

**BEFORE THE SMALL BUSINESS ADMINISTRATION NATIONAL OMBUDSMAN**  
**NATIONAL REGULATORY FAIRNESS HEARING**  
**AUGUST 19, 2019**

Good afternoon. My name is James Lamb. I am here as president of the Small Business in Transportation Coalition. I would like to thank Acting Administrator Pilkerton, Ms. Wehagen, Ms. Wales, Mr. Kelly, Ms. Pope and the distinguished staff of SBA for holding this hearing and inviting SBTC to participate.

SBTC represents over 15,000 transportation professionals and companies from across America, including truck drivers, motor carriers, and various third-party intermediaries. On numerous occasions, both as the SBTC and our predecessor trade group Association of Independent Property Brokers & Agents, we have sought and received valuable assistance from SBA in dealing with Federal Agencies. We thank you for your chronic habit of standing up for the little guys in the transportation industry.

As this is a Regulatory Fairness hearing, we wish to go on record and explain our experiences and disappointments in dealing with the Department of Transportation, which regulates our membership.

SBTC takes issue with DOT's Federal Motor Carrier Safety Administration in terms of substantive rulemaking, lack of respect for laws that regulate the agency itself, due process, equal protection of the law, selective enforcement and discrimination, retaliation and abuse of power. Indeed, it would appear when it comes to small businesses in transportation, FMCSA is allergic to the principle of fairness.

In our most recent experience with the agency, we petitioned for an exemption from the electronic logging device requirement on behalf of small carriers with fewer than 50 drivers. When we filed our exemption application in November 2017, the agency kicked our request back, applying an incoherent rule for exemptions that sets a procedure for individual carrier exemptions but does not apply to trade groups that file class exemptions. We note the agency did not apply this same rule to our competitor OOIDA when they filed a similar exemption the very next day. And the agency refused to publish our application in the Federal Register despite being required by law to do so -- quote --upon receipt --end quote, yet they did publish our competitor's application. And they failed to process our application within the 180 days prescribed by law, yet processed our competitor's application within 180 days. In fact, the agency ignored and refused to decide on our application until we filed a Federal lawsuit seeking to compel agency action under the APA. Only then, did they issue a determination, one devoid of due consideration, that again pointed to our failure to comply with their rule, a rule trade groups simply cannot comply with, to posture themselves when answering our complaint to a Federal Judge.

In our application, we noted the agency failed during rulemaking to properly assess the impact of their rule on the smallest operators and that they lumped one-man truckers in with the Fortune 500 mega carriers. We contend, the regulation of one-man operators -- in this one-size-fits-all manner --is unreasonable and does not conform to the National Transportation policy codified in law and entails destructive competitive practices. We believe the ELD rule is nothing more than a sham.... an attack on small business by big

business designed to drive up the costs of the little guys and we believe the agency has been “captured” by big business interests.

We also believe the agency has skirted Congress’ directive by allowing ELD manufacturers to self-certify. We have suggested to the agency that this presents a real national security threat, given studies that show how hackers can take control of trucks’ accelerators through these telematic devices. We all know terrorists have already resorted to using trucks to inflict mass casualties in recent years, but our warnings have fallen on deaf ears at FMCSA.

Furthermore, the agency improperly released small carriers’ social security numbers without drivers’ consent in violation of the Privacy Act, including my own, to the Unified Carrier Registration Board, a self-described non-profit association that administers the UCR interstate agreement... which, in turn, publicly published drivers’ SSNs on their website last March. FMCSA has shirked their responsibility for the data breach, which, according to our lawyers, is improper and actionable

The agency also routinely ignores Congress’ clear directive to set UCR fees within 90 days of receiving fee recommendations from the UCR Board, causing widespread confusion, chaos, and delays in the states receiving monies needed for motor carrier safety programs. We are on this path again in 2019 for the third year in a row.

Lastly, and perhaps most disturbingly, the FMCSA engaged in political retaliation in 2015 against me personally in the immediate aftermath of my bringing two federal lawsuits against the agency as AIPBA President when the government raised the property broker bond ten-fold, which devastated small business and knocked 40% of

the industry out-of-business. That is, the agency grossly and corruptly misrepresented the number and nature of complaints it had received against my private business as it made what I believe was an unethical request to a consumer protection agency to make a case of deceptive business practices against me. According to a deposition of an FMCSA employee, the FMCSA intentionally withheld and hid from that agency exculpatory information known to FMCSA that revealed they tracked the actual fraudulent imposter to China. That request then resulted in a civil nuisance suit, which, in truth, was nothing more than a political hit job by FMCSA intended to maliciously harass me, exact revenge for those lawsuits, disparage my character, and ruin my personal reputation and professional career. I find this unconscionable and egregiously unfair.

In closing, SBTC echoes its previous request that SBA please report our experiences with FMCSA to Congress in your annual report and call for Congress to better 'regulate the regulators' to prevent abuses of power in the future.

Thank you for your time.