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FHWA - 97-2299-7

July 15, 1996

96 JUL 16 P 1: 48
LEGS./REGS. DIV.

ADMINISTRATION

FHWA Docket No. MC-96-18
FHWA, Office of the Chief Counsel
HCC-10, Room 4232
400 Seventh Street, S.W.
Washington, D.C. 20590

Re: FHWA Docket No. MC-96-18
Revision of Rules of Practice for Motor Carrier
Proceedings

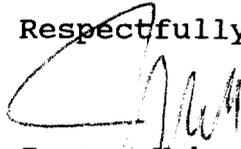
Gentlemen:

There are transmitted herewith the original and one copy of the comments on behalf of Landstar System, Inc. in connection with the *Federal Register* notice of April 29, 1996, announcing proposed changes in the FHWA Rules of Practice for Motor Carrier Proceedings.

Should you require anything further, your request to the undersigned, counsel for Landstar System, Inc., shall receive immediate attention.

For your convenience in acknowledging receipt of these comments, there are attached a copy of this communication and a self-addressed, stamped envelope.

Respectfully,



Jeremy Kahn
Counsel for
Landstar System, Inc.

JK:ji
Enc.
cc: Landstar System, Inc.

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BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

PROPOSED REVISION TO RULES OF PRACTICE
FOR MOTOR CARRIER PROCEEDINGS

FHWA DOCKET NO. MC-96-18

COMMENTS ON BEHALF OF
LANDSTAR SYSTEM, INC. AND
ITS MOTOR CARRIER SUBSIDIARIES

The Nature of these Comments

Landstar congratulates FHWA for reviewing its Motor Carrier Rules of Practice. Landstar is in favor of any modification of the Rules which will improve the safety regulatory process and modernize the Rules. These comments, however, are addressed to a single issue only: **Landstar is concerned that the proposed new rules may inadvertently adversely affect Landstar's existing self-insurance authorization.** The purpose of this statement is to express Landstar's concern on that one issue.

Identity of Party Filing Comments

These comments are submitted on behalf of Landstar System, Inc. ("Landstar"), Shelton, Connecticut, a non-carrier holding company. Landstar owns a number of interstate motor carriers, each of which holds interstate

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operating authority, formerly from the Interstate Commerce Commission, and now from the Federal Highway Administration ("FHWA").

Among the existing Landstar motor carriers are (1) Landstar Poole, Inc., Evergreen, Alabama; (2) Landstar Inway, Inc., Rockford, Illinois; (3) Landstar Ligon, Inc., Madisonville, Kentucky; (4) Landstar Ranger, Inc., Jacksonville, Florida; (5) Landstar Gemini, Inc., Jacksonville, Florida; (6) Landstar Express America, Inc., Charlotte, North Carolina; (7) Landstar T.L.C., Inc., St. Clair, Missouri; and (8) Landstar Logistics, Inc., Jacksonville, Florida.

As interstate motor carriers, each of the Landstar carriers is required under new 49 U.S.C. §13906(a) to maintain adequate insurance for the protection of the public.

Of the Landstar carriers listed above, the first five were authorized by the Interstate Commerce Commission to act as self-insured carriers in 1994; Landstar Express America and Landstar T.L.C. currently have an application pending before FHWA for self-insurance authorization.

These comments are directed only to the issue of the proposed revision to the FHWA's Safety Rules as they may affect the Landstar carriers' present and future self-insurance authorization.

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The Possible Impact of the
Proposed New Rules on Self-Insurance

The "original" five Landstar carriers have qualified to act as self-insurers under the stringent requirements of the then Interstate Commerce Commission. Two of the newer additions to the Landstar family of carriers have an application pending before FHWA for similar self-insurance authorization; based on the facts in the application and the success of the self-insurance program of the first five, Landstar anticipates this application being approved.

Landstar looks upon self-insurance authorization both as a means of meeting a carrier's obligation to provide security for the public [as described in 49 U.S.C. §13906(a)], and as a "reward" of sorts, allowing those motor carrier organizations with demonstrated excellent safety programs, safety performance, financial strength and ability to meet insurance obligations, to take advantage of the significant savings available through self-insurance.

The benefits of this important program were acknowledged by Congress when it enacted the ICC Termination Act of 1995 (P.L. 104-88), because it specifically included self-insurance as a specific option in 49 U.S.C. §13906(d), which provides as follows:

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Type of Insurance. - The Secretary may determine the type and amount of security filed under this section. A motor carrier may submit proof of qualifications as a self-insurer to satisfy the security requirements of this section. The Secretary shall adopt regulations governing the standards for approval as a self-insurer. Motor carriers which have been granted authority to self-insure as of the effective date of this section shall retain that authority unless, for good cause shown and after notice and an opportunity for a hearing, the Secretary finds that the authority must be revoked. (emphasis added)

Further, in Section 104(h) of ICCTA, the Secretary of Transportation is required to continue to enforce the rules and regulations of the ICC as in effect on July 1, 1995, governing qualifications for approval of a motor carrier as a self-insurer, unless and until such regulations are changed.

Those regulations include 49 CFR §1043.5, entitled "Qualifications as a Self-Insurer and Other Securities or Agreements." Included in that regulation as 49 CFR §1043.5(a)(3) is the statement that "applicant must submit evidence of a current 'satisfactory' safety rating by the United States Department of Transportation. . . . Any self-insurance authority granted by the [Interstate Commerce] Commission will automatically expire 30 days after a carrier receives a less than satisfactory rating from DOT."

As Landstar understands the DOT proposal, under proposed 49 CFR §362.104, the "satisfactory" safety rating will apparently be eliminated. Although the notice is not

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altogether clear as to what would happen to motor carriers with an existing "satisfactory" rating, there is concern that FHWA could interpret 49 CFR §1043.5(a)(3) in conjunction with its new regulations as finding that the Landstar carriers now have a "less than satisfactory" rating from DOT (because it would be something "other" than a satisfactory rating), and therefore no longer qualify for self-insurance. Similarly, should Landstar acquire new carriers in the future, there is a concern that the proposed safety rating process would make it impossible for such new carriers to qualify for self-insurance authorization, because they could never attain a "satisfactory" rating. ¹

Landstar expresses no specific view as to how, or if, FHWA should revamp the safety fitness program. However, it is essential that whatever changes may be made, those motor carriers which now are authorized to self-insure must be allowed to continue to self-insure (in the absence of some finding that they are no longer qualified under traditional standards), and new carriers must have a reasonable opportunity to self-insure, consistent with traditional standards.

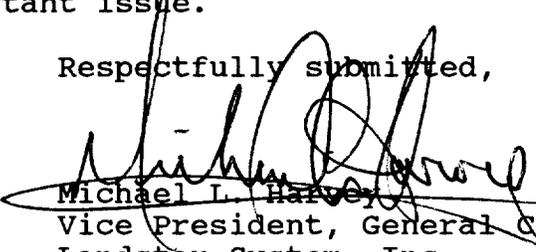
¹ In the *Federal Register* notice, FHWA specifically states it is "particularly interested in comments on this issue [the effect of the elimination of safety ratings]." (p. 18870)

Since there is no mention of 49 CFR §1043 in the *Federal Register* notice, it is believed that FHWA may not have considered this particular issue when making its proposal. Landstar wishes to call the issue to FHWA's attention.

Self-insurance is an important means by which highly qualified carriers, such as those in the Landstar system, can meet their obligations to the public and provide the best, safest, and most efficient possible transportation service for the public. Congress, in ICCTA, has recently spoken to the need to retain the current self-insurance system. In considering changes in the Safety Rules of Practice, Landstar urges FHWA not to inadvertently affect the ability of qualified carriers to self-insure.

Landstar is prepared to provide FHWA with such additional information as it may require for its consideration of this important issue.

Respectfully submitted,



~~Michael L. Harvey~~
Vice President, General Counsel
Landstar System, Inc.

July 11, 1996

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