



**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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April 2014

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## EXECUTIVE SUMMARY

On July 6, 2012, President Obama signed into law the Moving Ahead for Progress in the 21st Century Act (MAP-21; P.L. 112-141). Section 32104 of MAP-21 directed the Secretary of the U.S. Department of Transportation (DOT) to issue a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives 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.

Section 32104 also directed the Secretary to issue a report on the appropriateness of these requirements every 4 years starting April 1, 2013. The Secretary delegated the responsibility for this report to the Federal Motor Carrier Safety Administration (FMCSA).<sup>1</sup>

Interstate motor carriers and transportation intermediaries, as well as certain intrastate hazardous materials carriers, are required by law to maintain minimum levels of financial responsibility.<sup>2</sup> This report explains the history of these requirements, examines the current minimum insurance levels for the different sectors, provides background on the motor carrier industry, and summarizes the findings of a recent FMCSA-sponsored study on the adequacy of the Agency's current required minimum levels of financial responsibility, as well as findings from other reports on minimums. The report does not examine the current bond and insurance requirements for freight forwarders and brokers since MAP-21 mandated these requirements to be \$75,000 effective October 1, 2013, and the Agency will report on the appropriateness of these levels after it has had the opportunity to observe their impacts.

The legislative history of minimum insurance requirements for commercial motor vehicles (CMV) indicates that Congress recognized that crash costs would change over time and that DOT would periodically examine the levels and make adjustments as necessary. A variety of recent studies indicate that inflation has greatly increased medical claims costs and related expenses. In conclusion, FMCSA has determined that the current financial responsibility minimums are due for re-evaluation. The Agency has formed a rulemaking team to further evaluate the appropriate level of financial responsibility for the motor carrier industry and has placed this rulemaking among the Agency's high priority rules. The FMCSA will continue to meet with the stakeholders, including impacted industries, safety advocacy groups, and private citizens, as it moves forward with developing a proposed rule.

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<sup>1</sup> The FMCSA was established 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. The 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.

<sup>2</sup> The term "financial responsibility" used here refers to insurance. More specifically, it means liability coverage for bodily injury or property damage in the case of freight and passenger motor carriers as well as freight forwarders. When it comes to brokers and freight forwarders, insurance also means coverage for claims against unpaid freight charges. The terms "financial responsibility" and "insurance" are used interchangeably throughout this report.

## 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 and to protect carriers and shippers against 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, both Congress and the Federal Government have taken numerous actions to address the levels of financial responsibility, most recently with the enactment of MAP-21.

### 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, P.L. 74-255. In section 215 of the Act, 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 Interstate Commerce Commission (ICC), following an investigation, implemented regulations requiring the following levels (Table 1) of liability protection for motor carriers beginning November 15, 1936:<sup>5</sup>

**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>Limit for bodily injuries to or death of one person</b>	<b>Limit for bodily injuries to or death of all persons injured or killed in any one accident *</b>	<b>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.

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

<sup>4</sup> 1 F.R. 1156, 1156 (1936).

<sup>5</sup> *Id.* at 1163.

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> In 2010, FMCSA increased the required amount of the surety bond or trust fund for household good brokers to \$25,000.<sup>8</sup>

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

The next significant legislation regarding financial responsibility was enacted on July 1, 1980. President Jimmy Carter signed the Motor Carrier Act of 1980, P.L. 96-296 (MCA), which greatly deregulated the motor carrier industry. Section 30 of the MCA 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 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>9</sup> Congress set the “phase-in” 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 delay the statutory minimums and phase in implementation of the new insurance requirements.<sup>10</sup>

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 the carrier to operate in interstate commerce.”<sup>11</sup> Further, the legislative history of the MCA indicates that 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>12</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>13</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>14</sup>

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

<sup>7</sup> 42 FR 21782, 21783 (1977)

<sup>8</sup> 75 FR 72987

<sup>9</sup> Section 30 of the Motor Carrier Act of 1980 (P.L. 96-296)

<sup>10</sup> 46 FR 30974, 30983 (1981)

<sup>11</sup> H.R. Rep. No. 96-1069, at 9 (1980)

<sup>12</sup> *Id.*, at 41

<sup>13</sup> *Id.* at 6

<sup>14</sup> *Id.* at 43

The legislative history implies that minimum levels of financial responsibility would encourage the insurance industry to play a larger role in motor carrier safety. The House Committee Report to the MCA referred to a 1979 report by the National Transportation Policy Study Commission which recommended a level “sufficient to require ‘on site’ inspection by the insurance company, with minimums to be updated regularly.”<sup>15</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>16</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, P.L. 97-261 (the Act), into law. Section 18 of the Act established 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.

According to the 1983 Federal Highway Administration (FHWA)<sup>17</sup> rulemaking implementing the 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, that a single Federal standard for financial responsibility coverage will be more efficient for carriers and more equitable and certain for consumers.<sup>18</sup>

Section 18 of the Act establishes minimum levels of financial responsibility for motor carriers of passengers. Similar to the MCA, the Act provided the Secretary with the authority to temporarily lower the required financial responsibility amount below the statutory minimum 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 Act set minimum financial responsibility levels at \$5 million for carriers operating vehicles with a seating capacity of 16 or more passengers and \$1,500,000 for carriers operating vehicles with a seating capacity of 15 or fewer. The “phase-in” levels were set at \$2,500,000 for carriers

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<sup>15</sup> H.R. Rep. No. 96-1069, at 43.

<sup>16</sup> National Transportation Policy Study Commission, “National Transportation Policies Through the Year 2000” Final Report, June 1979, p. 279.

<sup>17</sup> Before the Motor Carrier Safety Act of 1999 established FMCSA, FHWA oversaw motor carrier safety.

<sup>18</sup> 48 FR 52679, 52679 (1983).

operating vehicles with a seating capacity of 16 or more passengers and \$750,000 for carriers operating 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 levels.<sup>19</sup> The current financial responsibility minimums went into effect on November 19, 1985.<sup>20</sup>

### **MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY ACT**

On July 6, 2012, the President signed MAP-21 into law. Section 32104 of MAP-21 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 for 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.

Section 32918 increased the financial security requirements for brokers to \$75,000. There is a new \$75,000 financial security requirement to ensure that freight forwarders pay their freight charges. The higher insurance threshold is designed to ensure payment of claims arising from a broker's failure to pay freight charges for transportation services it may have arranged.<sup>21</sup> The FMCSA issued rules to implement the new requirements on October 1, 2013.<sup>22</sup> The FMCSA expects to include an analysis of the limits on brokers and freight forwarders in future reports on financial responsibility.

### **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, \$5 million for 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 levels are: \$5 million for carriers operating vehicles with a seating capacity of 16 or more passengers and \$1,500,000 for carriers operating vehicles with a seating capacity of 15 or fewer.

Finally, the current levels of financial security of \$75,000 for brokers and freight forwarders went into effect on October 1, 2013.

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<sup>19</sup> 48 FR 52679, 52684 (1983).

<sup>20</sup> *Id.*

<sup>21</sup> 49 USC 13906(b)(2)(A).

<sup>22</sup> 78 FR 60226.

<sup>23</sup> 49 FR 27288.

<sup>24</sup> 49 CFR 387.33.

## BACKGROUND ON THE MOTOR CARRIER INDUSTRY

### MOTOR CARRIERS OF PROPERTY

In 2012, the motor carrier industry transported 9.4 billion tons of freight. This accounted for almost 70 percent of total shipments in the U.S. making the trucking industry the dominant freight transportation mode in the United States.<sup>25</sup> The trucking industry employs approximately 7 million people across all sectors of the economy and has grown from a \$203 billion industry in 1982 to \$642 billion in 2012.<sup>26</sup> Although the industry is highly diversified with many medium and large-sized carriers, the vast majority are small carriers operating six or fewer trucks (Table 2).

**TABLE 2 – GENERAL FREIGHT CARRIERS BY POWER UNITS**

<b>Fleet Size Group</b>	<b>Fleet Size by Power Units</b>	<b>Number of Carriers</b>	<b>Total Power Units</b>	<b>Carrier % of Total</b>
<b>Very Small</b>	1	246,577	246,577	48.60%
	2 to 3	131,478	305,875	25.91%
	4 to 6	58,186	276,194	11.47%
<b>Small</b>	7 to 8	15,883	118,395	3.13%
	9 to 17	28,888	346,681	5.69%
	18 to 19	2,880	53,097	0.57%
<b>Medium</b>	20 to 23	4,371	92,749	0.86%
	24 to 75	13,924	552,341	2.74%
	76 to 100	1,544	135,087	0.30%
<b>Large</b>	101 to 200	1,877	263,860	0.37%
	201 to 2000	1,639	796,097	0.32%
	2001 to 5000	82	252,719	0.01%
	5001 +	32	497,637	0.01%
<b>Totals</b>		<b>507,361</b>	<b>3,937,309</b>	<b>100%</b>

Source: FMCSA's Motor Carrier Management Information System (MCMIS) database, November 2013.

Counts exclude carriers that have multiple designations (e.g., freight and passenger carriers). These counts are of interstate carriers with recent activity (defined as those carriers that have had an inspection, a crash, a compliance review, a safety audit, an FMCSA Motor Carrier Identification Report (Form MCS-150) update, a vehicle registration activity, or a Unified Carrier Registration system payment activity in the past 3 years, or have current operating authority indicated in the Licensing and Insurance database.)

The property (or freight) motor carrier industry has nearly tripled since it was largely deregulated by the Motor Carrier Act of 1980. The size of the industry operating in interstate commerce and subject to FMCSRs was approximately 180,000 in 1982.<sup>27</sup> Today, the industry consists of approximately 507,361 active interstate freight carriers.<sup>28</sup>

<sup>25</sup> The American Trucking Associations (ATA) Trends 2013.

<sup>26</sup> Total annual gross revenues, American Trucking Associations Trends 2013 and ATA.

<sup>27</sup> U.S. Department of Transportation, "Motor Carrier Financial Responsibility Report" p. 9, 1982.

<sup>28</sup> FMCSA's MCMIS database, November 2013.



## 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, carry out more than 750 million passenger trips per year, moving individual passengers a total of 65 billion miles annually.<sup>29</sup> Industry distinctions are sometimes applied with regard to the number of passengers (1-8, 9-15 and 16+), type of vehicle (motorcoach, school bus, minibus, passenger van, and limousine), or type of operation (fixed-route, charter). The total number of FMCSA-registered interstate passenger carriers, as of November 2013, was 11,469.<sup>30</sup> According to a November 29, 2013 snapshot (excluding carriers that transport both passengers and freight, and carriers with no reported power units), the industry consists largely of small entities operating six or fewer units, as depicted in Table 3 below.

**TABLE 3 – PASSENGER CARRIERS BY POWER UNITS**

<b>Carrier Size</b>	<b>Fleet Size by Power Unit</b>	<b>Number of Interstate Passenger Carriers</b>	<b>Total Power Units</b>	<b>Carrier Count % of Total</b>
<b>Small</b>	1	4,125	4,125	35.97%
	2-3	3,107	7,292	27.09%
	4-6	1,587	7,582	13.84%
<b>Medium</b>	7-8	488	3,630	4.25%
	9-17	944	11,471	8.23%
	18-19	113	2,082	0.99%
<b>Large</b>	20-100	856	34,868	0.60%
<b>Very Large</b>	101+	196	83,944	1.71%
<b>Total</b>		<b>11,469*</b>	<b>154,994</b>	<b>100%</b>

Source: FMCSA's MCMIS database, November 29, 2013.

\*Total includes 53 passenger carriers with no reported power units.

## 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 oceanborne carriers. Depending on the mode of transportation or the services offered, transportation intermediaries are called by a number of names. Transportation

<sup>29</sup> American Bus Association Census 2012.

<sup>30</sup> MCMIS, as of December 14, 2012.

intermediaries involved in the trucking industry are licensed by FMCSA as either brokers or freight forwarders.

Traditionally, transportation intermediaries are non-asset-based companies whose expertise is providing mode- and carrier-neutral transportation arrangements for shippers with the underlying asset-owning and operating carriers. An intermediary will tailor a package of transportation services, sometimes by various modes of transportation, to meet the needs of a shipper's business. Today, many intermediaries also invest in physical assets, such as trucks, aircraft, warehouses, and consolidation centers, so that they can offer a fuller, vertically integrated range of multi-modal service options.

### Brokers

The 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>31</sup> Brokers that are subject to FMCSA jurisdiction are required to register with FMCSA.<sup>32</sup> As part of that registration, they are required to maintain process agents to accept service of process,<sup>33</sup> and file evidence of financial responsibility.<sup>34</sup> Brokers also have administrative and financial recordkeeping requirements.<sup>35</sup> As of November 2013, FMCSA's Licensing and Insurance database listed over 21,400 registered brokers.

### Freight Forwarders

The 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>36</sup> Approximately 2,400 freight forwarders were registered with FMCSA as of November 2013.

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<sup>31</sup> 49 CFR 371.2 (a).

<sup>32</sup> 49 USC 13901.

<sup>33</sup> Motor carriers are required to file process agent designations with FMCSA as well. 49 CFR Part 366.

<sup>34</sup> 49 CFR Part 365.

<sup>35</sup> 49 CFR Part 371.

<sup>36</sup> 49 CFR 386.2.

## CURRENT LEVELS OF FINANCIAL RESPONSIBILITY

The FMCSA requires motor carriers to maintain minimum levels of financial responsibility that are set forth in 49 CFR Part 387. 49 USC 13906 prohibits the Secretary from registering for-hire carriers unless they have filed proof of financial responsibility. The current minimum levels of financial responsibility are summarized below in Table 4.

**TABLE 4 – 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	\$300,000

Section 13906 of title 49 USC also prohibits the Secretary from registering brokers or freight forwarders unless they have filed security instruments approved by the Secretary. The security filed by brokers/freight forwarders is intended to ensure that freight charges are paid. Effective October 1, 2013, section 32918 of MAP-21 requires \$75,000 in financial security for brokers and extends the financial security requirement to freight forwarders as well.

**TABLE 5 – SECURITY REQUIREMENTS FOR BROKERS AND FREIGHT FORWARDERS**

<b>Regulated Transportation Intermediary</b>	<b>Security Level</b>	
	<b>Until September 30, 2013</b>	<b>Effective October 1, 2013</b>
Broker of Property	\$10,000	\$75,000
Broker of Household Goods	\$25,000	\$75,000
Freight Forwarder	-0-	\$75,000

## FINDINGS FROM THE RECENT FMCSA-SPONSORED STUDY

In response to widespread interest among Congress, industry, and safety advocates regarding the appropriateness and effectiveness of current minimum levels of financial responsibility in the motor carrier industry, FMCSA sponsored a comprehensive study of the topic. The study, conducted by DOT's John A. Volpe Transportation Systems Center and entitled "Financial Responsibility Requirements for Commercial Motor Vehicles," assessed the adequacy and effectiveness of those levels in meeting carrier liabilities.

The Volpe study examined whether the minimum financial responsibility requirements under 49 USC sections 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 study include:

- **Catastrophic motor carrier-related crashes are relatively rare.** Based on limited available claims data, it was estimated that catastrophic crashes, resulting in injury, death, and/or property damages that exceed the current minimum levels of financial responsibility, comprised less than one percent of all CMV crashes (about 3,300 of 330,000 total crashes per year). The various data sources utilized to estimate the share of crashes that exceeded the insurance limits included the Insurance Services Organization, Tractor Trailer Torts, MCMIS, the National Highway Traffic Safety Administration's General Estimates System, and the Pipeline and Hazardous Materials Safety Administration's Hazardous Material Information System.
- **However, costs for severe and critical injury crashes can easily exceed \$1 million.** The analysis reveals that two categories of injury crash (severe and critical) yield damages of more than \$1 million, in nominal terms, using the DOT's previous estimated value of a statistical life (VSL) of \$6.2 million.<sup>37</sup>
- **Insurance premiums have declined in real terms since the 1980s.** The analysis revealed the stability of insurance rates over the last three decades. 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.

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<sup>37</sup> U.S. Department of Transportation Memorandum to Secretarial Officers and Modal Administrators, July 29, 2011. As of February 28, 2013, the VSL is \$9.1 million.

- Current insurance limits do 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 2013, the medical consumer price index (CPI) increased at a significantly higher rate than the core consumer price index (4.9 percent annually for medical care, compared to 2.8 percent for core). In fact, the medical consumer price index has outpaced overall inflation in all but one of those 29 years.<sup>38</sup> Table 6 displays the inflation-adjusted current minimum levels of financial responsibility using the Core CPI and the Medical CPI. As depicted below in Table 6, the core CPI-adjusted level for general freight coverage is approximately \$1.7 million; the medical CPI-adjusted level is approximately \$3.2 million. Thus, had minimum financial responsibility levels kept pace with core CPI or medical CPI, by 2013, these minimum levels would have been significantly higher.

**TABLE 6 – INFLATION ADJUSTED LEVELS OF FINANCIAL RESPONSIBILITY BY CARRIER TYPE**

<b>Carrier Type</b>	<b>1985 Liability Limit Required</b>	<b>2013 Inflation Adjusted Liability Limit Core CPI*</b>	<b>2013 Inflation Adjusted Liability Limit Medical CPI*</b>
<b>General Freight</b>	\$750,000	\$1,623,771	\$3,188,250
<b>HM (Low)</b>	\$1,000,000	\$2,165,028	\$4,251,000
<b>HM (High)</b>	\$5,000,000	\$10,825,933	\$21,255,000
<b>Small Bus</b>	\$1,500,000	\$3,247,542	\$6,376,500
<b>Large Bus</b>	\$5,000,000	\$10,825,933	\$21,255,000

United States Department of Labor, Bureau of Labor Statistics.

- 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, and there are no uniform pricing practices (other than limits that might be imposed by State regulations). The insurance industry participants are protective of their pricing for competitive reasons, and available information was largely generic and limited. Motor carrier risk managers were also cautious regarding disclosing their insurance premium expenses. The study, therefore, did not assess potential insurance premium increases as a regulatory cost.

<sup>38</sup> American Institute for Economic Research-The Everyday Price Index Economic Bulletin Vol. LII, February 2012.

- **The study, though focused mainly on freight carriers, is also applicable to passenger and hazardous materials carriers.** The motorcoach industry has been the focus of recent National Transportation Safety Board (NTSB) studies and initiatives. The NTSB's post-crash investigation results suggest that key crash factors were the motorcoach driver, the mechanical condition of the vehicle, and the carrier's operations. Many of those incidents were multiple-fatality or multiple-victim crashes, such as a rollover near Sherman, Texas (2008), with 17 passenger fatalities; another rollover crash near Victoria, Texas (2008), which resulted in one fatality and 46 injuries; and a rollover near Williams, California (2012), where 9 passengers died. Applying DOT's VSL highlights the need for considering higher minimum levels of financial responsibility that would apply to for-hire passenger carriers. The same focus applies to hazardous materials carriers, which were not separately analyzed in the study, but arguably warrant equal attention.

## FINDINGS FROM OTHER REPORTS ON LARGE TRUCK FINANCIAL MINIMUMS

Other organizations, such as the Pacific Institute for Research and Evaluation (PIRE), the Alliance for Driver Safety and Security, Inc. (or the Trucking Alliance), and the American Trucking Associations (ATA), are interested in and have studied the appropriateness of the current minimum insurance levels for motor carriers.

PIRE published a report<sup>39</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 found the current minimum levels are an order of magnitude 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). The report recommended that DOT set a policy limit per crash of at least \$10 million and index for inflation and productivity growth in the same manner that DOT indexes its regulatory analysis value.<sup>40</sup>

The Trucking Alliance reviewed crash settlement data<sup>41</sup> that it compiled from its membership. Its March 2013 analysis showed that 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 shows that 42 percent of the trucking companies' monetary exposure from these settlements would have exceeded their insurance coverage, if all companies in the study had maintained the minimum \$750,000 insurance requirement. According to the Trucking Alliance, 42 percent of the injury claims could have had no avenue for offsetting all medical costs. The Trucking Alliance promotes increasing the Federal minimum requirements for trucking companies.

The ATA also conducted a review<sup>42</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 under \$1 million (not taking into account umbrella or excess coverage), while 83 percent are written at \$1 million, and the remaining 10.5 percent are written over \$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.

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<sup>39</sup> Pacific Institute for Research and Evaluation, "Potential Damages in Heavy Truck Crashes," March 2013.

<sup>40</sup> The DOT applies the Bureau of Labor Statistics' annual estimates of inflation and productivity growth rates.

<sup>41</sup> The Trucking Alliance, Press Release "Study Shows Trucking Companies Underinsured," June 4, 2013.

<sup>42</sup> <http://www.trucking.org/ATA%20Docs/What%20We%20Do/Trucking%20Issues/Documents/Insurance%20Study%20Group%20Findings.pdf>

## **CONCLUSION AND NEXT STEPS**

The current minimum financial responsibility levels for motor carriers of property, hazardous materials, and passengers were established in the 1980s. Catastrophic crashes involving CMVs are relatively rare occurrences. When catastrophic and severe/critical injury crashes do occur, the costs of resulting property damage, injuries, and fatalities, can far exceed the minimum levels of financial responsibility. Over the past 29 years, while insurance premiums have declined, the decreasing real value of the current minimum levels has effectively removed the function of insurance in covering catastrophic crashes, as medical and other crash-related costs have increased significantly. The legislative history of the Federal minimum insurance requirements strongly suggests that Congress recognized that crash costs would change and that DOT would regularly examine the levels and make adjustments as necessary. In conclusion, FMCSA has determined that the current financial responsibility minimums are inadequate to fully cover the costs of some crashes in light of increased medical costs and revised value of statistical life estimates. The Agency has formed a rulemaking team to further evaluate the appropriate level of financial responsibility for the motor carrier industry and has placed this rulemaking among the Agency's high priority rules. The FMCSA will continue to meet with stakeholders, including industry, safety advocacy groups, and private citizens, as it moves forward with developing a proposed rule.