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Written Testimony of
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Submitted to the
House Small Business Committee
Subcommittee on Oversight, Investigations, and Regulations

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Good morning, Chairman Coffman, Ranking Member Altmire and members of the committee. Thank you for the opportunity to testify before you today on FMCSA's proposed changes to the Hours of Service regulations.

My name is Paul James. I am president of Rex Oil Company in Denver. Rex Oil was founded in 1946 as one of the first Conoco jobberships in Colorado. In 2001 it merged with James Oil Company to become one of the largest and most diversified petroleum distribution businesses in Colorado. We employ more than 60 people including more than 20 drivers with a hazmat endorsement.

I am one of approximately 8,000 independent small business petroleum marketers that are members of the Petroleum Marketers Association of America (PMAA). A majority of PMAA's members are private motor carriers employing CDL drivers with HAZMAT endorsements to transport gasoline, diesel fuel, jet fuel, kerosene and heating oil to both wholesale and retail customers in DOT specification cargo tank vehicles and transport vehicles. These drivers engage in short-haul local delivery service from petroleum terminals to intermediate storage facilities and/or end users, and most stay within a 100-mile air radius or closer to home base to which they return at the end of each daily shift.

I understand that FMCSA is proposing these changes as a result of a lawsuit filed by truck safety advocates who believe the current regulations do not adequately address driver fatigue issues. However, petroleum marketers have concerns about the proposed changes and we appreciate the opportunity to share my concerns with you.

PMAA Opposes a Reduction of the Daily Maximum Driving Hours from 11 to 10.

PMAA opposes any reduction in the maximum daily drive time. A one hour reduction as proposed would have negative impacts on drivers and small business petroleum transporters. First, the reduction would hurt drivers. Short haul petroleum drivers are largely paid at an hourly rate. Reducing their maximum daily drive time would also reduce their paychecks. Thus the proposed reduction unnecessarily penalizes drivers and would reduce their overall standard of living.

Second, the reduction in maximum daily driving hours would drive costs up for small business petroleum transporters. With fewer hours to drive each day many companies would be forced to hire additional drivers or delay deliveries to the following day. In the petroleum marketing industry, product prices change daily. Often, it is advantageous from a price point perspective to purchase, pick up and deliver petroleum products on the same day. In addition, it is not uncommon for drivers to experience unexpected delays at petroleum terminal facilities. As a result, drivers often need every hour available to them under the current HOS regulations to complete their daily runs. Delaying product delivery by one day due to fewer available driving hours could increase small business operating costs significantly as it would likely force them to hire new drivers. Hiring additional drivers to pick up and deliver the same amount of product means prices for those commodities will also rise. Moreover, given the chronic shortage of experienced drivers, small business petroleum transporters who already operate on very small margins will be forced to hire less experienced drivers at lower hourly rates. The daily reduction in driving hours would thus decrease overall safety by putting less experienced drivers on the road.

PMAA Opposes Changes to the 34- Hour Restart Period.

PMAA opposes new restrictions on the 34-hour restart provision. In the NPRM, the FMCSA proposes imposing limits on the 34-hour restart period required at the end of a driver's work week before a return to duty is allowed. Specifically, the FMCSA is proposing the 34-hour restart provision include two nightly periods between 12:00 AM and 6:00 AM. This change would be extremely detrimental to small business petroleum transporters, particularly those supplying residential heating oil. Often during the winter heating season, drivers are required to respond to emergency calls after their shift is over to re-start residential furnaces and deliver additional product to customers who have run out in the middle of the night. These deliveries are essential to prevent pipes from freezing and to protect people - particularly the elderly - from death due to exposure. The average emergency call takes two hours from portal to portal and

generally fits within the driver's maximum on duty time and maximum daily driving time. However, the required midnight to 6:00 AM periods within the 34-hour restart would make such deliveries nearly impossible without a significant increase in product prices to support the hiring of the new drivers that would be required to cover emergency calls. The cost for residential heating oil and propane is already prohibitively high for the poor, working poor and elderly customers living on fixed incomes. These customers have a disproportionately high rate of emergency calls since they cannot afford to keep the fuel tanks that power their furnaces full. Again, this change would impose significant costs on small business petroleum transporters or all kinds who would be forced to hire additional drivers to maintain current delivery schedules.

PMAA Opposes the Proposed 30 Minute Driver Rest Break Proposal.

PMAA opposes the 30 minute break time proposal. Requiring a 30-minute driver break within the first seven hours of driving time does not result in any appreciable reduction of fatigue among short haul petroleum drivers. Unlike long haul drivers, short haul petroleum drivers are not driving lengthy uninterrupted, monotonous stretches of limited access highways for days or weeks at a time. Instead, these drivers are making short local runs between gas stations, farms, homes and commercial fleet operations to deliver product in the communities where they live. The drivers are stepping in and out of their trucks during loading and unloading activities followed by a sporadic period of non-driving activity and inactivity. Drivers are waiting for fuel to drop into storage tanks, waiting in line at terminal facilities – sometimes for several hours – to pick up product, and filling out delivery tickets and/or bills of lading. All of these tasks are often punctuated by stretches of time when the driver is idle and at rest. These varied activities are stimulating rather than monotonous and sedative, involve physical activity and higher brain function than would occur by long stretches of driving time. Moreover, small business petroleum transporters encourage drivers to take rest breaks when needed. Short haul drivers often stop along their delivery route for coffee breaks and lunch. These drivers have more opportunity to take rest breaks because they operate largely on local roads rather than confined to limited access interstate highways for long periods of time. In addition, there is no disincentive for short haul drivers to take rest breaks since they are paid by the hour and not the mile. Consequently, PMAA does not believe that the proposed rest breaks are appropriate for short haul drivers since fatigue is not a significant issue.

PMAA Supports Changes to HOS to Count Time Spent in a Parked CMV as Off-duty Time

PMAA requests the FMCSA adopt a provision that would allow time spent by a driver in a parked Commercial Motor Vehicle (CMV) to count as off-duty time. PMAA makes this request because private short haul drivers often spend significant periods of time parked in line at terminal facilities as they wait to load product. When fuel is in high demand or when branded products are on allocation, driver wait time may last up to three hours. During these extended wait times, the CMV is parked and the driver remains in the cab. The FMCSA requires drivers to count no driving wait time as on duty time. PMAA requests that the FMCSA allow up to three hours waiting in a parked CMV to be counted as off-duty time when a driver stays within a 100 air mile radius of their home base and return each day at the end of their shift. This would provide much needed flexibility to local short-haul deliveries of petroleum products that face increasing waiting time at terminals for branded supplies of compliant fuel for the geographic area in which they work. The three-hour allowance would be similar to what the FMCSA already allows under the oil field exemption. PMAA believes that this change can be made without contributing to driver fatigue or reducing overall safety.

PMAA is Concerned that the FMCSA Fatigue Data is Flawed

PMAA believes that the estimate of the percentage of fatigue-related crashes in the NPRM Regulatory Impact Analysis (RIA) is incorrectly inflated in two ways: First, the FMCSA overstated the percentage of single-vehicle truck crashes (which are more likely to be fatigue-related) compared to multi-vehicle crashes. More specifically, FMCSA approximately doubled the weight given to single-vehicle truck crashes in its large truck crash causation study. Second, the FMCSA appears to be treating any crash in which fatigue is listed as an "associated factor" as a fatigue-caused crash. That approach is not just contrary to prior research methods, it is also at odds with the agency's own report to Congress in March

2006 in which it stated that for associated factors: "No judgment is made as to whether any factor is related to the particular crash, just whether it was present." Applying the data in this way incorrectly doubles the FMCSA's analysis of the number of truck-involved crashes that are likely caused by fatigue.

In past rulemakings, the agency has found fatigue to be a causal factor in just seven percent of crashes. In fact, in just 2008, the FMCSA noted that while the best data on fatigue as a factor in fatal truck accidents showed only a 2.2 percent relationship, it remained confident that its seven percent figure is accurate. Now, the FMCSA is claiming without adequate data to back up their assertion, that it recognizes a 13 percent fatigue factor. However, data collected by the trucking industry and included in the docket demonstrates that since the current HOS rules were introduced in 2003, the industry has achieved a continually improving safety record, reaching the lowest fatality and injury rate levels in recorded history. PMAA is concerned that the proposed HOS changes are based on incorrect analysis of fatalities attributed to driver fatigue. Given the significant improvements in fatalities since 2003, and the flawed data analysis in the RIA, PMAA believes there is no need to address driver fatigue for short haul private drivers at this time.

CONCLUSION:

It is essential that the FMCSA take into consideration the differences between short haul and long haul drivers. As the FMCSA acknowledged in the preamble to the NPRM, the trucking industry is diverse and different sectors have different operational characteristics. Private petroleum carriers are not trucking firms but distributors and retailers that move their own goods between bulk storage facilities and retail outlets. Private short-haul petroleum transporters operate on a regular basis over local routes determined by the location of their bulk storage facilities and end-user customers in the local community. These drivers return to home base every night at the end of their shift. Fatigue is thus a less significant factor among short haul drivers as opposed to long haul drivers with sleeper births that travel long distances for days on end along the nation's interstate highways. PMAA believes that the proposed changes in the NPRM should not apply to short haul drivers.

PMAA appreciates the opportunity to submit these written comments and is happy to provide further information.