



**U.S. Department  
of Transportation**

**Federal Motor Carrier  
Safety Administration**

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**Examining the Appropriateness of  
the Current Financial Responsibility  
and Security Requirements for  
Motor Carriers, Brokers, and  
Freight Forwarders – Report to  
Congress**

A Report Pursuant to Section 32104 of the  
Moving Ahead for Progress in the 21<sup>st</sup> Century Act (P.L. 112-141)

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**TABLE OF CONTENTS**

**EXECUTIVE SUMMARY .....1**

**STATUTORY HISTORY OF FMCSA FINANCIAL RESPONSIBILITY AUTHORITY ...2**

MOTOR CARRIER ACT OF 1935 ..... 2

MOTOR CARRIER ACT OF 1980..... 3

BUS REGULATORY REFORM ACT OF 1982 ..... 4

MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY ACT (MAP-21) ..... 5

FIXING AMERICA’S SURFACE TRANSPORTATION (FAST) ACT ..... 6

CURRENT LEVELS OF FINANCIAL RESPONSIBILITY..... 6

**BACKGROUND ON THE MOTOR CARRIER AND TRANSPORTATION  
INTERMEDIARY/THIRD PARTY LOGISTICS INDUSTRIES.....8**

MOTOR CARRIERS OF PROPERTY ..... 8

MOTOR CARRIERS OF PASSENGERS ..... 8

TRENDS IN CRASH STATISTICS ..... 8

TRANSPORTATION INTERMEDIARIES (BROKERS AND FREIGHT FORWARDERS)..... 9

**2014 FINANCIAL RESPONSIBILITY ANPRM.....9**

**FINDINGS FROM PREVIOUS STUDIES .....10**

VOLPE STUDY ..... 10

EXTERNAL STUDIES ..... 12

**CONCLUSION .....14**

**TABLES**

TABLE 1 - MOTOR CARRIERS – BODILY INJURY AND PROPERTY DAMAGE LIABILITY LIMITS SET BY THE INTERSTATE COMMERCE COMMISSION IN 1936 ..... 3

TABLE 2 – CURRENT MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR BODILY INJURY/PROPERTY DAMAGE BY TYPE OF REGULATED CARRIER..... 7

TABLE 3 – SECURITY REQUIREMENTS FOR BROKERS AND FREIGHT FORWARDERS ..... 7

TABLE 4 – TOTAL CRASHES BY VEHICLE TYPE AND FATAL CRASHES INVOLVING LARGE TRUCKS AND BUSES, 2015-2018..... 8

TABLE 5 – INFLATION ADJUSTED LEVELS OF FINANCIAL RESPONSIBILITY BY CARRIER TYPE..... 11

## EXECUTIVE SUMMARY

On July 6, 2012, the President signed into law the Moving Ahead for Progress in the 21st Century Act (MAP-21), (Pub. L. 112-141, 126 Stat. 405). Section 32104 of MAP-21 directed the Secretary of Transportation to issue a report to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure on the appropriateness of the current minimum financial responsibility requirements for motor carriers of property and passengers, and the current bond and insurance requirements for freight forwarders and brokers. The report required under section 32104 was to be submitted to Congress 6 months after the “date of enactment” of MAP-21 and every 4 years thereafter.<sup>1</sup> The Secretary delegated the responsibility for this report to the Federal Motor Carrier Safety Administration (FMCSA).<sup>2</sup>

Interstate motor carriers, as well as intrastate hazardous materials carriers, are required by 49 U.S.C. § 31138 (for certain passenger carriers) and § 31139 (for certain property carriers) to maintain minimum levels of financial responsibility. Brokers and Freight Forwarders, also known as transportation intermediaries, are required to maintain financial security to ensure the payment of claims made against them pursuant to 49 U.S.C. § 13906(b) and (c). This report explains the history of these requirements, details the current minimum financial responsibility levels for the different sectors, provides background on the motor carrier industry, and summarizes the findings of relevant studies on the adequacy of the Agency’s current required minimum levels of financial responsibility.

The current minimum financial responsibility levels for motor carriers of property, hazardous materials, and passengers were established in the 1980s. Over the past 40 years, the medical and other costs of catastrophic crashes have increased significantly. In the relatively rare instances that catastrophic and severe/critical injury crashes do occur, the costs of resulting property damage, injuries, and fatalities can significantly exceed the minimum levels of financial responsibility. However, consistent with FMCSA’s prior reporting on data limitations, much of the information necessary for FMCSA to more fully examine the adequacy of the current minimum financial responsibility requirements is not readily available to the Agency, as many lawsuits are settled out of court and are subject to non-disclosure agreements. Moreover, much insurance company information is proprietary. Accordingly, FMCSA is able to provide only a limited assessment of the appropriateness of the motor carrier financial responsibility requirements at this time. In order for FMCSA to adequately assess the sufficiency of the financial responsibility requirements, the Agency would need access to more detailed

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<sup>1</sup>. See MAP-21, Pub. L. No. 112-141, §32104, 126 Stat. 405, 782 (2012). Congress designated the date of enactment as October 1, 2012. See *id.*, Pub. L. No. 112-141, §3, 126 Stat. 405 at 413.

<sup>2</sup> Congress established FMCSA within DOT on January 1, 2000, pursuant to the Motor Carrier Safety Improvement Act of 1999. Its primary mission, holding safety as its highest priority, is to reduce crashes, injuries, and fatalities involving commercial motor vehicle (CMV) transportation. FMCSA enforces motor carrier safety regulations, targets high-risk carriers and CMV drivers, improves safety information systems and CMV technologies, strengthens CMV equipment and operating standards, and increases safety awareness. To accomplish these objectives, FMCSA works with Federal, State, and local enforcement agencies, the motor carrier industry, safety advocates, and the motoring public.

information from the insurance industry, including anonymized claims data. To date, efforts to obtain this information under existing legal authorities and through requests for voluntary disclosure have been unsuccessful.

## **STATUTORY HISTORY OF FMCSA FINANCIAL RESPONSIBILITY AUTHORITY**

The Federal Government has long required motor carriers, brokers, and freight forwarders to maintain certain levels of financial responsibility, either through insurance, a bond, or other financial security, as a means to protect the public in the event of a crash or to protect motor carriers and shippers from dishonest and financially unstable brokers. The Motor Carrier Act of 1935 first directed the establishment of Federal rules and regulations for interstate motor carrier operations that govern “security for the protection of the public.”<sup>3</sup> Over time, Congress, the Interstate Commerce Commission (ICC), and the Department of Transportation (DOT) have taken numerous actions to address the levels of financial responsibility, with the most recent legislation being the FAST Act, Pub. L. 114-94, 129 Stat. 1312 (Dec. 4, 2015).

### **MOTOR CARRIER ACT OF 1935**

The first major legislative directive regarding financial responsibility levels for the motor carrier industry is found in the Motor Carrier Act of 1935, Pub. L. 74-255, 49 Stat. 543 (Aug. 9, 1935). In section 215 of the Act, former 49 U.S.C. § 315, Congress directed that no “certificate or permit shall be issued to a motor carrier or remain in force, unless such carrier complies with such reasonable rules and regulations as the [Interstate Commerce] Commission shall prescribe” governing security for the protection of the public.<sup>4</sup> The former ICC issued regulations requiring the following levels (Table 1) of financial responsibility for motor carriers beginning November 15, 1936:<sup>5</sup>

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<sup>3</sup> Section 215 of the Motor Carrier Act of 1935 (Pub. L. 74-255).

<sup>4</sup> 1 Fed. Reg. 1156, 1156 (1936).

<sup>5</sup> *Id.* at 1163. Congress later transferred responsibility for carrying out the financial responsibility authority of the ICC for the motor carrier industry to the Secretary of Transportation. Section 103, ICC Termination Act of 1995, Pub. L. 104-88, 109 Stat. 803, 885-887 (Dec. 29, 1995). Congress then assigned these duties to the Federal Motor Carrier Safety Administration. 49 U.S.C. 113(f)(1), enacted by section 101, Motor Carrier Safety Improvement Act of 1999, Pub. L. 106-159, 113 Stat. 1748, 1750 (Dec. 9, 1999).

**TABLE 1 - MOTOR CARRIERS – BODILY INJURY AND PROPERTY DAMAGE LIABILITY LIMITS  
SET BY THE INTERSTATE COMMERCE COMMISSION IN 1936**

<b>Kind of Equipment</b>	<b>Minimum limit for bodily injuries to or death of one person</b>	<b>Minimum limit for bodily injuries to or death of all persons injured or killed in any one accident *</b>	<b>Minimum limit for loss or damage in any one accident to property or other**</b>
<b>7 passengers or less</b>	\$5,000	\$15,000	\$1,000
<b>8 to 12 passengers inclusive</b>	\$5,000	\$20,000	\$1,000
<b>13 to 20 passengers inclusive</b>	\$5,000	\$30,000	\$1,000
<b>21 to 30 passengers inclusive</b>	\$5,000	\$40,000	\$1,000
<b>31 passengers or more</b>	\$5,000	\$50,000	\$1,000
<b>All motor vehicles used in the transportation of Property</b>	\$5,000	\$10,000	\$1,000

\* Subject to a maximum of \$5,000 for bodily injuries to or death of one person.

\*\* Excluding cargo.

In accordance with section 211(c) of the Motor Carrier Act of 1935, former 49 U.S.C. § 311(c), the ICC also decided that a person seeking authority to operate as a broker must furnish “a bond or other security approved by the Commission, in an amount of not less than \$5,000, and in such form as will ensure the financial responsibility of such broker and the supplying of authorized transportation in accordance with the contracts, agreements, or arrangements therefore.”<sup>6</sup> In 1977, the ICC increased the required amount of bonding to \$10,000.<sup>7</sup>

### **MOTOR CARRIER ACT OF 1980**

The next significant legislation regarding financial responsibility was enacted on July 1, 1980, the Motor Carrier Act of 1980, Pub. L. 96-296, 94 Stat.793 (MCA). Section 30 of the MCA (former 49 U.S.C. § 10927 note) set minimum levels of financial responsibility for property-carrying motor carriers. The MCA also gave the Secretary the authority to reduce those levels, by regulation, for up to a 2-year “phase-in period” provided the reduced levels would not adversely affect public safety and would prevent a serious disruption in transportation service.

Congress, in the MCA, set the minimum financial responsibility level at \$750,000 for the transportation of property, \$5 million for certain transportation of certain hazardous materials, and \$1 million for the transportation of hazardous materials consisting of “any material, oil, substance, or waste” that is not subject to the \$5 million limit.<sup>8</sup> Congress set the “phase-in”

<sup>6</sup> *Id.* at 1161.

<sup>7</sup> 42 Fed. Reg. 21782, 21783 (1977).

<sup>8</sup> Section 30 of the Motor Carrier Act of 1980 (Pub. L. 96-296).

levels at \$500,000 for general commodities, and \$1,000,000 and \$500,000 respectively, depending upon the type of hazardous materials transportation. DOT opted to phase in implementation of the new insurance requirements.<sup>9</sup> These statutory provisions, as amended, are now found at 49 U.S.C. § 31139.

The legislative history of the MCA shows that Congress included section 30 because “the issue of financial responsibility ... is inextricably bound to the entry provisions of the legislation that directly concern the ‘fitness’ of a carrier to operate in interstate commerce.”<sup>10</sup> Further, the legislative history of the MCA indicates the purpose of section 30 was “to create additional incentives to carriers to maintain and operate their trucks in a safe manner as well as to assure that carriers maintain an appropriate level of financial responsibility.”<sup>11</sup>

The legislative history of section 30 indicates that setting minimum levels of financial responsibility would address two concerns. First, the minimum levels would “assure that public safety is not jeopardized” in connection with the increased entry to the industry due to deregulation.<sup>12</sup> Second, the minimum levels would ease concerns that the largely deregulated industry would put pressure on safe operators to cut costs to meet the prices of their competitors, “some of which may cut costs by operating in violation of minimum safety standards.”<sup>13</sup>

The House Public Works and Transportation Committee Report to the MCA referred to a 1979 report by the National Transportation Policy Study Commission (“Commission”) which recommended a level “ ‘sufficient to require periodic ‘on site’ inspection by the insurance company, with the minimum to be updated regularly.’ ”<sup>14</sup> In explaining the role of financial responsibility levels, the Commission provided evidence that DOT did not have personnel or funds to enable it to effectively enforce the Federal Motor Carrier Safety Regulations (FMCSRs),<sup>15</sup> implying that increased scrutiny by the private sector (insurance industry) would be one method to improve safety oversight.

## **BUS REGULATORY REFORM ACT OF 1982**

On September 20, 1982, the President signed the Bus Regulatory Reform Act of 1982, Pub. L. 97-261, 96 Stat.1102 (the Bus Reform Act), into law. Section 18 of the Bus Reform Act (former 49 U.S.C. § 10927 note) updated the minimum levels of financial responsibility covering public liability and property damage for the transportation of passengers by for-hire motor vehicles in interstate or foreign commerce. These provisions, as amended, are now codified at 49 U.S.C. § 31138.

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<sup>9</sup> 46 Fed. Reg. 30974, 30983 (1981).

<sup>10</sup> H.R. Rep. No. 96-1069, at 9 (1980).

<sup>11</sup> *Id.*, at 41

<sup>12</sup> *Id.* at 6

<sup>13</sup> *Id.* at 43

<sup>14</sup> *Id.*

<sup>15</sup> National Transportation Policy Study Commission, “National Transportation Policies Through the Year 2000” Final Report, June 1979, p. 279.

According to the 1983 Federal Highway Administration (FHWA)<sup>16</sup> rulemaking implementing the Bus Reform Act:

The purpose of the financial responsibility provision of the ... Act ... is to create additional incentives to motor carriers to operate their buses in a safe manner and to assure that they maintain adequate levels of financial responsibility sufficient to satisfy claims covering public liability and property damage. The legislative history of Section 18 indicates a congressional belief that the establishment of minimum levels of financial responsibility to enhance safety will also ensure that adequate sources of compensation are available to compensate those who may be injured while traveling by bus. It is also believed, given the interstate nature of many motor carrier operations, a single Federal standard for financial responsibility coverage will be more efficient for carriers and more equitable and certain for consumers.<sup>17</sup>

Section 18 of the Bus Reform Act established minimum levels of financial responsibility for motor carriers of passengers. Similar to the MCA, the Bus Reform Act provided the Secretary with the authority to lower temporarily the required financial responsibility amounts below the statutory minimums by regulation, for up to a 2-year “phase-in period,” provided the reduced levels would not adversely affect public safety and would prevent a serious disruption in transportation service.

The Bus Reform Act set minimum financial responsibility levels at \$5 million for vehicles with a seating capacity of 16 or more passengers and \$1,500,000 for vehicles with a seating capacity of 15 or fewer. The “phase-in” levels were set at \$2,500,000 for vehicles with a seating capacity of 16 or more passengers and \$750,000 for vehicles with a seating capacity of 15 or fewer. In 1983, the Secretary opted to phase in implementation of the new insurance requirements with the lower financial responsibility levels.<sup>18</sup> The current financial responsibility minimums went into effect on November 19, 1985.<sup>19</sup>

### **MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY ACT (MAP-21)**

On July 6, 2012, the President signed MAP-21, Pub. L. 112-141, 126 Stat. 405, into law. Section 32104 of MAP-21 (49 U.S.C. § 13903 note) directed the Secretary to issue a report on the appropriateness of (1) the current minimum financial responsibility requirements for the transportation of passengers and property; and (2) the current bond and insurance requirements for freight forwarders and brokers, including brokers for motor carriers of passengers. This section also directed the Secretary to determine the appropriateness of these requirements every 4 years beginning April 1, 2013.

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<sup>16</sup> Before the Motor Carrier Safety Act of 1999 established FMCSA, (FHWA had authority over motor carrier financial responsibility at DOT.

<sup>17</sup> 48 Fed. Reg. 52679, 52679 (1983).

<sup>18</sup> *Id.* at 52684.

<sup>19</sup> *Id.*

Section 32918 of MAP-21 amended 49 U.S.C. § 13906(b) and (c) to increase the financial security requirements for brokers to \$75,000 and extended such requirements to freight forwarders for the first time. The higher financial responsibility amount is designed to ensure payment of claims arising from a broker's or freight forwarder's failure to pay freight charges for transportation services it may have arranged.<sup>20</sup> FMCSA issued rules implementing the \$75,000 requirement on October 1, 2013.<sup>21</sup>

## **FIXING AMERICA'S SURFACE TRANSPORTATION (FAST) ACT**

The President signed the FAST Act into law on Dec. 4, 2015 (Pub. L. 114-94, 129 Stat.1312). Section 5509 of the Act (49 U.S.C. § 31138 note) requires FMCSA to consider certain factors prior to issuing any final rule increasing property carrier financial responsibility. Those factors include (1) the rule's potential impact on motor vehicle safety and the motor carrier industry, (2) the ability of the insurance industry to cover revised financial responsibility requirements, (3) the extent the current minimums adequately cover medical care, compensation and other identifiable costs, (4) the frequency with which insurance claims exceed the current minimums in fatal accidents and (5) the impact on motor carrier safety and accident reduction of increased levels. Section 5509 also mandated that, prior to initiating any rulemaking to change passenger carrier minimum financial responsibility levels, the Agency complete a study specific to passenger carrier financial responsibility.<sup>22</sup> In addition, Section 5517 of the FAST Act required a report to Congress on minimum financial responsibility for motor carriers of property. The Agency submitted a joint FAST Act and MAP-21 report to Congress in March 2018.

## **CURRENT LEVELS OF FINANCIAL RESPONSIBILITY**

The current minimum financial responsibility levels for motor carriers of property took effect on January 1, 1985.<sup>23</sup> These levels are: \$750,000 for the transportation of property (other than hazardous materials), \$5 million for the transportation of certain hazardous materials, and \$1 million for the transportation of other hazardous materials.

The current financial responsibility minimums for motor carriers of passengers took effect on November 19, 1985.<sup>24</sup> The current minimum levels of financial responsibility are summarized in Table 2. 49 CFR § 387.9 (property) and 387.33T (passengers).

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<sup>20</sup> 49 U.S.C § 13906(b)(2)(A), (c)(2)(A).

<sup>21</sup> 78 Fed. Reg. 60226. FMCSA issued an Advance Notice of Proposed Rulemaking in furtherance of additional MAP-21 requirements pertaining to broker/freight forwarder financial responsibility in 2018. 83 Fed. Reg. 48779 (Sept. 27, 2018).

<sup>22</sup> FMCSA is not currently conducting a property or passenger carrier rulemaking.

<sup>23</sup> 49 CFR § 387.9.

<sup>24</sup> 48 Fed. Reg. 52679.



**TABLE 2 – CURRENT MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR BODILY INJURY/PROPERTY DAMAGE BY TYPE OF REGULATED CARRIER**

<b>Regulated Carrier Category</b>	<b>Minimum Level</b>
For-Hire Interstate General Freight Carriers	\$750,000
For-Hire and Private Carriers of Oil and Certain Other Types of Hazardous Materials	\$1,000,000
For-Hire and Private Carriers of Other Hazardous Materials	\$5,000,000
For-Hire Passenger Carriers (Seating Capacity ≤15)	\$1,500,000
For-Hire Passenger Carriers (Seating Capacity >15)	\$5,000,000
For-Hire General Freight Carriers < 10,001 pounds Gross Vehicle Weight Rating (GVWR) <sup>25</sup>	\$300,000

Effective October 1, 2013, section 32918 of MAP-21 required \$75,000 in financial security for brokers and extended the financial security requirement to freight forwarders as well.

**TABLE 3 – SECURITY REQUIREMENTS FOR BROKERS AND FREIGHT FORWARDERS**

<b>Regulated Transportation Intermediary</b>	<b>Security Level</b>
Broker of Property	\$75,000
Freight Forwarder	\$75,000

Prior to the increase in security level for brokers and freight forwarders, the minimum financial responsibility level was \$10,000 for brokers (\$25,000 for household goods brokers) and \$0 for freight forwarders. In 2015, FMCSA denied a petition from the Association of Independent Property Brokers and Agents (AIPBA) seeking an exemption from the \$75,000 requirement for all brokers and freight forwarders. 80 Fed. Reg. 17142 (Mar. 31, 2015). The Agency denied the exemption, in part, because it was not in the public interest. *Id.* at 17146. AIPBA’s successor organization, the Small Business in Transportation Coalition (SBTC), filed a more limited request for exemption in 2019, which the Agency denied in December 2021. 86 Fed. Reg. 71538 (Dec. 16, 2021). FMCSA found that granting the exemption was not in the public interest. *Id.* at 71542. FMCSA is aware that there is stakeholder interest regarding the financial security requirements for property brokers and freight forwarders, and continues to review stakeholder feedback on this issue.

<sup>25</sup> 49 CFR § 387.303T(b)(1)(i). This regulation, originally promulgated by the ICC, only applies where the entire carrier’s fleet contains vehicles below 10,001 pounds GVWR.

# BACKGROUND ON THE MOTOR CARRIER AND TRANSPORTATION INTERMEDIARY/THIRD PARTY LOGISTICS INDUSTRIES

## MOTOR CARRIERS OF PROPERTY

In 2018, the motor carrier industry transported 11.9 billion tons of freight, employing approximately 6.5 million people across all sectors of the economy.<sup>26</sup> As of the latest data available in November 2021, the industry consists of approximately 702,102 active interstate freight carriers.<sup>27</sup>

## MOTOR CARRIERS OF PASSENGERS

The passenger carrier industry is a highly-diversified industry providing many services. The services include transit, school bus, charter, tour, sightseeing, airport shuttle, commuter, scheduled intercity travel routes, and scheduled interstate travel routes. Motorcoach companies, for example, carried out 574.6 million passenger trips in 2017,<sup>28</sup> moving individual passengers a total of 69.6 billion miles.<sup>29</sup> The total number of FMCSA-registered interstate passenger carriers, as of November 2021, was 10,336.<sup>30</sup>

## TRENDS IN CRASH STATISTICS

Table 4 depicts the number of total crashes by vehicle type between 2016 and 2019 and the total number of fatal crashes involving large trucks and buses.<sup>31</sup>

**TABLE 4 – TOTAL CRASHES BY VEHICLE TYPE AND FATAL CRASHES INVOLVING LARGE TRUCKS AND BUSES, 2016-2019**

Year	Large Truck Crashes	Bus Crashes	Fatal Crashes Involving Large Trucks	Fatal Crashes Involving Buses
2016	434,000	67,000	4,177	231
2017	450,000	66,000	4,366	231
2018	499,000	65,000	4,415	230
2019	510,000	72,000	4,479	231

<sup>26</sup> FMCSA 2021 Pocket Guide to Large Truck and Bus Statistics. Available at: <https://www.fmcsa.dot.gov/safety/data-and-statistics/2021-pocket-guide-large-truck-and-bus-statistics>

<sup>27</sup> FMCSA Motor Carrier Information System (MCMIS) database, August 2020.

<sup>28</sup> The number of passenger trips given is the most recent FMCSA data available. FMCSA recognizes that passenger travel has been significantly affected by the onset of COVID-19 and that this number is not representative of the current environment.

<sup>29</sup> American Bus Association Census 2017.

<sup>30</sup> MCMIS, as of August, 2020.

<sup>31</sup> A large truck is defined as a truck with a gross vehicle weight rating greater than 10,000 pounds. A bus is defined as a vehicle with seats for at least nine people, including the driver.

## **TRANSPORTATION INTERMEDIARIES (BROKERS AND FREIGHT FORWARDERS)**

Transportation intermediaries are third-party logistics companies that match the transportation demands of shippers with the corresponding capacity and special equipment offered by motor, rail, air, waterway, and oceangoing carriers. Transportation intermediaries involved in the trucking industry are licensed by FMCSA as either brokers or freight forwarders.

### Brokers

FMCSA defines a broker in part as “a person who, for compensation, arranges, or offers to arrange, the transportation of property by an authorized motor carrier.”<sup>32</sup> As of November 2021, FMCSA’s Licensing and Insurance database listed 28,266 registered brokers.

### Freight Forwarders

FMCSA defines a freight forwarder as “a person holding itself out to the general public (other than as an express, pipeline, rail, sleeping car, motor, or water carrier) to provide transportation of property for compensation in interstate commerce, and in the ordinary course of its business: (1) [p]erforms or provides for assembling, consolidating, break-bulk, and distribution of shipments; (2) [a]ssumes responsibility for transportation from place of receipt to destination; and (3) [u]ses for any part of the transportation a carrier subject to FMCSA jurisdiction.”<sup>33</sup> There are 1,691 freight forwarders registered with FMCSA as of November 2021.

## **2014 FINANCIAL RESPONSIBILITY ANPRM**

On November 28, 2014, FMCSA issued an Advance Notice of Proposed Rulemaking (ANPRM) to solicit public input pertaining to various financial responsibility issues, including a potential increase in the motor carrier minimum financial responsibility requirements. 79 Fed. Reg. 70839. While FMCSA received almost 2200 public comments in response to the ANPRM, the Agency withdrew the ANPRM due to “insufficient data or information to support moving forward with a rulemaking proposal... .” 82 Fed. Reg. 25753, 25754 (Jun. 5, 2017). The comments FMCSA received in response to the ANPRM did not provide sufficient cost or benefit data, nor was the Agency independently able to obtain sufficient data, to inform policy changes. *Id.*

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<sup>32</sup> 49 CFR § 371.2 (a).

<sup>33</sup> 49 CFR § 386.2.

## FINDINGS FROM PREVIOUS STUDIES

### VOLPE STUDY

In January 2013, FMCSA funded a study conducted by DOT's John A. Volpe National Transportation Systems Center (Volpe), titled "Financial Responsibility Requirements for Commercial Motor Vehicles." The Volpe study examined whether the minimum financial responsibility requirements under 49 U.S.C. §§ 31138-31139 should be raised, weighing the benefits of improved compensation for crash victims, internalization of freight and passenger transportation costs, and reductions in truck and bus-involved crashes, against costs imposed on CMV operators, the insurance industry, and other relevant considerations. Overall, the study's findings provided preliminary support for increasing the current levels of financial responsibility.

Highlights from the 2013 study are presented below:

- **Catastrophic motor carrier-related crashes are relatively rare.** Volpe estimated that catastrophic crashes, resulting in injury, death, or property damages that exceeded the current minimum levels of financial responsibility comprised less than one percent of all CMV crashes.
- **Costs for severe and critical injury crashes can easily exceed \$1 million.** The analysis revealed that two categories of injury crash (severe and critical) yield damages of more than \$1 million, in nominal terms, using the DOT's recommended value of a statistical life (VSL) of \$6.2 million that was in effect at that time.<sup>34</sup>
- **Insurance premiums have declined in real terms since the 1980s.** The analysis revealed the stability of insurance rates over the last three decades prior to the issuance of the report. Insurance rates for the same level of coverage (e.g., \$750,000 or \$1 million) have declined slightly on average in nominal terms, hovering around \$5,000 per power unit (truck or bus). The real values (i.e., inflation adjusted) of insurance rates have also declined.<sup>35</sup>

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<sup>34</sup> U.S. Department of Transportation Memorandum to Secretarial Officers and Modal Administrators, July 29, 2011. As of 2021, DOT's recommended VSL is \$11.6 million. See <https://www.transportation.gov/office-policy/transportation-policy/revised-departmental-guidance-on-valuation-of-a-statistical-life-in-economic-analysis>.

<sup>35</sup> FMCSA acknowledges that insurance premiums have increased in nominal terms since the Volpe study was published in 2013.

- **Current insurance limits did not adequately cover catastrophic crashes, mainly because of increased medical costs.** The decreasing real value of the current minimum levels of financial responsibility is effectively removing the function of insurance in covering catastrophic crashes. From 1985 to 2019,<sup>36</sup> the medical consumer price index (CPI) increased at a significantly higher rate than the core consumer price index (4.6 percent annually for medical care, compared to 2.6 percent for core). In fact, the medical consumer price index has outpaced overall inflation in all but three of those 35 years. As depicted in Table 5, the core CPI-adjusted level for general freight coverage is approximately \$1.9 million; the medical CPI- adjusted level is approximately \$3.5 million.

**TABLE 5 – INFLATION ADJUSTED LEVELS OF FINANCIAL RESPONSIBILITY BY CARRIER TYPE**

<b>Carrier Type</b>	<b>1985 Liability Limit Required</b>	<b>2019 Inflation Adjusted Liability Limit Core CPI</b>	<b>2019 Inflation Adjusted Liability Limit Medical CPI</b>
<b>General Freight</b>	\$750,000	\$1,763,317	\$3,360,687
<b>HM (Low)</b>	\$1,000,000	\$2,351,089	\$4,480,916
<b>HM (High)</b>	\$5,000,000	\$11,755,444	\$22,404,581
<b>Small Bus</b>	\$1,500,000	\$3,526,633	\$6,721,374
<b>Large Bus</b>	\$5,000,000	\$11,755,444	\$22,404,581

- **Comprehensive data on premiums that motor carriers would incur to meet higher coverage limits were not readily available.** The insurance underwriting process is specific to individual motor carriers (e.g., the size of the fleet, type of operation, vehicle miles traveled, safety performance records (including previous crashes), etc.), and there are no uniform pricing practices (other than limits that might be imposed by State regulations). The study, therefore, did not assess potential insurance premium increases as a regulatory cost.
- **Though focused mainly on freight carriers, the study findings are applicable to passenger and hazardous materials carriers.** Although the study did not focus on the motorcoach industry or hazardous materials carriers, FMCSA considers its findings applicable to these operations.

<sup>36</sup> The Volpe study listed CPI and medical CPI from 1985 to 2013. FMCSA updated this figure to 2019 for the purpose of this report.

## EXTERNAL STUDIES

Other organizations, such as the Pacific Institute for Research and Evaluation (PIRE)<sup>37</sup>, the Alliance for Driver Safety and Security, Inc. (or the Trucking Alliance), and the American Trucking Associations (ATA), have studied the appropriateness of the current minimum insurance levels for motor carriers. Although FMCSA has not independently verified the information relied on in the external studies, the data they contain is informative.

PIRE published a report in 2013<sup>38</sup> that examined the appropriateness and effectiveness of current minimum levels of financial responsibility for motor carriers of property. This report assessed the adequacy of the current minimum level of \$750,000 for large trucks carrying property in interstate commerce by examining the costs and damages associated with serious large truck crashes, and concluded the current minimum levels are too low. The report found that the estimated upper decile/quartile range for liability awards in large truck crashes involving death or catastrophic injury is \$9-10 million in 2012 dollars (equivalent to \$10.2-11.3 million in 2020 dollars). The report recommended that DOT set a policy limit per crash of at least \$10 million in 2012 dollars and index it for inflation and productivity growth in the same manner that DOT indexes its estimate of the VSL.<sup>39</sup>

The Trucking Alliance, a safety advocacy coalition of freight and logistics companies, promotes increasing the Federal minimum insurance requirements for trucking companies. The Trucking Alliance reviewed crash settlement data<sup>40</sup> that it compiled from its membership. Its March 2013 analysis showed the current \$750,000 of insurance required of many motor carriers is inadequate to cover the costs of many crashes. Member companies of the Trucking Alliance voluntarily tracked 8,692 accident settlements between 2005 and 2011. The data show that 42 percent of the trucking companies' monetary exposure from these settlements would have exceeded their insurance coverage had all companies in the study maintained the minimum \$750,000 insurance requirement.

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<sup>37</sup> PIRE is an independent, nonprofit organization that works on grant and contract funded research studies.

<sup>38</sup> Pacific Institute for Research and Evaluation, "Potential Damages in Heavy Truck Crashes," March 2013.

<sup>39</sup> The DOT applies the Bureau of Labor Statistics' annual estimates of inflation and productivity growth rates.

<sup>40</sup> The Trucking Alliance, Press Release "Study Shows Trucking Companies Underinsured," June 4, 2013.

In 2013, ATA, a trade association representing the trucking industry, conducted a review<sup>41</sup> of the appropriateness of the current minimum insurance requirements with data obtained from the Insurance Services Office (ISO), an insurance advisory company. The ATA's analysis is based on ISO data, under nondisclosure agreements, from two of the 10 largest trucking insurers that covered all their large truck (over 26,000 pounds) policies. According to the ATA, ISO's data shows that only 6.5 percent of insurance policies for trucks over 26,000 pounds are written at limits less than \$1 million (not considering umbrella or excess coverage), while 83 percent are written at \$1 million, with the remaining 10.5 percent written for more than \$1 million. In its analysis of the ISO data, ATA found that there is a 1.40 percent chance of a claim exceeding \$500,000, a 0.73 percent chance of a claim exceeding \$1 million, and a 0.31 percent chance of a claim exceeding \$2 million. From 2006 to 2011, there were 85,632 reported crashes with a total of \$961,591,721 in claims incurred, making the average cost per occurrence \$11,229.

More recently, the American Trucking Research Institute (ATRI), ATA's research arm, compiled litigation data for 600 cases between 2006 and 2018.<sup>42</sup> ATRI looked specifically at case information with jury awards over \$1 million. ATRI's study found the number of cases with verdicts over \$1 million increased by a factor of nine from 2010 to 2013 and the dollar value of cases has also increased. The mean dollar value of jury awards over \$1 million between 2006 and 2018 was \$3.1 million and the median jury award was \$1.75 million. Between 2005 and 2011, there were 79 verdicts over \$1 million, while between 2012 and 2019 there were 265 cases, representing an increase of 235 percent. While the average verdict over the thirteen-year period between 2006 to 2018 was \$3.1 million, the average size of a verdict over the nine-year period from 2010 to 2018 was \$22.3 million. ATRI noted that when inflation and healthcare costs were accounted for, the average verdict increased between 36.5 and 37.6 percent faster than inflation or healthcare costs. ATRI asserts the increase in excess of inflation and medical costs implies other unknown factors may be affecting verdict awards.

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<sup>41</sup><https://web.archive.org/web/20151016215937/http://www.trucking.org/ATA%20Docs/What%20We%20Do/Trucking%20Issues/Documents/Insurance%20Study%20Group%20Findings.pdf>

<sup>42</sup> American Trucking Research Institute, "Understanding the Impact of Nuclear Verdicts on the Trucking Industry," June 2020, <https://truckingresearch.org/wp-content/uploads/2020/06/ATRI-Understanding-the-Impact-of-Nuclear-Verdicts-on-the-Trucking-Industry-06-2020-2.pdf>.

## CONCLUSION

The current minimum financial responsibility levels for motor carriers of property, hazardous materials, and passengers were established in the 1980s. Over the past 40 years, medical and other costs of catastrophic crashes have increased significantly. In the relatively rare instances that catastrophic and severe/critical injury crashes do occur, the costs of resulting property damage, injuries, and fatalities can significantly exceed the minimum levels of financial responsibility. However, consistent with FMCSA's prior reporting on data limitations, much of the information necessary for FMCSA to examine the adequacy of the current minimum financial responsibility requirements more fully is not readily available to the Agency as many lawsuits are settled out of court and are subject to non-disclosure agreements. Moreover, much insurance company information is proprietary. Accordingly, FMCSA is able to provide only a limited assessment of the appropriateness of the motor carrier financial responsibility requirements at this time. In order for FMCSA to adequately assess the sufficiency of the financial responsibility requirements, the Agency would need access to more detailed information from the insurance industry, including anonymized claims data. To date, efforts to obtain this information under existing legal authorities and through requests for voluntary disclosure have been unsuccessful.