

below 0.5 percent for the last two years (the industry-wide violation rate for alcohol was .015 percent in 2008 and .018 percent in 2007). Railroads remain free, as always, to conduct random testing at higher rates.

Issued in Washington, DC, on January 6, 2010.

Joseph C. Szabo,
Administrator.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No.: NHTSA-2009-0050]

RIN 2127-AK46

Insurer Reporting Requirements; List of Insurers Required To File Reports

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

ACTION: Final rule.

SUMMARY: This final rule amends the Insurer Reporting Requirements. The regulations specify the requirements for annual insurer reports and lists in appendices those passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. An insurer included in any of these appendices must file three copies of its report for the 2006 calendar year before October 25, 2009 as specified by law, but we acknowledge this notice has not been published by that date. Therefore, NHTSA will not take enforcement actions against any insurer that file the 2006 insurer reports after October 25, 2009, but not later than December 31, 2009. This is a one-time exception, based on the unique circumstances for 2009. All subsequent reports must be filed not later than October 25th of the year in which the reports are due. If the passenger motor vehicle insurers remain listed, they must submit reports by each subsequent October 25th.

DATES: This final rule becomes effective on February 11, 2010. Insurers listed in the appendices were required to submit reports on or before December 31, 2009. If you wish to submit a petition for reconsideration of this rule, your petition must be received by February 26, 2010.

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, National

Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Room W41-307, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., West Building, Room W43-439, Washington, DC 20590, by electronic mail to carlita.ballard@dot.gov. Ms. Ballard's telephone number is (202) 366-0846. Her fax number is (202) 493-2990.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to 49 U.S.C. 33112, *Insurer reports and information*, NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. 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. Pursuant to 49 U.S.C. Section 33112(f), the following insurers are subject to the reporting requirements:

(1) 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) 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 exempted certain 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.

In the final rule establishing the insurer reports requirement (49 CFR Part 544; 52 FR 59, January 2, 1987), NHTSA exercised its exemption authority by listing in Appendix A each insurer that 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 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 it would update Appendices A and B annually. NHTSA updates the appendices based on data voluntarily provided by insurance companies to A.M. Best, which A.M. Best¹ publishes in its *State/Line Report* 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 grants exemptions to self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) used for rental or lease whose vehicles are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(b)(1) and (f). Under 49 U.S.C. 33112(e)(1) and (2), 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;

(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

¹ A.M. Best Company is a well-recognized source of insurance company ratings and information. 49 U.S.C. 33112(f) authorizes NHTSA to consult with public and private organizations as necessary.

class exemption to all companies that rent or lease fewer than 50,000 vehicles, because it believed that the largest companies' reports sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded that smaller rental and leasing companies' reports do not significantly contribute to carrying out NHTSA's statutory obligations and that exempting such companies will relieve an unnecessary burden on them. As a result of the June 1990 final rule, the agency added Appendix C, consisting of an annually updated list of the self-insurers subject to Part 544. Following the same approach as in Appendix A, NHTSA included, in Appendix C, each of the self-insurers subject to reporting instead of the self-insurers which are exempted. NHTSA updates Appendix C based primarily on information from *Automotive Fleet Magazine* and *Auto Rental News*.²

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 October 25 of each year. Thus, any insurer listed in the appendices must file a report before October 25, 2009, and by each succeeding October 25, absent an amendment removing the insurer's name from the appendices.

II. Notice of Proposed Rulemaking

1. Insurers of Passenger Motor Vehicles

On August 17, 2009, NHTSA published a notice of proposed rulemaking (NPRM) to update the list of insurers in Appendices A, B, and C required to file reports (74 FR 41362). Appendix A lists insurers that must report because each had 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a final rule published on August 18, 2008 (73 FR 48151). Based on the 2006 calendar year market share data from A.M. Best, NHTSA proposed to remove Auto Club Southern California Group and add Auto Club Enterprise Insurance Group to Appendix A.

Appendix B lists insurers required to report because each insurer had a 10 percent or greater market share of motor vehicle premiums in a particular State. Based on the 2006 calendar year data for market shares from A.M. Best, we proposed to remove Farm Bureau of Idaho from Appendix B.

2. Rental and Leasing Companies

Appendix C lists rental and leasing companies required to file reports. Subsequent to publishing the August 18, 2008 final rule (see 73 FR 48151), the agency was informed by Emkay, Inc., (Emkay) that it was a motor vehicle leasing company offering financial, fleet management and consulting services pertaining to operating a fleet of motor vehicles and does not provide insurance policies for its customers to purchase. However, Emkay, further stated that it does include as a condition of its lease agreement that its lessees purchase and maintain its own motor vehicle insurance coverage. Emkay also submitted a copy of its lease agreement showing that insurance was required as a condition of the lease. Therefore, NHTSA proposed to remove Emkay, Inc. from the list of insurers required to meet the reporting requirements.

Public Comments on Final Determination

Insurers of Passenger Motor Vehicles

The agency received no comments in response to the NPRM. Therefore, this final rule adopts the proposed changes to Appendix A, B and C. Accordingly, NHTSA has determined that each of the 19 insurers listed in Appendix A, each of the eight insurers listed in Appendix B and each of six companies listed in Appendix C are required to submit an insurer report on its experience for calendar year 2006 no later than December 31, 2009, and set forth the information required by Part 544. As long as these insurers and companies remain listed, they would be required to submit reports in subsequent years.

Submission of Theft Loss Report

Passenger motor vehicle insurers listed in the appendices can forward their theft loss reports to the agency in several ways:

- a. *Mail:* Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, Department of Transportation, NHTSA, West Building, 1200 New Jersey Avenue, SE., NVS-131, Room W43-439, Washington, DC 20590;
- b. *E-mail:* carlita.ballard@dot.gov; or
- c. *Fax:* (202) 493-2990.

Theft loss reports may also be submitted to the docket electronically [identified by Docket No. NHTSA-2009-0050] by:

- d. *Logging onto the Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for filing the document electronically.

Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866, Regulatory Planning and Review. NHTSA has considered the impact of this final rule and determined that the action is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This final 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 rule, reflecting 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 Bureau of Labor Statistics Consumer Price Index for 2006 (see <http://www.bls.gov/cpi>), the cost estimates in the 1987 final regulatory evaluation were adjusted for inflation. The agency estimates that the cost of compliance is \$107,650 for any insurer added to Appendix A, \$43,060 for any insurer added to Appendix B, and \$12,423 for any insurer added to Appendix C. This final rule will remove one company and add one company to Appendix A, remove one company for Appendix B, and remove one company from appendix C. Therefore, the net effect of this final rule is a decreased cost of \$55,483 to insurers as a group.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation were placed in Docket No. T86-01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Technical Reference Division, 1200 New Jersey Avenue, SE., East Building (Ground Floor), Room E12-100, Washington, DC 20590, or by calling (202) 366-2588.

2. Paperwork Reduction Act

The information collection requirements in this final rule were submitted 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.*). The existing information collection indicates that the number of respondents for this collection is thirty-three, however, the actual number of respondents fluctuate from year to year.

² *Automotive Fleet Magazine* and *Auto Rental News* are publications that provide information on the size of fleets and market share of rental and leasing companies.

Therefore, because the number of respondents required to report for this final rule does not exceed the number of respondents indicated in the existing information collection, the agency does not believe that an amendment to the existing information collection is necessary. This collection of information is assigned OMB Control Number 2127-0547 ("Insurer Reporting Requirements").

3. Regulatory Flexibility Act

The agency also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies listed on Appendices A, B or C are 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 1 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 exempts 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 exempts 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 according to the principles and criteria contained in Executive Order 12612, and it has been determined that the final 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 final rule and determined that it would not have a significant impact on the quality of the human environment.

6. Civil Justice Reform

This final rule does not have any retroactive effect, and it does not preempt any State law, 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C.

32909, and section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

7. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) 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. You may use the RIN contained in the heading, at the beginning, of this document to find this action in the Unified Agenda.

8. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- ☐ Have we organized the material to suit the public's needs?
- ☐ Are the requirements in the proposal clearly stated?
- ☐ Does the proposal contain technical language or jargon that is not clear?
- ☐ Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- ☐ Would more (but shorter) sections be better?
- ☐ Could we improve clarity by adding tables, lists, or diagrams?
- ☐ What else could we do to make the proposal easier to understand?

If you have any responses to these questions, you can forward them to me several ways:

a. *Mail:* Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, West Building, 1200 New Jersey Avenue, SE., NVS-131, Room W43-439, Washington, DC 20590.

b. *E-mail:* carlita.ballard@dot.gov; or
Fax: (202) 493-2990.

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 amended as follows:

PART 544—[AMENDED]

■ 1. The authority citation for part 544 continues to read as follows:

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

■ 2. In § 544.5, paragraph (a), the second sentence is revised to read as follows:

§ 544.5 General requirements for reports.

(a) * * * This report shall contain the information required by § 544.6 of this part for the calendar year 3 years previous to the year in which the report is filed (*e.g.*, the report due by December 31, 2009 will contain the required information for the 2006 calendar year).

* * * * *

■ 3. Appendix A to part 544 is 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

Allstate Insurance Group
American Family Insurance Group
American International Group
Auto Club Enterprise Insurance Group¹
Auto-Owners Insurance Group
Erie Insurance Group
Berkshire Hathaway/GEICO Corporation Group
California State Auto Group¹
Hartford Insurance Group
Liberty Mutual Insurance Companies
Metropolitan Life Auto & Home Group
Mercury General Group
Nationwide Group
Progressive Group
Safeco Insurance Companies
State Farm Group
Travelers Companies
USAA Group
Farmers Insurance Group

■ 4. Appendix B to part 544 is 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)
Auto Club (Michigan)
Commerce Group, Inc. (Massachusetts)
Kentucky Farm Bureau Group (Kentucky)
New Jersey Manufacturers Group (New Jersey)
Safety Group (Massachusetts)
Southern Farm Bureau Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

■ 5. Appendix C to part 544 is 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

Cendant Car Rental
Dollar Thrifty Automotive Group
Enterprise Rent-A-Car
Hertz Rent-A-Car Division (subsidiary of The Hertz Corporation)
U-Haul International, Inc. (Subsidiary of AMERCO)
Vanguard Car Rental USA

¹ Indicates a newly listed company which must file a report beginning with the report due December 31, 2009.

Issued on: January 5, 2010.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

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