

because of these decisions and several outstanding Petitions for Reconsideration and Clarification. Accordingly, the considerations that led the Commission to adopt the *Suspension Order* continue to apply with respect to the scheduled September 6, 2003, expiration date for the initial Phase 1 mandatory BAS negotiation period. Specifically, we find that it is in the public interest to continue the negotiating period until we address outstanding relocation issues in the band. Also, by suspending the expiration of the initial negotiation period, we will not prejudice consideration of the relocation issues still pending. For these reasons, we suspend, effective immediately upon release of this order, expiration of the initial Phase 1, two-year mandatory BAS negotiation period for 60 days, until November 4, 2003.

6. As in the *Suspension Order*, we retain the option to shorten or lengthen this suspension as circumstances warrant. We also emphasize that the action taken herein is interim in nature and does not prejudice further action in other proceedings. For the duration of this suspension, all other aspects of the initial mandatory BAS negotiation period will continue in force and, as a consequence, BAS incumbents will not be subject to involuntary relocation by MSS licensees. For the duration of the suspension, we likewise require MSS and BAS licensees to comply with all negotiation requirements and procedures adopted in the *Second Report and Order* that are applicable to the initial BAS mandatory negotiation period.

#### Ordering Clauses

7. Authority for issuance of this Order is contained in sections 4(i), 5(c), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(c), 303(f), and 303(r), and Section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d). This action is taken under delegated authority, pursuant to sections 0.31(m) and 0.241(a) of the Commission's Rules, 47 CFR 0.31(m) and 0.241(a).

8. Pursuant to sections 4(i), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), and 303(r), Section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), and sections 0.31(m) and 0.241(a) of the Commission's Rules, 47 CFR 0.31(m) and 0.241(a), the expiration date of September 6, 2002, for the initial two-year mandatory BAS negotiation period for Phase 1 set forth in the *Second Report and Order* in ET Docket No. 95-18 is hereby suspended,

effective immediately upon release of this order, for 60 days until November 4, 2003.

#### List of Subjects in 47 CFR Parts 74 and 78

Communications equipment, Radio.  
Federal Communications Commission.

Marlene H. Dortch,  
Secretary.

#### Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 74 and 78 to read as follows:

■ 1. The authority citation for part 74 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 307, and 554.

■ 2. Section 74.690 is amended by revising the note following paragraph (e) to read as follows:

**§ 74.690 Transition of the 1990–2025 MHz band from the Broadcast Auxiliary Service to emerging technologies.**

\* \* \* \* \*

(e) \* \* \*

**Note to paragraph (e):** FCC suspends for 60 days, until November 4, 2003, the expiration date for the initial two-year mandatory negotiation period in paragraph (e)(1) and the beginning of the involuntary relocation period in paragraph (e)(4).

■ 3. The authority citation for part 78 continues to read as follows:

**Authority:** Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

■ 4. Section 78.40 is amended by revising the note following paragraph (f) to read as follows:

**§ 78.40 Transition of the 1990–2025 MHz band from the Cable Television Relay Service to emerging technologies.**

\* \* \* \* \*

(f) \* \* \*

**Note to paragraph (f):** FCC suspends for 60 days, until November 4, 2003, the expiration date for the initial two-year mandatory negotiation period in paragraph (e)(1) and the beginning of the involuntary relocation period in paragraph (f)(4).

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 544

[Docket No.: NHTSA-2003-14372]

RIN 2127-AJ01

#### 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 updates Appendices A, B, and C of 49 CFR part 544, insurer reporting requirements. The appendices list 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 2000 calendar year before October 25, 2003.

**DATES:** This final rule becomes effective on October 14, 2003. Insurers listed in the appendices are required to submit reports on or before October 25, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carlita Ballard, Office of Planning and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Ballard's telephone number is (202) 366-0846. Her fax number is (202) 493-2290.

#### 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 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. Under the agency's 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 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 (52 FR 59; January 2, 1987), 49 CFR part 544, NHTSA exercised its exemption authority by listing each insurer subject to the reporting requirements in Appendix A. Because the number of insurers subject to the reporting requirements is smaller than the number of insurers that fall under the 1% exemption, the agency chooses to publish the shorter list of insurers subject to the reporting requirements of 49 U.S.C. 33112. 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,<sup>1</sup> which A.M. Best publishes in its *State/Line Report* each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

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

#### 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 (see 49 U.S.C. 33112(b)(1)). 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; 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 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, Appendix C contains only the self-insurers subject to reporting, instead of the self-insurers that are exempted. NHTSA updates Appendix C based primarily on information from *Automotive Fleet Magazine and Business Travel News*.<sup>2</sup>

#### 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 Appendices A, B or C must file a report by October 25, 2003, and by each succeeding October 25, absent an amendment removing the insurer's name from the appendices.

#### Notice of Proposed Rulemaking

##### 1. Insurers of Passenger Motor Vehicles

On March 21, 2003, NHTSA published a notice of proposed

<sup>2</sup> *Automotive Fleet Magazine and Business Travel News* are publications that provide information on the size of fleets and market share of rental and leasing companies.

rulemaking (NPRM) to update the list of insurers in Appendices A, B, and C required to file reports (68 FR 13887). 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 July 16, 2002 (67 FR 46608). Based on the 2000 calendar year data market shares from A.M. Best, we proposed to remove Farmers Insurance Group and St. Paul Companies from Appendix A and to add Zurich/Farmers Group to Appendix A.

Each of the 19 insurers listed in Appendix A is required to file a report by October 25, 2003, setting forth the information required by part 544, for each State in which it did business in the 2000 calendar year. As long as these 19 insurers remain listed, they are required to submit a report by each subsequent October 25, for the calendar year ending slightly less than 3 years before.

Appendix B lists insurers required to report for particular States for calendar year 2000, because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. Based on the 2000 calendar year data for market shares from A.M. Best, we proposed no changes to Appendix B.

The eight insurers listed in Appendix B are required to report on their calendar year 2000 activities in every State where they had a 10 percent or greater market share. These reports must be filed by October 25, 2003, and set forth the information required by part 544. As long as these eight 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

Appendix C lists rental and leasing companies required to file reports. Based on information in *Automotive Fleet Magazine and Business Travel News* for 2000, NHTSA proposed to remove Ford Rent-A-Car System from Appendix C and to add Thrifty Rental Car System Inc., and Ryder TRS to Appendix C. Each of the 18 companies (including franchisees and licensees) listed in Appendix C would be required to file reports for calendar year 2000 no later than October 25, 2003, and set forth the information required by part 544. As long as those 18 companies remain listed, they would be required to submit reports before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

## Public Comments on Final Determination

### *Insurers of Passenger Motor Vehicles*

In the NPRM, the list of passenger motor vehicle insurers who are required to file theft loss reports contained the "Zurich/Farmers Group," a newly listed insurance company. In response to the NPRM, we received two comments regarding the "Zurich/Farmers Group" listing. The first comment was submitted by Farmers Group, Inc. (Farmers), and the second comment was submitted by Zurich North America (Zurich).

Farmers argued that the listing should contain only "Farmers Insurance Group" instead of "Zurich/Farmers Group." Farmers also stated that the "Zurich/Farmers Group" designation does not reflect the legal or economic reality of the relationship between the two separate insurance companies. Specifically, Farmers note that it is "comprised of reciprocal insurance exchanges (which are owned by their policyholders), or the wholly owned subsidiaries of those exchanges." The only part of Farmers owned by Zurich is the management company for the exchanges, Farmer's Group, Inc. Besides owning this management company, Zurich also engages in providing passenger automobile insurance separately, and in competition with Farmers. According to Farmers, therefore, "Zurich/Farmers Group" is not an insurance company and does not own any of the subsidiary companies that write auto insurance.

Zurich similarly argued that the listing in question should contain "Farmers Insurance Group" instead of "Zurich/Farmers Group." Specifically, Zurich described the structure of Farmers and reiterated that Zurich does not control the reciprocal insurance exchanges. Instead, Zurich owns only Farmers Group, Inc., which provides management services to all reciprocal exchanges. Zurich provides its own insurance services for passenger cars under the name of "Zurich North America." Neither the reciprocal insurance exchanges, nor Farmers Group, Inc. are a part of Zurich North America. Further, Zurich has less than 1% market share for passenger car insurance, and therefore, should qualify for small insurer exception. Currently, Zurich estimates its market share to be at 0.63%.

After reviewing both comments, the agency concluded that Farmers and Zurich are not a single insurance company, and should not be listed together as "Zurich/Farmers Group." The agency agrees with both

commenters' basic descriptions of their corporate structure. The agency also notes that while Zurich owns Farmers Group Inc. (which manages reciprocal exchanges), it also engages in providing their own insurance services through a separate entity that is separately licensed to provide insurance. In arriving at our decision, the agency consulted with an A.M. Best Co. insurance analyst familiar with Farmers and Zurich corporate structure, Stephan Holtzberger.<sup>3</sup> Mr. Holtzberger indicated support for our new position. Therefore, Appendix A will list "Farmers Insurance Group" instead of "Zurich Group/Farmers." Zurich North America Insurance will not be listed in Appendix A because it falls short of the requisite 1% market share.

As a result of the new information received in response to the NPRM, this final rule revises the changes initially proposed to Appendix A. The agency received no comments in response to the NPRM for Appendices B and C. Accordingly, this final will reissue Appendix B without change and adopt the proposed changes to Appendix C.

### 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 Planning and Consumer Standards, NHTSA, NVS-131, 400 Seventh Street, SW., Washington, DC 20590;

b. *E-mail:* [cballard@nhtsa.dot.gov](mailto:cballard@nhtsa.dot.gov); or

c. *Fax:* (202) 493-2290.

Theft loss reports may also be submitted to the docket electronically by:

d. Logging onto the Dockets Management System Web site at <http://dms.dot.gov>. Click on "ES Submit" or "Help" to obtain 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 proposed rule and has determined that the action is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This 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 2003 (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 \$86,100 for any insurer added to Appendix A, \$34,440 for any insurer added to Appendix B, and \$9,936 for any insurer added to Appendix C. In this final rule, for Appendix A, the agency will remove one company and add none; for Appendix B, the agency proposed no change; and for Appendix C, the agency removed one company and added two companies. The agency estimates that the net effect of this final rule would be a decrease of \$76,164 to insurers as a group.

Interested persons may 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, Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling (202) 366-4949.

#### 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.*). This collection of information is assigned OMB Control Number 2127-0547 ("Insurer Reporting Requirements") and approved for use through August 31, 2003, and the agency will seek to extend the approval afterwards.

#### 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 proposed for Appendices A, B, or C is 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

<sup>3</sup> Docket No. NHTSA-14372-4.

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 according to the principles and criteria contained in Executive Order 13132, 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 rule 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 Planning and Consumer Standards, NVS-131, NHTSA, 400 Seventh Street, SW., Washington, DC 20590;
- b. *E-mail*: [cballard@nhtsa.dot.gov](mailto:cballard@nhtsa.dot.gov); or
- c. *Fax*: (202) 493-2290.

#### 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. Paragraph (a) of § 544.5 is revised to read as follows:

#### § 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually before October 25, beginning on October 25, 1986. 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 October 25, 2003 will contain the required information for the 2000 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

California State Auto Association  
CGU Group  
CNA Insurance Companies  
Erie Insurance Group  
Berkshire Hathaway/GEICO Corporation Group  
Great American P & C Group  
Hartford Insurance Group  
Liberty Mutual Insurance Companies  
Metropolitan Life Auto & Home Group  
Nationwide Group  
Progressive Group  
SAFECO Insurance Companies  
State Farm Group  
Travelers/Citigroup Company  
USAA Group  
Farmers Insurance Group

■ 4. Appendix B to part 544 will continue 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 Group (Michigan)  
Commerce Group, Inc. (Massachusetts)  
Kentucky Farm Bureau Group (Kentucky)  
New Jersey Manufacturers Group (New Jersey)  
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

Alamo Rent-A-Car, Inc.  
ARI (Automotive Resources International) Associates Leasing Inc.  
Avis, Rent-A-Car, Inc.  
Budget Rent-A-Car Corporation  
Consolidated Service Corporation  
Dollar Rent-A-Car Systems, Inc.  
Donlen Corporation  
Enterprise Rent-A-Car  
GE Capital Fleet Services  
Hertz Rent-A-Car Division (subsidiary of the Hertz Corporation)  
Lease Plan USA, Inc.  
National Car Rental System, Inc.  
PHH Vehicle Management Services  
Ryder TRS<sup>1</sup>  
Thrifty Rental Car System Inc.<sup>1</sup>  
U-Haul International, Inc. (Subsidiary of AMERCO)  
Wheels Inc.

<sup>1</sup> Indicates a newly listed company, which must file a report beginning with the report due October 25, 2003.

Issued on: October 6, 2003.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

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