



Owner-Operator Independent Drivers Association

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November 16, 2021

The Honorable Peter DeFazio
Chairman
Committee on Transportation & Infrastructure
2165 Rayburn House Office Building
Washington, DC 20515

The Honorable Sam Graves
Ranking Member
Committee on Transportation & Infrastructure
2164 Rayburn House Office Building
Washington, DC 20515

Re: Industry and Labor Perspectives: A Further Look at North American Supply Chain Challenges

Dear Chairman DeFazio and Ranking Member Graves:

The Owner-Operator Independent Drivers Association (OOIDA) is the largest trade association representing the views of small-business truckers and professional truck drivers. OOIDA has over 150,000 members located in all fifty states that collectively own and operate more than 240,000 individual heavy-duty trucks. OOIDA's mission is to promote and protect the interests of our members on any issues that might impact their economic well-being, working conditions, and the safe operation of commercial motor vehicles (CMVs) on our nation's highways.

Small trucking businesses like those we represent account for 96 percent of registered motor carriers in the United States. We are undoubtedly the safest and most diverse operators on our nation's roads. Every region of our country and segment of our economy relies upon long-haul truck drivers. Our members are an integral part of the global supply chain and have a unique perspective on the many challenges our nation faces in moving freight in the safest, most efficient manner.

Unfortunately, most of what we are seeing today is not a surprise to truckers who have dealt with a dysfunctional supply chain for decades. It's not realistic to expect the supply chain will suddenly operate efficiently on a 24/7 schedule, especially when drivers aren't being fully paid for the time they work. The trucking industry already operates around the clock, but drivers are often restricted by factors beyond their control such as excessive detention time and the lack of readily-available, safe parking. These pervasive problems must be fixed if Congress hopes to implement any significant supply chain solutions. Additional concerns that need urgent attention from lawmakers include providing fair levels and methods of compensation, repealing the exemption that denies truckers guaranteed overtime pay, and better driver training programs among others.

While global supply shortages have recently forced some truckers off the road due to regulatory processing delays and difficulties finding replacement parts for faulty equipment, the current crisis is by no means due to a shortage of truck drivers. In fact, because the real bottlenecks in the supply chain occur at pickup and delivery points, adding more trucks and drivers will simply make lines longer, not faster. As part of any efforts to fix the supply chain, Congress must prioritize resolving the underlying circumstances that have led to excessive driver turnover. We support any efforts to improve the quality of

trucking jobs, but this must start with treating drivers as essential workers, which means valuing and compensating them for all of their time.

The Myth of the Driver Shortage

Since the late 1980's, large motor carriers have been attempting to convince Congress our nation suffers from a shortage of drivers. Over the last 30+ years, organizations like the American Trucking Associations (ATA) have consistently peddled this false narrative in an effort to distract from their members' embarrassingly high driver turnover rates, which routinely exceed 90%. More recently, large carriers have approached current disruptions in the supply chain as a new and promising opportunity to further engrain the myth and advance the dangerous legislative proposals they have built upon it.

Far too many Members of Congress, including many on this Committee, have readily accepted the driver shortage myth, which illustrates a troubling lack of understanding about our industry among policymakers. Over the last several months, ATA has consistently touted a shortage of as many as 80,000 drivers, despite a distinct lack of evidence. Accompanying this letter is a document prepared by the OOIDA Foundation that questions the validity of ATA's assessment, which not only lacks any clear explanation of methodology, but also remains the only document we've encountered that is being used to substantiate a shortage. Rather than trusting ATA's dubious analysis, lawmakers should focus on information provided by federal researchers at the Bureau of Labor Statistics (BLS). A 2019 report by BLS found that "the market for truck drivers works about as well as that for other blue-collar occupations, and that, broadly speaking, we should expect that if wages rise when the labor market for truck drivers is too tight, the potential for any long-term shortages will be ameliorated."¹

Acceptance of the driver shortage myth could have major safety and economic consequences for highway users and professional drivers. Large carriers and others looking for the cheapest driver workforce possible are currently pushing proposals that would enable 18, 19 and 20-year olds with minimal training or experience to become long-haul drivers, which presents serious safety concerns for anyone traveling on American highways. Against the objections of OOIDA, organized labor and safety advocacy groups, Congress recently included an apprentice program for drivers under the age of 21 in the Infrastructure Invest and Jobs Act (IIJA). Proposals to expand or dilute this program must be rejected until the federal government, trucking industry and American public have a better understanding of how these younger drivers affect highway safety.

While promoting policies designed to create the cheapest driver workforce possible, large carriers are simultaneously ignoring many of the factors that contribute to their excessively high turnover rates. Recent increases in driver compensation may be good for large fleets' public relations and recruiting, but drivers remain grossly underpaid after decades of stagnant wages. ATA boasts the average compensation for a professional driver is currently \$50,000, but they fail to mention drivers typically work 60 to 80 hours each week.

These wages aren't competitive with other, less-skilled professions that feature remarkably better working conditions. As a result, it should come as no surprise that new entrants are spending less and less time behind the wheel before looking for better opportunities in different fields. Other drivers may choose to remain in the industry, but begin careers at carriers who better prioritize driver retention through more competitive compensation and improved working conditions. In fact, ATA's own analysis shows LTL carriers, who generally offer better pay and conditions, have turnover rates closer to 14% each year.

¹ Bureau of Labor Statistics, *Is the U.S. labor market for truck drivers broken?* (March 2019)

Rather than expanding the driver pool to teenagers, Congress should consider ways to not only ensure drivers are being paid fair and competitive wages, but improve many of the challenges that make careers in trucking less and less sustainable.

Detention Time

Small-business truckers and professional drivers face numerous operational and infrastructure bottlenecks on a daily basis. Excessive detention time is chief among the chokepoints that contribute to supply chain dysfunction. Many drivers spend countless unpaid on-duty hours being delayed by shippers and receivers because Congress and the Federal Motor Carrier Safety Administration (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.

DOT must collect better information on detention time to demonstrate precisely what role it plays in supply chain delays. As we've discussed, if a truck's wheels are not moving, drivers are not getting paid. OOIDA strongly support efforts to collect and publicly disseminate accurate information on detention time. Comprehensive collection and publication of loading, unloading, and delay times among shippers/receivers would be beneficial for drivers and motor carriers, helping them improve trip planning, load selection, and other operational considerations. Additionally, a public database or website providing estimates and averages of these times could reduce detention times throughout the marketplace as drivers and motor carriers increasingly avoid certain locations that consistently produce longer delays, forcing shippers and receivers to improve their own efficiency.

In addition to creating significant inefficiencies in the supply chain, detention time is both a safety and financial concern for professional drivers. A 2018 Department of Transportation 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.²

These findings from the OIG report echo what OOIDA members have been experiencing for years. According to 2020 survey results from the OOIDA Foundation, drivers operating under the 70 hour/8-day rule spend 17% to 29% of their time in detention. This uncompensated time means individual drivers are effectively losing \$907 to \$1,512 per week.³ This can ultimately create the incentive for drivers to operate longer and push harder, foregoing rest breaks or pauses when they are tired in order to make up for lost compensation.

When studying the issue of detention time, there are two areas of particular concern which exacerbate the problem. The first is level of compensation as very few drivers receive pay for all the hours they work. While the Fair Labor Standards Act (FLSA) requires employers to pay covered non-exempt employees at least the federal minimum wage for all hours worked during the work week and overtime pay for all hours worked over 40 in a work week, truck drivers are exempt from the FLSA overtime guarantee under Section 13(b)(1). This exemption was implemented in the 1930s to prevent truckers from working too many hours, but today it simply prevents them from receiving adequate compensation for the work they do.

² 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).

³ Owner-Operator Independent Drivers Association Foundation, *2020 Detention Time Survey* (December 2020).

Exempting drivers from guaranteed overtime pay increases problems with detention time because shippers, receivers, and others in the industry have no financial incentive to load and unload trucks in an efficient manner. If a shipper or receiver knows that they won't be responsible for paying overtime, they simply don't care as much about respecting a driver's time. If repealed, drivers would either be fairly compensated for the extra hours they work, or shippers and receivers would find ways to reduce delays to avoid paying overtime. Simply put, the current law ensures that a driver's time is less valued than other professions and enables inefficiencies to persist, and even worsen. If Congress is serious about fixing pervasive problems in the supply chain, this must change.

A majority of OOIDA members (79 percent) are in favor of removing the exemption, especially company drivers (96 percent), and 60 percent believe this will help address the detention time issue.⁴ Removing the motor carrier exemption enables truckers to be paid during all work-related hours, not just when the truck is in motion. This would entitle drivers to the full compensation earned during their duty period. Better pay will encourage more experienced, safer drivers to stay in the industry. OOIDA encourages eliminating the FLSA motor carrier exemption, but the administration and Congress must consider a temporary repeal for the duration of the supply chain crisis.

Truck Parking

Finding a safe place to park is something most people take for granted, but it's a daily struggle for hundreds of thousands of long-haul truckers. The initial 2015 Federal Highway Administration's (FHWA) Jason's Law Survey recognized the lack of truck parking had become a serious highway safety concern. 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 growing demand.

Increasingly, drivers are forced to spend more and more of their on-duty time finding a place to park rather than keeping goods moving. In 2016, the American Transportation Research Institute (ATRI) estimated that drivers spend on average 56 minutes of available drive time each day looking for a safe place to park.⁵ There is no indication these conditions have improved since 2016. In fact, it is more likely the time spent looking for parking has increased since then.

This makes it challenging for truckers to rest when they are tired, makes it difficult to comply with hours of service regulations, and often forces them to park in hazardous locations. This creates safety issues not only for truckers, but for the motoring public as well. OOIDA has been working to address this problem in a meaningful way for a long time, but so far we've been unable to get much more than studies and reports telling us what we already know – more capacity is needed.

Truckers are particularly frustrated that Congress has authorized hundreds-of-billions of dollars in infrastructure investment in 2021 without a single dollar being devoted exclusively for the expansion of truck parking capacity. After more than a decade of pushing for necessary federal investment in building capacity, Congress's failure to do so has only exacerbated inefficiencies in the supply chain, contributing to today's significant disruptions.

⁴ Ibid.

⁵ American Transportation Research Institute, *Managing Critical Truck Parking Case Study – Real World Insights from Truck Parking Diaries* (December 2016).

Infrastructure/Highway Investment

Robust investment in our nation's infrastructure is naturally a priority for our members. A modern, reliable, and efficient highway system not only supports their businesses, but also ensures their safety. That investment is long overdue. According to the ATRI, traffic congestion costs the trucking industry \$74.5 billion annually and accounts for 1.2 billion in lost hours of productivity, which is equal to 425,533 truck drivers sitting idle for a year.⁶ Funding the nation's infrastructure will help alleviate congestion and upgrade the condition of our nation's roads, highways, and bridges.

As additional infrastructure funding is spent on various highway projects, the federal government and states must also carefully consider scheduling when planning construction periods. Highway planners must recognize that conditions beyond the control of professional drivers, including federal and state rules, often contribute to their inability to avoid areas or times of high congestion.

Broker Transparency

During the initial days of the pandemic, freight rates reached historic lows. Hundreds of truckers protested in front of the White House because some freight brokers consistently fail to comply with federal transparency regulations. For years, small-business truckers have expressed frustration that regulations designed to provide transparency are routinely evaded by brokers or simply not enforced by FMCSA. While freight rates have rebounded since the initial weeks of the pandemic, the need for better broker transparency remains urgent.

49 CFR §371.3 mandates that brokers keep transaction records and permits each party to a brokered transaction to review these documents. This allows carriers to know precisely how much a shipper paid the broker and how much the broker then paid the carrier. Unfortunately, many brokers implement hurdles they know will prevent a carrier from ever seeing this information. To improve broker transparency, OOIDA has proposed:

1. Require brokers to automatically provide an electronic copy of each transaction record within 48 hours after the contractual service has been completed.
2. Explicitly prohibit brokers from including any provision in their contracts that requires a carrier to waive their rights to access the transaction records as required by 49 CFR §371.3.

If rules are promulgated to improve broker transparency and current regulations are better enforced by DOT, this would support the economic stability of the trucking industry and help secure a more reliable transportation supply chain.

Worker Classification

Owner-operators are an indispensable component of the nation's supply chain. One type of employment model is a leased-on owner-operator, where a trucker leases their equipment to a carrier and agrees to operate the equipment under the motor carrier's authority. There are federal Truth-in-Leasing Regulations (49 CFR § 376.12) that dictate specific requirements for these leases which help safeguard truckers and the public. These regulations were established to protect owner-operators from abusive practices by carriers and to preserve the stability of the supply chain more generally. Specifically, the final rule implementing these regulations stated that they were issued in part "to promote the stability and economic

⁶ https://truckingresearch.org/wp-content/uploads/2020/08/ATRI_Bottlenecks2020_Brochure.pdf

welfare of the independent trucker segment of the motor carrier industry” and “to eliminate or reduce opportunities for skimming and other illegal or inequitable practices.”

Recently, there have been legislative efforts that would eliminate the leased-on owner-operator model as we know it. For example, AB5 in California, which implements the ABC Test for worker classification, would likely make it impossible for an owner-operator to lease to a carrier and provide their services. While implementation of this law is currently on hold because of legal challenges, it would immediately disrupt our nation’s supply chain if enacted.

In addition to AB5, there are Congressional proposals to federally implement the ABC Test through legislation like the PRO Act. Enacting this legislation would introduce tremendous uncertainty to the trucking industry, possibly requiring tens of thousands of truckers to abandon their existing business model. Not only would this force truckers to leave an arrangement that has provided them a stable career, it would also cause enormous disruptions and delays throughout the supply chain. Any attempts to radically define “employee” and independent contractor relationships are a serious threat to the stability and resilience of the supply chain.

While we oppose efforts that would endanger the leased-on owner-operator model, we applaud Congress for enacting Section 23009 of the Infrastructure Investment and Jobs Act. We believe this provision will help eliminate predatory lease-to-own schemes that often force potential owner-operators into crippling debt. Section 23009 requires the Secretary, in consultation with the Secretary of Labor, to establish a Truck Leasing Task Force. The Task Force will examine common truck leasing arrangements, including the impact of inequitable leasing agreements on the industry, and resources to assist commercial motor vehicle drivers in assessing the financial impacts of leasing agreements.

Conclusion

The fortitude of the nation’s truck drivers has never faltered even in the face of many challenges, including the current global supply chain crisis. Unfortunately, most of what we are witnessing today is not a surprise to small-business truckers that have experienced supply chain dysfunction for decades. It’s not realistic to expect the supply chain will suddenly operate efficiently, especially when institutional barriers prevent drivers from being fully paid for their time. We support Congress’s efforts to address current and future supply chain challenges, but you must start with finally valuing and compensating professional drivers for all of their time.

Thank you,

A handwritten signature in black ink, appearing to read "Todd Spencer". The signature is fluid and cursive, with a long horizontal stroke at the end.

Todd Spencer
President & CEO
Owner-Operator Independent Drivers Association, Inc.