

The Wisconsin Trucking Industry Perspective

Prepared by the
Wisconsin Motor Carriers Association
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Members of the Wisconsin Motor Carriers Association (WMCA) will be in Washington on April 28 & 29 to meet with members of the Wisconsin Congressional delegation. Although each WMCA member will have his or her own legislative priorities, this paper outlines some of the current issues for the trucking industry in Wisconsin.

The WMCA is a non-profit trade association representing the interests of truck and motor coach owners within the state of Wisconsin. The association has 1,100 members, ranging from independent contractors with one truck to companies with thousands of trucks. The WMCA is affiliated with the American Trucking Associations (ATA) in Washington and works with the ATA on federal issues.

Overview: This is an extremely challenging time for the trucking industry. A thirty percent increase in Wisconsin truck registration fees plus a slow economy with depressed freight rates, have led to numerous companies facing an economic crisis. Over 3,000 motor carriers filed for bankruptcy in 2008, leading to a reduction of about 7% in trucking capacity. The industry has always had a very low profit margin, around 2%. With a sluggish economy and depressed freight rates, the reduced revenue makes it difficult to survive for the average trucker.

Government policies are important factors in the business decisions made by trucking company officials and we appreciate the chance to provide our perspective.

RECOMMENDATIONS

The WMCA also makes the following recommendations on specific matters. Background information on these issues is provided in the following pages.

Card Check - Oppose "The Employee Free Choice Act" (HR 1409 and S 560).

Energy Policies

- Increase domestic supply of crude oil and increase domestic refining capacity in an environmentally responsible manner.

- Supports one national diesel fuel standard and ensure that no state enacts a boutique diesel fuel mandate.
- Increase the transparency of the petroleum exchanges and establish reasonable position limits to prevent excessive speculation.

Truck Idling - Support full funding of the EPA's SmartWaySM Program.

Highway Reauthorization

- Maintain the firewalls that protect the Highway Trust Fund.
- Support an increase in the federal fuel tax (both diesel and gasoline) as the primary funding source for the highway program.
- Support a dedicated freight program – paid for by freight users – to address the congestion caused by highway bottlenecks and to fund corridor expansion.
- Oppose the lease or sale of existing highway assets to private parties.
- Oppose tolls on existing Interstates other than on existing HOV lanes.
- Provide grandfather rights for the conversion of Highway 41 to an Interstate.

Transportation of Hazardous Materials - Eliminate redundant security background checks and duplicative security credentials.

Independent Contractors - Oppose reclassifying independent contractors as employees.

Truck Safety Legislation

- Provide tax incentives for equipment that maximizes vehicle safety.
- Support a national clearinghouse for positive drug and alcohol test results.
- Support a national employer notification system with states fully participating.
- Require new motor carrier owners to satisfactorily complete a safety training class before commencing operation.

Hours of Service - Retain the 11 and 34-hour provisions to avoid significant disruptions.

UCR Program – Repeal the Unified Carrier Registration Agreement (UCRA) program.

BACKGROUND INFORMATION

IMPORTANCE OF TRUCKING - The trucking industry provides efficient and safe transportation service to customers throughout the country. Nearly every good consumed in the U.S. is put on a truck at some point.

Wisconsin's economy depends on trucks for freight movement. Trucks carry 83% of all manufactured freight transported in Wisconsin and over 77% of all Wisconsin communities are served exclusively by trucks.

TRUCKING INDUSTRY PROVIDES GOOD PAYING JOBS - The trucking industry in Wisconsin provides over 195,000 jobs, or one out of 14 of all jobs in the state. Total trucking wages paid in Wisconsin exceeded \$7.5 billion, with an average annual trucking industry salary of \$37,383. There are 579,000 trucking companies in the United States; 96% of them have 20 or fewer trucks.

TRUCKING PAYS SIGNIFICANT TAXES - Nationwide commercial trucks make up only 10.9% of all registered vehicles, but pay 35.7% of the federal and state highway user taxes or a total of \$16.5 billion in federal highway-user taxes and \$18.6 billion in state highway-user taxes.

Wisconsin now ranks in the top ten in the country for both fuel tax and registration fees paid by truckers. A typical tractor semi-trailer combination in Wisconsin now pays over \$1,600 more each year in state highway user fees, compared with the national average.

HEALTH OF THE ECONOMY IS MOST IMPORTANT ISSUE - **The most important issue to members of the WMCA is a healthy economy. If new homes are not being built, if consumers are not purchasing goods and services, if agricultural products are not grown, there is little freight for the trucking industry to haul.**

EMPLOYEE FREE CHOICE ACT

WMCA members strongly oppose HR 1409 and S 560, "The Employee Free Choice Act" (EFCA). It would substitute a mandatory card-check system – a system prone to intimidation, retaliation, and coercion – for what is now a democratic secret ballot election process. Under card check, an employee is handed a card, asked to sign and if more than 50% of the employees do so, the company must recognize the organizing union as the bargaining agent. There is no secret ballot election required.

The courts have repeatedly ruled that federally supervised private ballot elections are the fairest and most foolproof method to determine whether a union has the support of a majority of employees. The Fourth Circuit Court of Appeals wrote, "It would be difficult to imagine a more unreliable method of ascertaining the real wishes of employees than a 'card check.'" The Second Circuit ruled that "It is beyond dispute that the secret ballot election is a more accurate reflection of the employees' true desires than a check of authorization cards collected at the behest of a union organizer," while the Sixth Circuit stated that, "An election is the preferred method of determining the choice by employees of a collective bargaining representative."

The Coalition for a Democratic Workplace released a new national survey that shows increasing public opposition to the EFCA. When given a more detailed description of the proposal, nearly 9 out of 10 voters (86 percent) said the process by which workers would choose union representation should remain private.

Equally as troubling as eliminating secret ballots is another provision in the legislation that would require mandatory binding arbitration. Under this legislation, if a first contract is not agreed upon within 120 days, the Department of Labor would institute a two-year contract which would not require consent of either management or labor.

Today, the most common method for determining whether or not employees want a union to represent them is a private ballot election overseen by the National Labor Relations Board (NLRB). The NLRB provides detailed procedures that ensure a fair election where employees may cast their vote confidentially without peer pressure or coercion from unions or employers.

The best way to guarantee worker protection from coercion and intimidation is through the continued use of a federally supervised private ballot election so that personal decisions about whether to join a union remain private. **We ask for your help in protecting the rights of workers by opposing S. 560 and HR 1409.**

ENERGY POLICIES

The WMCA supports a number of measures to increase the nation's fuel supply. These recommendations include:

- Support an increase the domestic supply and an increase in domestic refining capacity of crude oil in an environmentally responsible manner.
- Support one national diesel fuel standard and encourages Congress to take steps to ensure that no state enacts a boutique diesel fuel mandate. These unique blends are typically produced by only a handful of refineries, which results in less competition, higher refining margins, and ultimately higher fuel prices.

Recognizing that reducing the Nation's consumption of diesel fuel will reduce our demand for petroleum, the WMCA supports federal funding for research and development in the areas of new engine technologies, aerodynamics, low-carbon fuels, fuel additives, lubricity, tires, batteries, hybrids, insulation, and rolling resistance specific to operations of medium- and heavy-duty trucks.

The WMCA also believes that excessive speculation is, indeed, part of the problem and recommends that Congress take steps to increase the transparency of the petroleum exchanges and establish reasonable position limits to prevent excessive speculation. At a minimum, Congress should require the Commodities Future Trading Commission (CFTC) to increase its oversight of the petroleum markets to the same extent that it regulates other commodity trading activities. Reasonable position limits should be imposed that ensure the ability of consumers of the underlying commodity to effectively hedge market risk while limiting excessive speculation from investors that have begun using the futures markets for asset accumulation.

REDUCTION IN TRUCK IDLING

The WMCA and the trucking industry are committed to reduce truck idling. The Wisconsin Department of Commerce has administered an innovative and effective \$2.0 million program that has allowed trucking companies to purchase idle reduction equipment. The program has been well-received by the trucking community and has helped to reduce fuel consumption and diesel emissions.

The WMCA encourages its members to join the U.S. EPA SmartWaySM Transport Partnership Program in order to achieve greater national gains in fuel efficiency and carbon reduction. The goal of the Program is to look beyond the fuel economy of individual vehicles and use new management techniques and technologies to increase the amount of cargo moved per gallon of fuel for the entire fleet. SmartWaySM partners are expected to save over a half billion gallons of fuel in 2008.

The WMCA and ATA also recommend federal tax incentives for the purchase of equipment that will reduce discretionary idling. The industry also supports initiatives to improve highway infrastructure, eliminate critical bottlenecks, and reduce overall congestion on the Nation's highways.

CLEAN AIR REQUIRMENTS

Members of the ATA and the WMCA are committed to the maximum practical reduction of all types of pollution from commercial truck operations, vehicle maintenance and other industry facilities. However, it should be kept in mind that **compliance with these policies has been extremely costly to the trucking industry.**

- In June 2006, the country began the transition to ultra low sulfur diesel fuel (ULSD). The new fuel standard reduced the amount of sulfur in on-road diesel by 97% (i.e., 15 ppm) and was necessary to support the next generation of emissions control equipment to be used on diesel trucks. The fact that ULSD has a slightly lower energy content (~1%) has translated to a reduction in miles per gallon for each truck that uses ULSD. In addition to the increased cost of

the new fuel, ULSD also has lower lubricity, which has necessitated the use of fuel additives to avoid the failure of critical engine components.

- EPA has set out an aggressive schedule for reducing emissions of nitrogen oxides and particulate matter. New diesel engine emissions standards went into effect in 2002. Far more stringent standards became effective 1-1-07 and additional requirements will be in place in 2010. Because the rule required new and vastly different engine technologies, the introduction of these new engines has impacted the cost of purchasing new equipment, fuel economy, routine vehicle maintenance, and operational costs. Further price increases are expected again in 2010.

In addition the industry is facing other requirements that may prove to be costly or very difficult to comply with. A few examples include:

- The “Waxman-Markey bill, the American Clean Energy and Security Act, would require that emissions be reduced 20% from 2005 levels by 2020. The bill also requires every region of the country to produce a quarter of its electricity from renewable sources like wind, solar and geothermal by 2025. The proposed “cap and trade” legislation” would set limits and allowances for the amount of carbon various industries could emit. The bill does not specify how tens of billions of dollars raised from pollution permits would be spent. If approved, this legislation could have a significant impact on trucking because of the increase in energy costs and because most shippers will probably be included.
- The industry continues to face a multitude of state and local environmental restrictions. For instance, the California Air Resources Board (CARB) has adopted engine idle reduction requirements for vehicles with heavy-duty engines built on or after January 1, 2008. These requirements have imposed very stringent rules governing truck idling in the state of California.

HIGHWAY REAUTHORIZATION

In Wisconsin, our members have watched with dismay as over \$1.3 billion have been transferred from the supposedly segregated state Transportation Fund over the last two budgets for non-transportation programs. The impact on the quality of transportation will also be felt for years because of the additional cost of debt service from that bonding.

Maintaining the integrity of the Highway Trust Fund should be a top Congressional priority. We applaud the budget committees in both the House and the Senate for recently voting to maintain the firewalls that protect the Highway Trust Fund and other transportation related funds. Consideration should also be given to providing incentives to encourage states to maintain that integrity or even sanctions if they don't utilize the highway user revenues for their intended purpose.

The ATA supports increases in the federal fuel tax (both diesel and gasoline) as the primary funding source for the highway program. Because of evolving changes in fuel economy, energy usage and potential alternative energy sources, consideration will have to be given – over time – to a replacement taxing scheme. Any replacement

should adhere to the following conditions that currently make the fuel tax the preferred taxing scheme:

- Based on readily verifiable measures of highway and vehicle use;
- Limit the opportunities for evasion;
- Be inexpensive and simple for government to administer;
- Collect and enforce without imposing excessive administration and record keeping burdens;
- Differences in rates among vehicle classes should be reasonable.

The industry opposes the lease or sale of existing highway assets to private parties. It is patently unfair to highway users – who have paid for the construction and maintenance of these facilities through user fees - to transfer ownership of highways, roads and bridges to for-profit corporations. Additionally, ATA supports federal guidelines that maintain the integrity of the current national highway network and establish terms and conditions for public private partnerships that increase system capacity while protecting the national public interest.

The federal government, in consultation with state and local government and private sector stakeholders, must tie federal funding to the fulfillment of broad national goals in order to ensure that federal investments are consistent with national priorities. Consequently, ATA supports the recommendation of the National Surface Transportation Policy and Revenue Study Commission calling for the development of performance standards which ensure that projects are completed in a timely manner, address national congestion and safety goals and address the maintenance needs of highways and bridges on critical corridors.

The WMCA also makes the following recommendations relative to the Federal Highway Reauthorization process:

- Oppose tolls on existing Interstates other than on existing HOV lanes.
- Support the establishment of a dedicated freight program – paid for by freight users – to address the congestion caused by highway bottlenecks and to fund corridor expansion or network routes designed to address long-term needs.
- Provide grandfather rights for the conversion of Highway 41 to an Interstate. Without such grandfathering, many trucking companies would lose their ability to run permitted loads on that route.
- Limit or eliminate earmarks and make the Reauthorization Bill as transparent and as accessible for public review as possible.

TRANSPORTATION OF HAZARDOUS MATERIALS

The trucking industry supports a risk-based approach to background checks of drivers that transport hazardous materials. This risk-based approach would require the Department of Homeland Security to work with the Department of Transportation to identify a subset of hazardous materials that are “security sensitive” (*i.e.*, capable of being used as a weapon of mass destruction). Individuals that transport security sensitive hazardous materials would undergo a fingerprint-based background check and obtain a Transportation Worker Identification Credential (TWIC) as evidence of their fitness to transport these materials. The Transportation Security Administration (TSA) should continue to perform name-based background checks for drivers seeking to obtain or renew their hazardous materials endorsements to their commercial driver’s licenses. Redundant security background checks and duplicative security credentials, which are a significant financial burden upon drivers, must be eliminated to ensure that the TWIC is the only security credential required for transportation workers.

INDEPENDENT CONTRACTORS

Independent contractors or owner-operators have long been an important component of virtually every segment of the trucking industry, including but not limited to long-haul trucking, household goods moving, and intermodal operations. It is estimated that more than 500,000 independent contractors work in the trucking industry.

For motor carriers, owner-operators provide a valuable service. Owner-operators are seasoned business persons with truck driving experience who are highly skilled and motivated. The availability of such owner-operators and their equipment provides flexibility to meet fluctuations in demand for trucking services. For owner-operators, the trucking industry offers a unique opportunity for individuals to begin their own businesses. Start-up costs in the trucking industry are within reason and reach of many small business entrepreneurs.

Legislation authored in the 110th Congress would have eroded the protections afforded employers against attempts by the Internal Revenue Service to reclassify independent contractors as employees. Section 530 was enacted in 1978 by Congress to eliminate what was perceived as over zealous IRS reclassification efforts. Section 530’s so-called safe harbor provisions prevent reclassification generally if an employer has one of the designated reasonable bases for its independent contractor treatment, including past industry practice.

Over the years, Section 530 has been very valuable to trucking and other industries in eliminating expensive and contentious efforts by the IRS to reclassify contractors. Last years legislation would have substantially eliminated Section 530 protection by allowing prospective reclassification by the IRS and by eliminating industry practice as a safe harbor. Taxpayers would be put back into the position of having to defend their independent contractor treatment in costly, fact-intensive litigation instead of simply invoking the protections of Section 530 as they are now able to do. The elimination of the industry-practice reasonable basis is also especially egregious because it strikes most heavily at industries like trucking where independent contractor participation is long standing and well-accepted. That legislation would create administrative nightmares for employers contracting with independent contractors.

The legitimacy of independent contractor status in the trucking industry has been widely recognized since the industry's inception. Opening the validity of that status to specious IRS investigations and establishing onerous procedures inviting independent contractor discord would seriously undermine the efficiencies and opportunities the trucking industry has long enjoyed via its independent contractor business partners. Consequently, we urge Congress to reject any attempt to resurrect those proposals that will harm not only the trucking industry, but also the American economy.

HOURS OF SERVICE

In August 2005, the Department of Transportation issued new Hours of Service (HOS) rules that increased the amount of rest time between shifts by 2 hours (8 to 10 hours) and decreased the maximum on-duty time by 1 hour (15 to 14 hours). Additionally, the 2005 Rule required that rest breaks would count against the 14 hour on-duty time, thus eliminating the ability of drivers to "log-off" for those breaks. The rule also allowed 1 additional hour of driving (10 to 11 hours) and provided the driver with the flexibility to "restart" their weekly on-duty time limit after taking at least 34 consecutive hours off-duty.

After numerous court challenges (the latest in March of this year), the issue is not totally resolved. The ATA, the Federal Motor Carrier Safety Administration (FMCSA), and shipper interests have all filed briefs supporting the 11 and 34-hour provisions.

WMCA members have adjusted to the 2005 rules and would like to see that rule remain in effect. We believe that the 2005 Hours of Service rule is a responsible and balanced approach toward promoting driver alertness and overall highway safety. Safety has improved significantly under these HOS rules. Continual changes in the HOS rules will only cause confusion and misunderstanding among the truck driver population and law enforcement personnel about what rules apply.

TRUCK SAFETY

Wisconsin trucking has an excellent safety record. According to the Wisconsin Department of Transportation's 2008 Size & Weight Study, the crash rates for other vehicles are significantly higher than the crash rate for large trucks. That report also pointed out that large truck crash rates in Wisconsin have declined by roughly 40% over the past decade.

WMCA members feel that Congress should provide tax incentives for trucking companies that spend extra money on their equipment in order to install safety equipment that will maximize the vehicle's safety.

In Wisconsin the trucking industry enjoys an outstanding working relationship with the Wisconsin State Patrol and the Federal Motor Carrier Safety Administration (FMCSA) and it would support additional resources for these two organizations and the Motor Carrier Safety Assistance Program (MCSAP).

The WMCA makes a number of recommendations relative to truck safety for the Highway Reauthorization bill:

- We support the creation of a national clearinghouse for positive drug and alcohol test results. Prior to hiring an employee, employers would be required to check with the clearinghouse for an applicant's failed tests and previous refusals to test.
- We support a mandatory national employer notification system and recommends development of a standard protocol specifying type, format, and frequency of information required to be transmitted from the states. Violations/offenses to be reported to the states should also be standardized. States should be required to fully participate in this national system and provide information in a timely fashion. The retention period for violations/offenses on a driver's motor vehicle record should be left to the state's discretion.
- The WMCA recommends new motor carrier owners, both interstate and intrastate, be required to satisfactorily complete a safety training class before commencing operation. Safety training curricula should meet uniform standards nationwide. We also recommend that the Federal Motor Carrier Safety Administration (FMCSA) safety inspection be conducted at 6 months rather than at the current 18 months. Finally, we recommend requiring new carriers to attach proof of training to their application for a DOT number.
- WMCA supports tax incentives to encourage motor carriers to voluntarily adopt advanced safety technologies, including collision avoidance systems, lane departure warning systems, vehicle stability systems, brake stroke monitors, electronic on-board recorders (EOBRs), and automated transmissions/automated manual transmissions.

ADEQUATE TRUCK PARKING

There continues to be a shortage of adequate trucking parking in this country. We encourage Congress to make available adequate funding for additional truck parking and to encourage innovative public-private partnerships for truck parking projects.

UNIFIED CARRIER REGISTRATION AGREEMENT

The Unified Carrier Registration Agreement (UCRA) program became effective in 2007, replacing the earlier Single State Registration System (SSRS). It includes fees that are imposed on interstate motor carriers according to the number of vehicles they operate.

The program is a relic of the days when motor carriers were subject to strict economic regulation at both the federal and state levels. The time has come to eliminate the UCRA program and replace it with direct federal payments to the states through the existing federal Motor Carrier Safety Assistance Program (MCSAP). Total UCRA revenues amount to only \$100 million per year, an amount that could be offset by an increase in the existing federal diesel fuel tax of a fraction of a penny per gallon. The repeal of UCRA program would replace an unwieldy and increasingly inequitable system with a simpler, more efficient, and less controversial source of state revenues for highway safety and enforcement.