

**Written Testimony Presented Before the United States Senate
Homeland Security and Governmental Affairs Subcommittee on
Regulatory Affairs and Federal Management
Hearing Titled
“Improving Small Business Input on Federal Regulations: Ideas for Congress and
a New Administration”
January 19, 2017**

My name is Jerry Hietpas. I am the President of Action Safety Supply Co. a road construction related services company located in Oklahoma City and Tulsa Oklahoma. Since our founding in May 1975 our company has continuously served the highway and infrastructure industry in Oklahoma. We are fortunate to have about 160 full-time employees working with us.

We specialize in temporary traffic control devices and service, install guardrail, cable barriers, provide highway striping, impact attenuation devices, manufacture and install the permanent highway signs and sign posts including roadside highway guide signs and the overhead sign structures. We provide and maintain the temporary barriers that separate traffic during construction, the electronic changeable message signs and manufacture, install and maintain the radar trailers that monitor traffic speeds and volumes that provide the information that gets displayed on the electronic signs.

Our company and employees are dedicated to making highway work zones as safe as possible for the road user and our customers, the highway contractors and state agency personnel as they work to improve and maintain our highway system.

We recognize the need you have to provide oversight and how you are held accountable to the taxpayers for their resources you commit on their behalf to build and maintain our National Transportation System. You must be able to assure yourselves that good value is received in exchanged for the investment made. Sometimes it seems that as you implement the laws, compliance with the regulations that govern the process carry a higher value than the collection of meaningful data, achieving lower costs or a higher quality end result.

In the interest of time, my testimony will focus on three areas today:

- 1.) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration regulations as they apply to road striping trucks and truck mounted attenuators (crash cushions) with a small detour into hours of service regulations.
- 2.) The minimum pay rates paid to highway workers on federally funded projects as required under Davis-Bacon Act and administered by the U.S. Department of Labor and what appears on the surface to be an arbitrary application of the regulations used to establish geographical areas of the application of wages to pay.
- 3.) A completely different type of wage, hours, trade and demographics data that was required on a recent Housing and Urban Development project where we did some striping on a relatively minor project and a discussion about additional documentation requirements during the last round of stimulus projects.

USDOT Number Regulations

The USDOT Federal Motor Carrier Division REQUIRES that a company obtain a USDOT number if it operates vehicles with a gross vehicle weight of 10,001 pounds or more and the company transports hazardous materials. The company also must work in multiple states. Some states, such as Oklahoma, require that a company obtain a USDOT number even if it only does business in Oklahoma (Intrastate carrier). The primary purpose of the USDOT number is for tracking a company's safety record.

We stripe roads with a type of epoxy marking material. While this material has lasted up to 10 years when properly applied on high-volume roads and Interstate Highways providing great cost vs. benefit value, it has one component in it that is caustic and is therefore listed as a "hazardous" material and requires the vehicle to carry placards. Our company must be listed as a Hazardous Materials Carrier (HAZMAT) because of using these materials and is subject to all of the regulations. It makes sense. We all want our motor carriers, ESPECIALLY our HAZMAT carriers to be safe operators. Repeated accidents by a HAZMAT carrier will trigger increased inspections by enforcement authorities including stopping and inspecting vehicles with that USDOT number when seen traveling down the highway.

I mentioned our Truck Mounted Attenuator trucks. (TMAs) These vehicles by design must be 10,001 pounds or more to safely operate as an attenuator. The primary purpose of this “crash” truck is to follow slower moving operations (such as striping operations) and protect our employees from injury if a vehicle strikes our slower moving equipment. These trucks must carry our USDOT number.

TMAs have a secondary use as well. When the permanent attenuator, such as those protecting bridge piers, are damaged in an accident, a TMA can quickly be deployed to take the place of the damaged attenuator until it can be repaired. This action keeps the bridge safe in case a subsequent accident occurs. We routinely respond to the Oklahoma Department of Transportation’s (ODOT) requests to provide our TMA trucks to protect these damaged permanent attenuators until they are repaired. In this application, our trucks get hit. Many of the hits are hit and run but in some cases a wrecker is needed. If that were to happen, a reportable incident has happened. To make it easy to know when reports are needed and filed, enforcement people use the following criteria. If an accident requires a hearse, nurse or wrecker a reportable incident occurs.

Because of the frequency of these accidents, our company a HAZMAT carrier, was identified as an unsafe carrier and was “flagged” and given increased enforcement. Our crews driving to or from a striping job were stopped and inspected on a daily basis. Countless crew hours were lost during these safety inspections that were simply caused because our TMA trucks were involved in too many reportable accidents. The only way to reduce the number of these accidents was to not respond to ODOT’s requests and get out of that business. As of late, we only get stopped on the side of the road and inspected a couple of times a month. The inspections continue to cost us time and money. Inspectors concerned with complying with the process are costing us a lot of money.

Davis-Bacon Wage Rates

Attached to my testimony is a colored map of the State of Oklahoma. These colors correspond to the different minimum wage rates required to be paid to construction workers on federally funded projects in the various class codes and geographical areas of the state. The corresponding rates are color coded as well and attached for your reference.

HISTORY

The Davis–Bacon Act of 1931 is a United States federal law that establishes the requirement for paying the local prevailing wages on public works projects for laborers and mechanics. It applies to "contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works".

CURRENTLY

The Davis–Bacon Act was entered into the United States Code as 40 U.S.C. §§ 276a-276a-5, but has now been re-codified as 40 U.S.C. 3141-3148. The Act covers four main areas of construction: residential, heavy, buildings, and highway. Within these areas are further classifications, including craft positions such as plumber, carpenter, cement mason/concrete finisher, electrician, insulator, laborer, lather, painter, power equipment operator, roofer, sheet metal worker, truck driver, and welder.

The agency responsible for collecting and disseminating the prevailing wage data is the Wage and Hour Division (WHD) of the United States Department of Labor (DOL). The procedure "involves four steps: (1) planning and scheduling of surveys, (2) conducting the surveys, (3) clarifying and analyzing the respondents' data and (4) issuing the wage determinations."

Planning and scheduling surveys: In the third quarter of each year, the WHD distributes a Regional Planning Survey Report, published by the F. W. Dodge division of the McGraw-Hill Information Systems, to regional offices. The regional offices then consider the types of construction planned as well as the age of the current wage determination. This analysis determines when and where surveys will be conducted.

Issuance of surveys: WD-10 survey forms are sent to contractors and subcontractors along with a cover letter requesting information. Letters and forms are also sent to members of Congress, trade associations, and building trade unions to solicit information from them.

Compilation of data: WHD analysts then review the returned forms for completeness, ambiguity, and inconsistencies. If the information received is deemed to be inadequate, the scope of the survey may be expanded. For example, if it is determined that relevant projects have not been completed recently, or that the area is inadequately represented, WHD may conduct telephone surveys to increase the robustness of data.

Publication of data: Once compiled and analyzed, the wage determinations are made publicly available.

The geographical areas determined by the US DOL are cumbersome and arbitrary. There are 9 different wage determinations that incorporate the 77 Oklahoma Counties. Although the statute does make it clear that we will have wage classifications and geographical areas, the USDOL fails to work with local entities to determine what might be the best process for the local departments and contractors. For instance, why have 9 areas when we could have 8 that overlapped with the current 8 ODOT divisions? When we asked this question, we were quickly informed that “things just don’t work like that”. In essence what has occurred is that contractors will simply pay the highest wage determination in order to not have to adjust their workers’ pay downward if they happen to move that worker to a different territory. It is not uncommon for a single project to cross county lines requiring both sets of wage determinations be included in the contract documents.

The Department and contractors certainly spends a significant amount of administrative time on every federal-aid project to verify that the contractor payrolls are in compliance. The numbers are not huge for the administrative burden, but with many federal-aid projects being worked on at any given time, the costs can quickly add up.

A possible solution may be to establish a simple urban and rural area rate and require the Department of Labor to justify any proposed wage rate difference based on a factual comparative report that is specific to that worker classification.

HUD Project Wage and Data Issue

The majority of our work is done on the state roadway system, on city streets or on county roads. We also work with our customers on military bases or airports when needed. We had the opportunity to do striping on a small city street project in Moore, OK. We did not know part of the funding was coming from HUD. The job would take our crew about four hours to complete.

I have with me a 3/8-inch-thick stack of papers including the necessary forms that had to be completed, the instructions for filling out the forms, requirements for additional letters and certification requirements, request for demographic information on the individuals on the crew and a note from our payroll supervisor informing me she had to watch a 30-minute instructional video. All of this had to be completed prior to be able to make an application to receive payment for the work we did.

Our customer told us after the fact that they were told the city was having difficulty getting someone to do this type of work for them. We both agreed that we understood why and it brought back to mind the old story I heard about the military having to pay \$10,000.00 for a hammer. While I cannot testify if that story was true or not I CAN testify that after our experience working on and getting paid for the work on the HUD project, I have a better understanding why it is difficult for the city to find contractors to do the work.

Additional Reporting for Stimulus Projects: The last stimulus projects (American Recovery and Reinvestment Act of 2009 ARRA) required separate reporting in addition to our regular Certified Payroll Report required under Davis-Bacon. It is identified as form 1589 and requires the number of employees used, the hours worked and payroll dollars involved.

Our Davis-Bacon payroll reports are all computer generated because of the volume of reports needed and the data required. ARRA form 1589 was done by hand because of the temporary nature of the need and limited data required. We also did very few of these projects so the time impact to us was limited. My payroll supervisor estimated the additional reporting time she spent over the three-year period was about 300 hours.

Conclusion:

Thank you for the opportunity you have granted me to come and testify before you today and for the willingness of the committee to hear the concerns of small business, our small business, how some regulations have a negative impact and increase costs.