(iii) For channels 534 to 550—the minimum median desired signal level shall increase linearly from −70 dBm to −65 dBm.

(4) Portable units operating in Puerto Rico:

(i) For channels 511 to 530—the minimum median desired signal levels specified in § 22.970(a)(1)(i) of this chapter and § 90.672(a)(1)(i) shall apply;

(ii) For channels 531 to 534—the minimum median desired signal level shall increase linearly from −80 dBm to −70 dBm;

(iii) For channels 534 to 550—the minimum median desired signal level shall increase linearly from −70 dBm to −65 dBm.

■ 3. Sections 90.677 is amended by revising paragraphs (b) and (c) to read as follows:

§ 90.677 Reconfiguration of the 806–824/851–869 band in order to separate cellular systems from non-cellular systems.

* * * * *

(b) *Voluntary negotiations.* Thirty days before the start date for each NPSPAC region other than Region 47, the Chief, Public Safety and Homeland Security Bureau will issue a public notice initiating a three-month voluntary negotiation period. During this voluntary negotiation period, Nextel and all incumbents may negotiate any mutually agreeable relocation agreement. Sprint Nextel and relocating incumbents may agree to conduct face-to-face negotiations or either party may elect to communicate with the other party through the Transition Administrator.

(c) *Mandatory negotiations.* If no agreement is reached by the end of the voluntary period, a three-month mandatory negotiation period will begin during which both Sprint Nextel and the incumbents must negotiate in "good faith." In Region 47, a 90-day mandatory negotiation period will begin 60 days after the effective date of the Third Report and Order and Third Further Notice of Proposed Rulemaking in WT Docket 02–55. Sprint Nextel and relocating incumbents may agree to conduct face-to-face negotiations or either party may elect to communicate with the other party through the Transition Administrator. All parties are charged with the obligation of utmost "good faith" in the negotiation process. Among the factors relevant to a "good-faith" determination are:

(1) Whether the party responsible for paying the cost of band reconfiguration has made a bona fide offer to relocate the incumbent to comparable facilities;

(2) The steps the parties have taken to determine the actual cost of relocation to comparable facilities; and

(3) Whether either party has unreasonably withheld information, essential to the accurate estimation of relocation costs and procedures, requested by the other party. The Transition Administrator may schedule mandatory settlement negotiations and mediation sessions and the parties must conform to such schedules.

* * * * *

[FR Doc. 2010–14995 Filed 6–21–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 365 and 387

[Docket No. FMCSA–2010–0189]

RIN 2126–AB21

Cargo Insurance for Property Loss or Damage

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Administration eliminates the requirement for most for-hire motor common carriers of property and freight forwarders to maintain cargo insurance in prescribed minimum amounts and file evidence of this insurance with FMCSA. Household goods motor carriers and household goods freight forwarders will continue to be subject to this cargo insurance requirement.

DATES: Effective March 21, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Dorothea Grymes, FMCSA Insurance Team, Commercial Enforcement Division, telephone (202) 385–2400.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Entities That Are Discussed in This Final Rule

This proceeding applies only to for-hire motor carriers and freight forwarders as defined in 49 U.S.C. 13102. The term "motor carrier" means a person providing motor vehicle transportation for compensation. (§ 13102(14)). The term "freight forwarder," in § 13102(8) means a person holding itself out to the general public (other than as a pipeline, rail, motor, or water carrier) to provide transportation of property for compensation and in the ordinary course of its business—

(A) Assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments;

(B) assumes responsibility for the transportation from the place of receipt to the place of destination; and

(C) uses for any part of the transportation a carrier subject to jurisdiction under 49 U.S.C. subtitle IV–Interstate Transportation.

The term "freight forwarder" does not include a person using transportation of an air carrier subject to part A of subtitle VII of title 49, United States Code-Aviation Programs.

Of the approximately 252,600 total for-hire carriers and freight forwarders, there are about 166,700 for-hire motor carriers and 1,600 freight forwarders registered with FMCSA to provide transportation or services that could be subject to cargo insurance requirements if FMCSA fully implemented its authority to require motor carriers and freight forwarders subject to 49 U.S.C. 13906(a)(4) and 13906(c)(2). *See* Table 1 below. Of these, about 154,700 entities (contract only and "exempt" type) have not been subject to the cargo insurance requirements in the past. About 97,900 of the 252,600 entities are currently subject to the cargo insurance requirements. About 4,000 entities have authority to transport household goods, which are defined at 49 U.S.C. 13102(10).

TABLE 1—FOR-HIRE CARRIERS AND FREIGHT FORWARDERS BY AUTHORITY AND TYPE

[as of February 2009]

Active	Authority	Type	Total	% of total	Cargo insurance required		Number affected by rule
					Before	After	
Motor Carriers	Common Only	Household Goods	3,600	1.4%	Yes	Yes.	
		Non-Household Goods	76,035	30.1%	Yes	No	76,035
	Contract Only		70,400	27.9%	No	No.	
	Both Common and Contract		16,600	6.6%	Yes	No	16,600
	"Exempt"		84,300	33.4%	No	No.	
Freight Forwarders		Household Goods	435	0.2%	Yes	Yes.	
		Non-Household Goods	1,200	0.5%	Yes	No	1,200
Source: FMCSA L&I Database Report 4284			~252,600	100%			93,800
"Exempt" for-hire carriers, are not subject to 49 U.S.C. Subtitle IV, Part B, and are not required to maintain cargo insurance.					% Affected by Rule		37.1%

FMCSA evaluated various combinations of these entity populations along with the benefits, impacts, and potential registration and enforcement issues arising for each combination of alternatives. After consideration of all the comments to the docket, the Agency has decided to subject only household goods motor carriers and household goods freight forwarders to the cargo insurance requirements for the reasons given later in this document.

Legal Basis for the Rulemaking

Cargo insurance requirements for motor carriers were first authorized in the Motor Carrier Act of 1935 (August 9, 1935, Pub. L. 74–255, 49 Stat. 543 (1935)), which brought motor carriers and brokers under the jurisdiction of the Interstate Commerce Commission (ICC). Section 215 of the 1935 Act authorized—but did not mandate—cargo financial responsibility requirements for common carriers subject to ICC jurisdiction. The ICC exercised its statutory authority by establishing minimum cargo insurance requirements for common carriers, which are now codified at 49 CFR 387.301 and 387.303.

Cargo insurance requirements for freight forwarders were first authorized by a 1942 statute amending the Interstate Commerce Act (ICA), which brought freight forwarders under the jurisdiction of the ICC (Pub. L. 77–558, 56 Stat. 284, May 16, 1942). The 1942 Act added Section 403(c) to the ICA, which authorized—but did not mandate—the ICC to establish cargo financial responsibility requirements for freight forwarders subject to ICC jurisdiction. The ICC established minimum cargo insurance requirements for freight forwarders in 1944 (9 FR 14548, December 13, 1944). These requirements are now codified at 49 CFR part 387, subpart D.

Section 103 of the ICC Termination Act of 1995 (Pub. L. 104–88, 109 Stat. 803) (ICCTA) terminated the ICC and transferred jurisdiction over motor carrier and freight forwarder cargo insurance to the Secretary of Transportation, who delegated this authority to the Federal Highway Administration (FHWA). The ICCTA eliminated the distinction between common and contract carriers but, under the transition rule of 49 U.S.C. 13902(d), allowed the Agency to continue to register motor carriers with these distinctions pending implementation of a new unified Federal registration system required by 49 U.S.C. 13908.

Jurisdiction over motor carrier and freight forwarder cargo insurance was transferred to FMCSA following enactment of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1748, December 9, 1999). FMCSA continued to register carriers as either "common" or "contract" under the transition rule because the Agency had not yet implemented the new unified registration system in accordance with the requirements of 49 U.S.C. 13908. In the Notice of Proposed Rulemaking (NPRM) designed to implement this new system (70 FR 28990, May 19, 2005), FMCSA proposed to eliminate the cargo insurance requirement for all motor carriers and freight forwarders except those involved in the transportation of household goods for individual shippers.

Section 4303 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, August 10, 2005) mandated that the transition rule be terminated by January 1, 2007. Consequently, effective January 1, 2007, all for-hire motor carriers subject to the Agency's commercial jurisdiction under Title 49, United States Code, Subtitle IV, Part B, were required to be issued Motor Carrier Certificates of Registration which no longer classified them as common or contract carriers. Section 4303 also provided that all "exempt" for-hire [1] and private motor carriers registered with FMCSA on January 1, 2005, under any section of title 49 U.S.C. (including FMCSA's safety registration requirements adopted under 49 U.S.C. 31136) would automatically be considered registered "to provide such transportation or service for purposes of sections 13908 [Unified Registration System] and 14504a [Unified Carrier Registration]."

As a result of the termination of the transition rule, FMCSA's cargo insurance regulations, which expressly applied only to common carriers and freight forwarders, were no longer consistent with the governing statute. Because of this inconsistency and the resulting confusion over the scope of the Agency's cargo insurance requirements, FMCSA considers it necessary to issue a final rule amending these requirements prior to issuance of a final

[1] For-hire carriers not subject to 49 U.S.C. subtitle IV, part B.

rule in the section 13908 rulemaking proceeding.[2]

Background

Current Regulatory Requirements

Prior to enactment of the ICCTA, a "motor common carrier" of property was defined as "a person holding itself out to the general public to provide motor vehicle transportation for compensation over regular or irregular routes, or both."[3] Approximately 79,600 active common carriers were registered with FMCSA at the end of February 2009. Pursuant to 49 CFR 387.303(c), in order to obtain operating authority, common carriers were required to ensure that their insurance provider or surety company file with FMCSA:

(1) Evidence of bodily injury and property damage liability in the minimum amount of $750,000 to $5 million depending on the nature of the cargo being transported; and

(2) Evidence of cargo liability in the minimum amount of $5,000 per vehicle and $10,000 per incident.

In addition to the cargo insurance filing requirement, normally accomplished by filing Form BMC–34, Motor Carrier Cargo Liability Certificate of Insurance with FMCSA, insurance companies must issue an endorsement using Form BMC–32, Endorsement for Motor Common Carrier Policies of Insurance for Cargo Liability attached to the cargo insurance policy. The name of the insurer/surety and the policy number is a matter of public record available on FMCSA's Web site. Under 49 CFR 387.313(d), insurers and sureties may not cancel a carrier's insurance without notifying FMCSA in writing 30 days prior to cancellation.

The cargo insurance and surety requirements have been relatively low, but they covered claims up to the $5,000 and $10,000 limits regardless of deductibles or exclusions that the policy might have. Shippers normally file claims for loss and damage with the motor carrier(s) involved in the transportation, which either pay, deny or settle the claims. However, if they are dissatisfied with the motor carrier's response or if the motor carrier is insolvent, shippers have the option of filing a claim directly with the insurance or surety company to recover actual losses to property up to the limits on the insurance policy or surety bond. The insurance or surety company would then have the right to seek to recover the amount of any policy deductibles from the motor carrier.

Prior to enactment of the ICCTA, a "motor contract carrier" of property was defined as: "a person providing motor vehicle transportation of property for compensation under continuing agreements with one or more persons—

[1] By assigning motor vehicles for a continuing period of time for the exclusive use of each such person; or

[2] designed to meet the distinct needs of each such person."[4]

Approximately 87,000 active "contract" carriers were registered with FMCSA in February 2009. About 70,400 of these 87,000 carriers had contract authority only, while about 16,600 had both common and contract authorities issued by FMCSA or its predecessors. Contract carriers are subject to the same bodily injury and property damage public liability requirements described above for common carriers. However, FMCSA does not require contract carriers to have cargo insurance or provide evidence of cargo insurance. Shippers who establish contracts with contract carriers generally require such carriers to maintain cargo insurance in specified minimum amounts.

For-hire motor carriers transporting specific "exempt" commodities or providing other exempt transportation, as generally delineated in 49 U.S.C. 13502 through 13506, are exempt from FMCSA's commercial jurisdiction under Title 49, subtitle IV, Part B and are not required to obtain FMCSA operating authority or maintain cargo insurance.

Exempt for-hire carriers, however, have always been subject to FMCSA's safety requirements under 49 U.S.C. 31136 and 31502, including the public liability financial responsibility requirements under 49 U.S.C. 31138 and 31139 for any crashes that occur to their motor vehicles on the highways. These for-hire exempt carriers must register with FMCSA to obtain a USDOT registration number. Approximately 84,300 active for-hire exempt carriers were registered with FMCSA in February 2009. In accordance with 49 CFR 387.7, such carriers must maintain at their principal place of business one of the following forms, confirming coverage in the minimum amount of $750,000 up to $5 million, depending on the type of cargo the carrier is transporting:

(1) A Form MCS–90 titled, "Endorsement for Motor Carrier Policies of Insurance for Public Liability Under Sections 29 and 30 of the Motor Carrier Act of 1980;" or

(2) A Form MCS–82 titled, "Motor Carrier Public Liability Surety Bond Under Sections 29 and 30 of the Motor Carrier Act of 1980."

Motor Carrier Liability for Cargo Loss or Damage

The requirements for cargo insurance do not affect the statutory liability of carriers for loss or damage to cargo. Congress addressed carrier liability in the 1906 Carmack Amendment to the Interstate Commerce Act. When motor carriers and freight forwarders were brought under the ICC's jurisdiction in 1935 and 1942, respectively, they became subject to the Carmack liability requirements. The Carmack Amendment, now codified at 49 U.S.C. 14706, provides "first dollar" coverage to all shippers for cargo loss or damage. Under 49 U.S.C. 14706(a)(1), a carrier providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135[5] must issue a receipt or bill of lading for property it receives for transportation, and is liable for the actual loss of or injury to the property caused by the receiving carrier, delivering carrier, or any other carrier involved in the line-haul transportation. Failure to issue a receipt or bill of lading does not affect a carrier's liability.

Under 49 U.S.C. 14706(c), the carrier and shipper may agree to limit the carrier's liability to a value established by written or electronic agreement if that value would be reasonable under the circumstances surrounding the transportation. Carriers providing contract carriage, as defined in 49 U.S.C. 13102(4), may enter into contracts with shippers whereby the shipper waives its right to carrier liability for actual loss and damage (*see* 49 U.S.C. 14101(b)(1)). Such carriers, therefore, may establish both liability and insurance levels in their contracts with their customers.

With the elimination of the distinction between common and contract carriers for registration purposes, FMCSA had to determine whether the requirement for cargo insurance should be retained and extended to all carriers, including the 70,400 contract carriers currently exempt from the requirement, or eliminated for some or all 96,300 common carriers and 1,600 freight forwarders. In its NPRM on the unified registration system, FMCSA proposed limiting the requirement for cargo

[2] Because certain SAFETEA–LU provisions impacted proposals made in the May 2005 NPRM implementing section 13908, a Supplemental Notice of Proposed Rulemaking will be published in that proceeding revising the NPRM and soliciting additional public comment, further delaying issuance of a final rule.

[3] 49 U.S.C. 10102(15) (1995).

[4] 49 U.S.C. 10102(16)(1995).

[5] The definition of "carrier" in 49 U.S.C. 13102(3) includes freight forwarders. Subchapter I applies to motor carriers and subchapter III applies to freight forwarders.

insurance to household goods motor carriers and household goods freight forwarders in order to protect individual shippers, who are relatively unsophisticated consumers of transportation services.[6]

In its discussion of the proposal, the Agency noted that motor carriers typically have cargo insurance well in excess of the regulatory requirements, in part because many shippers require such insurance as a condition of doing business. Some common carriers offer shippers the opportunity to purchase additional cargo insurance. Shippers have always had the opportunity to purchase cargo or inland-marine insurance directly from insurance providers rather than rely on motor carriers and freight forwarders to provide coverage for loss and damage risks. Contract carriers negotiate issues of insurance and liability when they write contracts with shippers. Extending the coverage to the approximate 70,400 exclusive contract carriers would impose a burden on these carriers while providing little or no benefit to their customers, who already had contractual agreements dealing with carrier liability and insurance.

The only shippers that FMCSA considered in need of the protection provided by the cargo insurance requirement are individuals who arrange to move their own household goods. FMCSA concluded that such individuals are less knowledgeable about carrier liability requirements and need the protection afforded by the existing regulations. FMCSA, therefore, proposed limiting the requirement for obtaining and filing evidence of cargo insurance to household goods motor carriers and household goods freight forwarders.

Discussion of Comments to May 2005 NPRM

Thirty-two commenters addressed the proposal to eliminate the cargo insurance requirements for motor common carriers and forwarders of general freight. Commenters, included carriers, carrier associations, shippers, insurance companies and associations, freight claims collection services, brokers, traffic consultants, attorneys, and individuals. FMCSA received comments from Williams & Associates; Transportation and Logistics Council; T.D.L. Associates Commerce Consultant; National Small Shipments Traffic Conference, Inc; Lowe's Co.; Property Casualty Insurers Association of America; James Middleton; International Foodservice Distributors Association; Daniel C. Sullivan; Advocates for Highway and Auto Safety; Freight Transportation Consultants Association (FTCA); Transportation Intermediaries Association; National Conference of State Transportation Specialists; Third Party Logistics Providers; Certain Transportation Factors; C.S. Henry Transfer, Inc.; Dahlonega Transport, Inc.; Milan Express Co., Inc.; Silver Arrow, Inc.; National Association of Small Trucking Companies; Wisconsin Manufacturers & Commerce; Corporate Transportation Coalition; American Moving and Storage Association; National Private Truck Council, Inc.; Exel Transportation Services, Inc.; Owner-Operator Independent Drivers Association, Inc.; National Industrial Transportation League; Sysco Corporation; Wal-Mart Transportation, LLC; American Trucking Associations, Inc. (ATA); TM Claims Service, Inc.; and The Ooster Brush Company.

FMCSA considered all comments in developing this final rule. A summary of and the Agency's response to pertinent comments is provided here.

General Comments

Three commenters supported FMCSA's proposition to eliminate the cargo insurance requirement for most carriers and freight forwarders. The Property Casualty Insurers Association of America stated that the insurance marketplace is best qualified to determine appropriate insurance coverage. The Owner-Operator Independent Drivers Association agreed with FMCSA that most shippers require a higher amount of insurance coverage than the current federal minimums, so the current amount required serves little purpose.

ATA stated that given the statute authorizes carriers registered as common carriers today to enter into contracts, and that the definitions of "common carrier" and "contract carrier" have been eliminated, the cargo insurance requirement must apply to all motor carriers or none. It wrote, "ATA does not support extension of the cargo insurance requirements to all motor carriers and thus believes FMCSA's proposal to eliminate the cargo insurance endorsement requirement is the right approach."

Twenty-two commenters, mostly representing shippers, shippers' freight claims collection services, brokers, traffic consultants, and attorneys, stated that FMCSA should retain broad mandatory cargo insurance requirements because it is the most important protection for the shipping public with respect to loss and damage claims. They argued that the elimination of cargo insurance requirements is unjustified and contrary to the best interests of the shipping public. Sixteen commenters noted that the BMC–32 endorsement is the only protection against deductibles and other exclusions from liability found in cargo liability policies. They noted that in many cases the carriers' deductibles can be very high and the exclusions may eliminate most sources of loss or damage recovery. They also stated that the BMC–32 endorsement permits the shipper to proceed directly against the insurer, providing relief to shippers in the event the carrier becomes insolvent or bankrupt.

FMCSA Response. As stated above under the heading "Legal Basis for the Rulemaking," the ICC had the statutory discretion under section 215 of the Motor Carrier Act of 1935 to impose cargo insurance requirements on motor common carriers. The ICC chose to require such insurance beginning in 1937 based on the conditions existing in the marketplace during the mid-1930s (1 FR 1156, August 20, 1936, see also 1 M.C.C. 45 (1936)). The transportation industry has changed significantly since that time. For more than 40 years, the ICC granted operating authority to new applicants only if they could demonstrate that existing carriers were not providing adequate service. Moreover, the agency permitted contract carriers to serve only a limited number of shippers. As a result, the market was dominated by common carriers facing little or no competition. Beginning around 1980, the statutory standards for obtaining operating authority were changed to encourage competition and the ICC removed the prior restrictions on the number of shippers that could be served by contract carriers. Accordingly, the number of new carriers entering the market increased significantly, particularly those providing only contract carrier service. As a result of this market shift, the ability of commercial shippers to negotiate the terms of their transportation arrangements has been significantly enhanced.

When Congress transferred the remaining motor carrier provisions of the Motor Carrier Act of 1935 from the ICC to the Department of Transportation in the ICCTA, the House of Representatives' report accompanying the legislation specifically requested that DOT refrain from allocating scarce resources to resolve private disputes and only provide general oversight in the areas of regulations governing

[6] Approximately 3,600 household goods motor carriers and 400 household goods freight forwarders were registered with FMCSA as of February 2009.

commercial transactions between businesses. Congress wanted "private, commercial disputes to be resolved the way all other commercial disputes are resolved—by the parties." See H.R. Rep. No. 104–311, at 87–88 (1995). *See* also pages 117 and 121.

Cargo insurance entails the transfer of financial risk from the purchaser to an insurer and subsequent risk-sharing with other insureds. FMCSA does not agree with those commenters who believe the BMC–32 endorsement is the only protection against deductibles and other exclusions from liability found in cargo liability policies. The Carmack Amendment, 49 U.S.C. 14706, establishes "first dollar" liability regardless of deductibles and other exclusions from liability found in cargo liability policies. While the Form BMC–32 offers additional protection in the event of the motor carrier's insolvency or refusal to pay legitimate claims, a carrier must compensate the shipper for the actual loss or damage of its property regardless of policy deductibles or exclusions, unless the shipper has agreed to limit or waive carrier liability.

The Form BMC–32 endorsement does not mean that the shipper is necessarily entitled to proceed directly against the insurer without first filing a claim with the carrier. Under the regulations established in 49 CFR part 370 "Principles and Practices for the Investigation and Voluntary Disposition of Loss and Damage Claims and Processing Salvage," shippers should be filing loss and damage claims directly with the appropriate motor carrier.

FMCSA believes the cargo insurance requirement may have allowed commercial shippers and for-hire motor carriers to conduct business in economically inefficient ways. Shippers and motor carriers may have been taking transportation and business risks they probably would not have taken absent the BMC–32 endorsement. Carriers also may not have been spending adequately on cargo anti-theft/anti-damage systems, including training carrier personnel. When this final rule becomes effective, FMCSA believes the market will improve itself. Shippers and motor carriers will begin to better assess their risks and provide better cargo theft and loss prevention measures. FMCSA asked five insurers with the largest number of cargo policies on file with FMCSA what percentage of their clients carry more than the $10,000 aggregate minimum, as required by FMCSA. All five insurers responded that most of the policies they write for cargo liability are well above the FMCSA minimum. Most said their policies are for $50,000 to $100,000 liability. Based on our inquiries, FMCSA believes most carriers will continue to carry cargo insurance because their customers will require it.

In summary, FMCSA does not believe it is necessary to mandate cargo insurance requirements for the benefit of most commercial shippers. Commercial shippers should be able to protect their own property loss and damage interests in the marketplace without continued FMCSA intervention. In this respect, it should be noted that the current cargo insurance requirements apply to, at most, 30 percent of for-hire motor carriers regulated by FMCSA.[7]

FMCSA believes it is best to allow most motor carriers, insurance carriers, and general non-household-goods property shippers to conduct business efficiently, allow fair and expeditious decisions, and allow the industry to begin offering more variety in quality and price options to meet changing market demands and the diverse requirements of the shipping community.

Check on Financial Stability. Nine commenters stated that the mandatory cargo insurance requirement is one of the few remaining objective checks on the financial stability of new carriers entering the marketplace. Under the current system, FMCSA will prohibit a motor carrier applicant from obtaining common carrier operating authority if it cannot obtain cargo insurance. These commenters argue that elimination of the requirement for cargo insurance will encourage financially unstable new entrants to enter the market.

FMCSA Response. For-hire motor carriers that have been subject to the cargo insurance requirement will continue to be subject to the financial responsibility requirements for public liability. The costs of complying with the public liability requirements are far higher than the costs of purchasing cargo insurance at the current minimum levels and provide a more effective check on new carriers' financial stability. A November 2006 article in an industry periodical, *Overdrive,*[8] estimated an owner-operator with a good safety record would likely pay about $5,000 for primary liability insurance of $1 million to cover damage or injury done to others in case of a crash; $2,400 for physical damage insurance to cover damage done to the owner-operator's vehicles in case of a crash; $1,000 for cargo insurance to cover damage to or theft of the load; and $450 for $1 million in non-trucking-use liability insurance. While the *Overdrive* article did not state how much cargo loss or damage protection the $1,000 premium would cover, it did state that fleets typically buy $100,000 on the owner-operator's behalf, which is the amount mandated by many shippers. Specialty haulers can carry far more, the *Overdrive* article said.

Fraud Prevention. Three commenters stated that the shipping community relies on the BMC–32 endorsement to protect against unscrupulous motor carriers and freight forwarders seeking to avoid their financial responsibilities. One commenter stated that filing evidence of cargo insurance with FMCSA is essential to prevent fraud. The commenter stated that many instances of insurance fraud have been thwarted by having an independent government source for checking carrier insurance.

FMCSA Response. As stated above, it may be true that the BMC–32 endorsement may permit the shipper to proceed directly against the insurer as a last resort, possibly providing relief to shippers in the event the carrier becomes insolvent or bankrupt. FMCSA believes, however, that shippers should assume greater responsibility in assessing the risk of offering their property to authorized motor carriers and that the Agency should focus its scarce resources on motor carrier highway safety, rather than continuing to mandate a system that regulates loss exposure in connection with shipping commercial property. Commercial shippers getting rate quotes from motor carriers can simply ask additional questions of motor carriers offering their services to ascertain whether the motor carriers maintain cargo insurance in the amount and with the features the shipper desires.

Benefit to Brokers and Intermediaries. Three commenters argued that the mandatory cargo insurance requirement is important to carriers that interline freight or use local cartage companies for pickup and delivery. Under the

[7] This figure is based on the fact that approximately 252,600 for-hire motor carriers had USDOT numbers at the end of February 2009. Approximately 76,000 of these carriers were classified as motor common carriers potentially subject to the cargo insurance requirements (the actual number of carriers subject to the cargo insurance requirements may be smaller, because some common carriers haul only low value commodities that are exempt from cargo insurance requirements). 76,000/252,600 = 30.1%. The 70,400 carriers holding only contract carrier authority and the 84,300 for-hire carriers exempt from commercial registration requirements are not required to have cargo insurance.

[8] *Overdrive,* November 2006, *http://www.etrucker.com/apps/news/article.asp?id=56256.*

Carmack Amendment, the shipper may seek recovery from either the receiving or delivering carrier, and a carrier paying a claim may seek indemnification from a connecting carrier that is responsible for the loss or damage. These commenters believe the right of subrogation against the BMC–32 endorsement is a valuable protection for such carriers when a connecting carrier that is responsible for a loss goes out of business or files for bankruptcy. The Transportation Intermediaries Association (TIA) commented that its members benefit from mandatory cargo insurance because brokers and other third-party intermediaries are often caught in the middle when shippers cannot collect claims from the motor carrier or freight forwarder. TIA commented that the BMC endorsement is often the only remedy available to a broker, and to its shipper customer, when a carrier routinely refuses claims that are within its deductible or fall into an exclusion from its insurance coverage. One commenter also noted that consignees who did not arrange for the transportation and have no business relationship with the delivering carrier often experience losses and file claims.

FMCSA Response. Responsible transportation intermediaries generally screen potential carriers to ascertain which carriers would provide the best service to their clients. Cargo insurance monitoring and inspection can and should be part of the service intermediaries provide for their clients.

Brokers and intermediaries should be offering loads only to financially responsible authorized motor carriers. Responsible brokers and intermediaries should not be using motor carriers that are unable or unwilling to pay loss and damage claims. The market should encourage such carriers to leave the market sooner than they would have under the current system. Brokers and intermediaries also have the court system to help them recover actual damages for their shipper clients.

FMCSA's rationale for eliminating the cargo insurance requirements. Eight commenters argued that while the market drives the shippers to generally require cargo insurance as a condition of doing business, this is not an acceptable rationale for eliminating the cargo insurance requirements. Four commenters stated that smaller, occasional shippers rarely negotiate contracts or related cargo protections or ask carriers about their insurance coverage, and large shippers may be unaware of the deductibles and exclusions in carriers' cargo policies. Similarly, one commenter noted that many small-freight shippers may have no direct contact with the carriers that move their freight.

Other commenters disagreed with FMCSA's statement that there does not appear to be a need to require common carriers of property to maintain cargo insurance because these carriers typically have cargo insurance well above FMCSA limits ($5,000/$10,000). Four commenters, including Wal-Mart and Sysco, stated that it is incorrect for FMCSA to assume that all motor carriers already carry more cargo insurance than the regulations require. Four other commenters noted that while responsible, financially secure motor carriers typically carry cargo insurance for amounts that exceed the federal minimum, this is not a valid basis for eliminating this requirement. The commenters noted that even when a carrier has substantially greater coverage, it may have deductibles and exclusions that make it difficult for the shipper to recover losses; the first dollar coverage provided by the Carmack Amendment protects small shippers who can recover from the insurance company up to the limits of the policy. The FTCA noted that although carriers usually have cargo insurance for amounts that exceed the Federal minimum, this explanation demonstrates FMCSA's lack of understanding of the real value to the shipping public the BMC–32 has provided. The FTCA also noted that 97.87 percent of the claims filed against less-than-truckload (LTL) motor carriers in the year 2000 were under $5,000.

FMCSA Response. Shippers are like any other party in a transaction where one party will be providing services to another party. If the parties do not communicate the terms and conditions, or read the terms and conditions in their contracts (also known as bills of lading in transportation), the shipper assumes the risk. Shippers should ask carriers for copies of their policies, including all endorsements, exclusions, and declarations, to see whether the shippers' property or interests will be served by a particular motor carrier. While some small-freight shippers may have no direct contact with the carriers that actually move their freight, FMCSA believes these shippers should hold the service provider with whom they have direct contact accountable for checking to ensure motor carriers transporting the freight have adequate insurance. If the small-freight shippers cannot ensure the motor carriers have adequate cargo insurance, the small-freight shippers' service providers may acquire cargo insurance on behalf of the small-freight shippers.

FMCSA does not agree with the commenters who claim there is no rationale for eliminating the requirement based on the fact that common carriers typically carry cargo insurance in excess of the minimum requirements. As stated above, five insurers informed FMCSA that most of the policies they write for motor carrier cargo liability are for $50,000 to $100,000 liability. By eliminating the distinction between common and contract carriers for registration purposes, the ICCTA and SAFETEA–LU essentially mandated that we change our cargo insurance requirements so that carriers registered with the Agency are treated uniformly. As mentioned above, only 30 percent of for-hire carriers operating in interstate commerce are subject to the current requirements. Approximately 155,000 contract carriers and exempt for-hire carriers are not required to maintain cargo insurance.

FMCSA believes the individual shippers using the 3,600 for-hire household-goods motor carriers and 435 household-goods freight forwarders need the protection of cargo insurance, but not commercial shippers who can assess cargo loss and damage risks and cargo insurance requirements as a part of their normal business operations.

The FTCA did not indicate how many of the under $5,000 claims filed against LTL motor carriers in the year 2000 were paid out of pocket and how many loss or damage claims they, in turn, filed with their insurer under their cargo insurance policy. The survey data FTCA provided from the Transportation Loss and Prevention and Security Association (TLPSA) does not break down this information. A cargo insurance policy, like a homeowner's insurance policy, is used generally for large claims, not claims the motor carrier, like the homeowner, believes it can handle out of its own treasury. In fact, FMCSA believes this is probably why many cargo insurance policies have high deductibles; for-hire motor carriers and insurers contemplate that motor carriers would handle all claims from the first dollar under their Carmack liability up to the deductible, thus self-insuring for the deductible amount.

Flawed certificates of insurance. Seven commenters stated that certificates of insurance are flawed documents because they do not typically indicate the deductible and do not disclose exclusions in the policy; and that there is no mechanism for insuring the validity of the certificate or whether the policy remains in place. One commenter claimed that while a certificate of insurance may be useful in

determining that a policy has been issued with a face amount larger than the $5,000 BMC–32 requirement, the certificate of insurance is not evidence that a particular loss will be covered and is therefore of marginal utility. Three commenters stated that it is important to rely on the BMC–32 endorsement to confirm the existence of cargo insurance and satisfy that there is a policy that will offer true indemnity of claims.

FMCSA Response. FMCSA believes all seven commenters were referring to the ACORD (Association for Cooperative Operations Research and Development) [9] certificate of insurance document, rather than the BMC–34 Certificate of Insurance. The comments from Certain Transportation Factors and the Third Party Logistics Providers specifically name the ACORD certificate of insurance used by cargo insurers. The FTCA provided a virtually blank copy of an ACORD certificate on the last page of its submission.

FMCSA did not propose to modify the ACORD certificate. ACORD documents are written by an insurance standards organization and are not required to be filed with FMCSA. Nothing FMCSA does in this rule will change the number of carriers obtaining ACORD certificates of insurance or correct any perceived "flaws" in such forms.

The Agency recognizes that elimination of the BMC–32 endorsement will make it less convenient for commercial shippers to confirm the existence of cargo insurance. However, FMCSA believes that motor carriers, in order to effectively compete for desirable traffic, will devise alternative means of facilitating shipper verification of their cargo insurance policies.

Effect on small carriers/shippers/brokers. Another commenter stated that FMCSA, in proposing to eliminate the cargo insurance requirements, did not recognize the extent to which obtaining adequate cargo insurance is a problem for small carriers, as well as the ripple effect that abolition of the financial responsibility endorsement would have on small transportation service providers and small shippers and brokers, as well. The commenter argued that security-adequate, reasonably comprehensive cargo insurance is a particular problem for small carriers. Shippers are reluctant to do business with small carriers because the shipper fears that small carriers will be unable to pay for any cargo claim not covered by a cargo insurer. Three commenters argued that the BMC–32 endorsement allows smaller carriers to gain credibility in the marketplace. Similarly, one commenter noted that the current minimum cargo insurance requirement promotes competition and increases available capacity because shippers are more willing to trust a new entrant or "Mom and Pop Trucking," knowing that mandatory minimum cargo coverage is available and can readily be accessed.

FMCSA Response. The Agency does not believe that gaining credibility in the marketplace is an appropriate justification for maintaining existing cargo insurance requirements. The purpose of mandatory insurance minimums was to protect shippers, not to protect market share for carriers or new entrants lacking credibility. FMCSA believes that credible and trustworthy carriers have better and more efficient means of establishing themselves in the marketplace and should not have to rely on government-mandated insurance. The Agency does not believe it should use its regulatory authority to provide credibility to carriers or new entrants not otherwise equipped to establish themselves in the marketplace.

FMCSA believes that the markets can solve credibility issues without continued government intervention. As stated above, firms in the motor carrier industry, especially small carriers, choose combinations of insurance and cargo security systems to ensure cargo safely gets to its destination. Some small motor carriers may prefer to obtain little cargo insurance but spend a lot on cargo anti-theft/anti-damage systems, while other small motor carriers may choose to obtain more insurance but spend little on such anti-theft/anti-damage systems. FMCSA has been limiting all possible combinations by imposing a minimum insurance amount. All motor carriers will now be able to choose the combination which best suits their needs and abilities and those of their shippers and clients. The firms will have a better choice on how to best allocate resources, be financially responsible, and protect their exposure to risk without unnecessary government intervention.

Congressional intent. Two commenters stated that there has been no indication of any intent by Congress to eliminate minimum mandatory cargo insurance coverage and, to the contrary, believe that Congress intended to preserve the requirement. Three commenters noted that the survival of these regulations throughout the deregulation process should demonstrate their value to the shipping community and thus justify their continued existence in the current regulatory environment. One commenter said elimination of the cargo insurance requirements would be an inadvertent endorsement of lower industry performance standards. Another commenter stated that FMCSA should enforce the current regulations rather than eliminate them, and FMCSA should be re-staffed and re-engineered to provide the essential services that Congress intended for the protection of the shipping public.

FMCSA Response. FMCSA disagrees that Congress intended the Agency to preserve the cargo insurance requirement. Congress did not alter the existing statutory language, which permits — but does not mandate — the Agency to require cargo insurance. Congress continued to leave the decision about the need for cargo insurance to the Agency, as it had in the past. Because the level of required cargo insurance is already fairly low and many carriers maintain more than the required minimum, FMCSA does not believe that elimination of the requirements would be an inadvertent endorsement of lower industry performance standards.

Cargo insurance requirements should be expanded to include all motor carriers. Nine commenters concluded that the mandatory cargo insurance requirement should not only be maintained, but extended to all for-hire motor carriers. One of these commenters, Advocates for Highway and Auto Safety, did not limit its recommendation to for-hire motor carriers, notwithstanding the fact that private carriers transport their own goods.

FMCSA Response. FMCSA's authority to impose cargo insurance, codified at 49 U.S.C. 13906(a)(4), is limited to carriers required to register with the Agency under Chapter 139 of Title 49 of the United States Code. Consequently, we lack the necessary statutory authority to require "exempt" for-hire carriers or private carriers to obtain cargo insurance.

FMCSA believes that extending the requirement to all non-exempt for-hire property carriers and passenger carriers is unnecessary. Entities engaged in contract carriage resolve cargo liability issues through contracts negotiated with their customers. The financial arrangements they elect to make with shippers are not a concern for the public, nor do they raise safety issues that might justify such Federal intervention. Although passenger carriers transport a limited amount of

[9] ACORD is a global, nonprofit insurance association whose mission is to facilitate the development and use of standards for the insurance, reinsurance and related financial services industries.

cargo, the ICC declined, in its original cargo insurance rule, to require such carriers to have cargo insurance. *See* 1 FR 1156, at 1158, August 20, 1936.

Minimum amounts of required cargo insurance should be increased. Six commenters strongly urged that, not only should the cargo insurance requirements remain intact for all motor carriers and freight forwarders, but the minimum amounts established in 1976 ($5,000/$10,000) should be increased because: (1) The cost of living and the price of virtually all transported goods have increased, (2) modern trucks and trailers have significantly greater carrying capacity, and (3) new carriers entering the market and competition among carriers have increased the rate of carrier business failures. The FTCA suggested doubling the minimum amount of cargo insurance required for motor carriers and freight forwarders to $10,000/$20,000. Six commenters suggested that the levels should be increased to $25,000/$50,000 to adequately compensate a shipper for a loss. Two commenters stated that insurers should be allowed, but not required, to post BMC–32 endorsements higher than the $5,000 regulatory minimum.

FMCSA Response. FMCSA recognizes that the current minimum levels of required cargo insurance are relatively low. As discussed above, the limits do not affect the motor carrier's liability for actual cargo loss or damage. Arguments for or against the proposal based on the observations that most shippers require an amount of insurance above the government-established minimum is largely irrelevant to the issue of whether the requirement should exist.

Increased cost. Four commenters stated that there is no explanation offered for the FMCSA's estimate that the elimination of the insurance requirements would save carriers $3.95 million over 10 years. They stated that the elimination of the requirements will increase the cost to claimants. Commenters stated that without the BMC–32 endorsement, claimants would be forced to take settlement into their own hands, file claims against bankrupt carriers in Bankruptcy Courts, and recover little, if anything, for valid claims. They alleged the cost to shippers due to multiple exclusions, unpaid cargo claims, and the need to purchase their own cargo insurance would far exceed the potential savings claimed in the preamble to the proposed rule. One commenter stated that only 70 claims a year that are now covered by the terms of the BMC–32 endorsement need to be denied to offset the alleged savings to the motor carrier industry.

Two commenters asserted that the elimination of mandatory cargo insurance will raise the transaction costs for shippers and motor carriers. The commenters stated that shippers have learned to rely on the terms and conditions of the FMCSA endorsement instead of reviewing the carrier's insurance policy. Therefore, if the protections of the BMC–32 endorsement are eliminated, shippers will be required to review the terms and conditions of the cargo insurance policies of every motor carrier with whom they interact to identify loopholes and determine whether there is actual protection or whether the existence of insurance coverage is illusory.

FMCSA Response. FMCSA agrees that shippers have learned to rely on the terms and conditions of the FMCSA endorsement instead of reviewing the carrier's insurance policy. Shippers should be more proactive in determining what level of insurance protection they are actually receiving and take necessary safeguards.

FMCSA agrees that many shippers now pay for insurance from the motor carrier in the form of higher transportation charges. The motor carrier is providing a service or product just like the shipper. The shipper, for example, may carry its own liability insurance in the event its products injure consumers and passes such costs along to consumers.

Once this rule takes effect, some of the additional costs predicted by opponents of the proposal could develop due to the absence of a cargo insurance requirement. However, these costs are expected to be negligible. FMCSA has reevaluated the costs and benefits of this final rule. The Agency believes the market will react to the commenters' concerns by developing better ways of addressing these problems than the current insurance requirement.

Elimination Will Cause a Litigation Increase. Three commenters stated that the proposed elimination of the requirements would cause a significant increase in litigation by encouraging insurance companies to deny more claims for more reasons. This increase in litigation would also increase shipper costs.

FMCSA Response. These commenters do not provide any support for this proposition, which assumes that insurance companies and motor carriers are not now acting rationally (because they are not denying as many claims as they could). There is no evidence suggesting that insurance companies and motor carriers will behave differently as a result of this rule.

Updated Cost and Benefit Figures for the Final Rule

Costs

FMCSA calculates the costs of this final rule to be small and indirect. Commercial shippers relying on motor carrier cargo insurance to cover their property against loss or damage will have to do some additional work identifying for-hire motor carriers and freight forwarders who have adequate cargo insurance (through phone calls, e-mails, correspondence or other communications). The costs of this final rule are negligible and result primarily from shippers of shipments valued at less than $5,000 now having to verify that their potential carrier has adequate cargo insurance. FMCSA assumes that shippers of non-exempt cargo valued at greater than $5,000 are already verifying whether their shipments would be adequately insured, because their shipments would not be fully protected under the existing minimum cargo insurance requirement. Inasmuch as shippers of cargo valued at less than $5,000 already have to call or otherwise contact a carrier or broker to arrange for transportation, the additional time necessary to verify the existence of appropriate cargo insurance during this contact should, in most cases, be negligible. See the Regulatory Evaluation for the final rule in the docket for a detailed discussion of the cost estimates for this rule.

Benefits

Direct benefits of this final rule include time savings to: (1) Industry and FMCSA personnel resulting from streamlining the motor carrier registration process; and (2) the industry's insurance representatives by eliminating cargo insurance filing requirements for most carriers formerly referred to as "common carriers" and freight forwarders of non-household goods.

The total annual savings from the rule are estimated to be about $452,000 in the first year and $3.95 million over a ten-year period. The cost savings increase in each subsequent year of the analysis period because the entire carrier population increases by 3.71 percent annually.[10] These future costs savings are discounted at seven percent. Thus, the total discounted cost saving

[10] The eight-year (2000–08) average annual growth in motor carrier registrations with the FMCSA (interstate hazmat and non-hazmat, and intrastate hazmat only) is 3.71%. Source: MCMIS Snapshot, 29–July–2009.

associated with this provision equals $452,000 in the first year and $3.95 million over the ten-year period. See the Regulatory Evaluation for the final rule in the docket for a detailed discussion of how FMCSA arrived at these figures.

The Final Rule

The final rule limits the requirements for cargo insurance filings during registration (§ 365.109) to household goods motor carriers and household goods freight forwarders. Similarly, the requirement to maintain cargo insurance as a condition of retaining active operating authority, as codified in §§ 387.301(b), 387.303(c) and 387.403(a), is limited to household goods motor carriers and household goods freight forwarders. Furthermore, the list of commodities exempt from cargo insurance requirements is being removed from § 387.301(b) as it is no longer needed.

Forms BMC–32 and BMC–34 for Non-Household-Goods Motor Carriers and Freight Forwarders

All BMC–32 endorsements and BMC–34 certificates of insurance that insurers have issued to motor carriers and freight forwarders, except household goods motor carriers and household goods freight forwarders, will expire on the effective date of this final rule, March 21, 2011. FMCSA will be amending the BMC–32 endorsement and BMC–34 certificate of insurance to reflect the requirements of this final rule by removing the references to common carriers and amending other incorrect references. FMCSA will be seeking Office of Management and Budget (OMB) approval of the new forms before the effective date of the final rule. Insurance companies will not need to cancel any previous FMCSA filings. FMCSA will not remove the names of insurance companies and the appropriate policy numbers from FMCSA web sites and any other FMCSA distribution methods until March 18, 2013, the second anniversary of the effective date of this final rule, to facilitate identification of insurance coverage for claims arising from transportation occurring while the policies were in effect.

The Agency has added a new paragraph (f) to both §§ 387.313 and 387.413. These new paragraphs will serve as notice to the public that any valid form BMC–32 endorsements and BMC–34 certificates of insurance on the day before the effective date will expire on the effective date of the final rule for those 70,000+ for-hire motor common carriers and freight forwarders that do not transport household goods for individual shippers. FMCSA believes it is unreasonable to require the insurance companies to cancel the filings electronically or manually, as they may do under §§ 387.313(d) or 387.413(d). FMCSA will continue to maintain the previously filed data in its data systems until March 18, 2013, which is two years after the effective date of this final rule. Two years from notification of disallowance of the claim is the standard statute of limitations for filing a civil action based on a loss and damage claim under a receipt or bill of lading pursuant to 49 U.S.C. 14706(e).

Finally, FMCSA removes from the authority citation for 49 CFR part 365 the reference to 16 U.S.C. 1456, a provision of the Coastal Zone Management Act (CZMA) of 1972. The ICC added that reference in 1987 (52 FR 18365, May 15, 1987) because its regulations governing operating authority (49 CFR part 1160) required water carriers subject to ICC jurisdiction to comply with the CZMA. As a result of the ICCTA, many ICC regulations were transferred to FMCSA; 49 CFR part 1160 was recodified as 49 CFR part 365. In 2002, FMCSA rescinded the passage in part 365 dealing with water carriers (49 CFR 365.101(c), 67 FR 61818, 61820, October 2, 2002). We are now deleting the reference to the CZMA as well.

Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 due to public interest. The final rule has minimal costs. The Office of Management and Budget (OMB) has reviewed this document. The Agency has prepared a regulatory analysis of the costs and benefits of this action. A copy of the analysis document is included in the docket referenced at the beginning of this notice. The estimated ten-year costs and benefits of the analysis are shown in Table 2.

TABLE 2—ESTIMATED TEN-YEAR COSTS, BENEFITS, AND NET BENEFITS

[$ millions]

7% Discount Rate:	
Costs	Negligible
Benefits	$3.95
Net Benefits	$3.95
3% Discount Rate:	
Costs	Negligible
Benefits	$4.67
Net Benefits	$4.67

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FMCSA considered the effects of this regulatory action on small entities, as defined by the U.S. Small Business Administration's Office of Size Standards.

The final rule applies to both new entrant (filing) and existing (re-filing) motor carriers and freight forwarders. Regarding new entrants, data from the FMCSA Licensing and Insurance database indicate that the number of new entrant for-hire motor common carriers filing annually with FMCSA averaged 18,442 in fiscal years 2007 and 2008. Subtracting out new entrant passenger carriers (886) and household goods carriers (859) because they will not be affected by this final rule, while adding in the average 183 new entrant freight forwarders estimated to have filed with FMCSA during the same fiscal years, results in an average of 16,880 annual new entrant for-hire carriers and freight forwarders whose insurance agents would not have to file proof of cargo insurance with FMCSA under this rule.

Small Business Administration (SBA) regulations (13 CFR part 121) define a "small entity" in the motor carrier industry by average annual receipts, which is currently set at $25.5 million per firm for truck transportation and $7 million per firm for freight transportation. Although general freight transportation arrangement firms fall under this $7 million threshold, there is an exception for "non-vessel owning common carriers and household goods forwarders." This exception stipulates that, for this sub-set of freight forwarders, $25.5 million should be the revenue threshold. Since this subset appears to apply to freight forwarders in the trucking industry, we use $25.5 million as the revenue threshold for freight forwarders as well.

Motor carriers and freight forwarders are not required to report revenue to the FMCSA, but are required to provide FMCSA with the number of power units they operate when they apply for operating authority and to update this figure biennially. Because FMCSA does not have direct revenue figures, power units serve as a proxy to determine the carrier and forwarder size that would qualify as a small business given the SBA's revenue threshold. In order to produce this estimate, it is necessary to determine the average revenue generated by a power unit. The Agency determined in the 2003 Hours of Service Rulemaking Regulatory Impact Analysis

and Small Business Analysis [11] that a power unit produces about $172,000 in revenue annually (adjusted for inflation).[12] According to the SBA, motor carriers and freight forwarders with an annual revenue of $25.5 million are considered a small business.[13] This equates to 148 power units (25,500,000/172,000). Thus, FMCSA considers motor carriers and freight forwarders with 148 power units or less to be a small business for SBA purposes.

FMCSA has used data on revenue generated per power unit to determine that a motor carrier with approximately 148 power units would exceed the small business revenue level set by the SBA. Ninety-nine percent of motor carriers have fewer than 148 power units, and therefore could be expected to fall under the SBA's definition of a small business for this industry, with annual receipts of less than $25.5 million. Examining all freight forwarders within NAICS Code 4885, using the 2002 Economic Census, there are 12,266 freight transportation arrangement firms. Of these firms, 10,640 operated for the entire year, and 111, or approximately 1 percent, had revenues exceeding $25 million.

Thus, assuming that roughly 99 percent of both for-hire trucking firms and freight forwarders benefiting from this proposal have annual receipts of less than $25.5 million, FMCSA estimates that (93,800 times 0.99) 92,900 for-hire small entity motor carrier trucking firms formerly holding common carrier authority and 1,176 small entity freight forwarder [14] firms will benefit from this final rule. The average benefit per small entity will be $10 in direct or indirect fees the small motor carriers and freight forwarders would not be charged by their insurance carriers.

In addition, FMCSA notes that commercial shippers and freight brokers, which are indirectly affected by this final rule and which use motor carriers and freight forwarders that will no longer be subject to cargo insurance requirements, may incur minimal (indirect) costs to verify that carriers have insurance for shipments worth less than the eliminated insurance floor of $5,000.

This final rule will remove the Federal mandate to purchase and maintain a minimum level of cargo insurance for most motor carriers and freight forwarders using trucks and trailers, including small entity motor carriers and freight forwarders. It will also reduce the Federal mandate for most motor carriers and freight forwarders to direct their insurance and surety providers to prepare a BMC–32 Endorsement for Motor Common Carrier Policies of Insurance for Cargo Liability and to file with FMCSA a BMC–34 Motor Carrier Cargo Liability Certificate of Insurance. The insurance or surety provider must pay FMCSA a $10 fee to file each BMC–34 Motor Carrier Cargo Liability Certificate of Insurance.

The Agency considered the alternative of extending the cargo insurance requirements to all for-hire carriers (both former common and former contract carriers) in order to treat all regulated carriers uniformly. Rather than saving $452,000 as the elimination of the cargo insurance filing for common carriers would do, this alternative was estimated to have a one-time first-year cost of $891,000 and annual costs of about $222,000 thereafter—with little benefit to shippers that have contracts with for-hire motor carriers formerly known as contract carriers.

FMCSA has determined that the impact on motor carrier and freight forwarder entities affected by this final rule will not be significant. The effect of the final rule will be to allow most motor carriers and freight forwarders to choose the optimal level of cargo insurance protection without having to notify or seek approval from FMCSA. FMCSA expects the impact of the final rule will be a reduction in the information collection burden for most motor carriers and freight forwarders, and their cargo insurance providers. FMCSA asserts that the economic impact of the reduction in paperwork will be minimal and entirely beneficial to small motor carriers and freight forwarders. Accordingly, the Administrator of the FMCSA hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rulemaking will not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $140.3 million or more in any one year.

Executive Order 12988 (Civil Justice Reform)

This action will meet applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 12630 (Taking of Private Property)

This rulemaking does not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

FMCSA analyzed this rule in accordance with the principles and criteria contained in Executive Order 13132. FMCSA has determined that this rulemaking will not have a substantial direct effect on States, nor will it limit the policy-making discretion of the States. Nothing in this document will preempt any State law or regulation. FMCSA has therefore determined this rule does not have federalism implications.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that FMCSA consider the impact of paperwork and other information collection burdens imposed on the public. The changes in this final rule affect OMB Control No. 2126–0017 titled "Financial Responsibility, Trucking, and Freight Forwarding." The final rule requires that cargo insurance filings be made only by household goods motor carriers and household goods freight forwarders.

OMB Control No. 2126–0017 has 10 information collections (ICs) for 10 different forms covering all FMCSA insurance, surety bond, trust fund, and performance bond filings for for-hire motor carriers of property and freight forwarders. IC–3, within the information collection request, is devoted to Form

[11] Regulatory Analysis for: Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations, Final Rule. Federal Motor Carrier Safety. Published 4/23/2003. Docket FMCSA–1997–2350 item 23302. It may be accessed on the Internet at this URL—*http://www.regulations.gov/search/Regs/contentStreamer?objectId=090000648034dc9d&disposition=attachment&contentType=pdf.*

[12] From the 2000 *TTS Blue Book Of Trucking Companies,* number adjusted to 2008 dollars for inflation.

[13] U.S. Small Business Associate Table of Small Business Size Standards Match to North American Industry Classification Systems Codes (NAIC), effective August 22, 2008. See NAIC Subsector 484, Truck Transportation.

[14] A MCMIS data query on 14 February 2009 showed the FMCSA Licensing and Insurance database had 1,188 freight forwarders subject to FMCSA cargo-insurance regulations and 435 household-goods freight forwarders: 99 percent of 1,188 equals about 1,176 small entity freight forwarder firms.

BMC–34 entitled "Motor Carrier Cargo Liability Certificate of Insurance." IC–3 will now be limited only to the 4,000 motor carriers and freight forwarders involved in authorized for-hire household goods carriage, but the other nine ICs in OMB Control No. 2126–0017 will still be applicable to all for-hire motor carriers of property and freight forwarders. The information collection burden for IC–3 will decrease from approximately 13,458 hours to about 673 total hours, a decrease of almost 12,800 hours.

FMCSA has submitted a revised information collection request to OMB for this reduced information collection burden in IC–3.

National Environmental Policy Act

FMCSA analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, issued March 1, 2004 (69 FR 9680), that this action is categorically excluded from further environmental documentation under Appendix 2, paragraph 6.v. of the Order (regulations prescribing minimum levels of financial responsibility). In addition, the agency believes that this action includes no extraordinary circumstances that will have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it involves rulemaking action. (*See* 40 CFR 93.153(c)(2)). It will not result in any emissions increase nor would it have any potential to result in emissions that are above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable that this final rule will not increase total CMV mileage, or change the routing of CMVs, how CMVs operate, or the CMV fleet-mix of motor carriers. By this action, FMCSA merely removes a requirement that certain motor carriers purchase and maintain insurance for loss or damage to cargo and file evidence of such insurance with the Agency.

Executive Order 13211 (Energy Effects)

FMCSA analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We determined that it is not a "significant energy action" under that Executive Order because it will not be economically significant and will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

49 CFR Part 365

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Mexico, Motor carriers, Moving of household goods.

49 CFR Part 387

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

■ In consideration of the foregoing, FMCSA amends title 49, Code of Federal Regulations, chapter III, as follows:

PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

■ 1. The authority citation for part 365 is revised to read as follows:

Authority: 5 U.S.C. 553 and 559; 49 U.S.C. 13101, 13301, 13901–13906, 14708, 31138, and 31144; 49 CFR 1.73.

■ 2. In § 365.109, revise paragraph (a)(5)(iii) to read as follows:

§ 365.109 FMCSA review of the application.

(a) * * *

(5) * * *

(iii) *Form BMC 34 or BMC 83 surety bond*—Cargo liability (household goods motor carriers and household goods freight forwarders).

* * * * *

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

■ 3. The authority citation for part 387 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13906, 14701, 31138, 31139, and 31144; and 49 CFR 1.73.

■ 4. In § 387.301, revise paragraph (b) to read as follows.

§ 387.301 Surety bond, certificate of insurance, or other securities.

* * * * *

(b) *Household goods motor carriers-cargo insurance.* No household goods motor carrier subject to subtitle IV, part B, chapter 135 of title 49 of the U.S. Code shall engage in interstate or foreign commerce, nor shall any certificate be issued to such a household goods motor carrier or remain in force unless and until there shall have been filed with and accepted by the FMCSA, a surety bond, certificate of insurance, proof of qualifications as a self-insurer, or other securities or agreements in the amounts prescribed in § 387.303, conditioned upon such carrier making compensation to individual shippers for all property belonging to individual shippers and coming into the possession of such carrier in connection with its transportation service. The terms "household goods motor carrier" and "individual shipper" are defined in part 375 of this subchapter.

* * * * *

■ 5. In § 387.303, revise paragraph (c) to read as follows:

§ 387.303 Security for the protection of the public: Minimum limits.

* * * * *

(c) *Household goods motor carriers: Cargo liability.* Security required to compensate individual shippers for loss or damage to property belonging to them and coming into the possession of household goods motor carriers in connection with their transportation service;

(1) For loss of or damage to household goods carried on any one motor vehicle—$5,000,

(2) For loss of or damage to or aggregate of losses or damages of or to household goods occurring at any one time and place—$10,000.

■ 6. In § 387.313, add a new paragraph (f) to read as follows:

§ 387.313 Forms and procedures.

* * * * *

(f) *Termination of Forms BMC–32 and BMC–34 for motor carriers transporting property other than household goods.* Form BMC–32 endorsements and Form BMC–34 certificates of insurance issued to motor carriers transporting property other than household goods that have been accepted by the FMCSA under these rules will expire on March 21, 2011.

■ 7. In § 387.403, revise paragraph (a) to read as follows:

§ 387.403 General requirements.

(a) *Cargo.* A household goods freight forwarder may not operate until it has filed with FMCSA an appropriate surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements, in the amounts

prescribed in § 387.405, for loss of or damage to household goods.

* * * * *

■ 8. In § 387.413, add a new paragraph (f) to read as follows:

§ 387.413 Forms and procedures.

* * * * *

(f) *Termination of Forms BMC–32 and BMC–34 for freight forwarders of property other than household goods.* Form BMC–32 endorsements and Form BMC–34 certificates of insurance issued to freight forwarders of property other than household goods that have been accepted by the FMCSA under these rules will expire on March 21, 2011.

Issued on: June 15, 2010.

Anne S. Ferro,

Administrator.

[FR Doc. 2010–14866 Filed 6–21–10; 8:45 am]

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NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 830

Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Correcting amendments.

SUMMARY: The NTSB is correcting a regulatory subsection that became effective on March 8, 2010. The NTSB determined that a final rule which requires reports of certain runway incursions, failed to specify that on paragraph applies only to fixed-wing aircraft operating at public-use airports on land. These amendments function to considerably narrow the reporting requirement to include only the specific set of incidents for which the NTSB seeks reports. In addition, the NTSB is correcting a footnote because the NTSB no longer has a regional office in Parsippany, New Jersey.

DATES: The correction is effective June 22, 2010.

ADDRESSES: Copies of the notice of proposed rulemaking (NPRM) and the final rule, published in the **Federal Register** (FR), are available for inspection and copying in the NTSB's public reading room, located at 490 L'Enfant Plaza, SW., Washington, DC 20594–2000. Alternatively, copies of the documents and comments that the NTSB received from the public are available on the government-wide Web site on regulations at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Deepak Joshi, Aerospace Engineer (Structures), Office of Aviation Safety, (202) 314–6348.

SUPPLEMENTARY INFORMATION:

Regulatory History

On October 7, 2008, the NTSB published an NPRM titled "Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records" in 73 FR 58520, and, on January 7, 2010, the NTSB published a final rule under the same title in 75 FR 922. The final rule codified the addition of five reportable incidents, including the following requirement concerning the reporting of runway incursions: "Any event in which an aircraft operated by an air carrier: (i) Lands or departs on a taxiway, incorrect runway, or other area not designed as a runway; or (ii) Experiences a runway incursion that requires the operator or the crew of another aircraft or vehicle to take immediate corrective action to avoid a collision."

After the publication of this final rule, several organizations advised the NTSB that the regulatory language may inadvertently require that aircraft taking off or landing at sites outside an airport submit a report each time they take off or land. Representatives of these organizations were concerned that they would be required to report every takeoff or landing of a helicopter that occurs on a "taxiway" or "other area not designed as a runway." While the new rule literally states this, the preamble of the NPRM stated that it is *not* the NTSB's intent to be notified of normal taxiway and off-airport rotorcraft takeoffs and landings (*see* 73 FR 58520).

The NTSB does not seek to require reports of off-airport or taxiway takeoffs and landings that occur during normal helicopter operations, including helicopter operations at heliports, helidecks, hospital rooftops, highway berms, or any other area normally utilized to transport patients, passengers, or crews. The NTSB also does not seek to require reports of other off-airport or taxiway takeoffs and landings that occur during normal operations, such as those involving seaplanes, hot-air balloons, unmanned aircraft systems, and aircraft designed specifically for takeoffs and landings that do not occur at land airports. The NTSB's correction to its inadvertent error in drafting overly broad regulatory language in 49 CFR 830.5(a)(12) contains the requirement that the NTSB receive reports of the following: "Any event in which an operator, when operating an airplane as an air carrier at a public-use airport on land: (i) Lands or departs on a taxiway, incorrect runway, or other area not designed as a runway; or (ii) Experiences a runway incursion that requires the operator or the crew of another aircraft or vehicle to take immediate corrective action to avoid a collision."

In interpreting this subsection, the NTSB plans to use the definition of "airplane" found in 14 CFR 1.1, which indicates that "[a]irplane means an engine-driven fixed-wing aircraft heavier than air, that is supported in flight by the dynamic reaction of the air against its wings." Regarding the definition of "public-use airport," the NTSB plans to use the definition in 49 U.S.C. 47102(21), which indicates that "'public-use airport' means— (A) a public airport; or (B) a privately-owned airport used or intended to be used for public purposes that is—(i) a reliever airport; or (ii) determined by the Secretary to have at least 2,500 passenger boardings each year and to receive scheduled passenger aircraft service." The NTSB believes the qualification of "on land" of "public-use airport" is self-explanatory; the NTSB does not seek reports of operations on water.

This new language functions to narrow the reporting requirement. Given that it does not impose any new requirements but instead narrows the current requirement to include only reports of incidents in which *airplanes* at *public-use airports on land* are involved in runway incursions, the NTSB has concluded that it is legally permissible to publish this correction to the rule rather than engage in a new rulemaking procedure under the Administrative Procedure Act. The corrected language is clearly a logical outgrowth of the language that became effective on March 8, 2010, and applies to fewer scenarios than the original language.

List of Subjects in 49 CFR Part 830

Aircraft accidents, Aircraft incidents, Aviation safety, Overdue aircraft notification and reporting, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, the NTSB amends 49 CFR part 830 as follows: