



Owner-Operator Independent Drivers Association

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**Testimony of Lewie Pugh, Executive Vice President
Owner-Operator Independent Drivers Association
before the**

**United States Senate, Committee on Commerce, Science & Transportation
Subcommittee on Transportation & Safety
“Keep on Truckin’”: Stakeholder Perspectives on Trucking in America”
February 4, 2020**

Chairwoman Fischer, Ranking Member Duckworth, and members of the Subcommittee, my name is Lewie Pugh and I am the Executive Vice President of the Owner-Operator Independent Drivers Association (OOIDA). Prior to working at OOIDA, I was a small-business trucker for nearly 23 years with 2.5 million miles of safe driving. Before operating my own trucking business, I drove a truck during my service in the United States Army. I still proudly hold a Commercial Driver’s License (CDL). In short, I’ve been a trucker my entire career.

About OOIDA:

OOIDA has represented the interests of owner-operators and professional drivers for over 45 years. We were created by truckers to ensure their voices were being heard in Washington and beyond. Decades later, we continue to be led by men and women who make their living behind the wheel. Today, we have over 160,000 members across the United States and Canada. No other organization participating in today’s hearing knows truckers like we do.

Small trucking businesses like those we represent account for 96% of registered motor carriers in the U.S. We are undoubtedly the safest and most diverse operators on our nation’s roads. Our activities impact all sectors of the American economy on a daily basis. We move everything and anything – from agricultural products and household goods to military equipment and energy resources.

Introduction:

From our perspective as small-business motor carriers and professional drivers, we can see that the trucking industry is dysfunctional.

In large part, this is because too many people who know very little about trucking have an oversized role in shaping trucking policy. Drivers feel the negative effects of this firsthand, especially OOIDA members.

This dysfunction is apparent in seemingly every aspect of our industry. For example, the hours-of-service (HOS) rules are broken. They fail to reflect the realities of trucking and have done nothing to improve highway safety since their implementation. Our members comply with hundreds of other ineffectual regulations that have no impact on highway safety. Despite the U.S. Department of Transportation (USDOT) noting that the lack of truck parking had become a serious highway safety concern back in 2015, nothing has been done to address the growing crisis our members face every day. Law enforcement agencies have become too comfortable prioritizing revenue over safety. And drivers continue to work extremely long hours with notoriously low pay.

If you ask most drivers what Congress has done recently to improve their profession, I regret to inform you the answer is “nothing”. In fact, most of our members would tell you that Congress generally enacts laws that not only drive people away from the industry, but decrease highway safety. This isn’t a partisan attack against Republicans or Democrats, and we’re by no means suggesting we don’t fully appreciate the support we’ve received from individual Members of Congress on certain policies. In fact, we sincerely appreciate the efforts of elected officials like Chairman Wicker, who has spent much of his tenure in Washington fighting against bigger and heavier trucks. Instead, this is an honest reflection of how truckers view the legislative branch as a whole.

Don’t get me wrong – while Washington has contributed its fair share to the dysfunction in trucking, there is plenty of blame to go around.

Too many drivers are forced to haul cheap freight; too many motor carriers mistreat and underpay drivers; too many shippers and receivers detain drivers for excessive periods of time; too many safety advocates seek mandates that don’t work; and too many motorists don’t even attempt to operate safely around big trucks.

I make these claims based on firsthand experience. I’ve seen it. I’ve lived it.

OOIDA acknowledges all stakeholders are responsible for creating this mess, and believes we’re all responsible for fixing it as well.

As Congress considers the next highway bill, there are several ways you can make a positive difference for American truckers:

- Repeal the failed electronic logging device mandate;
- Repeal the overtime exemption for drivers in the Fair Labor Standards Act;
- Provide dedicated funding for new truck parking capacity;
- Create a fair process for drivers to appeal inspection violations written in error; and
- Fix the nation’s crumbling infrastructure in an equitable way.

You should also abandon unsafe, unproven, and unfair proposals:

- DO NOT mandate speed limiters;
- DO NOT mandate front and side underride guards;
- DO NOT mandate higher insurance minimums;
- DO NOT enact a truck-only vehicle miles traveled tax or expand tolling authority; and
- DO NOT pass the DRIVE-Safe Act.

I want to take a moment to focus on the DRIVE-Safe Act, which I will address in greater detail later in this testimony. Contrary to what other associations repeat constantly, there is no driver shortage that requires passage of this bill. The notion of a driver shortage isn't supported by facts, data, or reputable research. In other words, it's a myth. We oppose this bill because it's a solution in search of a problem. We urge Congress to flatly reject it.

Unfortunately, the DRIVE-Safe Act is symbolic of Washington's approach to trucking. For too long, Congress has allowed policy to be overly influenced by executives looking to maximize profits, activists who'd like to regulate truckers into oblivion, state and local governments who view truckers as rolling piggybanks, and self-proclaimed "experts" who don't even know what the inside of a truck looks like. This has to change.

Most of our members don't wear suits on a daily basis. Most of our members don't have advanced degrees in economics or engineering. But they know trucking. Congress needs to understand truckers aren't the problem, they are the solution – and treat them accordingly.

Thankfully, there are lawmakers – such as Chairwoman Fischer and Congressman Brian Babin – who see much of the dysfunction in our industry and understand that maybe it's time to listen to what real truckers have to say.

OOIDA appreciates being part of this hearing. We have some great ideas on how to fix many of the problems facing our industry, while simultaneously improving highway safety.

Electronic Logging Devices and Hours-of-Service Reform:

Today's truckers are subject to more regulations and greater enforcement than ever before, and while compliance with those regulations has never been higher, crash rates are still moving in the wrong direction. A prime example of this problem is the electronic logging device (ELD) mandate.

This massively expensive rulemaking, disguised as a silver bullet to improve safety, has driven many experienced truckers out of the industry. The roughly \$2 billion in costs associated with the mandate have imposed financial and compliance burdens on American businesses of all sizes, especially small carriers who are forced to spend their resources on installation,

compliance, and service fees for equipment that has not shown any proven safety benefit. We urge the Committee to repeal the ELD rulemaking or consider commonsense legislation that would exempt small-business carriers and drivers who have exhibited a proven history of safety.

Since December 2017, the implementation of the ELD mandate has highlighted the need for substantive hours-of-service (HOS) reform. Currently, the HOS regulations that dictate a truck driver's work schedule are overly complex, provide virtually no flexibility, and in no way reflect the physical capabilities or limitations of individual drivers. They effectively force drivers to be on the road when they are tired or fatigued, during busy travel times such as morning and afternoon rush hour, during adverse weather and road conditions, or when they simply are not feeling well.

The Federal Motor Carrier Safety Administration's (FMCSA) 2019 Notice of Proposed Rulemaking (NPRM) represents a welcomed shift toward developing regulations that better reflect the realities of trucking and improve safety for all highway users. OOIDA strongly supports the agency's approach, which will provide drivers more opportunities to rest when they are tired, to stay off the road during adverse driving conditions, and to maintain greater control over their own schedules. The provisions included in the NPRM will deliver much needed flexibility for drivers and notably do not increase the maximum allowable driving time.

However, in order to maximize the safety benefits of these changes, drivers should have sole discretion over how and when they use each of the provisions. In response to the proposal, OOIDA submitted the following feedback:

- OOIDA supports the split-duty provision which would allow drivers to "pause" the 14-hour clock for up to 3 consecutive hours once per duty period.
- OOIDA recommends eliminating the 30-minute rest break rule altogether. However, as an alternative, drivers should be allowed to split the 30-minute break into smaller segments, such as multiple 5 or 10 minute periods.
- OOIDA supports the 7/3 split sleeper-berth provision, but recommends the agency also include 6/4 and 5/5 options.
- OOIDA supports both changes to the short haul exceptions, which will extend the driving window from 12 to 14 hours and expand the air mile radius from 100 to 150 air miles. We also recommend allowing drivers using the short haul exception to end their work shift at a different location than their original dispatch.
- OOIDA supports extending the duty period from 14 to 16 hours for drivers that use the adverse driving provision. We also recommend expanding and clarifying conditions that would qualify for the adverse driving provision.

OOIDA applauds all of the Senators that supported greater HOS flexibility in a May 2019 letter to FMCSA. We encourage Members of Congress to continue constructively engaging in the HOS rulemaking process and avoid disrupting what our members hope will produce the most

positive improvements to truck safety regulations in recent memory. Meaningful HOS reform will not only help the trucking industry and benefit highway safety, but can drive economic growth across the country, creating new opportunities and greater job security for millions of hard-working Americans.

Coercion:

As FMCSA is finalizing its HOS reforms, Congress should also be aware of a significant safety issue facing drivers – coercion. Coercion occurs when a motor carrier, shipper, receiver, or transportation intermediary threatens to, or actually does, take action against a driver who refuses to violate federal safety regulations. Those coercing drivers are typically in positions of power, and drivers often feel pressure to engage in unsafe behavior to avoid losing their job or pay. This jeopardizes the safety of the driver as well as others on the road.

Congress has recognized the dangers of coercion and previously enacted legislation that explicitly prohibited the practice. FMCSA finalized a rule in 2015 that established standards for what constitutes coercion, a method for truckers to report complaints, and a process for the agency to assess and take action on these complaints.

Unfortunately, in our members' experience, this process has been wholly ineffective. Some of our members have never received a response to their complaint or have been told FMCSA had lost track of their submission. A lack of confidence in this system has discouraged drivers from reporting unsafe practices.

With FMCSA finalizing regulatory reforms that will give drivers more flexibility in their schedules, it is critical they retain sole discretion over how these flexibilities are used. Congress, through its oversight of FMCSA, should make sure bad actors within our industry are being held accountable for any coercive practices. Drivers want to operate as safely as possible, but need meaningful support from the federal government to ensure they aren't pressured to violate regulations.

Highway Funding:

As Congress considers solutions for the impending shortfall within the Highway Trust Fund (HTF), it must account for any proposal's impact on small-business truckers. America's truckers understand that the economic success and competitiveness of both their operations and the nation depend on a safe, reliable, and well-funded transportation system. Accordingly, OOIDA supports efforts to increase HTF revenues so long as it is done in a fair and equitable way. Congress must steer clear of any proposals that would put an oversized financial burden on truckers, who already pay more than their fair share.

A recent report by the Congressional Budget Office (CBO) found HTF revenues derived from the trucking industry through the heavy-vehicle and tire taxes are actually projected to increase over the next decade. Between the current diesel tax and these supplemental taxes, the trucking industry is estimated to increase its contributions to the HTF over this 10 year period.¹

¹ CBO, Issues and Options for a Tax on Vehicle Miles Traveled by Commercial Trucks (2019).

Furthermore, the costs of administering the existing federal fuel taxes are extremely low – estimated to be less than 1% of all revenues collected.² Congress should be looking to build on this relatively stable and predictable system. Therefore, OOIDA prefers boosting dedicated revenues to the HTF through reasonable and impartial increases to federal gasoline and diesel taxes.

We are steadfastly opposed to several proposals that would disproportionately burden truckers. One potential funding mechanism we are concerned with is a vehicle miles traveled (VMT) tax. While this concept may sound appealing in theory, there are far too many questions and uncertainties for Congress to begin implementing any sort of VMT program in the next highway bill. There will be significant costs associated with a VMT tax as well, and implementation and administrative fees are likely to be at least ten times as high as the current fuel tax system.³ Like the current fuel taxes, a VMT system would also fail to remain viable if not indexed to inflation.

We are also particularly concerned about proposals that would single out the trucking industry for a truck-only VMT. This would assure that truckers pay an unfairly high cost to prop up the HTF. We also oppose any efforts to utilize ELDs to impose a VMT on motor carriers. Small-business truckers have already borne a significant and disproportionate cost for complying with the ELD mandate, and utilizing the devices to facilitate a VMT program would create new costs and greater privacy issues.

OOIDA also remains opposed to the expansion of tolling. Tolling systems lack the efficiency and effectiveness of current funding mechanisms. Research has shown that tolling is an extremely wasteful method of generating revenue compared to fuel taxes, with as much as 30% of funds going to administrative costs⁴ rather than the construction and rehabilitation of roads and bridges. Additionally, toll roads consistently fail to meet revenue projections, creating unanticipated funding shortfalls, which can lead to deteriorating road conditions and early toll rate increases. In some states, tolling revenue is even used to prop-up urban transit systems, which is frustrating for truckers. In Pennsylvania, tolls on the state's turnpike will increase in 11 straight years to generate sufficient revenue to support some of the state's non-highway infrastructure. Truckers predominantly pay tolls out-of-pocket, as shippers seldom reimburse charges under the freight rate system. For small trucking businesses, any expansion of tolling, especially on major highways like interstates, will directly undercut their bottom line.

We are also closely monitoring proposals to repeal the Federal Excise Tax (FET). Any FET repeal must include a practical pay-for to offset for the lost HTF revenues it would create. Our members are concerned that some suggested offsets would generate inequitable financial burdens among motor carriers, leaving primarily small-business truckers and owner-operators – who are less likely to purchase new trucks than their larger competitors - to make up the difference.

² Transportation Research Board, Costs of Alternative Revenue Generation Systems, Report 689 (National Highway Cooperative Research Program, 2011).

³ CBO, Issues and Options for a Tax on Vehicle Miles Traveled by Commercial Trucks (2019).

⁴ Transportation Research Board, Costs of Alternative Revenue Generation Systems, Report 689 (National Highway Cooperative Research Program, 2011).

Compensation and Misclassification:

Like all hard-working Americans, drivers want to be appropriately compensated for their work. For decades, driver compensation has been eroding, making careers in trucking less appealing to new entrants and less sustainable for experienced truckers.

Currently, drivers are exempt from overtime pay through the Fair Labor Standards Act (FLSA). This exemption was implemented in the 1930s to prevent drivers from working too many hours, but today, it simply prevents them from receiving adequate compensation for the work they do. It also contributes to problems with excessive detention time because shippers, receivers, and others in the industry have no financial incentive to load and unload trucks in an efficient manner. Simply put, this exemption makes it the law that a driver's time should be less valued than other professions. The FLSA exemption for truck drivers is outdated and should be repealed.

OOIDA is committed to working with Congress as it examines and potentially addresses other issues related to driver compensation, such as employee classification. Without question, some truck drivers are misclassified, including some of our members. At the same time, the owner-operator business model has a well-established history and has provided millions of drivers the opportunity to be true independent contractors and small-business entrepreneurs. Congress should therefore avoid jeopardizing this beneficial model when addressing misclassification issues arising from the advent of the "gig economy."

In trucking, misclassification is generally done through "lease-purchase" agreements which are arrangements where motor carriers lease a vehicle to a driver with the promise of fair compensation, future ownership of the truck, and "independence" from traditional employer-employee requirements. The most problematic lease-purchase schemes are generally those that require the driver to lease their truck to the motor carrier when both are effectively the same entity. Through lease-purchase agreements, motor carriers avoid providing employee benefits, paying applicable taxes, and complying with other labor and employment laws.

That said, the trucking industry is incredibly complex, and any potential legislation to address misclassification should not only account for its diversity, but also the host of federal regulations that small-business truckers must comply with. It's important to remember the majority of owner-operators are true independent contractors – they own their equipment, negotiate their contracts, and control their terms of work.

Unfortunately, ill-conceived legislation involving misclassification has the potential to disrupt the livelihood of small-business truckers. Our members have already experienced this disruption in California with the enactment of AB5. This policy has pushed many motor carriers to sever ties with independent owner-operators from the state. Given the unique nature of the trucking industry, we urge Congress to consult with independent owner-operators before considering any legislation that could negatively impact their businesses and compensation.

The Driver Shortage Myth and DRIVE-Safe Act:

Far too many Members of Congress have accepted the driver shortage myth, which illustrates a troubling lack of understanding about our industry. Taking a closer look at what's actually occurring in trucking will reveal there is no driver shortage at all. It will also show that embracing some of the solutions proposed by those peddling the myth will only compound many of the actual problems facing our industry.

OOIDA strongly opposes efforts that would lower the minimum age requirement for truckers engaged in interstate commerce. S. 569, the DRIVE-Safe Act, presents obvious safety concerns for the new truck drivers it hopes to attract, as well as the traveling public who would share the road with them. Younger drivers – especially teenagers – generally lack the maturity and experience to operate a commercial motor vehicle (CMV) at the safest levels. Research indicates CMV drivers under the age of 19 are four times more likely to be involved in fatal crashes than all truck drivers, and CMV drivers between the ages of 19-20 are six times more likely to be involved in fatal crashes compared to all truck drivers. The DRIVE-Safe Act would allow these young drivers to make cross-country trips, requiring them to drive in terrain and weather conditions they may find completely unfamiliar. We acknowledge operational challenges exist for drivers near border cities, such as Kansas City, MO, and Kansas City, KS. However, operating across state lines in the greater Kansas City area is much different than driving across the country on a routine basis.

While these clear safety implications alone should dissuade elected officials from lowering minimum age requirements, professional drivers understand there are long-standing problems within the trucking industry that such a change would only worsen. For decades, our country's largest motor carriers and the trade associations in Washington that represent them have touted the myth of a driver shortage as a means to promote policies designed to maintain the cheapest labor supply possible. Over the same period, driver compensation has remained relatively stagnant, failing to increase at a rate that keeps pace with inflation. Experience tells us many of those entities pushing for S. 569 would simply use it to take advantage of a new pool of drivers – teenagers, who would be subjected to poor working conditions, predatory lease-to-own schemes, and woefully inadequate compensation.

Rather than developing legislation to allow more teenagers behind the wheel of 80,000 pound trucks, Congress should be taking steps to reverse the incessantly high driver turnover rate, which remains precariously high among many large truckload carriers. Reviewing the American Trucking Associations' (ATA) quarterly reports on driver turnover, you'll discover the rates among large carriers are particularly troubling – generally falling anywhere between 70 and 100% annually since 2011. In their most recent report, the organization estimated the annualized rate for 2019 through the third quarter at 96%. Further dispelling the driver shortage myth, the ATA's press release on the December 2019 report explains, "Large carriers reduced the number of drivers they employed, in keeping with lackluster freight levels..." It continues, "During the first two quarters of the year, larger carriers added drivers, but in the third quarter they started

right-sizing their fleets [emphasis added].”⁵ By no means does this sound like an industry suffering from a shortage of drivers.

Evidence from multiple federal agencies also helps dispel this myth. By FMCSA’s estimates, there are over 400,000 new CDLs issued annually, which shows there is certainly no shortage of new entrants to the industry.⁶ Additionally, a 2019 analysis from the Bureau of Labor Statistics found the labor market for truckers is similar to that of other blue-collar professions, and that while there is certainly a high rate of turnover in some parts of the trucking industry, there doesn’t appear to be evidence of a shortage.⁷

The perpetual churn of truckers driven by large fleets is also detrimental to safety, as those who leave the workforce are immediately replaced with less experienced individuals in an effort to keep labor costs as low as possible and avoid improving difficult working conditions. Without addressing the underlying circumstances that have led to excessive churn, we anticipate turnover rates will remain high or even increase – no matter the age of the driver.

Though allowing CDL holders under the age of 21 to engage in interstate commerce is unlikely to reduce driver turnover or improve safety, we appreciate the DRIVE-Safe Act’s approach to robust new entrant training. Aspects of the minimum standards included in the legislation, especially 240 hours of mandatory behind-the-wheel experience, are a good starting point for enhancing federal training requirements for current entry-level drivers, regardless of age. Ensuring properly trained drivers are entering the workforce is paramount to improving highway safety and reducing crashes. It will also help ensure those beginning a career in trucking are better prepared for the challenges and demands of the profession, which is another critical element to reducing turnover rates.

However, we are greatly concerned about provisions within the bill that permit drivers as young as 21 to train new drivers. This approach is dangerously insufficient. Only the most experienced truckers with a thorough history of safe driving should be permitted to train anyone getting behind the wheel of a CMV for the first time.

OOIDA is eager to work with elected officials on legislation that helps make trucking a viable and sustainable career choice for Americans who are prepared to enter the driver workforce. However, we will continue to dispel the driver shortage myth and oppose bills like the DRIVE-Safe Act that are built upon it. This proposal jeopardizes driver and highway safety in an effort to provide corporate motor carriers the cheap labor they crave.

⁵ American Trucking Associations, *Turnover Rate at Truckload Carriers Rose in Third Quarter*, December 19, 2019, <https://www.trucking.org/article/Turnover-Rate-at-Truckload-Carriers-Rose-in-Third-Quarter>.

⁶ FMCSA, *Regulatory Evaluation of Entry-Level Driver Training Notice of Proposed Rulemaking Regulatory Impact Analysis Initial Regulatory Flexibility Analysis* (March 2016).

⁷ Bureau of Labor Statistics, *Monthly Labor Review, Is the U.S. labor market for truck drivers broken?* (March 2019).

The Truck Parking Crisis:

In 2015, the Federal Highway Administration's (FHWA) Jason's Law survey report recognized the lack of truck parking had become a serious highway safety concern.⁸ Unfortunately, the problem has only worsened since then. States and local communities across the U.S. are struggling to maintain existing capacity, let alone keep pace with increasing demand. Today, professional drivers encounter truck parking shortages in every corner of the country. Absent federal involvement, the problem will continue to worsen.

Professional drivers regularly report difficulty accessing safe parking for CMVs, especially during times of high demand. Surveys of our members routinely reveal most truckers have been forced to drive beyond the point where they feel safe and alert simply because they could not find a place to park. This not only jeopardizes their own safety, but also the well-being of the motoring public with whom they share the road. Truckers are commonly placed in no-win situations where they must decide to park in an unsafe or illegal location – such as a vacant lot - or violate federal HOS regulations by continuing to search for a safer and legal alternative.

Forcing truckers to spend excessive amounts of time searching for parking is certainly a serious safety concern for all highway users, but the current crisis also creates additional hazards for the motoring public. As a last resort, drivers who are unable to find adequate parking reluctantly park in hazardous road-side locations, such as the shoulders of highways and interstate entry and exit ramps. This creates serious safety risks for law enforcement officials as well. Often, they are faced with the dilemma of allowing a tired trucker to rest in a dangerous location or ordering them to relocate when they are out of drivable hours.

OOIDA has spent the last year working with our industry partners and Members of Congress to develop a solution to this growing safety concern. Too many federal dollars have been spent recently on technology-based solutions that fail to address the root of the problem. We've determined federal investment in the expansion of trucking parking capacity is key. Soon, bipartisan legislation will be introduced in the House that would establish a competitive discretionary grant program - funded through existing highway safety programs - for truck parking projects across the country. With a focus on increasing capacity, the bill would provide funding for the construction of new rest areas and truck parking facilities, while also helping public entities convert existing spaces – such as inspection sites, weigh stations, and closed rest areas – into truck parking locations.

While this Committee may not maintain jurisdiction over this specific proposal, your support for addressing this national safety concern is vital. The truck parking crisis is a problem that affects every segment of our industry - from the largest fleets to single truck operators. Addressing the shortage has also been identified as a priority by the law enforcement community. It's not often so many industry stakeholders are in agreement on how to begin solving a problem – let alone agreeing the problem exists in the first place.

⁸ Jason's Law Truck Parking Survey Results and Comparative Analysis, Office of Freight Management and Operations, Federal Highway Administration, United States Department of Transportation.

OOIDA believes providing federal investment in the expansion of truck parking capacity must be a top priority for Congress in the development of the next highway bill. Addressing this problem will certainly demonstrate to professional drivers that Congress understands one of the most significant challenges they face on a daily basis and wants to help. Additionally, members of this Committee have shown particular interest in expanding the role of women in our industry. Our female members often identify the lack of safe parking as a factor that not only prevents other women from beginning a career in trucking, but discourages many experienced drivers from remaining behind the wheel.

Speed Limiters:

Efforts to mandate the use of speed limiters on CMVs is an example of a proposal that may initially sound effective, but in reality would likely lead to higher crash rates. As a result, OOIDA adamantly opposes S. 2033, the *Cullum Owings Large Truck Safe Operating Speed Act of 2019*.

Highways are safest when all vehicles are moving at the same relative rate of speed. Establishing a one-size-fits-all mandate limiting CMVs to a certain rate (S. 2033 favors 65 miles per hour) would create dangerous speed differentials between heavy trucks and other vehicles. Decades of highway research shows greater speed differentials increase interactions between truck drivers and other road users. Studies have consistently demonstrated that increasing interactions between vehicles directly increases the likelihood of crashes.^{9,10} Speed limiters also create dangerous driving conditions, including challenges navigating merges and running blockades (known as elephant races) that increase “road rage” among other drivers. Arbitrary speed limits make it difficult for truck drivers to switch lanes to accommodate merging traffic at entrance ramps – or to merge themselves. Other drivers often react to these situations in aggressive and unpredictable ways, creating unnecessary hazards for themselves and our members.

Not only would mandated speed limiters increase road hazards, they would do nothing to prevent speeding in some of the most safety sensitive situations. In certain road conditions, such as inclement weather or construction zones, well-trained drivers know to reduce their speed to maintain safe operation. Since the safest speed in these scenarios is often below 65 mph, speed limiters would likely have a very limited impact on preventing crashes. Moreover, most truck-related crashes occur on roads with a posted limit below 65 mph, rendering the supposed benefits of proposals like S. 2033 meaningless.

In addition to increasing crash rates, this legislation would disadvantage America’s small-business motor carriers. In their proposed 2016 rulemaking on speed limiters, FMCSA and the National Highway Traffic Safety Administration (NHTSA) admitted that “this joint rulemaking could put owner-operators and small fleet owners...at a disadvantage in some circumstances.”¹¹

⁹ David Solomon, *Accidents on Main Rural Highways Related to Speed, Driver, and Vehicle*, Bureau of Public Roads (1964).

¹⁰ Johnson and Pawar, *Cost-Benefit Evaluation of Large Truck-Automobile Speed Limits Differentials on rural Interstate Highways*, Mack-Blackwell Rural Transportation Center (2005).

¹¹ FMCSA and NHTSA, *Parts and Accessories Necessary for Safe Operation; Speed Limiting Devices*, <https://www.regulations.gov/document?D=FMCSA-2014-0083-0003>.

One remaining competitive advantage for small trucking companies over their larger competitors is the lack of a need to speed limit trucks for fleet management purposes. Instead, small trucking businesses are able to operate at the speeds determined to be safe by state officials, which in many cases is above 65 mph. Indeed, FMCSA and NHTSA concluded that as a result of losing this advantage, “some of the affected owner-operators would work for trucking companies as independent contractors. If all of the affected owner-operators worked for trucking companies as independent contractors, they would lose \$54 million in labor income.” Smaller carriers working at the behest of the larger fleets is not ideal for safety, consumers, or the trucking industry.

Our members will tell you they have experienced countless scenarios when their expertise and discretion was needed to avoid an accident or other dangerous situations. In many of these instances, speed limiters would curtail their ability to safely respond to hazards. Rather than mandating speed limiters, the most efficient and cost-effective means to promote safer roads is simply enforcing existing speed limits, which Congress authorized states to set based on their own unique factors.

Underride Guards:

OOIDA strongly opposes efforts to mandate the installation of side and front underride guards on all CMVs and trailers that exceed 10,000 pounds in gross vehicle weight (GVW), including S. 665, the *Stop Underrides Act*.

Over the last several decades, NHTSA has considered numerous options involving underride guards, but has consistently concluded federal mandates would be impractical and costly, thus outweighing any perceived safety benefits. The *Stop Underrides Act* intentionally disregards this reality and ignores the safety, economic, and operational concerns we have raised with its sponsors and supporters. Furthermore, in April 2019, the Government Accountability Office (GAO) issued a report on truck underride guards that indicated more data and research was necessary to fully understand the scope of this type of crash and how they can be prevented. The report also highlighted many of the concerns our members, trailer manufacturers, and law enforcement officials have about the equipment.

To be clear, we agree the existing rear underride guard on trailers – commonly referred to as a “DOT Bumper” in the United States – could be enhanced to reduce the risk of rear underrides for automobiles. If the Canadian standard was applied in the U.S. on the manufacture of new trailers, we would not oppose it. Unfortunately, S. 665 goes too far even in this regard. The bill would mandate truckers install rear guards on trailers that can’t physically accommodate them, such as low boys, household goods trailers, auto transporters, etc. The mandate would also retroactively apply to all trailers, including those nearing the end of their service.

However, our biggest concern with S. 665 remains the required installation of side underride guards. While existing technologies may reduce passenger compartment intrusion in certain situations, the bill fails to recognize numerous other issues limiting the real world practicality of side underride guards. For example, installation of the equipment would unquestionably create challenges for truckers navigating grade crossings and high curbs, backing in to sloped loading docks, properly utilizing spread-axle trailer configurations, conducting DOT-required trailer

inspections, and accessing vital equipment located under the trailer – such as brakes. GAO’s report notes, “Representatives from several trailer manufacturers, trucking industry organizations, and police departments we spoke with cited challenges with the use of side underride guards that would need to be addressed prior to widespread adoption by the industry.”¹² S. 665 would also mandate side underride guards on equipment that can’t physically accommodate them, such as intermodal, bulk, specialized, and flatbed trailers.

Additionally, S. 665 requires the installation of front underride guards on CMVs. Admittedly, we’re less familiar with these devices because they aren’t currently commercially available in the U.S. However, similar to the side underride guard provisions, this requirement would likely be extremely problematic. GAO’s report also notes, “Representatives from a tractor manufacturer that operates in both the U.S. and the European Union told us that front guard designs currently used in the European Union would not be compatible with conventional tractors used in the U.S., stating that these guards would need to be installed in the same space that the bumper, frame, and some equipment—including crash avoidance technologies—already occupy.”

We would also point out the bill would require the creation of performance standards for underride devices. Meaning, if an underride guard fails to meet the standard while in operation, the vehicle would be placed out of service and unable to operate. We have no idea how a trucker would get a side underride guard, weighing approximately 1,000 pounds, delivered to the roadside. Nor do we have any idea how the equipment would be installed safely on the roadside.

In sum, the bill mandates devices that aren’t practical, don’t physically work, and would create serious operational difficulties for our members. We should also note that the bill impacts millions of CMVs, trailers, straight trucks, and other vehicles. With an estimated price tag of tens of billions of dollars, S. 665 would be the costliest federal trucking mandate in history.

Minimum Insurance Requirements:

Recently, trial lawyers and their allies in Congress have proposed legislation to increase the minimum level of financial responsibility for trucking companies operating in interstate commerce. While working to gather support for their proposal, organizations like the American Association for Justice (AAJ) have shared wholly misleading information about this issue. OOIDA would like set the record straight on the real impact a minimum insurance level increase would have on highway safety and the catastrophic effect that would have on small trucking businesses.

Federal law currently requires motor carriers engaged in interstate commerce to carry at least \$750,000 in liability coverage (\$5 million for those hauling hazardous materials). However, the vast majority of carriers are insured at \$1 million or more. Having additional coverage is obviously not required, but the insurance industry tends to naturally adjust levels based on market conditions. If enacted, the AAJ’s latest proposal - H.R. 3781 (the INSURANCE Act) - would increase minimums from \$750,000 to a whopping \$4,923,154. Small-business truckers would quickly see their premiums at least triple.

¹² GAO, Truck Underride Guards Improved Data Collection, Inspections, and Research Needed, GAO-19-264 (Washington, D.C.: March 2019)

Contrary to claims by those who will benefit financially from an increase in insurance minimums (i.e. trial lawyers), this will do absolutely nothing to improve highway safety. Supporters of the proposal have no reputable research indicating it would. And they never will, because there is no correlation between insurance coverage and highway safety. In fact, increasing insurance minimums would likely force many owner-operators – who are collectively among the safest, most experienced drivers on the road – out of the industry because premiums would become unaffordable. As a result, legislation like H.R. 3781 would actually decrease highway safety, not improve it.

Proponents of the bill believe today’s insurance requirements need to be increased simply because they haven’t been raised since the 1980s. This erroneously assumes the insurance industry only provides coverage at the federally-mandated levels. Again, most motor carriers are insured at least \$250,000 above the minimum threshold because that’s what the market dictates.

AAJ and their allies want you to believe the rising cost of healthcare for those involved in a crash justifies an increase in insurance minimums. Unfortunately, research indicates this is patently false.

As required by MAP-21, FMCSA commissioned the John A. Volpe Transportation Systems Center (Volpe) to research this issue in greater detail. In 2014, Volpe released its report, which explained, “The **vast majority** of CMV-caused crashes have relatively small cost consequences, and the costs are easily covered with the limits of mandatory liability insurance [emphasis added].” If you’re wondering if this includes some of the most costly crashes, Volpe adds, “A small share exceed the mandatory minimum but are often covered by other insurance or assets.” There are certainly catastrophic crashes that exceed today’s requirements. However, Volpe helps put these rare occurrences into perspective by stating, “A final portion of high-cost crashes would fall outside compensation instruments even if the minimum liability were raised.” In short, these exceptional cases are often times so expensive that no level of insurance would cover them. We would also point out that, according to Volpe, only 0.06% of crashes result in damages that exceed today’s minimum coverage limits.¹³

So what is the point of H.R. 3781?

It should come as no surprise that AAJ is pursuing this bill, as trial lawyers typically receive 30-40% of a judgment or settlement against a motor carrier – and sometimes more. For AAJ, this is a shrewd, if not unabashedly transparent effort – mandating an increase in coverage limits will exponentially boost their judgment and settlements.

What remains most important is proposals to increase minimum insurance rates for motor carriers will do nothing to improve highway safety. Rather, it imposes yet another unnecessary and expensive federal mandate that will force the safest and most experienced truckers off the road, while further lining the pockets of our nation’s trial lawyers. There are so many other

¹³ Kent Hymel et al., Financial Responsibility Requirements for Commercial Motor Vehicles, John A. Volpe Transportation Systems Center (2013).

proven ways to reduce crashes and improve safety without eviscerating the livelihood of our nation's hard-working, small-business truckers.

Automatic Emergency Braking:

Automatic emergency braking (AEB) systems have garnered increased attention lately because of their potential to improve highway safety. We agree technology like AEB is promising, but efforts to mandate new CMVs be equipped with the systems are premature. While AEB is designed to help reduce or prevent rear-end collisions, this technology is still in its infancy and can create new challenges and dangers for drivers, such as false or unexpected system activation. In fact, several of our members who chose to utilize AEB later reported deactivating the systems because of operational difficulties.

For small-business truckers, AEB technology is also very expensive and studies have shown it is not clear that the benefits of these systems currently outweigh the costs.¹⁴

Legislation introduced in the House – H.R. 3773, the Safe Roads Act – would require AEB systems on all new CMVs, including every truck and vehicle involved in interstate commerce that has a vehicle weight or GVWR of at least 10,001 pounds. Not only does this encompass all tractor trailers, but also many pickup trucks and other heavy-duty vehicles.

Again, an industry-wide mandate is entirely premature at a time when AEB technology has yet to be perfected. In fact, improvements to the technology are likely to expand AEB's deployment without a federal mandate, provided truckers can trust these systems are reliable, cost-effective solutions to reducing crashes.

Compliance, Safety, Accountability Reform:

Since the inception of the Compliance, Safety Accountability (CSA) and Safety Measurement System (SMS) programs in 2010, there has been a steady increase in truck related crashes, injuries, and fatalities. Congress must continue holding FMCSA accountable in improving SMS/CSA methodology. The agency must implement recommendations from the 2017 National Academy of Sciences (NAS) review in a way that accurately reflects crash risk and crash causation. The NAS study proposed that FMCSA should investigate data on carrier characteristics such as methods and levels of driver compensation to improve SMS/CSA. OOIDA supports a federal study reviewing the impacts of driver compensation and safety.

As FMCSA works to implement the NAS recommendations, OOIDA opposes efforts that would return CSA scores to public view before the agency's reforms are completed. Publicly posting an analysis of violations developed under CSA while the system is still being improved is extremely problematic. Rather than creating arbitrary timeframes for the availability of data, Congress should focus its efforts on ensuring FMCSA is establishing a program that is fair, reliable, and actually based on safety.

¹⁴ K. Grove et al., *Field Study of Heavy-Vehicle Crash Avoidance Systems*, NHTSA (June 2016).

Detention Time:

Generally, if the truck's wheels are not moving, drivers are not getting paid. As a result, many drivers spend countless unpaid on-duty hours being detained by shippers and receivers because Congress and FMCSA have failed to address excessive detention time. For far too long, the trucking industry has typically defined detention as any time spent waiting to load or unload in excess of two hours. This line of thinking completely discounts the value of a driver's time. Any updated definition or set of standards estimating reasonable detention periods must instead prioritize the driver's time. Shippers and receivers should not be awarded a complimentary two-hour grace period at the driver's expense.

Detention time is both a safety and financial concern for small-business truckers and professional drivers. A 2018 USDOT Inspector General (OIG) report estimated that a 15-minute increase in average dwell time - the total time spent by a truck at a facility - increases the average expected crash rate by 6.2 percent. The study also estimated that detention time is associated with reductions in annual earnings of \$1.1 billion to \$1.3 billion for for-hire CMV drivers in the truckload sector and that detention reduces net income by \$250.6 million to \$302.9 million annually for motor carriers in that sector.¹⁵

These findings from the OIG report echo what OOIDA members have been dealing with for years. According to a 2018 survey of our members, a majority of both those who operate under the 60 hour/7-day rule and those who operate under the 70 hour/8-day rule indicated they spend between 11 and 20 hours each week waiting to load or unload their truck. In other words, those operating under the 60-hour rule spend approximately 18% to 33% of their possible drive time in detention, while those under the 70-hour rule spend 16% to 29% of their time detained. This uncompensated time means individual drivers are effectively losing \$865 to \$1,500 per week.¹⁶

The OIG study also concluded that, "accurate industrywide data on driver detention do not currently exist because most industry stakeholders measure only time spent at a shipper or receiver's facility beyond the limit established in shipping contracts. Available electronic data cannot readily discern detention time from legitimate loading and unloading tasks, and are unavailable for a large segment of the industry." OOIDA supports FMCSA's efforts to collaborate with industry stakeholders to develop and implement a plan to better collect and analyze reliable, accurate, and representative data on the frequency and severity of driver detention times.

As the agency gathers more information, we hope that both FMCSA and Congress will take substantive action to reduce excessive loading and unloading times and offset current safety and economic costs associated with detention time.

¹⁵ U.S. DOT Office of Inspector General, *Estimates Show Commercial Driver Detention Increases Crash Risks and Costs, but Current Data Limit Further Analysis*, U.S. Department of Transportation (Jan 2018).

¹⁶ Owner-Operator Independent Drivers Association Foundation, *2018 Detention Time Survey* (Jan 2019).

Entry-Level Driver Training:

OOIDA has supported national entry-level driver training (ELDT) standards for decades. In our opinion, the best way to promote safety is to improve driver training requirements. Currently, too many new drivers enter the industry without the basic skills to safely operate a CMV.

Following MAP-21, which mandated minimum training requirements for individuals operating a CMV, OOIDA was an active participant in FMCSA's Entry-Level Driver Training Advisory Committee (ELDTAC). Composed of twenty-six industry members, the ELDTAC was tasked with conducting a negotiated rulemaking to establish, for the first time, national training standards for drivers. FMCSA published a final ELDT rulemaking in December 2016, implementing many of the ELDTAC recommendations. While far from sufficient, the ELDT final rule set a curriculum of benchmarks that potential drivers needed to meet, created adequate minimum qualifications for training instructors, and outlined essential processes for registering training providers that would hold schools and instructors accountable for their performance. The ELDT rule established a February 7, 2020, compliance date, giving the agency, states, and industry stakeholders more than three years to prepare for its implementation.

Regrettably, just last week, with less than ten days before the training standards were set to go into effect, FMCSA announced a two-year delay of the entire ELDT rulemaking. The agency explained, "the extension is necessary so that FMCSA can complete the IT infrastructure to support the Training Provider Registry (TPR), which will allow training providers to self-certify, request listing on the TPR, and upload the driver-specific ELDT completion information to the TPR. Completion of the TPR technology platform is also necessary before driver-specific ELDT completion information can be transmitted from the TPR to the State Driver Licensing Agencies (SDLAs). This delay also provides SDLAs time to make changes, as necessary, to their IT systems and internal procedures to allow them to receive the driver ELDT completion information transmitted from the TPR." Because the ELDT rule would immediately begin improving CMV safety, we find this reasoning to be unsatisfactory – especially considering the agency and SDLAs had more than sufficient time to prepare the necessary systems for the scheduled 2020 rollout. OOIDA encourages lawmakers to hold FMCSA accountable in completing the IT infrastructure so there are no further delays.

In the interim period, OOIDA would like to work with Congress and FMCSA to improve the shortcomings of the original 2016 final rulemaking. We believe that the requirements could best be bolstered by establishing a minimum number of hours of behind-the-wheel (BTW) training. A robust ELDT program that features mandatory BTW experience will improve safety and reduce crashes among entry-level CMV drivers.

Autonomous Vehicles:

While OOIDA acknowledges the benefits that autonomous vehicles (AVs) may eventually bring, we believe lawmakers and the federal government must take careful and proper steps to ensure that AVs optimally serve both the general public and CMV drivers. Professional drivers will likely be the first to experience the technology's shortcomings or deficiencies outside of controlled testing scenarios, potentially creating serious safety concerns for our members and the

driving public. Additionally, OOIDA members and millions more working in other segments of trucking face a particularly uncertain future, as technology may first diminish the quality of their jobs, and then threaten to displace them completely. Unlike many of the industries involved in the proliferation of AV technology, truckers will probably not experience significant economic gains under a looming autonomous revolution.

Like all other safety systems and technologies, our members want to know that AVs will perform dependably. Unfortunately, DOT's recent AV 4.0 guidelines fall short of providing a thorough research, development, and deployment environment to ensure that AVs, including autonomous CMVs, can operate safely. AV 4.0 continues to rely on self-certification and a voluntary reporting system as the way to balance and promote safety and innovation. This system fails to ensure the transparency that is necessary for all stakeholders, including professional drivers, to evaluate the performance of AVs. Without this transparency, it will be extremely difficult for drivers to assess manufacturers' claims about these new technologies and how they will impact a driver's safety and livelihood.

As the Committee considers addressing AVs, we believe any legislation should be limited to motor vehicles weighing less than 10,000 pounds. The safe operation of an automobile differs greatly from that of a heavy vehicle. The introduction of autonomous technology to both types of vehicles will present distinct safety challenges and concerns that should be addressed and regulated on separate paths. Features unique to the trucking industry, including how changing technology may affect the jobs of millions of American drivers, merits the development and consideration of policies specific to heavy vehicles.

There are many other challenges that will need to be reconciled before AVs can be safely deployed, including questions about liability, cybersecurity, automation bias, insurance, and more. Small-business truckers and professional drivers possess the knowledge and experience that will be necessary to properly identify these concerns. While we are still years away from fully automated trucks, decisions made today will have a significant impact on how these technologies are deployed, and ultimately, on the livelihood of professional truck drivers and the economy at large. We look forward to working with elected officials, federal regulators, and our industry partners to ensure AV policies are developed in responsible manner that takes into account the perspective of American truckers.

Truck Size and Weight:

Congress should oppose calls to increase truck size and weight limits on our roads. Increasing the gross vehicle weight limit above 80,000 pounds would not only diminish safety and accelerate the deterioration of highway conditions, but would also have a dramatic impact on small trucking businesses that would be forced to modify their equipment at great cost just to remain viable, with virtually no return on their investment. Furthermore, allowing longer combination trailers, known as 'twin 33s', on our roads would only benefit a handful of large corporate motor carriers, but would have a negative impact on safety, infrastructure, and the rest of the trucking industry. It would be unwise to take action that would increase infrastructure repair costs at a time when available funding is already dwindling.

We oppose any wholesale changes to size and weight limits, as well as any pilot programs or industry-, region-, or corridor-specific exemptions. These one-off exemptions still present the same concerns described above, cause confusion for law enforcement, and increase the likelihood that Congress will one day move to increase overall limits.

We appreciate Chairman Wicker's recognition of the problems created by longer and heavier trucks and are thankful for his long-standing efforts to oppose any increases. We look forward to working with the Committee as there will inevitably be continued efforts to pursue these misguided measures.

DataQ:

The federal government allows truck drivers, motor carriers, and others to request a review of FMCSA-issued data, such as violations and inspection reports that might be incorrect or incomplete. This is commonly referred to as a Request for Data Review, or DataQ. Under federal law, states have the authority to establish their own review process, and unfortunately, nearly all of them have established a system that does not provide due process for truck drivers or motor carriers. Furthermore, in order to be eligible for certain safety grant funding, states are required to establish a system that collects accurate and complete data.¹⁷ We believe that many states are failing to live up to this standard.

Under the current system, reviews and additional appeals in many states are considered by the same person or agency who issued the initial violation. This creates an inherent conflict of interest. Very few law enforcement officers are willing to admit they made a mistake, and as a result, truckers are often denied an appeal even if they are correct about an erroneous violation. This is problematic because violations remain on a driver's or carrier's safety record and can negatively impact the employability of a driver and increase insurance costs. In many cases, this can put a driver or a small carrier out of business. In one particularly egregious instance, an OOIDA member spent thousands of dollars in legal fees to get a correction for a violation issued for a federal regulation *that does not even exist*.

As a matter of fairness and due process, Congress should examine ways to provide greater transparency and impartiality in the DataQ process. This is not a revolutionary idea. FMCSA, in its manual for best practices, recommends that states, "implement a 'DataQs Review Council' to provide a fair and impartial secondary review of original decisions."¹⁸ While many states have failed to do this, Arizona and Minnesota are two states that have implemented a review process that we believe provides a good starting point for other states to emulate.

In addition to providing due process to truckers, it is also in Congress' interest to have an accurate DataQ process because it will ensure that accurate safety data is utilized during future policy development. If the citations issued and data collected by state agencies cannot be trusted, then it undermines FMCSA's safety efforts more broadly.

¹⁷ 49 CFR § 350.201.

¹⁸ FMCSA, DataQs Analyst Guide, Best Practices for Federal and State Agency Users (2nd Edition, 2014).

Unified Carrier Registration (UCR):

Administered by the federal and state governments through a partnership with the motor carrier industry, the Unified Carrier Registration (UCR) program is an outdated and imbalanced system by which various taxes levied on motor carriers are collected and distributed to 41 participating states. The system was established in the 2005 highway bill for the purpose of maintaining a single national register of motor carriers conducting interstate travel, and it should be repealed in the next reauthorization.

OOIDA has many concerns with the system, starting with the significant inequity in the assessment of fees. The current tax structure is particularly burdensome and costly for single truck operators and small fleets, who represent approximately 96% of registered motor carriers, but often have limited resources compared to large fleets. Inequalities are inherent between and within the arbitrary fee brackets of the program. As a result, small motor carriers unfairly and unjustifiably pay more per truck than their larger competitors.

In addition to concerns about inequality, we believe the system lacks the transparency and accountability to merit the trust and support of motor carriers and Congress. In fact, the lack of any meaningful federal oversight has allowed UCR to become an out-of-control bureaucracy, rife with nepotism among public officials and private contractors. If members of this Committee took a closer look at the structure, operations, and decision-making of UCR and its board, we are certain you would share our disgust for the program.

To make matters worse, it is difficult to determine precisely what programs UCR taxes are supporting within participating states. We do know many states use UCR revenue as a non-federal match for Motor Carrier Safety Assistance Program (MCSAP) funding, which is devoted primarily to enforcement. Essentially, these states are utilizing a federally-authorized tax on motor carriers to leverage additional federal funding for the policing of them.

Through our participation in the UCR board, we have pushed for reform of the system and opposed countless proposals that perpetuate the program's lack of fairness, transparency, and accountability. Unfortunately, the UCR board, which is dominated by state officials, appears incapable or unwilling to address these concerns. As a result, Congressional action is warranted and overdue.

Many of our members believe the system no longer meets its objectives and favor eliminating it entirely in the next highway bill. Absent its repeal, a federal audit of how states are using UCR revenue and MCSAP funding would be a constructive first step to determining if the system remains necessary. Since its inception, UCR has never been audited by the USDOT OIG. Congressional oversight of UCR is also badly needed and should occur more regularly. Since its launch, the system has never been the focus of a Congressional hearing. At the very least, Congress should work with industry stakeholders to identify ways the system can be reformed to enhance transparency and improve value to the truckers who pay UCR fees.

Thank you for consideration of our testimony. OOIDA appreciates being part of this hearing. We believe these proposals can help fix many of the problems facing our industry, while simultaneously improving highway safety.

Sincerely,

A handwritten signature in cursive script that reads "Lewie Pugh". The signature is written in black ink and is positioned below the word "Sincerely,".

Lewie Pugh
Executive Vice President
Owner-Operator Independent Drivers Association, Inc.