

**HIGHWAY TO HEADACHE: FEDERAL  
REGULATIONS ON THE SMALL TRUCKING  
INDUSTRY**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON SMALL BUSINESS**  
**UNITED STATES**  
**HOUSE OF REPRESENTATIVES**  
**ONE HUNDRED FIFTEENTH CONGRESS**

FIRST SESSION

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# HIGHWAY TO HEADACHE: FEDERAL REGULATIONS ON THE SMALL TRUCKING INDUSTRY

WEDNESDAY, NOVEMBER 29, 2017

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON SMALL BUSINESS,

*Washington, D.C.*

The Committee met, pursuant to call, at 11:00 a.m., in Room 2360, Rayburn House Office Building. Hon. Steve Chabot [chairman of the Committee] presiding.

Present: Representatives Chabot, Brat, Radewagen, Knight, Kelly, Blum, Comer, Fitzpatrick, Marshall, Norman, Curtis, Velázquez, Evans, Lawson, Chu, Adams, Espaillat, and Schneider.

Also Present: Babin.

Chairman CHABOT. Good morning. The Committee will come to order.

On behalf of the Small Business Committee I first want to welcome our newest representative to this Committee, John Curtis, from the great state of Utah. And he is right down on my right, your left. He was sworn in as a member of the House earlier this month and recently joined our Committee. His experience as mayor of Provo and commitment to providing relief to small businesses will be an asset to this Committee. There is no question about that. We look forward to working with him and to provide solutions for America's small businesses. And welcome aboard. Great to have you.

And I would like to yield about 30 seconds to my colleague from Texas if he would like to—

Mr. BABIN. Yes, sir. Thank you, Mr. Chairman, for letting me come in here and sit down and just say thank you for having this hearing. I think it is very necessary. As the sponsor of the ELD mandate delay, I would just say that—and I have been a small businessman my entire career as a dentist and also as a truck driver. I was a former truck driver at one point in time and I think the backbone of our economy is small business. And we, as Republicans, as Conservatives, as pro-business, and many of my Democrat colleagues as well, I think it is imperative that we all look out for the small businessman because he is the one who is risking his lifeblood, his family, his investments, and this is where most people work in small businesses across this country. And rolling back a lot of this overregulation I think is something that is very, very important, and I am not even asking for a rollback. We are just asking for a delay until we can work a lot of these bugs out. Some of these

questions on ELDs that are going to be mandated here next month, just a few days before Christmas.

So Mr. Chairman, thank you for letting me be here. I would be willing to answer any questions if that is necessary. Otherwise, I am going to have to get back to a science environmental hearing. Okay?

Chairman CHABOT. You can go but no Committee is more important than this Committee. We do appreciate you being here, and Mr. Babin is the original sponsor of the ELD Extension Act of 2017. And I want to thank the ranking member for having agreed to allow him to participate. I think he has kind of already participated, but thank you very much for that. We appreciate it.

The Small Business Committee is here today to examine how regulatory Federal regulations affect small businesses in the trucking industry. The trucking industry plays a critical role in the U.S. economy. America's businesses rely on its transport and deliver all types of goods and products, including consumer goods, fuel, food, machinery, and raw materials, among others. Without the trucking industry our economy literally could not function. The industry produces more than \$700 billion in revenue. Trucking companies also provide over 7 million jobs in this country, which is 6 percent of all the jobs in America. Small businesses make up the majority of the trucking industry. In fact, 97 percent of trucking companies operate fewer than 20 trucks. Many of these trucking companies are owner-operators, a one-person business essentially.

As this Committee knows all too well, one of the biggest challenges facing America's small businesses today is complying with Federal regulations. With many regulations taking a "one size fits all" approach, small trucking companies are forced to comply with expensive, confusing, and oftentimes time-consuming regulations. This is not only costing small businesses but America's economy as a whole through lost time and delays in receiving all types of goods and products.

There are many agencies that regulate the trucking industry. The Federal Motor Carrier Safety Administration is one of the main agencies that regulate small trucking companies. In fact, according to it, 99 percent of the motor carriers that it regulates are considered small entities. But the FMCSA is not the only one with the power to regulate small trucking companies. Agencies such as the Pipeline and Hazardous Materials Safety Administration, The Environmental Protection Agency, OSHA (the Occupational Safety and Health Administration), the National Highway Safety Administration all have the authority to regulate small trucking companies, and they do.

While it is important to make sure that our roads and drivers are safe, needless regulations on small businesses can pile up and cost so much that it can literally on occasion put them out of business. We need to ease the regulatory burden on small businesses and make sure that agencies are considering how their regulations will affect America's small businesses. That is why I sponsored legislation that would provide regulatory relief to small businesses, H.R. 33, the Small Business Regulatory Flexibility Improvements Act of 2017 would ensure that Federal agencies actually examine how their new regulations would impact small businesses and re-

quire them to consider ways to reduce unnecessary costs and burdens. This bill was included in a larger bill, H.R. 5, the Regulatory Accountability Act of 2017, which passed the House with a bipartisan vote back in January. The Senate has introduced a similar bill, S. 584, which we hope will be taken up soon as this is an important step towards easing the regulatory burden on small businesses.

I have also cosponsored, as a number of us have, H.R. 3282, the ELD Extension Act of 2017, again, offered by our colleague from Texas, Brian Babin, which would delay the effective date of a regulation requiring electronic logging devices in commercial motor vehicles and provide small firms with more time to comply. Our witnesses today will provide real examples of what it is like for small trucking companies to navigate the confusing regulatory landscape. The chair is aware that there may be a difference of opinion from some organizations on some of the regulations that will be discussed in today's hearing in particular from the American Trucking Association. To accommodate them we are providing them the opportunity to submit a statement that will become part of the official hearing record, and I will review these statements myself when they are received, and I would encourage other members of the Committee to review that statement as well.

And I want to thank our witnesses for being here and taking time away from their businesses to travel to Washington to testify about their experiences before the Committee.

And I would now like to yield to the ranking member for her opening statement.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

The trucking industry is a critical component of our nation's transportation network. Trucking connects industries and consumers, stimulating economic activity in every corner of the country, and creating new markets for entrepreneurs.

According to the Bureau of Transportation Statistics, trucks annually transport \$10 billion tons of freight valued at more than \$720 billion in revenue. This economic engine is predominantly comprised of small business operators with 90 percent of firms having fewer than 10 trucks. Most of these small firms are owner-operators who run their business with just one truck with the owner at the wheel. Although dominated by small businesses, the trucking sector provides significant employment, supporting jobs for over 7 million people, almost half of them as drivers.

Given the prevalence and centrality of trucking to our economy, a number of steps have been taken over the years to improve safety starting in the 1930s with hours of service limitations followed by a number of rules and regulations that were subsequently adopted. A wide array of agencies are involved in regulating the trucking industry, including the Federal Courier Safety Administration, the Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Highway Safety Administration.

While the list seems long, each agency is tasked with particular regulations that fit within their particular jurisdiction. Although regulations are necessary and important to the public safety, it is

critical that agencies take into account the economic impact of regulations on small firms.

As always, the challenge is protecting the public safety while ensuring regulations do not unnecessarily harm or negatively impact small businesses, in this case, small trucking firms. In addition, a thriving truck sector requires a well-maintained infrastructure system. This vital economic artery needs safe bridges and functioning highways to reach its potential.

To that end I am concerned that Congress and the president have yet to move a meaningful infrastructure program that will make necessary and long-overdue upgrades. This is an area where I would hope there might be bipartisan cooperation.

Today's hearing will provide an important opportunity to evaluate the regulatory environment in which our small truckers operate and fine tune the rules so they achieve goals of both safer highways and a thriving, healthy trucking sector.

I once again thank the witnesses for being here today and offering their insight.

Thank you. I yield back.

Chairman CHABOT. Thank you very much. The gentlelady yields back.

And if Committee members have opening statements prepared I would ask that they be submitted for the record.

And I would now like to take just a moment to explain our timing and lighting system rules here. It is pretty simple. You get 5 minutes. Each of you will get that and there is a lighting system to assist you. The green light will stay on for 4 minutes. The yellow light will come on letting you know that you have a minute to wrap up and then the red light will come on. And you are supposed to stop by then. We will give you a little leeway but not a whole lot. So if you can stay within those parameters we would greatly appreciate it.

I would now like to introduce our very distinguished panel here this morning. I am pleased to introduce our first witness, Monte Wiederhold, who is a constituent from our area in Ohio. Mr. Wiederhold is the president of B.L. Reeve Transport, Inc., a small trucking company located in Maumee, Ohio. Mr. Wiederhold also serves on the Board of Directors at the Owner-Operator Independent Drivers Association and he is testifying on their behalf today. We welcome you here today and look forward to your testimony.

And our next witness will be Mr. Marty DiGiacomo. Mr. DiGiacomo is the owner of True Blue Transportation, a small family-owned trucking company located in Harrisburg, North Carolina, that provides trucking and brokerage services throughout the United States, as well as Canada and Mexico. He is testifying on behalf of the National Association of Small Trucking Companies, and we welcome you here as well.

Our third witness will be Mr. Stephen Pelkey. Mr. Pelkey is the president and CEO of Atlas PyroVision Entertainment Group, a professional fireworks display company located in Jeffrey, New Hampshire. Mr. Pelkey also serves on the Board of Directors of the American Pyrotechnics Association, or APA and is the chairman of the APA's Transportation Committee. He will be testifying on be-

half of the APA, and we welcome you here as well, Mr. Pelkey, and look forward to your testimony.

And I would now like to yield to the ranking member to introduce our fourth witness.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

It is my pleasure to introduce Mr. Robert Garbini, the president of the National Ready-Mixed Concrete Association. Mr. Garbini joined NRMCA in December 1991 as the marketing director of building systems. Prior to joining NRMCA he was the owner of Foundation Constructors in McLean, Virginia, a design-build construction company. The National Ready-Mixed Concrete Association was founded in 1930 and works to serve the entire ready-mixed concrete industry over 80 percent of which are small businesses. Thank you for being here today.

Chairman CHABOT. Thank you very much.

And Mr. Wiederhold, you are recognized for 5 minutes.

**STATEMENTS OF MONTE WIEDERHOLD, PRESIDENT, B.L. REEVER TRANSPORT, INC.; MARTY DIGIACOMO, OWNER, TRUE BLUE TRANSPORTATION; STEPHEN PELKEY; CHIEF EXECUTIVE OFFICER, ATLAS PYROVISION ENTERTAINMENT GROUP, INC.; ROBERT GARBINI, P.E., PRESIDENT, NATIONAL READY MIXED CONCRETE ASSOCIATION**

**STATEMENT OF MONTE WIEDERHOLD**

Mr. WIEDERHOLD. Thank you. Chairman Chabot, Ranking Member Velázquez, and members of the Committee. Thank you for the opportunity to testify today.

My name is Monte Wiederhold and I began my career as a professional truck driver in 1973. I have been a small business owner since 1993 and I am the president of B.L. Reeve Transport, Inc., a small fleet of seven drivers who, like me, are owner-operators. I have been a member of the Owner-Operator Independent Driver Association since 1983 and serve on its board of directors. I am a proud constituent of Chairman Chabot's and appreciate his interest in this subject and support for professional drivers.

Small trucking businesses represent 96 percent of motor carriers in the U.S. and are the safest and most diverse operators on the roads. Our activities impact all sectors of the American economy, moving everything from agriculture products to military equipment. Unfortunately, the Federal Government has never grasped the importance of this diversity and continues to burden us with "one size fits all" regulations which punish small businesses and stifle competition. These costly and burdensome rules are often advanced at the behest of corporate motor carriers who use legislation and regulation to gain competitive advantages over smaller operators like me. Large fleets promote these regulations as a silver bullet solution to improving highway safety despite a distinct lack of evidence. In reality, they are economic weapons used to leave smaller competitors out of the market by increasing our operating costs. Continuance of the "one size fits all" approach makes the Federal Government regulating the safest truckers out of the industry.

While Congress and the White House have been successful in providing relief on several key matters, it has failed to address serious concerns involving the most disruptive and expensive trucking regulation in history, the Electronic Logging Device or ELD mandate. The ELD mandate is estimated to cost a whopping \$1.8 billion annually, yet provides no safety or economic benefit for small business truckers who will bear most of these costs. The rule-making was approved based upon the false premise that ELDs will increase compliance with hours of service regulations and reduce the risk of fatigue-related crashes. There are also serious complications associated with implementation currently scheduled for December 18th. ELD manufacturers are allowed to self-certify their device without validation by the FMCSA and the agency has failed to adequately train law enforcement.

While the ELD mandate must be repealed we believe it would be reasonable and responsible for Congress and DOT to delay implementation until all complications are fully resolved.

Over 30 diverse organizations have joined our calls for a delay. Many more, including large fleets who championed the mandate, have pursued exemptions. The sheer number of businesses desperate for relief perfectly illustrates what happens when Washington recklessly embraces the “one size fits all” approach to regulations. OOIDA has requested that DOT temporarily exempt small trucking businesses with exemplary safety records from the mandate. Upon the request, only motor carriers defined by the Small Business Administration as small trucking businesses that have a record of no at-fault crashes would qualify and those with an unsatisfactory safety rating from the FMCSA would not be eligible. This exemption would provide temporary regulatory relief to America’s safest professional drivers who have safety records that far exceed the large fleets who have been utilizing ELDs for years.

The negative attention the ELD mandate has generated has exposed the fact that today’s hours of service requirements are poorly designed. The rigid and restrictive requirements fail to provide the flexibility drivers need. Instead, these rules push truckers to drive farther and faster. Congress has taken steps to improve HOS but more can be done to benefit both drivers and highway safety.

While professional drivers are dismayed by the lack of relief Washington has provided on the ELD mandate and what little progress was made on HOS, we are pleased by recent developments in other policy areas. We thank Congress for directing FMCSA to evaluate the effectiveness of the Compliance, Safety, and Accountability program which utilizes flawed methodology that does not accurately measure a carrier’s safe performance and unfairly penalizes small business operators.

Since CSA’s inception in 2010, the number of fatalities in injury crisis has increased 14 percent and 55 percent, respectively, according to the FMCSA. A recent National Academy of Sciences review provided numerous recommendations for modifying CSA. These include improving data quality and collection, analyzing how driver turnover rates and levels of compensation impact safety and implementing transparency guidelines.

We encourage Congress to hold FMCSA accountable in making these changes and fixing CSA. Owner-operators applaud the EPA’s

recent position to exempt glider kits from phase two with greenhouse gas emission standards. Regulations like phase two have dramatically altered small businesses' ability to purchase new or recently owned trucks, making them more reliable and affordable glider kits increasingly attractive. EPA's recommendations of this "one size fits all" rule is greatly appreciated and should be embraced by Congress.

The Trump administration has also withdrawn a rulemaking on increasing the minimum liability insurance level for motor carriers. Today's motor carriers typically carry \$1 million in coverage. Despite the facts that less than 0.2 percent of truck-involved accidents result in damages that exceed these levels, some large motor carriers and trial lawyers have sought to increase minimums to well over \$4 million. Allowing such dramatic increases would essentially serve as a death sentence for small business truckers. To ensure the survival of small trucking businesses, Congress must follow the administration's lead and reject efforts to increase minimum liability insurance.

Mr. Chairman, thank you again for the opportunity to testify. I look forward to hearing my fellow panelists' testimony and answering your questions.

Chairman CHABOT. Thank you very much, Mr. Wiederhold. I think you got more words in that 5 minutes than anybody in the history of this Committee. So well done. Thank you.

Mr. DiGiacomo, you are recognized for 5 minutes.

#### **STATEMENT OF MARTY DIGIACOMO**

Mr. DIGIACOMO. Thank you, Mr. Chairman and members of the Small Business panel. Thank you so much for this opportunity. I really appreciate it.

We are a small trucking company. I do provide brokerage services. I have been in trucking since 1979, and I think I have got a really good pulse on a lot of different trucking companies, even some that I brokered loads to just this week that are pleading to stop this ELD mandate. There are trucking companies, small family-owned trucking companies that just cannot afford to put in \$700 GPSs with the companies wanting a one to 3 year contract with fees like \$35, \$55 a month, whatever. Trucking has always been a fluctuating business. You cannot depend on everything staying exactly the same all the time, as you know, just by the economy, what it looks like.

So these trucking companies, and as Mr. Wiederhold said here, you know, there is no "one size fits all." It cannot work that way because you have got crane companies. You have got towing and recovering. You have got tanker. You have got guys on pipelines. Food service, which I did before. I mean, I have done a lot of different things but you cannot put a law, I mean, a set of guidelines into place and then try to run it with an electronic log. It just creates nightmares and havoc and a lot of extra cost.

And then, you know, being in the trucking industry this long, I remember the old rules where we could actually take naps when we wanted to and it would prolong our day. We could say, okay, yeah, we are going to take a nap now because I am tired. There are times when I would go out in the morning or at any time and,

you know, an hour or two later it is like, I am really tired. I have just got to pull over and take a nap. Well, there is no incentive to do it with the hours of service. So the hours of service right now are connected. The hours of service rules are connected right alongside the ELD mandate. The ELDs should be a choice for trucking companies to take that option if they see that it is going to benefit them. We all want to be safe. Representing small business truckers like ourselves and OOIDA members and these other guys, we are small business people. We feel called to what we are doing. We love what we are doing. We are not doing it for the money because farming and trucking are about the same. The profit margins are so slim, yet you know, we are being forced to pay for this, pay for that. And as he had mentioned earlier, you know, trying to get these insurance levels up to \$4 million. Why? You know, if you are with General Electric, yeah, you have to have a lot of insurance for problems you might have but, you know, Larry's Electric, it should not be that way.

The same thing with a broker bond. It was initially \$10,000. Now they want \$75,000. Well, with big companies like C.H. Robinson and T.K. Well, whatever, you know, they do that much business in an hour. So what good is that transportation bond? But again, it is putting the burden on the small business trucker. We had our own brokerage but we had to get rid of it because we could not put up \$75,000; we had put up \$10,000. So a lot of these regulations are just killing small businesses. Now you have got drivers within our industry that have millions and millions of miles of safe driving. How is an ELD log going to help them become any safer than they already are? It is a penalization, like putting training wheels on a guy. Oh, you need training wheels now. You have been doing this 30, 40 years. Yeah, but you know what? You need training wheels. No. That is not the answer. What I believe is the answer for safe drivers is training. And that is one of the reasons I joined NASTC. They have a training program for safety program for the driver members in the organization and I think, in my opinion, an ELD is not going to tell a driver judgmentally what the best thing is to do. It is not going to tell a driver, really, when he is tired? It is going to arrange for an appointment? You are going to be tired now. You need to go to sleep. You need to drive now. And the way the hours of service are set up right now they force a driver to keep pushing and the companies will push drivers. And I have been a part of that so I can give examples. And I can definitely give some examples of how the ELD is a very dangerous piece of equipment to put in a truck because it has happened to me when I did drive for a couple companies previously that had ELDs. The stress and frustration when you are under the gun with that ELD is so much a problem, and what it does, stress, frustration, and anger about what that thing is there for and what it makes you do actually produces fatigue. And that is what we are supposed to be avoiding here. We do not want fatigued drivers. We do not want drivers with bad attitudes, but that is what the ELD is doing.

Thank you for your time.

Chairman CHABOT. Thank you very much.

Mr. Pelkey, you are recognized for 5 minutes.

**STATEMENT OF STEPHEN PELKEY**

Mr. PELKEY. Good morning, Chairman Chabot, Ranking Member Velázquez, and other members of the Committee, I sincerely appreciate the opportunity to appear before you today to discuss how Federal regulations impact the small trucking industry, issues of vital importance to the U.S. fireworks industry.

I am Stephen Pelkey, owner and CEO of Atlas PyroVision Entertainment Group, headquartered in Jaffrey, New Hampshire, along with my six daughters, five of which are actively involved in the family business. I serve on the board of directors of the American Pyrotechnics Association (APA) and as the chairman of APA's Transportation Committee. I am here on behalf of the APA and wish to share our industry concerns with the current "one size fits all" transportation regulations that unfairly harm small business.

While this hearing focuses on the impact of Federal regulations on the small trucking industry, many industries, like fireworks, involve private carriers' transportation of goods and services. In other words, driving is incidental to the primary business function of loading and unloading tools of trade to provide a specific service, in our case, the setup and execution of a fireworks display.

Now, a major concern with the current regulatory structure is that small industry stakeholders are continually swept into these "one size fits all" transportation regulations that are best suited for large commercial companies rather than small family businesses attempting to comply with a myriad of regulations. I would like to highlight just a few DOT regulations that are extremely challenging and have an unfair and disproportionate impact on businesses.

DOD mandate. The fireworks industry is unique in that it depends upon short-term truck rentals as part of our business model utilizing them as our primary CMVs to meet the increased transportation activities during the 2-week period in and around the Independence Day holiday. After analyzing the significant negative impact that the DOD mandate would impose on the small companies that comprise the industry, the APA has worked to support the TRALA petition for relief for short-term rental trucks, as well as supportive legislation by Representative Babin that would provide for a 2-year delay in the implementation of this controversial mandate. Unfortunately, these efforts have not succeeded, and therefore, the APA has recently filed a request for a limited exemption from the ELD mandate during our peak Fourth of July period to coincide with APA's hours of service exemption. We hope that the Department of Transportation will act favorably upon our petition for relief.

We are also very concerned about FMCSA's new minimum training requirements for entry-level CMV operators. While the extensive classroom and behind-the-wheel training requirements may well be appropriate for entry-level drivers who desire to drive semi-trailers or operate long-haul commercial vehicles, there is no need to engage in this kind of extensive training for short-haul truck operators moving tools of trade. This type of training is best served by the hands-on training undertaken by each of our companies. Our drivers have far more knowledge and specific training about

their cargo than most full-time CDL drivers working for long-haul companies.

Additionally, we remain concerned about Federal Motor Carriers Hazardous Materials Safety Permit program. This program has been seriously flawed since the inception. While some efforts have been undertaken by the agency to address reforms and recognize the need for providing an additional level of review, much more must be done to provide HMSB holders with some level of assurance that they will simply not lose their permit upon which their livelihoods depend. The APA has widespread concerns regarding the agency's reliance on the behavioral analysis and safety improvement categories or basic ratings and their accuracy in judging a carrier's safety fitness, especially if the agency moves forward in the future with two ratings, fit and unfit. Carriers subject to these complex regulations and potential fitness ratings must be aware of the bar to achieve and maintain a fit rating. A small carrier cannot be judged against all carriers. How can a small family business who relies on a 2-week truck rental with very few inspections during the Fourth of July holiday be evaluated in the same manner as a 24/7 long-haul commercial trucking company inspected hundreds of times throughout the year?

Atlas and the APA are committed to ensuring safety in the transportation, handling, and execution of our fireworks displays. We need reasonable regulations in order to ensure safety compliance without placing undue burdens upon our small businesses.

Thank you for the opportunity to testify. I would be happy to answer any questions that you may have.

Chairman CHABOT. Thank you very much.

Mr. Garbini, you are recognized for 5 minutes.

#### **STATEMENT OF ROBERT GARBINI**

Mr. GARBINI. Thank you, Chairman Chabot, Ranking Member Velázquez, and members of the small business community. Thank you for the invitation to join you today to discuss the impact of Federal regulations on our industry and industries that use local delivery trucks.

I am testifying today on behalf of the National Ready-Mixed Concrete Association's members such as Hilltop Resources in Ohio District 1 and also DKN Ready-Mix in New York District 7. We represent more than 2,500 companies in our industry with subsidiaries that employ more than 135,000 American workers who manufacture and deliver ready-mixed concrete.

Roughly 85 percent of our industry is composed of family-owned and operated small businesses. The industry includes more than 70,000 ready-mixed concrete trucks and 6,000 ready-mixed concrete plants. Ready-mixed concrete companies produce a construction material vital to our economy and environment. From roads to bridges to homes and high-rise buildings, our built environment could not be realized without the use of ready-mixed concrete. In 2016 alone, the ready-mixed concrete industry produced 345 million cubic yards of ready-mixed concrete. That is roughly 1 cubic yard per person for everyone in the United States and in excess of \$35 billion in revenue.

Our industry faces unique challenges. Once ready-mixed concrete is loaded into a truck, it must be placed and discharged within 90 minutes or it will harden, causing permanent damage to the truck. There is no way that you can cool that material down or prolong it. The perishable nature of our product means that our industry is intensely local and the average delivery time is just 14 miles roundtrip from the plant. Because of the uniqueness of the product in our industry, we are often adversely impacted by the Federal trucking regulations that are intended for the trucking industry more broadly both because of the differences in the industry and because of the size of our business. While large companies can readily muster the resources necessary to keep up with, understand, and comply with Federal regulations, the small companies that make up our industry are less able to do so and consequently are disproportionately affected by these regulations.

Regulations should not be “one size fits all,” and because it is rarely the case that one size does fit all, the small trucking industry and the industries that support it are examples of potential companies that are affected adversely by the unintended consequences.

In my submitted testimony I touch on three current and two proposed regulations that impact or will impact the small trucking industry. The upcoming mandate from the Federal Motor Carrier Safety Administration regarding the installation of ELDs on commercial motor vehicles as mentioned by others here represent an outside burden on the small trucking industry. Similarly, compliance with phase two of the greenhouse gas emissions and fuel efficiency standards for medium and heavy-duty engines and vehicles presents a burden that small businesses are less able to shoulder than big businesses. Federal truck weight regulations often force heavy trucks like those used for delivering ready-mixed concrete to use local and state roads rather than highways causing unnecessary wear and tear on those roads and increasing the cost of ready-mixed concrete delivery.

In addition, proposed Federal regulations such as the mandatory use of speed limiters and mandatory screening for sleep apnea will have an unduly large adverse impact on the industry and those using the local delivery trucks, and on small businesses associated with the industry. These are instances where regulations intended to apply broadly disproportionately impact small businesses.

I appreciate this Committee’s dedication to and concern for the plight of the small business person, and I thank you for the opportunity to address these issues.

Chairman CHABOT. Thank you very much for your testimony.

And we want to thank the entire panel for your testimony. And I will now recognize myself for 5 minutes to kick off the questioning here.

And I will begin with you, Mr. Wiederhold. What specific costs would your business have to incur to comply with the ELD mandates, and how much of a burden would that be on your small business?

Mr. WIEDERHOLD. Well, it is going to be quite a burden. The costs for the ELDs can range anywhere from—there is I think about 200 different ones on the market right now. Some of them

could be as small as \$100. Some of them could be as much as \$1,000. Then we have monitoring fees that could start anywhere from \$30 to \$40-\$50 a month depending on what you want the ELD to take care of. And you know, as a small business, as a fleet like me, my wife works in an office at home and then I have an office manager that she takes care of the dispatch and filing and things that way. We are not going to realize any savings from this because they talk about a savings that is going to be realized from using ELDs. The big fleets could not do that because they have got it figured in their fuel taxes, their costs of operation and things and all like that. So we are not going to be able to realize that. Some companies that have used that are actually going to gain money from the technology because as referenced in the 2007 Senate hearing that was held on truck driver fatigue, one company that testified was saving \$182,000 in one year because their transmission costs went down \$11,000 and they got rid of one position in the office of \$50,000. So they saved \$182,000 in one year. I am not going to lay Doreen off that works for me because I am going to save whatever it is. And if you have times trucks, if you extrapolate that out, if you bought the top of the line type ELD you are looking at \$7,000 plus monitoring with no added safety benefit. One of my drivers has over 34 years of zero accidents. How is it going to make him any safer? We are not going to realize that.

Chairman CHABOT. Thank you very much.

Mr. DiGiacomo, let me go to you next. In your testimony you stated that truck drivers need flexibility when it comes to hours of service and off-duty time. Is enough being done currently to provide adequate and safe locations for truck drivers to rest? What should we be doing in addition to address that issue?

Mr. DIGIACOMO. Well, I am glad you asked that question. No, first of all, ever since the new hours of service rules went into effect with the 10 hours consecutive time off you have truck stops filling up a lot earlier now. Ever since then truck parking has become critical. And you add into that the ELDs in a guy's truck, my truck got slammed in a truck stop when I was parked at the end because a guy was racing around trying to find a parking spot so he could get his off-duty time started. He was running out of hours and so that is part of the stress issue.

The other thing is with the ELDs, anything can happen on a highway or with your customer and you are not going to end up exactly where you hope to end up to take a rest all the time and so you have got to have some flexibility. Now, ELDs can put you in spots where there is no facilities, no place to take a shower, no place to brush your teeth, no toilets. So how is that going to be a rest when you have got to take 10 hours off, let's say on the side of the road? There is no rest there. That is another problem with ELDs. And you have got a lot of parking spaces for trucks that are out there now. Even the scale houses do not provide facilities. And then you have the issue of a driver if he is parked overnight and there are no facilities, if he gets caught watering down his tires as they say, he can be ticketed for indecent exposure, which results often in a sexual offender list you have to sign up on. So, I mean, there are so many issues in this. But also, the rest areas, if they do not have facilities, are really not a good place to rest overnight.

So the parking has become a serious problem. And with the ELDs you could end up in a very bad neighborhood or the wrong place, or a shipper or receiver that you end up to load or unload at, often they will say no parking here. Well, where are you going to go? I am out of hours. That is the problem.

Chairman CHABOT. Thank you very much.

My time is just about to run out, so Mr. Pelkey, rather than not even get to give you a response, I think I am going to say my time is expired and I will now yield to the ranking member for 5 minutes.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Mr. Garbini, I would like to ask my first question to you. The truck mixer is a very specialized vehicle and has many nuances to driving one. Can you elaborate on the unique barriers that your members face as truckers?

Mr. GARBINI. That is an excellent question. And the truck itself—

Chairman CHABOT. I am not sure if the mic is on.

Mr. GARBINI. Thank you. There we are.

Ms. VELÁZQUEZ. Yes, now it is on.

Mr. GARBINI. The vehicle, and I think everyone in this room has probably seen a ready-mixed concrete mixer truck. It is a mobile manufacturing facility. So the driver has to have the skill to mix structurally acceptable concrete, have it placed safely, and maneuver it onto a construction site. So that by itself also provides the driver that opportunity to get in and out of the truck that does not have the same qualities as a long-haul trucker where you are trying to log the amount of time that that man or woman has been driving.

Ms. VELÁZQUEZ. Thank you.

Mr. Pelkey, you represent another type of trucking industry. What would you say are the unique challenges to your members?

Mr. PELKEY. The biggest challenge that we have is that for one, we are provided an hours of service exemption over our busy Fourth of July holiday and that is usually over an 11-day period. And that is for a 14-hour period because we have very unique circumstances where throughout the day they may get time off because they have set up a certain section of the display, they may go back to a hotel room, or they go back to their home, or somewhere along those particular narrative. Then what happens is with the ELD, that goes away because there is no ELD out there that currently has any program that allows for anyone that has a waiver of sorts in the APA, and its member companies are not able to take advantage of that waiver. So we lose that.

The other unique opposition that we have is that between the hours of service, most of our operations, 65-70 percent of our operations take place over the Fourth of July, and on the Fourth of July you may have drivers that are secondary to their nature of shooting fireworks, they are only driving 3 or 4 days a year. Subjecting them if they do not fully comply with an ELD and how to program it, they will lose or jeopardize our Hazardous Materials Safety Permit which puts us out of business.

Ms. VELÁZQUEZ. Thank you.

I would like to ask my next question to Mr. Wiederhold and Mr. DiGiacomo. The Federal Motor Carriers Safety Administration prohibit carriers, shippers, and receivers from forcing drivers to drive when it might not be safe to do so, provide simple procedures for drivers to file a complaint, and stiff penalties for violations. So my question is, why would these protections be any less effective for a driver using an ELD than they would be for a driver using paper logs?

Mr. DIGIACOMO. Well, the driver could certainly probably file a complaint but in reality if a driver does too much of that he is probably going to finding himself out of a job before long because the carrier, even though supposedly the harassment issue has been addressed by the FMCSA in the final rule, we still see instances today and we have had some screenshots. I do not know if any of you follow some of the Facebook stuff but there have been screenshots to where messages have come across and say you are sleeping with drive time. Why? Or if you can get this load there then we will fix your log. We will have safety fix your logs tomorrow. So a lot of people think the ELD mandate, the ELDs cannot be altered or cheated. They can be edited.

Ms. VELAZQUEZ. Okay. Any other comments?

Mr. DIGIACOMO. Yes. I would say that there are companies that claim they want to be safe. I drove for one very large carrier that is actually a worldwide company. They carry their own product. And they would regularly—and we ran local tanker work—they ran regularly pushing us where at the end of the day we would be done but they would say, hey, we have got this other run to go out on and you can go on that exemption for one day this week. So they would send you out on a run but unless everything worked out exactly perfectly like nothing ever does in the military either, you end up pulling over on the side of the road and calling them, and that is what we had to do. You had to wait on the side of the road or pull over and that extended your day. You had to wait for a guy to come out with a pickup. You might be 50 miles away, you might be five. You had to pull over and get that ride. Now you are extending your day. Now you get home late. You know, you have got to adjust all your logs. Those are some of the things. And like he said, I was actually fired from that job for banging my head underneath a trailer on something. He said that proves you are dangerous. And the reason was I would speak up about true dangerous situations and I would pre-trip my trip to the point where they were upset because I was actually showing, pointing out things that needed to be fixed. And they do not like people like that. They want a robot. There are certain companies that are like that. And that is one of the issues that I have come across.

Ms. VELAZQUEZ. Thank you.

Chairman CHABOT. The gentlelady's time has expired.

The gentleman from Iowa, Mr. Blum, who is the chairman of the Subcommittee on Agriculture, Energy, and Trade is recognized for 5 minutes.

Mr. BLUM. Thank you, Chairman Chabot. It took me a year but I can pronounce your name correctly. Thank you to our panelists for being here today.

Let us start at the 60,000 foot level. Is the trucking industry overregulated?

Mr. WIEDERHOLD. Yes.

Mr. DIGIACOMO. Yes.

Mr. PELKEY. Yes.

Mr. GARBINI. Yes.

Mr. BLUM. Okay, it is unanimous. Let the record reflect that. Secondly, are you having trouble finding drivers?

Mr. DIGIACOMO. Yes.

Mr. PELKEY. Yes.

Mr. GARBINI. Yes.

Mr. BLUM. And what is the reason for that? One at a time, I guess.

Mr. GARBINI. I would say that the difficulty in finding drivers has a lot to do with the trade itself. In terms of the ready-mixed concrete industry, there is more involved than just driving a truck and that goes to my point about the unnecessary requirement for ELDs at this point. A person is in and out of the truck. They are subjected to getting onto a jobsite and so forth. And quite frankly, it is not just a mundane job of sitting in a truck and driving from point A to point B which is 1,000 miles away. So oftentimes ready-mixed concrete producers are having a lot of difficulty finding individuals that want to get in there and be essentially entrepreneurs themselves.

Mr. PELKEY. For the very, very short time period of the year these truckers do not want to go through the training. They do not want to go through the testing process. You have to get a test for your CDL. In our cases, whether it is a pickup truck or a van, if you have one placardable amount, box amount of product into your truck, you need to have a commercial driver's license with a hazmat endorsement. Well, with that requires a certain amount of training. They understand the product. They understand the services involved. But there is a lot of training. For 2 or 3 or 4 days out of the entire year, there is not enough financial incentive in there for them even with some of these people making \$25 or \$30 an hour.

Mr. WIEDERHOLD. And if I could say to the perceived driver shortage problem that is being touted by a lot of the big megacarriers, there is actually a retention problem where turnover rates exceed 100 percent of a lot of these carriers. A lot of these carriers actually fashion their business model over the fact that they know it is going to be a revolving door process so we are not going to worry about too much if the guy stays or goes or whatever. And by the FMCSA's own estimates we have over 400,000 CDLs issued every year. They talk about a shortage of like 50,000 drivers by 2020. If you extrapolate that out there are going to be plenty of people. The problem is the uncompensated loading/unloading time. Drivers are paid by the mile or by the load, so when they are sitting at a dock someplace for several hours they are not getting paid for that. They are gone away from home for a long time. They get tired of missing the kids' birthdays or wedding anniversary. So there is a retention problem more so, especially our segment of the industry there. And I can speak to I hire only owner-operators so

I am a little bit more specific in that you have to own your truck to come to work for me.

My daughters work at an Apple store selling iPhones, iPads, that stuff, and when they have someone come in that is a truck and they talk about their dad owning a trucking company, then they say, oh, hey, I am looking for a job. So I think that there are people out there.

But one other quick thing here. If wages were adjusted from 1980 to what they are now because the average driver's pay is around 40 cents a mile, if that was adjusted for inflation you would have guys making 60 or 70 cents a mile. So the money talks just like it does on anything else.

Mr. BLUM. I have a minute left.

In listening to your testimonies, I was trying to ascertain, what is the bigger issue? Is it the cost of the ELDs or is it the inflexibility by industry, the "one size fits all" of the rules for the ELDs? If you could briefly, I have got 40 seconds.

Mr. GARBINI. It is the latter for me.

Mr. BLUM. Is it the cost or is it the inflexibility of the rules?

Mr. WIEDERHOLD. I think it is the cost myself from my standpoint.

Mr. DIGIACOMO. Cost and inflexibility.

Mr. PELKEY. Yeah, the inflexibility and cost but primarily the inflexibility.

Mr. BLUM. Great. And I am just about out of time. Thank you very much. I yield back, Mr. Chairman.

Chairman CHABOT. Thank you very much. The gentleman yields back.

The gentleman from—I think we have Mr. Evans next. Is that next in seniority? The gentlelady from California. I apologize. Okay. The gentlelady from California, Ms. Chu. Thank you.

Ms. CHU. Yes. I would like to submit for the record a very compelling letter that was sent to the Committee by a coalition of groups, including the Teamsters regarding the ELDs.

And I would like to—

Chairman CHABOT. Without objection; so ordered.

Ms. CHU. I would like to read excerpts from it. It says, "Our public health, safety, and law enforcement organizations, trucking companies, truck drivers, families of loved ones killed in truck crashes, and truck crash survivors write to express our staunch opposition to any attempts to delay implementation of the long-overdue Electronic Logging Device Rule. Truck driver fatigue has been a well-documented safety problem in the industry for decades. ELD are a proven and cost-effective technology that will save lives and reduce injuries, and according to the U.S. Department of Transportation will result in over \$1 billion in annualized net benefits. There is already widespread use of ELD technology in the U.S. and other countries. Nearly a third of trucks currently in service are equipped with ELDs. Similar technology has been used in Europe for decades and is required in the European Union, Japan, and other countries. Members of the trucking industry have known about this rule for years and have had ample time to prepare for it. Truck crash deaths and injuries are on the rise. In 2016, 4,317 people were killed in crashes involving large trucks, representing

an increase of more than 5 percent from the previous year and the highest number of fatalities since 2007. We urge the Committee to oppose any weakening of this overdue, common sense truck safety regulation." And it is signed by the Teamsters, the Trucking Alliance, the Federal Law Enforcement Officers Association, and pages and pages of family members of those who have been killed in truck crashes. And so I would certainly like to express my concern about any delay in implementation of this rule.

Just changing the topic, I would just like to say that trucking greatly affects my Los Angeles district. Sixty percent of all the goods in the U.S. travel through the ports of L.A. and Long Beach, and 40 percent of those goods travel through the San Gabriel Valley in my district and then out to the rest of the Nation. But with traffic congestion in the area, about one-fifth of the commercial trucks experience delays, and in fact, traffic congestion can increase the cost of shipping by 50 to 250 percent. In particular we have routes that are very dangerous. We have a confluence of State Routes 57 and 60 around my district demonstrating this problem. As a result, the Federal Highway Administration identified this 57/60 confluences, one of them was 25 most congested freight-significant locations in the Nation, and that is why we are working on making improvements through Tiger grants and so forth to relieve the freight bottleneck.

So I would like to ask the panel, can you explain how congested freight corridors like the 57/60 impact the ability of your businesses to transport goods across the country? Do congested traffic patterns end up costing your business more?

Mr. PELKEY. Well, I can only answer on our behalf for the fireworks industry. Twenty years ago we had virtually all commercial truck drivers were able to haul our fireworks from port to facility. When the Hazardous Materials Safety Permit was implemented, that was reduced by about half. In the last 3 years that has been reduced by as much as 90 percent of available long-haul drivers because they do not want to comply with the Hazardous Materials Safety Permit Program. Period. So in that particular case we have just lost our fundamental need of being able to get our products out of port and had to rely on a lot of our own carriage.

Mr. GARBINI. Congressman, let me say that in the ready-mixed concrete industry, we are not falling into that niche that you just described. Our drivers, our delivery of our products, generally average 14 miles from where the concrete is batched. So we are not impacting that kind of congestion that you are talking about. In fact, the congestion, oftentimes, because of the truck weight limitations is forcing us onto the local roads, damaging those roads instead.

Mr. DIGIACOMO. Yes, Congressman Chu, I would like to say that with those statistics, the ATA represents a lot of the line-haul companies that run terminal to terminal. Log ELDs in their trucks are okay. I mean, they work out well. UPS, companies like that where your truck is not running irregular or sitting at a shipper or receiver waiting on your shipper to load you. That is where you run into a lot of issues where the ELD and the hours of service come into play. But yes, the congestion is a problem because let's say you drive an hour and a half in the morning. You get to a shipper. Well, there are several trucks there. You might be there let's

say 4 hours. So now you are 4 hours down. Okay. Let's say you take a nap. For hours does not count. It does not count because there is no incentive for that and it counts against your day. So now you go out. Let's say you start driving but you want to take a lunch. You take a lunch. Your hours after that 4 hours of sitting, and let's say you run into a traffic jam, which is what you are starting to talk about. And like we did coming up here, you know, several accidents, problems, that really ruins your day right there.

Ms. CHU. Thank you. I yield back.

Chairman CHABOT. Quick answer, Mr. Wiederhold, if you want to.

Mr. WIEDERHOLD. Yeah, I would like to say to Congresslady Chu, that you talk about the accidents that happen. Depending upon what study you look at you are talking about 70 to 80 percent of the accidents being the fault of the person driving the car. And fatigue has only played a role—this is according to the FMCSA—less than 1-1/2 percent of the drivers were judged to be fatigued at the time of an accident. And so as the driving day goes on, the first hour of driving has the most DOT recordable accidents, and the ninth, tenth, and eleventh hour, and even if somebody is caught past that, it is less than 0.9 percent. So the congestion does play a role as far as the aggravation factor, and one of the reasons why a lot of people leave the industry.

Chairman CHABOT. Okay. The gentlelady's time is expired. Thank you.

Our newest member, the gentleman from Utah, Mr. Curtis, is recognized for 5 minutes.

Mr. CURTIS. Thank you, Mr. Chairman, and ranking member. It is a pleasure to be with you.

I would like to just briefly thank our four witnesses for being with us today.

I owned a small business. As a matter of fact, I suspect that business over the course of many years used at least three of the four of your services. I am not sure about fireworks. And I know firsthand how difficult it is to do what you do every day and I would like to thank you. I know keeping the lights on, keeping those employees going, dealing with all the things you deal with. And then on top of that dealing with government regulation can be very burdensome. I also know as a mayor what happens when you drive on my roads and I have to fix those roads, so I have seen both sides of this.

I would like to just express my feelings of concern for this legislation and the burden that we are putting on you and hope that me and my colleagues can find that proper balance that is necessary to make sure that our roads are safe and that we are doing the right things but that we are also not making it too burdensome for you.

I would like to just end by sharing a brief segment of an email that was sent to me. I have been in this role only a few days and have a heard about a lot of issues, but I have actually heard about this from some of my constituents. And the comment I would like to share is, "This is their livelihood and most small business owners/operators are against this but will be forced out if they cannot comply." And I think we just have to take that very seriously and un-

derstand the things that we are considering here. So with that, Mr. Chairman, I yield my time. Thank you.

Chairman CHABOT. Thank you very much. The gentleman yields back.

The gentleman from Pennsylvania, Mr. Evans, who is the ranking member of the Subcommittee on Economic Growth, Tax, and Capital Access is recognized for 5 minutes.

Mr. EVANS. Thank you, Mr. Chairman.

I do not think, at least I know I am not, anyone is against jobs and growth. I think we all understand that the best answer to moving the country forward is opportunity. So the question I want to just—it is not really a question, it is a comment. I am going to ask you to react to it.

The question is it is important that we strike a balance to ensure that Federal regulations do not impede the growth of the trucking industry. At the same time the public safety of our truckers and those that share the road with them is critical. So I am asking each of you, give me some reaction to how do we strike that balance? Because all that are read in listening to my colleague in terms of the letter she just presented, I am interested in your reaction to how do we strike that balance?

Mr. WIEDERHOLD. Well, first off I would like to say that by enacting common sense regulations, like the entry-level driver training rule we have finally got into existence now to where drivers need to be properly trained and not just go to a school for a couple weeks, ride with a trainer, and a lot of times these guys are riding with trainers who have only been driving a truck a year themselves. I recall my own experience after one year riding with my father, it was still a lot to learn and I am still learning things every day. So those are ways that we can actually move highway safety forward by enacting common sense regulations on things and actually using sound, scientific data. So those are things that I think we could do.

Mr. DIGIACOMO. Yes. You know, we are all committed to safety. We are family-owned companies. I do not care if it is a Swift truck or C.R. England or whatever that has an accident, kills, or maims people, it hurts us to see families hurt. So we are committed to safety, which is why I am part of that safety training that we take all the time. Like he said, we learn things all the time every day in trucking and safety. You are always working towards being a safe driver. But as an example of how I think these ELDs are not the answer for safety is all these big motor carriers with the ELDs, hiring all these student drivers, their accident rates are very high and they have got some very serious accidents. And the Walmart driver that killed—I forget his name, but Tracy Morgan was the survivor, I guess. Okay, he was in his first 2 hours of driving. So it is like that ELD did not prevent that crash.

I was in an incident where I had plenty of time with an ELD-equipped truck to get to my last stop many years ago and I was on Route 2 in Western Mass going down that road, came up behind a dump truck and I started losing time. Going down the mountain he started doing 25 miles an hour. And the rule was if you go over your hours twice in a year, which I already had one, you are fired. I had to start whipping out over that center line looking for a place

to pass that guy on a downhill mountain which I would never do. I finally got past the guy and got down into town. I did not have enough time to pull into the place I was delivering to. I had to stop in the middle of the road, put my four-ways on, hit on-duty not driving. Did that five more times until I could get into that driveway with people cursing me. You are in the middle of a little road there and that is what the problem with ELDs is. When you are down to the second, to the minute, when you could have pulled into that place much safer, that is just one example of many I could give. But that is my input.

Mr. EVANS. Thank you.

Mr. PELKEY. Thank you, Congressman. Safety could not be any more important to any one of our members. We deal with low explosives on a daily basis. A lot of us are family owned. We have our sons, our daughters, our husbands, wives, that are involved directly in the business. So we take safety extremely important.

The other problem that we have is the inflexibility of government, and when you say striking a balance, the balance being that we work on holidays and not every industry is the same. We work on the Fourth of July, New Year's Eve. We do not find many long-haul transportation companies that are willing to take two, three, four, five boxes to a particular display site that may be only an hour away from a facility on that particular day. They are just not willing, nor do they possess the HMSF or are willing to pass on that expense and all of the regulations associated to it, but our member companies are and they do so at their personal family expense.

Mr. GARBINI. Congressman, one of the common elements from all the four testimonies was one size does not fit all. And I think there has got to be a greater examination on this rule to recognize that these light delivery trucks for short haul do not fall in the same categories.

Mr. EVANS. Thank you, Mr. Chairman. I yield back the balance of my time.

Chairman CHABOT. Thank you very much. The gentleman yields back.

The gentleman from Kentucky, Mr. Comer, is recognized for 5 minutes.

Mr. COMER. Thank you. Thank you, Mr. Chairman. And thank you all for being here today. This is a big issue in my district. I look at this rule, this ELD rule. This in my opinion is the equivalent of Dodd-Frank legislation on small community banks. This is the same thing that is happening with our small truckers. Most of the small independent truckers in my district feel like there are two reasons this rule became. It is because the bureaucrats think it is a good idea that have never been in the trucking business and the large, large trucking companies want it to have a further competitive advantage over the small guys. Whatever instance, that is not good for me.

I am going to give you an example of how this affects a huge industry in America, in Kentucky, and especially in my district, agriculture. In Kentucky, we are the largest livestock producing state east of the Mississippi. The further east you go you still have a lot of cattle. If you look at the price of beef cattle—I am just using this

as an example. The further away from Congressman Blum's district, Congressman Marshall's district you get, the cheaper the cost of cattle is. It can be the same type of cattle, the same weight, the same breed. The difference is the trucking cost to get it to the Midwest where the infrastructure is. When you transport livestock, it takes longer than 12 hours. We have a lot of livestock trucking companies in my district that take cattle from the east to the Midwest to where the cattle finishing takes place and the cattle processing takes place. If you do not allow a waiver if this rule is not changed for the livestock industry, the price of cattle will be zero the further east of the Mississippi you get. Because if you have to stop and unload those cattle—you cannot keep the cattle on the truck or any of the livestock on the truck because they will get disease, you have shrinkage, they are going to lose weight, they could die. So you have to find a place to unload all those cattle. People are not going to do that. That industry is going to be gone. The small farmers that you have in the eastern part of the United States. So I know that the Federal Motor Carrier Safety Administration issued a 90-day waiver for the ELD rule for livestock haulers. That waiver is helpful in the short term but it does nothing for the long term.

So my question is, what is the best long-term solution to ensure the safety on our roadways for livestock and to continue the viability of the big livestock industry we have, and not just in my district in Kentucky but throughout the eastern part of the United States?

Mr. GARBINI. Congressman, I am going to answer the same way I just did to Congressman Evans. And all four testimonies had the same common element to them that one size does not fit all. There has got to be a greater examination to give relief to situations like what you just described.

Mr. PELKEY. And I think an important point to bring out is my personal circumstance in the 33 years that I have been in business is that we are handed regulation and then are told deal with it.

Mr. COMER. Right.

Mr. PELKEY. And dealing with it tends to—you make mistakes. You are trying to comply. You are trying to figure out how to comply. And the end result is, however, we are inspecting you and you did not do steps three, four, and five correctly. You did one great. Your heart was in the right place. Your mind was in the right place but you just did not get the job done. Therefore, here is a \$2,500 fine and try to do better next time.

Mr. WIEDERHOLD. From my standpoint, even as just a consumer, and I actually broke into the industry hauling cattle.

Mr. COMER. You know what I am talking about?

Mr. WIEDERHOLD. Yes. Absolutely. I did not go quite the distance that you are talking, but still nonetheless, you are talking about livestock here. It is not a load of freight.

Mr. COMER. Right.

Mr. WIEDERHOLD. So, but as a consumer, you are talking about dealing with the food chain of our country. And the fact that we have such a great, efficient transportation system enables food to be delivered, all kinds of goods to be delivered at a low cost to the consumers. And if I might throw this in also, a lot of people talk about the funding of our highways and stuff today and not

really want to raise fuel taxes, but everybody benefits from that. You know, whether you never get out and drive on the highways, but if you are going to have stuff delivered from Amazon or whoever it is, and that is a big thing right now.

Mr. COMER. You know, the shopping season. So, that all plays into that, so that is something that we need to consider.

Chairman CHABOT. Thank you. The gentleman's time has expired.

Mr. COMER. Thank you.

Chairman CHABOT. Thank you.

The gentleman from Florida, Mr. Lawson, who is the ranking member of the Subcommittee on Health and Technology, is recognized for 5 minutes.

Mr. LAWSON. Thank you, Mr. Chairman. And welcome to the Committee.

One of the areas that you were talking about is one size does not fit all and I can see that we were talking about it more and more this morning. And I was trying to get my hands around it because when I was in college, I was at Michigan and I worked for this company called Avante Express where they traveled all over Michigan but we had very little training on those trucks before we were traveling all over Michigan. I was working with a guy from Czechoslovakia who could not speak English and I had a map and we went back and forth trying to make things happen and trying to—but at that time we could only be on the road about 8 hours. Today I think you can be on the road about, what, 11 to 12 hours? Eleven hours, okay. And so, but we violated all of the principles because a lot of times we just could not make it in an 8-hour spread but we had to really get back. My concern is there are a lot of regulations that you all have to confront it with, and with those regulations that you confront it with, what is the best thing that you can offer to this Committee that we can work on to make changes so that we do not put so much pressure on the small business compared to the larger trucking firms? And I think that is extremely important.

Mr. WIEDERHOLD. Well, you know, as small business truckers, we are not looking for any type of specific advantage, like we want the rules to apply to the big guys and not apply to us. We are not looking for that. We are all working within the rules we have right now. But the present hours of service has zero flexibility, and prior to 2003, we operated under maybe the rules you are talking about, the 8 hour. You could drive 10 hours and you had 8 hours off. You could take your breaks as you wanted to. You were not penalized because you did not lose worktime later on in the day because if you took a 2 hour break, your clock was stopped. Whereas today the clock does not stop. It keeps going. It only stops if you have 8 hours. So the present hours of service is a huge, huge hindrance, and again, it penalizes drivers for trying to take the opportunity to be safe. And with regard to like the 14-hour rule, I have had personal experience of having to skip eating someplace because I was not going to get to my destination in time before my 14 hour clock. You know, you are allowed 11 hours of driving and 3 hours of on-duty time or whatever. Actually 13-1/2 now because we have a 30-minute break rule that we have to take before we acquire 8

hours of on-duty time. And that is another source of frustration because many drivers, and I have not talked to anybody that sees any merit in that. That is one of those rules that is another one that you just scratch your head with.

Mr. DIGIACOMO. I would also agree with that. That is one of the biggest problems with the inflexibility and the half-hour break that they tell us we have to have with a combined 8 hours of on-duty and on-duty driving, what a big mess that is. In any other industry, a half-hour break is a lunch. Why do we not be able to take our lunch when we want to? And previously, the 10 hours that you could drive with the 8 hours off—and you could break up that 8 hours however you wanted to, and the teams today, that is why you do not have many teams anymore. You cannot break up your sleeper time. They relegate that other driver to the sleeper for 10 straight hours. That is torture. I have run team a long time years ago.

So here is what I think is really part of the answer is the ELD is not going to give safe results. It does not really get the result that we want. I will tell you what I think the answer is good, substantial training. A lot of these big megacarriers, I am not saying they all do this but they do not train the drivers really well and so that is why you have got guys going down Donner Pass and losing his breaks and they both flipped over and they are killed. You know, that is a famous video. So I am going to let the other guys speak.

Mr. PELKEY. Driving for us is incidental to our business. Most of our jobs are less than 2 hours from the site, so we are only driving on the road anywhere between 1 and 3 hours in any given day. And it is the reason why Federal Motor Carrier had granted us a 14-hour hours of service exemption during our busy Fourth of July holiday over that 11 day period because we have a proven safety record of on the road driving. And the reason for that is because of the uniqueness of our organization that all of our member companies that arrive to a display site, they do some work, they may take some time off, they may go to a hotel room, their own home, because there are different crews that do different phases of a particular job. But at the end of the day they have only driven an hour. They may have to drive a half an hour to get their equipment back home, but it would be within that 14-hour period.

Chairman CHABOT. Mr. Garbini, did you want to get an answer in there real quickly?

Mr. GARBINI. I just wanted to comment that I think your search here and questions trying to find a solution for this are well founded. It lays with, quite frankly, working with industry on the small business side to come up with rules that make sense. I will leave it at that.

Chairman CHABOT. Thank you very much. The gentleman's time is expired.

Mr. LAWSON. I yield back.

Chairman CHABOT. Thank you very much. The gentleman from California, Mr. Knight, who is the chairman of the Subcommittee on Contracting and Workforce is recognized for 5 minutes.

Mr. KNIGHT. Thank you, Mr. Chairman. Just a couple things. I come from California. We have gone through a litany of different

things that we can embattle the trucking industry. The particulate filters that we have gone through over the last 8 or 10 years, I was in the legislature when that happened and a lot of the companies came forward and they bought those early particulate filters. A lot of engines were catching on fire. Their MPG was going down. Their ability to haul was going down. It was amazing those first couple years. Now we have kind of gone into the new filters and it is still a mess in California over many different areas of conversation. And then we went through the new motors. You could only have a certain amount or certain types of motors. And so the trucking industry wanted to come forward and buy the latest one to get them the furthest down the road. And so we dealt with many of the big manufacturers and said by 2025 you have to have this motor. And so the industry said we would just like to buy that. Well, the interesting thing was they did not build that motor at the time and so they had to buy the next stage of motor and then the next stage. And it just turned into a big mess. It is still a big mess in California. So we have gone through this and we have not listened to the trucking industry. We have listened to the politicians to write the laws and you have got to deal with it.

So all that being said, on the ELD, is there ever going to be a time where you say that we have got to upgrade to something that will be better for the trucker, better for the industry, better for the owners? And it will be of this higher advanced over maybe just taking your log, maybe doing it on your own and things like that. Or would you say that the log and how it is done today is the best way that we can do it? And that might come from the industry. That might come from owners.

Go ahead, sir.

Mr. WIEDERHOLD. Well, we are not against the technology by any stretch. We are just against it being mandated because, again, as speaking to the bulk of our membership being single-truck owner-operators, and I spoke to before, there is only going to be a cost. There is not going to be a savings because, I mean, outside of a guy is just lazy as far as figuring his fuel taxes, if you wanted to have a program that takes care of your fuel taxes that you are going to pay \$40 or \$50 a month for to keep track of then maybe, but I mean, the technology itself we are not against but the mandate is what we are opposed to.

Mr. KNIGHT. Okay. Sir?

Mr. DIGIACOMO. Yes. I would say that in the FMCSA's own words there is only a small percentage of drivers that are abusing the system. There are some problem drivers, just like if you have guys who are convicted of DWI in a town. Well, put a breathalyzer in their car. Do not put it in everybody's car. Why penalize everybody if they do not want it? How about if it was a choice? If it is going to benefit my business and help me to be safer, I will definitely buy it if it is going to help me be safer. But in my personal opinion, drivers that have been in this a long time and have great safety records, no serious instances of irresponsible driving, they do not even need a log book. They have been in it long enough. They have the maturity to run without a log and they would still be safe. So at some point I could see possibly looking into it if it is going

to benefit me, and if it will really contribute to my safety. But the hours of service is the biggest problem right next to—

Mr. KNIGHT. Okay. And a quick question on my last minute here. The industries, do the trade organizations and the industry come forward with ideas every year to say, hey, look, this is going to make us safer, this is going to make us more efficient, this is going to make it so we can make more money? All of those things are very important.

Mr. PELKEY. And I guess I would put it on behalf of our American Pyrotechnics Association has put forth continuously, have worked tenaciously as far as getting and working with Federal Motor Carrier on giving options. And I think a lot of that has been given back by Federal Motor Carrier by granting our hours of service exemption. So we have proven as an industry and worked with Federal Motor Carrier to say that yes, you have a very safe record over this strong period of time that you do business. But many of our members only have one or two trucks. And I do not think that they have a problem with those particular ELD mandates for those particular trucks, but we were at 90 percent, I believe 3,600 rental trucks that we rely on from vans, 15-foot trucks, to 26-foot trucks from Budget, Ryder, Penske, whatever they may be, to transport for 2 weeks out of the year to put equipment in and out of these trucks on a daily basis depending on what status a particular driver is in is just too problematic and just something that Federal Motor Carrier just does not want to deal with.

Mr. KNIGHT. Thank you, Mr. Chair. I yield back.

Chairman CHABOT. Thank you. The gentleman yields back.

The gentlewoman from North Carolina, Ms. Adams, who is the ranking member of the Subcommittee on Investigations, Oversight, and Regulations, is recognized for 5 minutes.

Ms. ADAMS. Thank you, Mr. Chairman. And thank you, gentlemen, for being here and for your testimony. A common theme among those opposed to the ELD rule is that they are too costly for small businesses to afford, but just a cursory reviews shows that there are several ELD options that come with no upfront costs and with monthly service fees as low as \$10. In addition, the FMCSA estimates that drivers will save approximately 20 hours per year in time they otherwise spend filling out paper. And everything is kind of moving toward computers and technology. So why would they not benefit from adopting the ELDs? I mean, I have listened attentively but it seems to me it is just a change from paper to something else. So anybody can comment.

Mr. WIEDERHOLD. Well, as far as it goes, you know, the ELD, you still have to put in things on your log, like your bill of lading model, who the shipping is, what kind of cargo you are carrying. Those things will still have to be entered whether you have a paper log or an ELD log. And this savings of time is mythical at best. I am sorry, but when I am doing my log as I keep it up during the day, it is probably 3 or 4 minutes maybe at that. And so there is not going to be this savings in time that they talk about. And drivers do not get paid by the hour anyway; they get paid by the mile or the load.

Ms. ADAMS. Okay.

Mr. DIGIACOMO. I would also say that those statistics that they give, you might want to check who gave that statistic. Maybe it is the manufacturer. Rand McNally is the biggest name. They claim to be the world's leader in maps because of their relationships with states and local municipalities, yet I have owned two of them for several years and I can tell you that the glitches and problems with that are consistent. They are never-ending. They are not accurate and they never should have been put out on the market. And that is what you are going to end up with is a gadget that is going to have problems. And that is why we still have to carry, according to the ELD mandate, we still have to carry a paper log in the truck. Why? Well, they are not going to work all the time.

And the other issue is if you are going to invest in something, you want to make sure it is going to be working all the time and not a problem to your truck. I have not done a lot of research on them because my truck is too old. I am not going to put one in. But a buddy of mine told me about the company that he is leased to is forcing all their drivers to take this one and it comes with a disclaimer, if you have any problems with the engine light coming on or any engine problems that occur, quickly disconnect this. Well, what are you going to do, pull over? Okay. So all these companies that are coming out with these, what kind of quality are they? Are they guaranteed to work? There you go. That is good.

Ms. ADAMS. Thank you. Yes?

Mr. GARBINI. My comment is that having an electronic logging device mandated on all vehicles, again, regardless of the size of the company or the length of drive that each one of the drivers may have in a day, is kind of a rationalization that electronics are going to be the solution. A company has to be committed to safety to begin with, and if they are doing that, and I think the question earlier from the congressman on the other end here, if the company is committed to safety, the paper log is going to work fine. The whole issue is really making it mandatory.

Mr. PELKEY. And in our particular industry we, in the fireworks industry, in the American Pyrotechnics Association, we do not really have an hours of service problem. And we do not have a safety issue problem that we have, especially over the 2-week period of the Fourth of July, and the cost, many member companies have been using ELDs for probably, off and on over the last year and a half, and there are a cost. There are costs associated because you have a monthly fee, whether you rent it, you purchase it, and then a database fee for each individual driver. So that ranges anywhere between \$200 and \$300 per year per driver.

And then on top of that, if they do not fill it out properly, in our uniqueness of our business, and if they have too many out-of-service conditions, what will happen is they will lose their Hazardous Materials Safety Permit. For the fireworks industry, that is their lifeblood. You might as well take their driver's license away and they are done. And that is the caveat that Federal Motor Carrier has over many of our member industries.

Ms. ADAMS. Thank you, gentlemen.

Mr. Chair, I yield back.

Chairman CHABOT. Thank you. The gentlelady yields back.

The gentleman from Texas, Mr. Babin, who is the sponsor of the ELD Extension Act of 2017 is recognized for 5 minutes.

Mr. BABIN. Yes, sir. Thank you, Mr. Chairman. It is a pleasure to be back in here.

Recently our office had sent a letter to the president asking for a delay for all sectors of the trucking industry until April 1st. And since then DOT has granted a waiver for 3 months to ag haulers and cattle haulers. And so I think that is proof that DOT certain has the authority to grant a waiver to whomever they wish in this process. I would like to hear from what each of you think. Would that be something that you would be in agreement that all sectors of our trucking industry should have a waiver of a temporary period of time, like the 3 months that the cattle and the ag haulers have.

Mr. WIEDERHOLD. Yes, I would agree with that. I mean, I think it is a laudable thing. I think that it actually needs to go farther than that but any reprieve to work out some of these problems associated with it would be welcome.

Mr. DIGIACOMO. I would agree in that it does need to go further. And just a quick comment, if logs were the answer to safety, why does the government on FEMA loads throw out the logbook for all of the drivers if we are running FEMA loads and there are 26 states still operating with all these trucks bringing emergency relief, fuel, propane. These guys are running way over their hours. It is not a problem. What happens if my customer has a problem with a plant shut down and I have got to get something there so people will not be out of work? What is the difference between what the government allows and what our customers might need?

Mr. PELKEY. And currently, APA members are granted a 14-hour hours of service waiver for an 11-day period over the busy Fourth of July holiday. And any ELD use that we are mandated to use basically nullifies that waiver that they have already admitted that we have a very safe track record and have established that over at least a dozen or so years of an impeccable safety record associated with that time period that we celebrate and perform these displays that probably the Nation's fireworks displays, 70 percent of all displays performed in that 2-week period.

Mr. GARBINI. I think your example of the relief that was given to the haulers, the livestock haulers is evidence again that the Federal Government and the agency, Federal Motor Carrier Safety Administration, have recognized that there are some flaws to this whole thing. There needs to be time taken with a stay on the entire process and have industry work with the regulators to come up with common sense. One size does not fit all across the board.

Mr. BABIN. Absolutely. And then, you know, I would also say to my colleagues that if a company likes their ELD and there is a history of it, and some of these companies really do, but I have talked to far more of my constituents and also outside my district who drive that they have grave concerns about the unknowns and the question marks regarding it and just how safe it is. But if it saves a company money, if it actually does make the highways safer and each individual company finds that, then certainly I am not trying to abolish by any stretch of the imagination ELDs. Keep using them. In the words of our previous administration, if you like your

ELD, you can keep your ELD. So that is all that we are trying to do and that is to get a little time, find out how these things work, get some testimony. We know that the previous administration said that there would be a \$2 billion compliance cost on this thing. And so I think it is not unreasonable to ask for a waiver for a short period of time until we can answer these questions.

Anyway, thank you, Mr. Chairman. I yield back.

Chairman CHABOT. Thank you very much. The gentleman yields back.

And I want to thank the panel for their excellent testimony here this morning and now this afternoon.

There is no question that the American economy relies heavily on the trucking industry and so therefore, this is a very important issue for us to consider. We, of course, understand that there is some disagreement between some of the small, probably all of the small trucking companies and some of the larger, and obviously the association that is one of the more significant ones in the trucking industry, too. But we thought that we ought to do our part as the Small Business Committee to make sure that there was an opportunity there for you to let this Committee know and we will let our colleagues know what we are hearing. And as I stated at the beginning, we are also inviting those with an opposite point of view to submit in writing their point of view so we can consider that as well.

And I would ask unanimous consent that members have 5 legislative days to submit statements and supporting materials for the record.

Without objection, so ordered.

And if there is no further business to come before the Committee, we are adjourned.

Thank you very much.

[Whereupon, at 12:35 p.m., the Committee was adjourned.]

**A P P E N D I X**

**Testimony of Monte Wiederhold**  
**President B L Reeve Transport, Inc.**  
**before the**  
**United States House of Representatives Committee on Small**  
**Business**  
**“Highway to Headache: Federal Regulations on the Small Trucking**  
**Industry”**  
**November 29, 2017**

Chairman Chabot, Ranking Member Velazquez, and Members of the Committee, thank you for providing me the opportunity to testify today. My name is Monte Wiederhold and I began my career as a professional truck driver in 1973. I have been a small business owner since 1993 and I am the President of B L Reeve Transport, Inc., located in Maumee, Ohio. My business is a small fleet, employing only 7 truckers, who like me, are owner-operators. Additionally, I have been a member of the Owner-Operator Independent Drivers Association (OOIDA) since 1983 and currently serve on the organization’s Board of Directors. I am also a proud constituent of Chairman Chabot’s and appreciate his interest in this subject and long-time support for professional drivers.

Small trucking businesses represent 96% of registered motor carriers in the United States. We are undoubtedly the safest and most diverse operators on the nation’s roads. Our activities impact all sectors of the American economy on a daily basis. We move everything and anything—from agricultural products and household goods to military equipment and energy resources.

Despite representing such a sizeable portion of the trucking industry, the federal government has never fully grasped the importance of our diversity, and continues to burden small business truckers with a “one-size-fits-all” approach to regulations. Time and time again, this approach punishes small businesses, stifles competition, and overregulates an industry deregulated by design. Too often, these costly and burdensome regulations are advanced at the behest of corporate motor carriers, who use the legislative and regulatory process to gain competitive advantages over smaller operators like me.

Frequently, regulations promoted by these large fleets are disingenuously billed as silver bullet solutions to enhancing highway safety, despite a distinct lack of reputable evidence to support their claims. In reality, they are economic weapons used to squeeze smaller competitors out of the trucking industry by increasing their operating costs. Continuance of the “one-size-fits-all” approach has left the federal government complicit in driving the safest truckers on the road out of the industry through overregulation.

### **Electronic Logging Devices (ELDs)**

While Congress and the new administration has recently been successful in providing relief for small trucking businesses on several key matters, it has surprisingly failed to adequately address serious concerns involving the most disruptive and expensive trucking regulation in history—the electronic logging device or ELD mandate.

The ELD mandate is estimated to cost a whopping \$1.8 billion annually, yet provides no safety or economic benefit for small-business truckers or the wide range of customers who rely on truck transportation. The rulemaking was approved based upon the false premise that ELDs will increase compliance with Hours-of-Service (HOS) regulations and thereby reduce the risk of fatigue-related crashes. Simply reviewing the poor safety records of large fleets that have utilized ELDs for years will expose the fact these devices do not achieve those purported safety benefits. Even analysis by the Federal Motor Carrier Safety Administration (FMCSA) in 2011 and 2014 determined there is no discernable improvement to highway safety or decrease in HOS violations related to ELDs.

The small number of large carriers that benefit from the utilization of ELDs are already using the technology to monitor their productivity. As a result, implementation of the mandate will force small businesses to bear a majority of the nearly \$2 billion price tag associated with the installation of these devices. For owner-operators, these costs will supplant a portion of investments otherwise devoted to maintenance, equipment, and other critical safety upgrades.

While small-business truckers are adamant the ELD mandate must be repealed, we are also concerned by serious complications associated with its implementation, which is currently scheduled for December 18, 2017. Many significant technological concerns remain unresolved, including the certification of devices, connectivity problems in remote areas of the country, cybersecurity, vulnerabilities, and the ability of law enforcement to access information. Perhaps most alarming, ELD manufacturers are currently able to self-certify technology without validation by FMCSA, creating vast uncertainty within the regulated community.

As owner-operators, some of the truckers who drive for B L Reever will be purchasing their own devices, based on their unique needs and budgets. Throughout their decision-making process, they have shared considerable concerns with me about the self-certification of devices and the uncertainty it causes. Unfortunately, the lack of FMCSA validation has created an atmosphere in which drivers have more confidence in identifying devices that are not wise investments than those that will ensure compliance.

FMCSA has also failed to adequately train law enforcement. Recently, the Commercial Vehicle Safety Alliance (CVSA), which represents motor vehicle safety officials, announced they would conduct ‘soft’ enforcement of the mandate through April 2018. Because the serious concerns of professional drivers have not been satisfactorily addressed, we believe it would be reasonable and responsible

for Congress and the Department of Transportation (DOT) to pursue a delay in implementation or suspend the mandate until these problems are fully resolved.

Concerns involving the ELD mandate and its flawed implementation are not isolated to OOIDA and small-businesses truckers. Over 30 organizations, representing a wide range of industries, have joined our calls for delaying the regulation. Many more, including large fleets who championed the mandate, have encountered serious difficulties with the regulation and pursued exemptions from its requirements. The sheer number of businesses desperate for relief perfectly illustrates what happens when the federal government recklessly embraces the “one-size-fits-all” approach to trucking regulations.

Last week, OOIDA submitted a request to DOT to exempt small trucking businesses with exemplary safety records from the mandate for a period of five years. Under the request, only motor carriers defined by the Small Business Administration (SBA) as a small-trucking business would qualify for relief from the \$2 billion regulation. Additionally, the request stipulates that only motor carriers with a record of no at-fault crashes would be exempted and those with an ‘Unsatisfactory’ safety rating from FMCSA would not be eligible.

If granted, this exemption would provide temporary regulatory relief to America’s safest professional drivers, who have already demonstrated exceptional safety records that far exceed the large fleets who have been utilizing ELDs for years. Furthermore, it would prevent small trucking businesses, who operate on the slimmest of margins, from installing and maintaining costly fleet management devices that provide them no economic or productivity benefits.

Because this request is undoubtedly consistent with the Trump Administration’s efforts to provide regulatory relief for American businesses of all sizes, we are hopeful DOT will grant it prior to the mandate’s December 18th implementation deadline.

### **Hours-of-Service**

All the negative attention associated with the ELD mandate has exposed the fact today’s Hours-of-Service (HOS) requirements are a significant and foundational problem for anyone involved in trucking. HOS standards are poorly designed and do not allow truckers to operate in the safest and most responsible manner. The overly rigid and restrictive requirements fail to provide the flexibility drivers need to rest when they are fatigued, avoid congestion and evade dangerous highway conditions. Instead, these rules force truckers to drive farther and faster.

Drivers’ frustration with HOS is extensive throughout our industry, with many truckers feeling as though they are constantly racing against the clock. Because we are typically paid by the mile, rather than the hour, today’s HOS requirements effectively penalize drivers for stopping to rest, addressing equipment issues or even eating. With concerns about my daily allotment of drivable

hours evaporating, I have skipped meals on the road to ensure I am able to reach my destination without jeopardizing compliance. Excessive waiting times for loading and unloading also use up a great deal of these available hours, as shippers and receivers have no incentive to refrain from wasting a driver's time. And they often do so since it costs them nothing to make a driver wait. Truckers often are told by policy-makers to "plan our days better", but that is virtually impossible in a setting where the rest of the supply chain is not held to the same regulations. Shippers and receivers care nothing about the 14-hour clock, making trucks essentially rolling warehouses that they will load or unload when convenient.

Unfortunately, all the problems associated with HOS are compounded by the lack of adequate truck parking in every corner of the country—one of the most serious and overlooked safety issues in trucking. On the road, I routinely begin my quest for an increasingly elusive open parking space with about 60 minutes left on my clock for fear my hours will expire before I find a safe location to stop. While I am not compensated for the time needed to find safe parking, I would certainly be penalized if I exceeded my HOS while searching. The lack of sufficient parking, coupled with the rigidity of HOS requirements, effects not only the safety, but the finances of drivers.

In recent years, Congress has taken steps to improve HOS, but more can be done to create a system that benefits both drivers and highway safety. Unlike other issues that often generate contention among large and small motor carriers, efforts to modernize HOS requirements would likely garner broad support, as the current standards burden businesses of all sizes and varieties.

While professional drivers are dismayed by the lack of relief Washington has provided on the ELD mandate and what little progress has been made on HOS, we are pleased by recent developments in other policy areas that affect our operations on a daily basis.

### **EPA Greenhouse Gas Emissions, Phase 2**

Earlier this month, the Environmental Protection Agency (EPA) indicated it intends to exempt glider kits from Phase 2 of its greenhouse gas emissions standards for heavy vehicles. This news was applauded by owner-operators, who are more frequently purchasing glider kits because of their reliability and affordability. Excessive and costly federal regulations like Phase 2 have dramatically altered small businesses' ability to purchase new or recently owned trucks. Since 2002, federal emission reduction standards have increased the cost of a new truck between \$50,000 and \$70,000, as additional environmental components and systems have become required. Given a glider kit's unique assembly, prices for these vehicles are typically 25-30% less than a new truck, allowing independent owner-operators to save tens of thousands of dollars on their purchase.

While glider kits provide appealing cost savings for drivers, they are also reliable, efficient, and meet all of the required environmental and safety standards necessary for operation. If applied to

glider kits, Phase 2 would have completely destroyed the domestic manufacturers of the equipment, jeopardizing quality jobs and eliminating the ability of small trucking businesses to acquire the vehicles that meet their needs.

We are pleased by the EPA's change of heart on the regulation of glider kits, but it's important to remember this unique problem was the result of a much broader issue involving environmental regulation in the trucking industry. As a small-business trucker, fuel is my largest expense. Operating on the slimmest of margins, I am constantly looking to reduce my fuel costs when it makes economic sense to do so. I don't need the EPA to mandate requirements, like Phase 2, to improve my efficiency because I'll make those improvements on my own, when I can afford them. Additionally, truck manufacturers have an economic incentive to develop and market vehicles that help drivers improve efficiency and cut costs. Environmental requirements that provide no improvements to efficiency also disproportionately impact small-business truckers, who, unlike large fleets, are less capable of phasing-in new technology over time or purchasing multiple units at discounted rates.

With its recent decision on glider kits, the EPA has signaled it is moving away from its "one-size-fits-all" approach to the Phase 2 rule, but a fundamental change in the agency's overall philosophy on trucking regulations remains necessary.

### **Minimum Insurance Liability Coverage**

In another victory for small-business truckers, the Trump Administration this summer withdrew a proposed rulemaking on increasing the minimum liability insurance level for motor carriers.

Today, motor carriers are required by law to carry \$750,000 in liability insurance, though most small trucking businesses maintain policies that provides \$1 million in coverage. Despite the fact less than 0.2% of truck-involved accidents result in property and personal injury damages that exceed current minimums, some large motor carriers and trial lawyers have sought to increase levels to well over \$4 million. Because many of our nation's largest fleets are self-insured, many would hardly be impacted by these increased costs. This is precisely why several corporate motor carriers support calls for dramatic increases to insurance minimums—they understand a 500% spike in policy premiums would essentially be a death sentence for their small-business competitors like me.

To ensure the survival of hundreds-of-thousands of small trucking businesses, elected officials must follow the administration's lead and reject efforts to dramatically increase minimum liability insurance.

### **Driver 'Shortage'**

Recently, corporate motor carriers have peddled the myth of a national driver shortage as a means to advance legislative and regulatory priorities that would actually harm drivers. The real prob-

lem in today's trucking industry is an astronomically high turnover rate and overcapacity of trucks—both perpetuated by large fleets.

In its quarterly report, issued earlier this fall, the American Trucking Associations (ATA) indicated the driver turnover rate among large truckload carriers is a whopping 90%. Some individual fleet are currently experiencing embarrassingly high turnover rates above 100%. With FMCSA reporting over 440,000 new CDL holders entering the workforce each year, the problem clearly isn't finding enough drivers, it's keeping them behind the wheel. This churn of drivers is exacerbated by large fleets, who continue to drive down trucker compensation and do little to improve increasingly difficult working conditions.

Overcapacity is also widespread among the large fleets. While pleading for help from Washington to address the mythical driver shortage, corporate motor carriers routinely blame the overcapacity of trucks within their own fleets for lower than expected earnings. Clearly, there are more trucks on the road than freight to haul.

If I lost a driver in my fleet tomorrow, I would certainly have a difficult time replacing him or her—not because there is a lack of CDL holders looking for employment, but because I prefer to hire drivers who have demonstrated a history of reliability and responsibility. Conversely, corporate motor carriers would rather advance legislative and regulatory proposals that help them put younger, less experienced and poorly trained drivers behind the wheel.

When being sold policies to increase CDL holders in the workforce, Congress must consider the real world implications of these short-sighted proposals. Often, these policies are meant to enhance corporate revenue at the expense of drivers and highway safety.

### **Unified Carrier Registration System**

While not a regulation, I would be remiss not to address drivers' ongoing frustration with the Unified Carrier Registration (UCR) system, a federally-authorized tax imposed on truckers that no longer serves a purpose and is administered with a distinct lack of transparency. I am particularly familiar with the system and its myriad shortcomings because I serve on the UCR's Board of Directors, which is comprised of federal and state officials, as well as representatives of the trucking industry.

The system was established in the 2005 highway bill, known as the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), for the purpose of maintaining a single national register of motor carriers conducting interstate travel. Drivers have many concerns with the system, starting with the significant inequity in the assessment of fees. The current tax structure is particularly burdensome and costly for single truck operators or small fleet carriers, who unjustifiably pay higher taxes per truck than large fleets.

Transparency within the program is severely lacking. Often, it is difficult to determine precisely what programs UCR taxes are supporting within the 41 participating states. We do know many states use UCR revenue as a non-federal match for Motor Carrier Safety

Assistance Program (MCSAP) funding, which is devoted primarily to enforcement. Essentially, these states are utilizing a federally-authorized tax on motor carriers to leverage additional federal funding for the policing of them.

Unfortunately, the UCR board, which oversees the entire system, is incapable or unwilling to address the concerns of truckers routinely voiced by their representatives on the panel. The time has come for Washington to take a closer look at the UCR and determine whether the system remains necessary. Since its inception, UCR has never been audited by the DOT Inspector General. A federal audit of how states are using UCR revenue and MCSAP funding would be a constructive first step to determine if the system is meeting its objectives. Congressional oversight of UCR is also badly needed and should occur more regularly. Since its launch, the system has never been the focus of a Congressional hearing. Improved oversight of UCR would help elected officials better understand the system and its impact on motor carriers.

### **Conclusion**

Mr. Chairman, thank you again for the opportunity to testify. Because our industry is so heavily regulated and intrinsically complex, there are many, many more issues I would love to bring to the Committee's attention today. Instead, OOIDA will be submitting more information for the record.

I look forward to hearing my fellow panelists testimony and answering your questions.

Hearing  
U.S. House Small Business Committee  
"Highway to Headache: Federal Regulations on the Small Trucking Industry"  
November 29, 2017

Testimony of  
Marty DiGiacomo  
Owner  
True Blue Transportation  
On behalf of the National Association of Small Trucking Companies

Mr. Chairman and Members of the House Small Business Committee, thank you for the invitation to speak to you today about the federal regulatory burden that small trucking companies face. I'm pleased to share insights on behalf of the National Association of Small Trucking Companies (NASTC).

NASTC represents more than 8,000 small motor carriers like me. These companies' fleets range from 1 to more than 300 power units, the average size being 16 power units. NASTC members operate in the for-hire, long-haul, full-truckload, irregular route segment of trucking. NASTC and its members regard safety as a top priority.

In his Harrisburg, Pennsylvania, speech on Oct. 11, President Trump said he wanted to cut regulations so we truckers can be freed up to do our jobs and run America's freight. We couldn't agree with him more. The most pressing (and oppressive) of all these burdensome regulations, currently, is the Electronic Logging Device (ELD) mandate set to begin Dec. 18. I've been trucking almost 40 years, and I can assure you, ELDs are not going to improve safety in any significant way for most of us— they are actually going to be counterproductive to safety, as I will explain with recent real-life situations, as well as other serious ramifications.

1. There have been no studies that conclusively show they will make driver's safer.
2. They actually produce more stress, frustration, and pressure on many drivers resulting in real fatigue — just the opposite of what ELDs are supposed to curtail.
3. ELDs often force drivers to drive when they are tired and "rest" when their bodies do not physically need to.
4. ELDs will force drivers to drive dangerously, causing more accidents, not less.
5. There is no ROI for many owner-operators who will be paying for something we don't want or need.
6. This mandate was not even initiated by the FMCSA, but by two senators who did not consult with enough real truckers beforehand for detailed and valuable input.
7. This is being pushed by special interest groups and companies that will benefit financially and large carriers (who force their student drivers to use ELDs and

speed limiters), who have blatantly stated and admitted that their motive is to reduce the competition by "leveling the playing field."

8. ELDs will cut into the paychecks of drivers and profits of small companies — unnecessarily.
9. Coupled with multiple recent changes to the Hours of Service (HOS) rules (which also need serious attention), ELDs have caused a large problem with diminishing available truck parking all over the country.

#### ELDS ARE DANGEROUS!

As an example of how ELDs work against safety, let me share a personal story. I drove in the early 1990s for a food service company that had ELDs. If you exceeded the HOS more than once in any 12-month period, it was grounds for automatic dismissal. On one occasion, I was on my way to a delivery in North Adams, Mass., on Route 2. I had enough time to get to this stop, but got behind a sluggish dump truck on the two-lane road and began losing time. To make matters worse, on the descent down the mountain into North Adams, the dump truck slowed to 25 mph all the way down, causing me to lose more precious time.

Keeping watch on my computer, I knew I was not going to make the stop before my ELD clock ran out of driving hours. I began edging over the center line periodically to see if I could pass. After about five of these dangerous maneuvers, I saw my chance and whipped out and hammered on the pedal and got past the dump truck with minimal spare time to clear an oncoming vehicle. I would never have done this stupid move had it not been my predicament of facing firing from my job!

If that wasn't enough, I still was not going to get to the restaurant delivery in time and had to stop the semi, short of the destination – in the middle of the road – and hit the "On Duty, Not Driving" button on the ELD. Then, I had to wait until it kicked in (about a minute) until I could move the truck ahead a few more feet, stop the truck before the ELD could record "On Duty, Driving" and hit the "On Duty, Not Driving" button again. After three of these idiotic, but necessary, maneuvers in the center of the main road into town, I had to repeat it two more times in the parking lot of the restaurant until I could get the truck positioned for delivery, highly upsetting people in the cars trying to get out of the driveway, thinking I was some kind of idiot.

Can we get PA systems put on all trucks with ELDs so we can let the public know why we are sitting in the middle of the road making their day a bit more miserable? After delivering, I couldn't drive my truck to the nearest motel, either. I had to call a cab, gather up all my gear, and leave the truck in the parking lot of the restaurant. If this was my personal truck, I may not be too thrilled at leaving it in certain areas, let alone the extra expenses of a taxi and motel.

#### PRESSURES, STRESS, UNSAFE CONDITIONS AND FINANCIAL BURDENS

As another example of the stress and undue pressure put on company drivers with ELDs, I have seen a great increase in trucks speeding through truck stops, which was never the case in previous years. Talking to some of these drivers, I've learned that they are frantically looking for a parking space so they can avoid exceeding their driving hours and start their off-duty time, or in a hurry to get going to maximize the driving hours they have left. In fact, this was the very reason my rig was hit at a truck stop a few months back by a Western Express driver, who was so nervous about his clock running out. He hit my trailer so hard with his trailer tandems that his trailer was put out of service with a damaged axle, blown tire, and severely bent wheel. My trailer damage exceeded \$5,000. Who pays for my lost time while it's in the repair shop?

Other drivers in truck stops have told me they were just minutes short of getting to their delivery appointment, but had to shut down due to their ELD and were waiting for their company to schedule another appointment the next day – or, in other cases, it might be two days away. Nobody gets paid while sitting to reschedule. In many cases, missed appointments also carry monetary penalties from the broker and/or customer. Lost time, lost revenue. Why?

#### SPECIAL INTEREST GROUPS

Companies like Rand McNally put their truck-specific GPSs on the market with claims that since they are the world's leader in maps and have relationships with states, counties, and municipalities, they have the best map information, yet their GPSs have many errors, malfunctions, and glitches. They have asked users to send in any corrections and recommendations to them to be applied to future map updates – which they only do about once a year. It seems to me that ELD vendors should use their own employees to iron out the wrinkles and mapping mistakes in the devices before they put them on the market. Instead, they use free labor by utilizing truckers who send in the corrections – and they still aren't right.

#### LIFE-THREATENING SITUATIONS — PARKING ISSUES

At times, drivers will be forced to park in areas they are not familiar with as their hours run out. These could easily be in unsafe environments or neighborhoods. At other times, gates may be locked upon nighttime arrivals or companies may not allow truck parking on their lots. With no or little driving time left on an ELD, a driver may be forced to park where it is not safe. One case in point is the June 27, 2012, murder of 31-year-old trucker Michael Boeglin, who was not allowed to park on the shipper's property overnight where he was due to pick up a load in the morning.

#### CONSEQUENCES OF INADEQUATE OR UNACCEPTABLE PARKING SITUATIONS

ELDs do not recognize the personal needs of drivers in regard to overnight parking. An ELD can stop our driving at a location that does not have adequate facilities for basic physical needs or the truck stop we end up at very often may not have any available parking spaces left. Now what do we do? There can be no "rest" for us if we cannot wash up before and after our sleeper hours. If we need to use a restroom during any of our off-duty time, and there is none available, it is unacceptable. In addition, drivers getting out of their trucks at night to "water down the tires" have been given tickets for

exposing themselves in public, often having to register as a sex offender! A driver should be able to relocate from a dangerous or inadequate place if he sees the need, but the ELD will not allow for that.

#### MISTREATMENT BY LAW ENFORCEMENT

Some law enforcement officers will wake up a sleeping driver just to do an inspection on his truck or look at his log book. This should never be allowed. Some states, like Maryland, enforce a 2-hour limit at their rest areas. They force us to move or ticket us. If we're out of hours, we're out of hours and nobody should be able to wake us up, let alone send us back out on the road when we need rest.

#### BENEFITING MEGACARRIERS, NOT SMALL CARRIERS AND OWNER-OPERATORS

Many of the megacarriers that have installed ELDs in all their trucks have a large number of student drivers entering (and exiting) their ranks. For this reason, these companies are taking the thinking, computing, and calculating out of drivers' daily routine, and that's fine. Since the most recent HOS changes have made it almost impossible to comply, I can understand why these companies would rather not have their new drivers constantly using a calculator to compute their daily hours, sleeper berth hours, weekly limits, reminders for the half hour "break" at the mandated time, etc. It fits their needs well, but for these companies to be pushing for the rest of us to have to use ELDs – in their own words to "level the playing field" — is self-serving and manipulative. Maybe they should consider allowing their more experienced, safe drivers the option of using them!

#### ABUSE OF ELDS BY CARRIERS

For a few months, I worked for another megacARRIER that consistently put us drivers in pressure cooker situations by sending us out on a final local run to finish the day where it was obvious, unless everything went like clockwork, we were not going to get back in time to the terminal. Drivers would push their driving so they could get back and go home for the night. It didn't matter if we were 50 miles out, 5 miles, or a few blocks from the terminal, we'd have to pull over and call dispatch. We'd sit and wait (sometimes on the side of the highway) until someone could come out to drive the truck back while we drove the service truck back. Then came all the added time for the extra entries and paperwork of involving an additional driver to the ELD log. Talk about frustration! Drivers could have been home a lot earlier and enjoyed maybe a meal with the family and gotten to bed earlier. But not with an ELD!

#### HOS PROBLEMS COUPLED WITH ELD MANDATED BREAKS

The current HOS rules contain unhelpful requirements that cannot give us the rest we need. The rules often require us to sleep when we are not tired, drive when we are tired, and take the half-hour "break" (in any other industry, a half-hour break is a "lunch break"). The HOS rules should let us take our meal breaks when and where we want to, not when a computer tells us to! I long for the old days when drivers could actually look forward to stopping at their favorite truck stop or diner to take a real rest or meal

break. Then, you could sit and visit and converse with other drivers and familiar servers, and you'd get revived to go back out and drive. A stop like that is something we can plan ahead for and rejuvenates us. I think drivers can better determine when they need a meal or a rest break than when a computer schedules it. I have seen many drivers waiting at truck stops, rest areas, or at shippers and receivers, twiddling their thumbs, just waiting till their "off duty" hours were accumulated, so they could start, or get back to, driving. That's not rest, but it's the HOS rules!

#### ALL TRUCKERS ARE NOT THE SAME

ELDs can never tell you when you're tired. I have driven team with numerous drivers while I was a company driver. One driver may love driving into the sunrise while another will get very drowsy once that "red ball" comes up. I love driving at night, but hate driving into the morning light. That's when I get most drowsy. Other drivers thrive on it. Some drivers need a full 8 hours sleep, while others live off 6 or even 4. I once worked with a driver that could only sleep 2 to 4 hours a night. He was up and ready to go! Personally, I prefer now to sleep until I feel ready to go. I might be able to go more than the current 10 hours or I might feel great at 4, 6, or 8.

#### HOS RULES NEED OFF-DUTY AND SLEEPER BERTH FLEXIBILITY

The new HOS rules are very difficult to comply with and penalize us for taking naps. Under the old rules, we could take naps and off-duty time as needed and prolong our time to balance our rest while accomplishing our maximum driving hours. Under the current rules, there is no incentive to take a nap. We have two choices: take 10 full uninterrupted hours off-duty or take two sleeper berth periods of 2 and 8 hours each. The 2-hour nap does not stave off the 14-hour clock. No nap less than 8 hours will stop the clock, either. We have no incentive to take any naps, other than the 8-hour nap. Then we have to take a 2-hour nap minimum to fulfill our 10 hours off, which should give us a full complement of hours available again, but they don't. We have to calculate the driving hours before the last sleeper berth break and subtract that from the available daily drive hours. The two periods cannot exceed the 11 hours, even though we've effectively fulfilled the combined 10 hours off. We should be able to get the full complement to start a new day of driving if we took 10 hours off. Sound complicated?

There are times we need to take a nap for however long we decide we should take it – until we feel like driving again. But, with the HOS clock ticking against us, we often drive when we would be better off taking a nap (or two) during our day (or night). This is not conducive to safety at all.

There are also times where we have any number of issues at the shipper or receiver. There may be a waiting line to unload, a broken down forklift, a crane that didn't show up or a crane unable to unload due to lightning, etc. If we decide to take a nap or a break during these times, as well as stopping for a few hours to avoid rush-hour traffic, we should be able to stop the clock, based on real-world situations.

#### TEAM DRIVERS ARE RARE NOW

Team drivers were not even given the option of two breaks (8 & 2), but were forced to take a full 10 hours off in the sleeper (which is torture), forcing the other driver to drive for his 10 or 11 hours straight. This is the reason so many husband and wife and well-established teams got out of the business. It is not workable under HOS. Teams should be able to swap driving and sleeper times whenever they both agree on it. This is the way it was done, and I can assure you, it is much safer when you have flexibility.

#### ELDS PRODUCE FATIGUE, NOT REDUCE IT

As the instances above show, there is added stress, anger, frustration, and wasted time added to a truck driver's day, which I can tell you from experience, results in real fatigue. Isn't that what we are looking to eliminate? If drivers or carriers want ELDs, it should be a choice. I'm not opposed to them being a choice, but not a mandate.

If ELDs are the answer to compliance and safe drivers, why are the accident statistics so high for the megacarriers that use them? If you look at the number of accidents that ELD-equipped carriers experience, it is not impressive. Even the infamous Walmart driver who killed James McNair and injured Tracy Morgan was legally compliant, but it was his decision not to get proper rest beforehand. He was truly fatigued long before he ran out of driving hours. So, the ELD cannot detect or tell us when we are tired, needing sleep or a break.

#### WHY ELDS AREN'T THE SECRET OF SAFETY

If ELDs were so effective in making us safer, don't you think we who are safety-conscious would be actively pursuing them? If lack of ELDs and working without the current HOS really resulted in unsafe drivers and concurrently endanger the motoring public, then why do we get to throw the log books out the window for FEMA loads? Doesn't that automatically make us a hazard on the road? When the government suddenly has an emergency, why does it throw out the driving rules, if it indeed makes us a threat? What if my customer has an emergency? Why can't I work a few more hours to get a hot shipment to its destination so there won't be a plant shutdown that puts people out of work?

Why do law enforcement officers get to work double shifts or extra hours while off-duty, when the work they do involves potentially life-threatening or life-or-death, split-second decision situations with the use of a firearm or their speeding cruisers? Don't firefighters often work double shifts or 2 or 3 days straight and aren't they involved in having to make quick decisions in similar situations with big, heavy equipment? What about our service men and women putting in extremely long hours in life-or-death situations? Are they all super human? Just because we are truckers, does this mean we are a different species, incapable of working a few extra hours on occasion to get a load to its destination on time?

#### EXEMPTIONS AND DIFFERING TYPES OF TRUCKING

There is a reason why so many groups have requested exemptions from the ELD mandate (e.g., UPS, Household Movers, Food Service, Livestock Haulers, Farmers, Grain Haulers, Pipeline Haulers, Towing & Recovery). It's because there are so many different applications of trucking that no one set of rules (enforced by ELDs) can work for everyone. It may work for line-haul drivers who run the same terminal-to-terminal lanes with (hopefully) legal driving schedules. But for the large majority of other trucking applications, an ELD is an imposition. For the many experienced and safe drivers (some with a million or millions of safe miles), how is this going to make them any safer than they already are? Mandatory ELDs are like putting training wheels on someone's bicycle who already knows how to ride the bike!

Personally, I think truckers with a certain number of years of experience and no serious instances of irresponsible driving should be allowed to drive without a log book.

#### BOTTOM LINE ON HOW TO IMPROVE SAFETY

Achieving safe trucking doesn't require an expensive unfunded government mandate for ELDs. Instead, let drivers drive when they're alert and sleep when they are tired. That's how you'll get safer drivers. Let us take our breaks when we know we need them and shut down for rush hour or heavy traffic, without being penalized.

ELDs can't make a driver safe. That takes quality training, mentorship, and common sense.

#### MECHANICAL COMPLICATIONS

If ELDs are so great, why will we still be required to carry a log book with us, even though we have an ELD? Because ELDs can fail! Not only fail, but one manufacturer's instructions clearly states that if your "check engine" light comes on or if the engine suddenly experiences "erratic behavior" to "disconnect immediately!" Any device that might even remotely adversely affect my engine and cause me to have to stop the truck immediately should be out of the question. The answer is "No!"

#### ELDS SOURCE OF EXCESSIVE FINES

Many small motor carriers fear that soon after ELDs are installed, overzealous Federal Motor Carrier Safety Administration (FMCSA) and local enforcement officers will take advantage of the ELDs to find all kinds of information on truckers to justify as many violations and fines as possible. Over the years, I've seen this numerous times even without the use of ELDs. And that opens up a wide door for potential lawsuits.

#### OUT-OF-CONTROL AGENCIES AND THEIR EXORBITANT FINES – DHS, EPA, ETC.

Truckers operate in a mine field of "gotcha's" with unbelievable and often obscure fines. Once when I went to pick up a load at the Charlotte/Douglas airport, I was sent to a separate airport warehouse to pick up my load. I entered a cage once inside the driver's door. A warehouse worker told me to come through to the floor. I opened the cage door and began to walk toward him. Suddenly he shouts, "Stop! Stop!" He said if

I stepped across a yellow line, I'd get fined \$10,000 and the warehouse would get fined \$10,000. He said if a U.S. Homeland Security officer been there, we would have been fined – no questions asked. This for an honest mistake, not a deliberate attempt to break any law. Stepping across that line would have posed no threat or danger to anyone, but a fine like this would put any owner-operator or small business trucker out of business immediately. Where do such arbitrary, sky-high fines come from? Drunk drivers don't even get fined like this.

The Environmental Protection Agency (EPA) fines for bypassing the extremely troublesome, expensive, EPA-mandated DEF and DPF systems that reburn diesel exhaust. These troublesome, high-maintenance contraptions have caused the demise of many truckers, frustrated and confounded many mechanics, and produce exhaust in excess of 1100 degrees. A replacement filter can cost \$10,000, not including labor and downtime. No wonder truckers want to bypass or remove these devices. If the EPA is so worried about greenhouse gases, why did it mandate this kind of system? Yet, its excessive fines can easily put even first-time offenders out of business:

Violators are subject to civil penalties up to \$45,268 per noncompliant vehicle or engine, \$4,527 per tampering event or sale of defeat device, and \$45,268 per day for reporting and recordkeeping violations (42 U.S.C. § 7524; 40 C.F.R. § 19.4). The EPA often uses the Mobile Source Civil Penalty Policy to arrive at a civil penalty for vehicle and engine enforcement settlements.

It's worth considering that even criminals with serious crimes are not assessed fines this steep. All government agency fines and penalties should be scrutinized and adjusted to be fair, if the fines are even necessary or appropriate.

#### SMS METHODOLOGY INEPT

The FMCSA's Safety Measurement System (SMS) and the Behavior Analysis and Safety Improvement Category (BASIC) in the Compliance Safety Accountability (CSA) program are a nightmare, causing undue restrictions on trucking companies, owner-operators, and drivers. The points arbitrarily assessed against trucking companies, as well as drivers' personal records, for events such as a headlight out, blown tire, log book violation (labeling us as "fatigued"), an accident even if the trucker was 100% not at fault or any number of other issues, can put a company out of business and cause a driver to lose his job and be unhirable.

During the Obama administration, the points were assessed once the CSA program went into effect were two years retroactive. How can someone be deemed safe under the regulators, but suddenly the bureaucrats put into effect a different program and now you are considered less than safe for the last two years? This indicates that too many in government agencies are not qualified, possibly even antagonistic toward truckers and small businesses, not considering or caring about the livelihood of hard-working middle class Americans. CSA should be scrapped.

#### ACCIDENT STATISTICS SKEWED

People looking for insurance money can be very creative in causing a truck accident, or even vindictively trying to cause a truck to wreck. These all add to the negative statistics on truck-at-fault accidents. This has nearly happened to me many times, but by God's grace or a miracle, I have never fallen into their trap and hit one. For the small percentage of trucker-at-fault accidents, many are not really the trucker's fault.

First, truckers are scrutinized a lot more in accidents than automobile drivers are. If the trucker is even 1% at fault, the officer charges him with being at fault, resulting in a "Non-Preventable" accident. In some states, the truck is always going to be charged with the accident.

Second, there are people who pull the "swoop and squat" trick on truckers, usually at night. They pull in front of a truck, using a second vehicle to block the left lane so the truck can't move over, and lay on the brakes hard (but with no skid marks), causing the truck to rear-end the vehicle, resulting in a personal injury lawsuit for every person "injured" in the front vehicle. The "witnesses" are in the second vehicle. The trucker is always charged in this scenario and often accused of being fatigued or falling asleep at the wheel. These occur much more than people think and are not limited to this scenario or this tactic only.

#### BROKERS BOND

Another issue to many small carriers, who operate as both truckers and brokers, is the bond required of all freight brokers. It used to be a \$10,000 bond to be posted requirement for all brokers. The bond was raised to \$75,000 a few years back, supposedly to thwart the criminal element from getting into the freight brokering business and to cover higher dollar amounts not paid to truckers for hauling freight for unscrupulous brokers.

This was a bad idea from the start, and I personally believe it was an attempt by the "big boys" to squeeze out the competition of small "mom and pop" operations that may not have had that much freight, but were reliable, honest, and could be trusted to pay within the 30-day industry standard. My wife and I had our own brokerage under the \$10K bond, but couldn't afford to put down another \$65K. Since we never did that much brokering business in a year, the \$10K broker bond should have been sufficient.

A \$75K bond or even a \$250K bond, as some bigger brokerage companies now have, is really of no value if the company is doing that much business in just hours. Companies like Landstar, J.B. Hunt, Schneider, and others move millions of dollars of freight a year, so the \$75K or even the \$250K is like a drop in the bucket for them. To make it more equitable and fairer, brokers should only be required to have a bond set at an amount that they typically do in a 3- or 4-month period.

The bond is not even a guarantee that a trucker will get paid even if he files against a brokers' bond who has not paid him for a load. I learned this a few years back. I was the first to file on his bond, but the bonding company said it had to wait until the required three months were up to see if the broker would make good on his obligation to me. When I tried to get my money, the bonder said it couldn't pay me because it had to pay other carriers who filed later, but supposedly had earlier dated loads that they had

not been paid on. No proof was given that it even paid them. It's really just another sham, in my opinion. When other companies like PFT Roberson and Elite Transportation go bankrupt, the bond is of no value, anyway. Only a few carriers get some money (exhausting the bond) and the others are all out of luck.

#### CONCLUSION

Our republic was founded upon and is supposed to be a "government of the people, by the people and for the people." It was never intended to be what it has become today – out-of-control government agencies that operate and make regulations separate from Congress and with little accountability to or input from the citizenry.

Small-business trucking bears a heavy load of rules, regulations, and red tape that are counterproductive to their stated intentions. These regulations, such as the inflexible HOS rules, the CSA program, arbitrary DHS and EPA rules, and the coming unfunded ELD mandate add costs, time, and attention, as well as sap small firms' resources unnecessarily. Instead of making the road safer, these rules and government mandates make both truckers and the driving public less safe.

**TESTIMONY  
Before**

**The United States House of Representatives  
Committee on Small Business**

**Hearing on**

**“Highway to Headache: Federal Regulations on Small Trucking Industry”**

**Presented by**

**Stephen Pelkey  
President & CEO  
Atlas PyroVision Entertainment Group**

**P.O. Box 498  
Jaffrey, NH 03452**

**November 29, 2017**

Chairman Chabot, Ranking Member Velazquez, and other members of the Committee on Small Business, I sincerely appreciate the opportunity to appear before you today to discuss how federal regulations impact the small trucking industry, issues of vital importance to the U.S. fireworks industry.

I am Stephen Pelkey, President and CEO of Atlas PyroVision Entertainment Group, headquartered in Jaffrey, New Hampshire. I also currently serve on the Board of Directors of the American Pyrotechnics Association (APA)<sup>1</sup> and as the Chairman of APA's Transportation Committee.

Atlas PyroVision Entertainment Group was founded in 1950 originally as Atlas Display Fireworks. Due to our company's expansion in close proximity pyrotechnics and consumer retail outlets, we changed our name to Atlas PyroVision Entertainment Group in 2015. We are recognized as a prominent professional firework Display Company producing professional fireworks displays throughout New England, including the City of Boston and First Night celebrations. During the past 20 years we have produced the pyrotechnics for the New England Patriots at Gillette Stadium and for six (6) years from 1997-2002, we were contracted to produce the DC Capitol Fourth Display. In 2018 Atlas will represent the US in DaNang, Vietnam and Canada in international competitions. Most recently we received the Gold Jupiter Award during the Montreal International Fireworks Competition for best pyromusical performance among eight (8) countries represented, which is one of the highest honors for a U.S. display company. Through our matching budget program, Atlas PyroVision Entertainment Group is engaged in producing displays for charitable programs in New England such as the Special Olympics, Make A Wish Foundation, Making Strides Against Breast Cancer, Boy Scouts of America, United Way, and the Cystic Fibrosis Ski Challenge.

While we are primarily engaged in professional fireworks displays, Atlas PyroVision also operates six (6) consumer fireworks retail stores located throughout New Hampshire and Maine.

Atlas PyroVision employs 24 full-time workers. During our busy Fourth of July season, our employment rolls swell to approximately 750 total workers. Atlas produces 800 fireworks displays annually, 75% of which occur over a two week period surrounding the Independence Day holiday. Each fireworks display must be transported by a licensed and trained pyrotechnician who holds a valid Commercial Drivers' License (CDL) with a Hazardous Materials Endorsement and our drivers must operate under a valid Hazardous Materials Safety Permit (HMSP) issued to our company. Our display fireworks are classified, regulated and transported as Division 1.1 or 1.3 explosives; consumer fireworks are classified, regulated and transported as Division 1.4 explosives. All of our fireworks are subject to the regulations of the Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Federal Motor Carrier Safety Administration (FMCSA) when transported in intrastate and interstate commerce. As such, we are a very interested stakeholder in today's hearing: *"Highway to Headache: Federal Regulations on the Small Trucking Industry."*

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<sup>1</sup> The APA is the authoritative voice and leading national safety and trade association for the fireworks industry representing manufacturers, importers, distributors, wholesalers, retailers, suppliers and professional display companies. The APA has over 250 member companies. Along with their subsidiaries, APA member companies are responsible for 90% of the fireworks manufactured, imported, distributed and displayed in the U.S.

“One Size Fits All” Transportation Regulations Unfairly Harm Small Business

While the hearing is focused on the impact of federal regulations impacting the small trucking industry, it must be noted that many, many industries, like the fireworks industry involve private carriage transportation of goods and services but driving is incidental to the primary business function of loading, unloading “tools of trade” and providing a specific service. In our case, the set up and execution of a fireworks display. Our Drivers have far more knowledge and specialized training about their cargo than most full time CDL drivers working for long haul companies. Our state licensed technicians who possess a CDL are routinely trained, specifically on the handling, transportation, storage and use of 1.4G/S and 1.3G low explosives.

Our major concern with the current regulatory structure is that small industry stakeholders are continually swept into these “one size fits all” transportation regulations that are best suited for large commercial companies rather than small stakeholders attempting to comply with a myriad of regulations in order to conduct their business operations. While many laws, including the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)<sup>2</sup>, are intended to ensure that requirements appropriate for larger businesses are not forced upon small businesses in the name of administrative convenience, Atlas and the APA stand behind sensible regulation. We recognize the responsibility we have since we handle hazardous materials, and specifically, explosives. In addition, many of our employees are also family members, so safety is very personal to us. There are often many ways to achieve the same goals, and if small businesses are to survive, the DOT regulatory agencies need to do a better job in recognizing the differences between small and big businesses, and that different approaches may be necessary. What works for large, long haul drivers managed under a fleet may be different from what works for small independent drivers, short-haul drivers, and especially intermittent casual drivers who only operate to and from job sites and / or serve unique industries not serviced by common carriers.

U.S. Fireworks Industry “Highway to Headache Regulations”

While certainly not an exhaustive list of current DOT regulations ripe for reform, the following regulations are extremely challenging and have an unfair, burdensome impact on small businesses that rely upon private carriage and intermittent casual drivers delivering goods and services to and from job sites:

*Electronic Logging Devices and Hours of Service Mandate*

Atlas and members of the APA initially tried to support the Federal Motor Carrier Safety Administration’s (FMCSA) Electronic Logging Device (ELD) mandate<sup>3</sup> in concept. Congressionally mandated as part of MAP-21,<sup>4</sup> it was intended to help create a safe work environment for drivers and make it easier and faster to accurately track, manage, and share Records of Duty Status (RODs). Like most major rulemaking initiatives, it takes time to determine whether compliance can be easily achieved across the full spectrum of individuals, companies and industries impacted.

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<sup>2</sup> P.L. 104-121

<sup>3</sup> 80 FR 78292

<sup>4</sup> Moving Ahead for Progress in the 21<sup>st</sup> Century Act (P.L. 112-114)

After analyzing the significant impact of the ELD mandate on the operations of the small companies that make up the fireworks industry, Atlas and the APA fully supported a Petition for relief for short-term rental trucks (less than 30 days) filed by the Truck Rental and Leasing Association (TRALA).<sup>5</sup> APA members believed that the hardest compliance burden for our industry would be during the busy Fourth of July period when our members rely upon over 3,600 rental trucks to handle the volume of Independence Day celebrations. We were extremely disappointed by FMCSA's inflexibility and final disposition of TRALA's Petition for exemption to only authorize an eight (8) day or fewer period of relief from the ELD mandate to allow for the utilization of paper Records of Duty Status (RODs).<sup>6</sup> In its disposition, the Agency essentially provided limited relief for drivers of property-carrying commercial motor vehicles (CMVs) rented for 8 days or less, regardless of reason, from the ELD requirement. However, in its rationale for the limited 8-day exemption period, the Agency stated that it "believes that an exemption period for up to 8 days for drivers of rental CMVs would give most carriers sufficient time to repair or replace their vehicles while minimizing any temptation to extend non-ELD operations." Additionally the Agency stated that, "an 8-day exemption period coincides with 49 CFR 395.34(d), which provides that a motor carrier that receives or discovers information about an ELD malfunction must correct it within 8 days."

Our industry is unique in that it depends upon utilizing short-term rentals as part of our business model - not as replacement CMVs - but as our primary CMVs given the vast majority of our transportation-related activities occur during the two week period encompassing the Independence Day holiday. Had the TRALA 30 day exemption for short-term rentals been granted, our operations as well as all companies in the fireworks industry would be able to continue to satisfy driver hours of service (HOS) with paper RODs as we have always done to document and satisfy compliance with driver HOS regulations. Furthermore, our experience with a few approved ELD systems do not allow for our existing HOS waiver of 14 hours during an 11 day period around the 4<sup>th</sup> of July, thus compromising Atlas and APA member companies with the ongoing threat of risking their Hazardous Materials Safety Permit and overall Commercial Motor Vehicle Safety Rating.

The APA has also actively participated in a broad coalition (31 unique industries) opposing the ELD mandate and we strongly supported Rep. Brian Babin's bill H.R. 3282, *the ELD Extension Act of 2017*, which would have provided for a two-year delay in the implementation of this controversial mandate, not only because of the unique hardships that our industry faces in complying with the rule but also for those many, many unique industries, including independent owner / operators. The ELD mandate is estimated to cost impacted stakeholders more than \$2 billion, making it one of the most expensive federal transportation rulemakings over the last decade. This significant mandate provides no safety, economic, or productivity benefits for the many small businesses impacted by the mandate, including each and every one of APA's members.

This is prime example of a costly regulation imposed on small businesses that has no bearing on safety. When so many industries are faced with compliance challenges, it is most telling that the ELD rule should never have gone forward as it only benefits large commercial carriers who manage fleets. Our products primarily move by private carrier and more specifically, by the companies within the fireworks industry. We utilize small trucks, vans and straight trucks of which a substantial portion move only by a hazardous materials safety permit (HMSP). The vast majority of common carriers do not have, nor do they wish to comply with the significant regulatory burdens associated with maintaining a HMSP.

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<sup>5</sup> 82 FR 14789

<sup>6</sup> 82 FR 47306

The APA recently filed a request for a limited exemption from the ELD mandate for relief during the peak Fourth of July period, similar to APA's Hours of Service (HOS) exemption.<sup>7</sup> Currently, all of our other avenues for relief have been exhausted and we hope that the newly appointed Administrator of FMCSA and / or the Office of the Secretary (OST) will act favorably upon our Petition for relief. Moreover, we hope that the sheer volume of Petitions for relief filed to-date by various industry groups will send a strong, clear message to the Secretary that this mandate must be rescinded or revisited, and at a minimum, immediately delayed before the December 18, 2017 mandate.

*New Minimum Training Requirements for Entry-level Commercial Motor Vehicle ("CMV") Operators*

We are very concerned about FMCSA's new Minimum Training Requirements for Entry-Level CMV Operators under 49 CFR Part 380 Subpart E.<sup>8</sup> This regulation is a classic example of an inappropriate "one size fits all" regulation. It imposes significant burdens on small, unique businesses without any real benefit to the public and will substantially diminish the pool of new driver entrants. For many of APA member companies, locating CMV operators possessing a HMSP (Hazardous Material Safety Permit) reduces the qualified applicant pool by fifty percent. Now with the ELD mandate becoming effective on December 18, 2017, many of those remaining CMV operators will no longer consider hauling fireworks 1.4G and 1.3G more than 100 air miles from any port.

Atlas and APA members, like many small businesses, are family-owned, multi-generational companies who provide industry specific goods and services. Our members utilize CMVs ranging from small cargo vans, pickup trucks to 24' straight trucks, almost all of which are less than 26,000 GVW. During the peak Fourth of July season (two weeks surrounding the holiday), the industry will rent more than 3,600 CMVs. These CMVs are used to deliver consumer product from warehouses to retail stores, stands and tents, as well as professional product and equipment to display sites and community displays. Frequently, the lead professional pyrotechnician for a fireworks display is also the driver who has a Commercial Driver's License (CDL).

The extensive 80-hour classroom and behind the wheel training for entry level drivers who desire to drive semi-trailers and / or operate long-haul commercial transportation may well be necessary and appropriate for them. However, there is no need to engage in that kind of training for short-haul straight truck operations involving far smaller vehicles and whose driving may be incidental to their primary duties of loading and unloading fireworks, already heavily regulated as explosives. This is especially true for the movement of "tools of trade" in the fireworks industry and for the delivery of our products to retail stores and temporary locations, which is best served by hands-on training undertaken by each company individually. Our CDL drivers already obtain a State issued CDL which includes passing a skills performance evaluation. Additionally, the majority of our CDL drivers are also subject to a criminal background check and fingerprinting as required for the hazmat endorsement. With the voluminous number of Federal, State and local regulations impacting operations of the fireworks industry, we are struggling to bring on part-time, intermittent, casual drivers and other personnel due to the seasonality of the business and burdensome training and regulatory requirements. Our members are not full-time

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<sup>7</sup> 81 FR 43701

<sup>8</sup> 81 FR 88732

truckers – driving is incidental to their primary duties of loading and unloading fireworks, already heavily regulated as explosives.

*Hazardous Materials Safety Permit*

Atlas and the APA remain concerned about FMCSA's Hazardous Materials Safety Permit Program (HMSP) and the on-going delays in reforming this flawed program. Given the enviable safety record of those subject to this permit program, FMCSA's lack of attention to effect promised reforms is inexcusable. For many HMSP holders, loss of a permit is an "out of business" edict.

Congress established the HMSP in 1990<sup>9</sup>, although FMCSA did not implement the program until 2005.<sup>10</sup> In the preamble to the rule, FMCSA stated that the program would reduce crashes. In fact, the safety record of HMSP holders, while outstanding, is better during the nine years preceding the program than in the 12 years since.

The HMSP program has been seriously flawed since its inception.<sup>11</sup> Initially, FMCSA proposed that carriers with a satisfactory rating could get a permit by simply asking. The rationale was that a carrier's safety rating was the agency's fitness standard. To accommodate carriers with no rating, the agency proposed using a fitness metric based on out-of-service (OOS) violations and crash rate. This policy was repeated in the preamble to the final rule. However, the Agency changed the regulatory text to say the permit holders had to have a satisfactory rating and not exceed the OOS and crash rate thresholds. The Agency's rule provided a means for holders to appeal or seek waivers of determinations to revoke or suspend permits, but it provided no such due process if, on the day the holder's permit expired, it was below the OOS thresholds necessary to qualify for a permit.

Because of the safety record of those in the program, FMCSA cannot justify suspending or revoking permits of those holders who are "underwater" based on OOS and crash rates. In the entire course of the program, the Agency had only issued six suspensions, and seven revocations. No HMSP holder has been declared an imminent hazard. So the Agency's inaction to address compliance issues and work with carriers to help them recover when they are underwater results in automatic denials on the date their permits expire. Fireworks companies, like many other companies are required to hold permits, as specialized carriers. If a fireworks display company loses its HMSP, it cannot haul something else while it waits to "age out" disqualification. Fireworks are what the company does. It is effectively "out of business," unless it can find an alternate means to deliver those displays.

The APA, along with several other trade associations representing companies subject to the HMSP program, have been advocating for the need of an administrative process that would allow the FMCSA to intervene outside of DataQs.<sup>12</sup> We refer to this as an "additional level of safety review" to determine a carrier's fitness prior to the denial of a HMSP. In 2011, FMCSA agreed that the program was flawed and accepted a petition for rulemaking submitted by APA and other affected stakeholders to reform the

<sup>9</sup> Senate Rept. 101-449. Hazardous Materials Transportation and Uniform Safety Act of 1990, August 30, 1990.

<sup>10</sup> 69 FR 39350, June 30, 2004

<sup>11</sup> *Id.*

<sup>12</sup> The DataQ system is flawed. Among criticisms of the program are that it required the officer issuing OOS citation to admit error; it asks this official to be proficient in relatively complex hazmat regulations; and the process is only available for appeals, not waivers.

HMSP. However, we remain disappointed that the Agency has not made reform of this program a priority. Rather, FMCSA said it would not move forward until its Compliance, Safety and Accountability (CSA) safety fitness rule was finalized.

Atlas testified on behalf of the APA and the Interested Parties for Hazardous Materials Transportation (Interested Parties) coalition<sup>13</sup> before the U.S. House of Representatives, Committee on Transportation and Infrastructure, Subcommittee on Railroads, Pipelines and Hazardous Materials, hearing on “*Examining Issues for Hazardous Materials Reauthorization*” on April 2, 2014. The vast majority of our testimony was focused on the flawed HMSP Program. While there has been some efforts on behalf of FMCSA to recognize the need for providing an “additional level of review” and corrective actions to permit holders who have little roadside data and high OOS rates, we believe more must be done to provide HMSP holders with some level of assurance that they will simply not lose their permit, upon which their livelihoods depend, due to the seriously flawed permit program.

#### *Carrier Safety Fitness Determination*

FMCSA issued a Notice of Proposed Rulemaking (NPRM) on January 21, 2016, “Carrier Safety Fitness Determination” (SFD)<sup>14</sup> that would have radically modified the safety fitness rating system in the current federal regulations. The proposed methodology would have utilized the flawed CSA / Safety Measurement System (CSA / SMS) data and scores. Although the rulemaking was withdrawn,<sup>15</sup> the Agency has indicated that it may initiate a new rulemaking after it fully assesses the impacts and recommendations resulting from the National Academy of Sciences (NAS) correlation study on the CSA program. Congress directed this third-party review of the CSA/SMS under the Fixing America’s Surface Transportation Systems (FAST) Act. NAS published its report “*Improving Motor Carrier Safety Measurement*” on June 27, 2017.

Noting our earlier concerns, HMSP holders are subject to FMCSA’s general safety fitness standards. FMCSA’s proposed integration of on-road safety data from inspections, along with results of carrier investigations and crash reports into the agency’s safety fitness rating methodology without providing carriers an opportunity for corrective actions is most troubling. The APA has widespread concerns regarding the Agency’s reliance on the CSA / SMS Behavioral Analysis and Safety Improvement Categories (BASIC) ratings and their accuracy in judging a carrier’s safety fitness especially if the Agency moves forward in the future with just two ratings: fit and unfit.

The CSA process consists of several steps. In the first step, CSA takes each carrier’s safety events (e.g., roadside inspection violations and crashes) and places them into groups called BASICS. Then, the events are assigned a numerical weight based on severity and age. Within each category, measures of performance (time and severity weighted violations and crashes) are adjusted based on either the carrier’s size (number of trucks and annual mileage) or exposure (number of inspections). Using these adjusted measures, carriers are then assigned scores in each category which represent a percentile

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<sup>13</sup> The Interested Parties represent industries and public safety agencies with operations in every state, have combined business revenues in excess of \$1 trillion, employ millions of workers, and have an enviable record of hazardous materials transportation safety and security. The Interested Parties exist to share information, to identify issues and to advocate for policies relating to the safe, secure and efficient transportation of hazardous materials.

<sup>14</sup> 81 FR 3562

<sup>15</sup> 82 FR 14848

ranking compared to carriers of like exposure. Carriers whose scores are deemed deficient (much worse than those of carriers with similar exposure) are prioritized for various FMCSA enforcement interventions – such as warning letters or investigations. The hazardous materials (HM) BASIC would be the primary tool utilized by FMCSA to determine how fireworks transporters rank relative to other HM carriers.

Carriers subject to these complex regulations and potential fitness ratings must be aware of the bar to achieve and maintain a “fit” rating. Additionally, any SFD rating must consider the size of the carrier and their operations. A small carrier cannot be judged against all carriers. Unlike large transportation companies that operate year round and are inspected frequently, display fireworks transporters operate primarily on a seasonal and periodic peak time basis, typically driving much shorter distances and many fewer miles as compared to long-haul freight transporters. Additionally, in order to meet local and state regulations as well as meet their customer’s needs, fireworks display transporters predominately operate over weekends, during holiday periods and at odd hours when inspection stations are not open. Accordingly, any future SFD requirements must not be a one size fits all criterion. Small carriers and their unique operations must be considered in order to develop a fair playing field.

#### Conclusion

We are grateful to the members of the Committee on Small Business for convening this important hearing to learn about the regulatory burdens imposed on small businesses that must comply with federal trucking / transportation regulations and your desire to explore regulatory relief for small businesses. Small businesses face myriad regulations including safety, security, workplace safety regulations and labor regulations and struggle on a daily and weekly basis to do their best to comply. The U.S. fireworks industry works diligently to comply with all regulations imposed on our small businesses and while we understand a need for certain regulations, especially those related to safety and security because we handle explosives, there are many DOT regulations that are far too broad and burdensome that do not consider the impact on small business; the ELD mandate, new minimum training requirements for entry-level CMV operators, the HMSP Program and Carrier Safety Fitness Determination are just a few of these one size fits all regulations that should be revisited with regard to impacts on small business.

Thank you for this opportunity to testify and share a brief glimpse of the regulatory burdens imposed upon our unique, small business. I would be happy to answer any questions that you may have.

HEARING BEFORE THE UNITED STATES HOUSE OF  
REPRESENTATIVES  
COMMITTEE ON SMALL BUSINESS  
“HIGHWAY TO HEADACHE: FEDERAL REGULATIONS ON  
THE SMALL TRUCKING INDUSTRY”

November 29, 2017

Testimony of Robert Garbini, P.E.

President, National Ready Mixed Concrete Association

Chairman Chabot, Ranking Member Velazquez, and Members of the Small Business Committee, thank you for the invitation to join you today to discuss the impact of federal regulations on the small trucking industry.

I am testifying today on behalf of the National Ready Mixed Concrete Association, which represents an industry with more than 2,250 companies and subsidiaries and employs more than 135,000 American workers who manufacture and deliver ready mixed concrete. While the Association represents both national and multinational companies that operate in every congressional district in the United States, roughly 85 percent all ready mixed concrete companies are family-owned and operated small businesses. The industry includes more than 70,000 ready mixed concrete trucks and of 6,000 ready mixed concrete plants.

Ready mixed concrete companies produce a construction material vital to our built environment. From roads to bridges, to homes and high-rises, our built environment could not be realized without the use of ready mixed concrete. This important building material is created by combining fine and course aggregates, cement and water. In 2016 alone, the ready mixed concrete industry is estimated to have produced more than 342 million cubic yards of ready mixed concrete, representing a value in excess of \$35 billion. Virtually every construction project in America uses at least some ready mixed concrete.

Once ready mixed concrete is loaded into a truck, it must be poured within 60 to 90 minutes, or it will harden and render the truck useless. The perishable nature of our product means that our industry is intensely local, and deliveries are often made just miles from the closest plant. As a result, ready mixed concrete delivery vehicles typically travel very short distances before offloading their product.

Because of the uniqueness of our product, and, consequently, our industry, the ready mixed concrete industry is often adversely impacted by federal trucking regulations intended to apply to the trucking industry more broadly, both because of the differences in industry and because of the differences in the size of our compa-

nies. While large companies can more easily muster the resources necessary to keep up, understand and comply with federal regulations, small companies are disproportionately affected by these regulations.

Regulations should not be one-size-fits-all, because it is rarely the case that one size does in fact fit all. The small trucking industry and industries it supports are examples of the potential for the adverse effects of unintended consequences to small businesses.

### **Electronic Logging Device**

One of the most obvious examples of this is the mandate that all commercial motor vehicles (CMV) be equipped with electronic logging devices (ELD) for House of Service (HOS) compliance. In a rule finalized December 16, 2011 by the Federal Motor Carrier Safety Administration (FMCSA), all CMVs will be required to install and operate ELDs.

While NRMCA appreciates FMCSA's recognition of the difference between short-haulers and long-haulers in the final rule, the rule complicates compliance with the ELD mandate. The rule states that short-haulers (those that can take advantage of the 100 air-mile logging exemption) will not be required to purchase, install and use ELDs. However, there is a caveat to the provision. The rule states that if a short-haul operator, not using an ELD, ends up coming out of compliance with the 100 air-mile logging exemption, and thus needs to fill out a record of duty status retroactively for that day, this occurrence (logging) can only be allowed "8 days in any 30-day period", after which that driver will need to use an ELD.

This is unachievable in the ready mixed concrete industry. Often, there are large construction jobs that occur throughout the year, particularly during busy months, that necessitate mixer drivers working longer days and needing to fill out a record of duty status daily during until the job or the busy period settle down. Under the rule, mixer drivers will be required to find the resources, make the investment to install the ELD and undergo training to comply with the ELD mandate for a brief period of time each year. The effect of this provision on the ready mixed concrete industry will be overly burdensome, both logistically and financially.

The rule fails to take into account the industry specific circumstances of ready mixed concrete truck drivers. Ready mixed concrete delivery drivers typically only drive an average of 14 miles from a concrete plant, drive only 4-6 hours per day, start and end at the same location, are routinely released from duty within 12 hours from the start of their shift, spend 60% of their on-duty time engaged in non-strenuous, non-driving related activities, and are not subject to fatigue inducing situations that long-haul drivers often experience.

The mandated use of ELDs in CMVs is to ensure HOS compliance. As noted above, due to the working conditions of mixer drivers and the exemptions/exceptions to HOS compliance that are provided, making use of ELDs by mixer drivers is a technical inappli-

cability. ELDs cannot accurately determine HOS compliance since mixer drivers are only in the CMV or driving a small amount of the time they're on-duty. In the case of the 100 air-mile exemption, mixer drivers and their employers only have to keep records of when the drivers started and ended their shifts, not a log of each individual duty status. Requiring a mixer driver to use ELDs cannot practically determine HOS compliance or productivity.

Further complicating the issue, is the application of the 100 air-mile logging exemption to the ready mixed concrete industry and the industry-specific change to the 100 air-mile logging exemption. Currently, the threshold for ready mixed concrete truck drivers on-duty time is 14 hours, instead of the standard 12 hours, as detailed in Title 49 of the Code of Federal Regulations, Section 395.1(e)(1)<sup>1</sup>. This change, which was brought about by the passage of the 2015 *Fixing America's Surface Transportation Act (FAST Act)*<sup>2</sup>, bring the on-duty threshold of the 100 air-mile logging exemption for ready mixed drivers in line with the 14-hour driving window<sup>3</sup>. What this means is that drivers of ready mixed concrete delivery vehicles are only required to install and use ELDs once a driver has worked beyond 14 hours more than 8 days in any 30-day period. This change, however, now creates the scenario where needing ELDs wouldn't be required until a period where a mixer driver can no longer even operate a CMV. The one-size-fits-all approach to the ELD mandate will result in ready mixed drivers using ELDs year round, regardless of whether the rule applies.

The underlying issue remains the penchant for federal regulations to be crafted in a one-size-fits-all manner. Because of the significant differences between industries impacted by this mandate, NRMCA strongly believes that the December 17, 2017 ELD effective date should be placed on hold until the rule can be comprehensively reviewed by FMCSA to determine the unforeseen, adverse impacts to the numerous unique trucking industry facets, including the ready mixed concrete industry.

## Phase 2

A second regulation impacting the small trucking industry and by extension industries like the ready mixed concrete industry is a regulation commonly referred to as "Phase 2." On October 25, 2016, the National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA) finalized a joint rule titled, "Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles-Phase 2."<sup>4</sup>

Among the issues related to Phase 2 that impact the small trucking industry are the added costs, technology sufficiency and suitability, and impacts on heavy-duty, class 8, straight truck weight challenges. Currently, the vast majority (98 percent) of American ready mixed concrete markets employ single-unit concrete mixer

<sup>1</sup> 49 CFR 396.1(e)(1)

<sup>2</sup> Public Law 114-94

<sup>3</sup> 49 CFR 395.3(a)(2)

<sup>4</sup> 81 *Federal Register* 73478

trucks operating on between 2- to 7-axels<sup>5</sup> to deliver ready mixed concrete to its point of placement. Under this regulation, these trucks would fit into the definition of vocational, heavy-duty, class 8 trucks.

NRMCA supports maintaining the flexibility of ready mixed concrete producers to utilize their already purchased assets to their fullest capacity, such as with “glider kits”. To this end, NRMCA opposes the rule’s suggestion to require glider kits contain Phase 2 compliant engines. Continuing to allow ready mixed concrete producers the opportunity to utilize refurbished trucks, truck parts and engines is an entrepreneurial inventiveness affording industry members economic and productivity advantages and competitiveness. Changing the current glider kit system will undoubtedly cause undue harm and hardship for many ready mixed concrete companies that base their business model on glider kits instead of purchasing brand new trucks.

Upending the current glider kit system serves as an unnecessary coercion on market forces that alone will inevitably pressure the phase out of pre-Phase 2 engines. Requiring glider kits to be Phase 2 compliant would be redundant, unnecessary, and unfairly expeditious on the ready mixed concrete industry.

Furthermore, NRMCA would like to highlight comments reported on that were made by Matthew Spears, executive director of EPA’s Heavy-Duty Diesel Program at a past session of the American Trucking Association’s Technology & Maintenance Council (September 22, 2015), in which he noted that the Phase 2 program changes to glider kits may be left alone when applied to concrete mixer truck chassis. In the final rule, this notion was not reflected. NRMCA would very much support such a carve out for ready mixed concrete trucks. As much, mixer trucks do fall in line with any criteria that would exclude their coverage based on low-mileage and/or vocational use.

In the rule, NHTSA and EPA suggest weight reduction as a viable method to meet the proposal’s requirements. While NRMCA does not disagree with this approach, NRMCA objects to its feasibility as applied to ready mixed concrete trucks. Due to the reality of the necessary configuration of trucks hauling ready mixed concrete, combined with current regulations from numerous other U.S. regulatory bodies, weight poses a unique and continuing challenge to the industry.

The necessity for manufacturing ready mixed concrete trucks with the lowest possible weight has existed as a market force since the inception of the federal bridge formula for truck weight restrictions on federal-aid highways. Manufacturing a light-weight mixer truck that meets all regulatory compliance thresholds and can still haul a full load remains a constant challenge of innovation and creativity.

The rule makes assumptions about heavy-duty truck weights in order to make suggestions about how weight reduction can be applied to meeting the rule’s requirements. These assumptions, in the

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<sup>5</sup>NRMCA, 2017 Fleet Benchmarking Survey

case of ready mixed concrete trucks are incorrect and miss the reality of a mixer truck's true tare and payload weights by thousands of pounds. For example, the maximum weight allowed on federal-aid highways is 80,000 lbs. spread over a calculated number of axles. However, due to structural design and specialized equipment installed on mixer trucks for handling such a heavy payload, under federal weight limits a typical ready mixed concrete truck ends up weighing considerably less than the allowable threshold. The realities of truck weight regulations leave little extra room for carrying payload. According to NHTSA's and EPA's assumptions these tolerances are roughly 3,000 to 6,000 lbs. lighter than what is true for mixer truck weights.

In addition to the federal weight tolerances, structural designs and necessary specialized industry equipment, along with previous emission regulation requirements that have added weight to mixer trucks, the overall acceptable weight of mixer trucks has reached its limit. Not to mention, this current weight of mixer trucks includes and takes into account the weight changes needed to comply with Phase 1 and all of the alternative material suggestions mentioned in the Phase 2 rule. All of these weight considerations have pushed ready mixed concrete producers to running mixer trucks, in many cases, with a .002% margin of weight threshold. Meaning, under such weight conditions, a truck merely getting too dirty will put it over legal weight limits and risk non-compliance.

Furthermore, the nature of hauling and delivering ready mixed concrete gives way to various driving conditions, road conditions, weather conditions and construction site conditions. Due to such realities, mixer trucks are designed to meet this inevitable rough-and-tough wear-and-tear atmosphere. Such a design requires materials that can handle these stresses and keep trucks moving; these materials invariably add weight to a ready mixed concrete truck.

Many of the methods NHTSA and EPA suggest in both Phase I and Phase II for complying with the rule are already being implemented by the industry, and numerous other suggestions in Phase II are simply not practical for mixer trucks, leaving technology that has yet to be invented or perfected the method the industry most likely will have left at its disposal for complying with Phase II. To this end, NRMCA recommends that NHTSA abandon this non-attainable rule in its entirety. Short of full repeal of the final rule, instead of pushing weight reductions, NRMCA advocates for increased weight tolerances in amounts large enough to offset the weights of new equipment and technology that will be employed for compliance with Phase II. NRMCA would like to remind NHTSA that such a precedent already exists for auxiliary power units and idling-reduction technology in many states.

NRMCA believes the Phase 2 rule is unduly burdensome and should better take into account cost and technology implications on downstream purchasers of heavy-duty trucks. As well, the new mandates for glider kits should not cover low-mileage, vocational trucks such as concrete mixer truck.

The consequence of adding more weight to mixer trucks for Phase 2 compliance results in achieving the opposite goal of Phase

2. Simply put, if the industry is forced to reduce payload to meet low weight tolerances, the industry will then be forced to use more trucks, making more trips to deliver the same amount of ready mixed concrete. More trips mean increased emissions, increase fuel consumption, more trucks sitting in traffic, and longer hours for industry drivers.

### **Truck Weights**

A third set of federal regulations that adversely impact the small trucking industry and small businesses that rely on it is the confusing, frustrating rules regarding truck weights. We have long advocated that federal truck weight regulations be updated to increase gross weights limits on the Eisenhower Interstate System (EIS). Research shows that increased weight limits would alleviate traffic congestion, increase safety, save millions of dollars annually on pavement and bridge maintenance and increase the productivity of large trucks used by businesses in the small trucking industry, such as ready mixed concrete trucks.

In 1956 Congress passed legislation aimed at protecting the pavement and bridges on the EIS. Those protections came in the form of axle and gross weight limits. The federal law also authorized states to allow operation on the EIS beyond the specified limits, but only if operation was legal in the state prior to July 1, 1956. In response to energy use concerns, the Federal Aid Highway Amendments of 1974 increased the weight limits to allow larger and heavier trucks to utilize the EIS. As a balance to this concession, Congress created the Federal Bridge Formula (FBF), which limits the size and weight of trucks by calculating the gross weight over the spacing and number of axles; the heavier the weight, the greater the required spacing between axles.

Federal weight limits<sup>6</sup> are set at 20,000 lbs. for a single axle, 34,000 lbs. for tandem axles, and 80,000 lbs. gross weight. In addition, the current FBF is overly cautious and no practical basis is given for the overstress criteria used to limit weights and configurations. These limits are the most restrictive of any developed nation. By comparison, though comparable U.S. trucks are limited to a maximum 80,000 lbs., the maximum weight for a six-axle truck in Canada is 95,900 lbs., in Mexico it is 106,920 lbs., and the European Commission has set the limit at 97,000 lbs.

Ready mixed concrete trucks are heavy duty trucks and have relatively heavy empty (or tare) weights due to the nature of the work they must perform. This is attributed to structural design and specialized equipment installed on the vehicle for handling the load. Due to the relatively heavy weight of the empty vehicle, the limits imposed by federal weight laws, especially the FBF, leave little extra weight for carrying payload. As well, the majority of ready mixed concrete trucks have only three or four axels to maximize maneuverability for on- and off-road use, and to deliver product under often challenging circumstances. For example, (not including states with higher grandfathered weight tolerances) under federal

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<sup>6</sup>23 CFR 658.17

weight limits a three-axle ready mixed concrete truck could weigh a maximum of 48,000 lbs. Only 18,000 lbs. (out of a potential 40,000 lbs. in the mixer drum) would be the productive payload, since approximately 30,000 lbs. is the tare weight of the truck.

As a result, federal weight laws essentially force fully loaded ready mixed concrete trucks off the EIS and onto local and state roads that are generally built to lower standards. While this congestion, makes for potentially unsafe driving conditions, and prematurely degrades secondary roadways, it also impacts the small trucking industry by drastically cutting efficiency and requiring extra miles to be traveled to deliver the product, resulting in increased fuel use and costs. Since ready mixed concrete trucks typically only travel a distance of 14 miles from their reporting plant, and average less than four miles per gallon, these realities are both a product of and exacerbated by the current federal truck weight laws.

Increasing federal truck weight limits will allow ready mixed concrete trucks to be more productive, will help reduce congestion and will also tend to decrease greenhouse gas emissions through reduced fuel consumption. This in turn helps achieve greater sustainability within the transportation and construction industry sectors through annual reductions of CO<sub>2</sub> and other greenhouse gas emissions. Addressing federal truck weight regulations will provide relief to the small trucking industry and benefits for the environment.

### **Sleep Apnea**

The first set of proposed regulations that would adversely impact the small trucking industry and small businesses like ready mixed concrete companies, is a regulation related to evaluation of truck drivers for sleep apnea. On March 10, 2016, FMCSA and Federal Railroad Administration (FRA) published a joint advanced notice of proposed rulemaking (ANPRM) titled “Evaluation of Safety Sensitive Personnel for Moderate-to-Severe Obstructive Sleep Apnea”<sup>7</sup> (OSA).

Currently, the vast majority (98%) of American ready mixed concrete markets employ single-unit concrete mixer trucks operating on 2- to 7-axels<sup>8</sup> to deliver ready mixed concrete to its point of placement. As noted, the average one-way distance a ready mixed concrete truck travels for a delivery is roughly 14 miles away from the ready mixed concrete plant and concrete mixer truck drivers spend less than 50% of their total on-duty time actually driving. Due to the perishable nature of ready mixed concrete<sup>9</sup> and the distance traveled, the time a driver spends behind the wheel is extremely limited. Consequently, mixer truck drivers are strictly short-haul operators and not subject to certain fatigue inducing circumstances that exist for long-haul operators and other types of CMV drivers.

<sup>7</sup> 81 *Federal Register* 12642

<sup>8</sup> NRMCA, 2017 Fleet Benchmarking Survey

<sup>9</sup> American Society for Testing and Materials, Standard C94, 2016

As NRMCA previously testified at the May 25, 2016 OSA listening session in Los Angeles, CA<sup>10</sup>, NRMCA believes it is important to again, reiterate that many different factors can lead to fatigue beyond OSA, and many different factors can lead to crashes involving large trucks beyond OSA.

In a survey of NRMCA's membership covering all geographic regions of the country and involving all sizes of businesses, NRMCA found that medical insurance coverage for OSA testing, treatment and required equipment is severely limited and would result in out-of-pocket costs to drivers and small businesses of between \$1,000 and \$3,000 annually per driver. Write-in responses to the same survey indicated costs as high as \$12,000 to \$15,000.

The financial burden associated with this proposed regulation may dissuade drivers from the small trucking industry or from working for small businesses, potentially exacerbating the driver shortage currently stalking the industry. Within the ready mixed concrete industry alone, as the economy continues to grow, firms have had to refuse business simply because they do not have enough drivers to handle the workload. Prospective drivers that may want to enter this profession, under a new rule, would likely be faced with having to cover certified medical examiner costs, testing costs and treatment out of their own pocket before being employed and likely even before being considered for employment.

### **Speed Limiters**

The second proposed regulation that would adversely affect the small trucking industry that I would like to draw your attention to related to speed limiters. On September 7, 2016, the Federal Motor Carrier Safety Administration (FMCSA) and National Highway Traffic Safety Administration (NHTSA) published a notice of proposed rulemaking (proposal) titled "Federal Motor Vehicle Safety Standards; Federal Motor Carrier Safety Regulations; Parts and Accessories Necessary for Safe Operations; Speed Limiting Devices"<sup>11</sup>.

Regardless of the merit of the proposed regulation, it highlights again the failure of the one-size-fits-all mentality to account for the very real differences between and variances within industries. While there are real concerns about the unsafe environment that may be created on our nation's roadways by the potential of a speed differential between large trucks traveling slower than the smaller, faster motoring public, the rule as applied to the ready mixed concrete industry is unnecessary and would impose a burden disproportionate its benefits.

Ready mixed concrete mixer truck drivers do not often reach the three speed limits listed as potential thresholds in the proposal (60 miles per hour, 65 and 68). Industry experience suggests that crashes within the industry generally occur at lower speeds and regularly do not involve other vehicles, making such a regulation when applied to the ready mixed concrete industry unlikely to in-

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<sup>10</sup> 81 *Federal Register* 25366

<sup>11</sup> 81 *Federal Register* 61941

crease safety on our nation's roadways for the industry and the motoring public, while imposing a disproportionately high burden on the small trucking industry and the small businesses in related industries, including the ready mixed concrete industry.

In conclusion, I would like to thank the Committee for the opportunity to discuss federal regulations adversely impacting the small trucking industry. The regulations addressed in this testimony are representative of a one size fits all approach to trucking regulations. NRMCA urges this Committee and federal regulators to carefully weigh the implications for regulations to all industries, including the small trucking industry and those associated with it like the ready mixed concrete industry, as well as consider the disproportionate weight of compliance on small businesses.

I look forward to the testimony presented by my fellow panelists and taking any questions you may have regarding my own.

Thank you.

**QFR Responses of Monte Wiederhold**  
**President, B L Reeve Transport, Inc.**  
**United States House of Representatives Committee on Small Business**  
**“Highway to Headache: Federal Regulations on the Small Trucking Industry”**  
**November 29, 2017**

**Representative Kelly:**

This Committee frequently hears from small businesses that a one-size-fits-all approach to regulations is a problem. Do you feel the voices of small businesses in the [trucking, fireworks, ready-mix concrete] industry are being heard by agencies when developing regulations, or are small businesses being overlooked? What should be done to make sure small businesses are being heard?

**Mr. Wiederhold:**

The voices of small businesses are being heard, but they are too often brushed aside in favor of the needs and interests of corporate motor carriers. However, overlooking the concerns of small businesses is not restricted to federal regulators. Congress is also comfortable accommodating large trucking fleets at a cost to smaller competitors. I believe this is a reflection of regulators and legislators failing to understand what a sizeable and critical role small businesses play in the trucking industry. As I mentioned in my written testimony, small trucking businesses represent 96% of registered motor carriers in the United States. Despite representing such a substantial portion of trucks on the road, the federal government continues to erroneously view us as only a minor segment of the industry. Regulators and legislators also don't fully appreciate the diversity of our operations. Because of our skill and experience, small business truckers operate more complex and challenging shipments than our corporate competitors. Unfortunately, this lack of understanding has led FMCSA and Congress to view and treat trucking as a monolithic industry. Until the federal government grasps the size and importance of small business trucking, our voices will continue to be heard, but overlooked.

**Representative Norman:**

On November 20, 2017 the Department of Transportation announced that it would be easing the transition to the Electronic Logging Device mandate until April 1, 2018. If a driver has a true and accurate paper record of duty status, the driver will be cited for not having an ELD, but will be allowed to continue driving and the violation will not impact the carrier's Safety Measurement System score. How would this help your business or the industry you represent?

**Mr. Wiederhold:**

While we are pleased truckers will not receive out-of-service violations until April 1, 2018, we believe this 90-day 'soft' enforcement period is simply a tacit acknowledgement from FMCSA that the agency, law enforcement and the regulated community are not prepared for the full implementation of the ELD mandate. Additionally, drivers may not be placed out-of-service, but they will still receive potentially hefty fines for operating without a functioning ELD. As is the case with most poorly-implemented federal mandates, only those being forced to comply will feel any burdens from the agency's inability to properly prepare. Meanwhile, corporate megacarriers who already use the devices will feel no impact from the \$2 billion mandate, but will continue to demonstrate some of the worst safety records in trucking. Rather than limiting some severe penalties for a brief period of time, the federal government should delay implementation until the concerns of all stakeholders have been fully addressed.

**Representative Bacon:**

The trucking industry drives the economy both figuratively and literally. The contributions of trucking to my home state of Nebraska are immense and the issue of regulations is one I hear about often. From the many conversations that I have had with people involved in different parts of the industry, the issue that most drivers face seems to stem from hours of service regulations rather than their enforcement mechanism. I hope that Congress can revisit the hours of service rules. If that were to happen, what fixes could be made to promote safety and provide more certainty for drivers and companies both small and large?

**Mr. Wiederhold:**

Today's hours-of-service (HOS) rules are a foundational problem that affects every segment of the trucking industry, but addressing all the concerns drivers have with the current system wouldn't diminish our opposition to the ELD mandate. Not a bit. The fact the ELD mandate will impose \$2 billion of regulatory costs on small businesses without providing them any safety or economic benefits would not change by providing greater flexibility to HOS rules. Naturally, we would welcome modernization of HOS because, unlike the ELD mandate, it would actually help improve safety on our roads for all users. Modifications would also likely benefit shippers, receivers and consumers by limiting otherwise avoidable disruptions in the movement of freight. Providing drivers more flexibility to rest when they are tired, avoid congestion and inclement weather, and reduce the stress of racing against a clock would be a meaningful safety initiative for Congress. Some fixes that could be made to promote safety include amending the rigid daily 14-hour clock rule, eliminating the mandatory 30-minute rest break, and expanding sleeper berth flexibility. Unfortunately, like so many trucking regulations currently on the books, HOS rules were written with little consideration for the needs of drivers and realities of trucking. OOIDA would be a strong partner in efforts to reform today's system in a manner that benefits safety and small business truckers.

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**Questions for the Record**  
**Committee on Small Business**  
**Hearing: Highway to Headache: Federal Regulations on the Small Trucking Industry**  
**November 29, 2017**

**Responses from Marty DiGiacomo, representing the National Association of Small Trucking Companies**

**Representative Kelly:**

This Committee frequently hears from small businesses that a one-size-fits-all approach to regulations is a problem. Do you feel the voices of small businesses in the [trucking, fireworks, ready-mix concrete] industry are being heard by agencies when developing regulations, or are small businesses being overlooked? What should be done to make sure small businesses are being heard?

**Response:** In general, small business voices are routinely overlooked by federal regulatory agencies. To increase responsiveness to and incorporation of small businesses' input in rulemaking, several changes could be made. One, require that several small business owners and association representatives be named to every federal advisory committee, and big business and advocacy-oriented "stakeholders" groups' representation be reduced. Two, require agencies to weight the responses from small business entities' public comments relative to small business's proportion of industry being regulated; devalue the weight of computer-generated, identical comments. Three, add to their duties of general counsels and inspectors general with oversight of a given agency the requirement that they force the regulators to fully and affirmatively consider the input of small business in each regulatory action; provide the IGs authority and a mandate to intervene and block any regulatory action that does not incorporate accommodations and reasonable flexibility in the proposed regulation specifically for small business or that fails at any point not to have followed the Administrative Procedure Act, the Regulatory Flexibility Act, the Paperwork Reduction Act, or Executive Orders 13771 or 13777. Four, empower the Small Business Administration to intervene in regulatory actions that raise significant small business concerns regarding the impact of an existing or proposed rule, with authority to delay or suspend a regulation for up to 12 months. Five, create a private cause of action available to small business entities for injunctive relief from a regulation that has or will have a disparate impact on small business.

Likewise, Congress should significantly increase its oversight of regulatory agencies and actions, so as to hold the federal bureaucracies accountable for not sufficiently providing flexibility for small business concerns in a rule or regulation. Further, Congress should file rulemaking comments more frequently on burdensome, inflexible regulations that fall heavily on small businesses.

**Representative Norman:**

1. On November 20, 2017 the Department of Transportation announced that it would be easing the transition to the Electronic Logging Device mandate until April 1, 2018. If a driver has a true and accurate paper record of duty status, the driver will be cited for not having an ELD, but will be allowed to continue driving and the violation will not impact the carrier's Safety Measurement System score. How would this help your business or the industry you represent?

**Response:** The temporary measure of not putting drivers without an ELD out of service until April 1 is marginally better than being put out of service in these cases. However, it amounts to a grudging, minimalist concession by an agency that is seldom concerned about the impact of its regulations on small trucking, which comprises the vast majority of carriers. The fact that numerous exemptions have been requested and only a handful — recently agricultural commodities and livestock haulers — granted shows the rule's inflexibility. Most small trucking businesses will experience a mixed bag of more tickets and fines, which add costs from this unfunded mandate, blemish their drivers' records, and have nothing to do with improving highway safety. Not counting these citations against Compliance Safety Accountability SMS scores concedes little. CSA/SMS is so flawed, as the Government Accountability Office, DOT Inspector General, University of Maryland, Wells Fargo, and others have detailed, Congress in the FAST Act required FMCSA to stop publicizing the false, misleading scores and the National Academy of Sciences to review. FMCSA has resisted actually reconstituting CSA/SMS and has coopted the NAS as seen in its recommendations that essentially leave SMS in place. It is anticipated that this amounts to a delay in including these first months' citations in SMS scores.

**Representative Bacon:**

1. The trucking industry drives the economy both figuratively and literally. The contributions of trucking to my home state of Nebraska are immense and the issue of regulations is one I hear about often. From the many conversations that I have had with people involved in different parts of the industry, the issue that most drivers face seems to stem from hours of service regulations rather than their enforcement mechanism. I hope that Congress can revisit the hours of service rules. If that were to happen, what fixes could be made to promote safety and provide more certainty for drivers and companies both small and large?

**Response:** You are right that the Hours of Service regulations underlie many of the problems that unnecessarily complicate truckers' lives and motor carriers' operations. NASTC strongly encourages Congress to revisit the HOS rules. Ironically, the bureaucratic attempt to micromanage trucking has created unnecessary complexity in the HOS rules, which adds stress and thus contributes to fatigue. The 14-hour window for on-duty commercial driving can be restrictive on truck drivers, whose day-to-day circumstances can include delays of all kinds and other lost time that counts as on-duty time or otherwise still burns the overall 14-hour clock under the hours of service rules. This results in time lost that simply cannot be used for driving. The HOS rule allows use of a sleeper berth, but unless it is the full 8 hour period, it does not stop the 14-hour clock (and does not allow splitting time in the sleeper berth for logging hours of service). Thus, there is no incentive for a driver to take a real rest or sleeper berth break because that would still count against the 14 hours of allowable time. Within the driving window of 14 hours (a maximum of 11 hours spent driving within that window), a driver cannot exercise judgment regarding his circumstances, to rest when weary, to maximize one's available time

within the driving hours window, or other common-sense discretionary use of time under these parts of the rule.

Further, the 30-minute required rest break under the hours of service rule has proven unworkable and should be repealed. The mandate effectively compresses the 14 hours into 13 hours, generally costing truck drivers far more than the half hour. Additional time is spent meeting the daily mandate finding available parking, preparing and securing the vehicle before beginning the 30 minutes and more time preparing to take the vehicle back on the road following the 30 minutes. What effectively costs drivers an hour or more a day can prove disruptive to the total available hours for the day. The added layer of complexity is disruptive and not easily accommodated in real-world situations that over-the-road truckers encounter. The costs of lost time and inefficiency of operations harm both drivers and carriers, as well as add to the costs of the shipping public. Lost time equals lost earnings and lost efficiencies. Further, these strictures can result in form-and-manner violations of the HOS rule, compounding the unnecessary costs, and adversely affecting the motor carrier's Compliance Safety Accountability scores, which can result in the carrier being targeted for FMCSA enforcement attention, all because of an inflexible combination of HOS rules that FMCSA created.

Several things could be done that would both promote safety and provide greater certainty. These would improve safety by giving carriers and drivers greater flexibility to respond to circumstances on the ground. Simplify the 14-Hour Driving Window, making 14 hours mean 14 hours. First, repeal the mandatory 30-minute rest break. Second, allow the splitting of sleeper berth time that moves the 14-hour window accordingly. All sleeper berth and off-duty time should stop the HOS clock. Allow each driver to log split sleeper berth time, counted toward hours of rest. That is, provide that a driver may split hours in the sleeper berth as the driver deems appropriate, such as 8/2, 3/5, 4/5, and clarify that the split sleeper berth hours logged must be at least 8 hours in a 24-hour period, and that the splits may be different from day to day. All split sleeper berth use would be logged as sleeper berth time and stop the clock. The 10-hour off-duty option, if used, would be logged "off duty." Any combination of 10 hours off-duty should start the full 14-hour clock again. Currently, even driver teams are required to spend a full 10 hours in the sleeper berth. I have spent many years team driving, but would not go back to it under the current HOS rules. I would need the flexibility to split sleeper berth time with my driving partner, as the rules formerly provided.



January 8, 2018

**Response to Questions for the Record  
Committee on Small Business  
Hearing: Highway to Headache: Federal Regulations on the Small Trucking Industry  
November 29, 2017**

**Representative Kelly:**

1. *This Committee frequently hears from small businesses that a one - size - fits - all approach to regulations is a problem. Do you feel the voices of small businesses in the [trucking, fireworks, ready - mix concrete] industry are being heard by agencies when developing regulations, or are small businesses being overlooked? What should be done to make sure small businesses are being heard?*

Mr. Pelkey: The American Pyrotechnics Association (APA) strongly believes that there are always good intensions with regulations; however, as a former State Representative (NH) serving on the Commerce Committee, we would frequently ask, "what industry would be adversely affected and have we addressed those concerns?" The "One Size Fits ALL" rulemaking policy seems to be the way many agencies adopt policy...for many of us it is like a "scorched earth" foreign policy.

With the complexity of each agency in government, we are sure it is far easier to force those affected to come to each agency with their specific issue of concern(s) and file a petition for waiver. The APA has been actively working with FMCSA as well as PHMSA on rules and regulations being implemented under MAP-21. Unfortunately, with the electronic logging device (ELD) mandate, our members are affected by a regulation that was designed to fix a problem for enforcement with some carriers who may be cheating on their paper records/logs (RODS). This is not the issue with member companies of the APA. If this were a concern of the Federal Motor Carrier Safety Administration (FMCSA), then the agency would have never authorized APA's current Hours of Services (HOS) exemption from the 14-hour rule during our busiest 11 days of the year (June 28- July 8).

Although HOS is a significant public safety concern for larger companies on long hauls operating daily throughout the year, it has overlapped into our industry which has very short distances to travel. As stated previously, our members utilize just over 90% of commercial motor vehicles (CMV's) on a seasonal basis two (2) to three (3) times each year with distances less than 150 miles. Most of our 250 member companies, as an industry business model, rent vans and cargo trucks because they are only needed for less than 30 days, two (2) or three (3) times each year. As our technicians are highly trained and skilled in the handling, storage and use of their cargo and they do this work for

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just a few days each year. These member companies and seasonal part time workers cannot afford the time and expense to add an additional layer of regulation that does not enhance personal or public safety but rather, only satisfies a need to better track the hours of drivers for long haul carriers.

The APA believes that any proposed rule or regulation should have a thorough vetting, including stakeholder input, to first to determine *which sector of any industry* requires additional regulation. This should be done by a predetermined standard to evaluate public safety, compliance, effectiveness and ultimately cost.

**Representative Norman:**

1. *On November 20, 2017 the Department of Transportation announced that it would be easing the transition to the Electronic Logging Device mandate until April 1, 2018. If a driver has a true and accurate paper record of duty status, the driver will be cited for not having an ELD, but will be allowed to continue driving and the violation will not impact the carrier's Safety Measurement System score. How would this help your business or the industry you represent?*

Mr. Pelkey: Yes, this would help many of our smaller member companies that are having difficulty understanding the new rule as well as the current exemption of 8 days within any rolling 30 day period. Unfortunately for many small businesses, the fines accrued can be devastating as companies attempt to better understand the rule in real time circumstances. However, with our busiest time just around the corner from mid-May through mid-July, it would be most beneficial for the FMCSA to approve APA's request for a limited exemption from the ELD requirement for drivers operating under the limited Hours of Service (HOS) exemption issued to our industry for a period of 11 days from June 28 to July 8. This HOS exemption was initially granted in 2005 and has been reapproved every two years, with an extension provided in the FAST Act. This exemption is not due for renewal until July 8, 2020.

**Representative Bacon:**

1. *The trucking industry drives the economy both figuratively and literally. The contributions of trucking to my home state of Nebraska are immense and the issue of regulations is one I hear about often. From the many conversations that I have had with people involved in different parts of the industry, the issue that most drivers face seems to stem from hours of service regulations rather than their enforcement mechanism. I hope that Congress can revisit the hours of service rules. If that were to happen, what fixes could be made to promote safety and provide more certainty for drivers and companies both small and large?*

Mr. Pelkey: This is an excellent question. Hours of Service (HOS) for long haul drivers over our busiest roads and highways is and should be a significant public safety concern. However, there should always be consideration of providing an exemption from many of the rules and proposed rules for short-haul drivers of CMV's who drive distances of less than 150 miles.

The HOS regulations, in general, do not reflect the real world circumstances related to transportation of goods and service vehicles. For instance, when a driver is caught in traffic due to construction or an accident involving another civilian or commercial driver, these unavoidable circumstances and delays add pressure on drivers to reach their destination as their time may be expiring. There needs to be a mechanism to allow a driver the ability to reach their base or destination without facing a HOS violation. The lack of safe havens or adequate parking for large trucks further complicates the hours of service rules.

Respectfully submitted,

*Stephen Pelkey*

APA Transportation Committee Chairman



Answers to Questions for the Record  
 Committee on Small Business  
 Hearing: Highway to Headache:  
 Federal Regulations on the Small Trucking Industry  
 Witness: Robert Garbini, PE  
 President, National Ready Mixed Concrete Association

**Representative Kelly Question:**

This Committee frequently hears from small businesses that a one-size-fits-all approach to regulations is a problem. Do you feel the voices of small businesses in the [trucking, fireworks, ready-mix concrete] industry are being heard by agencies when developing regulations, or are small businesses being overlooked? What should be done to make sure small businesses are being heard?

**NRMCA Response:**

Agencies are not doing enough to hear from and understand the unique difficulties regulations impose on small businesses and the costs associated with implementation of new regulations. For example, meaningful dialogue with a ready mixed concrete producer would have revealed how impractical and unnecessary complying with...the "Electronic Logging Devices and Hours of Service Supporting Documents"<sup>1</sup> final rule published by the Federal Motor Carrier Safety Administration (FMCSA) on December 16, 2015.

NRMCA appreciates FMCSA's recognition of the difference between long and short-haul operators published in the final rule; however, many questions pertaining to compliance remain. The provision, as written, does not take into consideration the uniqueness of manufacturing and delivering ready mixed concrete. The effect of this provision on small businesses in the ready mixed concrete industry is overly burdensome logistically and financially.

Specific to the ready mixed concrete industry:

- Drivers only drive an average of 14 miles away from a concrete plant round trip;
- Drivers only drive about 4 to 6 hours per day;
- Drivers begin and end their day at the same location;
- Drivers are routinely released from duty within 12 hours from the start of their shift
- Drivers spend roughly 60% of their on-duty time engaged in non-strenuous, non-driving related activities; and
- Due to the nature of these operating conditions drivers are not subjected to fatigue inducing situations such as long-haul drivers often experience.

Due to the nature of mixer drivers' work and the exemptions/exceptions to Hours of Service (HOS) compliance provided in law, using an ELD for HOS compliance is unnecessary and beyond the intent of the ELD mandate. Because mixer drivers spend roughly 60% of their on-duty time engaged in non-strenuous, non-driving related activities, they are not subject to the

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<sup>1</sup>80 Federal Register 78291

same fatigue that the ELD mandate intends to address. ELDs do not accurately reflect HOS compliance since mixer drivers are only in the Commercial Motor Vehicle or driving a brief period of their on-duty work status.

Further complicating the ELD mandate is the application of the 100 air-mile logging exemption to the ready mixed concrete industry and the industry specific change to the 100 air-mile logging exemption. Currently, the threshold for ready mixed concrete drivers on-duty time is 14 hours, instead of the standard 12 hours, as detailed in Title 49 of the Code of Federal Regulations, Section 395.1(e)(1)<sup>2</sup> – as amended in passage of the Fixing America’s Surface Transportation Act (FAST Act)<sup>3</sup>, brings the on-duty threshold of the 100 air-mile logging exemption for ready mixed drivers in line with the 14-hour driving window<sup>4</sup>. This means a mixer driver is only required to install an ELD once a driver has worked beyond 14 hours more than 8 days in any 30-day period. This creates a situation where needing ELDs wouldn’t be required until a period where a mixer driver can no longer even operate a CMV. This begs the question, why would mixer drivers still be required to comply with the ELD mandate?

This rule is counterproductive to its true intent. Agencies should take into consideration the unintended consequences some rules have on certain industries – especially industries composed primarily of small businesses. Where exceptions occur, Agencies should take them into consideration and allowances should be made when drafting/finalizing rules.

**Representative Norman Question:**

On November 20, 2017, the Department of Transportation announced that it would be easing the transition to the Electronic Logging Device mandate until April 1, 2018. If a driver has a true and accurate paper record of duty status, the driver will be cited for not having an ELD, but will be allowed to continue driving and the violation will not impact the carrier’s Safety Measurement System score. How would this help your business or the industry you represent?

**NRMCA Response:**

So long as the ELD mandate goes forward, a brief reprieve in impact on safety measures is relatively insignificant. NRMCA appreciates the intent of the transition period, there is nothing to suggest the April 1 extension will be sufficient for law enforcement to be trained on the Hours of Service exemptions and accommodations afforded specifically to the ready mixed concrete industry in the FAST Act.

Due to the nature of mixer drivers’ work and the exemptions/exceptions to Hours of Service (HOS) compliance provided in law, using an ELD for HOS compliance is unnecessary and beyond the intent of the ELD mandate. Because mixer drivers spend roughly 60% of their on-duty time engaged in non-strenuous, non-driving related activities, they are not subject to the

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<sup>2</sup> 49 CFR.1(e)(1)

<sup>3</sup> Public Law 114-94

<sup>4</sup> 49 CFR 395.3(a)(2)

same fatigue that the ELD mandate intends to address. ELDs do not accurately reflect HOS compliance since mixer drivers are only in the Commercial Motor Vehicle or driving a brief period of their on-duty work status.

Further complicating the ELD mandate, is the application of the 100 air-mile logging exemption to the ready mixed concrete industry and the industry specific change to the 100 air-mile logging exemption. Currently, the threshold for ready mixed concrete drivers on-duty time is 14 hours, instead of the standard 12 hours, as detailed in Title 49 of the Code of Federal Regulations, Section 395.1(e)(1)<sup>5</sup> – as amended in passage of the Fixing America’s Surface Transportation Act (FAST Act)<sup>6</sup>, brings the on-duty threshold of the 100 air-mile logging exemption for ready mixed drivers in line with the 14-hour driving window<sup>7</sup>. This means a mixer driver is only required to install an ELD once a driver has worked beyond 14 hours more than 8 days in any 30-day period. This creates a situation where needing ELDs wouldn’t be required until a period where a mixer driver can no longer even operate a CMV. This begs the question, why would mixer drivers still be required to comply with the ELD mandate? This rule is counterproductive to its true intent and a technical correction should be offered for the ready mixed concrete industry.

#### **Rep. Bacon Question**

The trucking industry drives the economy both figuratively and literally. The contributions of trucking to my home state of Nebraska are immense and the issue of regulations is one I hear about often. From the many conversations that I have had with people involved in different parts of the industry, the issue that most drivers face seems to stem from hours of service regulations rather than their enforcement mechanism. I hope that Congress can revisit the hours of service rules. If that were to happen, what fixes could be made to promote safety and provide more certainty for drivers and companies both small and large?

#### **NRMCA Response:**

Both Hours of Service and its ELD enforcement are problematic for many small businesses. Recognizing the uniqueness and perishability of the ready mixed concrete industry’s product, Congress afforded the ready mixed concrete industry several accommodations in the FAST Act. There are still several outstanding items from the original regulation that remain problematic for the ready mixed concrete industry. NRMCA believes these provisions should be revisited. As Congress begins to craft meaningful transportation and infrastructure policy, NRMCA is interested in working with you and your staff to find working solutions to HOS regulations as well as others. Currently, the ELD mandate is the most problematic; however, Obstructive Sleep Apnea is as well.

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<sup>5</sup> 49 CFR.1(e)(1)

<sup>6</sup> Public Law 114-94

<sup>7</sup> 49 CFR 395.3(a)(2)



## Commercial Vehicle Safety Alliance

Improving uniformity in commercial motor vehicle safety and enforcement

November 28, 2017

The Honorable Steve Chabot (R-OH)  
Chairman  
Committee on Small Business  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Nydia Velazquez (D-NY)  
Ranking Member  
Committee on Small Business  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Chabot and Ranking Member Velazquez,

On behalf of the Commercial Vehicle Safety Alliance (CVSA), *I am writing to express our strong opposition to any effort to delay implementation of the congressionally mandated electronic logging device (ELD) requirement.* The ELD requirement is not a new development and industry has had more than enough time to prepare for implementation. The December deadline for this important safety regulation was established by the Federal Motor Carrier Safety Administration (FMCSA) in 2015 following a decade of regulatory inquiry, study, litigation and ultimately a congressional mandate in 2012 as part of the Moving Ahead for Progress in the 21st Century Act. Motor carriers have had two full years to prepare for the requirement and obtain devices for their vehicles. FMCSA's own research has found that the use of ELDs results in a reduction in a motor carrier's crash rate and hours-of-service violations. It is time to move forward with this regulation.

The federal hours-of-service requirements exist to help prevent and manage driver fatigue. While it's true that we cannot regulate sleep, the hours-of-service rules set forth a framework that, if followed, allows for drivers to get the rest necessary to operate their vehicles safely. Unfortunately, hours-of-service violations continue to be some of the most frequently found violations by enforcement officials, who conduct roadside safety inspections. What this tells us is that too many drivers and motor carriers either don't understand the hours-of-service rules or are intentionally violating them – and, as a result, are likely driving fatigued. Deployment of ELDs will help address both of these issues.

For those drivers and motor carriers who don't understand the intricacies of the hours-of-service requirements and for those who make the occasional mistake when using their paper log, ELDs will remove the guess work and the risk of human error. This will result in better compliance and fewer violations. For those who are using their log books to find 'wiggle room' in the current hours-of-service regulations, ELDs will make it easier for inspectors to identify violations and take unsafe, noncompliant drivers off the roadways. The devices will also save time for both inspectors and drivers, leading to more efficiency.

Requiring the installation of ELDs will improve efficiencies, reduce fraud and error in reporting, reduce the amount of time a driver spends documenting their hours and reduce the time required for a roadside inspection. There are many inexpensive ELDs available for purchase and one truck stop chain is even offering free devices and installation at their facilities. The cost of an ELD is simply part of the cost of doing business and compliance for those in the truck and bus industries – vehicles have to be maintained, drivers have to be trained and ELDs have to be installed. The only scenario in which an ELD might have a significant impact on

a company financially is if it reduces the number of miles driven by forcing the company's drivers to drive within the current hours-of-service parameters. Improved compliance and the safety of the motoring public is the *purpose* of this requirement and not a justification for delaying implementation.

Both FMCSA and the enforcement community have made tremendous effort to minimize the impact of this requirement on industry. In order to ease the transition and to help those motor carriers that have not prepared for the ELD requirement, CVSA has elected to begin applying the out-of-service criteria (OOSC) associated with the ELD mandate on April 1, 2018. Setting an April 1, 2018 effective date for applying the ELD OOSC will provide the motor carrier industry, shippers and the roadside enforcement community with time to adjust to the new ELD requirement with minimal disruption to the delivery of goods. In addition, FMCSA recently announced that for the period between Dec. 18, 2017 and April 1, 2018, no Compliance, Safety, Accountability (CSA) points will be assigned to a motor carrier's safety record for an ELD violation.

I also want to assure you that the enforcement community will be ready to begin enforcement of the requirement on Dec. 18, 2017. On that date, inspectors and roadside enforcement personnel will begin documenting violations on roadside inspection reports and, at the jurisdiction's discretion, may issue citations to commercial motor vehicle drivers operating vehicles without a compliant ELD.

CVSA is a nonprofit association comprised of local, state, provincial, territorial and federal commercial motor vehicle safety officials and industry representatives. The Alliance aims to achieve uniformity, compatibility and reciprocity of commercial motor vehicle inspections and enforcement by certified inspectors dedicated to driver and vehicle safety. Our mission is to improve commercial motor vehicle safety and uniformity throughout the United States, Canada and Mexico by providing guidance and education to enforcement, industry and policy makers.

CVSA works to closely monitor, evaluate and identify potentially unsafe transportation processes and procedures as well as to help facilitate and implement best practices for enhancing safety on our highways. Commercial motor vehicle safety continues to be a challenge and we need the involvement of all affected parties to help us better understand these issues and put into place practical solutions.

If you have further questions or comments, please do not hesitate to contact me by phone at 301-830-6149 or via email at [collinm@cvsa.org](mailto:collinm@cvsa.org).

Respectfully,



Collin B. Mooney, MPA, CAE  
Executive Director  
Commercial Vehicle Safety Alliance

November 28, 2017

The Honorable Steve Chabot, Chair  
The Honorable Nydia Velazquez, Ranking Member  
U.S. House of Representatives  
Committee on Small Business  
Washington, D.C. 20515

Dear Chairman Chabot and Ranking Member Velazquez:

As you prepare for tomorrow's hearing, "Highway to Headache: Federal Regulations on the Small Trucking Industry," our public health, safety and law enforcement organizations, trucking companies, truck drivers, families of loved ones killed in truck crashes and truck crash survivors write to express our staunch opposition to any attempts to delay, create special interest exemptions from, or impede full implementation of the long overdue electronic logging device (ELD) rule.

The rule requires most commercial motor vehicles (CMVs), namely large trucks and buses in interstate commerce, to install an ELD to track driver on-duty time by December 18, 2017. The regulation was required in bipartisan legislation, the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21, P.L. 112-141), enacted in 2012. Subsequently, the regulation was issued by the Federal Motor Carrier Safety Administration (FMCSA) in 2015.

Truck driver fatigue has been a well-documented safety problem in the industry for decades. The National Transportation Safety Board (NTSB) has repeatedly cited fatigue as a major contributor to truck crashes and included reducing fatigue-related crashes in its 2017/2018 "Most Wanted List" of safety changes. ELDs are a proven and cost-effective technology that will save lives and reduce injuries, and according to the U.S. Department of Transportation will result in over \$1 billion in annualized net benefits. Additionally, ELDs provide an objective record of a CMV driver's on-duty time, will increase compliance with hours of service (HOS) rules, and will simplify and streamline the efforts of law enforcement.

There already is widespread use of ELD technology in the United States and other countries. Nearly a third of trucks currently in service are equipped with electronic logging technology. Similar technology has been used in Europe for decades and is required in the European Union, Japan, and many other countries. Members of the trucking industry have known about this rule for years and have had ample time to prepare for it.

Moreover, the legal challenge to the final rule was unanimously rejected by the U.S. Court of Appeals for the Seventh Circuit in 2016. The three judge panel denied each and every claim brought by the parties that sought to vacate the rule. In addition, the request to the U.S. Supreme Court to review the Seventh Circuit's ruling was denied.

Truck crash deaths and injuries are on the rise. In 2016, 4,317 people were killed in crashes involving large trucks, representing an increase of more than five percent from the previous year and the highest number of fatalities since 2007. Additionally, in 2015, the most recent year for

which complete data is available, an estimated 116,000 people were injured in crashes involving large trucks.

We urge the Committee to oppose any weakening of this overdue, commonsense truck safety regulation. Delaying, deferring or carving out exemptions to the ELD requirement will only contribute to more fatigued commercial drivers sharing the road with families and jeopardizing everyone's safety.

Sincerely,

Joan Claybrook, Chair  
Citizens for Reliable and Safe Highways and,  
Former Administrator, NHTSA

Jacqueline Gillan, President  
Advocates for Highway and Auto Safety

John Risch, National Legislative Director  
SMART-TD (UTU)

Deborah A.P. Hersman, President and CEO  
National Safety Council

Steve Owings, Co-Founder  
Road Safe America

Andrew McGuire, Executive Director  
Trauma Foundation

Jack Gillis, Director of Public Affairs  
Consumer Federation of America

Amy Fletcher  
Perrysburg, OH  
Volunteer, Truck Safety Coalition  
Wife of John Fletcher  
Killed in a truck crash 1/24/12

Kim Telep  
Harrisburg, PA  
Volunteer, Truck Safety Coalition  
Wife of Bradley Telep  
Killed in a truck crash 8/29/12

James P. Hoffa, General President  
International Brotherhood of Teamsters

Lane Kidd, Managing Director  
Alliance for Driver Safety & Security  
(The Trucking Alliance)

Dominick L. Stokes,  
Vice President for Legislative Affairs  
Federal Law Enforcement Officers Association

Stephen W. Hargarten, M.D., MPH  
Society for the Advancement of Violence  
and Injury Research

Jason Levine, Executive Director  
Center for Auto Safety

Janette Fennell, Founder and President  
KidsAndCars.org

Daphne Izer, Founder  
Parents Against Tired Truckers (PATT)

Peter Malarczyk  
Hastings-on-Hudson, NY  
Volunteer, Truck Safety Coalition  
Injured in a truck crash 12/29/15  
Son of Ryszard and Anita Malarczyk  
Killed in a truck crash 12/29/15

Monica Malarczyk  
Hastings-on-Hudson, NY  
Volunteer, Truck Safety Coalition  
Injured in a truck crash 12/29/15

	Son of Ryszard and Anita Malarczyk Killed in a truck crash 12/29/15
Marchelle Wood Falls Church, VA Volunteer, Truck Safety Coalition Mother of Dana Wood Killed in a truck crash 10/15/02	Alan Dana Plattsburgh, NY Volunteer, Truck Safety Coalition Son of Janet Dana, Uncle of Caitlyn & Lauryn Dana, Brother-in-law of Laurie Dana Killed in a truck crash 7/19/12
Lisa Shrum Fayette, MO Volunteer, Truck Safety Coalition Daughter of Virginia Baker, Step-daughter of Randy Baker Killed in a truck crash 10/10/06	Michelle Novak Delevan, NY Volunteer, Truck Safety Coalition Aunt of Charles "Chuck" Novak Killed in a truck crash 10/24/10
Tami Friedrich Trakh Corona, CA Board Member, CRASH Sister of Kris Mercurio, Sister-in-Law of Alan Mercurio, Aunt of Brandie Rooker & Anthony Mercurio Killed in a truck crash 12/27/89	Jane Mathis St. Augustine, FL Vice President, TSC Board Member, PATT Mother of David Mathis Mother-in-Law of Mary Kathryn Mathis Killed in a truck crash 3/25/04
Kate Brown Gurnee, IL Volunteer, Truck Safety Coalition Mother of Graham Brown Injured in a truck crash 5/2/05	Frank Wood Falls Church, VA Volunteer, Truck Safety Coalition Father of Dana Wood Killed in a truck crash 10/15/02
Tina Silva Ontario, CA Volunteer, Truck Safety Coalition Sister of Kris Mercurio, Sister-in-Law of Alan Mercurio, Aunt of Brandie Rooker & Anthony Mercurio Killed in a truck crash 12/27/89	Sandra Lance Chesterfield, VA Volunteer, Truck Safety Coalition Mother of Kristen Belair Killed in a truck crash 8/26/09
Jackie Novak Hendersonville, NC Volunteer, Truck Safety Coalition Mother of Charles "Chuck" Novak Killed in a truck crash 10/24/10	Jennifer Tierney Kernersville, NC Board Member, CRASH Daughter of James Mooney Killed in a truck crash 9/20/83
Michelle Lemus Los Angeles, CA	Paul Badger Davidson, NC Volunteer, Truck Safety Coalition

Volunteer, Truck Safety Coalition  
Injured in a truck crash 4/10/14

Santiago Calderon  
Arcata, CA  
Volunteer, Truck Safety Coalition  
Injured in a truck crash 4/10/14

Dawn King  
Davisburg, MI  
President, Truck Safety Coalition (TSC)  
Board Member, Citizens for Reliable and Safe  
Highways (CRASH)  
Daughter of Bill Badger  
Killed in truck crash 12/23/04

Linda Wilburn  
Weatherford, OK  
Board Member, PATT  
Mother of Orbie Wilburn  
Killed in a truck crash 9/2/02

Larry Liberatore  
Severn, MD  
Board Member, PATT  
Father of Nick Liberatore  
Killed in a truck crash 6/9/97

Wanda Lindsay  
New Braunfels, TX  
Volunteer, Truck Safety Coalition  
Wife of John Lindsay  
Killed in a truck crash 5/7/10

Beth Badger  
Columbus, GA  
Volunteer, Truck Safety Coalition  
Daughter of Bill Badger  
Killed in truck crash 12/23/04

Nancy Meuleners  
Bloomington, MN  
Volunteer, Truck Safety Coalition  
Injured in a truck crash 12/19/89

Debra Cruz

Son of Bill Badger  
Killed in truck crash 12/23/04

Bernadette Fox  
Davis, CA  
Volunteer, Truck Safety Coalition  
Best friend of Daniel McGuire  
Killed in a truck crash 7/10/14

John Ramsey  
Edneyville, NC  
Volunteer, Truck Safety Coalition

Henry Steck  
Homer, NY  
Volunteer, Truck Safety Coalition

Ed Slattery  
Lutherville, MD  
Board Member, PATT  
Volunteer, Truck Safety Coalition  
Husband of Susan Slattery  
Killed in a truck crash 8/16/10  
Sons Matthew & Peter Slattery critically  
injured in a truck crash 8/16/10

Ron Wood  
Washington, D.C.  
Volunteer, Truck Safety Coalition  
Son of Betsy Wood, Brother of Lisa Wood  
Martin, Uncle of Chance, Brock, and Reid  
Martin  
Killed in a truck crash 9/20/04

Gary Wilburn  
Weatherford, OK  
Volunteer, Truck Safety Coalition  
Father of Orbie Wilburn  
Killed in a truck crash 9/2/02

Christina Mahaney  
Jackman, ME  
Volunteer, Truck Safety Coalition  
Injured in a truck crash 7/19/11  
Mother of Liam Mahaney  
Killed in a truck crash 7/19/11

Harlingen, TX  
 Volunteer, Truck Safety Coalition  
 Injured in a truck crash 8/8/08  
 Laurie Higginbotham  
 Memphis, TN  
 Volunteer, Truck Safety Coalition  
 Mother of Michael Higginbotham  
 Killed in a truck crash, 11/18/14

Vickie Johnson  
 Hartwell, GA  
 Volunteer, Truck Safety Coalition  
 Wife of Curt Johnson, Step-mother of Crystal  
 Johnson  
 Killed in a truck crash 10/1/09

Randall Higginbotham  
 Memphis, TN  
 Volunteer, Truck Safety Coalition  
 Father of Michael Higginbotham  
 Killed in a truck crash, 11/18/14

Bruce King  
 Davisburg, MI  
 Volunteer, Truck Safety Coalition  
 Son-in-law of Bill Badger  
 Killed in truck crash 12/23/04

Marc Johnson  
 Hartwell, GA  
 Volunteer, Truck Safety Coalition  
 Brother of Curt Johnson  
 Killed in truck crash 10/1/09

Melissa Gouge  
 Washington, D.C.  
 Volunteer, Truck Safety Coalition  
 Cousin of Amy Corbin  
 Killed in a truck crash 8/18/97

Morgan Lake  
 Sunderland, MD  
 Volunteer, Truck Safety Coalition  
 Injured in a truck crash 7/19/13

Julie Branon Magnan  
 South Burlington, VT  
 Volunteer, Truck Safety Coalition  
 Injured in a truck crash 01/31/02  
 Wife of David Magnan  
 Killed in a truck crash 01/31/02

Cindy Southern  
 Cleveland, TN  
 Volunteer, Truck Safety Coalition  
 Wife of James Whitaker, sister-in-law  
 Anthony Hixon and aunt of Amber Hixon  
 Killed in a truck crash 9/18/09

Steve Izer  
 Lisbon, ME  
 Board Member, PATT  
 Father of Jeff Izer  
 Killed in a truck crash 10/10/93

Warren Huffman  
 Odessa, MI  
 Volunteer, Truck Safety Coalition  
 Brother of Tim Huffman  
 Killed in a truck crash 5/6/13

Tammy Huffman  
 Odessa, MI  
 Volunteer, Truck Safety Coalition  
 Sister-in-law of Tim Huffman  
 Killed in a truck crash 5/6/13

Ashley McMillan  
 Memphis, TN  
 Volunteer, Truck Safety Coalition  
 Girlfriend of Michael Higginbotham  
 Killed in a truck crash 11/18/14

cc: Members of the Committee on Small Business



November 28, 2017

The Honorable Steve Chabot (R-OH), Chair  
The Honorable Nydia Velazquez (D-NY), Ranking Member  
U.S. House of Representatives  
Committee on Small Business  
Washington, D.C. 20515

Dear Chairman Chabot and Ranking Member Velazquez:

We are writing in regard to the hearing taking place tomorrow before the House Small Business Committee, "Highway to Headache: Federal Regulations on the Small Trucking Industry." The subjects to be covered during this hearing raise concerns within our association, which represents the truckload segment of the trucking industry. The Truckload Carrier's Association (TCA) is comprised of over 600 companies varying in fleet size, from 7 to 20,000 trucks. TCA member companies of all sizes are supportive of the December 18, 2017 electronic logging device (ELD) implementation date and would like to express our opposition to any attempts to delay or halt implementation of the ELD rule.

The truckload industry embraces new and emerging technologies that will improve compliance with Department of Transportation (DOT) regulations. The use of an ELD will enable the industry to be transparent when complying with hours of service and is essential to the continuation of efficient business operations. TCA fleets are ELD compliant, and many have been so for years. The trucking industry has worked together to advocate the use of ELDs by providing educational opportunities on eliminating cost barriers, installation and use. TCA members have made the necessary adjustments to their fleets and are excited to see how the influx of data will assist in making their fleets more compliant and efficient.

Rather than aggrandizing the negatives of ELDs, we must focus on the numerous, measurable positives of this technology. ELDs will help us better understand a driver's day-to-day challenges with the hours of service regulation by providing accurate and transparent data. ELDs have the potential to highlight the ever growing issue of detention time, which is when a driver is delayed in traffic or at a shipping facility for multiple hours, thus cutting into their on-duty driving time. In addition, the use of ELDs will also go a long way in highlighting our industry's truck parking shortage, as time spent looking for parking can now be accurately measured. The truckload industry is quite interested in using this ELD-generated data to address the effects of detention time and limited truck parking on hours of service with the DOT and the Federal Motor Carrier Safety Administration (FMCSA).

We urge the committee to oppose any changes to the current ELD rule, including the December 18, 2017 implementation date. The rule has been written, finalized and litigated. Any delay in implementation would further interrupt the actions of a progressive trucking industry that continually places safety at its forefront and stresses continued regulatory compliance.

Sincerely,

A handwritten signature in black ink, appearing to read "John Lyboldt", with a stylized flourish at the end.

John Lyboldt  
President

cc: Members of the Committee on Small Business