

November 28, 2020

Docket Operations
U.S. Department of Transportation
1200 New Jersey Avenue SE.,
Room W12-140
Washington, DC 20590-0001

Docket Number FMCSA-2020-0178
Information Collection Request: Financial Responsibility for Motor Carriers

The American Property Casualty Insurance Association (APCIA) appreciates this opportunity to provide insurance industry perspective on FMCSA's request to continue requiring information from insurers through addition of the MCS-90 (truck) or MCS-90B (bus) endorsement to automobile insurance policies of regulated motor carriers. APCIA represents nearly 60 percent of the U.S. property casualty insurance market and the broadest cross-section of home, auto, and business insurers of any national trade association. Over 1,000 APCIA members write nearly percent of America's business auto insurance. They insure both the trucks and the cars that share our nation's highways. This gives APCIA members a unique perspective, seeking the best balance for highway safety.

Office of Management and Budget (OMB) review of the information collection through and related to the federally-mandated MCS-90 endorsement creates an opportunity for FMCSA to adjust the endorsement to eliminate unintended consequences of the agency requiring insurance endorsement language that change legal contracts to which FMCSA is not a party, namely insurance policies. In addition, a simple change to the MCS-90 Web pages can eliminate needless related confusion experienced by some motor carriers.

The problems outlined below currently add to the administrative burden of the information collection, making FMCSA's estimated burden inaccurate and greatly reducing clarity. They also have the unintended consequence of increasing the likelihood that the MCS-90 endorsements might be legally interpreted in ways never intended by either the FMCSA drafters or by the insurers that are required to add the endorsements to applicable motor carrier insurance policies. Implementing the remedies that we suggest below will enhance the quality, usefulness, and clarity of the collected information at the same time that it increases the clarity and predictability of the insurance coverage that FMCSA alters with its required MCS-90 and MCS-90B endorsements.

The MCS-90 is sometimes erroneously treated by trucking regulators as a simple certification of insurance coverage, which it is not. This federally required endorsement significantly broadens the liability coverage generally provided by trucking and bus automobile insurance policies. The endorsement has no language restricting its application to either the United States (the only nation where FMCSA has authority) or even to the insurance policy's defined territory (typically the U.S. and Canada).

At least two judicial interpretations (*Lancer Insurance Company v. Maria De La Luz Garcia, et al*, U.S. District Court S.D. Texas, H-93-4100, August 3, 1994; and *Lincoln General Ins. Co. v. De La Luz Garcia*, 5th District Court of Appeals (Tex.), 2007) have addressed applying MCS-90 provisions to auto accidents occurring in the Republic of Mexico. These cases attempted to apply U.S. regulatory authority in Mexico. Each attempted to force the insurer to respond to an accident outside its defined coverage territory, where it had no infrastructure for investigating and adjusting insurance claims. Such a result would force an American insurer to violate Mexican federal law that allowed only Mexican-domiciled insurers to provide third-party automobile liability coverage in Mexico. While the *Lincoln General* court decision was ultimately decided against applying coverage in Mexico on appeal, the *Lancer* decision did apply coverage in Mexico. Both illustrate legal exposures created by the U.S. government that could be easily fixed by limiting the MCS-90 to apply only to accidents occurring inside the United States, which is the only country where FMCSA has

authority. No one should have to go through both trial and appeal in order to confirm what a contract said before the federal government changed the language by requiring addition of its own endorsement.

The second unintended consequence should be easy for FMCSA to remedy, which is to remove the OMB expiration date from the endorsement itself. FMCSA regulations require that the MCS-90 and its accompanying insurance filing be continuous until canceled. Including the administrative-only OMB expiration date on the endorsement itself creates confusion and could change the meaning of the endorsement in the eyes of a court. It needlessly causes motor carriers to worry that their insurance coverage might not satisfy federal requirements, especially as this bureaucratic date often falls behind its intended expiration.

Recognizing the problem created by including the OMB expiration date on the continuous-until-canceled MCS-90 endorsements, FMCSA added explanatory language about the OMB date to the endorsement, adding even more non-insurance language to insurance contracts.

An example from an insurer of the real world consequences caused by adding first the OMB expiration date and then FMCSA's attempt at explanation to the MCS-90 endorsement will illustrate the needless problems and expense caused by this bureaucratic addition to a legal insurance contract:

"We have fielded urgent calls from our insured customers who have been threatened with suspensions or revocations of their motor carrier operating authority from law enforcement and with the loss of shipper and customer contracts. In those cases, law enforcement agencies and shippers assumed that the date shown in the upper right hand corner represented either the expiration of the insured's insurance policy, or that they were no longer in good standing with the FMCSA."

If law enforcement and transportation regulators misunderstand the impact of placing the OMB expiration date on a legal document that is supposed to be continuous until canceled, why should FMCSA expect motor carriers, shippers, receivers, etc. to interpret the information correctly?

APCIA believes that the solution to this confusion lies in FMCSA removing the OMB expiration date and the explanatory language from the endorsement itself and locating both on the MCS-90 Web page. The OMB expiration indicator is a bureaucratic requirement having nothing to do with the legal contract that is an insurance policy and should not be located on an endorsement form, even one required by the federal government.

A third, related problem arises from FMCSA's use of indicators for the date of a Web page's last update. The unintended consequence related to changes of the MCS-90 Web pages is that some users believe a change in the Web page equates to a change in the MCS-90 itself. These changes lead to unnecessary expense by both motor carriers and insurers when Web page updates erroneously appear to call for insurer form and automation updates. FMCSA should be able to easily remedy this by clearly labeling the Web page update date as such, perhaps adding a phrase indicating that the page update does not mean that the MCS-90 itself has changed.

OMB renewal of MCS-90 information collection provides an opportunity for FMCSA to correct bureaucratic mistakes that have had unintended consequences, add to the regulatory burden associated with requiring the endorsements be added to motor carrier automobile insurance policies, have nothing to do with FMCSA's safety mission, and could be easily fixed.

APCIA looks forward to continuing to work with FMCSA toward our mutual goal of improving highway safety. Our perspective is based on the fact that our members insure both the motor carriers regulated by FMCSA and the individual car drivers that share the road with them. We would welcome the opportunity to discuss our suggestions for MCS-90 and MCS-90B improvement with FMCSA.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Passmore", with a stylized, cursive script.

Robert Passmore