

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6315

Memorandum

To: Members, Committee on Small Business
From: Committee Staff
Date: November 27, 2017
Re: Hearing: "Highway to Headache: Federal Regulations on the Small Trucking Industry"

On Wednesday, November 29, 2017 at 11:00 a.m., the Committee on Small Business will meet in Room 2360 of the Rayburn House Office Building for the purpose of examining how federal regulations can affect the small trucking industry and exploring ways to provide regulatory relief to the industry.

I. Background on the Trucking Industry

The trucking industry plays a critical role in the United States economy. America's businesses rely on the trucking industry to transport and deliver all types of goods and products, including consumer goods, fuel, food, machinery, and raw materials. The trucking industry produced \$726.4 billion in revenue in 2015 and employs about 7.1 million people, which accounts for 6 percent of all American jobs.¹ In addition, 80 percent of all cargo is transported by trucks.²

Small businesses make up the majority of the trucking industry. In fact, 90 percent of trucking companies operate fewer than 6 trucks, and 97 percent operate fewer than 20 trucks.³ Many trucking companies are owner-operators, meaning individuals own and operate their own trucking business as a one-person business. There are approximately 350,000 owner-operators registered in the United States.⁴

¹ *Trucking Industry Statistics*, TRUCKERPATH.COM (Jun. 27, 2017), <https://truckerpath.com/blog/trucking-industry-statistics/>.

² *Id.* Further, 8 percent of cargo is transported by air, 6 percent by pipeline, 4 percent by rail, and 2 percent by water. *Id.*

³ *Id.*; Am. Trucking Ass'n, *Reports, Trends & Statistics*, http://www.trucking.org/News_and_Information_Reports/Industry_Data.aspx (last visited Nov. 17, 2017); OOIDA Found., *Industry Facts*, <https://www.ooida.com/OOIDA%20Foundation/Tools/industry-facts.asp> (last visited Nov. 17, 2017).

⁴ However, most owner-operators will lease onto a larger carrier and operate under the larger carrier's Department of Transportation number. OOIDA Found., *Owner-Operator and Professional Employee Driver Facts*, <https://www.ooida.com/OOIDA%20Foundation/RecentResearch/OOfacts.asp> (last visited Nov. 17, 2017).

Many federal agencies have the authority to regulate the trucking industry.⁵ Below are examples of federal agencies and their authority to regulate the trucking industry:

- Federal Motor Carrier Safety Administration (FMCSA): The FMCSA has the authority to issue safety standards for commercial motor carriers and motor vehicle operators. Between 2010 and 2016, FMCSA promulgated 71 final rules that impact the trucking industry.⁶ According to the FMCSA, 99 percent of the motor carriers that it regulates are considered small entities under the Small Business Administration's definition of a small business.⁷
- Pipeline and Hazardous Materials Safety Administration (PHMSA): The PHMSA has the authority to regulate the safe transportation of hazardous materials.
- Environmental Protection Agency (EPA): In addition to the PHMSA, the EPA also has the authority to regulate hazardous waste. The EPA has also issued emissions standards that apply to trucking companies.
- Occupational Safety and Health Administration (OSHA): OSHA has the authority to regulate workplace safety, which includes the safety of transportation workers.
- National Highway Safety Administration (NHTSA): NHTSA is responsible for highway safety in general and vehicle safety.

II. Federal Regulations Impact the Small Trucking Industry

Small trucking companies are subject to many of the same federal requirements as large trucking companies. Industries that rely on the trucking industry or use trucking as part of their business model can also be subject to many of the same regulations. Below are some examples of regulations that affect the small trucking industry.

A. FMCSA's Electronic Logging Device Mandate

In 2012, Congress passed the Commercial Motor Vehicle Safety Enhancement Act, which included a requirement that the Department of Transportation adopt regulations requiring the use of electronic logging devices (ELDs) in commercial motor vehicles when operated by drivers who are required to keep records of their hours of service, which many small trucking companies currently complete using paper logs.⁸ The devices connect to the vehicle's engine and automatically record driving hours. The overall goal of the mandate was to reduce the

⁵ For a list of agencies that regulate transportation safety in general, see U.S. Dep't of Transp., *Transportation Safety Regulation in the United States Government*, <https://www.transportation.gov/office-policy/transportation-policy/transportation-safety-regulation-united-states-government> (last updated Apr. 15, 2016).

⁶ OOIDA Found., *Regulatory Burden with No Link to Safety* (Mar. 3, 2017), <https://www.oida.com/OOIDA%20Foundation/RecentResearch/Request/DownloadFile.ashx?type=One%20Pager&document=Regulatory-Burden-with-no-link-to-Safety-One-Pager.pdf>.

⁷ Electronic Logging Devices and Hours of Service Supporting Documents, 80 Fed. Reg. 78,291, 78,378 (Dec. 16, 2015) (to be codified at 49 C.F.R. pts. 385, 386, 390, & 395).

⁸ Commercial Motor Vehicle Safety Enhancement Act, Pub. L. No. 112-141, § 32301(b), 126 Stat. 405, 786–88 (2012).

number of accidents and improve safety. On December 16, 2015, the FMCSA published a final rule implementing the mandate and also set ELD performance and design standards, required ELDs to be certified and registered with the FMCSA, established what supporting documents drivers and carriers are required to keep, and prohibited the harassment of drivers based on ELD data.⁹

In the final rule's final regulatory flexibility analysis analyzing the rule's impact on small entities, the FMCSA concluded that it "would not allow any motor carriers to be exempt from coverage of the rule based solely on a status as a small entity" because "small businesses constitute a large demographic the [FMCSA] regulates, [and] providing exemptions to small business to permit noncompliance with safety regulations is not feasible and not consistent with good public policy."¹⁰ The FMCSA also stated that implementation of the rule would not require any additional reporting, recordkeeping, or other paperwork-related compliance and would actually result in paperwork and time savings by switching from paper-based reporting to electronic reporting.¹¹ The rule is set to go into effect on December 18, 2017.

Small trucking industry representatives argue that the ELD mandate will cost \$2 billion for the industry to comply with and will cause many small trucking companies to go out of business.¹² In addition to the costs to purchase and install the device, there are also monthly subscription costs. Many large trucking companies already use ELDs, so it is not a new cost for them. For small trucking businesses, the paper logs are less burdensome, less costly, and still allow them to be in compliance with hours-of-service regulations. There is uncertainty within the regulated community because ELD manufacturers can currently self-certify that the technology complies with the mandate without any validation from the FMCSA, so small trucking companies have been delaying the purchase and installation of the devices until they have a guarantee that the devices comply with the mandate.¹³

Members of Congress have introduced legislation and sent a letter to President Trump regarding the ELD mandate and requesting an extension of the compliance deadline.¹⁴ On November 20, 2017, the FMCSA announced that it would provide a 4-month window for truck drivers to comply with the rule and will begin normal enforcement of the rule on April 1, 2018.¹⁵ If a driver is caught without an ELD during the 4-month window, they will be cited and allowed to continue driving as long as they are complying with hours-of-service regulations. The FMCSA is also issuing a 90-day waiver to the agricultural industry, specifically for carriers that haul livestock.

⁹ 80 Fed. Reg. 78,291.

¹⁰ *Id.* at 78,378.

¹¹ *Id.*

¹² Letter from Agric. Retailers Ass'n et al., to Elaine Chao, Secretary, U.S. Dep't of Transp. (Mar. 21, 2017), [http://landlinemag.com/Documents/2017/Coalition Letter DOT January 30 Executive Order.pdf](http://landlinemag.com/Documents/2017/Coalition%20Letter%20DOT%20January%2030%20Executive%20Order.pdf).

¹³ *Id.*

¹⁴ ELD Extension Act of 2017, H.R. 3282, 115th Cong. (2017); Letter from Rep. Brian Babin, to Donald Trump, President, United States of Am. (Nov. 9, 2017), https://babin.house.gov/uploadedfiles/eld-execaction-full_final.pdf.

¹⁵ See David Cullen, *FMCSA to Issue 90-Day ELD Waiver to Ag Haulers*, HEAVY DUTY TRUCKING (Nov. 20, 2017), <http://www.truckinginfo.com/channel/drivers/news/story/2017/11/fmcsa-to-issue-90-day-eld-waiver-to-ag-haulers.aspx>; Melanie Zanona, *Trump Eases Electronic Logging Device Rule for Truckers*, THE HILL (Nov. 20, 2017), <http://thehill.com/policy/transportation/361240-trump-admin-eases-electronic-logging-device-rule-for-truckers>.

B. FMCSA's Hours of Service Regulations

On December 27, 2011, the FMCSA finalized regulations that limit when and how long a person may drive a truck or truck-trailer.¹⁶ Drivers are allowed 14 consecutive hours in which they are allowed to drive, and then must be off-duty for 10 consecutive hours before they can drive again. During the 14-consecutive-hour period, drivers are only allowed to drive their trucks for up to 11 total hours. The regulations also require that if more than 8 consecutive hours have passed without a break, the trucker must take an off-duty break for at least 30 minutes before driving again. The regulations also provide a 60 hour limit in a 7 day period, and a 70 hour limit in an 8 day period. These 60 and 70-hour limits can reset if a driver takes at least 34 hours off duty or in a sleeper berth.

Small trucking industry representatives argue that these regulations are restrictive on drivers and do not account for unpredictable circumstances, such as traffic delays and time spent finding parking, preparing, and securing the vehicle.¹⁷ The time that drivers spend off the road results in lost earnings and lost efficiencies, and drivers have reported lost income and lost mileage as a result of the regulations.¹⁸ Opponents argue that the regulations should allow for more flexibility by giving drivers more discretion to decide when they should rest when fatigued and when to maximize their time on the road if the conditions are favorable to long driving times.

C. Other Regulations that Affect the Small Trucking Industry

In addition to the ELD mandate and the hours of service rules, there are many other regulations that impact the small trucking industry, some of which the Administration has started to take steps to provide regulatory relief:

- FMCSA/NHTSA Heavy Vehicle Speed Limiters: In September 2016, the FMCSA and NHTSA jointly proposed regulations that would require vehicles with a gross vehicle weight rating of more than 26,000 pounds to be equipped with a speed limiting device that would limit the speed at which the vehicle could operate.¹⁹ The agencies were considering 60, 65, and 68 miles per hour.²⁰ Small business representatives argued that the requirement would have a disproportionate impact on small trucking companies and would deter them

¹⁶ Hours of Service of Drivers, 76 Fed. Reg. 81,133 (Dec. 27, 2011) (to be codified at 49 C.F.R. pts. 385, 386, 391, & 395). See also FED. MOTOR CARRIER SAFETY ADMIN., INTERSTATE TRUCK DRIVER'S GUIDE TO HOURS OF SERVICE (Oct. 2016), https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Drivers_Guide_to_HOS_2016.pdf.

¹⁷ U.S. Small Bus. Admin. Office of Advocacy, *Comment to Federal Motor Carrier Safety Administration on FMCSA's Proposed Hours of Service of Drivers Rule*, 4 (Feb. 25, 2011), https://www.sba.gov/sites/default/files/dot11_0225.pdf; See generally *Do Not Enter: How Proposed Hours of Service Trucking Rules Are a Dead End for Small Businesses: Hearing Before the Subcomm. on Investigations, Oversight, & Regulations of the H. Comm. on Small Bus.*, 112th Cong. (2011).

¹⁸ James Jaillet, *OOIDA Survey Latest to Show Hours-of-Service Rules Cut Pay, Increase Driver Fatigue*, OVERDRIVEONLINE.COM (Nov. 20, 2013), <http://www.overdriveonline.com/oida-survey-latest-to-show-hour-of-service-rules-cut-pay-increase-driver-fatigue/>.

¹⁹ Federal Motor Vehicle Safety Standards; Federal Motor Carrier Safety Regulations; Parts and Accessories Necessary for Safe Operation; Speed Limiting Devices, 81 Fed. Reg. 61,942 (Sept. 7, 2016) (to be codified at 49 C.F.R. pt. 571).

²⁰ *Id.* at 61,944.

from upgrading their fleets.²¹ The agencies' unified regulatory agenda, which was published on July 20, 2017, indicates that the proposed rule has been moved to a long-term item.²²

- FMCSA Entry Level Driver Training: In December 2016, the FMCSA finalized regulations that established new minimum training standards for certain individuals applying for a commercial driver's license, upgrading their commercial driver's license, or hazardous materials, passenger, or school bus endorsement on their commercial driver's license.²³ Some small business representatives in industries who use trucking to transport their goods short distances, but is not the main part of their business, argue that the regulations are burdensome for their industries and should have less burdensome training requirements for short-haul trucking operations.²⁴
- FMCSA Carrier Safety Fitness Determination: In January 2016, the FMCSA proposed a new statistical measuring program that was designed to determine which motor carriers were "fit" to operate in interstate commerce and which were not based on the motor carrier's safety data and investigations.²⁵ Small trucking companies argued that the proposed methodology was flawed, would have a disproportionate impact on small carriers, and more study was needed before finalizing the rule.²⁶ On March 23, 2017, the FMCSA withdrew the proposed rule while it waits for the results of a Congressionally-mandated correlation study from the National Academies of Science.²⁷
- FMCSA Obstructive Sleep Apnea: In March 2016, the FMCSA issued an advanced notice of proposed rulemaking that would establish criteria and processes for instituting sleep apnea screening requirements for truck operators.²⁸ The proposed rule attempted to provide clarity to medical examiners, carrier employers, and drivers on when sleep apnea tests were required for a driver. The FMCSA had previously regulated this issue through guidance, but Congress directed in 2013 that any new or revised requirements must be done through rulemaking.²⁹ Small business representatives argued that the sleep apnea tests

²¹ Nat'l Fed'n of Indep. Bus., *Comment to U.S. Department of Transportation on Docket ID No. DOT-OST-2017-0069 – Notification of Regulatory Review* (82 Fed. Reg. 45750), 1–2 (Nov. 1, 2017), <https://www.regulations.gov/document?D=DOT-OST-2017-0069-1404>.

²² See *Heavy Duty Speed Limiters*, RIN: 2126-AB63, OFFICE OF INFO. & REGULATORY AFFAIRS (2017), <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201704&RIN=2126-AB63>.

²³ Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators, 81 Fed. Reg. 88,732 (Dec. 8, 2016) (to be codified at 49 C.F.R. pts. 380, 383, & 384).

²⁴ See Am. Pyrotechnics Ass'n, *Comment to Federal Motor Carrier Safety Administration on Proposed Rule for Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators* (Apr. 6, 2015), <https://www.regulations.gov/document?D=FMCSA-2007-27748-1237>.

²⁵ Carrier Safety Fitness Determination, 81 Fed. Reg. 3,561 (Jan. 21, 2016) (to be codified at 49 C.F.R. pts. 350, 365, 385, 386, 387, & 395).

²⁶ See U.S. Small Bus. Admin. Office of Advocacy, *Comment to Federal Motor Carrier Safety Administration on FMCSA's Carrier Safety Fitness Determination Rule*, 3–6 (May 19, 2016), https://www.sba.gov/sites/default/files/FMCSA.SFD_Comments.051916.pdf.

²⁷ Carrier Safety Fitness Determination, 82 Fed. Reg. 14,848 (Mar. 23, 2017) (to be codified at 49 C.F.R. pts. 350, 365, 385, 386, 387, & 395).

²⁸ Evaluation of Safety Sensitive Personnel for Moderate-to-Severe Obstructive Sleep Apnea, 81 Fed. Reg. 12,642 (Mar. 10, 2016) (to be codified at 49 C.F.R. pts. 240, 242, & 391).

²⁹ *Id.* at 12,645; Act of Oct. 15, 2013, Pub. L. No. 113-45, 127 Stat. 557.

would be a significant burden for small carriers, with the tests costing thousands of dollars and lost time on the road.³⁰ On August 8, 2017, the FMCSA withdrew the rulemaking, stating that the current safety programs and regulations are the appropriate avenues to address sleep apnea.³¹

- EPA/NHTSA Regulations for Greenhouse Gas Emissions from Commercial Trucks and Buses: In September 2011, the EPA and NHTSA issued greenhouse gas emissions and fuel economy standards for medium and heavy duty trucks manufactured from 2014 to 2018.³² The agencies jointly finalized Phase 2 standards for trucks manufactured through 2027 in October 2016.³³ Trucking industry representatives argued that the regulations exceeded EPA's authority under the Clean Air Act and did not rely on the most recent data to support the rule. On November 16, 2017, EPA proposed to repeal the Phase 2 emission standards for glider vehicles, glider engines, and glider kits.³⁴

III. Conclusion

The current regulatory environment on the trucking industry disproportionately burdens small trucking companies. With many regulations taking a one-size-fits-all approach, small trucking companies are forced to comply with expensive, confusing, and time-consuming regulations, which is costing the American economy through lost time and delays in receiving all types of goods and products. This hearing will provide an opportunity for Members to learn more about the regulations and possible solutions to ease the regulatory burden and provide flexibilities for small firms in the trucking industry.

³⁰ See Nat'l Ass'n of Small Trucking Companies, *Comment to U.S. Department of Transportation on Docket No. FMCSA-2015-0419*, 5 (Apr. 26, 2016), <https://www.regulations.gov/document?D=FMCSA-2015-0419-0322>; Owner-Operated Indep. Drivers Ass'n, *Comments in Response to an Advanced Notice of Proposed Rulemaking Evaluation of Safety Sensitive Personnel for Moderate-to-Severe Obstructive Sleep Apnea*, 11–12 (Jul. 8, 2016), <https://www.regulations.gov/document?D=FMCSA-2015-0419-0561>.

³¹ Evaluation of Safety Sensitive Personnel for Moderate-to-Severe Obstructive Sleep Apnea, 82 Fed. Reg. 37,038 (Aug. 8, 2017) (to be codified at 49 C.F.R. pts. 240, 242, & 391).

³² Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles, 76 Fed. Reg. 57,105 (Sept. 15, 2011) (to be codified at 49 C.F.R. pts. 523, 534, & 535).

³³ Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, 81 Fed. Reg. 73,478 (Oct. 25, 2016) (to be codified at 49 C.F.R. pts. 523, 534, 535, & 538).

³⁴ Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits, 82 Fed. Reg. 53,442 (Nov. 16, 2017) (to be codified at 40 C.F.R. 1037 & 1068).