

Hearing
U.S. House Small Business Committee
“Highway to Headache: Federal Regulations on the Small Trucking Industry”
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Testimony of
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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 LEDs 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.