

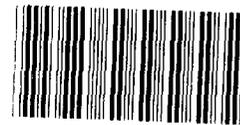
GAO

Briefing Report to the Chairman,  
Subcommittee on Surface  
Transportation, Committee  
on Public Works and Transportation  
House of Representatives

May 1986

# MOTOR CARRIERS

## The Availability of Environmental Restoration Insurance



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UNITED STATES GENERAL ACCOUNTING OFFICE  
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RESOURCES, COMMUNITY,  
AND ECONOMIC DEVELOPMENT  
DIVISION

May 19, 1986

B-222849

The Honorable Glenn M. Anderson  
Chairman, Subcommittee on Surface  
Transportation  
Committee on Public Works and  
Transportation  
House of Representatives

Dear Mr. Chairman:

In your February 6, 1986, letter you requested that we gather certain information relating to insurance problems confronting the insurance and trucking industries. You expressed interest in, among other things, the extent to which insurers are writing environmental restoration insurance for trucking firms, the reasons they object to writing the insurance, changes they advocate to make the insurance more acceptable to them, and shortfalls in the data available to address these areas of interest. This briefing report summarizes the results of our work.

Section 30 of the Motor Carrier Act of 1980 requires certain trucking firms that haul hazardous cargo and all interstate for-hire trucking firms to have minimum levels of financial responsibility covering liability for bodily injury, property damage, and environmental restoration. The required minimum levels of financial responsibility are \$750,000, \$1 million, or \$5 million, depending on the degree of hazard posed by the cargo. The Department of Transportation requires trucking firms to have either insurance or a surety bond to comply with this requirement. It does not permit self-insurance. There is no comparable requirement for air, water, or rail carriers.

To comply, most trucking firms purchase a commercial auto liability insurance policy which provides the traditional bodily injury and property damage coverage as well as the environmental restoration coverage required by Section 30. In general, the insurance is available in the voluntary market--insurers willing to write the insurance--or in the assigned risk market--insurers required to share in writing insurance for trucking firms unable to obtain insurance in the voluntary market.

According to three insurance associations and our sample of 27 insurers, who issued nearly 60 percent of the liability policies for trucking firms regulated by the Interstate Commerce Commission, some trucking firms will have problems obtaining insurance in 1986 at the \$750,000 and \$1 million coverage levels in the voluntary market. Most insurers will offer these levels, but many intend to decrease the number of policies they issue. Moreover, obtaining the \$5 million coverage will be extremely difficult, particularly for new trucking firms, because most insurers intend to decrease the number of policies they issue or not offer this coverage level. The insurance will also be more expensive. The insurers increased their premiums to trucking firms an average of 72 percent in 1985 and plan to further increase premiums an average of 29 percent in 1986.

Insurance in the amount required by Section 30 is available in the assigned risk market in all but four states--Hawaii, Maryland, South Carolina, and Texas. Assigned risk premium rates--which are the same for all trucking firms in a state--usually are higher than voluntary market rates. Also, a poor safety record will not prevent a trucking firm from obtaining insurance in the assigned risk market. In this regard, a valid driver's license and payment of premiums are the only eligibility requirements for obtaining insurance in this market.

Overall, we expect to see more new trucking firms obtaining the required insurance in the assigned risk market. This may be the only way the vast majority of new entrants and those whose insurance has been cancelled will be able to obtain the \$5 million coverage required for extremely hazardous cargo, such as radioactive materials, munitions, and poison gas.

Insurers told us that they object to writing environmental restoration coverage, particularly at the \$5 million level, because there are too many unknown risks involved and they are unable to obtain reinsurance--insurance that insurers purchase to cover losses they may incur under their policies. Insurers are concerned that not enough is known about the nature and extent of damage that hazardous materials can inflict on the environment and human health and that the damage can manifest itself many years after an accident. Therefore, they are uncertain about when their liability will come to an end and what the total liability associated with an accident will be.

Insurers consider the language describing the risk they are being asked to insure to be open-ended and not well-defined. For example, they fear having to pay substantial sums for speculative damages based on a risk of future harm without a showing of actual bodily injury. They also are concerned that key words and phrases in their policies will be interpreted by courts to expand coverage beyond that intended by insurers as has happened, in their view, under other types of insurance policies.

To address their concerns, many insurers and the associations advocated amending the Motor Carrier Act to (1) lower the minimum required financial responsibility amounts or give the Secretary of Transportation authority to determine them and (2) eliminate the environmental restoration clause or define the scope of the clause so it clearly describes what is being insured.

Although insurers have reservations about offering environmental restoration coverage, we were not able to determine the extent to which their reservations can be substantiated through actual experience with this coverage. This is because neither the associations nor the insurers could identify any court cases involving the coverage; they also did not provide us with information on the amount of claims made or losses incurred under trucking firm liability policies in general or under the environmental restoration clause in particular.

We obtained the information for this briefing report principally from officials of the Department of Transportation, Interstate Commerce Commission, three insurance associations, 27 insurance companies, and four trucking associations. The scope of our review is discussed in more detail in part I of this report.

As agreed with your office, we did not obtain official agency comments on this report. We did discuss its contents with officials of the Department of Transportation, the Interstate Commerce Commission, and the three insurance associations. They concurred with the facts, and their comments have been included where appropriate. Unless you publicly announce its contents earlier, we plan no further distribution of this briefing report until 7 days from the date of this letter, as arranged with your office. At that time, we will provide copies to the Department of Transportation and the Interstate Commerce Commission and to others upon request. If you have any further questions on these matters, please contact me at 275-7783.

Sincerely yours,



Herbert R. McLure  
Associate Director



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ABBREVIATIONS

AIPSO	Automobile Insurance Plans Service Office
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
C.F.R.	Code of Federal Regulations
DOT	Department of Transportation
GAO	General Accounting Office
ICC	Interstate Commerce Commission
ISO	Insurance Services Office

## OBJECTIVES AND SCOPE OF REVIEW

- GAO WAS REQUESTED TO OBTAIN INFORMATION ON
  - TYPES OF CARGO THAT REQUIRE ENVIRONMENTAL RESTORATION INSURANCE.
  - THE EXTENT TO WHICH INSURERS ARE UNDERWRITING THE INSURANCE FOR TRUCKING FIRMS.
  - REASONS INSURERS OBJECT TO UNDERWRITING THE INSURANCE.
  - STATUTORY AND OTHER CHANGES ADVOCATED BY INSURERS.
  - THE AVAILABILITY OF REINSURANCE (THE INSURANCE PURCHASED BY INSURERS TO COVER AMOUNTS PAID UNDER POLICIES THEY ISSUE).
  - WHETHER HAZARDOUS MATERIALS TRANSPORTERS SELF-INSURE.
  - THE PERCENTAGE OF THE PETROLEUM MARKET TRANSPORTED BY PRIVATE MOTOR CARRIERS.
  
- DURING ITS REVIEW, GAO CONTACTED OFFICIALS OF
  - THREE INSURANCE ASSOCIATIONS AND 27 INSURANCE COMPANIES ISSUING ABOUT 60 PERCENT OF THE \$750,000 AND ABOVE POLICIES FOR MOTOR CARRIERS REGULATED BY ICC.
  - FOUR TRUCKING AND TWO PETROLEUM ASSOCIATIONS.
  - THE DEPARTMENT OF TRANSPORTATION.
  - THE INTERSTATE COMMERCE COMMISSION.

## PART I

### OBJECTIVES AND SCOPE OF REVIEW

On February 6, 1986, the Chairman, Subcommittee on Surface Transportation, House Committee on Public Works and Transportation, requested us to gather information on the insurance problems confronting motor carriers of property (trucking firms) and their insurers, especially under the requirements of Section 30 of the Motor Carrier Act of 1980. Section 30 requires certain trucking firms that haul hazardous cargo and all interstate and foreign for-hire trucking firms to have minimum levels of financial responsibility covering liability for bodily injury, property damage, and environmental restoration. The required minimum levels are \$750,000, \$1 million, or \$5 million, depending on the degree of hazard posed by the cargo. Department of Transportation regulations allow insurance or a surety bond as evidence of compliance with this requirement. The insurance that trucking firms purchase to comply with this requirement--commercial auto liability--provides the traditional bodily injury and property damage coverage as well as the environmental restoration coverage required by Section 30. Following are the Chairman's questions and the sources we contacted to answer them.

**1. What are the types of cargo that require environmental restoration insurance?**

We contacted officials of the Bureau of Motor Carrier Safety, Department of Transportation (DOT) and reviewed applicable statutory provisions and federal regulations.

**2. How many insurance underwriters offer environmental restoration insurance, to what extent are they willing to underwrite the motor carrier market, and what plans, if any, do they have for terminating existing environmental restoration coverage?**

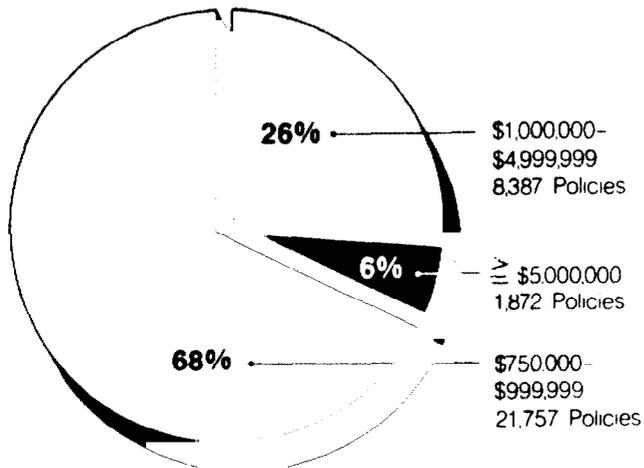
**3. Why do insurance underwriters object to writing coverage for environmental restoration?**

**4. What policy or statutory changes do insurance underwriters advocate for the purpose of making environmental restoration insurance more widely acceptable to the insurance industry?**

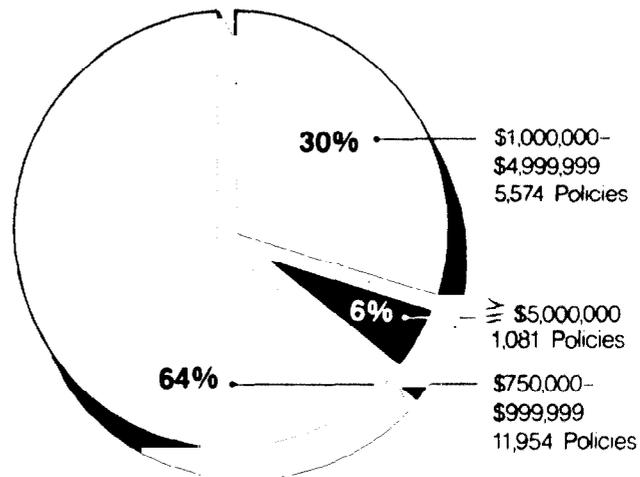
In addressing questions 2 through 4, we found that industry-wide data on the number of insurers underwriting environmental restoration insurance coverage for motor carriers and the amount written are not available. Given this, we considered alternate means of collecting the data within the Subcommittee's time frames. We found that the Interstate Commerce Commission (ICC) had an automated file of certified motor carriers and their insurers.

**FIGURE 1: MOTOR CARRIER LIABILITY POLICIES IN 1985: THE ICC FILE AND GAO'S 60% SAMPLE**

**ICC: 656 Insurers; 32,016 Policies**



**GAO Sample: 27 Insurers; 18,609 Policies**



Note: Policies are bodily injury and property damage liability policies held by regulated motor carriers active as of Dec. 16, 1985.

Source: ICC file of regulated carriers and their insurers.

While this file is limited to for-hire motor carriers regulated by the ICC (interstate carriers), it is to our knowledge the only national data base which identifies insurance companies that provide commercial auto liability insurance for trucking firms. Using the ICC file, we were able to survey a number of these insurers to obtain information relevant to the questions posed by the Subcommittee.

As of December 16, 1985, ICC officials identified 656 insurance companies that had endorsed commercial auto liability policies in the \$750,000 and over range. From this group of insurance companies, we selected the 27 insurers most active in this market. They held nearly 60 percent of the total number of Section 30 level policies in ICC's file.

Figure 1 shows the number and percent of policies in each of the three Section 30 coverage levels in both ICC's file and in our sample of 27 insurance companies. The distribution is very similar. For example, 68 percent of the policies issued by the 656 insurers were in the \$750,000 to \$999,999 range, while 64 percent of the policies issued by the 27 companies were in this range. We did not verify the accuracy of ICC's file.

As a percent of the ICC file at each level, our sample comprises:

- 55 percent of policies in the \$750,000 to \$999,999 range;
- 67 percent of policies in the \$1,000,000 to \$4,999,999 range; and
- 58 percent of policies in the \$5,000,000 and over range.

To supplement information obtained from the 27 insurers, we contacted three associations--the American Insurance Association, the National Association of Independent Insurers and the Alliance of American Insurers--representing a total of about 850 property and casualty insurance companies. We also contacted the Insurance Services Office, which provides statistics and recommends premium rates, and the Automobile Insurance Plans Service Office, which administers assigned risk plans for 44 states and the District of Columbia.

**5. Can hazardous materials transporters self-insure for environmental restoration? If so, how many do?**

**6. What percent of the oil, gasoline, and home heating oil markets is transported by private motor carrier service?**

The Bureau of Motor Carrier Safety does not permit trucking firms to self-insure as a method of complying with Section 30. Also, the Bureau does not have data on the actual number

of trucking firms that transport hazardous cargo. Further, there is no source of data for determining the percent of the petroleum market transported by private motor carriers. However, we discussed questions 5 and 6 with officials of

--the Private Truck Council of America--an association of private motor carriers--and ten companies that are members;

--the American Trucking Associations and two of its conferences involved in hauling extremely hazardous materials--the National Tank Truck Carriers and the Munitions Carriers;

--the Petroleum Marketers Association of America, an association of about 12,000 independent small business petroleum marketers that transport gasoline to service stations and heating oil to homes from bulk terminals of petroleum companies; and

--the American Petroleum Institute, a national trade association representing companies engaged in the exploration, production, refining, and marketing of petroleum products.

**7. To what extent is reinsurance available in the domestic market and in foreign markets, and what is the breakdown of these market segments?**

We found no industry-wide data on the number of reinsurers, or the amount of reinsurance written, for commercial auto liability insurance for trucking firms. In addressing this question, we contacted the Reinsurance Association of America--an association of domestic reinsurance companies, 5 reinsurance companies which underwrote about 35 percent of the reinsurance underwritten by domestic companies in 1984, and 27 insurers.



**STATUTORY AND REGULATORY PROVISIONS RELATING  
TO ENVIRONMENTAL RESTORATION INSURANCE**

- FOR CERTAIN MOTOR CARRIERS OF PROPERTY, SECTION 30 OF THE MOTOR CARRIER ACT OF 1980
  - ESTABLISHED FINANCIAL RESPONSIBILITY REQUIREMENTS COVERING LIABILITY FOR BODILY INJURY, PROPERTY DAMAGE, AND ENVIRONMENTAL RESTORATION.
  - REQUIRED MINIMUM LIABILITY COVERAGE LEVELS OF \$750,000, \$1 MILLION OR \$5 MILLION, DEPENDING ON THE DEGREE OF HAZARD POSED BY THE CARGO.
  
- DOT IMPLEMENTING REGULATIONS ACCEPT INSURANCE OR SURETY BOND AS EVIDENCE OF FINANCIAL RESPONSIBILITY, BUT NOT SELF-INSURANCE.
  
- REQUIRED LEVELS OF LIABILITY APPLY TO ALL TYPES OF ACCIDENTS, INCLUDING THOSE UNRELATED TO CARGO OR THE ENVIRONMENT.
  
- NO COMPARABLE REQUIREMENTS EXIST FOR AIR, WATER, OR RAIL CARGO CARRIERS

PART II

STATUTORY AND REGULATORY PROVISIONS RELATING  
TO ENVIRONMENTAL RESTORATION INSURANCE

Section 30 of the Motor Carrier Act of 1980 established minimum levels of financial responsibility covering liability for bodily injury, property damage, and environmental restoration for certain trucking firms that haul hazardous cargo and all interstate and foreign for-hire trucking firms. The required minimum levels of financial responsibility depend upon the type, and, in some cases, the amount of cargo transported.

Section 30 did not define "environmental restoration". However, DOT defined the term in regulations:

"Environmental Restoration means restitution for the loss, damage or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measures taken to minimize or mitigate damage or potential for damage to human health, the natural environment, fish, shellfish and wildlife."

SECTION 30 MINIMUM FINANCIAL  
RESPONSIBILITY REQUIREMENTS

Table 1 summarizes the required levels of financial responsibility for bodily injury, property damage, and environmental restoration coverage, by type of cargo and motor carrier. For-hire motor carriers are truckers who haul cargo for others. Private motor carriers are business firms that use their own vehicles to haul the products they produce or market. The current minimum levels shown in table 1 have been in effect since January 1, 1985. Section 30 financial responsibility requirements were first imposed on July 1, 1981, and remained the same until January 1, 1985. During that period, a \$500,000 minimum was required for the categories of carrier and cargo now set at \$750,000 or \$1 million, and the current \$5 million minimum was set at \$1 million.

As indicated above, the type of cargo determines which of the three levels of coverage is required. This level becomes the insurer's liability exposure for all types of accidents, including those unrelated to the vehicle's cargo and those which do not damage the environment.

DOT regulations (49 C.F.R. 172.101) contain a 100-page list which designates and classifies hazardous cargo for purposes of Section 30.

**TABLE 1**

**MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY  
FOR MOTOR CARRIERS SINCE JANUARY 1, 1985**

<u>Minimum level</u>	<u>Commodity transported</u>	<u>Interstate or foreign</u>		<u>Intrastate</u>	
		<u>For-hire</u>	<u>Private</u>	<u>For-hire</u>	<u>Private</u>
\$ 750,000 <sup>a</sup>	Nonhazardous cargo		x		
1,000,000 <sup>a</sup>	Hazardous cargo such as cement, coal, gasoline, and heating oil	x	x	x <sup>b</sup>	x <sup>b</sup>
5,000,000 <sup>a</sup>	Hazardous cargo such as sulfuric acid; <sup>b</sup> any quantity of Class A or B explosives or poison gas; compressed gas; <sup>b</sup> or radioactive materials	x	x	x	x
5,000,000 <sup>c</sup>	Any quantity of Class A or B explosives or poison gas; or radioactive materials	x	x		

<sup>a</sup>Applies to vehicles with a gross vehicle weight of 10,000 pounds or more. About 5.5 million (14.5 percent) of the approximate 38 million trucks in the United States are in this weight category.

<sup>b</sup>In bulk only--transported in cargo tanks in excess of 3,500 gallons.

<sup>c</sup>Applies to vehicles with a gross vehicle weight of less than 10,000 pounds.

Note: We simplified the information in table 1 for illustration purposes. Federal regulations, 49 C.F.R. 387 and 172.101, should be consulted for specific guidance.

If an interstate or foreign for-hire trucker hauls cargo not covered by the list, the trucker is required to have a minimum of \$750,000 liability coverage, including environmental restoration. Environmental restoration coverage is required at the \$750,000 level even though the trucker is transporting a non-hazardous cargo. Intrastate for-hire carriers and private carriers that haul only non-hazardous cargo are not subject to this requirement.

#### **ACCEPTABLE EVIDENCE OF FINANCIAL RESPONSIBILITY**

Section 30 also provides that financial responsibility may be established by any one or combination of the following methods acceptable to the Secretary of Transportation: evidence of insurance, guarantee, surety bond, or qualification as a self-insurer. However, DOT regulations implementing Section 30 allow only insurance or surety bond as acceptable evidence of financial responsibility. The Department believed it could not assure adequate protection of the public on the basis of self-insurance because there was no feasible way to predict the future solvency of a carrier. DOT pointed out that, in its view, there are a number of viable alternatives to self-insurance, such as large-deductible policies, which will lower insurance costs.

The Department prescribed two forms to document financial responsibility. Form MCS-90, "Endorsement for Motor Carrier Policies of Insurance for Public Liability," must be signed by an insurance company. Form MCS-82, "Motor Carrier Public Liability Surety Bond," requires signature by a bonding company. These forms are kept at the motor carrier's principal place of business. They are available for inspection by DOT at that location.

The May Trucking Company petitioned the DOT on January 14, 1986, to waive its current financial responsibility rules and allow it to self-insure. Alternatively, the company asked DOT to institute a motor carrier safety rulemaking proceeding concerning self-insurance. In April 1986, the American Trucking Associations and the Regular Common Carrier Conference also asked DOT to institute a rulemaking proceeding concerning self-insurance.

The May Trucking Company outlined the steps it was willing to take to qualify as a self-insurer. The company said it had arranged for an irrevocable line of credit of \$1 million through March 1988, and was also willing to submit quarterly, independently audited financial statements demonstrating a maintained net worth of at least \$2 million.

As of May 9, 1986, the May Trucking Company's petition on self-insurance was the only one DOT had received from a trucking firm. DOT had not approved the petition as of that date. However, DOT's Associate Administrator for Motor Carriers stated that in view of the escalating costs and decreasing availability of commercial liability insurance, the Department is planning to

receive public views and comments on possible revisions to the present regulations.

**REQUIREMENTS FOR OTHER MODES  
OF TRANSPORTATION**

The Director, Office of Economics, DOT, informed us that there are no statutory or regulatory requirements establishing minimum levels of financial responsibility for air, water, or rail carriers of hazardous or non-hazardous cargo. However, Section 18 of the Bus Regulatory Reform Act of 1982 requires interstate motor carriers of passengers (buses) to have minimum amounts of financial responsibility covering public liability and property damage.



**EXTENT INSURERS ARE UNDERWRITING  
ENVIRONMENTAL RESTORATION INSURANCE**

- INDUSTRY-WIDE DATA ARE NOT AVAILABLE ON THE NUMBER OF INSURERS UNDERWRITING ENVIRONMENTAL RESTORATION INSURANCE FOR MOTOR CARRIERS OR ON THE AMOUNT WRITTEN.
  
- ACCORDING TO THE INSURANCE ASSOCIATIONS AND 27 INSURERS WE CONTACTED, THERE WILL BE SOME PROBLEMS OBTAINING INSURANCE IN THE VOLUNTARY MARKET AT THE \$750,000 AND \$1 MILLION LEVELS; THE CRITICAL PROBLEM WILL BE AT THE \$5 MILLION LEVEL.
  
- THESE INSURERS INCREASED PREMIUM RATES AN AVERAGE OF 72 PERCENT IN 1985 AND EXPECT TO INCREASE RATES BY AN ADDED 29 PERCENT IN 1986.
  
- THERE WERE 12,241 CANCELLATIONS RECORDED IN ICC'S INSURANCE SYSTEM FOR SECTION 30 LEVEL POLICIES IN 1985, BUT MOST MOTOR CARRIERS AFFECTED BY THESE CANCELLATIONS FOUND REPLACEMENT INSURANCE.
  
- MORE CARRIERS WILL BE HEADING FOR THE ASSIGNED RISK MARKET IN 1986 AT ALL COVERAGE LEVELS; THIS MAY BE THE ONLY WAY THE VAST MAJORITY OF NEW ENTRANTS WILL BE ABLE TO OBTAIN THE \$5 MILLION COVERAGE.

### PART III

#### EXTENT INSURERS ARE UNDERWRITING ENVIRONMENTAL RESTORATION INSURANCE

Industry-wide data on the number of insurers writing insurance for truckers and the amount written are not available. However, based on our discussions with officials of three insurance associations and 27 insurers that issued about 60 percent of the liability policies in ICC's insurance system, we were able to get an insight about the extent to which the insurance will be offered. Reasons insurers object to writing the insurance are presented in part V of this briefing report.

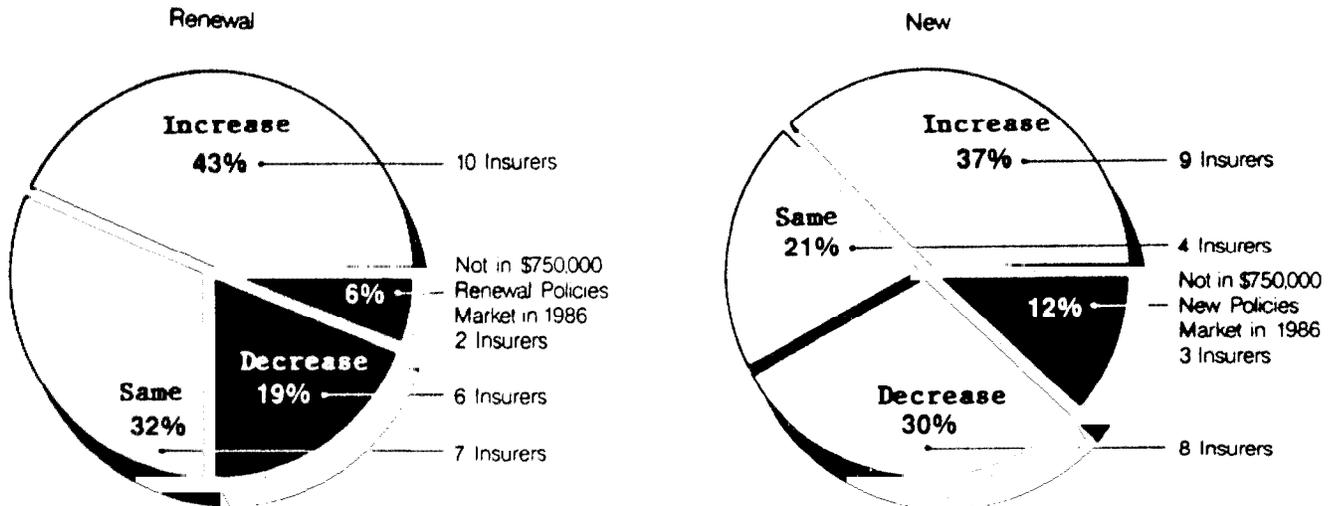
Insurance association representatives told us that most insurers probably would be willing to continue providing insurance coverage at the \$750,000 and \$1 million levels to existing policy holders with good safety records. In general, however, the insurers would not be seeking new customers. They added that while the cost of insurance may increase, most trucking firms will be able to obtain insurance, including environmental restoration coverage, either in the voluntary or the assigned risk market. The assigned risk market provides insurance, generally at higher rates, to those truckers unable to obtain insurance in the voluntary market. They added that many truckers--those who need \$5 million coverage or those whose insurance company went out of business--will have to obtain coverage in the assigned risk market. Insurance, in the amount required by Section 30, is currently available in the assigned risk market of all states except Hawaii, Maryland, South Carolina, and Texas. (See part IV.)

Based on our discussions with 27 insurers, some truckers will have problems obtaining insurance in the voluntary market at the \$750,000 and the \$1 million levels in 1986, regardless of their safety records. Although most of the insurers plan to offer these levels of coverage, many intend to decrease the number of policies they issue in 1986. Moreover, obtaining the \$5 million coverage will be extremely difficult, particularly for new entrants in the market. Several insurers are leaving the \$5 million market, and most others plan to decrease the number of policies they issue at this level. As a result, we expect to see more new trucking industry entrants and truckers whose insurance has been cancelled heading for the assigned risk market at all coverage levels. This may be the only way the vast majority of new entrants will be able to obtain the \$5 million coverage.

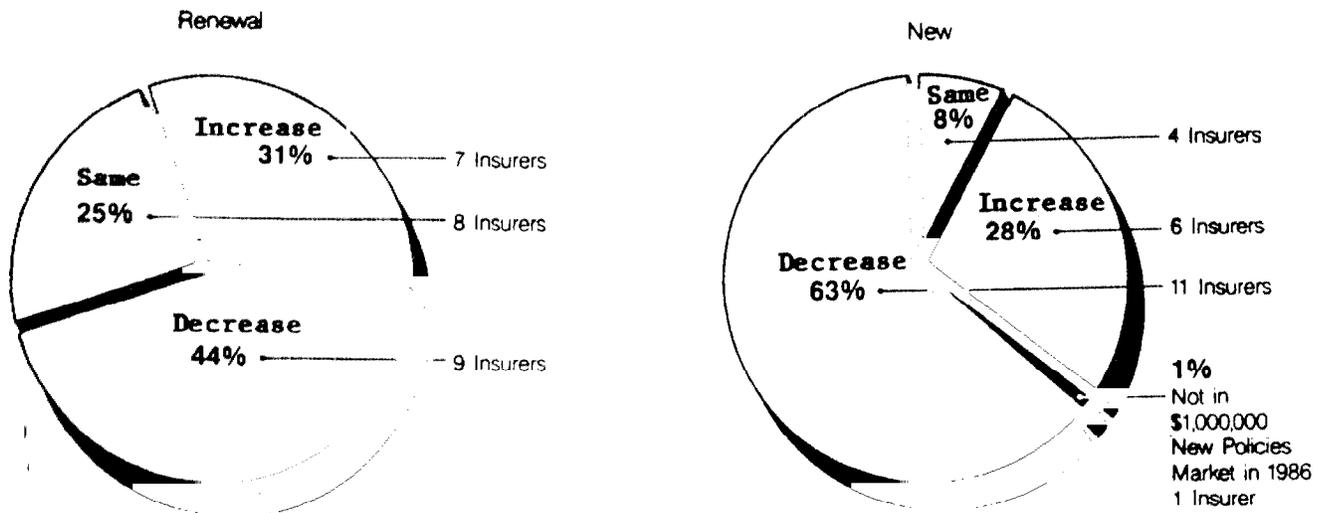
According to insurers we contacted, premium rates charged trucking firms for liability insurance increased an average of 72 percent in 1985, ranging from 0 to 300 percent. These insurers plan to increase rates an average of 29 percent in 1986, ranging from 0 to 100 percent. Despite these increases, the insurance association representatives stated that, overall, insurers are charging lower rates than recommended by the Insurance Services Office.

**FIGURE 2: INSURER PLANS FOR 1986: GAO'S SAMPLE BY SHARE OF MARKET (\$750,000 AND \$1,000,000 LEVELS)<sup>a</sup>**

**\$750,000 Minimum Coverage**



**\$1,000,000 Minimum Coverage**



<sup>a</sup>"Market" for each pie chart is the number of policies of that type (e.g., \$750,000) held by insurers in GAO's sample in December 1985. Sample constitutes 60% of total ICC file.

Note: Policies are bodily injury and property damage liability policies held by regulated motor carriers active as of Dec. 16, 1985.

Source: ICC file of regulated carriers and their insurers: GAO's survey of 27 of these insurers.

INSURER PARTICIPATION AT THE  
\$750,000 AND \$1 MILLION LEVELS  
IN 1986

We asked officials of the 27 insurance companies whether they wrote new or renewal policies for truckers in each of the three Section 30 levels in the voluntary market during 1985 and 1986. And if they planned to offer insurance in 1986, we asked whether they expect the number of new policies and renewals they issue at each level will increase, decrease, or stay the same relative to 1985.

The 27 individual insurers held different total numbers of policies--224 to 1,648--in ICC's insurance file as of December 16, 1985. They also tended to concentrate in different parts of the market--\$750,000, \$1 million, or \$5 million. Figure 1 on page 10 shows the Section 30 levels of coverage. In order to take into account differences in the size of insurers, we weighted their responses regarding their 1986 plans for new policies and renewals by the number of policies each insurer had at each coverage level in ICC's system on December 16, 1985. The result for the \$750,000 and \$1 million coverage levels is shown in figure 2. For example, for renewals of \$750,000 policies, six insurers responded that the number of policy renewals they issue at the \$750,000 level will decrease in 1986 compared to 1985. These six insurers issued 19 percent of the total number of \$750,000 policies that the 27 insurers had in ICC's insurance system as of December 16, 1985.

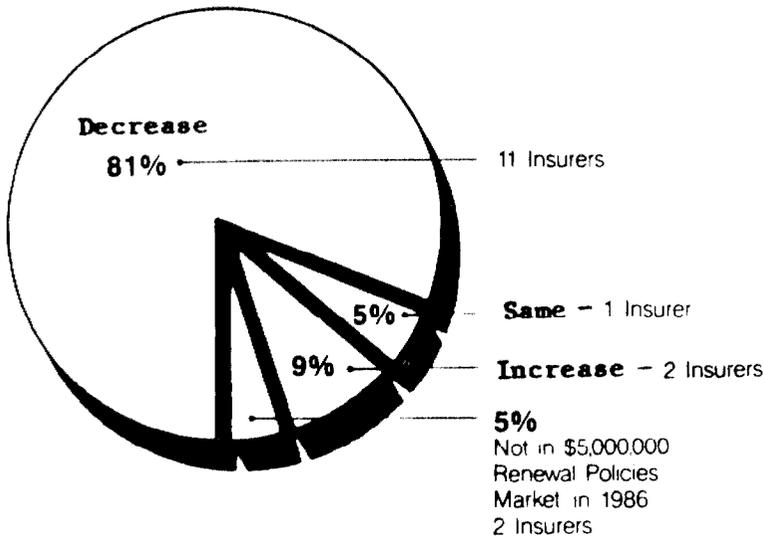
Figure 2 shows that most of the insurers we contacted will be offering new policies and renewals at the \$750,000 coverage level in the voluntary market during 1986. However, 11 insurers, holding 42 percent of the \$750,000 policies in our sample in December 1985, will either decrease the number of new \$750,000 policies they issue or leave the market at this level. In addition, eight insurers, holding 25 percent of the \$750,000 policies, will either decrease the number of \$750,000 policy renewals or leave the market. As a result of these decreases and comments made by insurance association and company officials, some new trucking firms and those whose insurance has been cancelled will have problems obtaining this level of insurance.

Most of the insurers will be offering new policies and renewals at the \$1 million coverage level in the voluntary market during 1986. However, certain truckers will also have problems obtaining this level of insurance. Twelve insurers, holding 64 percent of the \$1 million policies in our sample, will either decrease the number of new \$1 million policies they issue or leave this market. In addition, nine insurers, holding 44 percent of the \$1 million policies, will decrease the number of \$1 million policy renewals.

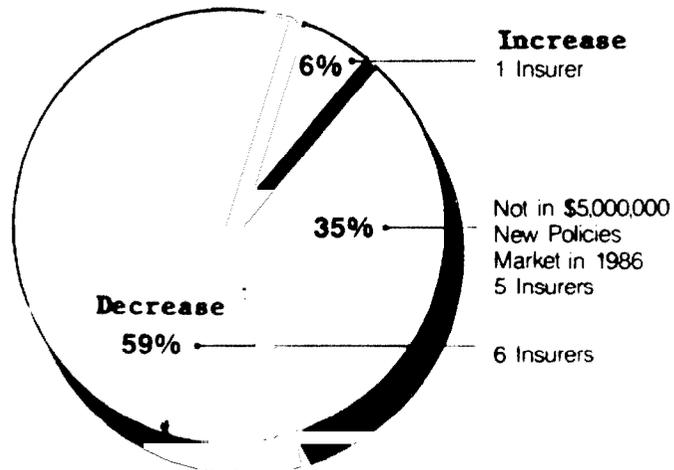
**FIGURE 3: INSURER PLANS FOR 1986: GAO'S SAMPLE BY SHARE OF MARKET (\$5,000,000 LEVEL)<sup>a</sup>**

\$5,000,000 Minimum Coverage

**Renewal**



**New**



<sup>a</sup>"Market" for each pie chart is the number of policies of that type (e.g., \$5,000,000) held by insurers in GAO's sample in December 1985. Sample constitutes 60% of total ICC file.

Note: Policies are bodily injury and property damage liability policies held by regulated motor carriers active as of Dec. 16, 1985.

Source: ICC file of regulated carriers and their insurers: GAO's survey of 27 of these insurers.

**INSURER PARTICIPATION AT THE  
\$5 MILLION COVERAGE LEVEL**

Obtaining the \$5 million coverage in the voluntary market during 1986 will be extremely difficult. Regarding renewals at the \$5 million level, only 16 insurers we contacted offered them in 1985 while 14 insurers intend to offer them in 1986. Figure 3 shows that of the 14 insurers, 11 insurers, holding 81 percent of the \$5 million policies in our sample, plan to decrease the number of \$5 million policies they renew in 1986 compared to 1985. Further, two insurers, holding 5 percent of the \$5 million policies, will discontinue writing renewal policies at this coverage level.

Motor carriers requiring new policies at the \$5 million level in 1986 will have even more difficulty. Only 12 of the insurers we contacted offered this coverage in 1985, and seven insurers intend to offer these policies in 1986. Figure 3 shows that of the seven insurers, six insurers, holding 59 percent of the \$5 million policies in our sample, plan to decrease the number of new policies they issue in 1986. Availability of insurance at this level will be further reduced because five insurers, holding 35 percent of the \$5 million policies, will discontinue writing policies at this coverage level. Only one insurer, holding 6 percent of the \$5 million policies, plans to increase the number of new policies it writes at this level.

Representatives of the three insurance associations we contacted generally confirmed the responses from our sample of insurance companies. They told us that most insurance companies would probably be willing to continue providing insurance coverage at the \$750,000 and \$1 million levels to existing policy holders with good safety records, but in general would not be seeking new customers. They also said many insurers have elected not to underwrite the \$5 million coverage because of the unknowns associated with environmental restoration and the decreasing availability of reinsurance at that level. Reinsurance is the insurance that an insurer purchases to cover all or part of the loss which the insurer may sustain under policies it underwrites. They added that many truckers--those who need the \$5 million coverage or those whose insurance company went out of business--will have to obtain coverage in the assigned risk market.

Based on the responses we received from the 27 insurers, it is apparent that, as the amount of insurance coverage increases, insurers are less willing to underwrite or to increase the number of new policies and renewals they underwrite.

## INSURANCE POLICY CANCELLATIONS

While national data relating to cancellations of commercial auto liability policies written for truckers is not available, we were able to obtain limited cancellation data from the insurers we contacted and ICC.

We asked the insurance company officials about the number of truckers insurance policies they cancelled in 1985, and the number of cancellations they anticipate in 1986. The following table shows their responses:

**TABLE 2**  
**INSURER RESPONSES RELATING TO**  
**CANCELLATIONS OF INSURANCE POLICIES**

<u>From:</u>	<u>Increased</u> <u>a lot</u>	<u>Increased</u> <u>somewhat</u>	<u>Stayed</u> <u>same</u>	<u>Decreased</u> <u>somewhat</u>	<u>Decreased</u> <u>a lot</u>
1984 to 1985	5	5	12	2	1
1985 to 1986	0	5	11	5	3

Compared with 1985, most of the insurers who responded to this question do not expect major shifts in the number of policies they will cancel in 1986. About 90 percent of the insurers told us that they cancel policies primarily for failure to pay the premium or poor safety records.

In 1985, insurers notified ICC of 12,241 cancellations of bodily injury and property damage policies in the \$750,000 and over range that were issued to regulated motor carriers. As of February 25, 1986, only 1,286 regulated motor carriers affected by these cancellations became inactive. The rest apparently found replacement insurance. Of the 12,241 policy cancellations, 6,443 were attributed to the 27 insurers in our sample.

In fiscal year 1985, there were 33,283 regulated motor carriers, about a 9-percent increase over fiscal year 1984.



**AVAILABILITY OF ENVIRONMENTAL RESTORATION  
COVERAGE IN THE ASSIGNED RISK MARKET**

- ALL THREE SECTION 30 COVERAGE LEVELS ARE AVAILABLE THROUGH ASSIGNED RISK PROGRAMS IN 46 STATES AND THE DISTRICT OF COLUMBIA.
  
- OF THE FOUR REMAINING STATES
  - TEXAS AND HAWAII HAVE NO ASSIGNED RISK PROGRAMS FOR TRUCKERS AT SECTION 30 COVERAGE LEVELS.
  
  - SOUTH CAROLINA CURRENTLY HAS NO ASSIGNED RISK PROGRAM FOR MOTOR CARRIERS REQUIRED TO FILE WITH ICC OR THE STATE, BUT IS CONSIDERING ESTABLISHING ONE.
  
  - MARYLAND HAS A STATE-OWNED INSURANCE COMPANY THAT PROVIDES COVERAGE UP TO THE SECTION 30 LIMITS, IF REINSURANCE IS AVAILABLE.
  
- ASSIGNED RISK PREMIUM RATES ARE USUALLY HIGHER THAN VOLUNTARY MARKET RATES.
  
- ALL TRUCKERS IN THE ASSIGNED RISK PROGRAM OF A STATE PAY THE SAME PREMIUM RATES REGARDLESS OF THEIR SAFETY RECORD.
  
- HAVING A VALID DRIVER'S LICENSE AND PAYING PREMIUMS ARE THE ONLY ELIGIBILITY REQUIREMENTS FOR OBTAINING INSURANCE IN AN ASSIGNED RISK PROGRAM.

## PART IV

### AVAILABILITY OF ENVIRONMENTAL RESTORATION COVERAGE IN THE ASSIGNED RISK MARKET

#### STATE-ASSIGNED RISK PROGRAMS

We discussed the availability of commercial auto liability insurance for trucking firms in the assigned risk market with a representative of the Automobile Insurance Plans Service Office (AIPSO)--which administers the assigned risk plans in 44 states and the District of Columbia--and state insurance officials in the other six states.

The AIPSO representative said that each assigned risk plan they administer provides trucking firms the insurance coverage mandated by Section 30, including the \$5 million coverage. He said liability insurance is available from these plans for trucking firms unable to obtain the insurance in the voluntary market. He added that all insurance companies writing commercial auto liability insurance policies in a particular state are required to share in the financial results--profits or losses--of the state's assigned risk plan. Reinsurance is not purchased for these plans.

Regarding the assigned risk insurance market in the other six states, Massachusetts and North Carolina officials told us that their states have assigned risk programs which provide trucking firms the liability insurance coverage required by Section 30.

Maryland representatives said that a state-owned insurance company provides assigned risk coverage up to the Section 30 limits, but it must reject applications if reinsurance is not available. They said obtaining reinsurance at the higher levels of coverage is becoming an increasing problem.

South Carolina officials told us that currently there is no assigned risk program in their state for motor carriers required to file with the ICC or the State Public Service Commission. They added that the state is considering the establishment of an assigned risk plan for these carriers which will cover all three Section 30 levels.

Texas and Hawaii representatives said their states had no assigned risk programs for commercial auto liability insurance at Section 30 coverage levels for trucking firms.

**TABLE 3**

**ASSIGNED RISK PREMIUM RATES FOR PLANS  
ADMINISTERED BY THE AUTOMOBILE INSURANCE  
PLANS SERVICE OFFICE<sup>a</sup>**

<u>Number of states</u>	<u>Ratio of assigned risk premium rates to Insurance Services Office recommended rates for voluntary market</u>
4	.70 - .99
9	1.00 - 1.09
17	1.10 - 1.19
6	1.20 - 1.29
<u>8</u>	1.30 - 1.35
<u>44</u>	

<sup>a</sup>Table includes the District of Columbia but not Ohio, which had not established a rate as of February 21, 1986. Also, a ratio of 1.35 means the assigned risk rate is 35 percent more than the Insurance Services Office recommended rate.

## ASSIGNED RISK PREMIUM RATES

We also attempted to ascertain how the premium rates charged for assigned risk plan insurance compare with the premium rates insurers charge in the voluntary market. Although data relating to actual premium rates in the voluntary market were not available, AIPSO did have data comparing the base premium rates recommended by the Insurance Services Office (ISO) for the voluntary market with the rates used in 44 of the assigned risk plans it administers.

As shown in the table on the facing page, assigned risk premium rates were lower than the ISO recommended rate in four states--considerably lower in New Jersey, at .70. In the balance of 40 states, assigned risk premium rates were equal to (1.00) or higher than those recommended for the voluntary market. Eight state-assigned risk programs were in the highest premium range, at 1.30-1.35 of the ISO recommendations.

Assigned risk premium rates may actually be higher in relation to the rates actually charged--as opposed to recommended--in the voluntary market. Insurance association representatives estimate that the actual premium rates currently being charged by voluntary market insurers are generally below those recommended by ISO. The ISO recommended rates do not consider income received by insurance companies from their investment of premiums.

## SAFETY RECORDS AND INCENTIVES

Insurance association representatives told us that having a valid driver's license and paying premiums are the only eligibility requirements for obtaining insurance in an assigned risk program. They added that all truckers in the assigned risk program of a state pay the same premium rates regardless of their safety record.

An official of one insurance company we contacted who shares in the premiums and losses of the assigned risk pools voiced concern that it has no access to the safety records of carriers in the pool, such as it has for carriers it insures in the voluntary market. In addition, the AIPSO representative we talked with observed that there is less incentive for carriers insured through assigned risk programs to maintain a good safety record, since their premium rate is not affected by this.

The insurance association representatives also pointed out, however, that many carriers with good safety records will have to obtain insurance coverage in assigned risk programs, especially at the \$5 million level. They said that this may help the overall financial results of the assigned risk market.

**REASONS INSURERS OBJECT TO UNDERWRITING  
ENVIRONMENTAL RESTORATION INSURANCE**

INSURANCE OFFICIALS CITED THE FOLLOWING REASONS  
INSURERS OBJECT TO UNDERWRITING ENVIRONMENTAL  
RESTORATION COVERAGE:

- INSURERS ARE UNCERTAIN ABOUT THE SCOPE OF THE RISK  
THEY ARE BEING ASKED TO INSURE AND WHEN, IF EVER, A  
CLAIM WILL BE MADE.
  
- KEY WORDS AND PHRASES IN THE FORM MCS-90 OR THE  
INSURANCE POLICY MAY BE INTERPRETED IN A WAY THAT  
EXPANDS THE COVERAGE BEYOND THAT INTENDED BY  
INSURERS.
  
- THE NUMBER OF MOTOR CARRIER ACCIDENTS HAS INCREASED.
  
- MANY INSURERS HAVE BEEN UNABLE TO OBTAIN NEEDED  
REINSURANCE FOR POLICIES IN EXCESS OF \$1 MILLION.

REGARDING CLAIMS AND LOSSES:

- INDUSTRY-WIDE DATA ARE NOT AVAILABLE FOR CLAIMS AND  
LOSSES UNDER THE ENVIRONMENTAL RESTORATION CLAUSE OR  
UNDER TRUCKER LIABILITY COVERAGE IN GENERAL.
  
- MOST INSURERS WERE UNABLE TO TELL US HOW MUCH THEY  
HAD PAID IN CLAIMS UNDER THE ENVIRONMENTAL  
RESTORATION CLAUSE OR THEIR CLAIMS AND LOSS  
EXPERIENCE WITH TRUCKERS IN GENERAL.

## PART V

### REASONS INSURERS OBJECT TO UNDERWRITING ENVIRONMENTAL RESTORATION COVERAGE

When 22 of our sample of 27 insurance companies told us they were not planning to offer new policies or renewals for one or more of the three Section 30 levels of coverage in 1986, we asked them why. They offered a variety of reasons for insurer reluctance to offer environmental restoration coverage. We grouped the reasons into four categories: (1) uncertainties about the scope of liability exposure under the environmental restoration clause; (2) commercial auto liability underwriting results and risk of increased losses; (3) motor carrier safety records; and (4) availability of reinsurance.

We also asked the insurance company officials and the association representatives for any data they could provide us in support of their concerns--especially on the number and amount of claims actually paid under environmental restoration coverage, or for their motor carrier liability policies. In most cases, the insurance companies were unable to provide these data based on their own experience, nor were the associations able to give us such data for the industry.

### UNCERTAINTIES ABOUT SCOPE OF LIABILITY EXPOSURE UNDER THE ENVIRONMENTAL RESTORATION CLAUSE

Association and insurance company officials said that a primary reason for the reluctance to write environmental restoration coverage is a lack of familiarity with the scope of exposure associated with the coverage. In addition, they voiced a concern that key terms and phrases used in policies will be interpreted by courts to expand coverage beyond what the insurance industry intended. They pointed out that the industry's experience with other, more narrow forms of pollution coverage, has led many insurers to conclude that providing insurance with Section 30 environmental restoration coverage creates too many unknowns and is, therefore, uninsurable.

Risk associated with hazardous cargo: A lack of precise information about the damage that hazardous materials can inflict on the environment and human health was a basic reason given for the reluctance to write environmental restoration coverage, particularly at the higher levels. Insurers are concerned that not enough is known and that discoveries are still being made about the ways in which various chemicals can cause damage.

The industry also is uncertain about the length of time over which damage can occur, how soon after an accident the damage might begin to manifest itself in the environment and human health, and how many people suffer impaired health as a result. One company recounted its claims experience with an accident involving a gasoline spill on a roadway. After repeated clean-up efforts at a cost of roughly \$1.5 million, local residents began to complain that their well water was contaminated, which raised the possibility of future claims. Though this example did not involve the environmental restoration clause, it was offered to us as an illustration of insurer uncertainty about when all claims will have been filed and when their liability will come to an end.

The associations and insurers observed that they rely on actuaries to estimate the likelihood of the covered event occurring and, should it occur, the amount of damages they will have to pay. Insurers determine what premiums should be, given the actuarially determined risk and amount of liability exposure. However, insurers believe the unknowns associated with environmental restoration coverage make it nearly impossible to estimate liability exposure.

Definition of key policy terms and phrases: In addition to the above uncertainties, a closely related concern of insurers is the meaning that will be attached to key words and phrases in their policies.

First, insurers consider the terms describing the risk they are being asked to insure to be open-ended and not well-defined. The environmental restoration clause exposes insurers to liability for "the cost of . . . measures to minimize or mitigate damage or potential for damage to human health, the natural environment . . ." (emphasis added). The associations and insurers said the scope of this coverage requirement does not guarantee that benefits will be paid only for actual injury; rather, they consider this language open to widely varying interpretations and speculative claims for "potential" damage.

Association representatives also expressed concern about the link between the Section 30 environmental restoration coverage and the potential liability of motor carriers under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). CERCLA imposes liability on "facilities", including motor carriers, for damages caused by the release of hazardous substances. Association representatives were concerned that a trucker hired to deliver hazardous waste to a disposal site could be held liable for the entire amount of environmental cleanup costs at the site even if the trucker delivered the cargo safely.

Second, insurers perceived a trend whereby key words and phrases in their policies will be construed by the courts in a way

that vastly expands coverage beyond what they intended. This concern clearly is not limited to the environmental restoration clause nor to trucker liability policies, but to liability insurance policies in general. The principal examples provided us which are relevant to claims related to environmental damage are as follows:

--The comprehensive general liability policy used by most insurers restricts coverage to pollution which is both "sudden and accidental." This is intended, according to the insurers, to cover such things as a breach in the hazardous waste impoundment wall that causes wastes to run off onto neighboring property, but not to cover the gradual leaking of wastes over many years from that impoundment. The industry perceives a trend in court decisions that allow for recovery of damages for such matters as well water contamination and any resultant damage to human health that is caused by seepage over a decade or more. (Note: Coverage under the environmental restoration clause also is restricted to "accidental" occurrences, but there is no corresponding explicit restriction that it be "sudden" as well.)

--The comprehensive general liability policy is an occurrence-based policy, meaning that coverage exists only if there is an accident that results in injury or damage neither expected nor intended from the standpoint of the insured. The policy typically will contain a dollar limit per occurrence that establishes the outer limits of the insurer's exposure. (Note: The environmental restoration clause required under Section 30 also is an occurrence-based coverage.) Insurers perceive a trend where courts will construe "occurrence," incorrectly in their view, to mean each individual claim arising from a single accident, and the liability coverage limits awarded accordingly. Under this construction of the term "occurrence," a \$5 million policy limit conceivably could be multiplied by the number of individual injury claims arising from a single accident.

The associations emphasize that not all the cases interpreting insurance policies reach the same result and that, in fact, some cases reach a result the industry considers correct. In addition, many of the decisions adverse to the industry have not yet reached the highest appellate courts and may be reversed. It also should be recognized that none of the cases to which the industry refers involved any claims arising under the environmental restoration clause. Nonetheless, insurers are deeply concerned that their exposure under other forms of pollution coverage has been broadened beyond what they intended and that they will encounter a similar experience under the environmental restoration clause.

**TABLE 4****INDUSTRY-WIDE COMMERCIAL AUTO LIABILITY<sup>a</sup>  
UNDERWRITING RESULTS: 1980-85**

(all dollar values are in millions)

<u>Year ended</u>	<u>Written premiums</u>	<u>Earned premiums</u>	<u>Loss<sup>b</sup> and loss adjustment expense/ratio</u>	<u>Underwriting expense/ratio</u>	<u>Combined ratio<sup>c</sup></u>	<u>Increase over prior year</u>
1980	\$4,613	\$4,539	\$3,652 80.5	\$1,322 28.7	109.7	
1981	4,640	4,635	4,089 88.2	1,402 30.2	119.1	9.4
1982	4,641	4,610	4,342 94.2	1,471 31.7	126.6	7.5
1983	4,640	4,613	4,588 99.4	1,498 32.3	132.7	6.1
1984	5,306	5,055	5,643 111.6	1,649 31.1	143.4	10.7
1985 <sup>d</sup>	6,846	6,048	6,434 106.4	1,939 28.3	135.3	- 8.1

<sup>a</sup>Commercial auto liability insurance includes, among other things, buses and taxis as well as trucks, which are not shown separately in available industry-wide data. Similarly, loss results shown reflect claims from all types of accidents, not just those resulting in pollution or other types of environmental damage, for which separate data are not available.

<sup>b</sup>Loss and loss adjustment figures combine the amounts of claims actually paid with the amounts of claims made, but not yet settled and paid. Separate data for claims paid are not available.

<sup>c</sup>The combined ratio is the sum of three types of expense ratios: loss and loss adjustment, underwriting, and dividends (not shown in table, but included in the combined ratio figures).

<sup>d</sup>Through third quarter 1985.

Source: A. M. Best data.

## LOSSES

Some of the insurers in our sample and the insurance associations mentioned risky cargo and potential for high losses as reasons insurers object to underwriting environmental restoration coverage. However, most insurers could not give us actual data on their current loss experience with environmental restoration coverage in particular, or with trucker liability coverage in general.

Most of the insurers we talked with either had little or no actual claims experience under the environmental restoration clause or were not yet recording their experience with the clause separately. Among the 24 who responded to our question about environmental restoration claims they had actually paid, 16 were unable to tell us if they had any, seven said they had had no such claims to date, and one estimated actual payments of \$3 million in 1985. On our question about claims paid under trucker liability coverage in general, 15 of the 24 companies who responded were unable to tell us, while nine said they paid a total of about \$186 million in 1985. Most did not record this information separately from their total commercial auto liability line, which includes taxis and buses, as well as trucks.

We were able to obtain industrywide experience data for commercial auto liability in general for 1980-85 (developed by A. M. Best, a private company which gathers and reports insurance statistics for the trade). Experience data relate policy expenses (claims losses, underwriting costs and dividends paid) to policy income in the form of earned premiums ("written premiums" refer to premiums contracted for the entire policy term, while "earned premiums" represent premiums collected for that portion of the policy term which has expired).

According to these data, the ratio of losses (an expense) to earned premiums (income) increased each year to a high point in 1984, when losses exceeded premiums earned. (See table 4.) In other words, the 1984 loss ratio of 111.6 means that for every premium dollar insurers collected, they had losses of nearly \$1.12. Through the first three quarters of 1985 (the latest available data), the ratio decreased, but losses remain greater than premiums earned. However, the term "loss" as used here has two significant qualifications:

- Claims made are combined with claims paid, so that "loss" represents estimated possible future expenses, as well as actual expenditures.
- Income from investments of premiums--a significant element in net profit or loss for insurance companies--is not reflected in these "loss" figures.

The insurance associations told us that industry-wide data distinguishing claims made from claims paid are not available.

They also observed that insurers had been discounting the premiums charged for commercial auto liability for years, precisely because of the opportunity for increased investment income in a relatively high interest rate period. Interest rates are now lower and the opportunities for investment income are measurably less than in the early 1980's.

**SAFETY RECORDS**

The insurance associations cited increases in the number of motor carrier accidents as a reason for limiting policy issuances for commercial auto liability, including environmental restoration coverage, to established companies with known safety records. The Bureau of Motor Carrier Safety provided a summary of accident data reported to them by carriers:

**TABLE 5**  
**TRUCK ACCIDENTS, FATALITIES, INJURIES,**  
**AND PROPERTY DAMAGE: 1979-84**

<u>Year</u>	<u>Accidents</u>	<u>Fatalities</u>	<u>Injuries</u>	<u>Property damage</u> (millions)
1979	35,541	3,072	32,126	\$346.3
1980	31,389	2,528	27,149	311.2
1981	32,306	2,810	28,533	355.1
1982	31,759	2,479	25,779	321.2
1983	31,628	2,528	26,692	342.9
1984	36,854	2,721	29,149	404.1

In 1980, the year the Motor Carrier Act was passed, there was a significant decrease in accidents reported, and the number of accidents varied little from that level through 1983. In 1984, however, total accidents reported rose again, above the 1979 level. The insurance companies and associations are concerned with the cost impact of these recent accident numbers. They pointed out that the diminishing availability of Section 30 levels of coverage in the voluntary market is forcing more carriers into the state assigned risk programs, where premium rates are typically higher but in no way related to safety records. They fear that, once in an assigned risk program, even carriers with previously good safety records will have less incentive to bear the cost of preventive maintenance and other safety-related procedures.

## REINSURANCE

Most insurers in our sample and the associations gave the declining availability of reinsurance as an important reason for their reluctance to continue writing environmental restoration insurance. Most insurers seek to limit their exposure on high limit liability policies by reinsuring part of the coverage--typically the amount over \$1,000,000. Our sample of insurers and the associations reported that reinsurance was becoming more difficult to find, especially at the \$5,000,000 level, and the cost had increased sharply. The Committee's question to us on the availability of reinsurance is addressed in part VII of this report.

**CHANGES ADVOCATED BY INSURERS TO  
MAKE ENVIRONMENTAL RESTORATION  
INSURANCE MORE ACCEPTABLE**

● **STATUTORY CHANGES:**

- ELIMINATE OR DEFINE THE SCOPE OF THE ENVIRONMENTAL RESTORATION CLAUSE.
- LOWER THE FINANCIAL RESPONSIBILITY LIMITS OR GIVE THE SECRETARY OF TRANSPORTATION AUTHORITY TO DETERMINE THE LIMITS.
- ESTABLISH A SINGLE NATIONAL DRIVER'S LICENSE FOR COMMERCIAL DRIVERS.

● **REGULATORY CHANGES:**

- CLARIFY LANGUAGE IN THE FORM MCS-90 ENDORSEMENT.
- IMPROVE ENFORCEMENT OF TRUCK SAFETY REGULATIONS.
- REDEFINE THE LIST OF HAZARDOUS MATERIALS.

● **INSURANCE INDUSTRY CHANGE:**

- EXCLUDE ENVIRONMENTAL RESTORATION COVERAGE FROM BASIC POLICY.

## PART VI

### CHANGES ADVOCATED BY INSURERS TO MAKE ENVIRONMENTAL RESTORATION INSURANCE MORE ACCEPTABLE

Officials of the insurance associations and companies we contacted advocated a number of statutory, regulatory, and insurance industry changes to make environmental restoration insurance more acceptable to insurers.

#### MOTOR CARRIER ACT CHANGES

The principal change recommended by the insurance officials was either to eliminate the environmental restoration clause or define the scope of the clause so it clearly describes what is being insured. The officials did not specify how they wanted the scope of the clause to be defined.

They also advocated lowering the minimum financial responsibility amounts after reviewing accident loss data for various types of motor carriers or giving the Secretary of Transportation the authority to determine what level the financial responsibility amounts should be, incident to a rulemaking proceeding. In this regard, the American Insurance Association pointed out that the association had data that suggest more than 99 percent of the commercial auto accidents result in damages of less than \$500,000.

The insurance officials also pointed out that the type of cargo transported determines the minimum level of insurance coverage required. For example, the \$5 million coverage level becomes the insurer's liability exposure for all types of accidents, even those unrelated to the vehicle's cargo or those which do not damage the environment. They said that attorneys often will base the amount of a claim on the amount of insurance coverage that a trucker has, regardless of the type of accident that gave rise to the claim. One approach for addressing this concern would be to restrict the types of claims that could be brought against the \$5 million coverage level to cargo related accidents affecting the environment.

#### NATIONAL COMMERCIAL DRIVER'S LICENSE

The insurance representatives also recommended that legislation be enacted to require a single national driver's license for commercial drivers. They pointed out that a 1981 study by the National Highway Traffic Safety Administration and the American Association of Motor Vehicle Administrators found that 10 to 32 percent (varying by state) of commercial drivers held more than one driver's license. They added that the Federal

National Driver Register cannot identify a multiple licensed driver, does not pinpoint commercial drivers, and is restricted to responses involving driving while intoxicated, reckless driving, and felony-type convictions. This results in a limited national reporting system for identifying problem drivers and taking corrective driver improvement actions. Insurers consider a single driver's license a way to help screen unsafe drivers.

### REGULATORY CHANGES

Insurance officials also recommended that DOT take several actions. First, they wanted the language in the Form MCS-90, "Endorsement for Motor Carrier Policies of Insurance for Public Liability," clarified. They stated that inclusion of the phrase "measures taken to minimize or mitigate damage or potential for damage to human health" in the definition of "environmental restoration" may allow easy access to an award for speculative or remote damages based on a theory of risk or fear of future harm without a showing of actual bodily injury. Insurers consider this language ambiguous.

Second, several insurers believe the federal government, which imposed the insurance requirements, has a responsibility to ensure vigorous enforcement of its motor carrier safety regulations. They do not consider the current level of enforcement adequate. Third, one insurer wanted DOT to redefine the list of hazardous materials, but it did not elaborate on exactly what it wanted done.

### INSURANCE INDUSTRY CHANGES

Regarding changes the insurance industry is making, the officials said that beginning in 1986 some insurers are employing a new pollution exclusion endorsement which excludes coverage for all pollution losses, regardless of whether the loss is sudden, non-sudden, accidental, or non-accidental. The result is that, should a loss occur and the policy has the pollution exclusion language and the Form MCS-90 attached, the insurer will pay the loss but has the right to request reimbursement from the policyholder.

The officials said that Form MCS-90 requires insurers to pay environmental restoration damages regardless of whether it is excluded from the basic policy. However, insurers have a subrogation right to recover from the policyholder if the insurer is required to pay for damages that are excluded. They also said that, until very recently, insurers were not including a specific charge in their premiums for environmental restoration coverage. They added that insurers may not be able to recover large environmental claims through the subrogation process because many policyholders do not have the necessary financial resources.

Also, some insurers do not want to use their subrogation right for customer relations reasons.

Twenty-five of the 27 insurance companies we contacted will offer commercial auto liability insurance at one or more of the three Section 30 coverage levels in 1986. Of these, 11 insurers told us that they currently exclude or plan to exclude environmental restoration from their basic commercial auto liability policy coverage for trucking firms. Six of the 11 insurers said they would offer environmental restoration coverage as a separately priced amendment while the remaining five insurers said they would not charge a separate premium.

Also, the officials said there is a move to go to a "claims-made" policy for comprehensive general liability insurance, which requires claims to be made during the time the policy is in force. Once the policy term expires, new claims can no longer be filed even though the incident that gave rise to the claim occurred while the policy was in force. In contrast, under an occurrence policy, claims can be made for an insured event that occurred during the life of the policy after the policy term expires. As of May 1986, 36 states had approved the use of a claims-made policy for comprehensive general liability insurance.

The "claims-made" approach would place fundamental limitations on the environmental restoration clause. This is so because environmental restoration claims can have a "long tail"--the injury or disease connected with the accident may not be discovered for many years. However, an Insurance Services Office official informed us that, as of May 1986, the insurance industry has not attempted to use the "claims-made" approach for commercial auto liability insurance, which provides environmental restoration coverage.

**AVAILABILITY OF REINSURANCE FOR  
ENVIRONMENTAL RESTORATION INSURANCE**

- NUMBER OF COMPANIES REINSURING ENVIRONMENTAL RESTORATION INSURANCE FOR TRUCKERS AND AMOUNT WRITTEN IS NOT AVAILABLE.
  
- FOR ALL INSURANCE LINES, DOMESTIC REINSURERS WRITE ABOUT 75 PERCENT OF THE U.S. MARKET WHILE FOREIGN REINSURERS WRITE ABOUT 25 PERCENT. NET REINSURANCE PREMIUMS WRITTEN FOR THE U.S. MARKET IN 1984 AMOUNTED TO ABOUT \$10.3 BILLION.
  
- WE CONTACTED FIVE REINSURERS WHO UNDERWROTE ABOUT 35 PERCENT OF THE REINSURANCE WRITTEN FOR ALL PROPERTY AND CASUALTY INSURANCE LINES BY DOMESTIC COMPANIES IN 1984. ALL FIVE EITHER WILL REINSURE LITTLE OR NO TRUCKER INSURANCE OR WILL EXCLUDE ENVIRONMENTAL RESTORATION COVERAGE.
  
- REINSURERS ARE CONCERNED ABOUT THE UNKNOWN RISKS INVOLVED WITH ENVIRONMENTAL RESTORATION COVERAGE AND THE POTENTIAL FOR LARGE CLAIMS.
  
- INSURERS WE CONTACTED ESTIMATED THAT REINSURANCE RATES ROSE AN AVERAGE OF 107 PERCENT IN 1985 AND WILL RISE AN AVERAGE OF 62 PERCENT IN 1986.

## PART VII

### AVAILABILITY OF REINSURANCE FOR ENVIRONMENTAL RESTORATION INSURANCE

An insurer purchases reinsurance to cover all or part of the loss which the insurer may sustain under policies it underwrites. Reinsurance is purchased so an insurer can spread its risks and limit its liability from large or catastrophic losses. Many insurers are not willing to provide basic insurance coverage above \$1 million for truckers unless they can obtain reinsurance.

The United States reinsurance market is served by both domestic insurers and foreign insurers. Domestic insurers underwrite about 75 percent of the market while foreign insurers, such as Lloyd's of London, underwrite about 25 percent. In 1984, net reinsurance premiums written amounted to about \$10.3 billion, including about \$2.4 billion written by foreign insurers. However, a representative of the Reinsurance Association of America informed us that no industry-wide data is available on the number of companies providing reinsurance for environmental restoration insurance for truckers or, for that matter, the total amount of reinsurance written for truckers insurance.

#### AVAILABILITY OF REINSURANCE

To obtain information on the availability of reinsurance in 1986, we contacted officials of five large domestic reinsurance companies--which underwrote about 35 percent of the reinsurance underwritten for all property and casualty insurance lines by domestic companies in 1984--and 27 insurers.

The views of the officials of the five reinsurance companies on the availability of reinsurance in 1986 varied, but on the whole, they expect that the total amount of reinsurance available to insurers will increase during 1986. However, all of these companies said they either will reinsure little or no truckers insurance or will specifically exclude environmental restoration coverage because of the unknown risks involved and the potential for large claims. These are two of the reasons the insurers we contacted cited for not wanting to underwrite environmental restoration coverage.

Of the insurers we contacted, 17 insurers (about 71 percent) believe that reinsurance availability will decrease in 1986, while the remaining 29 percent believe availability will remain the same. Nevertheless, nine of the 17 insurers who believe that reinsurance availability will decrease said they will be able to obtain the amount of reinsurance they need to insure truckers in 1986. However, four of the nine insurers may not need reinsurance because they are not going to offer new policies or renewals at the \$5 million level in 1986.

**REINSURANCE UNDERWRITING**  
**LOSSES AND PREMIUMS**

According to data provided by the Reinsurance Association of America, reinsurance underwriting losses have been increasing in recent years. During the 5-year period from 1980 through 1984, the ratio of domestic reinsurance losses and underwriting expenses to net reinsurance premiums has increased every year. The ratio rose from 107 in 1980 to 133 in 1984. A ratio above 100 means reinsurance losses and underwriting expenses exceed net premiums. However, financial results have improved in 1985. For the first 9 months of 1985 (the latest data available), the ratio for 55 major domestic reinsurance companies amounted to about 119--the first decrease in 5 years. The ratio does not take into account income received by reinsurance companies from their investment of premiums.

We also asked the 27 insurers for their estimates of the increases in reinsurance rates for their company in 1985 and 1986. For the insurers that provided estimates, their reinsurance rates increased an average of about 107 percent in 1985 and will increase an average of about 62 percent in 1986.



**EXTENT THAT HAZARDOUS MATERIALS  
TRANSPORTERS SELF-INSURE**

- THE DEPARTMENT OF TRANSPORTATION DOES NOT ACCEPT SELF-INSURANCE AS A METHOD OF COMPLYING WITH SECTION 30. IT REQUIRES MOTOR CARRIERS TO HAVE INSURANCE OR A SURETY BOND.
- THE FOR-HIRE NATIONAL TANK TRUCK CARRIERS AND MUNITIONS CARRIERS SAID ALL THEIR MEMBERS PURCHASE INSURANCE.
- IN RESPONSE TO A PRIVATE TRUCK COUNCIL OF AMERICA SURVEY, 15 PRIVATE MOTOR CARRIERS REPLIED THAT THEY SELF-INSURE.
- WHILE THREE LARGE PETROLEUM COMPANIES WE CONTACTED CONSIDER THEMSELVES SELF-INSURERS, THEY IN FACT OBTAINED THE NECESSARY COVERAGE, FOR EXAMPLE, FROM AN INSURANCE COMPANY THEY OWNED.

## PART VIII

### EXTENT THAT HAZARDOUS MATERIALS TRANSPORTERS SELF-INSURE

Department of Transportation regulations implementing Section 30 of the Motor Carrier Act allow only insurance or a surety bond as acceptable evidence to show compliance with the minimum financial responsibility requirements. DOT does not accept self-insurance. However, the Department is planning to receive public views and comments on possible alternatives (including self-insurance) or revisions to its present requirements.

As requested, we gathered information on this subject by asking officials of several trucking associations whether their members purchase insurance or a surety bond or self-insure. We also asked representatives of 10 companies that produce and transport items classified as hazardous materials whether they purchase insurance or a surety bond or self-insure.

#### PRIVATE MOTOR CARRIERS

We spoke with the Legislative Counsel of the Private Truck Council of America--an association of about 1,500 private motor carriers--to ascertain whether the association members self-insure or purchase insurance. The association is comprised of business firms that use their own trucks to haul some or all of the products they produce. About 25 petroleum companies, including the largest ones in the United States, belong to the Private Truck Council. The Legislative Counsel said that many of the members, especially the large petroleum companies, are multibillion-dollar firms that self-insure. The Legislative Counsel also provided us a copy of the results of a November 1985 insurance survey of Council members. Fifteen of the 130 members responding indicated they self-insured. However, he did not inform us whether the 15 private motor carriers transported hazardous cargo and were thus subject to Section 30 requirements. If they transport only nonhazardous cargo, they are not subject to Section 30.

We contacted officials of five large petroleum companies that are members of the Private Truck Council to inquire whether they self-insure or purchase insurance for their private motor carrier operations. Although these officials considered their company to be self-insured, three of the five companies technically do not self-insure for purposes of Section 30. The officials were using the term self-insurance in a general context because their companies in fact either obtained the necessary insurance from an insurance company they owned (sometimes referred to as a captive insurer), held a surety bond, or purchased insurance with very large deductibles. The other two companies did not answer our

phone calls, and thus, did not amplify on the context in which they were using the term "self-insurance."

We also contacted five members of the Private Truck Council of America that produce and transport hazardous materials other than petroleum products. Officials of four of the companies informed us that they purchased insurance to cover their private carrier operation. An official of the fifth company said his company "self-insured" because it paid all of its claims against its private carrier operation, but in effect, the company possessed a surety bond to comply with Section 30. Officials of two of the companies that purchased insurance said they had deductibles of \$500,000 and \$937,500, respectively.

### FOR-HIRE MOTOR CARRIERS

To gain an insight as to whether for-hire hazardous materials transporters self-insure, we contacted the two for-hire trucking conferences of the American Trucking Associations that haul extremely hazardous materials--the National Tank Truck Carriers Conference and the Munitions Carriers Conference. We also contacted the Petroleum Marketers Association of America. This association represents about 12,000 independent small business petroleum marketers. The marketers are middlemen in transporting gasoline to service stations and heating oil to homes from bulk terminals of petroleum companies.

The Managing Director of the National Tank Truck Carriers Conference told us that there are about 170 domestic trucking firms who are members of the association, representing about 85 percent of the tank truck market and including the 26 largest tank truck haulers. He informed us that all of the members purchase insurance to comply with Section 30.

We also spoke with the Managing Director of the Munitions Carriers Conference. In 1985, there were 25 members in the association. The members are for-hire trucking firms that vary in size. Some members specialize in transporting explosives while other members haul mainly other types of cargo. The members transport about 90 percent of the explosives shipped by the Department of Defense and about 90 percent of the commercial shipments of explosives. We were told that none of the members are self-insured.

Finally, we contacted the Petroleum Marketers Association of America. The Association's Director of Legislative Affairs said that most of the members of the association do not have the financial resources to self-insure, and thus they have to purchase insurance.



**BUREAU OF MOTOR CARRIER SAFETY  
ENFORCEMENT ACTIVITIES**

- THE BUREAU OF MOTOR CARRIER SAFETY DOES NOT HAVE DATA ON THE ACTUAL NUMBER OF TRUCKING FIRMS THAT TRANSPORT HAZARDOUS CARGO.
- THE BUREAU HAS NO SYSTEM FOR COLLECTING DATA FROM INSURERS TO MONITOR WHETHER TRUCKING FIRMS HAVE THE INSURANCE COVERAGE REQUIRED BY SECTION 30.
- NUMBER OF BUREAU AUDITS TO ASSURE COMPLIANCE WITH SECTION 30 HAS DECREASED.
- PERCENT OF SECTION 30 COMPLIANCE AUDITS WITH VIOLATIONS HAS INCREASED.

## PART IX

### BUREAU OF MOTOR CARRIER SAFETY ENFORCEMENT ACTIVITIES

The Bureau of Motor Carrier Safety does not have data on the actual number of trucking firms that transport hazardous cargo. The Bureau does maintain various types of data relating to motor carriers, such as type of cargo transported and type of equipment operated. This data is collected by Bureau field office personnel. However, motor carriers are not required to report the data to the Bureau. As of February 1986, the Bureau had data on about 219,000 motor carriers, of which about 19,000 transported some type of hazardous cargo.

Section 30 directed the Secretary of Transportation to assure compliance with the financial responsibility requirements. This responsibility has been delegated to the Bureau of Motor Carrier Safety. The Bureau carries out this responsibility by checking to see if the trucking firm has the proper evidence of compliance--either Form MCS-90 or Form MCS-82--during its safety management audits.

The Bureau has no system for collecting data from insurers to monitor whether trucking firms have the insurance coverage required by Section 30. Also, the Bureau's Chief of Safety Fitness Enforcement told us the Bureau does not have an agreement with ICC whereby ICC would inform the Bureau of trucking firms who had their insurance cancelled.

The ICC has an automated file of the interstate motor carriers which it certifies, including their insurers. ICC relies primarily on the insurance companies to report policy cancellations. However, during our review, we noted three insurers that stopped providing insurance to trucking firms a few years ago were still included in ICC's insurance system. As a result, ICC's records incorrectly showed that these three insurers still had insurance policies in force with trucking firms.

**TABLE 6****BUREAU OF MOTOR CARRIER SAFETY AUDITS TO  
ASSURE COMPLIANCE WITH SECTION 30**

<u>Year</u>	<u>Motor carrier classification</u>	<u>Number of audits</u>		<u>Percent with violations</u>
		<u>Total evaluated</u>	<u>With violations</u>	
1983	ICC-authorized	1,522	569	37
	ICC-exempt	192	91	47
	Private	1,604	769	48
	Other	<u>78</u>	<u>39</u>	50
	Total	<u>3,396</u>	<u>1,468</u>	43
1984	ICC-authorized	1,655	567	34
	ICC-exempt	183	61	33
	Private	1,368	523	38
	Other	<u>75</u>	<u>42</u>	56
	Total	<u>3,281</u>	<u>1,193</u>	36
1985	ICC-authorized	1,452	584	40
	ICC-exempt	142	81	57
	Private	974	495	51
	Other	<u>91</u>	<u>58</u>	64
	Total	<u>2,659</u>	<u>1,218</u>	46

Table 6 shows the number of safety management audits the Bureau conducted to assure compliance with Section 30. It shows that the Bureau checks few motor carriers to determine if they are in compliance with Section 30 and the number of carriers audited has decreased since 1983. The Bureau has an enormous workload, but it has few safety investigators with which to conduct compliance checks.

The table also shows that a high percentage of the trucking firms audited were not in full compliance with Section 30 requirements. The percent of truckers not in compliance in 1985 was higher than either of the two previous years. The Bureau's Chief of Safety Fitness Enforcement told us the main types of violations include (1) not having the MCS-90 endorsement, (2) having less insurance than required, or (3) having no insurance at all. He said the Bureau follows up on all violations to see that they are corrected or the trucking firm ceases operations.

**PERCENTAGE OF PETROLEUM MARKET  
TRANSPORTED BY PRIVATE MOTOR CARRIERS**

- DATA ON THE PERCENTAGE OF PETROLEUM PRODUCTS TRANSPORTED BY PRIVATE VERSUS FOR-HIRE MOTOR CARRIERS IS NOT AVAILABLE.
  
- TWO TRUCKING ASSOCIATIONS OFFERED ROUGH ESTIMATES THAT PRIVATE AND FOR-HIRE MOTOR CARRIERS EACH TRANSPORTED ABOUT 50 PERCENT OF THE PETROLEUM MARKET.
  
- FIVE LARGE PETROLEUM COMPANIES PROVIDED US THE FOLLOWING ESTIMATES OF THE PERCENTAGE OF THEIR PETROLEUM PRODUCTS HAULED BY PRIVATE AND FOR-HIRE MOTOR CARRIERS.

<u>PETROLEUM COMPANY</u>	<u>PERCENT TRANSPORTED BY PRIVATE CARRIAGE</u>	<u>PERCENT TRANSPORTED BY FOR-HIRE CARRIAGE</u>
A	60	40
B	60	40
C	55	45
D	50	50
E	15-20	80-85

**PART X**

**PERCENTAGE OF PETROLEUM MARKET  
TRANSPORTED BY PRIVATE MOTOR CARRIERS**

We contacted several trucking and petroleum associations, including the American Petroleum Institute, to ask if they had data relating to the percentage of petroleum products such as oil, gasoline, and home heating oil transported by private motor carriers versus for-hire motor carriers. While they were unable to provide this data to us, officials of two trucking associations and five large petroleum companies were able to provide rough estimates of the percentage of total petroleum products that are transported by private motor carriers and by for-hire motor carriers.

The Managing Director of the National Tank Truck Carriers Conference and the Legislative Counsel of the Private Truck Council of America informed us that they believe private and for-hire motor carriers each transported about 50 percent of the petroleum products hauled by trucks.

Officials of five large petroleum companies provided us the estimates shown on the facing page of the percentage of their total petroleum products transported by private motor carriers and by for-hire motor carriers.

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