



**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
UNITED STATE DEPARTMENT OF TRANSPORTATION**

**COMMENTS OF THE
NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION, INC.
IN RESPONSE TO FMCSA'S
ADVANCE NOTICE OF PROPOSED RULEMAKING
AND REQUEST FOR PUBLIC COMMENTS
DOCKET NO: FMCSA-2014-0211; RIM 2126-AB74**

PAUL D. CULLEN, JR.
The Cullen Law Firm, PLLC
1101 30th Street, N.W., Suite 300
Washington, DC 20007
(202) 944-8600

JOHN R. BAGILEO
The Law Offices of John Bagileo
1101 30th Street, N.W., Suite 300
Washington, DC 20007
(301) 404-8382

*Counsel to the National Motor
Freight Traffic Association, Inc.*

I. INTRODUCTION

These comments are submitted on behalf of the National Motor Freight Traffic Association, Inc., (“NMFTA”) in response to an Advance Notice of Proposed Rulemaking and a request for public comments published on November 28, 2014, and entitled “Financial Responsibility for Motor Carriers, Freight Forwarders, and Brokers, FMCSA-2014-0211, RIN 21265-AB74. With this Notice, FMCSA announces that it is “considering a rulemaking that would increase the minimum levels of financial responsibility for motor carriers, and other purposes.”

II. STATEMENT OF INTEREST

NMFTA is a nonprofit membership organization headquartered at 1001 North Fairfax Street, Suite 600, Alexandria, VA 22314. Its membership is comprised of motor carriers and transportation companies operating in interstate, intrastate and foreign commerce. NMFTA’s mission is to serve as a research and development organization providing the transportation industry with the necessary information to advance and improve their interests and welfare. NMFTA is committed to helping the industry meet transportation challenges through research, education, and publication of specifications, rules, transportation codes and the preparation and dissemination of studies, reports and analyses. NMFTA represents approximately 450 less-than-truckload (LTL) motor carriers which are subject to the federal minimum financial responsibility requirements under 49 U.S.C. § 31139 and 49 C.F.R. Part 387. NMFTA’s members make up the vast majority of motor carriers operating in the United States that primarily specialize in LTL transportation.

III. COMMENTS OF NMFTA

NMFTA sent a survey to its members asking for their experiences related to the subjects raised by this proceeding. It received 23 responses from a cross-section of its members.

NMFTA members report that in their experience only a very small number of claims ever exceed

the minimum insurance level of \$750,000. Just under 80% of NMFTA respondents report that they have never experienced a claim that exceeds the minimum amount. The survey respondents also reported with agreement that their claims and loss experiences were the biggest factor affecting the amount of premiums – evidence that the insurance requirement continues to provide a strong incentive to operate safely.

NMFTA does not observe evidence that the imposition of a higher minimum insurance requirement on all motor carriers will have an effect on safety. Although the operating margins of LTL motor carriers are among the lowest in the industry, NMFTA members universally report their continued commitment and effort to invest in the safe operation of their fleets. If the requirement for a higher minimum level of insurance acts only to impose higher premiums upon motor carriers, it will reduce the capital available to them to spend on safety. And if such a new rule were to drive up premiums dramatically, making them unaffordable, it would act to drive good, safe motor carriers out of business.

A. Demographics Of The LTL Industry and Survey Respondents

LTL carriers provide a unique service and run a distinct business model. The vast majority of LTL motor carriers operate regionally, engaging in cooperative relationships with LTLs from other regions in order to provide nationwide delivery service to their customers. More than half of the motor carriers providing NMFTA with information for these comments operate fewer than 100 trucks, just under thirty percent operate between 100 and 1,000 trucks, and three respondents operate over 1,000 trucks. They believe that the amount of the premiums they pay is primarily dependent upon their accident and claims/loss experience.

B. The Effect Of Safety Ratings And Other Factors On Insurance Premiums

A majority of respondents believe FMCSA safety ratings have had no impact on their insurance premiums. Several motor carriers believe their good safety rating positively impacts their insurance premiums, and they all note that they have always had a good safety rating. Two

carriers reported an impact of their safety rating on their premiums, but they did not report in what direction. By far, most survey respondents reported that their accident, claims, and loss experience were the biggest factors in the amount of premiums they pay. Far behind, but mentioned by several motor carriers, in diminishing order, were fleet demographics (number of power units and their age, condition, and options), geographic scope of the operation (including miles driven), quality of drivers (hiring practices and driver backgrounds), the amount of the insurance coverage they sought (size of deductible and umbrella), and type of cargo hauled.

C. Experience With Claims Above \$750,000

The large majority, just under 80% of respondents, reported that they have received no claims against them that exceed \$750,000. Three carriers report one to two percent of claims exceeded that amount, and two carriers reported 1 or 2 claims total that exceeded that amount.

D. The Effect Of Safety Programs On Claims

NMFTA members were asked to what extent the company's safety and driver training programs reduced personal injury and property claims. The respondents all reported the ways they invest in safety (driver training, technology, hiring experience drivers), and several respondents reported their belief that such efforts contribute to their low claims experience.

E. Crash Fault

With regard to crash fault, just under one-third of respondents report that there were no instances, or there was no data, that their drivers were cited by police as at-fault. About forty percent of respondents said that 15% of their crashes involved a police citation of their driver, and another one-third report that between 16 and 50 percent of their drivers were cited by police as at-fault (the higher end of that percentage coming from a statistically insignificant sample of 1 out of 2 total accidents at one motor carrier and 1 out of 3 total accidents at another motor carrier, and 2 out of 4 accidents over a period of years).

F. Hazmat And Hazmat Claims Experience

Just under half of the respondents haul hazardous materials, and all but two of those carriers have experienced no hazmat claims. Those two carriers report that their hazmat claims fell below the \$5 million liability limit. None reported claims above the statutory minimum \$5 million.

G. Summary

In the ANPRM, FMCSA states that when Congress strengthened the statutory requirements for a minimum level of financial responsibility in the motor carrier industry, it intended to address two concerns: “first, to protect the ability of the public to recover damages in the event of crashes and second, to ease concerns that competition in the largely deregulated industry could result in cost-cutting at the expense of minimum safety standards.” Notice at 70840, citing H.R. Report No. 90-1069 (1980). Although LTL carriers report some different experiences under the current insurance requirement, NMFTA members’ survey responses support a finding that current insurance requirements continue to serve Congress’ intended purposes.

The fact that motor carrier premiums are affected by their claims experience demonstrates how the insurance requirement continues to provide a financial incentive for motor carriers to operate safely. This is supported by the respondents’ descriptions of their continued investment in safety measures and procedures – evidence that such investment has not been negatively impacted by the relative value of the insurance today.

Finally, NMFTA members report very little experience with claims exceeding \$750,000 (almost 80% experiencing none). Unless there is some basis to believe that the minimum insurance requirement was intended to cover all claims no matter how large, the claims experience of NMFTA members demonstrate that the current level is sufficient to cover the significant majority of claims today.

IV. CONCLUSION

NMFTA members pride themselves on their commitment to safety and as a result have achieved a low claims experience. They are not aware of any evidence that a higher level of public liability insurance is needed to cover their liabilities or to protect the public. Given their continued investments in safety and their low claims experience, NMFTA members oppose the prospect of diverting sizable sums from their budget to pay higher premiums.

Respectfully submitted,

DATE: February 26, 2015

/s/Paul D.Cullen, Jr.
Paul D. Cullen, Jr.
THE CULLEN LAW FIRM, PLLC
1101 30th Street, N.W., Suite 300
Washington, D.C. 20007
(202) 944-8600

John R. Bagileo
THE LAW OFFICES OF JOHN BAGILEO
1101 30th Street, N.W., Suite 300
Washington, D.C. 20007
(301) 404-8382

*Counsel to the National Motor
Freight Traffic Association, Inc.*

Your comment was submitted successfully!

The **Federal Motor Carrier Safety Administration (FMCSA)** Proposed Rule: [Financial Responsibility for Motor Carriers, Freight Forwarders and Brokers](#)

For related information, [Open Docket Folder](#) 

3

Your Receipt

Your Comment Tracking Number:
1jz-8hfa-b2to

Your comment may be viewable on Regulations.gov once the agency has reviewed it. This process is dependent on agency public submission policies/procedures and processing times. Use your tracking number to find out the status of your comment.

Email Address

Email Receipt 

Your comment:

Comment:

See attached file(s)

Uploaded File(s) (Optional)

- NMFTA comments in ANPRM Min Insurance Req FINAL.pdf: **success**

This information will appear on
Regulations.gov:

First Name: Anonymous
Submitter's Representative: Paul D. Cullen, Jr.
Last Name: Anonymous
Organization:

This information will **not** appear on
Regulations.gov:

*All information will be displayed
on Regulations.gov*

Name:

National Motor
Freight Traffic
Association, Inc.

