

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 544**

[Docket No. 96-130; Notice 01]

RIN 2127-AG56

Insurer Reporting Requirements; List of Insurers Required to File Reports

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

ACTION: Notice of proposed rulemaking.

SUMMARY: NHTSA proposes to update its lists in Appendices A, B, and C of Part 544 of passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. If these revised appendices are adopted in a final rule, each insurer included in any of these appendices must file a report for the 1994 calendar year not later than October 25, 1997. Further, as long as they remain listed, they must submit reports by each subsequent October 25.

DATES: Comments on this proposed rule must be received by this agency not later than April 25, 1997. If this rule is made final, insurers listed in the appendices would be required to submit reports beginning with the one due October 25, 1997.

ADDRESSES: Comments on this proposed rule must refer to the docket number referenced in the heading of this notice, and be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. Docket hours are 9:30 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Proctor's telephone number is (202) 366-1740. Her fax number is (202) 493-2739.

SUPPLEMENTARY INFORMATION:**Background**

Pursuant to 49 U.S.C. 33112, Insurer reports and information, NHTSA requires certain passenger motor vehicle insurers to file an annual report. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's implementing regulation,

49 CFR Part 544, the following insurers are subject to the reporting requirements: (1) Those issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States; (2) Those issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one State; and (3) Rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency has exempted smaller passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a State-by-State basis. The term "small insurer" is defined in Section 33112(f)(1)(A) and (B) as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under State law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular State, the insurer must report about its operations in that State.

As described in the final rule establishing the requirement for insurer reports (52 FR 59, January 2, 1987), in 49 CFR Part 544, NHTSA exercises its exemption authority by listing in Appendix A each insurer which must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally is administratively simpler since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers that are required to report for particular states because each insurer had a 10 percent

or greater market share of motor vehicle premiums in those States. In the January 1987 final rule, the agency stated that Appendices A and B will be updated annually. It has been NHTSA's practice to update the appendices based on data voluntarily provided by insurance companies to A.M. Best, and made available for the agency each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA is authorized to grant exemptions to self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) which are used primarily for rental or lease and which are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(b)(1) and (f). NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles because it believed that reports from only the largest companies would sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded that reports by the many smaller rental and leasing companies do not significantly contribute to carrying out NHTSA's statutory obligations, and that exempting such companies will relieve an unnecessary burden on most companies that potentially must report. As a result of the June 1990 final rule, the agency added a new Appendix C, which consists of an annually updated list of the self-insurers that are subject to Part 544. Following the same approach as in the case of Appendix A, NHTSA has included in Appendix C each of the relatively few self-insurers which are subject to reporting instead of relatively numerous self-insurers which are exempted. NHTSA updates Appendix C based primarily on information from the publications *Automotive Fleet Magazine* and *Business Travel News*.

C. When a Listed Insurer Must File a Report

Under Part 544, as long as an insurer is listed, it must file reports on or before each October 25. Thus, any insurer listed in the appendices as of the date of the most recent final rule must file a report by the following October 25, and by each succeeding October 25, absent a further amendment removing the insurer's name from the appendices.

Notice of Proposed Rulemaking

1. Insurers of Passenger Motor Vehicles

Based on the 1994 calendar year A.M. Best data for market shares, NHTSA proposes to amend the list in Appendix A of insurers which must report because each had at least one percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a notice published on August 13, 1996 (See 61 FR 41985). One company, Allmerica Property and Casualty Company erroneously included in the August 1996 listing, is proposed to be removed from Appendix A.

Each of the 18 insurers listed in Appendix A of this notice would be required to file a report not later than October 25, 1997, setting forth the information required by Part 544 for each State in which it did business in the 1994 calendar year. As long as those 18 insurers remain listed, they would be required to submit reports by each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B lists those insurers that would be required to report for particular States for calendar year 1994, because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. Based on the 1994 calendar year A.M. Best data for market shares, it is proposed that Amica Mutual Insurance Company, reporting on its activities in the State of Rhode Island be removed from Appendix B. One company, Integon Corporate Group, that was not listed in Appendix B, is proposed to be added.

The 12 insurers listed in Appendix B of this notice would be required to report on their calendar year 1994 activities in every State in which they had a 10 percent or greater market share. These reports must be filed no later than October 25, 1997, and set forth the information required by Part 544. As long as those 12 insurers remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

2. Rental and Leasing Companies

Based on information in *Automotive Fleet Magazine* and *Business Travel News* for 1994, the most recent year for which data are available, NHTSA is proposing several changes in Appendix C. As indicated above, that appendix lists rental and leasing companies required to file reports. Based on the data reported in the above mentioned publications, it is proposed that two rental and leasing companies, ARI (Automotive Rentals, Inc.) and A T & T Automotive Services, Inc., be included in Appendix C. Accordingly, each of the 15 companies (including franchisees and licensees) listed in this notice in Appendix C would be required to file reports for calendar year 1994 no later than October 25, 1997, and set forth the information required by Part 544. As long as those 15 companies remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

NHTSA notes that on July 5, 1994, the Cost Savings Act (including Title VI—Theft Prevention) was revised and codified “without substantive change.” The passenger motor vehicle theft insurers’ reporting provisions, formerly at 15 U.S.C. 2032 are now at 49 U.S.C. 33112. In this NPRM, NHTSA proposes to make minor technical amendments to make Part 544 reflect its changed statutory authority.

Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this proposed rule and has determined the action not to be “significant” within the meaning of the Department of Transportation’s regulatory policies and procedures. This proposed rule implements the agency’s policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this proposed rule, reflecting more current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing Part 544 (52 FR 59, January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the cost estimates in the 1987 final regulatory evaluation, the agency estimates that the

cost of compliance will be about \$50,000 for any insurer that is added to Appendix A, about \$20,000 for any insurer added to Appendix B, and about \$5,770 for any insurer added to Appendix C. If this proposed rule is made final, for Appendix A, the agency would remove one insurer; for Appendix B, the agency would remove one insurer and add one insurer; and for Appendix C, the agency would add two additional companies. The agency therefore estimates that the net effect of this proposal, if made final, would be a cost decrease to insurers, as a group of approximately \$38,460.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation have been placed in Docket No. T86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590, or by calling (202) 366–4949.

2. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted to and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information was assigned OMB Control Number 2127–0547 (“Insurer Reporting Requirements”) and was approved for use through October 31, 1996. The agency has begun the process of seeking reinstatement of OMB’s approval of the collection of information. It expects that process to be complete well before October 25, 1997, when the next reports are due. The agency will publish a Federal Register notice with the control number when it receives notice from OMB that it has approved the requirement.

3. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies proposed to be included on appendices A, B, or C would be construed to be a small entity within the definition of the RFA. “Small insurer” is defined in part under 49 U.S.C. 33112 as any insurer whose premiums for all forms of motor vehicle insurance account for less than one percent of the total premiums for all forms of motor vehicle insurance issued

by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all "self insured rental and leasing companies" that have fleets of fewer than 50,000 vehicles. Any self insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

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

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this proposed rule and determined that it would not have a significant impact on the quality of the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies of the comments be submitted. All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be accompanied by cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after the date. To the extent possible, comments filed after the closing date

will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 544

Crime insurance, Insurance, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 544 is proposed to be amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 would be revised to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Section 544.2 would be revised to read as follows:

§ 544.2 Purpose.

The purpose of the reporting requirements in this part is to aid in implementing and evaluating the provisions of 49 U.S.C. chapter 331 *Theft Prevention* to prevent or discourage the theft of motor vehicles, to prevent or discourage the sale or distribution in interstate commerce of used parts removed from stolen motor vehicles, and to help reduce the cost to consumers of comprehensive insurance coverage for motor vehicles.

§ 544.4 [Amended]

3. Paragraph (a) of § 544.4 would be revised to read as follows:

§ 544.4 Definitions.

(a) *Statutory terms.* All terms defined in 49 U.S.C. 32101 and 33112 are used in accordance with their statutory meanings unless otherwise defined in paragraph (b) of this section.

* * * * *

§ 544.5 [Amended]

4. Paragraph (a) of § 544.5 would be revised to read as follows:

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually not later than October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 for the calendar year three years previous to the year in which the report is filed (e.g., the report due by October 25, 1997 shall contain the required information for the 1994 calendar year).

* * * * *

5. Appendix A to Part 544 would be revised to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Aetna Life & Casualty Group
Allstate Insurance Group
American Family Group
American International Group
California State Auto Association
CNA Insurance Companies
Farmers Insurance Group
Geico Corporation Group
ITT Hartford Insurance Group
Liberty Mutual Group
Metropolitan Group
Nationwide Group
Progressive Group
Prudential of America Group
Safeco Insurance Companies
State Farm Group
Travelers Insurance Group
USAA Group

6. Appendix B to Part 544 would be revised to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Arbella Mutual Insurance (Massachusetts)
Auto Club of Michigan (Michigan)
Commerce Group, Inc. (Massachusetts)
Commercial Union Insurance Companies (Maine)
Concord Group Insurance Companies (Vermont)
Erie Insurance Group (Pennsylvania)
Integon Corporate Group "
Kentucky Farm Bureau Group (Kentucky)
Nodak Mutual Insurance Company (North Dakota)
Southern Farm Bureau Casualty Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

7. Appendix C to Part 544 would be revised to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
ARI (Automotive Rentals, Inc.)¹

¹ Indicates a newly listed company which must file a report beginning with the report due on October 25, 1997.

A T & T Automotive Services, Inc.¹
 Avis, Inc.
 Budget Rent-A-Car Corporation
 Citicorp Bankers Leasing Corporation
 Dollar Rent-A-Car Systems, Inc.
 Donlen Corporation
 Hertz Rent-A-Car Division (subsidiary of
 Hertz Corporation)
 Lease Plan International
 National Car Rental System, Inc.
 Penske Truck Leasing Company
 Ryder System, Inc. (Both rental and leasing
 operations)
 U-Haul International, Inc. (Subsidiary of
 AMERCO)
 USL Capital Fleet Services
 Issued on: February 18, 1997.
 L. Robert Shelton,
*Associate Administrator for Safety
 Performance Standards.*
 [FR Doc. 97-4355 Filed 2-21-97; 8:45 am]
 BILLING CODE 4910-59-P

Surface Transportation Board

49 CFR Part 1136

[STB Ex Parte No. 624]

Removal of Obsolete Regulations Concerning Rail Passenger Fare Increases

AGENCY: Surface Transportation Board,
DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (Board) proposes to remove from the Code of Federal Regulations obsolete regulations concerning rail passenger carrier commutation or suburban fare increases.

DATES: Comments are due on March 26, 1997.

ADDRESSES: Submit comments to Surface Transportation Board, Office of the Secretary, Case Control Board, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927-5660. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: Effective January 1, 1996, the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), abolished the Interstate Commerce Commission (ICC) and established the Board within the Department of Transportation. Section

204(a) of the ICCTA provides that "[t]he Board shall promptly rescind all regulations established by the [ICC] that are based on provisions of law repealed and not substantively reenacted by this Act."

The regulations at 49 CFR part 1136 require that a rail passenger carrier proposing commutation or suburban fare increases concurrently file tariffs and verified statements with the ICC and the Governor and appropriate state or county regulatory agency. The carrier is also to certify that the notice provisions of 49 CFR 1312.5 have been met.¹

The ICC issued these regulations, in *Notice of Increases in Frt. Rates and Pass. Fares*, 349 I.C.C. 741 (1975), to ensure that rail and motor carriers would give advance notice of and justification for commutation and suburban passenger fare increases. The rules were designed to facilitate the filing of potential protests seeking the suspension and/or investigation of fare increases. Subsequently, the ICC modified these regulations by removing their application to motor passenger carriers. *Practice and Procedure-Misc. Amendments-Revisions*, 6 I.C.C.2d 587 (1990). The ICC reasoned that it could not investigate, suspend, revise or revoke for being unreasonable a rate proposed by a motor passenger carrier acting independently and noted, moreover, that there had been no complaints or protests under these rules regarding ratemaking activity by passenger carriers. *See Practice and Procedure-Miscellaneous Amendments-Revision*, Ex Parte No. 55 (Sub-No.73) (ICC served Oct. 10, 1989).

We believe that the remaining regulations in Part 1136 are now also obsolete. Under the ICCTA, with certain exceptions not relevant here, "the Board does not have jurisdiction * * * over mass transportation provided by a local governmental authority." 49 U.S.C. 10501(c)(2). Even as to rail passenger transportation that might not qualify for that exemption, our regulatory authority

is quite limited. The tariff filing requirements formerly applicable to rail carriers, at former 49 U.S.C. 10761 and 10762, have been repealed.² Moreover, although the Board has the authority to issue injunctions "when necessary to prevent irreparable harm,"³ there is no longer a procedure for protesting, investigating, and suspending rates or fares prior to their going into effect. Under these circumstances, we do not believe that the regulations at 49 CFR 1136 are necessary. We seek comments concerning their proposed removal.

The Board preliminarily concludes that the removal of the rule, if adopted, would not have a significant effect on a substantial number of small entities. The effect, if any, of this rule's removal will be to lessen the regulatory filing requirements of rail passenger carriers. We believe that the removal of the notice provision is unlikely to significantly affect small governmental jurisdictions. The Board, however, seeks comments on whether there would be effects on small entities that should be considered.

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

List of Subjects in 49 CFR Part 1136

Administrative practice and procedure, Buses, Railroads.

Decided: February 10, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,
Secretary.

PART 1136—[REMOVED]

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X of the Code of Federal Regulations is proposed to be amended by removing part 1136.

[FR Doc. 97-4502 Filed 2-21-97; 8:45 am]

BILLING CODE 4915-00-P

¹ Indicates a newly listed company which must file a report beginning with the report due on October 25, 1997.

¹ These regulations describe, *inter alia*, the placement, form, and content of the notice given when a rail passenger carrier seeks a fare increase. The Board has proposed that these regulations be eliminated. *Regulations for the Publication, Posting and Filing of Tariffs for the Transportation of Property by or with a Water Carrier in the Noncontiguous Domestic Trade*, STB Ex Parte No. 618 (STB served Dec. 20, 1996).

² New 49 U.S.C. 11101 (b) and (d) require disclosure of rail common carrier rates and service terms. New 49 U.S.C. 11101(c) further requires rail carriers providing common carriage to give advance notice of rate increases to those who have requested such notification. *See Disclosure, Pub. & Notice of Change of Rates—Rail Carriage*, 1 S.T.B. 153 (1996) and 49 CFR 1300.

³ See 49 U.S.C. 721(b)(4).