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Testimony of  
**JOE RAJKOVACZ**  
**DIRECTOR OF REGULATORY AFFAIRS**  
**OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION**

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

Regarding  
“MAKING OUR ROADS SAFER:  
REAUTHORIZATION OF MOTOR CARRIER  
SAFETY PROGRAMS”

*JULY 21, 2011*

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Submitted by



**Owner-Operator Independent Drivers Association**  
**1 NW OOIDA Drive**  
**Grain Valley, Missouri 64292**  
**Phone: (816) 444-5791**

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

My name is Joe Rajkovic. I am Director of Regulatory Affairs for the Owner- Operator Independent Drivers Association and serve on the association's Board of Directors. Prior to my current position with OOIDA, I was an owner-operator for more than two decades operating my own equipment and leasing my services to a motor carrier. You have asked today for OOIDA's input on reauthorizing highway safety programs and as someone who spent nearly thirty years behind the wheel of a truck, and spent the past decade listening to the safety concerns and complaints from active truckers, I am happy to provide you with my unique perspective.

As you are most likely aware, OOIDA is a not-for-profit association 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 152,000 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 operations in this country are small-businesses, approximately 96 percent of all motor carriers have 20 or less trucks in their fleet and roughly 78 percent of carriers have fleets of just 6 or fewer trucks. In fact, one-truck motor carriers represent nearly half of the total number of registered 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 toward the highway safety goals of the Subcommittee and U.S. Department of Transportation.

With that said, during this reauthorization process, Congress has the potential to accomplish great things with the drafting of a "Highway Bill". However, in light of the current economic conditions and the regulatory assault under which America's small-business truckers are currently operating, some proposed legislation passed under the guise of safety could cause irrevocable harm to this significant portion of the industry and their contributions to the unprecedented levels of highway safety we are currently experiencing.

### **Detention Time**

One cannot simply 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 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 can negatively impact a trucker's ability to comply with safety regulations. Detention time has been a growing problem in the trucking industry for many years, according to a study performed by the FMCSA, detention representing more than 3 billion dollars in waste to the industry and over 6 billion dollars to society. Unless and until the problem of excessively detaining drivers at loading/unloading facilities is addressed, most safety regulations pertaining to hours-of-service (HOS) of drivers will be undermined.

Repeatedly, time spent waiting to be loaded or unloaded has been identified by drivers and small motor carriers in studies, as well as at FMCSA's public listening sessions, as a major factor that must be addressed in order to have effective HOS regulations. The pressure to violate HOS regulations will not fade away even with an electronic on-board recorder mandate (EOBRs).

Under current HOS regulations, the daily 14-hour clock begins to tick for a trucker 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 U.S. based drivers are not compensated by the hour but rather based upon the number of miles driven. This translates into a drivers' time having essentially no value, particularly to shippers and receiver which fall outside of FMCSA's authority and are not held accountable for their actions related to HOS violations by drivers.

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 the same facilities with little or no idea how long they will be there. Known in the industry as "detention time," most shippers and receivers 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 shipping or receiving facilities with no idea of whether he or she will be there for 2 hours or for 10. In certain segments of our industry, it is not unusual for drivers to wait up to 24 hours before receiving a load. During this waiting time, it can be 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.

As a driver and owner-operator I contended with excessive detention time on a daily basis, for example: for over two decades I hauled refrigerated food products between the Midwest and the west-coast – primarily California. The receivers I frequented most were grocery wholesalers. Appointments would be set, I'd show up on-time and the games would begin. I'd be lucky to be immediately assigned a door to begin unloading. There was always some excuse such as "we over-booked" appointments and "we'll get to you when we can". Often, I had other scheduled appointments to make and this first delay caused a cascading effect that would cause every other appointment to be missed. Increasingly, the other receivers would assess non-negotiable "late fees" in order to unload the product they ordered. None of these receivers would compensate me for unwarranted detention time that was a result of their inefficiency but they were not shy about taking from me both my time and hard earned money in extortionate unloading fees.

Once I was empty, I'd begin the return trip by loading produce. Contrary to what many people may believe, this is not a process where I'd simply go to one shipper, get loaded and hit the road. Most produce shipments involve multiple pick-ups. Each shipper could take anywhere from 1 hour to more than 24 hours to complete loading. As a driver, I'd have to constantly monitor my C.B. radio for the call from the shipper to head to the loading dock. If I had the misfortune to fall asleep and missed the call, I was marked as a "no-show" and the process would start all over.

None of these massive delays were ever recorded against my available HOS. The hours were logged as "off-duty" time because it would have been financial suicide for me to burn as much as half my available weekly time for zero compensation (as an aside, EOBR's will not change this dynamic). Nobody in the supply chain cared about how their actions complicated my ability to comply with the HOS regulations.

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 would benefit from more efficient freight movement and dramatically improved highway safety – because drivers will no longer be incentivized to hide their actual on-duty hours. Furthermore, if the compensation structure for drivers were to be changed from mileage based pay to a form of hourly compensation many safety concerns would be alleviated.

We appreciate that within FMCSA's draft Strategic Plan (2011-2016), the agency recognizes that in order to truly "raise the safety bar" for our industry, under Goal1, Strategy 1.1 the agency proposes to "*Identify gaps in current legislative and regulatory authorities that prevent FMCSA from reaching certain elements of the CMV transportation life-cycle (e.g., entities touching roadway movement of passengers and freight: shippers, receivers, brokers, freight forwarders) who may have a deleterious effect on safety through their actions.*" Without full supply chain accountability related to drivers HOS, many strategies designed to improve highway safety will find that achieving that goal remains elusive.

### **Speed Limiters**

For years, many safety advocates and large corporate interests have been advocating for the government to impose restrictions on the engine speed of heavy-duty commercial vehicles despite the fact that the use of "speed limiters" is not widely researched or an act grounded in safety or sound scientific principle. Large motor carriers traditionally have opted to use speed limiters as a business decision and fleet management tool and as such support an industry wide mandate in an effort to level the playing field against small businesses which are perceived to have a competitive advantage because engaging a speed limiter is often not necessary of a small trucking operation. The limited research that has been conducted on speed limiters has demonstrated mixed and controversial results including results showing they are highly dangerous and offer very little economic or environmental benefit, particularly to small motor carriers despite the promoted misconception that they will improve upon fuel efficiency and highway safety.

Speed limiters are costly, ineffective, easily tampered with, and dangerous as they can cause speed differentials and disrupt the on-going flow of traffic. Highway safety engineers have long recognized that highways are safest when all vehicles are traveling at the same speed regardless of the speed limit. This is clearly evidenced by the well documented fact that accident rates are lower on interstate highways than on other roads because of access control, wider lanes, shoulders and the steady movement of traffic. Indeed, notwithstanding higher speeds, the interstate highway system experiences accidents and fatality rates two to five times less than the primary road system it replaced. It is well established that deviations from the mean speed of traffic in the negative as well as positive direction contribute significantly to accidents. For example, it has been found that for every 1 kilometer per hour increase in speed differential the casualties increase by 270.

Forcing heavy-duty trucks to drive slower than the flow of traffic will lead to frequent lane changes, passing and weaving maneuvers as well as tailgating by other faster moving vehicles. Indeed, traffic safety statistics produced by NHTSA in 2011 show that an average of 423 people die each year and 5000 are injured where the passenger vehicle rear ends the truck. In addition, other studies have shown that almost 1 in 5 fatal accidents involving a truck include a vehicle striking the rear end of truck. Removing trucks from the free flow movement of traffic exacerbates the potential for more passenger vehicles colliding with the back of slower moving trucks.

Safety is compromised when drivers lack full control of their vehicles. A study produced in Great Britain found that drivers of vehicles with external speed controls had a tendency to travel as fast as the speed limiter would allow, even when speed was too fast for the driving conditions. Further, OOIDA's research has shown that drivers have a tendency to drive over the speed limit in lower speed zones to make up for the effects of the speed limited truck. While prevailing highway research shows that one of the major contributors to truck accidents is driving too fast for conditions, there are situations where extra power and speed are essential. When a speed limited truck is trying to pass another truck efficiently, speeds higher than 68 mph may be required to avoid what is known in our industry as an "elephant race." In addition, truck drivers are trained to know that during a tire blow out, one must accelerate to attempt to maintain control of the truck with a speed limited truck a driver may have limited ability to have the control necessary to regain control.

OOIDA believes that in order to ensure safety, efforts must be made to keep all traffic flowing at the same rate of speed and drivers must have the power and ability to maneuver around impediments on the road. The best way to keep traffic flowing smoothly and safely is through increased enforcement of existing speed limits. Any Highway Bill which seeks to compromise the safety and livelihood of small business trucking operations will face considerable opposition by our membership considering it is small-business truckers, who have their skin and bones on the line and should have the right to stay safe behind the wheel.

Although, we are here to primarily discuss safety, I would be remiss if I didn't mention at least some of the disproportionate impact speed limiters would have economically on small business trucking operations. Among the many illustrations two of the most frequent concerns by owner operators include: (1) the ability to spec the truck to the necessary business

model and (2) the method of enforcement. As a small business owner, trucks are “spiced” to match the demographics of the route, the weight, the loads being hauled etc. This often requires changing the gear ratio, tires, and other relevant equipment on a truck to obtain optimal performance. An operator forced to operate a speed limited truck may not be able to make these changes and as a consequence the truck may not be running as efficiently and therefore costing the operator money and compromised compliance. Also, many drivers have concerns about enforcement as the only way for law enforcement to monitor speed limited compliance is to port into the engine of a truck which, if done incorrectly can disable the entire vehicle. This is a problem OOIDA has already been experiencing with its membership in speed limited provinces in Canada. It is a problem that can cost small business truck operators thousands of dollars to fix.

We would also like to point out that the FMCSA’s Large Truck Crash Causation Study (LTCCS) did not record a single truck involved fatality above 75 mph. Additionally, states have set speed limits within their borders based upon traffic engineering studies establishing the safest speeds for vehicles to operate upon their highways. Any federal action to require speed limiters on commercial motor vehicles would act as a defacto national speed limit.

Finally, not allowing trucks to operate at posted speed limits will reduce trucking productivity thus requiring MORE trucks to haul the same amount of freight as is currently hauled thus increasing car-truck interactions. From personal experience, I could legally drive from Salinas, California to Milwaukee, Wisconsin in 33 total hours of driving time – without violating posted speed limits. Arbitrarily speed limiting my truck to 62 mph would add 14.13 hours to the trip and one less day of shelf-life for perishable commodities.

Large truckload motor carriers who are proponents of speed limiting trucks also historically experience triple digit turn-over rates among their drivers. Our average member spends over 200 nights away from their families. I personally averaged 280 days away from my family for over 20 years. For an industry that has difficulty retaining drivers, further increasing the time they must spend away from their families through reduced productivity is simply counter-intuitive to encouraging good, safe drivers to remain in the industry.

### **Electronic On-Board Recorders**

The FMCSA is currently in the process of another effort to require truckers engaged in interstate commerce to install EOBRs on their trucks. If EOBRs could prevent the manipulation of a driver’s work schedule and respect drivers’ privacy rights, OOIDA would consider supporting their use for HOS 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 HOS 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 HOS enforcement is that the devices will provide an accurate, tamper-proof record of a driver’s duty status and therefore ensure compliance with the HOS 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 HOS 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 actually has no available time under the HOS rules. In fact, EOBRs will still permit someone to perform compensated work for the motor carrier to continue driving, 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 HOS compliance than paper log books. The substantial costs of EOBRs, costs that would be especially burdensome to small-business, 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 HOS 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. During the recent HOS rulemaking process, the ATA published a whitepaper stating that "*Finally, by*

*restricting truck driver productivity and forcing the use of more inexperienced drivers, the revised rules are likely to result in more highway crashes – new drivers present more than 3 times the risk of crashes than their more experienced counterparts.”* It is simply mystifying that we still have no meaningful training standards for entry-level drivers, but instead a continual push for more on-board safety technology.

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.

### **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 authority.

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 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 history records and safety practices.

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. 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 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 close to 40,000 applications for operating authority are filed with FMCSA each year. 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 new entrant safety audit, should result in automatic denial of 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.

**Conclusion.**

OOIDA firmly believes that it is in the best interest of the industry and highway safety for Congress to continue the practice of passing multi-year reauthorization Highway Bills. However, due to economic and regulatory uncertainty, Congress must be careful how the bill is funded and what legislative priorities are passed into law. Instituting a massive new private infrastructure funding configuration will result in additional taxation upon the traveling public and the shipment of goods, risking our economy even further. Costly mandates such as EOBRs and speed limiters are not in the best interest of the small-business trucking community. Moreover, mandates such as speed limiters will cause small business truckers to actively work to oppose the overall bill. Congress however has an opportunity to effectuate great and much needed change in the industry, and significantly help drivers and small-business truckers, through the pursuit of mandatory detention time, improved training, and most importantly, a refocused federal investment that will improve the flow of interstate commerce and increase highway safety.

Thank you again for this opportunity and I look forward to answering any questions that you may have.