My name is Tilden Curl. I am from Olympia, WA. I've held a CDL and made my living driving trucks for over 20 years. I have been an independent owner/operator for over 15 years and have driven over 2 million miles with no major accidents. I have been an advocate for truck drivers and helping all who will listen to understand what the challenges of our industry are for about the last 13 years. For the sake of disclosure, I joined OOIDA in 2001 and became a life member in 2012 because of their unending support for all truck drivers, members and non-members alike.

It is my intention to bring to light the one factor, second to driver training, which could bring the most benefit for the industry and its drivers and public safety. That issue is the discontinuation of self-insurance in the competitive trucking market. I will demonstrate the reasoning behind this conclusion and the positive effects this change would have on the safety and economic balances in the industry.

The purpose of this inquiry is to take a look at the effects of self-insurance on the transportation industry and to assess its achievement of stated goals and purpose. To do this we must start with the beginning of the regulation.

49 CFR 387.1 Purpose & Scope[1]

> *This subpart prescribes the minimum levels of financial responsibility required to be maintained by motor carriers of property operating motor vehicles in interstate, foreign, or intrastate commerce.*
>
> *The purpose of these regulations is to create additional incentives to motor carriers to maintain and operate their vehicles in a safe manner and to assure that motor carriers maintain an appropriate level of financial responsibility for motor vehicles operated on public highways.*

The questions that arise stems from the assessment of the purpose of this regulation; "***To create additional incentives to motor carriers to operate their vehicles in a safe manner".*** In a draft reauthorization bill of MAP 21 obtained by *Transportation Weekly, SEC. 3194 titled "Self-insurance for Motor Carriers Repealed"* stated in part: *Section 13906 of title 49, United States Code, sets fourth requirements for financial responsibility of motor carriers, ~ "**FMCSA has determined that the self-insurance program does not add significantly, if at all, to the safety of motor carrier transportation. In addition, administration of the self-insurance program, which benefits fewer than 50 motor carriers, is disproportionately burdensome, invites litigation and is an inefficient use of agency resources."*** Later in the draft bill, language was included as follows; "*Section 13906(d) is amended by striking the second, third and last sentences."* which is the text preceding in bold type.

While this is a very important aspect, it is but one of the considerations of the issue. This government provision should not create a financial advantage between the competitors. While self-insurance is not illegal, it clearly gives a financial advantage to those who can limit their

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[1] http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrruletext.aspx?reg=387.1

costs per unit versus those who purchase insurance on the open market. This advantage can then be used to manipulate market rates by reducing operating costs.

Any company purchasing insurance coverage must have a risk assessment completed by the insuring company to determine the risk exposure of the insured party. This creates a three party scenario; the insurer, the insured, and the claimant. This system functions well because the risk assessment and settlement is made by a third party (the insurer). When the insurer and the insured are the same entity, a claimant is forced to negotiate directly with the offending party.

Some large self-insured companies in the trucking industry are considered "Training Companies". For this reason, a risk assessment should be determined by a third party and not by the company holding the financial responsibility for the actions of its drivers. The fairest method is to require insurance company professionals make that evaluation to maintain an industry standard.

As for the economics, some may suggest the removal of this financial privilege might be inflationary. Keep in mind this is already being paid by owner/operators, independent operators, and smaller companies not large enough to qualify for the self-insurance privilege. Assume the average truck travels 10,000 miles per month with an average expense of insurance of $600-$800 per month. This makes an average cost 6-8 cents per mile per unit. For prospective, a strong headwind can reduce fuel mileage and increase operating cost by as much as 20 cents per mile. The 6-8 cents per mile is well within the operating margins that currently exist. Unless an emotional response to equality was voiced, the removal of this privilege alone should not increase freight rates. On a 1000 mile trip, the 7 cents currently being saved by the self-insured company would be $70. If that same 7 cents were to be added to driver pay, it would constitute upward of a 20 percent raise[2] for the majority of drivers. [3]In an article by Allen Wastler of CNBC from Sept. 28, 2013, he quotes a statement by Bob Costello, chief economist for the American Trucking Association, which points out, "Transportation, however, usually makes up a very small percentage of the overall price of goods". This same article also points out that profitability for these same companies is on the rise.

[4]Another report by CNBC listed driver/ sales workers and truck driving as the 8th most dangerous occupation in America. That report indicated a 6% jump in work-related fatal injuries. The report says:

#8. Driver/ sales workers and truck drivers
Number of fatal work injuries: 759
Fatal work injury rate (per 100,000 workers): 24

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[2] http://www.bls.gov/oes/current/oes533032.htm

[3] http://www.cnbc.com/id/101066568

[4] http://www.cnbc.com/id/49842847/page/4

There was a six percent jump in work-related fatal injuries in this subcategory of driver/ sales workers and truck drivers from 2010. The larger story is that this part of transportation and material moving showed the highest level of fatalities since 2008 – a total of about a quarter of all occupational fatalities.

With these things in mind, a third party risk assessment could help address the causes of these injuries and reduce the risks to the public. The increased participation in the insurance pool would allow for a fair risk assessment of all drivers and possibly lower the overall insurance cost. It would increase the value of a safe driver and cause unsafe driver conduct to be unprofitable. With greater appreciation for high quality, well trained drivers, the safety benefits should produce lower accident rates and a safer public.

Many of today's accidents happen in overcrowded truck stops as a result of poorly trained or low experienced driver errors while trying to park or maneuver into tight spots. The bulk of these accidents go unreported because the cost of repair is below the deductible amount of the insurance. For self-insured companies the deductible, if one applies, is often much higher than the average expense of damage incurred in the majority of these accidents. An example of this is a case that I'm familiar with. For reasons of privacy, I will not expose personal information. The information I can expose is as follows; a truck for RMC Trucking (a one truck independent operator) was parked at a truck stop in New Jersey when a Western Express driver attempted to park next to the RMC truck. In the process, the Western Express driver hit the RMC truck doing damage to the hood, left fender and mirror. At the time of the incident, the driver of the Western Express truck revealed that he only had 2 months experience. Upon returning to his base of operations, the RMC driver got an estimate for the repair costs of the damage. That estimate came to $3750. That estimate was then submitted to the Western Express claims department. They returned an adjusted claim of $857. and a release form. An attached letter explained that, ***"The reduction from your demand was due to the omission of the left fender repair; hood refinish; R&I of grille, signal lamps, headlamp doors, Kenworth lettering, hood rear lower chrome trim; and glass material. In addition, paint materials were calculated at $38/hr."***

I took the liberty of looking up the information available at no cost on the safer.fmcsa.dot.gov website and found the following information:

Western Express +								
DOT#	Power units	Drivers	Miles*	Crashes	Injuries	Fatalities	Crash rate per PU	Crash rate per driver
511412	2550	2550	305.5	441	126	14	17.3%	17.3%

+ Crashes for 24 months prior to 12-10-2013
* In million miles traveled

For this reason, I suggest that maximum deductible limits should be set at a level no higher than $2500. with a requirement that all amounts above that be reported to insurance. Under current law, unless there is an injury or fatality or a tow away, none of these accidents are reportable. This could indicate more training or action might be required for a driver.

As we face a predicted and potential driver shortage, we will be able to admit only properly trained and skilled, safe drivers to our roadways. As the demand for more drivers will lower the average experience level, this simple measure will make our roadways safer by making untrained, undertrained, or unsafe drivers unprofitable for all companies.

As another aspect of this issue, many self-insured carriers lease owner/operators to carry excess freight. They then provide insurance coverage to the lease operator as if they were an insurance company or broker. If these lease operators are contractors, then the carrier is acting as an insurance company without going through the process of becoming a licensed and bonded insurance company. A self-insured company should only be able to insure equipment that it owns. Otherwise, these drivers should be considered employees to qualify for coverage as a company driver. While the self-insured companies are <u>currently</u> within their rights to insure company trucks, I question their right to provide insurance without being an insurance company with proper credentials.

In 49 CFR, 387.309(a)(1) It states in part as follows: *Applicant should demonstrate that it will maintain a net worth that will ensure that it will be able to meet its statutory obligations to the public and indemnify all claimants in the event of loss.*

In a claim of loss against a self-insured company, the victim is forced to negotiate directly with the offending company for satisfaction or hire legal services to pursue a settlement.

Another question is; Are any of the assets used to qualify for self-insurance also being used to secure any other lines of credit? These qualifying assets should not be dedicated to any other purpose. In the case of catastrophic loss, such as the I-5 bridge strike over the Skagit River in Mt. Vernon, Washington where fortunately there was no loss of life, a reduced settlement might be required when the amount of loss exceeds the ability of the self-insured carrier to satisfy claims allowing these expenses to fall to tax payers. Another aspect of this question is, if a company is deemed to be too large to insure, is that company too large to fail? If a major company went into bankruptcy would or could that cause adverse effects on victim settlements, the economy, or commerce in general?

Several self-insured companies have "trailer swap" agreements with each other. Does the asset assessment cover the borrowed trailers owned by other companies in excess of their own? Independents and owner/operators are required to purchase additional insurance to cover non owned trailers even though that trailer may be covered by another policy.

Self-insurance is a provision in the regulations that allows large companies to reduce costs. If the average insurance premium is $700 per month per unit, a company with 5000 units would benefit $3,500,000. (3.5 mil.) per month in extra profits, minus claims payouts, over the same company model purchasing insurance. Insurance purchasing carriers are already paying

for this coverage from the existing freight rates. These profits can then be used to influence markets in a way that fully insured carriers cannot. Because of the lack of standardized training requirements, the least experienced drivers are put on the highways with the understanding that many will only stay employed until the debt of truck driving school or the driver training program is repaid. This is supported by the high turnover rates of these companies. The self-insured carriers profit at the expense of new drivers and the public trust. These drivers are among the highest risk factor drivers. This increases the risk exposure and is what insurance purchasers have to be insured against. The advantage of low driver pay and no independent risk assessment is an advantage gained by the self-insured. This advantage lowers the safety for the general public and does little to attract high quality, safer drivers for the future of the industry.

A study assembled by OOIDA Foundation shows the contrast between several self-insured companies and an insurance purchasing company and the safety benefit as a result. The chart below is a summary of this information. A full report and supporting documentation can be obtained by contacting OOIDA Foundation.

Self-Insured Carriers										
Self-Insured Carriers	US DOT	Power Units	Drivers	Miles *	Speed Violation	Crashes	Injuries	Fatalities	Crash Rate Per PU	Crash Rate Per Driver
Werner Enterprises	53467	7,201	10,338	855	732	939	298	22	13%	9%
J B Hunt Transport Inc.	80806	10,512	10,096	766	401	673	239	13	6.4%	6.70%
C R England Inc.	28406	5,257	7,300	589	454	595	168	8	11.3%	8.20%
Knight Transportation Inc.	428823	3,920	3,950	450	384	282	95	5	7.2%	7.10%
None Self-Insured Carrier										
Bennett Motor Express LLC	92693	699	623	59	80	39	12	2	5.6%	6.2%

*In million miles traveled in 2011

The ultimate result of requiring all carriers to insure uniformly would be better trained and more qualified drivers, safer highways. It would support reduced driver turnover and value experienced drivers. It would allow all carriers to compete equally which would bring higher levels of service to customers while providing greater value and safety to the public. It would bring about a true fair market in interstate commerce.

Some association representatives for self-insured companies have suggested that we need to "level the playing field". I agree. I have shown where this is the most sensible place to start with the most benefit for safety overall. [5]A report released on the CVSA website dated Sept. 24, 2012 states,

Each year nearly 4000 people die related to large trucks and buses. Many are the direct result of unsafe and aggressive driving by truck and bus drivers. This equates to more deaths than a 737 airplane crashing every two weeks for a year.

Steve Kepler, CVSA's Executive Director says, ***"The truth is that most of these accidents are avoidable."*** In the same report, NTSB Chairman Deborah Hersman stated, ***"It takes three things to effectively change unsafe behavior on our nation's highways: strong education, strong laws and strong enforcement."*** I would add to that, equal treatment of all players. The FMCSA minimum liability standards for self-insured companies create a different standard that supports higher profits for the self-insured.

We have a national uniformity of safety standards for all carriers, yet the insurance requirements vary depending on asset value of a company. This gives an economic advantage to the self-insured group over the insurance purchasing carriers to compete on a level playing field. To highlight this, take a look at a bill recently introduced by Rep. Cartwright of Pennsylvania. This bill advocates for an increase in minimum liability requirements from the current $750,000 to approximately 4.2 million dollars per power unit. This increase would not affect the self-insured carriers at the same levels as carriers purchasing insurance. Conversely, this bill would increase the rates for insurance purchasing carriers from an average of $6,000-$8,000 per year to estimates upwards of $20,000[6] per year, per unit. This would likely create an even greater advantage for a carrier to be self-insured. If this same standard was applied to a self-insured company of 5,000 power units, this would constitute an expense of $100,000,000.(100 mil.). If the self-insured company had to put up 4.2 mil. per truck, that would create a $21,000,000,000. (21 billion) dollar liability. The contrast is staggering when applied equally across the board. While expenses are piled on through discriminatory rules or laws for the small business operators, self-insured companies are enjoying large or even record profits[7]. Independents and small operators simply ask for a fair playing field.

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[5] http://www.cvsa.org/news/2012_press.php

[6] http://www.landlinemag.com/Story.aspx?StoryId=25702

[7] http://money.cnn.com/data/sectors/transportation/

Another aspect for consideration is that some estimates reflect approximately one third of the 2.5 million[8] estimated trucks currently in operation in the US are self-insured. If these estimated 833,000 trucks purchased insurance at the rate of $800. per month, as the remaining 1.6 million trucks do, this would add $666,700,000.(666.7 million) per month or $8,000,000,000.(8 billion) per year to our economy. Again, insurance purchasers are already paying at this rate. The self-insured companies are enjoying this revenue mostly as profits.

Anti-Trust laws address: conspiring to fix market prices, price discrimination, allocation of markets or customers and monopolization, among other things. There are some questions that should be addressed in this area to see if it violates the "spirit" of these laws. An example of this could be sited as the Robinson-Patman act which says; a seller charging competing buyers different prices for the same commodity or discriminating in the allowances may be in violation of this act. Although the act applies to commodities but not services, and to purchases and not freight rates, the overall principal is the same. The self-insured carriers have the ability to establish freight rates for a market based on the advantages they maintain. It creates an unfair advantage. Another is the Sherman Act which also addresses competitive practices that are not accepted. This act does not address interstate commerce directly, but does address unsuitable business practices. It specifically does not allow for competing individuals or businesses to fix prices, divide markets, or rig bids. The Federal Trade Commission Act bans "unfair methods of competition" and "unfair or deceptive acts or practices".

[9]Section 45(a)(1) states: ***Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.***

It could be argued that the insurance requirements or bond requirements or increased liability create such an unfair competition situation.

Every independent and owner/operator welcomes competition on equal terms. Set unfair advantages aside and the industry will enjoy the benefits of better trained drivers, service enhancements based on competition, safer highways through a higher value of safe operations, greater compliance, more stable rates, and generally a more stable industry for future growth. An industry that honors fair competition, professionalism, safety and efficiency is an industry prepared for the future.

Thank you,

Tilden Curl, owner
Tecco Trucking Inc.
OOIDA Life Member and
Advocate for Trucking Reform

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[8] http://www.fmcsa.dot.gov/documents/facts-research/CMV-Facts.pdf

[9] http://www.stolaf.edu/people/becker/antitrust/statutes/ftc.html