

The Wisconsin Trucking Industry Perspective

Members of the Wisconsin Motor Carriers Association (WMCA) went to Washington on April 28 & 29, 2010 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.

Overview: The most important issue to members of the WMCA has always been a healthy economy. If companies are not manufacturing products and if consumers are not purchasing goods and services, there is little freight for the trucking industry to haul.

This is an extremely challenging time for the trucking industry. A slow economy with depressed freight rates have led to numerous companies facing an economic crisis. For all of 2009, the amount of freight hauled by the trucking industry was down 8.3%. That's the largest annual decrease since a 12.3% plunge in 1982.

According to Avondale Partners, 3,065 motor freight carriers failed in 2008, which was 54% higher than in 2007. In the first six months of 2009, another 850 trucking companies went out of business.

The industry has always had a very low profit margin, around 2%. Many in the industry have had to make drastic cuts in spending over the last two years. Even with lower overhead expenses, the depressed freight rates have made it difficult to survive for the average trucker.

Our members also worry about the future of the economy. It is projected that the national debt will double in just four years from 2008 to \$11.5 trillion in 2012. Unemployment continues at almost 10%. The new budget provides for more than \$2 trillion in new taxes over the next decade, including taxes on small businesses that may make it difficult to hire new workers.

The WMCA members coming to Washington look forward to discussing the impact that the economy has had on their operations relative to the availability of capital and their ability to generate new jobs.

RECOMMENDATIONS - The WMCA also makes the following recommendations on specific matters.

Highway Reauthorization

- Support an increase in the federal fuel tax (both diesel and gasoline) as the primary funding source for the highway program and dedicate those funds solely to the Highway Trust Fund.
- Oppose the lease or sale of existing highway assets to private parties;
- Oppose the imposition of tolls on existing Interstates - except HOV lanes;
- Support a dedicated freight program to address traffic congestion.

Highway Safety Measures

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

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

Independent Contractors - Oppose H.R. 3408 and S. 2882 relative to reclassifying independent contractors as employees.

Climate Change

- Reduce truck idling through tax incentives for new technology;
- Support full funding of the EPA’s SmartWaySM Program;
- Eliminate critical bottlenecks and reduce overall traffic congestion;
- Oppose a carbon tax that will raise the price of fuel without any improvements in the national highway system.

Bonds for Brokers – Support an increase in the current bond level of \$10,000 for a transportation broker which was set in 1977.

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

Petroleum Market Transparency - Increase the transparency of the petroleum exchanges and establish reasonable position limits to prevent excessive speculation.

BACKGROUND INFORMATION

THE WMCA - 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 1,050 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.

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. The trucking industry hauled 68.8% of all the tons of freight transported in the United States in 2008. The trucking industry was an astounding \$660.3 billion industry in that same year, representing 83.1 percent of the nation's freight bill.

Trucking is the vital transportation link not only for domestic goods, but also for international products. Imported goods from overseas have to be moved multiple times from port to final destination.

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 is a major employer in the United States. Across all industries, 7.3 million people were employed in trucking-related jobs in 2008. Nearly 3.4 million of these workers were truck drivers.

There were 590,000 carriers (for-hire, private fleets, and other interstate motor carriers) in the U.S. in November of 2009; 96% of them have 20 or fewer trucks and nearly 88% operating six trucks or less.

In Wisconsin the industry 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.

TRUCKING PAYS SIGNIFICANT TAXES - Nationwide commercial trucks make up only 12.2% of all registered vehicles, but pay 36% of the federal and state highway user taxes or a total of \$17.8 billion in federal highway-user taxes and \$20.2 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.

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 three 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.

Financing - The Wisconsin Motor Carriers Association supports an increase in the federal fuel tax (both diesel and gasoline) as the primary funding source for the highway program. The WMCA will support an increase in the fuel tax to meet a refocused program objective. We believe that user fees should meet the following criteria:

- Minimize opportunity for evasion;
- Inexpensive and simple for government to administer, collect and enforce without imposing excessive administrative and record keeping burdens on highway users;
- Based chiefly on readily verifiable measure of highway and vehicle use;
- Reasonably uniform in application among classes of highway users; and
- Not create impediments to interstate commerce.

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. However, 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; not provide opportunities for evasion; be inexpensive and simple for government to administer, collect and enforce without imposing excessive administration and record keeping burdens; and differences in rates among vehicle classes should be reasonable.

Tolls And Privatization of Highway Assets - The WMCA 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, the WMCA 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. Finally, we oppose the imposition of tolls on existing Interstates other than on existing HOV lanes.

Dedicated Freight Program - WMCA supports 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. In short, freight dollars going to freight projects.

HIGHWAY SAFETY MEASURES IN REAUTHORIZATION

Drug and Alcohol Testing Clearinghouse – WMCA members 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 S. 1113 (*The Safe Roads Act of 2009*) introduced by Senator Mark Pryor (D-AR) in 2009 (S. 1113). The legislation would create a U.S. Department of Transportation National Drug Clearinghouse database to store commercial motor vehicle operators' positive drug and alcohol tests results and records of refusals to take the tests. S. 1113 would authorize \$5 million annually for the FMCSA to develop and deploy the national clearinghouse; require medical review officers, employers and other service agents to report positive results from drug and alcohol tests to the FMCSA; require employers to check the database for prospective employees' records prior to hiring; and protect employees' privacy and define employees' rights to challenge information in the database.

National Employer Notification System – The Wisconsin DOT has offered an employer notification system for a fee that has been extremely effective in notifying employers of violations and offenses. The WMCA would like to see 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.

New Carrier Training – We recommend 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. Further, the WMCA recommends requiring new carriers to attach proof of training to their application for a DOT number.

Tax Incentives for Advanced Safety Technologies – The 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.

EMPLOYEE FREE CHOICE ACT

WMCA members strongly oppose HR 1409 and S 560, “The Employee Free Choice Act” (EFCA). These bills would waive secret ballot elections after a majority of workers signed cards authorizing a union and require the National Labor Relations Board to certify the union as the sole representative for those workers. Under a card check campaign an employee would typically be given a union authorization card by a union organizer and asked right then and there to indicate whether he or she supports the union. These card check campaigns do not include important protections provided for in law and, as has been demonstrated countless times in actual organizing campaigns, card checks are often accompanied by stories of union coercion, intimidation, and abuse.

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.

Virtually the entire business community is opposed to the legislation. ATA is part of a broad based coalition – the Coalition for a Democratic Workplace – that opposes card check. 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 Coalition for a Democratic Workplace released a 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.

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. In short, it allows owner-operators to live out their own version of the American dream.

Rep. James McDermott (D-WA) introduced H.R. 3408 which would eliminate the safe harbor provision altogether except when an IRS audit has been previously conducted. 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. Senator Kerry (D-MA) also introduced similar legislation (S. 2882).

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.

In summary, 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.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE CHANGE

Reductions in Truck Idling – The WMCA recommends pursuing a federal solution that reduces discretionary idling through incentives for new technology and reduces non-discretionary idling through highway infrastructure improvements. Wisconsin has a very successful grant program through the Department of Commerce that enables truck operators to purchase diesel idle reduction equipment. The association has also been very involved in developing a statewide diesel idling statute that would reduce non-essential idling.

Fuel Economy Standards – We support setting technologically feasible national fuel economy standards for medium- and heavy-duty trucks that reduce fuel consumption and do not compromise the performance of the vehicles.

Fuel Efficiency Through SmartWaySM – The WMCA is a member of the U.S. EPA SmartWaySM Transport Partnership Program with the goal of achieving greater national gains in fuel efficiency and carbon reduction. The Program looks beyond the fuel economy of individual vehicles and uses 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.

Infrastructure Improvements – We support initiatives to improve highway infrastructure, eliminate critical bottlenecks, and reduce overall congestion on the Nation's highways.

However, the association does not support a carbon tax that will raise the price of fuel without any improvements in the national highway system. Like the federal fuel tax, any new user fees placed on transportation fuels should be dedicated solely to the Highway Trust Fund and invested with other funds under a multi-year highway authorization bill.

As Congress considers carbon tax legislation, we hope it will work to develop climate and energy legislation that benefits the environment and the economy. It is important to

fully understand the effects the tax will have on all sectors of the economy and address policies that could unintentionally hinder our nation's growth.

BONDS FOR BROKERS

The current bond level of \$10,000 for a broker was established in 1977. The industry has changed significantly since then and clearly the \$10,000 bond requirement is outdated and inadequate. During the last two years the stagnant economy has precipitated numerous examples of brokers leaving trucking companies and owner operators without proper payment for their services and the inadequate level of bonding provided no relief in these situations.

Years ago, the Owner-Operators Independent Drivers Association (OOIDA) petitioned the U.S. DOT to raise the bond required for transportation brokers from \$10,000 to at least \$300,000. OOIDA argued at time that the \$10,000 was simply inadequate and that truckers are not able to effectively track the credit worthiness of every broker with whom they deal. The ATA is on record supporting an increase to \$250,000. The WMCA members agree that the bond should definitely be increased and we encourage you to address this issue.

The \$10,000 requirement is so low that it is easy for "fly-by-night" freight brokers to acquire the bond, enter into shipper/trucker agreements, and then simply take off with the money only to reappear somewhere else to work the scam again.

SECURITY BACKGROUND CHECKS

Duplicative background checks and redundant credentials have imposed an unacceptable burden upon drivers that transport hazardous materials. Drivers that transport hazardous materials must submit to a fingerprint-based background check to obtain the hazardous materials endorsement to their commercial driver's license at a cost of approximately \$100. Many of these drivers also access port facilities and therefore must obtain a Transportation Worker Identification Credential (TWIC) at a cost of \$105.25 for the second credential. The background checks for both of these credentials are identical.

The Wisconsin Motor Carriers Association supports the risk-based approach to background checks of drivers that transport hazardous materials that is contained in the SAFE TRUCKERS ACT, which passed the House of Representatives as part of the TSA Reauthorization Act, H.R. 2200:

- Recognizes that not all hazardous materials are security sensitive -- paint and food coloring are not weapons of mass destruction. Requires DHS to work with DOT to identify a list of security sensitive hazardous materials (SSHM) that are truly weaponizable.
- Requires individuals that transport SSHM to undergo a fingerprint-based background check and obtain a TWIC as evidence of their fitness to transport these hazardous materials of concern.
- Ensures that the TWIC is the only security credential required for transportation workers and preempts other state and local background checks and credentials when applied to drivers transporting hazardous materials.

Adoption of the Safe Truckers Act as part of TSA Reauthorization will eliminate that cost to America's truck drivers, help preserve scarce government resources, and maintain the highest standards of security.

PETROLEUM MARKET TRANSPARENCY

The Wisconsin Motor Carriers Association believes that excessive speculation is a 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.