstate Commerce Commission (ICC), in its earliest days of motor carrier regulation, considered applications of carriers seeking authority to self-insure their operations. The ICC took the position that self-insurance requirements should be stringent and that carriers availing themselves of that privilege should maintain adequate reserves to meet claims. *Motor Carrier Insurance Protection of the Public,* 1 M.C.C. 45, 58 (1936).

The ICC set no rules at that time governing the qualifications for self-insurers, but decided to consider for approval the application of any carrier that could establish its ability to satisfy, ''its obligations for bodily-injury liability, property-damage liability, or cargo liability without affecting the stability or permanency of its business.'' *Id.* at 59. Motor carrier requests to self-insure which were approved by the ICC required the execution of insurance endorsements which obligated the insurance company to pay final judgments regardless of any policy defenses it may have against the insured. *Id.* at 53. The self-insurance was based upon deductible levels in the insurance policies which were authorized by the ICC. Despite the size of any deductible, the insurance company remained liable to the public for the entire amount of the policy. Although the ICC considered use of deductibles to be tantamount to self-insurance, the motor carrier would be fully insured since the insurance company remained liable for the entire amount of the policy. The self-insurance authorization posed no additional risk to the public because the insurance company would be required to pay a judgement, without regard to the deductible, if the carrier refused to pay.

In response to an insurance crisis in the motor carrier industry in the mid 1980's which increased the cost of insurance coverage to extraordinary levels and affected its availability, the ICC began authorizing carriers with adequate financial resources to self-insure all, or part of, their required liability coverage backed by adequate security without the public protection provided by the traditional insurance company endorsement.[1] The ICC recognized that self-insurance plans do not necessarily afford the precise level of protection that customary insurance plans provide since insurance policies cover liability for every accident within the policy limits. Nevertheless, the ICC began issuing self-insurance authorizations subject to an extensive series of conditions designed to insure that the public would be protected from uncompensated losses. *See,* No. MC–128527, *May Trucking Company* (unpublished decision), served April 22, 1986. (*See* Appendix to this ANPRM.). Interim rules designed to establish minimum criteria that motor passenger and property carriers must meet to qualify as self-insurers were adopted by the ICC. Ex Parte No. MC–178, *Investigation into Motor Carrier Insurance Rates,* served April 12, 1986 (51 FR 15008, April 22, 1986). Final rules were adopted which included application guidelines covering the adequacy of the carrier's net worth, the existence of a sound self-insurance program, a ''satisfactory'' safety rating, and additional information the ICC might require. *Investigation into Motor Carrier Insurance Rates,* 3 I.C.C. 2d 377 (1987) (52 FR 3814, February 6, 1987).[2] The ICC expanded the list of methods carriers can use to demonstrate sound self-insurance programs to include irrevocable letters of credit and irrevocable trust funds. *Id.* at 388. In reviewing self-insurance applications, the ICC relied on its general powers to impose conditions on a case-by-case basis to insure that the public was adequately protected. *Id.* at 383. The requirement of an irrevocable trust fund or letter of credit in at least the amount of the self-insurance liability has been imposed in virtually all self-insurance authorizations.

The ICCTA, Pub. L. 104–88, 109 Stat. 803, provides that ''[T]he Secretary of Transportation shall continue to enforce the rules and regulations of the Interstate Commerce Commission, as in effect on July 1, 1995, governing the qualifications for approval of a motor carrier as a self-insurer, until such time as the Secretary finds it in the public interest to revise such rules.'' Section

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[1] The minimum financial responsibility requirements for for-hire carriers, formerly regulated by the ICC and now by the FHWA, are contained in 49 CFR Part 387.

[2] These rules are now codified at 49 CFR 387.309 [former 49 CFR 1043.5].

104(h) amending 49 U.S.C. 31144. The revised rules must provide for the continuing ability of motor carriers to obtain self-insurance authorizations, and the continued qualification of all carriers conducting self-insured operations pursuant to grants issued by the ICC or the Secretary. *Id* Section 204 of the ICCTA provides that all regulations previously issued by the ICC continue in effect according to their terms until modified or terminated.

Request for Comments

The purpose of this ANPRM is to obtain comments from motor carriers, insurance companies and other interested persons to determine whether the public is adequately protected against uncompensated losses.

The self-insurance regulations require each applicant to demonstrate that it has established and will maintain an insurance program that will protect the public against all claims to the same extent as if the carrier maintained commercial coverage in the prescribed amounts. 49 CFR 387.309. In support of such a program, the carrier may make use of irrevocable letters of credit, irrevocable trust funds, reserves, sinking funds, third party financial guarantees, parent company or affiliate sureties, excess insurance coverage, or other similar arrangements. *Id*. The FHWA is concerned with the widespread use of letters of credit to support self-insurance programs and seeks public comment on whether these instruments provide the intended claims protection, especially when a carrier has terminated its self-insured operations and is no longer obligated to maintain this letter of credit as security for the claims which accrue during the self-insurance period. Generally, the ICC, as well as the FHWA, has permitted carriers to support their self-insured operations with either an irrevocable letter of credit or an irrevocable trust fund in the amount of the self-insurance liability. The FHWA requires that the carrier maintain the trust fund until all cognizable self-insurance claims are resolved. No such condition is attached to the letter of credit because of the nature of the instrument. Carriers can terminate their self-insured operations by discontinuing all operations, by relinquishing the self-insurance authorization and obtaining commercial coverage, or by violating a condition of the authorization such as losing the required ''satisfactory'' safety rating. In each situation, all cognizable self-insurance claims arising during the period of self-insured operations cannot be identified when the operations are terminated. The trust fund condition is designed to protect the potential claimants when self-insured operations are terminated. *See* No. MC–8535, *George Transfer-Application to be a Self-Insurer* (unpublished decision), served September 24, 1986. (*See* Appendix to this ANPRM.) The letter of credit cannot provide this type of protection and, by its nature, is of questionable value as a back-up security.

Accordingly, the FHWA solicits comments regarding the elimination of the use of letters of credit in support of self-insured operations and the requirement, in all cases, of the maintenance of an irrevocable trust fund which must remain in place and fully funded until all cognizable self-insurance claims have been resolved.

The FHWA seeks public comment on the need to increase the amount of back-up collateral maintained in the letters of credit or trust funds. As a general rule, these instruments are executed in the amount of the self-insurance authorization, and adjustments to reflect additional claims exposure are not requested. Should additional security be required as the level of unpaid claims increases? Should the scope of the carrier's operations be considered in determining the level of collateral or back-up security?

The FHWA also requests public comment on the sufficiency of the reporting requirements that self-insured carriers must meet with respect to bodily injury and property damage (BI&PD) claims. Generally, each carrier must submit quarterly and yearly claims handling and financial data. This information forms the basis of the FHWA's monitoring and compliance program which now is designed to insure compliance with the terms and conditions imposed by the FHWA. The compliance review, however, does not include a verification of the carrier's claims reserves, a function that can only be performed by a professional risk analyst. In the FHWA's view, the absence of this information may create a potential risk for claimants. Accordingly, the FHWA requests comments on whether a self-insured carrier should be required to submit a yearly certified BI&PD claims report. The report would indicate that the yearly claims reserves accurately represent the best estimate of the carrier's liability. This report could be prepared by the carrier's excess insurance provider or any organization qualified to conduct such an analysis. Comments are also solicited on whether the FHWA should impose such a requirement on carriers that obtained their authorization before the effective date of the ICCTA.

Section 387.309 of title 49, CFR, provides that ''any self-insurance authority granted by the Commission [now the FHWA] will automatically expire 30 days after a carrier receives a less than satisfactory rating from DOT.'' The FHWA is considering whether to extend that period to 45 days to enable safety inspectors time to evaluate the corrective measures taken by the carrier after the less than satisfactory rating was assigned. This would in no way alter the FHWA's insistence that all self-insured carriers maintain ''satisfactory'' safety ratings. *See* No. MC–176440, *Direct Transit, Inc., Authorization to Self-Insure* (unpublished decision), served February 8, 1996. (*See* Appendix to this ANPRM.).

Proposed New Fee Items

The FHWA dedicates resources to make certain that the carriers authorized to conduct self-insured operations are complying with the conditions imposed in their respective authorizations. This involves a thorough review of claims and financial data submitted generally on a quarterly and yearly basis. In some instances, the data must be submitted on a monthly basis. Detailed reports of these reviews are prepared and analyzed. In addition, where financial problems call a carrier's continuing ability to self-insure into question, considerable time is devoted to determining whether additional safeguards should be imposed or whether the authorization should be terminated. Any trends in the carrier's exposure to BI&PD claims must be scrutinized. Furthermore, review and analysis of the proposed certified claims report would add to the monitoring duties. None of the costs of these duties is recovered from the current application fees. Accordingly, the FHWA is considering a $1900 yearly monitoring fee on each carrier conducting BI&PD self-insured operations which represents only the FHWA's current estimate of the salary and overhead costs for agency employees to monitor compliance with the conditions in the self-insurance authorizations.

The FHWA solicits public comment on the need to recover costs associated with performing additional processing activities beyond the handling of a single carrier application. Considerable resources of the former ICC and the FHWA have been expended in dealing with multiple carrier applications and requests to modify outstanding authorizations by changing the self-insurance coverage, altering the type and amount of the security coverage, or adding a carrier to the self-insured group. In many instances, these modification requests require an extensive reanalysis of the carrier's financial condition if additional self-insurance authorization is requested. The financial analysis of carrier groups and their parent corporations is often complex and time-consuming. Detailed examination of intercorporate transactions as well as the asset quality of intercorporate receivables and debt (including covenants) must be conducted. Accordingly, the FHWA solicits comments on the need to assess fees in three categories: (1) Request for an increase in coverage, change in the letter of credit or trust agreement, reporting requirements or other modifications—($2,600); (2) addition of a single carrier to an existing authorization—$3,400; and (3) multiple carrier applications or modification of applications—($400 per carrier). These costs represent only the salary and overhead expenses associated with the FHWA employees who perform these functions.

The FHWA requests comments concerning whether continuing to permit motor carriers to self-insure their operations is in the public interest or whether congressional action should be requested to repeal the statute directing the Secretary to continue the self-insurance program. In this regard the FHWA proposes the following specific questions for comments:

1. Does the self-insurance authorization jeopardize the payment of BI&PD and cargo claims by allowing carriers to conduct operations with insufficient security or collateral to guarantee payment of claims?

2. Does the ability of large carriers to conduct self-insured operations create an unfair competitive advantage over smaller carriers which must absorb the expense of the Federal insurance requirement?

3. Should the FHWA permit a motor carrier to conduct self-insured operations with less security or collateral than an insurance company would require?

4. Do the savings generated by self-insured operations justify exposing the public to the risk of uncompensated losses resulting from carrier bankruptcy or termination of operations?

5. Is it possible for the FHWA to conduct the self-insurance program in a manner that insures the potential claimants will not be placed at risk?

6. Is the administration of a self-insurance program a proper role for a Federal agency?

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that a decision to seek termination of the self-insurance program would be a significant regulatory action under Executive Order 12866, and under the DOT's regulations, policies and procedures because of the substantial public interest anticipated in this action.

Currently, 56 carriers have been authorized to self-insure their operations, 9 of which have authorizations which cover only cargo liability. The gross revenues generated by carriers holding the BI&PD authorizations range from $8,396,000 to $1,207,601,000, or an average of $174,345,468. These carriers are exposed to an average claims balance of $3,412,882. The vast majority of these carriers self-insure at the $1,000,000 level which corresponds to the required level of coverage.

The potential economic impact of this rulemaking is not known at this time. Therefore, a full regulatory evaluation has not yet been prepared. The FHWA intends to use the information collected from commenters to this docket to evaluate the economic and other issues attendant to this regulatory action.

Regulatory Flexibility Act

Due to the preliminary nature of this document and lack of necessary information on costs, the FHWA is unable at this time to evaluate the effects of the potential regulatory changes on small entities. The FHWA solicits comments, information, and data on these potential impacts.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action, if promulgated, would, in all likelihood, impact existing collection of information requirements for the purposes of the Paperwork Reduction Act of 1995 (49 U.S.C. 3501–3520). Because of the potential changes, existing Office of Management and Budget (OMB) approvals may require amendment or new approvals may need to be obtained. Requiring an annual BI&PD claims report should not appreciably add to the existing paperwork burden because the carriers are currently required to submit the claims information. However, a certification requirement will likely increase the costs associated with the preparation of the claims report.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR 387

Commercial motor vehicles, Hazardous materials transportation, Highways and roads, Insurance, Motor carriers, Motor vehicles safety, Penalties, Reporting and recordkeeping requirements, Surety bonds.

Issued on: September 11, 1997.

Gloria J. Jeff,

Acting Administrator.

Appendix

[The Appendix to this ANPRM should include the full text of the following three cases: (1) No. MC–128527, *May Trucking Company* (unpublished decision), served April 22, 1986; (2) No. MC–8535, *George Transfer-Application To Be A Self-Insurer* (unpublished decision), served September 24, 1986; and (3) No. MC–176440, *Direct Transit, Inc., Authorization to Self-Insure* (unpublished decision), served February 8, 1996].

Interstate Commerce Commission

[Decision No. MC–128527; Service Date: April 22, 1986]

May Trucking Company—Application To Be a Self-Insurer

Decided: April 16, 1986.

Subject to certain conditions, applicant authorized to self-insure bodily injury and property damage liability.

Summary of Decision

In this decision, the Commission is granting the application of May Trucking (May) to self-insure, under 49 U.S.C. 10927 and 49 C.F.R. 1043.5(a), its bodily injury and property damage liability subject to certain conditions.[1]

Background

In an application filed September 30, 1985, May Trucking Company (May) requested that the Commission allow it to act as a self-insurer for bodily injury and property damage (BI&PD) claims. No protest were filed. In a decision served December 9, 1985, May's application was denied by a majority of the Commission,[2] without prejudice to refiling by the carrier. On December 30, 1985, May filed a Petition to Reopen, requesting that the Commission vacate the prior decision and approve the application for self-insurance.

May's initial application and supplemental petition reveal that, as an irregular route common carrier of general commodities, it operates 275 tractors (175 of which are leased from owner-operators), and 550 trailers. It specializes in the transportation of frozen vegetables, dry grocery products, boxed meat, dairy products and paper goods and handles no highly hazardous materials. Its headquarters facility and terminal is located at Payette Idaho. It also has a terminal at Salem, Oregon, and one planned at Salt Lake City, Utah. The only direct employees of May are the Management and Administrative personnel. An unspecified number of company drivers are employees of Drivers' Employment Services, a wholly-owned subsidiary.[3] May is currently rated ''satisfactory'' by the Department of Transportation, Federal Highway Administration. As pertinent, May presently has a $3,000 deductible public liability policy and processes its own claims for collision and property damage liability under $5,000. In addition, United States National Bank of Oregon (National Bank) has established a $1 million credit line in the name of May which it indicates is dedicated to fund liability claims brought against the applicant.

As of December 31, 1984, May's financial statements reflect total assets of $9.0 million, including $5.2 million in current assets, of which $628,000 was reported as cash or cash equivalents. Its current liabilities amounted to $4.0 million and its total stockholders' equity was $3.4 million. (During 1984 it retained after-tax earnings of $700,000, bringing its retained earnings balance to $3.4 million). Its freight revenue in 1984 was $32.3 million out of its $41.2 million operating revenue, while its operating expenses amounted to $40.1 million. This yielded $1.0 million in operating earnings and net earnings of $700,000.

While not a part of the application, the quarterly financial report (QFR) filed by May for the fourth quarter 1985, shows that for 1985, the carrier generated a net operating profit of $172,000, down sharply from the operating profit it reported for the twelve months of 1984. The year to year decline in operating profit was due, in part, to a $501,000 or 50 percent increase in insurance expense. The fourth quarter 1984 and fourth quarter 1985 insurance expense increase of $291,000 accounted for the bulk of the annual increase of $501,000. May's reported net income of $419,000 for 1985 was achieved largely on the strength of a gain on the disposition of non-operating assets. May's QFR report also shows that, as of December 31, 1985, it has a balance of $8,000 in its cash account and had total stockholder equity of $3.8 million.

From September 1980 to September 1981, May had excess insurance limits extending to $15 million. From 1981 to September, 1984 the carrier had coverage to $25 million, at which time it increased its excess limits to $30 million. From 1980 through 1985, May's claims handled by insurance companies averaged $390,000 per year. In only two of those years, 1980–1 and 1983–4, did claims against it exceed $500,000.[4] Its 1984–5 claims handled by the insurance company amounted to $354,000. The average amount, in round numbers, of each claim, by year, was 1980–1, $23,000; 1981–2, $8,000; 1982–3, $10,000; 1983–4, $16,000; and 1984–5, $7,000. From the number of claims reported, it appears that few required a payout in excess of $25,000 and that none required a payment of more than $50,000. May states that none of its claims for the period September 1980–September 1985 required resort to its ''umbrella'' policies (*i.e.* coverage exceeding the $500,000 limit of its primary insurance during that time).

In its original application, May proposed to pay its liability claims from the $1 million line of credit maintained with National Bank. Despite the carrier's favorable loss history, its safety program, and its high credit rating, May's proposal was still considered inadequate to protect the public in certain key respects.

Specifically, the Commission rejected May's application for the following reasons. First, among other things, its proposed line of credit was revocable and, therefore, provided little protection for the public above May's ability to meet claims from current revenues. Also, May's proposal included no provisions for meeting obligations in the event of catastrophic occurrences. In the initial decision, the Commission set forth some guidance for any carrier seeking self-insurance authorization. The Commission indicated that any future application by May should include: a self-retention feature related to the carrier's recent claims experience; acceptable insurance to meet multiple occurrences above the self-insured retention levels; an irrevocable trust fund (also related to the carrier's claims experience), and information to allow the review of the retention levels, the carrier's loss adjustments, and loss reserves. Any future application was also to provide for periodic submission of statements of account, including profit and loss figures. May's Petition to Reopen addresses those specific concerns. In the Petition to Reopen May's offers to tie any authorization to self-insure to the carrier's maintenance of a minimum net worth. Further, May offers to convert the $1 million line of credit into an irrevocable line of credit. We believe that with May's suggested changes (and additional conditions that we will impose) May's application provides adequate protection to the public and should be granted.

Discussion

Any decision to allow self-insurance must reflect the carrier's ability to absorb both known predictable losses and unpredictable ones. Predictability is greatest at the lower claims levels. From our observations and knowledge of the claims experience of self-insured carriers the greatest frequency and predictability of losses for commercial auto BI&PD claims is in the $1–$10,000 range. May's recent claims experience fits within these limits. Each incremental step upward in claims typically has progressively fewer losses. However, to have the same degree of coverage through self-insurance as traditional insurance at a higher level of exposure to loss, the size of a motor carrier's operation must be significantly larger in scope. In this way we can to assured that adequate assets will be available to pay claims.

Self insurance is not new. See 49 C.F.R. 1043.5. However, most self-insurance programs previously approved by the Commission provide that losses that are not predictable are transferred to professional risk takers by way of insurance coverage. In the past, motor carriers that wanted to self-insure their BI&PD liability negotiated deductibles or self-retention levels in their policies of insurance. The level of self-insurance retention depended upon the size of the operation and on the carrier's financial strength. Motor carriers handled the great bulk of their ordinary claims at the lower levels of losses but insured against and passed on the unpredictable, severe losses to the insurance industry. These motor carriers met our security requirements by having insurance companies attach an endorsement to their policies of insurance and by filing our prescribed certificate of insurance (so-called ''accommodation'' filings) on behalf of carriers. The endorsement makes the insurance companies liable to the public from the first dollar of liability to the minimum limits set by law.

The current insurance crisis in the industry has resulted in a decrease in the availability

[1] The Commission's grant of this authority does not release May from its obligation to meet the financial responsibility regulations of the Department of Transportation (DOT). In this regard, we take official notice of May's recent filing with the DOT requesting a waiver of DOT's requirements to allow the carrier to self-insure.

[2] Although the prior decision is styled as also denying May's application to self-insure its cargo liability, May takes clear in the Petition to Reopen that it does not request such authority. May's Petition to Reopen, P. 7, note 3.

[3] May's 1984 Annual Report filed with the Commission fails to identify this company as an affiliate. However, we will require applicant to file information on any affiliate whose business is supportive of the operations of May trucking.

[4] Our analysis of the figures provided by May indicates that the aggregate claims against the carrier never exceeded $500,000 in any given calendar year. The figures submitted by May are based on a non-calendar year used by the carrier's insurance company.

of commercial auto BI&PD liability insurance coverage and a precipitous increase in insurance costs. Many insurance companies have withdrawn from underwriting motor carriers' insurance, while others have curtailed their underwriting. The severity of the increased costs of BI&PD coverage has been so unprecedented that some carriers have gone out of business, either unwilling or unable to increase freight rates or to pay the increased premiums. Additionally, it appears that many underwriters also are refusing to negotiate policies with higher deductibles or are not providing significantly reduced premiums for policies with high deductibles. For example, May's insurance premiums for primary BI&PD coverage increased from $398,855 for the year ending September, 1985, to $2.2 million for the year ending September 1, 1986. This increase in premium expense, however, is not based on any increase in losses paid by the insurance company. May's net profits for 1984 were only $700,000. Thus, it is faced with the real possibility of not being able to meet extraordinary insurance costs. May's history in this crisis is similar to many other motor carriers of property. As such, it presents the Commission with an example of the problem we face in meeting our responsibility to ensure that carriers have reasonable alternatives available to meet statutory security obligations, while not compromising our duty to ensure the existence of a safe motor carrier industry capable of paying all claims to the level required by law. See H.R. Rep. No. 96–1069, 96th Cong. 2d. Sess. 41 (1980) (''The purpose of [section 10927] is to create additional incentives to carriers to maintain and operate their trucks in a safe manner as well as to assure that carriers maintain an appropriate level of financial responsibility'').

Accordingly, while we must continue to ensure that motor carriers have sufficient security for the protection of the public, we will consider reasonable proposals to entirely self-insure. Such an approach is consistent with our broad authority in section 10927 to approve various types of security—and our obligation to promote a safe, efficient, and reasonably priced transportation system. 49 U.S.C § 10101. A carefully crafted proposal by a carrier to insure its own losses appears to be a reasonable method by which we can aid the industry without jeopardizing the public.

In order for the Commission to approve a motor carrier's application to self-insure its BI&PD liability, we must carefully weight the qualifications presented by the applicant against the protection to the public available in our prescribed insurance and surety programs. The prescribed insurance and surety programs give the public protection from the first dollar of liability up to our minimum requirements of $750,000, $1 million or $5 million per occurrence,[5] depending on the commodity transported.[6] There is, however, no requirement that a motor carrier like May obtain so-called ''umbrella'' coverage to cover claims exceeding its primary coverage. See 49 C.F.R. 1043.2(b)(2) and parallel DOT regulations at 49 C.F.R. 387.9.

In the initial application, May offered to establish a $1 million line of credit, dedicated to paying liability claims brought against it. In response to the Commission's objection that the letter of credit, without more, did little to enhance the protection of the public, May has amended the line of credit in two respects. First, the bank which issued the line of credit has made an irrevocable commitment to May to maintain the credit line until March 31, 1988. Second, the bank has agreed with May to notify the Commission If the credit line is drawn upon.

It is May's contention that these amendments to the line of credit significantly improve the protection being offered to the public. It further claims that the credit line is now for the full amount of financial responsibility required by the Commission.[7]

Moreover, May is willing to have its self-insurance conditioned on maintenance of at least $2 million in net worth (retained earnings and share-holders equity). The applicant intends to look to operating revenues as its first source of funds to pay liability claims. Its net worth, in excess of the $2 million, will function as its net source of funds. Finally, the $1 million irrevocable line of credit will be drawn upon as a last resort.[8] Thus, May has ensured that substantial sums of money will be available to pay claims.

We recognize that self-insurance plans will not necessarily afford the precise level of protection that customary insurance plans provide. In the normal situation, a carrier that is covered for $1 million in liability will be protected up to a million dollars for each accident. With the plan before us, however, we are convinced that the public will be adequately protected. Indeed, with the conditions that we will impose, May's plan should protect the public in a manner that is functionally equivalent to the protection provided under traditional insurance plans. We will require May to have and maintain a ''satisfactory'' safety rating as determined by the DOT, which is the highest possible rating. We will require the carrier to maintain a minimum net worth. If its net worth falls below this level, May's self-insurance authorization will automatically be terminated, unless the carrier corrects this situation within 30 days. The Commission will also monitor the carrier's financial condition and claims experience and revoke permission to self-insure should events occur that we believe could jeopardize its ability to pay future claims. See 49 C.F.R. 1043.9. We believe that, subject to these conditions designed to ensure the maintenance of assets necessary to pay all claims up to the level provided by law, May should be permitted to self-insure.

The imposition of these conditions allows the Commission to balance the needs of the public for a high level of security and the need of the public for an efficient, reasonably priced, and safe transportation system. Accordingly, we will approve the application subject to the following specific conditions.

First, May must submit to the Commission carrier quarterly and annual financial statements, as they become available, during the time the self-insurance, authorization is in effect. The financial statements (income statement, balance sheet and statement of changes in financial position) must include a certification by an appropriate May management official verifying the accuracy of the information provided in the statements. Financial disclosure is also required of affiliated companies which provide support services to the operations of May Trucking Company. These financial statements will provide up to date information on May's financial condition and thus will permit the Commission to ensure, among other things, that the net worth requirement is being maintained. In this regard, we will insist that if, at any time, the applicant's net worth balance falls below the $2 million minimum, this self-insurance authorization will automatically terminate unless within 30 days from the date of the notice, May corrects the situation or obtains other security for the protection of the public.

Second, May must file with the Commission carrier quarterly and annual claims reports, within two weeks of the close of the previous quarter, during the time the self-insurance authorization is in effect. These claims reports should detail the number, dollar amount and nature of May's claims experience. May must also provide the Commission with a quarterly report detailing pending court cases or other actions which relate to or arise from the claims experience. As with the financial statements, these claims reports must be certified as to their accuracy by an appropriate May management official.

Third, the carrier must notify the Commission *immediately* of any pending or contingent liability claim(s) which individually exceeds $50,000 or collectively exceed $250,000. If any of these reports or notices of liability claims indicate that the public is being jeopardized by May's failure to maintain an appropriate level of financial responsibility, May's self-insurance may be revoked.

Fourth, during the time the self-insurance authorization is in effect, May must have unrestricted access to the entire $1 million line of credit. In addition, drawdowns from the $1 million credit line may only be made to satisfy bodily injury and property damage claims. The Commission must be notified immediately of the specific purpose and amount of any May drawdown. Furthermore, we will require that May provide, at the time of the notice of the drawdown, a plan detailing how it proposes to respond to further liability claims. Again, should drawdowns suggest that May's financial

[5] 49 C.F.R. 1043.1 and .2. The term per occurrence means that the protection of the insurance company extends to all vehicles used in the interstate operation of the motor carrier for each accident which may occur during the life of the policy for the prescribed minimum limits. Thus, any approval to self-insure must ensure that the carrier can absorb both predictable losses and unpredictable ones.

[6] May advised that it transports commodities requiring a minimum coverage of $1 million.

[7] This is technically incorrect, as the $1 million statutory requirement is per occurrence and it has not been established that May's proposal offers identical coverage.

[8] May expects to pay BI & PD claims out of current earnings as it has in the past, thereby, obviating the need to replenish the funds available under its line of credit.

arrangements do not adequately protect the public, we will consider revocation of this authorization.

Fifth, the Commission must, at all times, be made aware of the terms and conditions under which the line of credit is being made available. In particular, the Commission must be notified no later than 90 days prior to the effective date of any change in the terms of the line of credit or its cancellation. Applicant is further required to notify the Commission of the renewal of the line of credit no later than 6 months prior to its expiration date.

Sixth, this application is granted with the express condition that the information required will be timely filed with the Commission. Any failure to timely file any of the information will subject the carrier to termination of its self-insurance authorization.

Seventh, we repeat that the Commission retains the authority to terminate May's self-insurance authorization at any time if, after notice and hearing, it appears to the Commission that applicant's financial arrangements fail to provide satisfactory protection for the public.

Eighth, the Commission retains the right to require May to submit any additional information that it deems necessary.

Finally, the Commission has reopened Ex Parte No. MC–178, *Investigation Into Motor Carrier Insurance Rates.* In that proceeding, interim rules are adopted pending completion of notice and comment on proposed final rules respecting many of the issues raised in May's application. That decision is being served today. Should any of the conditions required of May be inconsistent with any interim or final rules adopted in Ex Parte No. MC–178, May will be required to conform its financial arrangements to those rules.

Energy and Environmental Statement

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered: The application is granted subject to the conditions set forth in this decision.

(1) Applicant must submit carrier quarterly and annual financial statements to the Commission. The statements must include a certification by an appropriate May official verifying the accuracy of the information provided. Disclosure is also required of affiliated companies which provide support services for the operations of May Trucking Company;

(2) Applicant must file with the Commission quarterly claims reports detailing the number, dollar amount, and nature of its claims experience and quarterly reports detailing pending court cases which relate to or arise from the claims experience. These reports must be certified as to accuracy by an appropriate May official;

(3) Applicant must notify the Commission immediately of any pending or contingent liability claim(s) which individually exceeds $50,000 or collectively exceed $250,000;

(4) Applicant must maintain an irrevocable $1 million line of credit and must submit, within 15 days of the service date of this decision, a copy of any agreement with the bank covering the credit line; and notify the Commission immediately upon any drawdown on the line of credit; also May must have unrestricted access to the entire line of credit and drawdowns from the line of credit may only be made to satisfy BI & PD claims;

(5) At the time of any notification of any drawdown the applicant will also provide the Commission with a plan detailing how it proposes to respond to further liability claims;

(6) The applicant must notify the Commission no later than 90 days prior to the effective date of any change or cancellation of the line of credit and must notify the Commissioner of the renewal of the line of credit no later than 6 months prior to its expiration date;

(7) Applicant must maintain a new worth of at least $2 million and must notify the Commission at any time that the applicant's net worth falls below $2 million. The applicant will have 30 days to correct this situation or face termination of the authority to self-insure;

(8) The Commission retains the authority to terminate May's self-insurance authorization, at any time, if it appears to the Commission that applicant's financial arrangements fail to provide satisfactory protection for the public.

(9) This decision will be effective 30 days after service.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley, Commissioner Lamboley would have granted the application subject to further clarification and conditions. Vice Chairman Simmons and Commissioner Andre commented with separate expressions.

James H. Bayne,

Secretary.

Vice Chairman Simmons, commenting:

Approval of May Trucking Company's self-insurance application in today's decision is grounded in a conclusion that the May proposal contains adequate safeguards for protection of the public. A necessary component of those safeguards is meaningful Commission monitoring of May's self-insurance program. At this time, I believe the commission possesses sufficient resources to carry out this oversight function. Depending on the number of other self-insurance applications filed and granted, however, current resources may not be adequate to maintain an appropriate level of oversight. If this situation arises, I will not hesitate to seek additional resources from Congress.

Commissioner Andre, commenting:

I am hopeful that we will be able to reduce the burden both on self-insurers and on this agency as we further develop these self-insurance procedures. It seems essential that the procedures be as simple as is consistent with maintaining protection for the public. However, I do not think it desirable to delay approval of this application any further.

Interstate Commerce Commission

[Docket No. MC–8535; Service Date: September 24, 1986.]

George Transfer, Inc.—Application To Be a Self-Insurer

Decided: September 18, 1986.

Subject to certain conditions, applicant authorized to self-insure bodily injury and property damage and cargo liability.

Summary of Decision

In this decision, the Commission is granting the application of George Transfer, Inc., (hereinafter ''George Transfer'' or ''Applicant'') to self-insure its automobile BI&PD liability for $1,000,000 and its cargo liability under 49 U.S.C. 10927 and 49 C.F.R. 1043.5(a), subject to certain conditions.

Background

George Transfer holds irregular route common and contract motor carrier authority from this Commission to transport general commodities throughout points in the United States. Approximately 90 percent of its traffic, however, involves the transportation of fabricated and processed metals and metal products. The applicant operated over 1,200 equipment units out of 29 terminals generating $34,000,000 of operating revenue in 1985. It uses owner-operators extensively in its motor carrier operations. Normally, they supply the power tractors, and the carrier supplies the trailers. The carrier's corporate headquarters is located at Parkton, Maryland. The applicant is not owned or controlled by any other corporation. It has two small subsidiaries, neither of which holds authority from this Commission.[1]

In support of its application, the carrier has submitted detailed financial statements prepared as of December 31, 1985. As of that date the carrier's balance sheet shows total assets of $12,310,290 and liabilities of $6,813,000. Current assets exceed current liabilities by $3,283,588. The carrier had a net worth of $5,497,779 as of that date. George Transfer generated total operating revenues of $34,776,494 in the calendar year ending December 31, 1985. Its net operating revenue was $761,168. It reported ordinary income before income tax of $509,649 and net income after taxes of $290,549. The operations of George Transfer were profitable in 1983 and 1984 as well as 1985.

Applicant states that it is safety conscious and expends considerable time and resources in developing safety awareness, The applicant's Safety Department is headed by a Safety Manager, who reports to its Director of Operations. This department is responsible for the overall safety program of the carrier. The program calls for a multifaceted approach to safety. Monthly safety meetings of drivers are held at each of the carriers' 29 terminals. Spot-check inspections of vehicles and of drivers' hours-of-service logs are required. Vehicles are required to be inspected every 30 days. Safe driving incentive awards are given to drivers with

[1] The two subsidiaries are George International Warehouse, Inc., which provides a warehousing service, and Marden Bros. Inc., which leases motor vehicles.

perfect driving records. Drivers are given intensive training in company and Department of Transportation safety requirements. New driver applicants are thoroughly screened by the carrier before they are hired. A complete background investigation is a part of this screening process, including contacts with past employers, reference checks, and verification of safe driving records. Applicant has a safety rating of ''satisfactory'' from the Department of Transportation. (Exhibit F to the application)

George Transfer has handled its own BI&PD and cargo liability claims in the past under self-retention insurance programs. If this application is granted, it plans to continue the same program. The only difference will be that an insurance company will not certify primary coverage with the Commission from the first dollar of liability.[2] Under the carrier's claims program, all claims are handled expeditiously. Claims reserves are established within ten days of reported accidents. Any claim with a possible liability exceeding $50,000 is reviewed monthly by its corporate attorney. The applicant is ready to supply the Commission with any reports detailing its financial condition and claims experience as a condition to the grant of self-insurance authority. The applicant offers to maintain a minimum net worth of $2 million dollars in order to ensure that funds will be available to pay liability claims. It also proposes, as an additional safeguard to the public, to establish trust funds for the payment of BI&PD and cargo liability claims. The BI&PD liability trust will be funded in the amount of $1,000,000; and the cargo fund will be funded in the amount of $250,000. Each fund will be irrevocable and used exclusively for the payment of designated claims liability. The trust funds may only be drawn upon when the carrier certifies to the trustee that it does not have sufficient operating funds to satisfy its BI&PD or cargo liability. If drawn upon, George Transfer will replenish the trust funds to the required minimum amounts within 30 days—$1,000,000 for BI&PD or $250,000 for cargo.

Applicant believes that a grant of self-insurance authority for its BI&PD and cargo liability is essential to its ability to continue profitable operations in the face of the current insurance crisis. Its insurance premiums for the present policy year, from May 1986 to May 1987, total $832,000. This represents more than a 400 percent increase over the previous policy year premiums of $201,000. This latter premium figure provided excess BI&PD and cargo liability coverage to $10,000,000. The current cost of $832,000 provides excess coverage only to $1,000,000. By the terms of the policy, the motor carrier is not permitted to handle third party liability claims, even though it has had eight years experience in this activity. It must absorb such losses up to its deductible amount and pay the insurance company a fee of 15 percent of the loss for handling the claim. The deductibles in the current policy are $250,000 per occurrence for BI&PD and $150,000 per occurrence for cargo. The applicant stresses that these increases in premiums and reductions in coverage have been made despite the fact that the carrier has paid all of its BI&PD and cargo claims over the past five years. Stated another way, the insurers of George Transfer have paid no claim under their excess policies because all losses feel within the motor carrier's self-retention level.

The applicant conducted an exhaustive search for renewal coverage before accepting the terms of its present insurance company. Ten insurance companies simply made no response to the carrier. Several would not consider primary coverage. One offered coverage up to $1,000,000 at an annual premium of $2,500,000. Another offered the same coverage but at a premium of $3,000,000. Several others told the carrier that they simply refused to consider underwriting any motor carrier risk. The carrier estimates that it will save $900,000 a year in costs if is permitted to self-insure.

The following tables provide details as to the loss experience of George Transfer over the past five years:

TABLE I.—AUTOMOBILE BODILY INJURY AND PROPERTY DAMAGE LIABILITY

Policy year	Average claim amount	Number of claims	Total claim expense
1981–1982	$4,971	110	$546,828
1982–1983	2,420	96	232,274
1983–1984	3,879	105	407,274
1984–1985	8,219	120	986,333
1985–1986	3,059	105	321,181
5 year average	4,510	107	498,778

TABLE II.—CARGO LIABILITY

Policy year	Average claim amount	Number of claims	Total claim expense
1981–1982	$3,045	64	$194,939
1982–1983	1,880	47	88,395
1983–1984	1,621	60	97,245
1984–1985	6,283	42	263,903
1985–1986	4,658	38	177,015
5 year average	3,497	50	164,300

Discussion

George Transfer, we believe, has presented a strong case for authority to self-insure its BI&PD and cargo liability. It has more than adequate financial qualifications. The company has strong cash and working capital positions. A positive working capital position is important as it indicates that the carrier can meet its current obligations from its current assets. Furthermore, its debt to debt plus equity ratio is favorable. In addition, it has handled its own BI&PD and cargo liability claims for a number of years and is capable of doing so in the future under a Commission approved self-insurance program. It also has an active and successful safety program, which it intends to maintain.

In our prior decisions, we have taken a conservative approach to the question of permitting motor carriers to self-insure their

[2] The deductible or self-retention level is a binding condition between the insurance company and its motor carrier insured, not the public. The Commission's prescribed BI&PD and cargo insurance forms override the policy terms and conditions and give the public protection from the first dollar of liability up to the required minimum limits. In the case of George Transfer, the commodities it transports requires the carrier to maintain a minimum BI&PD limit of $1,000,000 per occurrence and a cargo limit of $5,000 per vehicle, $10,000 aggregate per occurrence. 49 C.F.R. 1043.2.

BI&PD and cargo liability.[3] We are charge by the act to provide adequate security for the protection of the public. See 49 U.S.C. 10927. Because of this, the Commission has been, and will continue to be, very selective in approving carriers to exercise this privilege.

As we stated in MC–128527, *May Trucking Company, supra,* ''(A) carefully crafted proposal by a carrier to self-insure its own losses appears to be a reasonable method by which we can aid the industry without jeopardizing the public.'' We believe that the application by George Transfer meets these criteria. We will approve this application subject to certain conditions necessary to ensure that there is adequate protection for the public.

In our view, the minimum net worth requirement and the trust funds offered by applicant are such as will provide the type of protection we seek for the public. The net worth requirement will ensure protection against unpredictable claims. Moreover, the trust fund is an easily understood and easily monitored financial arrangement for establishing a means to compensate the public in the case of any accident. However, in order to ensure the protection of the public to the greatest extent possible we will require some modifications in the terms and language of the trust agreements. An explanation of these modifications and our rationale for these changes follows.

The trustees appointed by George Transfer, Inc. are Joseph Kiel and T. Bernard Williams. Mr. Kiel is apparently George Transfer's house counsel with the responsibility for reviewing personal injury and property damage claims. However, Mr. Williams is not further identified. Although we have no reason to believe the trustees are not legally competent, we believe that they should be further identified to the extent of describing their relationship to the applicant and their business addresses so the Commission will know who will have legal title to the trust money and how they may be contacted.

Similarly, we believe that the beneficiaries of the trusts should be more clearly designated. The reason for this designation is to prevent claims on the trust funds from creditors other than persons who have BI&PD and cargo claims.

Generally, creditors of a beneficiary who has an interest in a trust can subject the beneficiary's interest in the trust to satisfaction of a debt. The purpose of the trust fund created here is the payent of BI&PD claims. As established, the trustee will transfer funds to George's Transfer when applicant certifies its inability to pay the involved claims. George's Transfer will presumably pay the claims with the trust funds. The arrangement may present a problem. The settlor's (George's Transfer) continuing involvement could complicate a determination as to who is the intended beneficiary of the trust. Additionally, it creates a potential for abuse because George's Transfer will actually have possession of the funds. Applicant's possession of the funds subjects them to potential attached by George Transfer's other creditors because of the applicant's continuing interest.

To avoid any potential misconstruction and abuse we will require the applicant to revise the agreements to identify explicitly BI&PD and cargo claimants as the intended beneficiaries. Specifically, the class of beneficiaries under the cargo trust agreement should be more clearly defined, in paragraph 3 of the cargo trust agreement, ''to retire claims of persons or corporations for loss and damage to cargo arising as a result of transportation provided by George's Transfer.'' Further, both the cargo trust and liability trust agreements should be revised to provide that payment will be made to such claimants directly rather than to George's Transfer. This should be accomplished by modifying the liability trust agreement (paragraph 3, line 10) and the cargo trust agreement (paragraph 3, lines 7–8) deleting, ''Grantor funds to meet such obligations'' and inserting, ''claimants identified by the Grantor sufficient funds to meet such obligation.''

Moreover, in order to insure that the trust agreements will not be subject to attachment by George Transfer's creditors in any bankruptcy proceeding we will require the agreements be further modified (paragraph 3, line 10 in the liability trust agreement and paragraph 3, line 8 in the cargo trust agreement) in the following manner: After ''obligations'' insert: ''The payment of those funds to claimants is solely and exclusively for settlement of outstanding claims. Those claims shall be paid from the trust fund irrespective of the financial responsibility or lack thereof or insolvency or bankruptcy of the Grantor''.

Finally, we address the issue of revocation. Each trust is irrevocable ''so long as the Grantor continues to insure itself.'' However, this construction of the trust could present a problem. For example, if applicant ceased to perform operations it might no longer be insuring itself and the trust fund would be dissolved, yet there might be claims outstanding against it which it would not be able to pay. In order to ensure that trust fund assets will be applied to these outstanding claims, we require the following language added after the first sentence in paragraph 9 of both agreements: ''Notwithstanding the preceding sentence, this trust shall not be revoked until all legally cognizable claims arising prior to the date Grantor ceases to insure itself have been settled. The purpose of this provision is to insure that these funds are available to reimburse claimants who present their claims within the time allowable by the applicable statute of limitations before residual funds, if any, may be returned to the Grantor upon termination of the trust.''

Subject to these modifications, we will accept the applicant's offer to establish a trust fund in the amount of $1,000,000. We emphasize the fact that this trust fund will be utilized only for payment for liability claims. Further, we will require that applicant keep the Commission informed about the trust, its maintenance and operation, at all times. Finally, the trust fund will be replenished to the required minimum amount after each drawdown.

Applicant seeks authority to self-insure its cargo liability as well as its BI&PD liability. Our insurance rules provide for this type of self-insurance. 49 C.F.R. 1043.5. The standard for granting an application for self-insurance for cargo liability is the same as that for BI&PD liability. Namely, that the carrier ''will furnish a true and accurate statement of its financial condition and other evidence which will establish to the satisfaction of the Commission the ability of such carrier to satisfy its obligation for * * * cargo liability without affecting the stability or permanency of the business of such motor carrier.''

As demonstrated above, applicant has the ability to self-insure its cargo liability claims as well as its BI&PD claims. The present minimum security requirements for cargo is $5,000 or $10,000 for aggregate losses. 47 C.F.R. 1043.2(c). George Transfer's current self-insurance retention program has required it to pay all claims under $250,000 for the last five years. The claims chart reproduced above also shows that there have been no claims in excess of that amount during that period. In fact, in the last five years, George Transfer has not had a cargo claim exceed $40,000. Thus, in reality George Transfer has been self-insured for its cargo liability for several years. In granting its application for self-insurance with respect to cargo liability, we are doing nothing more than allowing the carrier to continue its present practice, albeit without an insurance company intermediary between the public and the applicant. The record before use shows that George Transfer has the qualifications necessary to self-insure its cargo liability, and we approve its application subject to the conditions set forth below.

As in the case of its BI&PD liability, applicant has offered to establish a separate trust fund of $250,000 for the sole purpose of the payment of claims attributable to cargo loss or damage. This trust fund will be utilized in the event that George Transfer is unable to pay claims from operating revenues. Notably, the amount of this fund will equal the present coverage of George Transfer's existing policy. We will accept the applicant's offer to establish a trust fund for the payment of cargo claims subject to the conditions set forth above in the discussion of the liability trust fund.

Findings

Given the carrier's financial position, its claims history and experience and its safety record we find that the establishment of these trust funds with the conditions discussed above will provide protection for the public. Therefore, we accept George Transfer's offer to establish these trust funds. We emphasize that these funds will be utilized only for payment of BI&PD and cargo liability claims. Further, we will require that applicant keep the Commission informed about the trusts, and their maintenance and operation, at all times. Finally, the trust funds will be replenished to the required minimum amount after each drawdown. In addition, we will impose the following conditions on this grant of self-insurance authority.

Applicant must submit to the Commission a carrier quarterly and annual financial

[3] Ex Parte No. MC–5, *Motor Carrier Insurance for the Protecting of the Public,* 1 MCC 45, 58 (1936); MC–128527, *May Trucking Company—Application to be a Self-Insurer (not printed);* and *Ex Parte No. MC–178, Investigation Into Motor Carrier Insurance.*

statements, as they become available, during the time the self-insurance authorization is in effect. The financial statements (income statement, balance sheet and statement of changes in financial position) must include a certification by an appropriate management official verifying the accuracy of the information provided in the statements. These financial statements will provide up to date information on the carrier's financial condition.

Further, applicant must file with the Commission carrier quarterly and annual claims reports, within two weeks of the close of the previous quarter, during the time the self-insurance authorization is in effect. These claims reports should detail the number, dollar amount and nature of George Transfer's claims experience. As with the financial statements, these claims reports must be certified as to their accuracy by an appropriate management official.

Additionally, the carrier must notify the Commission immediately of any pending or contingent liability claim(s) which individually exceeds $50,000 or collectively exceed $250,000. If any of these reports or notices of liability claims indicate that the public is being jeopardized by the carrier's failure to maintain an appropriate level of financial responsibility, George Transfer's, self-insurance may be revoked.

Moreover, the Commission must, at all times, be made aware of the terms and conditions under which the trust agreements are operating. In particular, the Commission must be notified no later than 90 days prior to the effective date of any change in any of the terms of the trust or its cancellation.

The application is granted with the express condition that the information required will be timely filed with the Commission. Any failure to timely file any of the information will subject the carrier to notice of termination of self-insurance authorization.

Finally, the Commission retains the authority to terminate applicant's self-insurance authorization at any time if, after notice and hearing, it appears to the Commission that applicant's financial arrangements fail to provide continued satisfactory protection for the public.

It is ordered: The application is granted subject to the conditions set forth in this decision.

(1) Applicant must submit carrier quarterly and annual financial statements to the Commission. The statements must include a certification by an appropriate applicant official verifying the accuracy of the information provided. Financial disclosure is also required of affiliated companies which provide support services for the operations of the motor carrier.

(2) Applicant must file with the Commission quarterly claims reports detailing the number, dollar amount, and nature of its claims experience and quarterly reports detailing pending court cases which relate to or arise from the claims experience. These reports must be certified as to accuracy by an appropriate carrier official;

(3) Applicant must maintain a net worth of at least $2 million dollars and must notify the Commission at any time that the applicant's net worth falls below $2 million dollars.

(4) Applicant must establish a trust fund in the amount of $1,000,000 for the payment of BI&PD liability claims and one in the amount of $250,000 for the payment of cargo liability claims as set forth in Exhibits ''G'' & ''H'' attached to its application and as modified in this decision. The trust funds must be irrevocable and used only for the payment of its BI&PD or cargo liability. If drawn upon, applicant must contribute to the trust fund, within a period of 30 days after the date on which the trust funds are used to retire claims, sufficient cash to increase the BI&PD trust fund to the $1,000,000 minimum. or the cargo trust fund to the $250,000 minimum. The executed trust fund agreements, must be submitted within 15 days of the service date of this decision. Any changes in their terms must be given prior approval by the Commission. Furthermore, any draw down on these funds and failure to replenish within 30 days must be reported immediately to the Commission, along with an explanation as to how it proposes to respond to further BI&PD or cargo claims.

(5) Applicant must notify the Commission immediately of any pending or contingent BI–PD liability claim(s) which individually exceeds $50,000 or collectively exceed $250,000; and any pending or contingent cargo liability claims which exceed $50,000 individually or $100,000 collectively.

(6) The Commission retains the authority to terminate George Transfer's self-insurance authorization, at any time, if it appears to the Commission that applicant's financial arrangements fail to provide satisfactory protection for the public.

(7) This decision will be effective 30 days after service.

Energy and Environment Statement

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre and Lamboley.

Noreta R. McGee,

Secretary.

Federal Highway Administration

[Docket No. MC–176440; Service Date: February 8, 1996]

Decision; Direct Transit, Inc. (North Sioux City, SD); Authorization To Self-Insure

Decided: February 8, 1996.

By decision of the former Interstate Commerce Commission (Commission) served May 25, 1995, Direct Transit Inc. (Direct) was authorized to self-insure its bodily injury and property damage (BI&PD) liability subject to certain conditions. The self-insurance authorization was activated on August 1, 1995. As a result of a safety audit conducted by the Federal Highway Administration (FHWA), Direct was notified that it was assigned an ''Unsatisfactory'' safety rating effective January 12, 1996.

Section 1043.5(a)(3) of Title 49 of the Code of Federal Regulations governing qualifications for a self-insurer, provides in part:

Any self-insurance authority granted by the Commission will automatically expire 30 days after a carrier receives a less than satisfactory rating form the U.S. Department of Transportation (DOT).

Direct's self-insurance authorization will expire automatically on February 11, 1996.

By virtue of the ICC Termination Act of 1995, P.L. 104–88, the responsibility for making determinations regarding the self-insurance program and all authorizations pursuant thereto was vested in the Secretary of Transportation, and subsequently by delegation, in FHWA.

By a petition filed February 6, 1996 with FHWA, Direct seeks a waiver of the automatic termination provision and an emergency extension of its self-insurance authorization for a period of 30 days or until it is issued a ''Satisfactory'' safety rating, whichever occurs first.

In support of its petition, Direct contends that the automatic termination provision is inappropriate and will simply penalize the carrier by increasing its insurance premiums. While acknowledging that the ''Satisfactory'' safety rating requirement is justifiable in most circumstances, the carrier claims nonetheless that the public is protected and that it is not in the public interest to invoke the automatic termination rule in this instance. Direct maintains that automatic termination should apply only to a ''withering and desperate carrier''. (Petition at 7).

Direct's arguments are groundless and disturbing. In developing the self-insurance requirements, the Commission recognized the possibility that ''Unsatisfactory'' or ''Conditional'' ratings militate against allowing an applicant to self-insure because such ratings indicate operations that might result in a higher than average claims experience or the potential for substantial liability, both of which could adversely affect a carrier's ability to indemnify claimants. *Investigation Into Motor Car. Insurance Rates*, 3 I.C.C. 2nd 377,379 (1987). The Commission further noted, ''It is also consistent with our intent that safe operations serve as the touchstone for any self-insurance authorization.''*Id.* at 384. The 30-day expiration provision was implemented because ''a diminution in a carrier's safety status would warrant immediate reexamination of self-insurance authority.'' *Id.* at 385.

Direct, having begun self-insured operations only several months ago, has too short a track record to trumpet the success of its program and can hardly profess that the public will be protected based on that meager record. The Commission's self-insurance requirements were imposed ''to guarantee that a carrier can meet its financial responsibility to the public''. *Id.* at 380. Carriers that conduct unsafe operations cannot make such guarantees. The issue before me concerns the relationship between unsafe operations and self-insurance. I reject Direct's contention that the payment of premiums for additional commercial insurance coverage is a relevant factor. I also note that the circumstances surrounding this matter do not appear to justify the eleventh-hour filing of Direct's petition.

It should come as no surprise that FHWA, the agency charged with ensuring safe operation of commercial vehicles on our Nation's highways, will continue to insist that all carriers operating with self-insurance authority maintain ''Satisfactory'' safety ratings. Nevertheless, I will authorize an extension of the self-insurance authorization to March 7, 1996 for the sole purpose of conducting another compliance review of the carrier's operations.

Direct should understand that failure to obtain a ''Satisfactory'' safety rating during the extension period will not provide support for a further extension. Accordingly, the carrier should begin the process of securing commercial insurance coverage in the event its self-insurance authorization terminates.

It is ordered: 1. A waiver of the automatic 30-day period for expiration of petitioner's self-insurance authority and an extension of the self-insurance authorization until March 7, 1996, is hereby granted.

2. The terms and conditions of the self-insurance authorization activated August 1, 1995, will remain in effect throughout the extension period.

3. As of 12:01 A.M. on March 8, 1996, in the absence of the issuance of a ''Satisfactory'' safety rating, Petitioner's self-insurance authorization will terminate without further order of the FHWA.

4. A copy of this decision is to be filed in Docket No. MC–176440 and all sub numbers thereunder.

5. This decision is effective when served.

By the Federal Highway Administration.

John F. Grimm,

Director, Office of Motor Carrier Information Analysis.

[FR Doc. 97–24714 Filed 9–22–97; 8:45 am]

BILLING CODE 4910–22–P–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA); Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies the petition by John Chevedden for the issuance of a mandatory Federal regulation that would require all new cars to be manufactured with windshield edge coating in the space between the center rear view mirror and the lowered sun visors. The petitioner stated that this will prevent blinding glare from the sun in the early morning and late afternoon. According to the petitioner the targeted windshield coating is currently standard on the Hyundai Accent. Based upon the information provided by the petitioner and other information available to NHTSA, the agency has concluded that there is insufficient evidence to support a mandatory Federal requirement that all new cars be manufactured with a windshield shade band that is identical to the shade band currently installed on the Hyundai Accent.

FOR FURTHER INFORMATION CONTACT: Kenneth O. Hardie, Safety Performance Standards, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Mr. Hardie's telephone number is (202) 366–6987.

SUPPLEMENTARY INFORMATION: By letter dated May 21, 1997, John Chevedden of Redondo Beach, California, petitioned NHTSA to issue a new rule that would require that all new cars be manufactured with windshield edge coating in the space between the center rear view mirror and the lowered sun visors. Mr. Chevedden's petition stated that the targeted windshield coating is currently standard on the Hyundai Accent. Mr Chevedden stated that this will prevent blinding sun glare and enhance safety by reducing collisions in the early morning and late afternoon sun.

The specific area of the windshield that Mr. Chevedden's petition addresses is called the ''glazing shade band,'' *i.e.*, the area immediately adjacent to and below the top edge of the vehicle glazing, through which light transmission is less than that required for glazing that are requisite for driving visibility, as defined in ANSI Z26.1. ANSI Z26.1 is the *American National Standard for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways; Safety Code*. Examples of shade bands are:

a. Laminated Safety Glass—A color band in the laminated product formed by the application of a dye or pigment to the interlayer material prior to lamination.

b. Tempered Safety Glass—A pattern comprised of lines and spaces, or dots and voids, printed into the glass surface from a durable opaque or translucent material.

Mr. Chevedden asked that all new cars be required to be manufactured with a windshield edge coating (windshield shade band) identical to that which is installed on the Hyundai Accent. Federal law requires that the area of window requisite for driving visibility have light transmittance of not less than 70%. Motor vehicle manufacturers place a mark on the windshield designating the AS1 line. The windshield below that line is ''requisite for driving visibility'' and must comply with the 70% light transmittance requirement. Federal law does not specify any minimum light transmittance for the windshield above the AS1 line. Thus, manufacturers are free to install any shade band design they choose above that line.

In addition to the Federal limit that windshield shade bands can only extend down to the AS1 mark, there are some States that have motor vehicle regulations that prohibit the windshield shade band from extending downward from the top edge of the vehicle by more than six inches. Further, there is a voluntary standard for windshield shade bands promulgated by the Society of Automotive Engineers (SAE). This SAE standard is SAE J100, *Vehicle Glazing Shade Bands.* Although the use of the SAE Standards by anyone in the automotive industry is entirely voluntary, SAE standards are widely used by the automotive industry. All SAE Standards are submitted to the American National Standards Institute for recognition as American National Standards.

Mr. Chevedden petitioned to change the status quo and make the Hyundai Accent shade band design mandatory for all new cars, light trucks and sport utility vehicles. While NHTSA has carried out many suggestions from concerned citizens regarding motor vehicle safety, to change or impose a new Federal motor vehicle safety standard, NHTSA must present information to the public demonstrating that there is a safety problem with the current situation and that the proposed solution will address the problem and improve safety in a cost effective way. The petitioner provided no information to support his contention that there is a safety problem with the current situation or that his proposed solution will improve safety in a cost effective manner. NHTSA has no information indicating that the Hyundai Accent windshield shade band design is more effective than any other vehicle that is equipped with a windshield shade band, nor does the agency possess information regarding the efficacy of any shade band in reducing motor vehicle-related deaths and injuries. Absent such information, NHTSA has no basis for initiating a rulemaking proceeding.

After carefully considering the petition, NHTSA concludes that there is not a reasonable possibility that the order requested by the petitioner would be issued at the conclusion of a rulemaking proceeding. Accordingly, the petition is denied.