



**Testimony of Lewie Pugh, Executive Vice President
Owner-Operator Independent Drivers Association
before the
United States House of Representatives, Committee on Transportation & Infrastructure
“Protecting Transportation Workers and Passengers from COVID: Gaps in Safety, Lessons
Learned and Next Steps”
February 4, 2021**

Chairman DeFazio, Ranking Member Graves, and members of the Committee, 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 150,000 members across the United States and Canada. We know truckers better than anyone.

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

Throughout the COVID-19 pandemic, small-business truckers and professional drivers have literally put their lives on the line to keep us safe. When many Americans began working from home, truckers continued to crisscross the country, picking up and delivering items that we all need.

The perseverance of the nation's truck drivers has never faltered even in the face of many new challenges. At the onset of COVID-19, shippers and receivers started restricting access to their facilities, including restrooms. Suddenly, finding a place to use the bathroom was more difficult, even impossible at times. Initially, drivers weren't able to find masks, hand sanitizer, or even bottled water. Ironically, they were delivering everything Americans needed to survive, though they couldn't actually buy much of it themselves. It was a cruel reality, and it wasn't until FEMA began distributing items at truck stops that many truckers finally had what they needed.

They also had no real idea what they would do if they experienced COVID symptoms while on the road, often hundreds if not thousands of miles from home. And then things went from horrible to unimaginable when freight rates dropped to historic lows, in some cases only paying pennies per mile. By May of 2020, roughly 80,000 truckers were out of work.

Congress could have temporarily suspended the federal diesel tax so drivers would have extra money in their pockets during the toughest times. You could have waived the heavy vehicle use tax (HVUT) for a year so that every truck owner would get a modest break. You could have reinstated the per diem for employee drivers or even suspended Unified Carrier Registration (UCR) payments. Instead, you hung your hats on the Paycheck Protection Program (PPP), which failed to support most small carriers.

In the midst of the crisis, the Department of Homeland Security (DHS) and the Department of Transportation (DOT) rose to the occasion. They engaged industry stakeholders and took a number of steps to address real issues that were affecting drivers. For example, the Federal Highway Administration (FHWA) allowed states to permit food trucks at rest areas. Unfortunately, many states, like Missouri, wouldn't allow it. Think about that for a minute – truckers couldn't buy food at a truck stop or restaurant, yet some states had the nerve to deny them a hot meal at rest areas. OOIDA wasn't even permitted to give free meals away in Missouri. That's a damn shame.

We were all shocked last year when this Committee voted, in the middle of a global catastrophe, to increase motor carriers' federal minimum liability insurance requirements by \$1.25 million. Truckers watched in disbelief as members of this panel went from patting them on the back on social media to kicking them while they were down.

Things are getting better, but safe truck parking is still a national crisis. Last year, this Committee provided a one-year, \$250 million authorization for truck parking projects in the highway bill. This is a great starting point, but more must be done. We've worked with Reps. Mike Bost (R-IL) and Angie Craig (D-MN) to develop a bipartisan bill to address the problem.

Despite there being over 65 members on this Committee last Congress, only 4 of you cosponsored the legislation.

So what do truckers want?

- We want more truck parking. Not only should you cosponsor the Truck Parking Safety Improvement Act, but get it done.
- Try to do something good for truckers without doing something bad. Don't cripple them with unnecessary insurance increases or a speed limiter mandate
- Repeal the overtime exemption for employee drivers in the Fair Labor Standards Act (FLSA). I've been asked by some lawmakers what would happen as a result. My answer is simple: employee drivers would actually be paid for the hours they work. This would also help fix the driver churn that big carriers misleadingly tout as a driver shortage.
- Reinstating the per diem tax deduction for employee drivers. Let them deduct their meals while out on the road again.

You can take steps to help, but you must also avoid causing unnecessary damage. Truckers have earned your respect by now. We encourage you to show them some real appreciation – Twitter statements are nice but it doesn't put food on the table.

Drivers still worry about getting the vaccine while they continue to work. Finding a decent meal is still tough. Many are concerned about the future of their business, an uncertain freight market, and new regulations. Some even fear that their business will survive COVID only to be destroyed by Congress.

Truck Parking

The truck parking shortage is a national safety 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.¹ Unfortunately, the problem has only worsened since then. In December 2020, FHWA issued findings from its 2019 Jason's Law survey, which found that truck parking shortages are still a major problem in every state and region of the country.

Furthermore, the expansion of truck parking capacity hasn't kept pace with truck vehicle miles traveled, and a handful of states actually have fewer public parking spaces than they did at the time of the original survey. Governments at all levels are failing to confront this challenge, and Congress must step in to solve this urgent safety problem.

While the truck parking shortage has been a concern for decades, the closure of rest areas during the coronavirus pandemic brought new attention to truck parking challenges. For example, countless truckers were left scrambling to find places to take a break after Pennsylvania closed

¹ Jason's Law Truck Parking Survey Results and Comparative Analysis, Office of Freight Management and Operations, Federal Highway Administration, United States Department of Transportation.

its rest areas early in the pandemic. At the time, our industry pushed federal officials, as well as those in Pennsylvania, to reopen these critical facilities without delay. With the encouragement of FHWA, the state ultimately reversed course and reopened each of its rest areas over time.

Unfortunately, the reopening process was unnecessarily slow and undoubtedly still forced some drivers to park in unsafe areas. In the future, federal and state transportation and health officials must understand the importance of these facilities in the safe and efficient movement of goods during a national emergency, and ensure they remain accessible for truckers. Thankfully, swift outreach from industry and federal officials not only helped reopen shuttered facilities in Pennsylvania, but prevented other states from following suit. Although pandemic-related parking issues have largely been resolved, the underlying parking shortage remains.

Professional drivers regularly report difficulty accessing safe parking for commercial motor vehicles (CMV), 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 hours-of-service (HOS) regulations by continuing to search for a safer and legal alternative.

The current crisis also creates hazards for the general public. As a last resort, drivers who are unable to find adequate parking often reluctantly park in hazardous road-side locations, such as highway shoulders and interstate entry and exit ramps. This creates 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.

Congress can help address the truck parking shortage by enacting the Truck Parking Safety Improvement Act, which would dedicate existing highway safety funding for the expansion of truck parking capacity. This legislation doesn't create any new uses for federal funds or authorize new spending. Instead, it ensures that existing funding is focused on creating new parking spaces through the establishment of a competitive grant program. We would like to thank Representatives Mike Bost and Angie Craig for introducing this legislation during the 116th Congress, and we look forward to building even greater bipartisan support for this legislation in the new Congress.

Unfortunately, too many federal dollars have been spent on technology-based solutions that fail to address the root of the parking problem. We've determined federal investment in the expansion of truck parking **capacity** is key. With a focus on increasing capacity, the Truck Parking Safety Improvement Act 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.

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.

Minimum Liability Insurance

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.

Federal law currently requires motor carriers to maintain 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, legislation like H.R. 3781 (the INSURANCE Act) from the 116th Congress would increase minimums from \$750,000 to a whopping \$4,923,154. Small-business truckers would quickly see their premiums dramatically increase.

OOIDA would like set the record straight on the real impact a minimum insurance increase would have on highway safety and the catastrophic effect it would have on small trucking businesses. This is particularly important for small carriers, who are already struggling as a result of the pandemic and uncertainty within the freight market. Truckers want to operate safely, and to do so, they make significant investments in their equipment to keep it in good working order. Placing new costs on small-business truckers through unnecessary increases to minimum insurance requirements would detract from these goals and ultimately put some of the safest drivers out of business.

Because there are so many factors that determine premium costs, it is difficult to estimate precisely how much they would increase for different motor carriers. We know from surveying our members and analyzing the American Transportation Research Institute's annual surveys on the cost of operation that small motor carriers already pay more per mile than their larger competitors. This is by no means a result of poor driving records, but rather the inability of small businesses to negotiate better rates. Our members also typically have a higher deductible to keep costs down, meaning any increase in minimum requirements would disproportionately affect small businesses. Compounding this problem, any increase is likely to cause some insurers to no longer provide coverage to large trucks. This will further increase costs, as supply becomes limited.

We estimate that if Congress increased minimum coverage requirements to \$2,000,000, as this Committee did in last year's H.R. 2, premium costs for small business truckers could at least double, causing a trucker who currently pays \$10,000 per year to pay a whopping \$20,000. This would be unaffordable to many small businesses, who would quickly be driven out of business. For other carriers that try to offset the news costs by increasing their rates, they would likely lose business to better-leveraged large fleets.

Contrary to claims by those who will benefit financially from an increase in insurance minimums, 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, an increase to minimum insurance requirements may actually decrease highway safety, not improve it.

Proponents of this proposal claim that 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 current minimum threshold because that's what the market dictates.

AAJ and their allies, including members of this Committee, want you to believe the rising cost of healthcare for those involved in a crash justifies an increase in insurance minimums. However, research indicates this is patently false. As required by MAP-21, the Federal Motor Carrier Safety Administration (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.”*

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 0.6% of crashes result in damages that exceed today's minimum coverage limits.²

If the existing insurance minimum covers over 99% of truck-involved crashes, what's the impetus for increasing the current requirement?

It should come as no surprise that AAJ is leading this proposal, 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 judgments and settlements.

What remains most important is the fact that 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. It will also do

² Kent Hymel et al., Financial Responsibility Requirements for Commercial Motor Vehicles, John A. Volpe Transportation Systems Center (2013).

nothing to help protect transportation workers or rebuild our infrastructure. As Congress rightfully focuses on defeating the coronavirus and reviving our economy through infrastructure investment, a minimum insurance increase has no place in the discussion.

FLSA and Overtime Compensation

Like all hard-working Americans, truckers 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.

One of the most unnecessary barriers to fair compensation that truckers face is the Fair Labor Standards Act (FLSA), which currently exempts employee drivers from overtime pay requirements. 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 their work. 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 a timely, efficient manner.

The unfairness of the overtime exemption has always been clear, but the long hours truckers have worked during the pandemic makes the injustice even more obvious. Waivers to HOS regulations for truckers hauling emergency supplies exacerbated this issue, with some truckers working even longer hours than they normally would. All of this work was done without a guarantee of overtime pay for their efforts. While OOIDA supported the relaxing of HOS requirements to quickly respond to the early challenges of the pandemic, keeping them in place for an extended period of time has resulted in most drivers working longer hours without any additional compensation.

Simply put, the FLSA exemption makes it the law that a driver's time is less valued than other professions. If Congress is serious about providing relief to the working class, then you must start by repealing this outdated exemption. While the Education & Labor Committee has final jurisdiction over repealing this exemption, it is interrelated with the issues that the Transportation & Infrastructure Committee is discussing today and handles more generally

Access to Food and Restrooms

In addition to difficulty finding parking at the outset of the pandemic, truckers also faced challenges accessing basic needs like food and restroom facilities. During government mandated stay-at-home orders, restaurants and other fresh food options at truck stops were largely closed. To provide at least some relief to truckers, we supported FHWA's decision to allow states to permit food trucks to temporarily operate at highway rest areas. We thank Members of Congress who also encouraged the agency to take this step. Unfortunately, very few states embraced this solution. As COVID cases surged across the country this fall and states renewed or expanded dining restrictions, truckers again found themselves struggling to find warm, quality meals while on the road.

Moving forward, we encourage Congress to not only allow states greater flexibility in permitting food trucks at rest areas during crises, but expand daily food access to hard-working truckers by reversing the federal ban on the commercialization of rest areas.

Truckers also experienced difficulty accessing restrooms at shipping and receiving facilities throughout the pandemic. Some businesses claimed that limiting access was a way to control the spread of the virus to their employees. These policies were counterproductive. As the most transient community in America, truckers must have the ability to wash their hands after handling freight, paperwork, and business equipment to help combat the spread of the virus. During any future public health crisis, Congress must work with the logistics community to ensure truckers have access to restrooms.

More broadly, the federal government should continue to improve its communication to public and private entities about the problems of closing critical facilities to truckers during emergencies. While there may be valid health reasons for these measures, truckers' needs were often ignored in the heat of the moment when policies were implemented.

Access to PPE

In the early months of the pandemic, acquiring PPE was a serious challenge for truckers. Many had to independently purchase equipment or find free distribution sites, despite being appropriately deemed essential workers. OOIDA worked closely with FMCSA to obtain and distribute protective masks to drivers. We also appreciated the efforts of the Department of Homeland Security (DHS) and the Federal Emergency Management Agency (FEMA) in obtaining and distributing PPE to hundreds of thousands of truckers. Still, many truckers, including employee drivers, have been forced to independently track down and pay out-of-pocket for PPE, hand sanitizer, and other supplies to protect themselves and those they come into contact with. In any future national health crisis, the distribution of protective supplies to truckers must occur immediately. Not only are professional drivers moving critical supplies to areas of need, they are also the most transient community in the country, which increases their chances of exposure.

As an association that represents employee drivers, owner-operators, and small-business motor carriers, our top priority is ensuring the safety and well-being of truckers. We support government efforts to help make PPE as widely-available as possible. We are also open to legislative proposals that would require employers to provide basic supplies to employees, but any proposal must take into account the unique challenges small businesses face and the limited availability of supplies, especially for those not purchasing in large quantities. Furthermore, these measures must not be overly complicated or punitive for businesses that are facing unprecedented challenges.

Access to Testing and Vaccines

Truckers face distinct challenges when it comes to accessing testing for COVID-19. Most of the time, our members are out on the road, away from home – often for hundreds of nights a year. It is not easy for them to drop in to their doctor's office for a COVID test if they are feeling sick,

exhibiting symptoms or have been in contact with an infected individual. During the worst parts of the pandemic, it was very difficult for our members to find information about where they could obtain a test while on the road. While the federal government has since made information available on testing locations, Congress should make certain this information is communicated to essential workers like truckers much earlier and more clearly during any future health crisis.

Similarly, truckers are now concerned about how they will access vaccinations while continuing to work. For professional drivers, who often spend several consecutive weeks or even months on the road to make ends meet, accessing vaccinations can be logistically difficult and economically disruptive. Few truckers know precisely where they will be from week-to-week, making it difficult to return home for shots and often impossible to predict where they may be located when it's time for a second booster. Even those who are capable of getting vaccinated while they work will undoubtedly experience difficulty accessing vaccination sites – visiting a clinic, pharmacy or medical facility by car is much easier than finding a location to temporarily park a CMV. Providing vaccinations at truck stops and rest areas throughout the country would be an effective solution to ensuring the essential workers in our industry are receiving the care they need.

PPP and Economic Relief

As this Committee considers how to improve the federal government's response to future national emergencies and help small-business truckers survive the current pandemic, it also needs to be aware of the ways Congress failed to help truckers during the economic downturn caused by coronavirus. Far too many of our members didn't qualify for a loan under the Paycheck Protection Program (PPP) because of the way the program was structured. In short, this program doesn't work well for independent contractors that make significant investments in equipment and take multiple deductions when filing taxes.

While the PPP falls outside the Transportation & Infrastructure Committee's jurisdiction, it's important to understand the frustration truckers felt when they were told to apply for this government assistance program, only to find out that it doesn't work for them. This was the go-to recommendation for small-businesses impacted by the coronavirus, and when it didn't work for our members, they were essentially out of luck.

Compounding this frustration, truckers have seen Congress provide passenger airlines with billions of dollars in aid, but are left to wonder why the small trucking businesses who keep the supply chain moving were essentially left out. While some of these decisions weren't made in this Committee, you have the power to help truckers make it through these challenging times by avoiding unnecessary regulatory costs and burdens.

For truckers who didn't get any relief in 2020, the last thing they need is new costs that don't provide them, or the public, any real benefit. Small-business truckers need to be able to make necessary investments in their equipment and their businesses to continue operating safely, and they need to make investments to adapt to changes brought on by COVID. None of this will be possible if they are hurting from the economic downturn, are unable to access federal aid, and have to pay new costs to meet new federal regulations.

Broker Transparency

In the immediate aftermath of the pandemic, freight rates reached historic lows and many drivers were struggling. After years of small-business truckers expressing frustration about the deliberate evasion of transparency regulations (49 CFR §371.3) by freight brokers, the detrimental impacts of COVID-19 finally caught the attention of federal regulators. In May, the President remarked that truckers were being price-gouged by brokers and DOT started listening. Let's be clear, current regulations mandate that brokers keep transaction records and allows carriers to review such records.

These rules enable carriers to make educated decisions about what loads to take and with whom to do business. However, because these regulations go largely unenforced, brokers have implemented common practices that make it difficult for carriers to ever access transactional information required by §371.3. These practices include making carriers visit a broker's physical business location to view information in person or forcing carriers to waive their rights under §371.3 when signing contracts.

As a solution to improve broker transparency, OOIDA filed a petition with the agency that would require brokers to provide transaction information automatically within 48 hours of the completion of the contractual services and would prohibit brokers from including any contractual provision that waives a carrier's right to access transaction records. Since our petition was submitted in May 2020, FMCSA has opened up a variety of regulatory dockets to gather public comments regarding this issue. Once the agency has completed their review of these comments,

OOIDA strongly encourages FMCSA to promulgate and enforce measures that will prevent brokers from continuing to circumvent transparency requirements. All truckers want is for brokers to comply with existing federal regulations. They're not asking for anything more than their right to transparency, which is used to help them differentiate good brokers from unscrupulous ones.

Conclusion

Throughout the COVID-19 pandemic, small-business truckers and professional drivers have literally put their lives on the line to keep us safe. While they have faced daunting new obstacles, our truck drivers have ensured that critical supplies get delivered to all corners of the country. We have outlined just a few of the steps that Congress can take to show their appreciation and support, but we also urge you to avoid causing unnecessary damage that would force the industry's safest drivers off the road.

Thank you,

Lewie Pugh
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