

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

ADVOCATES FOR HIGHWAY AND AUTO  
SAFETY, et al.,

Petitioners,

v.

FEDERAL MOTOR CARRIER SAFETY  
ADMINISTRATION, et al.,

Respondents.

Case No. 20-1370

**MOTION FOR LEAVE TO INTERVENE IN SUPPORT OF RESPONDENTS**

Pursuant to Fed. R. App. P. 15(d) and Circuit Rule 15(b), the Owner-Operator Independent Drivers Association, Inc. (“OOIDA”) moves this Court for leave to intervene in Case No. 20-1370 in support of the Respondents.

OOIDA is a not-for-profit corporation organized in the State of Missouri, with its headquarters located at 1 N.W. OOIDA Drive, P.O. Box 1000, Grain Valley, Missouri 64029. OOIDA was founded in 1973 and has approximately 160,000 members residing in all fifty states. OOIDA’s members include commercial truck drivers, owner-operators who haul freight under lease to motor carriers, and small business carriers who have their own Department of Transportation (“DOT”) operating authority. In support of its motion, OOIDA states:

## Procedural Posture

1. On June 1, 2020, respondent Federal Motor Carrier Safety Administration published a final rule amending the rules governing the daily and weekly time limits for a driver's operation of a commercial motor vehicle. *See Hours of Service of Drivers*, Docket No. FMCSA-2018-0248-8249, 85 Fed. Reg. 33,396 (June 1, 2020) ("Final Rule").

2. On September 16, 2020, Petitioners Advocates for Highway and Auto Safety, International Brotherhood of Teamsters, Citizens for Reliable and Safe Highways, and Parents Against Tired Truckers ("Petitioners") filed a Petition for Review of the Final Rule. *Petition for Review, Advocates for Highway & Auto Safety v. Fed. Motor Carrier Safety Admin.*, No. 20-1370 (D.C. Cir. Sept. 16, 2020).

3. Counsel for OOIDA has conferred with counsel of record for Petitioners, and Petitioners consent to the motion. As of the time of this filing, Counsel for Respondents have not yet made an appearance in this matter. Counsel for OOIDA has left a message requesting conferral with the appellate staff of the Department of Justice's civil division but have not yet received a response.

4. Pursuant to Fed. R. App. R. 15(d), OOIDA's deadline to request leave to intervene in this matter is October 16, 2020. OOIDA's motion is therefore timely filed.

## Standing and Interest of OOIDA

5. Federal Rule of Appellate Procedure 15(d) permits interested parties to intervene in challenges to agency action filed in the Courts of Appeals. "[L]itigants

seeking to intervene in cases involving direct review of administrative actions must establish Article III standing." *Noel Canning v. N.L.R.B.*, 705 F.3d 490, 514 (D.C. Cir. 2013), *aff'd*, 573 U.S. 513 (2014). An association has standing where "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Id.* (quoting *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977)).

6. OOIDA meets all three elements of associational standing.

7. First, OOIDA's individual members would have standing to intervene in their own right. Standing for an intervenor requires showing injury in fact, causation and redressability. *See Crossroads Grassroots Policy Strategies v. Fed. Election Comm'n*, 788 F.3d 312, 316 (D.C. Cir. 2015). In regulatory challenges, where a party can show injury in fact, it can also show causation and redressability. *See id.* (where successful petition for review would injure intervenors, it follows that such injury is directly traceable to the challenge and can be prevented by defeating the challenge). This Court has "generally found a sufficient injury in fact where a party benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party's benefit. *Id.*

8. OOIDA's members include commercial truck drivers subject to the hours-of-service regulations modified by FMCSA-2018-0248. *See, e.g.*, OOIDA comments

submitted August 3, 2020, <https://www.regulations.gov/document?D=FMCSA-2018-0248-8264>. The Hours of Service rules directly impact OOIDA's members. It governs the management of their businesses, controls their working conditions, and affects their daily lives. The changes to the hours-of-service rules promulgated in FMCSA-2018-0248 have significantly and positively impacted the interests of OOIDA's members. *Id.*

9. OOIDA members would be impacted directly by an order granting the relief Petitioners seek in this challenge. *See, e.g., id.* (noting that rule changes will improve driver efficiency and safety); *see also Mil. Toxics Project v. E.P.A.*, 146 F.3d 948, 954 (D.C. Cir. 1998) (finding that association has standing to intervene in support of munitions rule because some of its members are directly subject to the rule). OOIDA's members would, therefore, have standing to intervene in this action in their own right.

10. Second, the interests OOIDA seeks to protect here are germane to its purpose. OOIDA's mission includes advancing the regulatory goals and rights of small business truckers.

11. OOIDA has long advocated for increased flexibility in the hours-of-service rules, the type of regulatory relief provided by the Final Rule.

12. OOIDA twice petitioned DOT and FMCSA to amend the hour-of-service rules to provide drivers with more flexibility in their workday:

- a. On June 8, 2017, OOIDA submitted a rulemaking petition requesting, *inter alia*, a change to the hours-of-service rules to provide flexibility by allowing drivers to stop the 14-hour hours-of-service clock ([FMCSA-2018-0248-0001](#)).

- b. On February 13, 2018, OOIDA submitted a rulemaking petition specifically requesting that the hours-of-service rules be amended to permit a 3-hour pause in the 14-hour clock and that the 30-minute rest break requirement be removed ([FMCSA-2018-0248-1210](#)).

13. OOIDA participated throughout the underlying rulemaking proceeding, advocating for the type of amendments established by the rule:

- c. On September 25, 2018, OOIDA submitted comments in support of the advanced notice of proposed rulemaking, ([FMCSA-2018-0248-3347](#)).
- d. In October 2019, OOIDA submitted detailed responses to FMCSA's specific questions contained in its notice of proposed rulemaking ([FMCSA-2018-0248-7317](#); [FMCSA-2018-0248-7948](#)).
- e. On August 3, 2020, OOIDA submitted comments in support of the proposed final rule. ([FMCSA-2018-0248-8264](#)).
- f. OOIDA representatives and members participated in multiple FMCSA listening sessions:
  - i. A member of the OOIDA Board of Directors (Dick Pingel) offered comments at the FMCSA listening session at the Great American Truck Show in Dallas, TX on August 24, 2018 ([FMCSA-2018-0248-5164](#));
  - ii. Todd Spencer and members of the OOIDA Board of Directors (Steven Davenport, Mark Elrod, and Doug Smith) offered comments at the FMCSA listening session in Joplin, MO on September 28, 2018 ([FMCSA-2018-0248-4229](#));
  - iii. Lewie Pugh offered comments on behalf of OOIDA at the FMCSA listening session in Washington, DC on October 10, 2018 ([FMCSA-2018-0248-5244](#));
  - iv. Lewie Pugh offered comments on behalf of OOIDA at the FMCSA listening session in Dallas, TX on August 23, 2019 ([FMCSA-2018-0248-8167](#));

- v. Lewie Pugh offered comments on behalf of OOIDA at the FMCSA listening session in Washington, DC on September 17, 2019 ([FMCSA-2018-0248-8166](#)).

14. Finally, the relief sought by OOIDA—denial of the petition for review of the Final Rule—does not require the participation of individual drivers.

### **Grounds for Intervention**

15. OOIDA's unique interests—*e.g.*, the interests of individual and small business truck drivers affected by the challenged rule—are neither represented by the government respondents, nor the truck drivers represented by Petitioner International Brotherhood of Teamsters.

16. Respondents FMCSA, DOT, and the United States are tasked with promulgating and enforcing motor carrier safety rules, and they do not necessarily represent the same interests of those they regulate, including OOIDA members. OOIDA members have different practical and legal perspectives on the hours-of-service rules than the Respondents.

17. OOIDA members also work and operate their vehicles under different contractual and commercial terms than do the drivers represented by the Petitioner International Brotherhood of Teamsters. OOIDA's participation in this proceeding will, therefore, ensure the Court has a more complete perspective on the position of truck drivers on the Final Rule.

18. OOIDA also satisfies the criteria governing intervention as a matter of right in the district courts under Fed. R. Civ. P. 24(a)(2). Courts evaluate intervention as a matter of right under four factors:

(1) the timeliness of the motion; (2) whether the applicant “claims an interest relating to the property or transaction which is the subject of the action”; (3) whether “the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest”; and (4) whether “the applicant’s interest is adequately represented by existing parties.”

*Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003) (quoting *Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1074 (D.C. Cir. 1998)).

19. First, as set forth above, OOIDA’s motion is timely under Fed. R. App. R. 15(d). Second, OOIDA’s members are directly impacted by FMCSA-2018-0248, and OOIDA has Article III standing. *See id.* at 735 (showing Article III standing satisfies Rule 24(a)(2) “interest” requirement). Third, OOIDA may be required to “reestablish[] the status quo” on behalf of its members if Petitioners’ challenge is successful. *See id.* (moving party’s ability to protect its interests is impeded even if party could achieve its goals through later litigation). Finally, as set forth above, OOIDA members’ unique interests as small business drivers are not specifically represented by the government respondents tasked with promulgating and enforcing the hours-of-service rules. *See id.* at 735-36 (finding government defendants did not adequately represent interests of intervenor affected by agency action and noting that this Court has “often concluded

that governmental entities do not adequately represent the interests of aspiring intervenors”).

20. Finally, OOIDA also satisfies the standard for permissive intervention under Fed. R. Civ. P. 24(b)(1)(B), which permits intervention for anyone who “has a claim or defense that shares with the main action a common question of law and fact.” OOIDA’s intervention in support of FMCSA-2018-0248 will address the legal and factual questions raised by Petitioners.

### **Conclusion**

OOIDA respectfully moves this Court for leave to intervene in the above-captioned challenge to the Final Rule.

Respectfully submitted,

*/s/ Paul D. Cullen, Jr.*

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Dated: October 16, 2020

*Attorneys for Owner-Operator Independent  
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**CERTIFICATE OF COMPLIANCE**

I hereby certify that this motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) and D.C. Cir. R. 27(a)(2) in that the motion contains 1,884 total words and that this motion complies with the type-formatting requirements of Fed. R. App. P. 27(d)(1) and D.C. Cir. R. 27(a)(2).

Dated: October 16, 2020

/s/ Paul D. Cullen, Jr.  
Paul D. Cullen, Jr.  
Attorney for Owner-Operator  
Independent Drivers Association, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on October 16, 2020, an electronic copy of the foregoing *Motion for Leave to Intervene* was filed and served on all registered parties via the Court's CM/ECF system and by United States Mail on the following:

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