
Testimony of
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Before the
UNITED STATES SENATE
COMMITTEE ON COMMERCE, SCIENCE & TRANSPORTATION
SUBCOMMITTEE ON SURFACE TRANSPORTATION & MERCHANT
MARINE SAFETY, SECURITY & INFRASTRUCTURE

Regarding
OVERSIGHT OF MOTOR CARRIER SAFETY EFFORTS

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On behalf of



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Good morning Chairman Lautenberg, Ranking Member Thune and distinguished members of the Subcommittee. Thank you for inviting me to testify on matters that are extremely important to our nation's small business trucking professionals and professional truck drivers.

My name is Todd Spencer. I have been involved with the trucking industry for more than 30 years, first as a truck driver and an owner-operator, and then as a representative for small-business trucking professionals. I am currently the Executive Vice President of the Owner-Operator Independent Drivers Association (OOIDA).

OOIDA is a not-for-profit corporation established in 1973, with its principal place of business in Grain Valley, Missouri. OOIDA is the national trade association representing the interests of independent owner-operators and professional drivers on all issues that affect small-business truckers. The more than 156,000 members of OOIDA are small-business men and women in all 50 states who collectively own and operate more than 200,000 individual heavy-duty trucks. The Association actively promotes the views of small business truckers through its interaction with state and federal regulatory agencies, legislatures, the courts, other trade associations and private entities to advance an equitable business environment and safe working conditions for commercial drivers.

The majority of trucking in this country is small business, as 96% of all carriers have less than 20 trucks in their fleet and 86% of carriers have fleets of just 6 or fewer trucks. In fact, one-truck motor carriers represent nearly half of the total number of motor carriers operating in the United States. These small business motor carriers have an intensely personal and vested interest in highway safety as any safety-related incident may not only affect their personal health, but also dramatically impact their livelihood. As such, OOIDA sincerely desires to see further improvements in highway safety and significant progress towards the highway safety goals of the Subcommittee and the U.S. Department of Transportation.

The first step towards achieving significant improvements is a commitment by the Federal Motor Carrier Safety Administration (FMCSA) to vigorously enforce all existing regulations governing motor carriers as well as freight brokers and other transportation intermediaries. While we talk continuously about safety in the trucking industry, historically there has been an acceptance of the poor safety practices of large motor carriers. There has also been an acceptance of labor abuses and perpetual violations of existing leasing regulations by motor carriers which has led to industry wide problems such as high driver turnover rates and the inability to keep safe, experienced drivers in the industry. Similarly, the lack of oversight of freight brokers and other transportation intermediaries allows many unscrupulous entities to regularly take advantage of small business motor carriers forcing those truckers into choosing between safety and making enough money to support their families.

It must be recognized that in trucking, economics and safety go hand in hand. From the equipment aspect where a driver is unable to pay for repairs to his truck because he was not properly compensated despite delivering a load on time and in good order to unrealistic delivery schedules that put drivers in the position of driving while fatigued or violating hours-of-service rules. There is a chain of responsibility in safety and FMCSA, in addition to being given the

authority to properly govern it, must be given the resources to adequately enforce existing regulations.

In addition to committing to enforcement, Congress and the FMCSA must formulate new rulemakings or modifications to existing regulations that will have a meaningful impact on the trucking industry and highway safety such as ensuring that hours-of-service rules hold all industry stakeholders accountable for their actions and mandating training for entry-level truck drivers. Optimum trucking and highway safety can only be achieved by holistically developing a safety culture that acknowledges the perspectives of people behind the wheel and accounts for all industry stakeholders.

FMCSA

OOIDA and the trucking professionals we represent are encouraged by FMCSA's recent efforts to reassess its enforcement activities and to expand its understanding of driver perspectives. For example, the considerable time and effort that the agency put into its public hours-of-service listening sessions should be commended.

However, OOIDA believes that over the past several years the limited resources of the FMCSA have been somewhat misdirected in a manner that diverts enforcement priorities away from efforts that would have a much greater impact on highway safety. For many years the agency's enforcement priorities have placed an increasing emphasis on targeting drivers while largely ignoring the enforcement of many regulations related to corporate motor carriers and transportation intermediaries. While some progress has been made, this model of enforcement has kept the trucking industry from achieving its full safety potential. To reach that potential FMCSA must seek to enforce all regulations under its authority and Congress must be willing to expand the agency's jurisdiction to encompass all industry stakeholders who influence and compromise safety.

You simply cannot divorce safe operations and safety compliance from the economic realities that truckers must face every day. While truck drivers certainly should be held accountable for their actions, the same should be true for the stakeholders who often have more control over truckers' schedules and activities than the drivers themselves.

The Department of Transportation and the FMCSA have jurisdiction over regulations that may be perceived as outside the "safety" purview, but in reality regulations such as those governing leasing agreements, loading/unloading of trucks and transportation intermediaries have a tremendous impact on safety. Those regulations are often directly related to a driver's bottom line. Unfortunately, since its inception the FMCSA has placed little priority on enforcing regulations perceived as being solely economic. In fact, in most instances the agency has done little if anything to enforce those rules. This has resulted in a trucking industry where drivers and small players are regularly preyed upon by dishonest entities who have little fear of recourse or of reprisal from the trucker they are essentially defrauding or the government agency expected to oversee them.

Enforcement priorities that ignore the relationship between highway safety and the coercive demands of shippers, receivers, motor carriers and freight brokers upon drivers are impediments to our overall safety objectives. The demands and expectations of trucking stakeholders on drivers are far more influential on safety than any inspection scheme or schedule of fines that Congress or FMCSA may devise. Unless those economic issues are addressed, drivers who become disqualified from driving for violating hours-of-service rules and other safety regulations will simply be replaced by new, less experienced drivers, facing the same economic pressures. It is only by addressing underlying economic concerns that we will begin to see significant improvements to highway safety.

Detention Time

The excessive, uncompensated time truckers spend waiting to be loaded or unloaded at shipping and receiving facilities represents one of the greatest examples of how lacking regulatory enforcement and economic pressures within the industry impact a trucker's ability to comply with safety regulations. Time spent waiting to be loaded or unloaded was repeatedly identified by drivers and small motor carriers at FMCSA's public listening sessions as a major factor that must be addressed in order to have effective hours-of-service rules. In addition, excessive time spent waiting to be loaded or unloaded plays a major role in drivers' continued opposition to the use of electronic on-board recorders for hours-of-service enforcement.

Under current hours-of-service regulations, the daily 14-hour clock begins to tick for a truck driver when the driver performs any on-duty activity, including those duties related to loading and unloading. However, unlike other industrialized nations throughout the world, most US based drivers are not compensated by the hour but rather based upon the number of miles driven. This translates into drivers' time having essentially no value, particularly to shippers and receivers. Shippers and receivers also fall outside of FMCSA's authority and are not held accountable for their actions related to hours-of-service regulations.

Shippers and receivers routinely make truckers wait for considerable amounts of time before they allow them to load or unload their trucks and drivers routinely arrive at loading facilities with little or no idea how long they will be there. Known in the industry as "detention time", most shippers do not pay for this time and have little financial or regulatory incentive to make more efficient use of drivers' time. It is common for a driver to pull into a shipping or receiving facility with no idea of whether he or she will be there for 2 hours or for 10. In certain industries, it is not unusual for drivers to wait up to 24 hours before receiving a load. During this waiting time, it is nearly impossible for a driver to rest. Often, the driver must wait in line or be "on call," ready to take the load and make the "just-in-time" delivery.

To give you an idea of how significant the detention time problem is - industry surveys have estimated upwards of 40 hours per truck per week is wasted waiting to be loaded and unloaded. In fact, as a part of the Motor Carrier Efficiency Study the FMCSA identified loading and unloading as the most cited inefficiency in trucking - costing the industry an estimated \$3 billion per year and society over \$6.5 billion annually.

Not only is excessive time waiting to be loaded and unloaded uncompensated, but it essentially steals the time that drivers have under the hours-of-service rules to do the work for which they are paid - driving the truck.

In addition to the monetary cost, in research conducted for the Department of Transportation, excessive detention is often cited as a contributor to hours-of-service violations as well as driver fatigue. Because a driver's time is not accounted for by shippers, drivers are regularly put in the compromising position of having to choose between meeting scheduling demands or complying with safety rules such as hours-of-service regulations. Research shows that often, because of economic necessity and the structure of the industry, drivers feel pressured to not keep an accurate log book or to drive while fatigued. For example, a comprehensive study on shippers' role in driver regulatory compliance noted that waiting for freight to be loaded/unloaded can "impede a driver's ability to effectively meet schedules and lead to violation of HOS, driver fatigue and loss of income by all parties involved..." (A Qualitative Assessment of the Role of Shippers and others in Driver Compliance with Federal Safety Regulations, 1998).

The General Accountability Office is currently conducting a related investigation into the potential operational inefficiencies and safety problems associated with commercial motor vehicles that are detained at loading docks. The GAO is seeking to learn to what extent detention time affects trucking industry operations and safety as well as what federal actions could be taken to reduce the implications caused by detention times on trucking industry operations and safety.

From OOIDA's perspective, if the time spent by drivers waiting to be loaded or unloaded is contemplated and if compensation for excessive detention time begins to be negotiated or if shippers and receivers are held accountable under FMCSA regulations, the trucking industry and the American public will benefit from more efficient freight movement and dramatically improved highway safety.

Hours-of-service

To say the least hours-of-service regulations are significant to the men and women who make their living behind the wheel of commercial motor vehicles. Those rules have a major impact on the daily lives of truckers whether they are engaged in activities related to their livelihood or at home with their families. Truckers have appreciated FMCSA's genuine interest in hearing their thoughts and concerns as the agency works towards a new hours-of-service rule.

To achieve significant safety gains as well as reduce non-compliance, the next hours-of-service rule must be more flexible to allow drivers to sleep when tired and to work when rested. The rules must encourage truck drivers to get off the road when they are tired and must not penalize them for doing so. As such, the most important factor to consider as the next hours-of-service rule is devised is that the overwhelming majority of truck drivers governed by the rule are compensated only for driving even though they are expected to perform non-driving, uncompensated work that can consume considerable and unpredictable amounts of their on-duty time.

Under the current hours-of-service regulations the 14-hour clock begins whenever a driver performs any on-duty activity after taking a compliant minimum rest. The remaining 10 hours of a 24-hour day is supposed to be reserved for resting. There are general and administrative functions that are required of drivers such as completing paperwork, fueling, undergoing safety inspections and general maintenance that require daily on-duty, uncompensated time that counts against their 14-hour on-duty clock. To some extent drivers can predict and control those duties, but there are many other activities that occur regularly that are also uncompensated yet highly unpredictable.

Physically loading or unloading vehicles, manually sorting and stacking freight and taking care of mechanical breakdowns are a few examples of these unpredictable, uncompensated activities that count against the 14-hour clock. In addition there are the delays from congestion, work zones, detours and inclement weather which reduce earnings potential because again, drivers are predominantly paid by the mile and must count this time against their 14-hour clock.

Considering all that they are asked to do, it is easy to understand that drivers want to get in as much compensated driving time as possible each day. In a survey done by OOIDA of its members, 66% reported that they forego short rest breaks, naps and meals under the 14-hour rule in order to perform as much compensated driving time as they can. In fact most drivers report that they seldom drive more than 10 hours per day, but still feel compelled to continue driving when they would like to take a break to compensate for either planned duties or unpredictable delays.

Significant reductions in driver fatigue and non-compliance will not be achieved until drivers are paid for all of their work and drivers face no economic downside for complying with the rules. If drivers were compensated for both their driving and non-driving on-duty work, they would have much less incentive to drive while fatigued. Additionally, they would have every incentive to record all of their on-duty time, and concerns with the accuracy of logbooks would disappear.

Electronic On-Board Recorders

If Electronic On-Board Recorders (EOBRs) could prevent the manipulation of a driver's work schedule and respect drivers' privacy rights, OOIDA would consider supporting their use for hours-of-service reporting. But for now, OOIDA's opposition to EOBRs remains unchanged. OOIDA remains convinced that EOBRs are no more a reliable or accurate record of a driver's compliance with the hours-of-service regulations than paper log books. In our collective mind there remains no rational basis for the economic burden and unreasonable imposition to personal privacy presented by requiring drivers to be monitored by EOBRs.

The theory behind the use of EOBRs for hours-of-service enforcement is that the devices will provide an accurate, tamper-proof record of a driver's duty status and therefore ensure compliance with the hours-of-service rules which in turn will make for a safer trucking industry. This theory is undermined by the fact that EOBRs cannot capture, without the driver's input, data related to the time a driver spends conducting on-duty, non-driving activities. The hours-of-service rules require a record to be kept of both driving time and all non-driving work activity (waiting to load and unload, inspecting/repairing the truck, performing the loading and

unloading, looking for the next load, receiving a dispatch, doing paperwork, performing compensated work at another job, etc.). Even though an EOBR can record how long someone has operated a truck, if the driver does not manually enter his non-driving work time into the EOBR, the EOBR will show the driver as available to drive when he is not under the hours-of-service rules. In fact, EOBRs will still permit someone performing compensated work for a person other than the motor carrier to drive, without showing a violation.

The EOBR's reliance on driver input means they provide a no more accurate or tamper-proof record of a driver's hours-of-service compliance than paper log books. The substantial costs of EOBRs, costs that would be especially burdensome to small businesses, cannot be justified by any perceived improvement in compliance. The costs also include those to personal privacy. The truck cab is the home away from home of most long haul truck drivers. They sleep, eat and conduct personal business in the truck while not driving. They have a legitimate expectation of privacy that must be afforded to them.

OOIDA is also certain that EOBRs will make it easier for motor carriers to harass drivers. Congress required FMCSA to ensure that such devices would not be used to harass truck drivers. Unfortunately, the EOBR rule that was recently issued seems to ignore this requirement. As the agency knows, it must ensure that its safety regulations do not have a deleterious effect on the physical condition of drivers. The only evidence on the record regarding the potential health effects of EOBRs are the studies that show that electronic monitoring of employees can increase the stress of workers. EOBRs can be used to exacerbate driver fatigue as carriers will be able to notice whenever a driver has stopped their truck during their on-duty time. Perhaps the driver has decided to take a break and get rest. Such breaks do not suspend the running of the 14-hour work-day under the HOS rules. The carrier will be able to instantly instruct the driver to return to the road and maximize his or her driving time. Carriers will also be able to instruct drivers, whenever they want, to log their on-duty, not-driving work as off-duty, thereby preserving their on-duty driving time. Both practices remove what little discretion drivers have today to resist the economic pressure discussed above.

OOIDA encourages lawmakers to seek solutions to motor carrier safety issues that are much less intrusive and much more effective such as mandating comprehensive driver training, resolving problems at the loading docks, revising methods of driver compensation, creating more flexible hours-of-service rules, and providing adequate truck parking in those areas around the country where drivers who wish to rest cannot find such parking today.

Driver Training

An adequately trained driver is the key to any advances in safety goals. To this end, OOIDA has consistently been a strong proponent of Federal government efforts to develop and impose mandatory driver training and licensing requirements for entry-level truck drivers.

At present, FMCSA regulations require entry-level drivers to be trained in only four subjects – driver qualifications, hours-of-service, driver wellness and whistle blower protection – all of them unrelated to the hands on operation of a commercial motor vehicle. The Notice of Proposed Rulemaking published in 2008 would expand the required training for Class A drivers

to include a minimum of 44 hours behind the wheel training in addition to 76 hours of classroom training, nearly all of it involving subjects pertaining directly to the safe operation of a commercial motor vehicle. The rulemaking also proposes the accreditation of driver training schools offering entry-level courses as well as the establishment of standards for ensuring that instructors at such schools are qualified to teach those courses. The goal of these regulatory revisions is to enhance the safety of commercial motor vehicle operations on the nation's highways.

Based upon our continuing, firm belief that minimum training requirements for entry-level drivers will improve highway safety for all motorists, private as well as commercial, OOIDA very much supports the FMCSA's proposal to establish minimum training requirements that require a specified amount of behind-the-wheel training for entry-level drivers. OOIDA also believes that the effectiveness of such a training program can be ensured only if all facilities providing entry-level driver training programs are accredited by independent agencies and the instructors providing the training are required to meet relevant qualification standards. Accordingly, OOIDA also supports the agency's proposal to regulate training providers.

We sincerely hope FMCSA will soon move forward with its rulemaking on driver training.

CSA 2010

There has been much misinformation communicated within the trucking industry concerning FMCSA's Comprehensive Safety Analysis 2010 initiative or "CSA 2010." Much of the information seems to have purposely distorted the basic goal of this initiative – improving highway safety.

For too long, drivers seem to have been the sole focus of enforcement at roadside. The large motor carrier community actually encouraged this one dimensional view because it allowed them to shirk their shared responsibility for having adequate safety management practices in place.

CSA 2010 will hold a motor carrier immediately responsible for actions of their drivers on the highway. Once the initiative is fully implemented, motor carriers' safety ratings will be tied to actual data from roadside inspections as opposed to the current practice where they may face an introspective review of their safety practices once in a decade – if even then.

For motor carriers that choose to continue with business as usual through insufficient training of their new drivers and failure to implement genuine preventive maintenance programs on equipment for which they own, CSA 2010 will very quickly be able to determine their indifference to good safety management practices. This is a significant improvement over the current system which really amounts to a "catch me if you can" and "catch and release" enforcement model.

New Entrant Safety Assurance

As a part of its Congressionally mandated efforts to beef up its New Entrant Safety Assurance efforts, FMCSA is conducting safety audits of new entrant motor carriers within 18 months of

their being granted operating authority. OOIDA believes that instead of conducting safety audits well after the granting of operating authority, FMCSA should focus its limited resources on gathering information during the initial application process to determine an applicant's ability to comply with regulations. Prior to granting operating authority, FMCSA can derive plenty of data regarding an applicant's ability to perform safely and comply with regulations from evidence of work experience, training, and/or knowledge of the industry. FMCSA should also enhance current protest procedures to encourage industry stakeholders, including States, to provide data and other information that could lead to a more informed authorization process. This larger body of information could be checked against existing DOT databases to identify "chameleon" carriers and brokers as well as other problem applicants and to deny them new authorizations.

OOIDA believes it is wrong to lump all new applicants together either for pre-qualification testing or later safety audit purposes. OOIDA's experience assisting its members to obtain their first operating authority has shown that the majority of these new applicants are experienced commercial motor vehicle drivers with excellent safety records. They are stable business owners who have for many years been driving a truck as an owner-operator or employee driver and have, throughout those years, learned much about applicable safety regulations and effective safety management procedures.

There's a strong correlation between a carrier's future performance and its past accident record. Thus, FMCSA should expand the application form to collect information that will help the agency to identify those applicants with poor crash records.

All owners (whether individuals, partners or shareholders) as well as key personnel, especially including, but not limited to, those who will be responsible for safety compliance and management should be identified. Their past training, experience, and work histories should be listed on the application. Applicants should also explain briefly why they left each employer or, if they were self-employed, why the business was shut down. This information should go back at least 5 years, and should not be limited to trucking experience as all work experience will help determine whether the applicant possesses the character and integrity to conduct safe trucking operations. FMCSA might also consider requesting the applicant's recent tax returns and/or contracts and agreements as confirmation of the veracity of information provided.

FMCSA could also enhance this pre-qualification review process by modifying current protest procedures to take full advantage of third-party information about applicants. FMCSA's current practice is to post in the Federal Register a summary of the application (49 C.F.R. §365.109(b)), which contains only the applicant's name and address, its designated representative, assigned number, the date of filing, and the type of authority requested. Interested parties, including States who would have a direct interest in keeping applicants with poor driving and accident records from receiving new authority, then have only ten days to request the full application and file a formal protest.

It is our understanding that well over one hundred applications for operating authority are filed with FMCSA each day. Thus, the ten-day review and protest period is far too short to allow stakeholders an opportunity to contribute in a meaningful way to the decision making process.

All names, businesses, and equipment identified in an application or by protesters could then be checked against the substantial pool of information currently collected in DOT's various computer databases, such as MCMIS, PRISM, and CDLIS, to confirm past performance and crash history. Certain types of information, such as evidence that the applicant is simply seeking to evade prior enforcement actions or out-of-service orders, or has a history of the 16 types of violations that now result in denial of permanent authority when discovered in a safety audit, should result in automatic denial of new entrant authority.

The proposed pre-qualification investigation is analogous to that currently conducted and effectively used by the Federal Maritime Commission in its licensing process for ocean transportation intermediaries. Applicants must demonstrate not only that they possess the "necessary experience" in related activities but the "necessary character" to render such services. 46 C.F.R. §§515.11(a)(1) & 515.14. Further, the Federal Maritime Commission investigates the accuracy of the information, the integrity and financial responsibility of the applicant, the character of the applicant and its qualifying individuals, and the length and nature of the applicant's relevant experience, before granting a license.

Such a thorough pre-qualification review process should eliminate problem applicants long before the current application and safety audit procedure might find them.

Distracted Driving

Professional truckers are the safest drivers on the road per vehicle miles traveled. They have a vested interest in highway safety as their lives and livelihoods quite literally depend on it. Every day on roadways across America, professional truckers witness drivers operating vehicles while engaged in activities that significantly impede their ability to attend to the task of driving safely. Experience has shown these professionals that in particular drivers sending text or email messages while operating a vehicle are a significant hazard to themselves and other roadway users.

OOIDA supports government efforts to prohibit motorists from sending text or email messages while operating a moving vehicle. While we applaud the FMCSA for moving forward with a rulemaking to ban interstate operators from texting or emailing while driving, we do have some concerns as to whether this ban will be equitably levied on motor carriers utilizing fleet management devices. The current rulemaking makes an unfounded assumption that fleets utilizing on-board management systems do so responsibly.

Many of OOIDA's members who drive for larger fleets tell us a different story. Our members inform us that it is common for them to be messaged during their driving hours and in many instances, their immediate response is required – which they do while their vehicle is in motion. For example, I recently spoke with a member who desired to take a short nap during the middle of his duty cycle and was repeatedly harassed via his on-board dispatch system to "return to driving" otherwise he would not make the delivery on-time. He was effectively kept by his motor carrier from getting the short nap he felt he needed in order to perform his driving duties safely.

Most everyone understands the danger in “texting” with cell-phones or other handheld communication devices while driving. However, the reading and sending of alpha-numeric script from a fleet dispatch system also needs to be specifically prohibited otherwise the intent of the proposed regulation will be undermined.

Conclusion

We are encouraged by FMCSA’s recent efforts to reassess its enforcement activities and to expand its understanding of driver perspectives. We hope that the agency and this subcommittee recognize that enforcement priorities that ignore the relationship between highway safety and the coercive demands of shippers, receivers, motor carriers and freight brokers upon drivers are impediments to safety objectives, that the demands and expectations of trucking stakeholders on drivers are far more influential on safety than any inspection scheme or schedule of fines that Congress or FMCSA may devise and that only by addressing underlying economic concerns that we will begin to see significant improvements to highway safety.

OOIDA and the hardworking men and women who comprise our membership sincerely desire to see further improvements in highway safety and significant progress towards highway safety goals of the Subcommittee and the U.S. Department of Transportation. To reach the trucking industry’s full safety potential FMCSA must seek to enforce all regulations under its authority and Congress must be willing to expand the agency’s jurisdiction to encompass all industry stakeholders who influence and compromise safety.

Thank you again Chairman Lautenberg and Senator Thune for the opportunity to testify before the Subcommittee. I look forward to the dialogue, and will be happy to answer any questions that you may have.