

The Wisconsin Trucking Industry Perspective

April 8, 2011

Members of the Wisconsin Motor Carriers Association (WMCA) will be in Washington on April 13 & 14, 2011 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 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.

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 three years. Even with lower overhead expenses, the depressed freight rates have made it difficult to survive for the average trucker.

The WMCA members coming to Washington look forward to discussing the economy and other issues that have an impact on their operations and their ability to generate new jobs.

RECOMMENDATIONS - The WMCA makes the following recommendations.

Hours of Service - Oppose the FMCSA proposed changes in the Hours of Service regulations.

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

Federal Deficit - Support cuts in spending to help alleviate the federal deficit.

Highway Reauthorization

- Dedicate a greater percentage of funds to basic maintenance and expansion of the National Highway System (NHS).
- Address congestion on critical highway freight corridors.
- Establish a public interest standard and conditions for public-private partnerships, and limit the use of tolls.
- Additional revenues for transportation should be collected through the fuel tax (rather than tolls) because it is: easy and inexpensive to collect; has a low evasion rate; and is tied to highway use.

Safety Measures

- Support the creation of a national clearinghouse for positive drug and alcohol test results.
- Support a mandatory national employer notification system.

Electronic Logging Devices - Support regulations requiring the use of electronic logging devices (ELD) for documenting compliance with hours-of-service (HOS) rules. Oppose the DOT purchasing these electronic devices for Mexican trucks entering this country.

Hazardous Materials Credentials - Support legislation similar to the 2009 Safe Trucker bill that would streamline hazardous materials credentials.

Independent Contractors - Reject attempts such as the Plan/Prevent/Protect proposal by the Department of Labor that would erode the long-established business model utilizing independent contractors.

Excessive Regulations - Support efforts to eliminate or reduce excessive and burdensome regulations.

Domestic Fuel Supplies - Increase the domestic fuel supply.

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 1,090 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 89.9 percent of total manufactured tonnage in the state in 2009 or 486,290 tons per day. Over 77 percent of Wisconsin's communities depend exclusively on trucks to move their goods.

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.

TRUCKING INDUSTRY PROVIDES GOOD PAYING JOBS - The trucking industry is a major employer in the United States. The trucking industry in Wisconsin provides over 161,000 jobs, or one out of 15 in the state. Total trucking industry

wages paid in Wisconsin in 2008 exceeded \$6.6 billion, with an average annual trucking industry salary of \$40,996.

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. There are over 22,000 trucking companies located in Wisconsin, most of them small, locally owned businesses. These companies are served by a wide range of supporting businesses both large and small.

TRUCKING PAYS SIGNIFICANT TAXES – The trucking industry in Wisconsin pays approximately \$759.2 million in federal and state roadway taxes and fees. The industry paid 36 percent of all taxes and fees owed by Wisconsin motorists, despite trucks representing only 19 percent of vehicle miles traveled in the state.

In 2009, a typical five-axle tractor-semitrailer combination paid \$9,441 in state highway user fees and taxes in addition to \$8,959 in federal user fees and taxes. These taxes were over and above the typical taxes paid by businesses in Wisconsin. It should be noted that Wisconsin now ranks in the top ten in the country for both fuel tax and registration fees paid by truckers.

HOURS OF SERVICE REGULATIONS

We would like to thank the members of the Wisconsin Congressional delegation that signed a letter to DOT Secretary Ray LaHood, expressing concerns about the proposed changes to the Hours of Service (HOS) regulations. We would like to highlight a few of the points that were made in the letter from Senators:

“We are concerned about the Department of Transportation's proposed changes to the hours of service rules for commercial truck drivers. The proposed changes, if finalized, would have a substantially negative impact on highway transportation safety and the U.S. economy.

“Since being implemented in 2003, the current hours in service rules have allowed the trucking industry to achieve unprecedented improvements in safety performance and productivity. During this time, both the number and rate of fatal and injury accidents involving large trucks have declined to their lowest levels in recorded history, even as truck mileage increased by almost 10 billion miles.”

According to FMCSA's website, between 2006 (earliest year available) and 2009:

- The number of driving time violations decreased 29% and Out-of-Service (OOS) violations decreased 23%.
- The number of on-duty limit violations decreased 26% and OOS violations decreased 14%.
- The number of workweek limit violations and OOS violations both decreased 20%.

- The number of 34-hour restart violations decreased 41% and OOS violations decreased 63%.

The Wisconsin Motor Carriers Association has filed comments with the Federal Motor Carrier Safety Administration. The WMCA concluded its comments with the following statement:

“Given the apparent lack of data by FMCSA’s own admission to justify its proposal for sweeping changes to the HOS provisions as opposed to the consistently improving highway safety record as evidenced by the reliable statistical evidence, we have great difficulty in finding a need to change the HOS provisions as proposed. There does not appear to be any evidence that highway safety will be improved by the changes and such changes could have a negative impact. We are reasonably sure the changes will have a negative impact on the industry’s productivity and on a truck driver’s ability to earn a decent living.”

OUTLOOK ON THE ECONOMY

For the trucking industry, there are signs that the economy is slowly improving. This is probably reflective of some improvements in the overall economy and a corresponding increase in freight demands. It may also be attributed to the fact that capacity has been diminished and that driver availability is tightening.

Consider for example:

- The total number of class 8 trucks sold in the fourth quarter of 2010 was 30,070, 12.1% higher than sales in the third quarter of the year. Compared with a year earlier, sales in the fourth quarter of 2010 were up 4.1%. After plummeting nearly 30 percent in 2009, class 8 truck sales climbed 12 percent during 2010.
- ATA’s advance seasonally adjusted For-Hire Truck Tonnage Index dropped 2.7 percent in February, following a 3.5 percent surge in January. Compared with February 2010, tonnage climbed 4.4 percent, which was the fifteenth consecutive year-over-year gain.

However, our optimism for the future of the economy is tempered by higher fuel prices and by a number of uncertainties.

Price of Fuel - The high price of diesel fuel continues to frustrate our members. On April 4, 2011, the national average price of retail on-highway diesel rose 4.4 cents to \$3.976 per gallon. This compares to a retail price of \$3.144 per gallon during the fourth quarter of 2010. The average price during the fourth quarter of 2009 was \$2.741 per gallon. High diesel fuel prices are even more difficult in Wisconsin because the state diesel fuel tax rate is 32.9 cents per gallon, one of the highest in the country.

While fuel surcharges allow many fleets to pass through the increases, history shows that many fleets continue to lose money when prices rise. Many smaller fleets do not get surcharges on some freight (particularly backhauls) and empty miles and idling are often cited as areas where the higher prices are never recouped.

For many motor carriers, fuel is now equal to labor as the highest expense; and for some carriers, fuel has likely surpassed labor as their largest expense. In addition, the higher diesel fuel prices have effects in other areas such as engine oil and tires.

The WMCA 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 limits to prevent excessive speculation.

International Uncertainties – The uncertainties in the Middle East and the impact of the tsunami in Japan make it difficult to project the future of the economy.

Deficit – The large federal deficit and the ongoing trade deficit make many of our members very nervous. The WMCA supports making drastic cuts in federal spending, even if that adversely affects programs favored by the industry.

Regulatory Uncertainties – The threat of additional burdensome regulations by administrative agencies such as the Department of Labor and The Environmental Protection Agency could have a dampening effect on economic recovery.

TRANSPORTATION REAUTHORIZATION PRIORITIES

The WMCA supports a federal surface transportation program that makes our highways safer, reduces fossil fuel use and lowers emissions. In order to meet these goals, the next highway reauthorization bill should address highway congestion. Specifically we would like the bill to:

- Dedicate a greater percentage of funds to basic maintenance and expansion of our most critical highway corridors, focusing on the National Highway System (NHS). Environmental requirements for NHS projects must be streamlined. The NHS comprises just four percent of total road miles, yet carries 45% of all traffic and 75% of truck traffic.
- Create a new initiative to address congestion on critical highway freight corridors. The program would fund those projects identified as providing congestion relief at bottlenecks on corridors which have the most significant impacts on trucking mobility and on the U.S. economy.
- Establish a public interest standard and conditions for public-private partnerships, and limit the use of tolls. Eliminate or curtail State and local government authority to toll existing Interstate Highway lanes or impose congestion pricing on trucks where no toll-free alternative is available.
- Support 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, and electronic on-board recorders (EOBRs).

TOLLS

Because of important measures adopted by Congress and by state and federal taxation agencies, fuel tax evasion is relatively low. Tolls, on the other hand, are often easily evaded, usually by motorists using alternative, less safe routes that were not built to handle the level and type of traffic experienced due to toll evasion. There are significant capital and operating costs associated with collecting tolls, while fuel taxes are relatively inexpensive to administer. While state fuel tax collection costs are one to two percent of revenue, on major toll roads, collection expenses constitute one-quarter to one-third of revenue. Even on newer toll roads which utilize the latest technologies, collection costs are significant compared with the fuel tax, ranging between 12% and 20% of revenue.

TRANSPORTATION FUNDING

Many trucking companies would be willing to support an increase in their highway user fee payments if the funds are used on highways and bridges and if those expenditures would reduce congestion. The source of revenue should:

- Be easy and inexpensive to pay and collect;
- Have a low evasion rate;
- Be tied to highway use; and
- Not create impediments to interstate commerce.

The ATA believes that fuel taxes meet all of these criteria. Currently, the federal tax on diesel generates approximately \$400 million per year for each penny collected, while each penny of a gasoline tax produces around \$1.3 billion. We recognize that over the long term, due to changes in vehicle technologies, the tax on diesel and gasoline may not be a viable source of revenue. ATA is willing to consider alternatives that meet the criteria described above.

INDUSTRY HAS OUTSTANDING SAFETY RECORD

Highway safety continues to be a top priority of the Wisconsin Motor Carriers Association. The tragedy of traffic fatalities hits home for everyone in trucking because the highways are our workplace. The trucking industry in Wisconsin will continue to work at reducing accidents, but at the same time, it is proud of an excellent safety record. Consider, for instance:

- According to the National Highway Traffic Safety Administration (NHTSA), the truck-involved fatality rate in 2008 declined 12.3 percent. This decline marks the largest year-to-year drop ever and the fifth consecutive year the fatality rate has improved.
- Since 2005, the truck-involved fatality rate has come down more than 20 percent and is at its lowest since the U.S. Department of Transportation began keeping those records in 1975. The fatality rate has declined more than 66 percent since 1975.

Members of the WMCA recommend the following measures that we feel would help to improve highway safety among commercial motor vehicle operators.

- Drug and Alcohol Testing Clearinghouse - The WMCA supports 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.

- National Employer Notification System – The WMCA also supports a mandatory national employer notification system and recommends development of a standard protocol. States should be required to fully participate in this national system and provide information in a timely fashion.

ELECTRONIC LOGGING DEVICES

The WMCA supports federal laws and regulations requiring the use of electronic logging devices (ELD) for documenting compliance with hours-of-service (HOS) rules. In developing such a law or regulation, the WMCA believes the following issues should be addressed.

- There should be sound evidence linking ELD use to enhanced fleet safety performance.
- ELDs requirements should be based on the minimal, functional, and performance specifications necessary to accurately record and report hours-of-service compliance and assure reliability and utility of operation.
- Except for HOS compliance data, statutory protections should be afforded to motor carriers pertaining to the control, ownership and admissibility of data derived from ELDs, and to assure the privacy rights of drivers.
- Any ELD regulation must address the operational diversity of the trucking industry, continue existing exceptions to the record of duty status, and consider additional exemptions that balance compliance and the evolving industry diversity.
- Motor carriers using compliant ELDs should be relieved of the burden of retaining supporting documents for verification of driving time.

The WMCA does not support the purchase of electronic on-board recorders by the federal DOT for Mexican trucks entering this country.

HAZARDOUS MATERIALS CREDENTIALS

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 drivers' 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 SAFE Trucker Act passed the House in June 2009, but did not pass the Senate. Legislation has not yet been introduced in the 112th Congress. Major provisions of that bill would:

- Recognize that not all hazardous materials are security sensitive -- paint and food coloring are not weapons of mass destruction.

- Require DHS to work with DOT to identify a list of security sensitive hazardous materials (SSHM).
- Require 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.
- Ensure 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.

INDEPENDENT CONTRACTORS

The trucking industry services the nation's needs very efficiently and part of that efficiency is based upon its ability to utilize the independent contractors. Owner-operators embody the American small business, entrepreneurial spirit that emphasizes productivity and flexibility. Intrusive regulatory programs like the Department of Labor's Plan/Prevent/Protect could erode this long-established business model and would have a negative effect on the trucking industry and on the national economy.

The DOL proposal would require a business to:

- Perform written analysis of the worker's status applying the Fair Labor Standards Act's "economic realities test";
- Disclose the analysis to the affected worker;
- Keep a record of the analysis in its files for review should an investigator seek this information.

Our members feel that this requirement is an invitation to litigation and an administrative nightmare. A motor carrier's legal analysis of contractor's status based on the economic-realities test is sure to be misunderstood by at least a small percentage of those reviewing it and would undoubtedly lead to baseless challenges and create virtually ongoing administrative turmoil and uncertainty.

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.

TRUCKS DELIVER A CLEANER TOMORROW

The trucking industry continues to improve energy and environmental efficiency even while increasing the number of miles driven. In 2008 combination trucks consumed nearly 45 billion fewer gallons of fuel than passenger vehicles in the U.S. and accounted for just 16 percent of the total fuel consumed.

Through advancements in engine technology and fuel refinements, new diesel truck engines produce 98 percent fewer particulate matter (PM) and nitrogen oxides (NOx)

emissions than a similar engine manufactured prior to 1990. Sulfur emissions from diesel engines have also been reduced by 97 percent since 1999.

Through the U.S. EPA's SmartWay Transport Partnership, the trucking industry is working with government and businesses to quantify greenhouse gas emissions and take steps to reduce them.

REPEAL OF 1099 REPORTING

The WMCA is very pleased that Congress has repealed the burdensome regulations on 1099 reporting. On April 5, the U.S. Senate passed a bill that fully repeals the provisions contained in last year's federal health care law that require businesses to issue IRS Forms 1099 to any supplier, whether of goods or services, with which they spend over \$600 during a tax year. These provisions would have taken effect for payments made in 2012. The House of Representatives passed an identical bill (H.R. 4) earlier, so the legislation now goes to the President.

The law currently does not require reporting of payments made to corporations or those made for goods, as opposed to services. The expanded 1099 reporting would have been enormously burdensome for all business, but would have hit motor carriers, which are mostly small, highly mobile businesses with lots of suppliers, especially hard.

THE HIGH COST OF REGULATIONS

The Wisconsin Motor Carriers Association is concerned with the extremely high cost of complying with government regulations. If we are to emerge from recession, businesses will need to become more efficient without the burden of unnecessary and costly regulations.

The April, 2011 edition of *The Thinker* magazine cited a 2008 review by the Competitive Enterprise Institute that indicated that the cost of government regulations to businesses and, ultimately, to consumers was \$1 trillion or more annually. That report claimed that regulations added 70,000 pages to the *Federal Register* and costs almost matched all corporate profits in 2007 and were seven times higher than the 2007 budget deficit. That study concluded that "Federal environmental, safety and health, and economic regulations cost hundreds of billions of dollars every year over and above the costs of official federal outlays."

Legislation isn't the only regulatory problem source. Regulation by federal agencies plays a huge hand in the development of burdensome regulations. Cap-and-trade legislation may have failed in the Congress, but the EPA seems intent to implement some of those provisions by regulatory means.

The trucking industry is one of the most heavily regulated industries in the country. Some examples of excessive regulations include the following:

Cargo Tank Wetlines - According to DOT's hazmat incident database - between 1999 and 2009 - there have been 8 incidents that have resulted in a fatality or injury that are attributable to wetlines releases. By contrast, more than 50,000 cargo tank shipments of flammable liquids occur each day. These government

statistics indicate that the risk of a fatal wetlines incident is approximately 1 in 30,000,000. Notwithstanding this incredibly low incident rate, PHMSA has proposed a wetlines regulation that overstates the benefits and dramatically underestimates the cost to the trucking industry.

State Hazmat Transportation Permits - There are more than 40 separate state hazardous materials permitting programs. Compliance with these separate programs is an enormous administrative burden for the interstate trucking industry. While some states actually conduct motor carrier fitness reviews, most simply treat this permitting authority as a paperwork exercise that enables them to raise revenue from interstate motor carriers that are based outside of the states' jurisdiction. Congress should preempt state-based hazardous materials transportation permitting programs.

Excessive DOT Regulations – Earlier this month, the ATA submitted comments to the DOT relative to numerous regulations that ATA felt were burdensome or outdated that impact motor carriers. Many of their suggestions related to regulations dealing with hazardous materials as discussed in another section of this paper. However, ATA also suggested modified FMCSA regulations dealing with such things as submitting blind specimens for drug testing and the requirement for a driver that is convicted of violating non-parking related traffic laws to notify his/her CDL-issuing state in writing of the violation.

ENERGY POLICIES

The WMCA is puzzled by the administration's willingness to loan the Brazilian oil company \$2 billion to develop its offshore oil resources, which would produce jobs for Brazilians and boost Brazil's economy. At the same time, however, we are prohibiting the exploration of our own vast reserve of untapped domestic resources.

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 the use of Canadian scale oil.
- 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.

SHORTAGE OF 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.