



May 5, 2025

VIA ELECTRONIC SUBMISSION

The Honorable Sean Duffy, Secretary of Transportation
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Mr. Daniel Cohen, Assistant General Counsel for Regulation
Office of the General Counsel
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: Comments on Request for Information on Ensuring Lawful Regulation: Reducing Regulation and Controlling Regulatory Costs [Docket No. DOT-OST-2025-0026]

Dear Secretary Duffy and Assistant General Counsel Cohen:

On April 3, 2025, the U.S. Department of Transportation (DOT) published in the *Federal Register* a Request for Information (RFI) on *Ensuring Lawful Regulation: Reducing Regulation and Controlling Regulatory Costs*.¹ DOT seeks comments and information to assist the Department and its operating agencies in identifying existing regulations, guidance, paperwork requirements, and other regulatory obligations that can be modified or repealed, consistent with law. DOT seeks to ensure that its administrative actions do not undermine the national interest and it achieves meaningful burden reduction while continuing to meet statutory obligations and ensure the safety of the U.S. transportation system.² The Office of Advocacy (Advocacy) submits the following comments in response to the RFI.

I. Office of Advocacy

Congress established Advocacy under Pub. L. 94-305 to represent the views of small businesses and other small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy

¹ 90 Fed. Reg. 14593 (published Apr. 3, 2025).

² *Id.*

come from input received from outreach to small businesses and do not necessarily reflect the views of the SBA or the Administration. Part of Advocacy’s role under the Regulatory Flexibility Act (RFA) is to assist agencies in understanding how regulations may impact small businesses, and to ensure that the voice of small businesses is heard within the regulatory process.³ Congress crafted the RFA to ensure that regulations do not unduly inhibit the ability of small entities to compete, innovate, or comply with federal laws.⁴ In addition, the RFA’s purpose is to address the adverse effect that “differences in the scale and resources of regulated entities” has had on competition in the marketplace.⁵

II. Background

Regulatory burdens have increased within the United States with an overwhelming amount of red tape generated by federal agencies. As a result, President Trump has committed to a government-wide initiative aimed at unleashing prosperity, particularly for small entities, through deregulation.⁶ Advocacy has worked with federal agencies to assist in reviewing rules to determine the impact of the regulatory burden on small entities, and all agencies have been required to conduct retrospective reviews of their regulations since the RFA was enacted in 1980.⁷

In furtherance of the President’s agenda, on April 3, 2025, DOT announced a deregulatory review initiative titled *Ensuring Lawful Regulation: Reducing Regulation and Controlling Regulatory Costs*. As indicated above, DOT seeks public input to identify regulations, guidance, paperwork requirements, and other regulatory obligations that can be modified or repealed to achieve meaningful burden reduction. Advocacy commends the DOT for undertaking this review and for inviting the public to participate.

III. Advocacy Outreach and Summary of Small Entity Issues

In response to DOT’s RFI, Advocacy hosted a small business regulatory roundtable on April 14, 2025, to hear directly from small businesses and their representatives about which regulations are most burdensome and in need of review and reform. Nearly 100 people participated in Advocacy’s roundtable, and many spoke and provided written materials. As a result of Advocacy’s outreach, we received comments on 36 issues. The following is a summary of the issues that were raised during Advocacy’s roundtable and follow-up correspondence, submitted for DOT’s consideration. Advocacy consolidated four issues that received multiple comments (hours of service, entry-level driver training, speed limiting devices, and broker transparency) into single entries. Advocacy acknowledges that different small entities may have different viewpoints and perspectives on these issues.

³ Pub. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

⁴ *Id.* § 2(a)(4-5), 5 U.S.C. § 601 note (Findings and Purposes).

⁵ *Id.* § 2(a)(4), 5 U.S.C. § 601 note (Findings and Purposes).

⁶ *See, e.g.*, Exec. Order No. 14,192, 90 Fed. Reg. 9065 (Feb. 6, 2025); *see also* Exec. Order No. 14,219, 90 Fed. Reg. 10583 (Feb. 25, 2025).

⁷ *See* 5 U.S.C. § 610.

A. Paperwork Burdens Are a Good Place to Start

Small entities face a deluge of recordkeeping and reporting requirements from the federal government, including DOT and its subagencies. The Paperwork Reduction Act (PRA) is meant to minimize the paperwork burden on the public and state, local, and tribal governments,⁸ and requires the Office of Management and Budget (OMB) to review and approve agency collections of information.⁹ Even with the PRA, however, DOT and its subagencies have more than 500 active collections of information, resulting in more than 178 million annual burden hours and more than \$2.4 billion in annual costs, according to OMB.¹⁰ Of the total paperwork burden, \$2.1 out of the \$2.4 billion in costs are placed on motor carriers through information required by the FMCSA. This is an especially considerable cost for the Truck Transportation industry (NAICS 484) which generates \$564.3 billion in annual revenue.¹¹ Streamlining forms and clarifying the steps small businesses need to take to comply with DOT and its agencies' paperwork requirements would be a great place to seek regulatory reform and burden reduction, and will allow small businesses to further thrive and innovate. The FMCSA's hours of service and electronic logging devices are two of the most commonly cited small business paperwork complaints. In fact, the FMCSA's hours of service regulations alone make up some 28 percent of all DOT paperwork burden hours and 65 percent of the total cost.¹² Advocacy encourages DOT and its subagencies to thoroughly review and streamline existing forms and information collections for ease of use for small entities.

B. DOT National Environmental Policy Act (NEPA) Procedures¹³

The issue: NEPA seeks to protect the environment by ensuring that the government considers environmental impacts before making decisions about major federal actions. It applies to all branches of the federal government and covers a wide range of activities, including permits, land management, and infrastructure projects. The NEPA process involves several steps, including identifying the proposed action, determining if it is subject to NEPA, and conducting an environmental review. NEPA provides opportunities for public review and comment on environmental evaluations, ensuring transparency and public involvement in the decision-making process. The Council on Environmental Quality (CEQ) issued an interim final rule on February 25, 2025, removing its NEPA implementing regulations, effective April 11, 2025.¹⁴ The CEQ is working to push NEPA policymaking out of CEQ and into the key federal agencies, like the DOT, who actually issue permits and approve projects. Advocacy believes these changes should result in long-needed improvements.

⁸ See Paperwork Reduction Act of 1995, 44 U.S.C. § 3501(1).

⁹ See 44 U.S.C. § 3504(c).

¹⁰ See Off. of Info. & Regul. Aff., Inventory of Currently Approved Information Collections, <https://www.reginfo.gov/public/do/PRAMain> (choose "Department of Transportation" from dropdown under "Current Inventory"; then click "Submit") (last accessed Apr. 28, 2025).

¹¹ U.S. Census Bureau, 2022 SUSB Annual Data Tables by Establishment Industry (Apr. 2025), <https://www.census.gov/data/tables/2022/econ/susb/2022-susb-annual.html>; U.S. Census Bureau, 2022 Nonemployer Statistics Tables (Dec. 12, 2024), <https://www.census.gov/programs-surveys/nonemployer-statistics/data/tables.html>.

¹² *Id.*

¹³ U.S. Dep't of Transp., *NEPA*, <https://www.transportation.gov/transportation-policy/nepa> (last updated July 26, 2024).

¹⁴ See 90 Fed. Reg. 10610 (Feb. 25, 2025).

Small business impact: While NEPA applies to federal agencies and not small businesses, small businesses are fundamentally impacted by the NEPA decision making and approval process and the initiation of important projects. With the removal of CEQ's NEPA regulations and the shifting the responsibility for NEPA implementation primarily to individual agencies, DOT should ensure that small businesses receive better and more prompt approval of projects that will allow small businesses to grow and thrive. Long project and permitting delays have been a major concern for small businesses in the construction, transportation, and infrastructure sectors. The new procedures should be designed to ensure these bottlenecks and delays are eliminated.

Small business recommendation: The DOT and its subagencies should take this opportunity to speak with affected states and industry partners to standardize the contract negotiations for NEPA review and assignment to interested states. In addition, DOT should adopt durable, statutorily grounded NEPA procedures that implement the Fiscal Responsibility Act of 2023's page and time limits, emphasize predictability, timely reviews, and appropriate limits on analysis. DOT should also expand the use of categorical exclusions and clarify project eligibility streamline procedures to reduce unnecessary variation that creates hardship for applicants navigating multiple agency processes.

Advocacy recently filed comments on the CEQ's withdrawal of NEPA regulations, recommending that CEQ focus on reducing unnecessary confusion for small businesses by maintaining consistency among federal agencies while these changes to the NEPA process take place.¹⁵

C. Federal Motor Carrier Safety Administration (FMCSA)

1. Hours of Service¹⁶

The issue: Hours of Service (HOS) regulations for commercial drivers limit the amount of time drivers can drive and be on duty, with specific requirements for rest periods and duty limits. These rules aim to prevent driver fatigue and improve safety. However, the HOS rules are rigid, one-size-fits-all rules that lack flexibility and could actually reduce safety in certain circumstances.

Small business impact: This issue was raised by several commenters at Advocacy's roundtable and in follow-up comments. Small business representatives stated that the existing HOS rules are not sensible for today's trucking industry because they force truckers to be on the road when they are tired, during busy travel times, and during hazardous weather and road conditions. While the FMCSA promulgated reforms in 2020 that alleviated some HOS rigidity (e.g., modifications to the 30-minute break requirement, split sleeper berth times, flexibility to avoid adverse driving conditions), the changes do not solve all the safety and efficiency challenges associated with current HOS rules. Motor carriers and drivers are relied on to safely and effectively transport

¹⁵ U.S. Small Bus. Admin, Off. of Advoc., Comments on Removal of National Environmental Policy Act Implementing Regulations, Docket No. CEQ-2025-0002, RIN 0331-AA10 (Mar. 26, 2025), <https://advocacy.sba.gov/wp-content/uploads/2025/03/Comment-Letter-Removal-of-National-Environmental-Policy-Act-Implementing-Regs.pdf>.

¹⁶ 49 C.F.R. pt. 395 (2024).

approximately 70 percent of all goods transported in the U.S. Without ample evidence to the contrary, they should be extended the same type of trust to safely operate their vehicles and adjust their schedules as roadway conditions warrant.

Small business recommendation: Various small business representatives recommend that the FMCSA:

- amend HOS regulations to provide more efficiency for drivers and establish FMCSA pilot programs to analyze expanded flexibility options, including a “split-duty” period and additional split sleeper berth options.
- clarify through guidance that the HOS regulations only apply to employees and not to self-employed carriers (i.e., non-employee owner-operators).
- provide separate regulations for the short-haul trucking industry (separate from long-haul) similar to how the Occupational Safety and Health Administration has separate regulations for general industry, construction, and maritime. This would also eliminate the need for exemptions that do not apply to short-haul operations, such as electronic logging devices and required commercial driver’s license (CDL) test sections not applicable to short-haul drivers.
- recognize that last-mile delivery companies (such as the waste hauling industry) highlight the unique challenges of short-haul trucking (which face different risks, do not require sleeper berths, travel 150-200 miles a day, and have different safety profiles compared to long-haul drivers). As such, safety measures based on miles do not accurately reflect the risks faced by short-haul drivers.
- recognize that HOS complexity is contributing to the driver shortage problem and impacting the economic incentives facing drivers.
- provide a consistent policy for preemptively and proactively declaring an emergency (e.g., for fuel deliveries), so the FMCSA has a preemptive policy for declaring a regional emergency at least five days in advance of a reliably predicted disaster.
- consider exempting livestock haulers from the HOS regulations (as they were during the COVID-19 emergency) due to the demands associated with livestock care (living animals), labor challenges, driver shortages, and supply chain concerns.

Advocacy understands that HOS regulations are statutorily mandated but believes that the FMCSA should seek regulatory changes that would improve safety by providing greater flexibility and give small businesses and drivers more control over their driving time. Where HOS regulations cannot be reduced, FMCSA should look to reduce other regulatory burdens which add to the amount of work required in the service time limits. Finally, the FMCSA should also recognize and provide appropriate exemptions for critical and special products (such as fuel and livestock) that do not neatly fit under generalized regulations.

2. Entry-Level Driver Training Requirements¹⁷

The issue: Since 2022, motor carriers have been required to use a federally registered training company to train commercial driver’s license (CDL)-B drivers. Entry-Level Driver Training (ELDT) rules mandate that new CDL applicants complete a specific training program from a registered provider before taking the CDL skills or knowledge test. This training includes both

¹⁷ 49 C.F.R. pt. 380, subpt. F. (2024).

classroom instruction (theory) and hands-on driving (skills) training. There is also an option to become a registered training partner. Many small businesses would like to train their own employees, but the requirement to have a closed course for behind-the-wheel training of a few drivers per year is not feasible for smaller companies without the empty land or space to do so.

Small business impact: The high cost of the ELDT training class is a barrier to attracting drivers. According to one commenter, the cost of attending a class at a driving school has increased from \$250 to as much as \$8,000 per driver. This regulation has blocked what was a good career path for younger workers. Commenters did recognize that training is important to improve safety by helping ensure new drivers are prepared for various highway, traffic, and weather conditions, but training needs to be right sized for the industry.

Small business recommendation: The FMCSA should ease restrictions on carriers being able to create their own training program, which commenters say are overly burdensome and expensive for small businesses. Another commenter suggested that the FMCSA consider three options:

1. Create an exemption or specific restricted license class from the special federally registered training requirement for CDL-B drivers who drive less than 100 air miles from their home location, do not drive overnight, or in extreme weather conditions (e.g., any local delivery company, dump truck, school bus, or home fuel delivery).
2. Allow companies to use a federally recognized online training course for all classroom theory or curriculum (i.e., eliminate the closed course requirement and minimize the administration or specific curriculum).
3. Eliminate the 2022 driver training rule, as there is no data to indicate it was necessary for strict federally approved training requirements to begin with.

Advocacy believes that reducing barriers and the costs of training new drivers, including encouraging small businesses to develop their own training programs, will open the door to a younger workforce and help ease the growing driver shortage. It would also eliminate the competitive advantage that larger companies now have over smaller businesses that do not have the resources to build a fully compliant ELDT program.

3. Speed Limiting Devices¹⁸

The issue: In 2022, FMCSA reopened a speed limiter rulemaking that would restrict all heavy commercial motor vehicles (CMVs) to a single top speed across the country, potentially as low as 60 miles per hour. The proposed rule would apply to CMVs with a gross vehicle weight rating (GVWR) or gross vehicle weight of 11,794 kilograms or more (26,001 pounds or more).

Small business impact: Small businesses are concerned that by establishing a one-size-fits-all mandate restricting heavy-duty CMVs to a speed that is separate from passenger vehicles, this regulation would create dangerous speed differentials between CMVs and other cars. One commenter stated that decades of highway research show that greater speed differentials increase interactions between truck drivers and other road users, and studies have consistently demonstrated that increasing interactions between vehicles directly increases the likelihood of

¹⁸ Parts and Accessories Necessary for Safe Operations; Speed Limiting Devices, Docket No. FMCSA-2022-0004, 87 Fed. Reg. 26317 (May 4, 2022).

crashes. Commenters cited the FMCSA's 2016 *Speed Limiter Notice of Proposed Rulemaking*, stating that the rulemaking could put owner-operators and small fleet owners, particularly those not using team driving strategies, at a disadvantage in some circumstances. Additionally, small trucking companies, especially independent owner-operators, would be less profitable with speed limiting devices set. Small businesses recognize the concern of safety, but feel that carriers and drivers need greater flexibility to service their customers in a safe and timely manner.

Small business recommendation: Small businesses commenters stated that eliminating the speed limiter mandate would ensure that small carriers remain competitive with the large carriers, thus benefiting shippers, wholesalers, retailers, and consumers. In addition, one commenter from the livestock hauling sector stated that when a trailer is on a federal highway with a posted speed of 75 mph, speed limiters become a major safety concern. The FMCSA should ensure that their rules are necessary, do not inadvertently impede safety, and promote small business flexibility. Commenters recommended that the FMCSA withdraw the proposed rule and not proceed with this rulemaking.

4. Broker Transparency¹⁹

The issue: Existing regulations require brokers to keep records of transactions with motor carriers. Under 49 CFR § 371.3, each party to a brokered haul also has the right to review the record of the transaction. The FMCSA published a proposed rule that aims to amend § 371.3 by requiring the disclosure of broker transaction records to motor carriers. The rule was published in response to petitions for rulemaking to the FMCSA.

Small business impact: This issue has drawn considerable small business interest (and conflicting viewpoints) as part of Advocacy's outreach efforts. Proponents of greater transparency and access to records claim that these regulations are routinely evaded by brokers and not enforced by the FMCSA. Small carriers and owner-operators have stated they are left financially vulnerable without access to transaction records, delaying or preventing payment, and reducing their ability to challenge fraudulent or unfair practices. They say this directly impacts their cash flow, ability to maintain equipment, and compete fairly. They believe that broker transparency will alleviate asymmetric information disparities and help motor carriers determine which brokers and loads they choose to haul.

On the other hand, small freight broker representatives have stated that the proposed rule suffers from important defects. The defects include a lack of legal authority, reliance on unwarranted economic regulation and outdated technology, and undermining market competition and innovation by mandating the disclosure of confidential pricing and business strategies. One commenter suggests that the FMCSA require brokers to automatically provide records within 48 hours of load completion and prohibit waivers that allow brokers to sidestep this obligation.

Small business recommendation: Small carriers and brokers have conflicting views about this regulation. While small carriers would like the FMCSA to finalize the proposed rule, brokers believe the FMCSA should withdraw the proposed rule and focus its efforts on enhancing

¹⁹ Transparency in Property Broker Transactions, Docket No. FMCSA-2023-0257, 89 Fed. Reg. 91648 (Nov. 20, 2024) (to be codified at 19 C.F.R. pt. 371); 49 C.F.R. § 371.3 (2024).

highway safety and addressing a larger supply chain fraud issue, which they say costs the U.S. economy over \$1 billion annually. Advocacy believes this issue needs to be addressed within the broader issue of freight fraud. This approach will likely require a broader, multi-department resolution, including the underlying criminal aspects of the freight fraud issue. Advocacy recommends that the FMCSA engage in direct stakeholder outreach and consider the formation of a formal negotiated rulemaking process to address this transparency issue and the broader issue of fraud.

5. Inspection, Repair, and Maintenance²⁰

The issue: Minor, non-safety critical violations found during roadside inspections, such as faded reflective tape or worn but functional mud flaps, often result in citations, Compliance, Safety, Accountability (CSA) points, or violations. These infractions can be corrected on-site but are still recorded as violations, harming a carrier's safety score and increasing insurance premiums. This approach does not distinguish between serious safety issues and cosmetic or minor deficiencies.

Small business impact: Small carriers are disproportionately impacted by CSA scoring. Even minor violations can lead to higher insurance costs, fewer load opportunities, and reputational damage, all without any meaningful impact on safety.

Small business recommendation: Small carriers recommend creating a grace period or exemption process for non-safety critical, repairable-on-site items discovered during inspections. This would reduce the administrative and financial penalties small carriers face for trivial or easily fixable issues, helping them preserve safety ratings, reduce insurance costs, and remain competitive without compromising safety.

6. Driver Qualifications: English Language Proficiency²¹

The issue: This regulation requires commercial drivers to read and speak English sufficiently to converse with the public, understand traffic signs and signals, and respond to official inquiries. However, enforcement is inconsistent, and many drivers with limited English proficiency operate commercial vehicles without adequate understanding of their electronic logging devices (ELDs) or safety protocols. This creates confusion during inspections, interferes with hours-of-service compliance, and poses a potential safety risk.

Small business impact: Small carriers who follow the rules are placed at a competitive disadvantage against operators who employ drivers that cannot legally or safely comply with federally required systems and communication standards. It also creates potential liability in the event of accidents or non-compliance during audits.

Small business recommendation: Small carriers recommend enforcing the existing English proficiency requirements uniformly and ensuring that drivers can properly operate ELDs and understand regulations critical to compliance and safety.

²⁰ 49 C.F.R. pt. 396 (2024).

²¹ 49 C.F.R. § 391.11(b)(2) (2024).

Advocacy notes that President Trump signed an executive order on April 28, 2025, titled *Enforcing Commonsense Rules of the Road for America's Truckers*. It states that English language proficiency should be a non-negotiable safety requirement for professional drivers so they can read and understand traffic signs and communicate with traffic safety, border patrol, agricultural checkpoints, and cargo weight-limit station officers.²²

7. Emergency Equipment on All Power Units (Fire Extinguishers)²³

The issue: This regulation from section 393.95 of the CFR requires fire extinguishers in trucks, truck tractors, and buses. The regulation uses outdated requirements, since 4B:C fire extinguishers have been obsolete since 1998 and do not address Class A fire hazards. Additionally, the regulation permits the same size fire extinguisher for both hazmat and non-hazmat loads, neither of which offers significant protection. Further, the regulation is ambiguous, which allows law enforcement, employers, and drivers to interpret it in multiple ways. The National Fire Protection Association (NFPA) 10 is the current industry standard for minimum requirements for portable fire extinguishers.²⁴ Transportation companies outside of maritime and agricultural industries also fall under OSHA's § 1910.157 regulatory standard, which itself is outdated and contains confusing and contradictory information to NFPA 10.

Small business impact: As it relates to the transportation industry, these flaws in sections 393.95 and 1910.157 of the Code of Federal Regulations create serious confusion and regulatory compliance issues and can result in unnecessary fines. For example, one commenter noted that in Pennsylvania alone there were over 4,000 fire extinguisher citations issued by law enforcement in 2024, over 6,000 citations in 2023, and over 6,000 citations in 2022. Both the FMCSA and OSHA regulations increase risk and reduce safety by referencing outdated language and obsolete equipment as being "acceptable" for fire protection and prevention.

Small business recommendation: The FMCSA should update § 393.95 to reflect current industry standards as it relates to fire extinguishers (as should OSHA with § 1910.157). The FMCSA should also incorporate by reference the applicable NFPA 10 standards for selection, inspection, installation, and maintenance of portable fire extinguishers to § 393.95 to provide better guidance to all transportation businesses. Small businesses should not be subject to inconsistent interpretations of the law by different law enforcement officers. These rules are designed for safety, and the agency should ensure the language is harmonized between regulatory agencies. The standard should also be updated every three years regarding portable fire extinguishers. This would improve compliance, safety, and understanding and reduce the number of violations.

²² Exec. Order No. 14,286, 90 Fed. Reg. 18759 (May 2, 2025).

²³ 49 C.F.R. §§ 393.95 (a)(1)-(6) (2024).

²⁴ See Nat'l Fire Prot. Ass'n, NFPA 10: Standard for Portable Fire Extinguishers (2022), <https://www.nfpa.org/codes-and-standards/nfpa-10-standard-development/10>.

8. CDL Knowledge Test – Hazardous Materials (HazMat) Endorsement²⁵

The issue: The required HazMat knowledge test for endorsement renewals is overly broad and not tailored to specific industries. As a result, small businesses such as fuel transporters are at risk of failing the test due to questions unrelated to fuel hauling.

Small business impact: The scope of the HazMat knowledge test is overly broad, leading to a growing number of commercial drivers failing their endorsement renewal exams. This trend has created operational challenges for companies like fuel distributors. Small business energy marketers, for example, have limited staffing flexibility to compensate for HazMat-endorsed drivers who fail to renew. This issue is compounded by HOS restrictions and other regulatory limits on driver availability, and has become more pronounced in recent years.

Small business recommendation: The FMCSA should collaborate with state and local officials to narrow the knowledge test by industry focus. This would reduce the number of test failures caused by questions unrelated to particular sectors (e.g., questions about transporting nuclear materials, which are not relevant for fuel haulers).

9. CDL Standards: Requirements and Penalties; Waivers, Exemptions, and Pilot Programs²⁶

The issue: The recreation vehicle (RV) industry is subject to DOT CDL requirements when transporting RVs from manufacturing sites to dealer locations, prior to first retail transaction. CDL requirements were intended for full-time commercial truck drivers hauling freight, not RVs that are transported one at a time and are empty of cargo and passengers during transport. Further, once an RV is purchased by a private owner, CDL requirements do not apply and applicable state driver's licensing laws and safety requirements apply. The FMCSA recognized this distinction and since 2015 has granted an exemption, which must be renewed every five years, based on actual vehicle weight versus the gross vehicle weight rating.

Small business impact: The current requirement to apply for a formal exemption from CDL requirements every 5 years is wasteful and unnecessary. Small RV manufacturers, family owned and operated dealerships, and private towaway companies are disproportionately impacted and should not be subject to such burdensome rules.

Small business recommendation: The FMCSA should permanently exclude RV manufacturers, dealers, and driveaway-towaway companies from the Class A and Class B CDL vehicle groups. This would include the transport of RVs with an actual vehicle weight not exceeding 26,000 pounds or a combination of RV trailer/tow vehicle with an actual weight of the towed unit not exceeding 10,000 pounds and the gross combined weight not exceeding 26,000 pounds. This narrow exemption request is solely for the Class A and Class B CDL requirements, not for other FMCSA regulations that govern the commercial movement of RVs. Small business owners and operators could focus on producing and selling safe and reliable American-made RVs without

²⁵ 49 C.F.R. pt. 383 (2024).

²⁶ 49 C.F.R. §§ 381.300, 383.91 (2024).

the administrative burden and cost of collecting updated data on frequency of travel, safety statistics, regional destinations, etc. for each individual RV transported. A shortage of drivers with CDLs is also having a significant impact on the RV industry.

10. Definition of Commercial Motor Vehicle - Exemptions²⁷

The issue: FMCSA regulations that define motor carriers and CDL requirements also include certain exemptions for the CDL that require further clarification. For example, one commenter stated that when using a ¾-ton or 1-ton pickup to pull a triple axle trailer, the driver must have a Class A CDL due to the GVWR above 26,000 pounds, even if the actual weight of the pickup and trailer (with load) are less than 26,000 pounds. For example, even though a double axle tilt bed trailer has issues when hauling a skid steer, due to the frame not being able to support the load and unloading, it is still legal to do so without a CDL due to the GVWR being below 26,000 pounds. This becomes a safety issue because the frames will become damaged when loading and unloading. The simple solution is to use triple-axle trailers that can handle the loading and unloading of the same skid steers. However, it is illegal to do this without a CDL because the GVWR of the triple-axle trailer is 21,000 pounds, which with the weight of the pickup, puts the GVWR above 26,000 pounds.

Small business impact: Small businesses are struggling to find CDL drivers, especially Class A CDL drivers. Due to the GVWR definition, a driver needs a Class A CDL just to pull a skidder with a pickup on a trailer that can handle the load.

Small business recommendation: When using pickups, the FMCSA should raise the GVWR to 36,000 pounds for the pickup and trailer. The FMCSA should keep the 10,000-pound requirement for the maximum amount that can be towed without a CDL. This will allow small businesses to use heavier duty trailers with a higher GVWR to ensure there are no safety issues. However, it will not allow an individual to drive a pickup pulling something over 10,000 pounds without a CDL. This will drastically improve how small businesses safely transport their equipment, materials, and products without requiring a CDL.

11. Electronic Logging Devices (ELD) Mandate²⁸

The issue: Livestock haulers are currently exempt from using ELDs. Congress has provided an appropriations rider that forbids the FMCSA from using funds to implement and enforce the ELD mandate for livestock haulers. This language has been in place for 8 years.

Small business impact: Since the ELD mandate does not currently apply to livestock haulers, they are not currently impacted by the rule. They also operate safely without an ELD. Eliminating the rule completely for livestock haulers so that they do not have to rely on the appropriations rider year after year would add some finality to this issue without any negative impact on safety.

²⁷ 49 C.F.R. § 383.5 (2024).

²⁸ 49 C.F.R. pt. 395, subpt. B, app. A (2024).

Small business recommendation: The FMCSA should provide a permanent exemption of the ELD mandate for livestock haulers. Making the exemption permanent would provide clarity and certainty to small business owners in the livestock hauling industry.

12. Freight fraud²⁹

The issue: Freight fraud is plaguing the trucking industry. There have been an increasing number of instances of freight theft. This can occur when a freight broker tenders a load to a carrier but the freight is picked up by a fraudulent carrier that stole the information. Fraud and theft of trucked and brokered freight hauling takes many forms. According to small businesses, fraud perpetrators and criminal enterprises that target trucking and brokerage account for thousands of instances annually. These are crimes, yet they largely go unenforced.

Small business impact: Small businesses suffer especially hard from these crimes. Fraud brings harmful economic ripples for victimized small truckers, motor carriers, and brokers. Such crimes increase their cost of doing business due to loss of compensation and equipment and disruption of operations.

Small business recommendation: The FMCSA should ensure that the National Consumer Complaint Database (OMB Control Number: 2126-0067) is timely updated and that new incidents of freight fraud be reported to the DOT Office of Inspector General (OIG) at least weekly. The number of complaints of fraud appears to be significantly underreported. Small businesses suspect that the underreporting by the public stems from inadequate data maintenance and untimely reporting of criminal acts to the DOT's OIG. This would help address the underreporting of fraud incidents, giving the OIG more cases to investigate and litigate. Greater enforcement would help reduce the lost compensation and damaged equipment, while restoring brokers' trust in new entrants into trucking who have a recently issued DOT number. Advocacy believes that the issue of freight fraud will likely require a broader, multi-department resolution, including the underlying criminal aspects of the issue.

13. Specimen Collection - Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Addition of Oral Fluid Specimen Testing for Drugs³⁰

The issue: In 2023, the FMCSA (along with other DOT agencies) issued new rules for Drug and Alcohol Testing programs that prohibited specimen collections by a person with a close relationship to the donor. These so-called "conflict of interest" provision effectively excludes certain eligible specimen collectors in a manner that disproportionately burdens small trucking companies, owner-operators, and motor carriers located in rural and remote locations.

Small business impact: Small motor carriers are often located in very small, rural towns and remote areas many miles from the closest city. Thus, these motor carriers do not have ready

²⁹ Nat'l Consumer Complaint Database, Fed. Motor Carrier Safety Admin., <https://nccdb.fmcsa.dot.gov> (OMB No. 2126-0067) (last visited May 2, 2025).

³⁰ 49 C.F.R. § 40.31 (2024); *see* Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Addition of Oral Fluid Specimen Testing for Drugs, Docket No. DOT-OST-2021-0093, 88 Fed. Reg. 27596 (May 2, 2023).

access to clinical laboratories, industrial services providers, or hospitals and medical professionals offering drug and alcohol testing. The lack of a reasonable exception allowing use of a DOT-trained specimen collector on-site adds compliance costs in time, money, and human resources. To travel a great distance to reach third-party drug and alcohol testing requires considerable planning and execution. This results in lost time that otherwise would have been compensated for the miles driven with a freight load.

Small business recommendation: The FMCSA should amend the general exclusion in § 40.31(f)(2) by inserting “unless no other collector is available,” an identical exception found in § 40.31(d) that addresses an analogous circumstance. The recent “conflict of interest” provisions impose inordinate hardship on economically disadvantaged small motor carriers and their truck drivers. Adopting a comparable exception for a duly qualified “close personal friend” to collect specimens would save carriers and truck drivers time, additional costs, lost revenue, and extra paperwork.

14. Small Business Representation on Advisory Committees

The issue: Chronically, special interests not subject to DOT or FMCSA regulations, such as law enforcement, advocacy groups, labor unions, and large carriers, hold far more seats on federal advisory bodies than the independent and very small trucking operations who make up the largest segment of commercial motor carriers. Therefore, the policy and regulatory recommendations by these bodies tend to be of the “one-size-fits-all” variety that invariably benefit large interests and motor carriers to the detriment of the smalls.

Small business impact: Commercial motor carriers must live under, operate by, and comply with the “one-size-fits-all” policies these advisory bodies adopt, which are largely comprised of people whose livelihoods are unaffected by the burden, cost, rigidity, etc. of the policies they adopt for hundreds of thousands of people. Such groups have no skin in the game and often lack an understanding of the differences between a large company’s operations and a small company’s challenges.

Small business recommendation: The DOT and FMCSA should require all agency advisory committees, such as the Motor Carrier Safety Advisory Committee, to include a higher proportion of representatives from small motor carriers. Having a significant portion of members on these bodies who come from small trucking and other small-operation transportation, especially drivers and those representative of the many subsegments of trucking, would ensure a broader diversity of voices, many of which reflect many years of experience. Advocacy notes that the lack of small entity representation in advisory groups is not limited to the DOT and its subagencies, but is and has been a common theme across all federal agencies.

15. FMCSA Registration System (FRS) Modernization

The issue: The FMCSA is developing a new registration system to streamline the registration process for new applicants and the management of the registration life cycle for existing

registered entities.³¹ The platform is intended as a one-stop shop that includes user roles for individuals and businesses that support registered entities. The proposal is in the implementation stage and has been processed without rulemaking (which the FMCSA acknowledges is required). Factual and legal issues were presented to the agency in its informal request for comments and have not been answered. The proposed new application is being touted as having a positive effect on fighting fraud, but no consideration of pending alternatives has been raised, nor has OMB approval been obtained.

Small business impact: The traditional application for new authority is a FMCSA Form OP-1, Application for Motor Property Carrier and Broker Authority and Instructions,³² made under the penalty of perjury. The proposed new application is over 20 pages long and will require hiring consultants and third-party preparers for as many as 100,000 new registrants annually. The adoption of this registration system without enforcement will have no measurable benefit. Allowing the agency to proceed with the implementation of the new application procedure would leave material questions of fact and law raised but not answered by the agency in its informal proceedings. Moreover, by the agency's own admission, rulemaking is ultimately required and should be conducted as part of other more comprehensive pending proposals which will be adversely affected if the new application process is allowed to proceed.

Small business recommendation: First, the FMCSA should ensure the rulemaking it acknowledges is necessary is properly completed before the application process is fully integrated. Any new collection of registration documents must be readily available to victims in order to facilitate victims' rights and remedies. The new application process does not contain the same remedies as Form OP-1. It also does not afford the assurance that the agency will allow the subpoenaing of transactional records brokers and carriers are currently required to maintain for litigation purposes. Second, the agency should suspend the adoption of the new registration system, pending rulemaking, and take remedial action to ensure that there is not a better way to address fraud. Small businesses have become victims of fraud in the freight transportation spot market through a lack of law enforcement safeguards. Federal agencies should more vigorously investigate broker scams and assist victims in prosecuting civil and criminal fraud in the supply chain.

16. Compliance Safety Accountability/Safety Measurement System (CSA/SMS) Methodology and New Safety Fitness Determination Requirement³³

The issue: Since its founding in 2000, the FMCSA has been charged by Congress with promulgating a new safety fitness determination for all carriers that will afford each registrant a formal safety fitness rating. In over 20 years of attempts, the agency has not been able to meet this task. It has spent its time and effort in developing SMS methodology, utilizing roadside

³¹ See Registration Modernization Resources Hub, Fed. Motor Carrier Safety Admin., <https://www.fmcsa.dot.gov/registration/resources-hub> (last visited May 2, 2025).

³² Form OP-1: Application for Motor Property Carrier and Broker Authority, Fed. Motor Carrier Safety Admin., <https://www.fmcsa.dot.gov/registration/form-op-1-application-motor-property-carrier-and-broker-authority> (last visited May 2, 2025).

³³ Compliance, Safety, Accountability (CSA) Program, Fed. Motor Carrier Safety Admin., <https://csa.fmcsa.dot.gov> (last visited May 2, 2025).

inspections and crash data augmented with an appeals process to make hundreds of changes without rulemaking. Congress challenged SMS as a safety fitness determination and required SMS to be removed from public view. It was submitted again for rulemaking in 2017 and then withdrawn due to opposition. The agency has continued to promote the controversial methodology and has used it in the background to profile carriers for audit without success.

Small business impact: As a result of the FMCSA’s commitment to CSA/SMS methodology, it cannot issue required safety fitness determinations to over 95% of the authorized carriers, of whom the vast majority are small businesses. The absence of a safety rating prejudices small businesses in particular. Small and new applicants without a safety rating have higher insurance premiums and less access to freight. The insurance industry and the public fear that “unrated” small carriers will be the target of large verdicts against shippers and brokers. The FMCSA has been unable to develop a new safety fitness proposal based upon objective standards, including the promulgation of a safety fitness rule under rulemaking procedures that can offer small carriers and new entrants an opportunity for notice and comment.

Small business recommendation: The agency has a pending recommendation to consider the use of objective audits consistent with a congressional mandate. In 2017, in response to the DOT's request for regulatory reform, a plan was set which would use already-approved auditors to conduct pre-screening of new applicants and biennial updates which would meet the FMCSA’s duty to certify carriers as both safe to operate and hence fit to use. The FMCSA has already approved the theory of the objective audit. Its cost and content have been defined, and small and new applicants have been affected by the absence of a safety rating. The cost for training, testing, and certification could easily be built into the filing fee and biannual update cost. This proposal is ripe for testing and can assure equal treatment of small carriers given the due process, cost-benefit analysis, and determination of material issues inherent in rulemaking to protect the rights of small businesses.

D. Federal Aviation Administration (FAA)

17. Operations Specification A025 - Electronic Signatures, Electronic Recordkeeping Systems, and Electronic Manual Systems³⁴

The issue: The FAA requires detailed reports about how aircraft operators will use electronic signatures, manuals, and records.

Small business impact: This authorization may have been helpful when it was new or novel to use a computer to support a business. However, today nearly every aircraft operator uses electronic signatures, records, and manuals. Additionally, the Electronic Signatures in Global and National Commerce Act of 2000 gave electronic signatures and records the same binding authority as paper signatures and records in interstate commerce. Congress already gave businesses the right to use computers in furtherance of their business, but the FAA’s outdated rules are complicated and burdensome. These processes are commonplace among all businesses.

³⁴ Notice N 8900.368, OpSec/MSpec/T/Spec/LOA A025, Electronic Signatures, Electronic Recordkeeping Systems, and Electronic Manual Systems, Fed. Aviation. Admin. (June 22, 20216), https://www.faa.gov/documentlibrary/media/notice/n_8900.368.pdf.

The process is a waste of time, as the end result is already authorized by Congress and has no impact on aviation safety.

Small business recommendation: The FAA should rescind Operations Specification A025. This change would eliminate policies requiring operators to document how they use computers. It would also save time for FAA personnel and aviation operators without diminishing safety.

18. 14 C.F.R. parts 119, 145, and 147 among others that require the issuance of operations specifications paragraphs

The issue: The FAA issues mandates on applicants and certificate holders through policy rather than the notice and comment rulemaking. Specifically, the agency has added requirements through “operations specifications” paragraphs issued under 14 C.F.R. parts 119, 145, and 147 (among others). These requirements are not contained in the regulation and in some cases have been specifically rejected during informal rulemaking. They also create unnecessary expenditures of time and money by the agency, applicants, certificate holders, and the public.

Small business impact: This practice adds to the financial and time burdens associated with obtaining and maintaining certificates issued by the FAA. Furthermore, since policy can change at the discretion of the agency without notice or comment from the public, new or differing “requirements” can result in requests for “corrective actions,” issuance of letters of investigation, and notices of proposed civil penalty and/or certificate action that unnecessarily burden the agency and industry, particularly small businesses.

Small business recommendation: The FAA should follow the advice of the industry representatives, which has been provided in numerous solicited and unsolicited recommendations, and create a method of developing operations specifications paragraphs that clearly distinguish among those 1) required by regulation, 2) requested by a certificate holder that can and should be issued in the interest of safety, and 3) developed for the convenience of the agency. This would remove unnecessary burdens from all applicants and certificate holders subject to 14 CFR requirements and would reduce the work for the agency to issue and keep the operations specifications paragraphs current.

E. Federal Railroad Administration (FRA)

19. Small Business Size Standard under the Regulatory Flexibility Act³⁵

The issue: On May 9, 2003, the FRA adopted an alternative size standard for small railroads for purposes of the RFA. Under the RFA, federal agencies are required to use the SBA definition of a small business unless an agency, after consultation with the Office of Advocacy and an opportunity for public comment, adopts an alternative size standard(s) appropriate to the activities of the agency.³⁶ Rather than use the SBA size standard of 500 or 1,500 employees (depending on the activity), the FRA decided to use Class III railroads as its new small business size standard. This alternative definition has become outdated because of industry consolidation,

³⁵ Final Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws, 68 Fed. Reg. 24891 (May 9, 2003) (codified at 49 C.F.R. pt. 209).

³⁶ 5 U.S.C. § 601(3).

resulting in all Class II railroads now qualifying as small businesses under the latest (2023) SBA Table of Size Standards.³⁷ The Surface Transportation Board (STB), although an independent agency, has also adopted the same RFA alternative small business size standard as the FRA.³⁸

Small business impact: Because of the outdated alternative RFA small business size standard, the FRA's (and STB's) analyses no longer provide an appropriate proxy for small businesses in today's industry environment and fail to consider sufficient regulatory alternatives that achieve the agency's objectives while minimizing the burden on small businesses.

Small business recommendation: The FRA (and STB) should revise its RFA alternative small business size standard under the RFA to include both Class II and Class III railroads that are not owned by a Class I railroad. This change would treat all Class II as well as Class III railroads as small businesses for purposes of the RFA analysis, which would improve the regulatory analysis and consider alternative regulatory approaches for all these small firms. Advocacy would welcome the opportunity to consult with the FRA (and STB) pursuant to section 601(c) of the RFA.

20. Qualification and Certification of Dispatchers³⁹ and Certification of Signal Employees⁴⁰

The issue: The FRA requires detailed records and testing to certify both signal employees and dispatchers are qualified to operate. The rules also require a railroad to certify contractors, which is unworkable with existing regulations, including the drug and alcohol regulations at Part 219. Currently, Part 243, Training, Qualification, and Oversight for Safety-Related Railroad Employees, covers the training and qualifications of signal employees and dispatchers. On March 14, 2025, the FRA issued a letter in this matter, stating that the FRA intends to initiate a rulemaking to extend the rule's compliance deadlines by one year while it evaluates further steps.

Small business impact: The final rules on certifying both signal employees and dispatchers are not justified, with both having negative cost-benefit ratios. Nor are these rules Congressionally mandated or consistent with Executive Order 14192 *Unleashing Prosperity Through Deregulation*. Most short lines railroads do not have their own employees to perform this work or the expertise to do so, requiring a costly paperwork exercise to certify contractors. The FRA's own regulatory evaluation showed no benefit to safety and regulatory redundancy with Part 243.

Small business recommendation: The FRA should rescind both regulations. This change would eliminate regulations requiring small business railroads to certify, test, and evaluate contractors who are not their employees. It would allow railroads to better allocate their resources for safety and save time and resources for the FRA without diminishing safety.

³⁷ U.S. Railroad Retirement Board, 2022 Total Employment by State, Class of Employer and Last Railroad Employer (Sept. 2024), <https://rrb.gov/FinancialReporting/FinancialActuarialStatistical/Annual>.

³⁸ Small Entity Size Standards Under the Regulatory Flexibility Act, 81 Fed. Reg. 42566 (June 30, 2016).

³⁹ 49 C.F.R. pt. 245 (2024).

⁴⁰ 49 C.F.R. pt. 246 (2024).

21. Railroad Freight Car Safety Standards⁴¹

The issue: The regulation prohibits the use of any freight car more than 50 years old.

Small business impact: This regulation is a holdover from a time when freight cars with many wooden components were still in operation. The rule has long outlived its purpose. Considerable time and resources are expended by railroads and car owners in pursuit of FRA waivers, which require FRA inspections and approvals. It further restricts an already short supply of freight cars.

Small business recommendation: The FRA should rescind this regulation. Preparing a waiver requires time and resources by the railroad or car owner and the government. The FRA's costs and resources are expended as inspectors travel to the location of 50-year-old cars for an inspection before a waiver is issued. The amount of valuable time wasted by both the railroad and the government could be reduced to allow more freight car availability and better service to the customer with no impact on safety.

22. Railroad Freight Car Safety Standards⁴²

The issue: This regulation requires a person to inspect freight cars at “each location where a freight car is placed in a train.” If a car or string of cars that have a pre-departure inspection are handed off to another train, the cars must be inspected again, simply because they were “placed in a train.” When the same cars are again given to another train they must be inspected yet again many times on the same railroad. The mere act of placing a car in a different train triggers an inspection. If a single train divides into two trains, the FRA finds that one train is now two trains, therefore a new train has been created. The FRA requires one of the two trains to be inspected, but the FRA lets the railroad decide which train to inspect. Either train may proceed, but not both trains. Alternatively, if the train had continued unchanged, no cars would have been required to be inspected.

Small business impact: Small business railroads are in the car-load business. They pick up and set out cars daily as they serve customers. When they are required to needlessly re-inspect cars multiple times a day, it serves no safety purpose and is a waste of resources. Further, if they split a train and then they must re-inspect half of the train, it takes valuable time and increases the probability that they may have to re-crew a train due to hours-of-service restrictions.

Small business recommendation: The FRA should modify the regulations so that a freight car inspection can be conducted congruent with train brake inspection. Modifying the regulation will keep freight moving. It will reduce freight delays and highway crossing blockages while improving customer service and the supply chain. It will increase safety by reducing exposure to the risk of injury due to slips, trips, and falls by not requiring rail personnel to needlessly walk around stationary trains in rail yards, sidetracks, and main tracks during inclement weather, darkness, and other adverse conditions.

⁴¹ 49 C.F.R. § 215.203 (a)(1) (2024).

⁴² 49 C.F.R. § 215.13(a) (2024).

23. Crew Size⁴³

The issue: This rule, which is currently in litigation, establishes a train crew size requirement, where historically small business short lines have operated with a crew size appropriate to the workload. The rule establishes a flawed risk assessment paradigm that no railroad could meet if a crew size reduction was sought.

Small business impact: The rule increases costs by requiring an additional unneeded crew member, unwarranted paperwork filing, and recordkeeping with no benefit to safety.

Small business recommendation: The FRA should modify the regulation to allow railroads to determine the appropriate crew size or at least stay the regulation until the litigation is complete. Small business railroads could operate in a cost-effective manner safely. If the railroad wanted to start a new operation, they would not have to initiate an onerous and impossible risk analysis.

24. Training, Qualification, and Oversight for Safety-Related Railroad Employees⁴⁴

The issue: On October 3, 2022, in response to the American Short Line and Regional Railroad Association's (ASLRRA) 2019 petition for rulemaking, the FRA published a proposed rule on Training, Qualification, and Oversight for Safety-Related Railroad Employees. The rule would codify agency guidance providing flexibility to small businesses and clarify existing training requirements.

Small business impact: Current regulations contain excessively burdensome and costly requirements, extensive recordkeeping, and repetitive training requirements with no safety benefit for small businesses.

Small business recommendation: The FRA should finalize this rule, incorporating ASLRRA's comments that individual companies, within their Part 243 training programs, provide the methodology by which they propose to assess an employee's knowledge and skills to perform assigned tasks. This change would reduce excessively burdensome regulations, allowing them to focus resources on investments that do impact safety.

25. Brake System Safety Standards (eABS)⁴⁵

The issue: Current brake regulations are based on decades-old labor agreements, not current technology or practice. They allow only one pick-up or set of cars and limit travel between inspections.

Small business impact: Short line railroads can currently pick up one block of cars before they must stop and perform a walking inspection of the train's brake system, which can take multiple

⁴³ Train Crew Size Safety Requirements, 89 Fed. Reg. 2505249 (Apr. 9, 2024); 49 C.F.R. pt. 218 (2024).

⁴⁴ Training, Qualification, and Oversight for Safety-Related Railroad Employees, 87 Fed. Reg. 59749 (proposed Oct. 3, 2022) (to be codified at 49 C.F.R. pt. 243).

⁴⁵ Amendments to Brake System Safety Standards Governing Operations Using an Electronic Air Brake Slip System, 86 Fed. Reg. 3957 (proposed Jan. 15, 2021) (to be codified at 49 C.F.R. pt. 232).

hours depending on train length. Further, the mileage limitation means the Class I railroad that may receive the train would also have reduced mileage for those cars.

Small business recommendation: The FRA should finalize the notice of proposed rulemaking that was published during the first Trump Administration. The proposed rule would amend FRA regulations to address operations using an electronic air brake slip (eABS) system, with changes to incorporate QP inspections, eliminate unnecessary recordkeeping, and reconsider record retention durations. Short line railroads are in the customer service business. These changes would allow improved customer service and enhancement to public and employee safety, while reducing fuel consumption.

26. Continuous Welded Rail (CWR); Plan Contents⁴⁶

The issue: A section of the definition of CWR states rail installed as CWR remains CWR, regardless of whether a joint or plug is installed into the rail at a later time. The FRA has interpreted this to mean if the CWR rail is removed and replaced with jointed rail in sections of less than 400 feet, the railroad is still required to comply with Parts 213.118 and 213.119.

Small business impact: This definition requires railroads to maintain, train, inspect, and document according to a plan for a track structure that no longer exists. This requires resources for situations that will never occur because the track structure is different than what the plan covers.

Small business recommendation: The FRA should modify the definition, allowing the replacement of CWR rail with less than 400 feet section rail without requiring a CWR plan and adherence to that plan. The change would allow railroads to remove CWR and install with traditional jointed rail without having to comply with Parts 213.118 or 213.119. Jointed rail has a less expensive transportation cost and does not require specialized equipment for handling or installation.

27. Emergency Escape Breathing Apparatus⁴⁷

The issue: The FRA's final rule mandating Emergency Escape Breathing Apparatus (EEBAs) was issued with up to a \$107 million cost over ten years to the industry with no quantifiable benefits. Further, the manufacturers of this equipment say they cannot meet the demand in time to comply with the regulatory deadlines.

Small business impact: The EEBA rule is a very costly regulation with no safety benefit. Resources allocated to compliance cannot be spent on improvements that would result in improving safety, such as investment in track.

Small business recommendation: The FRA should rescind this rule. The regulation is inconsistent with the policies for sound cost-benefit analysis delineated in DOT Order 2100.7, *Ensuring Reliance Upon Sound Economic Analysis in Department of Transportation Policies*,

⁴⁶ 49 C.F.R. § 213.119(l) (2024).

⁴⁷ Emergency Escape Breathing Apparatus Standards, 89 Fed. Reg. 5113 (finalized Jan. 26, 2024) (codified at 49 C.F.R. pt. 227).

Programs, and Activities, and should be repealed. This would allow small businesses to better allocate their resources.

28. Periodic inspection: general, 92 Day locomotive inspection⁴⁸

The issue: The FRA requires a comprehensive inspection and replacement of some parts, such as filters, every 92 days regardless of whether the locomotive has been used.

Small business impact: The regulation requires time and resources to perform a detailed locomotive inspection required by the regulation. Most short lines do not use their locomotives every day, so it would make sense to require the inspection for 92 days of use.

Small business recommendation: The FRA should amend the regulation to require inspections based on days used, not calendar days. This would allow small businesses to better allocate their resources and not waste them on needless inspections, resulting in the loss of use of the locomotive and replacement of barely used filters.

F. Pipeline and Hazardous Materials Safety Administration (PHMSA)

29. Position in train of placarded cars, transport vehicles, freight containers, and bulk packagings⁴⁹

The issue: This regulation mandates the position in a train of each loaded placarded car, transport vehicle, freight container, and bulk packaging. The requirements for buffer cars around unoccupied distributed power engines result in excess switching and aggravates an acute car shortage with no benefit to safety.

Small business impact: This rule will result in increased switching and an increased risk of injury to train crews. It also creates an artificial demand for freight cars that are already in short supply and further complicates empty/load issues for train handling.

Small business recommendation: The PHMSA should remove this requirement. Short line railroads could reduce the risk of employee injury due to slips, trips, and falls by reducing unnecessary switching, and reducing the demand for freight cars that may not be used in revenue service.

30. Placarding Requirements⁵⁰

The issue: The PHMSA seeks to exclude E15 (a fuel blend containing 15% ethanol and 85% gasoline) from the lowest flash point placarding exception. Significant policy developments have led to increased distribution of E15, and fuel marketers now routinely transport E15 alongside conventional gasoline and other petroleum distillates. As fuel distributors adapt to these evolving

⁴⁸ 49 C.F.R. § 229.23 (2024).

⁴⁹ 49 C.F.R. § 174.85 (2024).

⁵⁰ Hazardous Materials: Advancing Safety of Highway, Rail, and Vessel Transportation, 89 Fed. Reg. 85590 (proposed Oct. 28, 2024); 49 C.F.R. § 172.336 (2024).

market realities, the PHMSA should revise its approach to permit the lowest flash point marking exception for compartmented cargo tanks transporting split loads of E15 with gasoline, diesel, or E10.

Small business impact: Requiring distinct placards for E15 introduces unnecessary logistical complexity, potentially necessitating en route placard changes or additional markings. These changes offer no material benefit in terms of hazard communication or emergency response. The burden would fall disproportionately on small business marketers operating in areas with expanding E15 distribution.

Small business recommendation: The PHMSA should allow the lowest flash point placarding exception to apply to E15 in split loads. This approach would ensure regulatory consistency, support efficient distribution operations, and align with national objectives to expand renewable fuel use, all while remaining aligned with PHMSA's mission to ensure the safe transportation of hazardous materials.

G. Federal Highway Administration (FHWA)

31. Installation, operation, and maintenance by qualified technicians of electric vehicle charging infrastructure; § 680.106(j) Qualified technician⁵¹

The issue: The FHWA imposed training requirements on electricians through regulatory rulemaking (not included in the plain text of the Infrastructure Investment and Jobs Act) as part of the National Electric Vehicle Infrastructure (NEVI) program, for electricians installing, operating, or maintaining Electric Vehicle Supply Equipment (EVSE). The regulation requires that an electrician must receive a certification from the Electric Vehicle Infrastructure Program (EVITP)⁵² or receive a continuing education certificate from a registered apprenticeship program for electricians that includes charger-specific training and is developed as a part of a national guideline standard approved by the Department of Labor in consultation with the DOT. For projects requiring more than one electrician, at least one electrician must meet the requirements above, and at least one electrician must be enrolled in an electrical registered apprenticeship program.

Small business impact: Licensed, certified electricians do not need extra training to competently install, operate, or maintain EVSE. Including training requirements adds an unnecessary financial burden to small electrical contractors looking to install, operate, or maintain EVSE. Smaller electrical contractors interested in performing this work may feel the need to have all their electricians go through this arbitrary training, which adds costs and precludes them from using these funds for more practical needs to help grow or run their business. Small electrical contractors face the constant challenge of managing their workforce. While they may have qualified electricians available to perform this work, they may not always have registered apprentices on staff or enough electricians that have met these arbitrary training requirements, which will preclude them from bidding on this work. Due to natural workforce fluctuations, such as apprentices completing their training or electricians transitioning to other contractors, retiring,

⁵¹ 23 C.F.R. § 680.106(j) (2024).

⁵² Electric Vehicle Infrastructure Training Program, <https://evitp.org> (last visited May 2, 2025).

or starting their own businesses, a small electrical contractor may have the required registered apprentices or certified electricians on staff one day and not the next. These shifts make it challenging to consistently comply with rigid staffing mandates.

The training requirements aside, all electrical contractors are experiencing a shortage of qualified electricians and apprentices. These workforce challenges are more pronounced for smaller contractors and impact them disproportionately. Consequently, these gratuitous workforce requirements only serve to exacerbate these staffing issues for smaller contractors and place larger contractors at a competitive advantage.

Small business recommendation: The FHWA should eliminate the EV continuing education/EVITP training and registered apprentice mandates included in 23 CFR Part 680.106(j). Eliminating this regulation would free up the scarce resources small electrical contractors currently need to devote to an unnecessary training program in order to install, operate, or maintain EVSE under the NEVI program. Smaller electrical contractors would be more inclined to bid on these projects if granted greater flexibility and autonomy in managing their workforce, without the added concern of meeting rigid training requirements for their electricians or having registered apprentices on staff.

H. Federal Transit Administration (FTA)

32. National Transit Database⁵³

The issue: The National Transit Database (NTD) was created by Congress in the 1970s to create a standard list of key performance indicators (KPIs) for every transit agency that receives federal funds. In practice, there are five fundamental failings with the NTD:

1. It is only concerned with inputs and not outcomes,
2. No transit agencies in America take it seriously,
3. Measurements are focused on the equipment, not customers,
4. It takes 30 months to report the data, and,
5. Diverse geographic areas, like Montana and Manhattan, do not want the same things from their transit agency, and consequently should not measure the same things.

The regulation noted above calls for minor revisions to the data collected, when the authority exists to change the data collected so that NTD considers KPIs important to performance and customers.

Small business impact: Because NTD measures how agencies care for their buses and trains instead of the people who use them, transit agencies have a "project-based" approach versus a "performance-based" approach. This creates projects for large engineering firms to the detriment of smaller firms focused on results for customers. It also ignores the needs of the small business owners who are customers, and whose small businesses and communities thrive when their transit is lean and efficient.

⁵³ National Transit Database: Proposed Reporting Changes and Clarifications for Report Years 2025 and 2026, 89 Fed. Reg. 86907 (proposed Oct. 31, 2024).

Small business recommendation: The FTA should rescind the proposed rule and issue a new proposed rule that focuses on KPIs which are meaningful to customers and small businesses. Small businesses and the American workers they employ use mass transit and pay taxes to support it. They should benefit from increased efficiencies captured by measuring the right things: efficient performance versus costly projects. In focusing on performance versus projects, transit agencies will engage with smaller firms with deep expertise in delivering measurable results.

33. Limit Use of Project Labor Agreements (PLAs) to True Collaborations at the FTA and FHWA⁵⁴

The issue: A Project Labor Agreement (PLA) is a pre-hire collective bargaining agreement between unions and contractors that establishes employment terms for a specific construction project. It ensures labor harmony and efficient project completion by addressing potential disputes and standardizing labor practices. PLAs are commonly used on public and large-scale private projects. Both the FTA and the FHWA have programs addressing PLAs.

Small business impact: The prior administration sought to require or encourage the use of project labor agreements (PLAs), without regard to the availability of union labor in a particular market, or how the PLA was formulated.

Small business recommendation: The FTA and FHWA should limit the use of PLAs and allow them on a federal-aid project when the state or local transportation agency has meaningfully collaborated with leading industry groups and labor on its terms. This policy will prevent misuse of PLAs and ensure a competitive procurement process. Under Disadvantaged Business Enterprise (DBE) program rule changes enacted in May 2024, state DOTs are to require extensive demographic and financial information from all contractors and subcontractors bidding on a project, submitting them to a DOT data portal for analysis. Although the portal does not yet exist, some states have already imposed this mandate. With the DBE program's future being litigated, the DOT should direct states to stop collecting this data from bidders until further notice. Deferring this new bureaucratic requirement will keep administrative (and project) costs from increasing for all project partners.

I. National Highway Traffic Safety Administration (NHTSA)

34. Heavy Vehicle Automatic Emergency Braking (AEB) rule⁵⁵

The issue: Automatic Emergency Braking (AEB) systems are more of a threat to road safety than a solution, especially when large trucks are involved in an incident. The mandate underway will require all new commercial motor vehicles to have, and commercial drivers to use, the AEB when operating the vehicle.

⁵⁴ U.S. Dep't of Transp., Fed. Highway Admin., *Construction Program Guide: Project Labor Agreement*, <https://www.fhwa.dot.gov/construction/cqit/pla.cfm> (last updated Apr. 21, 2023); U.S. Dep't of Transp., Fed. Transit Admin., *Project Labor Agreements*, <https://www.transit.dot.gov/funding/procurement/third-party-procurement/project-labor-agreements> (last updated Oct. 23, 2015).

⁵⁵ Heavy Vehicle Automatic Emergency Braking: AEB Test Devices, 88 Fed. Reg. 43174 (proposed July 6, 2023) (to be codified at 49 C.F.R. pts. 393, 396, 571, 596).

Small business impact: Drivers' experiences with AEBs report that their features put the lives and safety of truck drivers and the people in vehicles near them at risk every day. AEBs frequently suddenly slam on a truck's brakes, catching the truck driver by surprise. The suddenness of the device's action causes near-misses on highways and may require evasive action on the professional driver's part. If the commercial vehicle in an AEB-caused accident is an owner-operator or belongs to a small carrier, the proportion of any loss (property, casualty, or both), especially if the truck requires repair, is much more severe than the same accident's adversities imposed on a large carrier. The small carrier incurs extra expenses, losing capacity and revenue perhaps while losing the services of an injured driver.

Small business recommendation: The NHTSA should require that the AEB mandate rulemaking for heavy commercial motor vehicles be paused pending further investigation into the degree to which and the frequency of accidents in the United States where a vehicle or vehicles involved have AEBs. Greater understanding of the nature, frequency, and severity of incidents involving bodily injury, property damage, near-misses in traffic attributable to AEBs, statistically valid conclusions regarding causality attributable to AEBs for each industry sector of the commercial bus and trucking sectors, including long-haul, full-truckload carriers, and small (fewer than 20 power units) motor carriers is needed by regulators and lawmakers to inform appropriate requirements and use cases. A pause in the AEB mandate for additional fact-finding would spare small carriers the additional expenses of making changes to meet the mandate. It would also increase traffic safety by putting more options for preventing accidents in professional drivers' hands and safeguard small carriers and truck drivers who lost time, additional expenses, lost revenue and equipment, and unnecessary bodily injury to truckers.

J. Conclusion

Advocacy commends the DOT for pursuing this regulatory review process. Advocacy is prepared to collaborate with small entities from across the country to help the DOT and its subagencies achieve lasting and impactful results from this initiative. Advocacy will continue the important work of engaging with small businesses, small nonprofits, and small governmental jurisdictions to help them understand DOT regulations, facilitate the sharing of their feedback, and relay their concerns to DOT.

As the DOT considers potential regulations for revision and rescission, Advocacy encourages the DOT and its operating agencies to reach out to us early and often. Advocacy also encourages the DOT to thoroughly consider all the potential impacts that its actions will have on small entities, as required under the Regulatory Flexibility Act.

Please feel free to contact me or Bruce Lundegren at (202) 205-6111 or bruce.lundegren@sba.gov if you have any questions or require additional information.

Sincerely,

//s//

Chip W. Bishop III
Deputy Chief Counsel
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//s//

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Copy to: Mr. Jeffery B. Clark, Sr., Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget