

BEFORE THE  
FEDERAL HIGHWAY ADMINISTRATION  
DEPARTMENT OF TRANSPORTATION

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COMMENTS OF THE  
OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC.

IN RESPONSE TO NOTICE AND REQUEST FOR COMMENTS

DOCKET NO. FHWA-2009-0113

Agency Information Collection Activities: Request for  
Comments for New Information Collection

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The Owner-Operator Independent Drivers Association, Inc. (“OOIDA”) submits these comments in response to the November 27, 2009, notice published at 74 Fed. Reg. 62381 by the Federal Highway Administration (“FHWA” or “Agency”), Docket No. FHWA-2009-0113, seeking public comments on its plan to request approval from OMB for the collection of information pertaining to the shortage of long-term truck parking on the National Highway System (“NHS”). According to the FHWA, this new information collection is meant to implement Section 1305 of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act (“SAFETEA-LU”) legislation, which directed the Secretary of Transportation to establish a pilot program addressing the inadequate supply of long-term truck parking spaces. Section 1305 identifies seven different types of state, local, and regional parking projects that might qualify for funding through such a pilot program.

Citing “the limited resources available,” FHWA seems already to have eliminated from serious consideration projects in six of those seven categories, stating that projects involving dissemination of information regarding the availability of long-term parking spaces will “maximize the effectiveness of this pilot program.” 74 Fed. Reg. at 62382. Further, although the proposed information collection would include a detailed description, rationale, scope of work, evidence of consultations with stakeholders, cost estimate, time line, and map for each proposed project, FHWA emphasizes that this is not a request for applications. It is only a request for the underlying information that FHWA claims to need in order to evaluate and rank applications, if and when the time comes for their submission. FHWA intends in the future to publish a separate Federal Register notice with information and guidance relating to the actual application process. *Id.*

OOIDA is a not-for-profit trade association incorporated in Missouri with its principal place of business located at 1 NW OOIDA Drive, Grain Valley, Missouri 64029. OOIDA is the largest trade association representing the interests of independent owner-operators and professional truck drivers on all issues that affect small-business truckers. OOIDA actively promotes the views of small-business truckers before a broad variety of forums, including federal and state agencies, legislatures, courts, other trade associations, and private businesses, in an ongoing effort to obtain equitable and safe working conditions for its members.

OOIDA's nearly 157,000 members collectively own and operate approximately 240,000 heavy-duty trucks and small truck fleets. More than 50 percent of OOIDA's members are engaged in long-haul trucking, which keeps them away from home in excess of 150 nights a year.<sup>1</sup> Like other long-haul truck drivers, these members need suitable places to park their trucks while they get the rest and sleep they need to safely and legally operate their trucks. Also like other long-haul truck drivers, these members frequently are unable to find the necessary parking spaces. Thus, the FHWA's allocation of truck-parking related grant funds under Section 1305, whether based upon data sought through the proposed information collection or otherwise, will significantly affect their day-to-day operations.

As discussed more fully below, OOIDA does not believe that the proposed information collection is justified. There is a substantial body of statistical data and anecdotal information already available indicating the sections of the NHS with the most severe parking shortages. To the extent that more detailed information may eventually be required to enable the FHWA to compare the various proposals submitted by applicants for funding, it could simply be requested as one data

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<sup>1</sup>2008 OOIDA Owner-Operator Member Profile Survey.

element in the application.

Moreover, FHWA is wrong in focusing the pilot program exclusively on projects dealing with dissemination of parking information or even in favoring such projects. The Agency was not given authority by Congress to limit the pilot program in this manner. Nor is such an approach logical, because information-dissemination projects will not add to or even maintain the current supply of long-term truck parking spaces. No matter what level of funding is authorized or ultimately appropriated for the pilot program, it is OOIDA's firm belief that the FHWA must give equal and full consideration to all statutorily qualified project proposals. To have the greatest effect, the pilot program should be treated as a federal assistance program allocating available funds to eligible projects that would do the most to increase the number of long-term truck parking spaces.

## DISCUSSION

### I. There is No Need for a Burdensome New Information Collection Separate from the Application Process.

As a result of DOT's prior efforts to better understand and address the truck parking shortage, a significant body of information already exists documenting the existence and severity of the shortage as well as the range of possible solutions to the problem. Many of the published studies and reports also identify the regions, states, and travel corridors where the problems are most severe. Government - prepared or - sponsored reports documenting the truck-parking shortage include the following:

- *Commercial Driver Rest & Parking Requirements: Making Space for Safety*, FHWA-MC-96-0010 (May 1996), which estimates a shortfall of 28,400 public truck parking spaces along interstates nationwide.
- State-specific surveys conducted in the late 1990s confirming significant parking shortages

along interstates in Iowa, Minnesota, New York, and Tennessee.

- *Highway Special Investigation Report: Truck Parking Areas*, PB2000-917001, NTSB/SIR-00/01 (2000), which addresses both the truck parking shortage along the interstates and possible solutions.
- *Study of Adequacy of Commercial Truck Parking Facilities*, FHWA-RD-01-158 (March 2002), which expands upon prior studies by assessing the extent and geographic distribution of parking shortages along the entire NHS.
- *Dealing With Truck Parking Demands*, Transportation Research Board, NCHRP Synthesis 317 (2003), which identifies successful and innovative strategies that have been employed by states to address the truck parking problem, as well as potential strategies not yet in use.

OOIDA and other trucking-industry trade associations have also conducted and made available to involved government agencies the results of member surveys addressing the nature, extent, and primary location of the shortages. Most recently, in response to the current information collection notice, OOIDA conducted a member survey, which generated nearly 6,000 responses confirming that problems finding adequate parking for required rest periods have worsened over the past five years, since the adoption of the new hours-of-service regulations. OOIDA Parking Survey - 2010 (“2010 Survey”), Q.34&36. Specifically, more than three-quarters of the 6,000 drivers (77%) responding to the survey said that they often or on a regular basis have difficulty finding parking to take their required rest break at the end of the workday. *Id.* at Q.3. Another 17% reported sometimes having problems finding parking at the end of the workday. *Id.* In addition, roughly 45% of respondents indicated that they often or on a regular basis drive beyond where they feel safe and alert or beyond their daily driving hours of service because of parking shortages. *Id.* at Q.7&8.

Another large group (40-45%) says they sometimes do so. *Id.* The 2010 Survey also showed that industrial property near a loading facility; shipper or receiver facilities; roadside pullouts; on/off ramps; shopping mall parking lots; vacant lots are regularly or often used in lieu of designated truck-parking spaces. *Id.* at Q.24-33. Nearly half of respondents reported sometimes using nearby industrial properties and shipper/receiver facilities for parking often or on a regular basis, while approximately one-third more reported using them to park often or on a regular basis. *Id.* at Q.29&33. The other listed areas are each used often or regularly by between 15 and 20 percent of the respondents.

Moreover, the federal and state studies listed above also identify the geographic areas with the greatest shortages. California, Pennsylvania, New York, Texas, and Virginia are frequently among the states identified in reports and newspaper articles as the states with the greatest disparity in supply and demand. *See, e.g., Highway Special Investigation Report (2000);* OOIDA's 2010 Survey, which measures the drivers' perception of the problem, indicated that the need for additional parking spaces is most critical in the east, both Northeast (31%) and Southeast (18%). 2010 Survey, Q.38. Responsive drivers also identified California, New York, New Jersey, Virginia, Pennsylvania, Massachusetts, and Connecticut as the States most deficient in available parking. *Id.* at (Q.39).

Moreover, the I-95 corridor has consistently been identified as one having the most severe shortages. Truck drivers are all too aware of the difficulty finding available truck parking within this corridor. A case in point is if a driver is in Miami, Florida the first available modern truck stop facility is 150 miles to the north at Fort Pierce, Florida. Other interstates with serious parking shortages include I-80, I-10, I-5, I-40, I-90, and I-75. *See, e.g., Commercial Driver Rest & Parking Requirements (1996).* Anecdotal evidence strongly supports these conclusions, as a drive down any

of these highways on weekday evenings shows large lines of trucks parked on highway access ramps and shoulders, especially near large cities. *See also* 2010 Survey, Q.4 (82% of respondents find it difficult to legally and safely park in outlying areas of major cities on a regular basis or often). A prime example of this growing problem is on I - 40 between Gallup, New Mexico and Needles, California where eight rest areas have been closed due to state budget considerations.

With such ample documentation already available for use by FHWA in evaluating various proposals to alleviate particular truck parking shortages, the need for the proposed information collection is doubtful. It is especially unnecessary at this juncture because SAFETEA-LU provides that interested entities must submit an application “containing such information as the Secretary may require.” *See* Section 1305(b)(2). Thus, to the extent that the FHWA will need more precise information in order to effectively compare the merits of the project proposals submitted, the necessary information – the severity of the parking shortage on the portions of affected highways and the anticipated positive effects of the proposed project, both stated in numerical terms – can be obtained through a mandatory data field in the actual applications. There is no legitimate reason why potential applicants should be required, even before any grant funds are available and project applications can be submitted, to devote what FHWA estimates would be about 40 hours responding to the proposed information collection (74 Fed. Reg. at 62382-62383), when that same information could be collected later from interested jurisdictions.

II. FHWA’s Decision to Focus Its Pilot Program on Projects That Involve Dissemination of Information Exceeds Its Statutory Authority.

Section 1305(b)(3) of SAFETEA-LU identifies seven categories of projects that are eligible for grant funds under the mandated truck parking pilot program. Five of these – opening of existing but non-traditional parking facilities to truck parking; capital improvements that will allow truck

parking facilities that close on a seasonal basis to remain open year round; construction of truck parking facilities adjacent to commercial truck stops and travel plazas; construction of safety rest areas that include truck parking; and construction of truck turnouts with parallel parking – would add badly needed parking spaces to the currently inadequate supply. Another involves interchange-related construction that would improve truck access to existing truck parking facilities. Only one category, projects involving the dissemination of information about available parking, serves neither of these functions.

Nevertheless, FHWA is discouraging applications for projects that would add to or even stop the elimination of existing parking spaces because of its predetermination that future funding for this pilot program will not be sufficient to fund such projects. As described by the Agency, “It is the belief of FHWA that, given the limited resources available, the broad dissemination of information regarding the availability of public or private long-term parking spaces provides the greatest opportunity to maximize the effectiveness of this pilot program.” 74 Fed. Reg. at 62382. It is not entirely clear from this language whether FHWA intends only to accept applications under the pilot program that propose information-dissemination projects or whether it simply intends to give those proposals the highest priority. In either case, the FHWA has exceeded its statutory authority.

Congress expressly granted “States, metropolitan planning organizations, and local governments,” permission to apply through the pilot program for funding for seven identified types of projects. SAFETEA-LU, § 1305(b)(3). Further, Congress instructed the FHWA, in allocating grant funds, to give priority to applicants that “(A) demonstrate a severe shortage of commercial motor vehicle parking capacity in the corridor to be addressed; (B) have consulted with affected State and local governments, community groups, private providers of commercial motor vehicle parking,

and motorist and trucking organizations; and (C) demonstrate that their proposed projects are likely to have positive effects of highway safety, traffic congestion, or air quality.” *Id.* at § 1305(b)(4). This approach reflects the fact that variations from one location to another suggest that the analysis of shortages and the development of solutions should be performed at the corridor, state, or local level. *Dealing With Truck Parking Demands* (2003); *Study of Adequacy of Commercial Truck Parking Facilities* (2002). Thus, it is “States, metropolitan planning organizations, and local governments,” not the FHWA, that were given authority by Congress to determine what specific type of projects, among the seven identified categories, would best serve their unique truck-parking needs. There is simply no statutory language giving the FHWA the discretion to limit or focus funding under the pilot program to only one of the seven eligible types of projects.

Administrative agencies have no inherent powers. They are instead creatures of statute and, therefore, must depend entirely upon statutory provisions for their authority and jurisdiction to act. *See Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986); *Michigan v. EPA*, 268 F.3d 1075, 1081 (D.C. Cir. 2001); *American Bus Ass’n v. Slater*, 231 F.3d 1, 9 (D.C. Cir. 2000). If Congress’s intent is clearly set forth in a statute that is the end of the matter; the agency “must give effect to the unambiguously expressed intent of Congress” and conduct its business accordingly. *Chevron USA, Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 842-843 (1984). Congressional intent here is clear: “to address the shortage of long-term parking for commercial motor vehicles on the National Highway System” through a federally funded pilot program giving grants to state, regional, and local governments for seven categories of qualifying projects. SAFETEA-LU, § 1305. Congress also made absolutely clear its intent that “priority” be given to projects developed after consultation with local stakeholders that “are likely to have positive effects

on highway safety, traffic congestion, or air quality” in corridors with a “severe shortage” of parking.  
*Id.*

As explained in the Conference Committee Report accompanying the legislation (the “Report”), “[t]his section allows State, regional, and local governments to address the safety problem of fatigued drivers through a pilot program designed to allow for the creation of new rest stops, . . . addition of new commercial motor vehicle parking facilities adjacent to commercial truck stops or travel plazas, or opening existing weigh stations or park-and-ride facilities to commercial motor vehicle parking.” *Conference Report on H.R. 3, Safe, Accountable, Flexible, Efficient, and Transportation Equity Act: a Legacy for Users*, H. Rep. No. 109-203, 1<sup>st</sup> Sess (2005), at p. 858. The Report further states that “Pilot programs **may also include** using intelligent transportation systems, or other means, to promote the availability of public or privately available parking facilities.” *Id.* (emphasis added). The use of the word “may” instead of shall, will, or other mandatory terminology shows that information-dissemination systems are only one type of project that “may” be proposed in addition to projects creating new parking spaces.

Placing the primary authority here with state and local governments, as Congress has done, makes the most sense. Even though the truck-parking shortage presents a nationwide problem, because the data show that parking shortages are fairly concentrated geographically researchers have concluded that the “development of solutions should be targeted at the corridor, state, or sub-state, rather than the national level.” *Dealing With Truck Parking Demands* (2003); *Study of Adequacy of Commercial Truck Parking Facilities* (2002). “Identifying consensus solutions that are acceptable to all stakeholders is likely to be easier and more successful at the corridor, state, or sub-state level,” where those with the greatest knowledge of local conditions can use their first hand knowledge to

identify the most effective and cost-efficient strategies. *Id.* Thus, it would be counter-productive for FHWA to prevent these potential funding applicants from looking at the local situation and developing innovative solutions that would prevent further loss of or add to the number of spaces with little more funding than information-dissemination projects.

In sum, Congress simply did not allow the FHWA to go in the direction it is now heading. To the contrary, because of the localized nature of the problem, it quite clearly wanted the Agency to consider projects with the potential to create new or maintain existing long-term truck parking as well as information-dissemination projects and told the Agency precisely what factors should be given priority in choosing among all of the proposed projects.

III. FHWA's Approach is Counter-Productive Because it Does Not Increase or Even Maintain Available Long-Term Truck Parking.

Nor is a pilot program that focuses exclusively on or gives priority to the dissemination of parking information the most logical choice if the Agency truly wants to see a measurable improvement in the long-term truck-parking situation. Although drivers may realize some limited benefit from signs showing available truck parking, the reality is that regardless of whatever information may be contained on those signs, drivers will still pull off the highway whenever they are tired, hoping to find the one parking spot just recently vacated. Real-time electronic notification about the availability of parking spaces might help them to find parking in certain cases, but what they want and need even more is an adequate supply of parking spaces that allows them to plan for a parking spot in advance. 2010 Survey Q.23&44.

Yet the supply of long-term truck parking is diminishing instead of growing in recent years due to the convergence of several factors. First, with the exception of reductions in long-haul trucking due to the current economic downturn, the number of trucks on the nation's highways and

consequently the number of truckers needing places to rest and sleep has been steadily increasing in recent years. Even in the current economic downturn, drivers are reporting more difficulty finding available parking. As discussed below, state budget considerations affecting rest areas are playing a part, but additionally many local municipalities have enacted local parking restrictions against parking heavy-duty trucks on their surface streets. Further, once the economy improves and truck traffic increases, this problem will be exacerbated significantly.

Second, businesses are demanding “just-in-time” pickup or delivery schedules on a more frequent basis. The concept is to provide customers with deliveries that keep production and demand in sync, while greatly reducing inventory costs. Although not intended, the practice has increased pressures on drivers to be at shipping or receiving facilities at a precise time. To ensure timely arrival at a facility in such cases - notwithstanding traffic congestion, bad weather, or other potential disruptions in driving time - truckers are increasingly using parking spaces that might otherwise be available for long-term truck parking as pickup or delivery “staging” areas.

Third, the number of existing short-term and long-term parking spaces along the NHS is decreasing as many financially strapped states are closing or considering closing public facilities, such as rest areas along the interstates and major highways. Indiana closed six rest areas at the end of 2008. Arizona closed 13 of 18 public rest areas toward the end of 2009 and is considering closing more. Virginia closed 19 of its rests areas in the middle of 2009, but has recently announced plans to reopen those stops because of the difficulties the closures causes for truckers and other travelers. Whenever a rest area is closed, drivers who might have used the shuttered rest stops for short breaks or long-term sleep are forced to turn to commercial truck stops and travel plazas, which increases the demand on their remaining parking spaces. But even this assumes that such a commercial facility

is nearby. Often drivers will use highway on and off-ramps in lieu of other options.

Given the increased volume of truck traffic, the increased use of limited truck parking spaces to meet tighter schedules, and the reduction in the number of total truck parking spaces, it does not make sense for FHWA at the outset of the pilot program to preclude the allocation of funds to projects that could add to the current inventory or at least prevent further losses. FHWA might find, after reviewing applications spanning all seven categories, that it would “maximize the effectiveness of this pilot program” by funding fewer projects in the six other categories that each cost somewhat more than the average information-dissemination projects.<sup>2</sup> Most important here is that FHWA should wait until it sees what will be proposed, what effect each proposed project will have on alleviating the parking shortage in a particular area, and the estimated cost of each project before it reaches any conclusions.

Once it reviews all the applications, it should then treat the pilot program as a federal-assistance program targeted directly at increasing or maintaining the supply of long-term truck parking spaces where they are most needed. Such an approach not only complies with the priorities mapped out by Congress in Section 1305 of SAFETEA-LU but was also rated by state highway maintenance engineers as the most effective strategy for addressing the parking problem. *Dealing*

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<sup>2</sup> FHWA’s experience with another information-dissemination program, the Interstate Oasis Program, should provide further evidence that this type of program, while inexpensive, may not be the option preferred by many jurisdictions to attack the parking problem. As FHWA should recall, the Interstate Oasis rulemaking proposed free interstate highway signage for any private facility, including truckstops, travel plazas, and other private facilities located near the interstates that, among other required services offered well lit, long-term parking for large trucks. Although the program was finalized in October of 2006, and notwithstanding the prospect of additional business for designated facilities, so far as we can determine states did not request signage, nor did the program result in the creation of any additional truck parking facilities. To the contrary, it has largely been a failure.

*With Truck Parking Demands* (2003). While the funds made available for the program might not be enough to support large new construction projects, even limited funds may help forestall further rest area closings, allow existing facilities like weigh stations to be opened to parking, and allow seasonal facilities to remain open more of the year.

### CONCLUSION

OOIDA applauds Congress's creation of a federal pilot program to assist state, regional, and local governments grappling with the long-term truck-parking shortage. However, FHWA should not use its resources to gather more information about the parking shortage. Once funding becomes available, it should solicit applications for eligible projects in all seven categories identified in SAFETEA-LU and allocate funds to those projects that will do the most to create new long-term parking spaces in the areas with the most severe shortage. FHWA should not limit state and local governments, up front, to projects that do nothing more than disseminate information about the current and shrinking supply of spaces.

Respectfully submitted,



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