
Testimony of
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Before the
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
SUBCOMMITTEE HIGHWAYS AND TRANSIT
US HOUSE OF REPRESENTATIVES

Regarding
IMPROVING AND REFORMING THE NATION'S SURFACE
TRANSPORTATION PROGRAMS

MARCH 29, 2011

On behalf of



Owner-Operator Independent Drivers Association
1 NW OOIDA Drive
Grain Valley, Missouri 64029

Good morning Chairman Duncan, Ranking Member DeFazio, 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 trucking professionals and professional truck drivers.

My name is Kristopher Kane. I live in rural Juniata County, Pennsylvania, and have been involved with the trucking industry for more than 25 years, as both an owner-operator and employee driver. I am a longtime member of the Owner-Operator Independent Drivers Association (OOIDA).

As you are most likely aware, 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 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 the trucking community in this country is made up of small businesses, as 93% of all carriers have less than 20 trucks in their fleet and 78% 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.

I have been asked to come here today to speak on behalf of OOIDA about highway reauthorization efforts, particularly, highway funding and OOIDA's priorities for the reauthorization. However, before I share OOIDA's views on the funding of the "Highway Bill" and legislative priorities, it is important to provide context and comment on the state of the industry and the challenges that drivers, like myself, are currently facing or will soon face.

Although it is not the subject of today's hearing, the barrage of excessive regulatory rulemaking that small business truckers and professional drivers are subject to is highly burdensome, unnecessary, and often originates from large corporate motor carriers seeking to diminish competition from smaller carriers. When drafting this bill, Congress must take this into consideration. From excessive distracted driving efforts which could significantly limit a driver's ability to communicate about loads and deliveries to mandating costly and unnecessary technology under the guise of safety, truckers are certainly feeling the squeeze. Considering their growing regulatory burdens, the struggling economy, increasing fuel prices, and the looming threat of providing Mexico-domiciled carriers unfettered access to U.S. highways, small business trucking professionals in our country are now more than ever questioning their ability to maintain a livelihood in their chosen industry.

So while this Subcommittee is developing a much needed reauthorization package, I ask you to keep drivers in the forefront of your minds during this process, because not only do you have a tremendous opportunity to offer reform, but you also, during this current climate, could cause

further devastation if you implement unfair funding schemes or make further unfounded and costly mandates that will cause many truckers to simply their truck.

Highway Funding

OOIDA members appreciate the Subcommittee's commitment to improving and reforming our nation's surface transportation system. In these times of tight budgets and growing needs, focusing Federal investments on priorities that will have the greatest impact on growing our economy while improving safety should be the guiding principle of the next surface transportation authorization bill. As such, our members feel that one of the most significant reforms the Subcommittee should make is to return focus to the Federal-Aid Highway program, specifically by prioritizing maintenance, capacity, and safety investments in the National Highway System (NHS), especially Interstate Highways.

The NHS and the Interstate System has to be one of the unqualified successes of our nation over the last 50 years. Our members use the NHS every day and are proud to pay our fair share for its maintenance and continued improvement and expansion. Indeed, although heavy-duty trucks account for only 7% of our nation's highway traffic, our members and other trucking companies contribute more than 36% of the money going into the Federal Highway Trust Fund. Despite this investment, the trucking community continues to see efforts to divert Trust Fund dollars away from highway investments and towards not only other sectors of transportation, but also into community improvement projects that have little or no connection to improving the flow of interstate commerce. The next surface transportation authorization bill represents an opportunity to halt these diversions and refocus investment.

As such, OOIDA urges the Subcommittee to reject the Administration's proposal to shift billions of dollars in Trust Fund investment away from needed highway improvements and instead direct them towards various "livability," community improvement, bicycle, and pedestrian projects. Some have also called upon the Highway Trust Fund to provide financial support to the Administration's planned High Speed Rail system and to increase the share of Trust Fund revenues provided to support transit systems in urban areas. OOIDA opposes these proposals.

Further, OOIDA calls upon the Subcommittee to refocus the scope of the current Federal-Aid program to one based upon improving mobility of freight and people to grow the nation's economy and improve safety. Such a scope should be used as a basis for evaluating existing and proposed uses of Trust Fund dollars. This will allow a shift away from programs supporting activities such as recreation and towards focused investment in the NHS. Additionally, dollars should be dedicated to new areas such as expanded truck parking, an effort that will increase highway safety and transportation productivity.

As noted above, OOIDA recognizes the challenging fiscal situation facing our nation, and while a refocused Federal-Aid Highway program will allow additional funds to flow towards needed highway maintenance and improvement, the needs are significantly greater than the funds currently available. While OOIDA's members are committed to the existing fuel tax as the primary highway funding mechanism, we are engaged and working with the DOT on future funding proposals, including road user fees. We also support efforts to strengthen the existing

Transportation Infrastructure Finance and Innovation Act (TIFIA) program and are encouraged by the potential of an infrastructure bank, provided that it is focused on highway investments.

On the other hand, some have argued that a massive involvement by Wall Street and foreign banks is the silver bullet that will allow for significant new highway investment. OOIDA's members beg to differ, recognizing that such private involvement in our highways, especially our existing roads, means tolls, which really amounts to nothing more than a tax increase to the traveling public, including truckers. OOIDA believes there are contributions the private sector can make that will assist federal, state and local governments in better assessing the true nature and needs of our nation's infrastructure. For instance, OOIDA supports empowering states to allow for public-private partnerships to add new rest areas and expand services at existing areas to benefit truckers and other travelers.

OOIDA is willing to support the private sector involvement in "Greenfield projects" provided the project is developed in a transparent manner, involves significant input from highway users, adds to existing capacity in an effort to relieve congestion, provides choice for users, removes fees once the project is paid for, and considers state and local land rights, while limiting government taxpayer resources used to support private sector endeavors. OOIDA adamantly opposes the sale or lease of existing roads and efforts to convert non-tolled roads into toll facilities. We look forward to working with the Subcommittee and its partners in the Ways and Means Committee in developing a financing system for the upcoming reauthorization package.

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 truckers' ability to comply with hours-of-service regulations are undermined. Time spent waiting to be loaded or unloaded has been repeatedly identified by drivers and small motor carriers in studies as well as at the Federal Motor Carrier Safety Administration's (FMCSA) 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 that impact a driver's ability to comply with 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. 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 are placed in a no-win situation in regards to hours-of-service compliance. 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).

At the request of Ranking Member DeFazio, the Government Accountability Office recently completed an investigation into the potential operational inefficiencies and safety problems associated with commercial motor vehicles that are detained at loading docks. The GAO learned that detention time affects trucking industry operations, HOS compliance, and driver revenues.

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.

Electronic On-Board Recorders

The FMCSA is currently in the process of another effort to require drivers to install Electronic On-Board Recorders (EOBRs) on their trucks. If EOBRs could prevent the manipulation of a driver's work schedule, respect drivers' privacy rights, and actually improve highway safety, 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 actually has no available time under the hours-of-service rules. In fact, EOBRs will still permit someone performing 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, as well as use the truck for personal use while not on duty. 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.

Speed Limiters

Much like EOBRs, restricting the vehicle speed of a commercial truck is not an act grounded in safety or sound principle. Rather, speed limiters are highly dangerous and offer very little economic or environmental benefit, particularly to small motor carriers. 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 reasonable speed limits. Mandating restricted engine speed is a non-starter and OOIDA will actively work to oppose any Highway Bill including such language as drivers, who have their skin and bones on the line, simply have the right to stay safe behind the wheel and not be forced into situations where arbitrarily controlling the power and speed of the truck is outside of the operators control.

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, comprehensive 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. OOIDA also supports adoption of a graduated Commercial Drivers License.

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 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 or patterns of non-compliance with unsafe behavior.

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 review 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. Databases such as MCMIS, PRISM, CDLIS, and CSA can be used 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.

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 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 on existing roads will result in additional taxation upon the traveling public and the shipment of goods, risking our economy even further.

Costly mandates such as EOBRs 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, 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.

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
Truth in Testimony Disclosure

Pursuant to clause 2(g)(5) of House Rule XI, in the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include: (1) a curriculum vitae; and (2) a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness. Such statements, with appropriate redaction to protect the privacy of the witness, shall be made publicly available in electronic form not later than one day after the witness appears.

(1) Name:

Kristopher Kane

(2) Other than yourself, name of entity you are representing:

Owner-Operator Independent Drivers Association

(3) Are you testifying on behalf of an entity other than a Government (federal, state, local) entity?

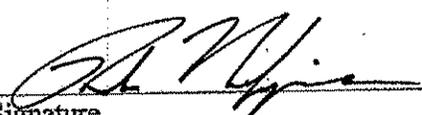
YES

If yes, please provide the information requested below and attach your curriculum vitae.

NO

(4) Please list the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by you or by the entity you are representing:

FY 2009-2011 - \$1.5 million subcontract with a grantee for the DHS Trucking Security Program. Approximately \$1.1 million of reimbursements have been received thus far.


Signature

3-29-2011
Date

Mr. KRISTOPHER KANE

Member of the Owner-Operator Independent Drivers Association since 1-13-1997

Kristopher Kane is an OOIDA member and currently lives in Oakland Mills, PA. He has over 25 years of experience as a commercial motor vehicle operator. He was an owner-operator for 10 years. He is now an employee driver and typically pulls tanker trailers. He was married for 33 years before his wife passed, has 2 children as well as 3 foster children. At college he studied to be a minister but became a professional driver instead.