

*Before the*

**Committee on Transportation and Infrastructure**

**United States House of Representatives**

*Statement of*

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and  
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*On*  
Improving and Reforming our Nation's Surface Transportation  
Programs

**March 29, 2011**



**Driving Trucking's Success**

## **HIGHWAY PROGRAM COMMENTS**

### **INTRODUCTION**

Chairman Mica, Congressman Rahall and members of the Committee, thank you very much for inviting me to testify on behalf of the American Trucking Associations (ATA).<sup>1</sup> My name is Barbara Windsor, and I am president and CEO of Hahn Transportation, based in New Market, Maryland. I currently also serve as ATA's chairman. Hahn is a specialized regional trucking firm that hauls petroleum, aluminum, cement, and other products throughout the Mid-Atlantic corridor.

Mr. Chairman, a safe, efficient system of highways connecting America's cities, towns and rural areas is essential to our country's economic well-being, military security, and overall quality of life. Our predecessors recognized this reality by creating the Interstate Highway System, which has served our country well, and today allows even the smallest entrepreneur to serve markets throughout the country and around the world.

Every day, thousands of trailers and containers, carrying everything from grain to machine parts, flow through our ports, across our borders, and on our rail, highway, air and waterway systems as part of a global multimodal transportation logistics system. It is a complex array of moving parts that provides millions of good jobs to Americans, broadens the choices of products on store shelves, and creates new and expanding markets for U.S. businesses. Highways are the key to this system. Trucks move 70% of our Nation's freight tonnage<sup>2</sup> and draw 82% of freight revenue.<sup>3</sup> In addition, trucks move \$8.3 trillion worth of freight each year, nearly 60% of the U.S. economy.<sup>4</sup> The trucking industry is expected to move an even greater share of freight in the future.<sup>5</sup>

Trucks are also crucial to freight moved by rail, air, and water. The highway system connects all of these modes to manufacturing and assembly plants, warehouses, retail outlets, and homes. An efficient highway system is the key to a fluid global supply chain, which in turn is a fundamental element of a growing and prosperous economy. It should also be noted that despite the emphasis on promoting the use of intermodal transportation for moving the Nation's freight, 93% of freight moves by a single mode.<sup>6</sup>

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<sup>1</sup> The American Trucking Associations is the largest national trade association for the trucking industry. Through a federation of other trucking groups, the industry-related conferences and its 50 affiliated state trucking associations, ATA represents more than 37,000 members covering every type of motor carrier in the United States.

<sup>2</sup> U.S. Census Bureau, *2007 Commodity Flow Survey*, Dec. 22, 2009

<sup>3</sup> Global Insight, *U.S. Freight Transportation Forecast to...2021*, 2010

<sup>4</sup> U.S. Census Bureau, *2007 Commodity Flow Survey*, Dec. 22, 2009

<sup>5</sup> Global Insight, *U.S. Freight Transportation Forecast to...2021*, 2010

<sup>6</sup> U.S. Census Bureau, *2007 Commodity Flow Survey*, Dec. 22, 2009

The reason for this is that moving freight by multiple modes adds handling costs and additional time, and increases the possibility of breakage. Therefore, the share of additional freight that could benefit from intermodal service is extremely small, and the vast majority of freight will continue to be carried by trucks on the highway system well into the foreseeable future.

Unfortunately, Mr. Chairman, our current highway system no longer meets our transportation needs. While the condition of our highways and bridges has steadily improved in recent years, the performance of the system is deteriorating.

In 2009, drivers in metropolitan areas wasted 4.8 billion hours sitting in traffic and burning 3.9 billion gallons of excess fuel, at a cost of \$115 billion.<sup>7</sup> The cost to the trucking industry was \$33 billion.<sup>8</sup> Disruptions to the movement of freight on our nation's highway system due to congestion jeopardize the tremendous gains the trucking industry has made to improve supply chain efficiencies. Congestion slows delivery times, creates unpredictability in supply chains, and ultimately makes U.S. businesses less competitive and consumer products more expensive. Indeed, in its 2008 *State of Logistics Report*, the Council of Supply Chain Management Professionals described a logistics system whose costs between 2003 and 2007 rose nearly twice as fast as GDP.<sup>9</sup> Mr. Chairman, if we fail to address congestion, these costs will continue to rise, and will translate into higher consumer prices and slower job growth, and weaken the United States' ability to compete in the global economy. However, the real costs of congestion are largely hidden. The supply chain is wound so tightly that any disruption or slow-down can cause significant ripple effects.

Mr. Chairman, incremental solutions will not allow us to meet the Nation's current and future transportation needs. The federal surface transportation program in its current form will not suffice. While more resources than are currently available will be necessary to finance the transportation improvements needed to get our country out of traffic gridlock and to make driving less hazardous, we can no longer afford to spend limited federal resources on projects that do not meet our most important national needs. Therefore, federal funds must be invested in a manner that will most effectively address these requirements. Furthermore, outdated federal laws and regulations that are detrimental to motorists and to society at large must be reformed.

## **CONSOLIDATE AND IMPROVE THE PERFORMANCE OF PROGRAMS**

When the federal highway program was created, it had a clearly defined mission: to finance construction of the Interstate Highway System. When that mission was complete, highway user revenues were still flowing into the Highway Trust Fund (HTF), but Congress did not identify a new federal role. As a result, the federal program lost its focus, and now gives as much priority to funding bicycle paths as to providing resources

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<sup>7</sup> Texas Transportation Institute, *2010 Urban Mobility Report, Dec. 2010*

<sup>8</sup> Ibid.

<sup>9</sup> Council of Supply Chain Management Professionals, 19<sup>th</sup> Annual *State of Logistics Report*, June 18, 2008.

for the improvement of Interstate highways responsible for the safe and efficient movement of millions of people and trillions of dollars worth of freight. It is time to acknowledge the fact that the program does not have sufficient resources to satisfy all constituencies. The program should be refocused to address the most pressing needs from a national perspective, and should eliminate extraneous programs and project eligibilities that are more appropriately dealt with at the local or state level, or through General Fund resources.

#### *Consolidated Highway Program*

The various federal-aid highway program categories should be consolidated into a single program to eliminate unnecessary red tape that has little practical effect, but creates bureaucratic headaches for both state and federal agency employees. Furthermore, eligibility should be limited to the National Highway System (NHS) and a limited number of other highways with significant passenger vehicle and freight traffic. States should be given broad authority to use the revenue for construction, reconstruction, rehabilitation, planning, capital safety improvements, operational improvements, and other projects and activities designed to improve the safety and efficiency of eligible highways. Revenue from the program should not be transferable to non-highway projects or programs. According to the Federal Highway Administration's 2008 *Conditions and Performance* report, federal highway user fee revenue is sufficient to maintain current levels of condition and performance on the NHS, and to begin to make improvements in the system.

#### *Address Freight Bottlenecks*

Freight tends to be concentrated along a few major corridors, principally the Interstate System and other highways that are part of the NHS. Many of these corridors are also among the most heavily congested in the nation. Providing funding to address the immediate and longer-term deficiencies plaguing these important corridors is a necessary and appropriate feature of a nationally focused federal-aid program.

A study for the Federal Highway Administration (FHWA)<sup>10</sup> identified the highway bottlenecks that cause the greatest amount of delay for trucks. Based on the agency's estimates, ATA calculates that these bottlenecks cost the trucking industry approximately \$19 billion per year in lost fuel, wages, and equipment utilization. The study estimated that highway bottlenecks account for 40 percent of congestion.

#### *Eliminate Extraneous Programs and Eligibilities*

In an era of limited resources for transportation, it is difficult to justify federal funding for projects whose benefits are extremely localized, or which provide limited benefit to those paying into the program. Therefore, ATA recommends eliminating the Enhancements program, the Congestion Mitigation and Air Quality Program, and other programs which specifically fund non-highway projects.

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<sup>10</sup> Cambridge Systematics for the Federal Highway Administration, *Estimated Cost of Freight Involved in Highway Bottlenecks*, Nov. 12, 2008.

### *Preserve Funding for Safety Programs*

Funding for motor carrier and passenger vehicle safety programs should continue to come primarily from the HTF. ATA's safety recommendations are included in the "Safety Program Comments" section below.

### *Transit*

Because funding is so constrained now, we encourage you to consider funding all or a portion of the transit program out of the General Fund. This would provide an immediate injection of approximately \$5 billion in highway funding annually, while strengthening the user pays principle that has historically been the foundation of the Highway Trust Fund. New or expanded transit projects increasingly justify their federal funding based on benefits that have little to do with improving highway mobility. This includes providing transportation services to underserved populations such as the elderly or handicapped, spurring community economic development, and supporting "livability" initiatives. The Obama Administration acknowledged this shift in policy with the issuance of new guidance in 2010.<sup>11</sup> It is appropriate, therefore, that these investments, made for the general good and not for the benefit of those paying into the HTF, should be financed out of the General Fund.

### *Eliminate Earmarks*

Mr. Chairman, ATA supports the moratorium on highway earmarks. Project selection must be based on sound economic analysis. It is also evident that the money for many earmarks is never spent because the project is not a priority for the State or because the earmark will fund only a small portion of the project's total cost.

## **SOURCES OF FUNDING**

Trucking companies are willing to support an increase in the fuel tax if the revenues are dedicated to projects and programs that will benefit goods movement on the nation's highways. While we understand that a fuel tax increase may be off the table in this Congress, the fact remains that no other source of funding has been identified that –

- Will produce the level of revenues needed to meet current and future highway infrastructure needs;
- is easy and inexpensive to pay and collect;
- has a low evasion rate;
- is tied to highway use; and
- does not create impediments to interstate commerce.

Private financing of highway infrastructure can play only a very limited role in addressing future transportation needs, and certain practices may generate unintended consequences whose costs will vastly exceed their short-term economic benefits. In particular, we are very concerned about attempts by some states to carve up the most important segments of the Interstate highway system for long-term lease to the highest

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<sup>11</sup> [http://www.fta.dot.gov/news/news\\_events\\_11036.html](http://www.fta.dot.gov/news/news_events_11036.html)

bidder. We believe that leasing existing Interstate highways to private interests is inconsistent with the efficient and cost-effective movement of freight, is not in the public's best interest, and represents a vision for the Nation's transportation system that is short-sighted and ill-conceived. We therefore oppose these schemes.

ATA is strongly opposed to tolls on existing Interstate highways, a view we understand you share, Mr. Chairman. While federal law generally prohibits this practice, Congress has, over the years, created a number of exceptions. Imposing tolls on existing lanes of the Interstate System would have a devastating effect on the trucking industry. The industry is highly competitive and taxes of this magnitude simply cannot be passed along to shippers. Furthermore, tolls cause diversion of traffic to alternative routes which are usually less safe and were not built to handle the additional traffic. We urge the Committee to eliminate pilot programs which provide tolling authority for existing Interstate Highways and to refrain from authorizing additional tolling flexibility.

We also support substituting the 12% federal excise tax (FET) on the retail sale of trucks, tractors, and trailers with a higher diesel fuel tax. According to the Joint Committee on Taxation, an increase of 7.3 cents per gallon of diesel fuel tax would be sufficient to recover revenue from elimination of the FET. The FET provides a disincentive to carriers who wish to purchase new equipment, which is normally safer and cleaner than the equipment they replace. Aftermarket equipment designed to improve safety or reduce emissions, such as lane departure warning systems and aerodynamic packages, are also taxed. Another benefit of replacing the FET with a diesel tax increase is that year-over-year revenues from the diesel tax tend to have small fluctuations, while FET revenues can fluctuate significantly, depending on the state of the industry. For example, FET revenues dropped from \$3.8 billion in 2007 to \$1.4 billion in 2008.

## **CUT GOVERNMENT RED TAPE AND STREAMLINE THE PROJECT DELIVERY PROCESS**

### *Streamlining of Project Approvals*

Mr. Chairman, we commend you for focusing on a long-standing concern which must be addressed if we are to do more with fewer resources. Federal rules that extend the timeline for project delivery by seven to 10 years must be reformed. Based on experience with projects such as the replacement of the I-35 bridge in Minneapolis and reconstruction of I-15 in Salt Lake City in preparation for the Winter Olympics, we know that streamlining can be accomplished without compromising the environment or overlooking community impacts. ATA recommends that several steps be taken to streamline the project delivery process:

- Eliminate redundancies in the NEPA process by allowing alternatives analyses, studies and other planning processes that are completed outside of NEPA to be accepted as part of the NEPA process.
- Streamline the permitting process among various agencies by eliminating redundant requirements, centralizing coordination within FHWA, and setting strict time limits for reviews.

- Allow for a simplified NEPA process for projects with few significant impacts.
- Revise Council on Environmental Quality regulations to narrow the number of “reasonable alternatives” on a project-level basis.
- Allow for a single EIS rather than a draft and final EIS, while preserving adequate opportunities for public comment and review.

*More Effective Utilization of Highways Through the Use of More Productive Trucks*

In addition to better, less congested highways, the trucking industry needs to improve its equipment utilization to meet current and future demands. The United States has the most restrictive truck weight regulations of any developed country. At the same time, America’s freight transportation demands are greater than any other nation’s, and we have the world’s most well-developed highway system. Based on projected increases in demand for truck transportation, increases in truck productivity will be essential if we are to avoid total gridlock on our highways.

More productive vehicles would also produce important environmental benefits by reducing vehicle miles traveled, fuel consumption, and greenhouse gas emissions. Use of these vehicles could reduce fuel usage by up to 39%, with similar reductions in criteria and greenhouse gas emissions.<sup>12</sup>

Research demonstrates that more productive trucks can be as safe as or safer than existing configurations. Furthermore, because fewer truck trips will be needed to haul a set amount of freight, crash exposure – and therefore the number of crashes – will be reduced.<sup>13</sup>

A new federal-state partnership is necessary to promote truck size and weight reforms that meet the important and legitimate financial goals of U.S. businesses, while also addressing the equally important and legitimate concerns of federal and state government agencies and officials who seek to safeguard public safety, promote air quality goals and protect their investments in highway infrastructure. In order to take advantage of the benefits that productivity increases can deliver, Congress must reform its laws to give states greater flexibility to change their size and weight regulations, with oversight by the U.S. Department of Transportation.

Ultimately, it is the consumer who will benefit most from size and weight reform, because more productive trucks will keep costs down for virtually every product Americans make, buy, and sell. More productive trucks will not harm the freight

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<sup>12</sup> American Transportation Research Institute, *Energy and Emissions Impacts of Operating Higher Productivity Vehicles*, March 2008.

<sup>13</sup> See for example: Campbell, K.L., *et al.*, “Analysis of Accident Rates of Heavy-Duty Vehicles,” University of Michigan Transportation Research Institute (UMTRI), Report No. UMTRI-88-17, Ann Arbor, MI, 1988.; Transportation Research Board, National Research Council, “Truck Weight Limits,” Special Report 225, Washington, D.C., 1990; Cornell University School of Civil and Environmental Engineering, “Economic and Safety Consequences of Increased Truck Weights,” Dec. 1987; Scientex, “Accident Rates For Longer Combination Vehicles,” 1996; Woodrooffe and Assoc., “Longer Combination Vehicle Safety Performance in Alberta 1995 to 1998,” March 2001.

railroads; only a small portion of truck freight is actually conducive to movement by rail. We would also like to note that ATA members are big users of rail intermodal service, and trucking companies are among the railroads' largest customers. We find the railroads' opposition to improvements in truck productivity very disingenuous given our members' importance to their traffic levels and bottom lines.

## **THE OBAMA ADMINISTRATION'S REAUTHORIZATION PROPOSAL**

Mr. Chairman, ATA has many serious concerns with what we know so far about the Obama Administration's reauthorization proposal. While we appreciate the Administration's support for significant increases in funding for transportation, the complete lack of an explanation for how the massive spending increases are to be paid for is troubling, and does not help to advance the debate. Furthermore, the Administration has proposed to include programs not traditionally funded from the HTF in a new Transportation Trust Fund. In order to qualify for trust fund status, these projects must be funded primarily from user fees. It is unlikely that new user fees will be identified, and therefore we can only assume that highway users may be required to pay for these programs. ATA will strongly oppose any additional diversion of highway user fees to other modes of transportation.

While the proposal purports to significantly increase funding for highways (without an identified funding source), the ramp-up in funding over time is dwarfed by increases to transit and passenger rail. Given the serious deficiencies facing the highway system and the fact that 70% of freight<sup>14</sup> and 89% of passenger-miles<sup>15</sup> move on highways, the Administration's priorities seem to be based more on ideology than on practical analysis. Compounding this lack of resources for highways, the USDOT's proposal would prevent states from spending a significant share of their highway allocations on capacity expansion, despite the need for more resources to address a costly and worsening congestion problem in cities throughout the country.

ATA opposes the Administration's proposal to fund a livable communities program from the HTF. Projects funded under this program are unlikely to be in the national interest, will not produce significant safety, mobility and economic benefits, and are more appropriately funded from local sources than from federal highway user fees.

We also oppose the Transportation Leadership Awards program. A program designed to promote innovations in transportation policy may be laudatory under some circumstances. However, USDOT under its current leadership is likely to only support projects which meet an ideological vision that is out of step with the vast majority of the American public, and which do little to improve highway safety or mobility.

ATA is also concerned about the Administration's Infrastructure Bank, or I-Bank proposal. Once again, funding for this proposal has not been identified, and we will oppose any attempts to fund it from highway user fees. The Administration's proposal to

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<sup>14</sup> Global Insight, *U.S. Freight Transportation Forecast to...2021*, 2010.

<sup>15</sup> USDOT Bureau of Transportation Statistics, *National Transportation Statistics*, 2008

select projects for funding or financing from the I-Bank without any input from outside sources is a thinly veiled attempt to once again put the Administration's ideological stamp on the federal transportation program. And at the end of the day, the basic issue remains – what will be the revenue stream to repay I-Bank loans.

## **SAFETY PROGRAM COMMENTS**

### **THE INDUSTRY'S SAFETY RECORD**

The trucking industry is the safest it has ever been and continues to get even safer. For example:

- From 1998 to 2008 (the most recent year for which rates are available), the truck-involved fatality rate dropped by 32 percent.
- In actual numbers, there were 1,166 fewer fatalities in 2008 than in 1998—remarkable progress in light of the trucking industry operating 1.3 million additional trucks and 31 billion more miles in 2008 compared to 1998.
- The truck-involved *injury* rate has also decreased 58 percent since 1988, the first year USDOT began keeping records, and 39% in just the past ten years.
- In 2008, truck-involved fatality and injury rates fell to their lowest levels since USDOT began keeping statistics.
- More recently, in 2009, **the number of injuries and fatalities** in truck-involved crashes reached their **lowest levels** since USDOT began keeping records.

### **NECESSARY STEPS FOR CONTINUED IMPROVEMENT**

ATA and the trucking industry is proud of its safety progress and we believe it is, at least in part, the result of the many safety initiatives ATA has advocated for – and achieved – over the past decades, including mandatory drug and alcohol testing, the commercial driver's license program, and hours of service regulations based on sound science. Yet, truck safety is about more than regulations. It is about understanding the factors that create crash risk and the behaviors and events that precipitate crashes. It is about programs, countermeasures and preventive actions that truly address those risks and behaviors. Future FMCSA rules and programs will only succeed to the degree to which they focus on and address crash risk and causation.

### **CRASH CAUSATION AND PREVENTION**

FMCSA only regulates part of the highway safety equation: commercial motor vehicles. Yet the single largest factor impacting truck safety is the behavior of other motorists. Approximately 85% of truck crashes involve other vehicles. Since FMCSA does not regulate the operation of all vehicles, it is encumbered in its efforts to reduce truck-involved crashes.

As mentioned earlier, to truly be effective in improving commercial motor vehicle safety, FMCSA must address the primary causes of crashes. FMCSA's own research shows that in the majority of large truck/passenger vehicle crashes, the driver of a passenger vehicle was the sole party cited for a related factor (e.g., speeding, failure to yield).<sup>16</sup> Numerous additional studies have analyzed crash data and arrived at the same conclusion.

For instance, a University of Michigan Research Institute (UMTRI) study of 8,309 fatal car-truck crashes examined driver factors in these crashes and found that car drivers made errors in 81% of these crashes and truck drivers only 26%. Some suggest these figures are slanted because in most instances the truck driver survives the collision to "tell his side of the story." However, the same study looked at crashes where both drivers survived (but there was some other resulting fatality). The result: the driver error proportions for these crashes were very similar to the entire sample.

In 2002, the AAA Foundation for Traffic Safety sponsored research similar to the aforementioned UMTRI study. The AAA study analyzed more than 10,000 fatal car-truck crashes that occurred between 1995 and 1998. This study, too, found car drivers to be disproportionately coded for related factors (e.g., speeding, failure to yield) in these crashes. Specifically, 80% of the car drivers had been attributed a related factor by the investigating officer while 27% of truck drivers had been attributed a related factor in these events.<sup>17</sup>

In addition, two recent studies conducted by the Virginia Tech Transportation Institute (VTTI) collected data on 210 car/truck incidents using both video and non-video data. The evidence, much of it video, showed that 78% of these incidents were initiated by car drivers, while the remaining 22% were initiated by truck drivers.<sup>18</sup>

Since meaningful solutions to commercial motor vehicle safety require a focus on the primary causes of crashes, FMCSA should direct even more resources toward awareness, education, and traffic enforcement programs to address the role of passenger vehicles in car/truck crashes. FMCSA's "Ticketing Aggressive Cars and Trucks" program is one such program, albeit a small one, aimed directly at the high-risk behaviors of both car and truck drivers. This program has been evaluated and shown to be effective. As a result,

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<sup>16</sup> Department of Transportation: Federal Motor Carrier Safety Administration, *Report to Congress on the Large Truck Crash Causation Study*, (2006).

<sup>17</sup> AAA Foundation for Traffic Safety, *Identifying Unsafe Driver Actions that Lead to Fatal Car-Truck Crashes*, Washington, D.C., (2002).

<sup>18</sup> Virginia Tech Transportation Institute, *A Descriptive Analysis of Light Vehicle-Heavy Vehicle Interactions Using In Situ Driving Data*, (2006).

FMCSA should work to implement it as part of each state's motor carrier safety assistance program.

Another means FMCSA has to impact truck-involved multi-vehicle crashes is to give motor carriers the tools to avert them. For example, tax incentives to adopt crash avoidance technologies will give motor carriers the means to better prevent such crashes. Additional discussion on these technologies is in the *ATA's Priority Safety Recommendations* section below.

As a matter of practice, the trucking industry holds itself to a very high standard with respect to crash accountability. Trucking companies evaluate each crash not merely to establish fault, but to determine if the crash could have been prevented in any way. Carriers determine whether the driver could have taken any action to avert the crash. If the motor carrier finds that the accident was preventable (based on a set of uniformly accepted industry criteria), then the driver is held responsible for the crash. FMCSA's *Safety Rating Methodology* employs a similar standard. Any crash that is preventable is counted against the carrier in FMCSA's *Safety Rating Methodology*.<sup>19</sup>

This is worthy of note because motor carriers recognize that the key to reducing crashes is finding ways to prevent them, regardless of fault. Congress and FMCSA must adopt a similar approach as well. In order to further reduce commercial motor vehicle crashes, as a community, we must recognize the scope of the problem, understand the primary causes of these crashes, and have the political will to put programs in place that address all parts of the truck safety equation.

## **THE REGULATORY COMPLIANCE AND ENFORCEMENT MODEL**

Using the regulatory compliance and enforcement model in the future as the primary means to impact truck safety will yield limited returns, since it only addresses one of the many essential elements of an effective safety program. ATA recognizes that this model is necessary, and we support it. However, this model alone will be insufficient to achieve maximum results. Other safety interventions and countermeasures, beyond regulatory compliance, can address the main causes of crashes even more directly. Taking a broader approach to safety and moving beyond a compliance and enforcement model will enable even greater safety improvements.

This broader approach must embrace a variety of solutions. Government and industry together can facilitate various active safety interventions, and in fact, some of these interventions depend on government and industry action in order to be implemented. In ATA's view, the most innovative and effective future oversight programs will be the ones that provide motor carriers with the tools to support carrier-based safety improvements.

## **THE SAFETY MANAGEMENT MODEL**

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<sup>19</sup> 49 C.F.R., Part 385, Appendix B, Section II, Subsection B, (e).

Today's safety professionals see compliance with safety rules and regulations as a single component of a more comprehensive safety management program. The most effective programs are founded on the principle that the best way to reduce accidents is to focus on individual behaviors that create the greatest risk. Most crashes are the result of personal judgments and poor decisions, not compliance or non-compliance with a regulation.

If every driver were motivated by avoidance of government-imposed consequences, then the compliance and enforcement model would be adequate. Yet, individuals respond not only to rules, but to a sense of personal responsibility, personal enrichment and formal recognition. In other words, people generally respond better to the carrot versus the stick. Understanding this key principle, FMCSA could employ creative initiatives such as a formal recognition of safe drivers in its safety monitoring systems, advocating a special CDL designation for drivers with exemplary safety records, and the like.

The National Safety Council promotes *14 Elements of a Successful Safety and Health Program*. Of note, though, is that only one of these elements is directly related to regulatory compliance. In addition, FMCSA's own Motor Carrier Safety Advisory Committee has identified 20 non-regulatory safety practices that can improve commercial motor vehicle safety. In short, both of these groups recognize that compliance alone is insufficient for maximum safety.

## **ATA'S PRIORITY SAFETY RECOMMENDATIONS**

Here are some examples of how a broader approach to addressing true crash risk could be more effective.

### *Fatigue*

ATA has learned from the medical community that drivers with certain health issues and poor sleep hygiene/habits are far more likely to suffer from chronic drowsiness. We also know that time of day, specifically the body's natural circadian rhythms, plays a far greater role in driver alertness than time on task (i.e., driving hours). In lieu of tinkering with the hours of service rules, FMCSA could more effectively address fatigue-related incidents and crashes by incentivizing carriers to implement wellness programs, to install alertness monitoring systems, and to implement fatigue management programs that help drivers understand and better manage circadian rhythms.

### *Drug and Alcohol Test Clearinghouse*

The current drug and alcohol testing regulations have helped to ensure that alcohol and drugs play a very limited role in commercial motor vehicle crashes. However, there is a well-known loophole in the current testing program that is being exploited by some drug-abusing drivers. When a driver moves from one trucking company to another, some "positive" drug and alcohol test results are not discovered by the hiring company because these "positive" results and the driver's work history are self-reported, and not centrally tracked.

To close this loophole, ATA has, for more than a decade, advocated the development of a clearinghouse for positive drug and alcohol test results, so that drivers cannot evade the consequences of their actions by “job-hopping,” intentionally miscommunicating their work histories, or otherwise failing to remove themselves from service. However, until very recently, neither FMCSA nor the U.S. Department of Transportation’s drug and alcohol policy office seemed to share ATA’s urgency to create such a database, but instead focused its resources on verifying that motor carriers comply with required random testing rates.

#### *Employer Notification Systems*

Systems operated by state licensing agencies that alert motor carriers to drivers’ moving violations are yet another creative means to improve commercial motor vehicle safety. Research has demonstrated that drivers convicted of moving violations are more likely to be involved in future crashes. However, under the current process, carriers may not know of these violations for up to 12 months when they conduct the required annual review of the driver’s motor vehicle record. An active system that alerts the motor carrier to convictions for moving violations will foster more timely action (e.g., training, countermeasures) on the part of the motor carrier that will help avert future crashes.

#### *Speed Limiters & Speed Limits*

Speeding is one of the most common contributing factors to motor vehicle crashes. However, the current approach to reducing truck speed - on-road speed limit enforcement by state and local enforcement agencies - is only minimally effective. These jurisdictions lack the resources to create an enforcement deterrence that will materially reduce speeding incidences. Moreover, applying resources in this manner is simply impractical.

A more efficient approach would be to require that speed limiters on all new trucks be set at 65 miles per hour at time of manufacture. Naturally, we would need a parallel requirement that drivers and motor carriers be prohibited from tampering with or adjusting these limiters. While this action would only reduce the incidences of drivers exceeding highway speed limits, it would be effective in reducing the number and severity of the most devastating high speed crashes.

In 2006, ATA petitioned NHTSA and FMCSA to require that these limiters be set at time of manufacture. Fortunately, in late 2010, NHTSA announced that it had accepted ATA’s petition and would be initiating a rulemaking on this matter sometime in 2012. While grateful that NHTSA is taking this action, ATA urges the agency to initiate this rulemaking sooner, given the importance of this issue.

While politically unpopular, ATA also believes all traffic must be slowed down. ATA continues to support a national 65 mile per hour speed limit for all vehicles.

#### *Safety Technology Incentives*

FMCSA’s current approach to preventing motor vehicle crashes is to focus on motor carriers’ safety management controls as measured through regulatory compliance levels. Specifically, the agency enforces requirements that motor carriers screen, qualify, and

monitor their drivers and properly maintain their equipment. However, as discussed above, the benefits of this approach are limited.

Fortunately, FMCSA has also begun evaluating the effectiveness of several vehicle technologies to help prevent or reduce the severity of commercial motor vehicle crashes. These technologies include Brake Stroke Monitoring Systems, Vehicle Stability Systems, Lane Departure Warning Systems (with Blind Spot Detection) and Collision Warning Systems. While these evaluations have shown promising results, it is premature to mandate these devices in all trucks, since the benefits and limitations of these systems are not yet fully understood. Also, while there may be very certain benefits in some types of operations (over-the-road), the benefits in other types of operations (intra-city) may be very limited.

Congress should provide tax incentives for motor carriers to install and test these systems. Doing so will facilitate their deployment in the segments of the industry where they would be most beneficial. Also, such incentives will foster growing acceptance of the devices and the ability to further understand their capabilities and limitations, before requiring their deployment in all vehicles.

#### *New Carrier Training*

ATA recommends that new motor carrier owners, both interstate and intrastate, be required to satisfactorily complete a safety training class before commencing operation. Proof of training completion should be required to be attached to a new carrier's application for a DOT number. The safety training curricula for these classes should meet uniform standards nationwide. ATA also urges that new entrant safety audits be conducted within six months of initiating operations, not 18 months as is the current practice.

#### *Truck Crashworthiness Standards*

ATA supports additional crash-worthiness research for potential standards for newly manufactured class 7 and 8 trucks. While crashworthiness standards exist for passenger vehicles, there are no such requirements for newly manufactured trucks.

### **HOURS OF SERVICE**

FMCSA recently proposed changes to its hours of service (HOS) rules--rules that have been functioning effectively for more than seven years. The proposed changes are unnecessary, unjustified, and would be a significant step back for trucking industry safety and productivity. ATA strongly believes that retention of current HOS regulations is the only justifiable course open to the Agency. That belief is founded upon the following tenets:

- The trucking industry has dramatically improved its safety record while operating under the current HOS rules. Regulatory compliance has also substantially improved. In contrast, the complex proposed changes in the

HOS proposal will undermine compliance and will very likely undermine industry safety.

- The changes proposed by FMCSA will have virtually no benefit in terms of reducing fatigue-related truck crashes and, in fact, will create other types of truck safety concerns such as promoting aggressive driving and driving during peak hours of congestion.
- The changes proposed by FMCSA will occasion enormous productivity losses in the trucking industry. The Agency's past estimates of more than \$2 billion annually related to such changes are much closer to the mark than the unsophisticated analysis in the current proposal that improperly reduces those costs by more than half.
- The Agency's cost/benefit assessment of the changes in the proposed rule is fundamentally flawed. As demonstrated in a February 2011 Edgeworth Economics Report<sup>20</sup>, the Agency made numerous crucial errors in its assessment that individually and cumulatively render its conclusions meaningless.
- The Agency's attempt to include health benefits as justification for changes in the HOS rules is also unsupported. As a February 2011 report<sup>21</sup> by Professor Francesco Cappuccio explains, the Agency has misapplied the sleep duration/mortality risk studies it relied upon and there is simply no scientific support for the health benefits the Agency presumes.

In its HOS proposal, the Agency has abandoned years of objective analysis in favor of speculation and internal "judgments" of critical areas. As described in ATA's comprehensive comments to the HOS docket, FMCSA's approach in its proposal cannot be squared with its prior factual conclusions and analytical approach; is contrary to the real-world circumstances to which the rules apply; and its financial computations whither under objective scrutiny. In short, FMCSA is far from making any sort of case that the HOS rules should be changed and the obvious strains in its attempt to justify those changes illustrates how ill-considered they are.

## **HAZARDOUS MATERIALS PROGRAM RECOMMENDATIONS**

### *Security Background Checks [49 U.S.C. §5103a]*

ATA supports a risk-based approach to background checks of drivers that transport hazardous materials. This risk-based approach is embodied in the SAFE TRUCKERS

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<sup>20</sup> Edgeworth Economics, *Review of FMCSA's Regulatory Impact Analysis for the 2010-2011 Hours of Service Rule*, February 15, 2011.

<sup>21</sup> Cappuccio, Francesco, P., *Analysis and expert opinion on the Federal Motor Carrier Safety Administration's (FMCSA) Methodology for Valuing Health Benefits as presented in 2010-2011 Hours of Service Rule Regulatory Impact Analysis (RIN 2126-AB26) Section 5*, February 23, 2011.

ACT, which passed the House of Representatives as part of the TSA Reauthorization Act (H.R. 2200) during the 111<sup>th</sup> Congress. H.R. 2200 would require the Department of Homeland Security to work with the USDOT 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), which would serve as a single credential evidencing a hazmat driver’s fitness to transport these materials. Redundant security background checks and duplicative security credentials are a significant financial burden upon drivers and would be eliminated. *Congress should enact the SAFE TRUCKERS ACT to ensure that the TWIC is the only security credential required for hazardous materials drivers.*

#### *Cargo Tank Wetlines*

According to DOT’s hazmat incident database, between 1999 and 2009, there were 8 incidents that 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 (76 FR 4847) that overstates the benefits and dramatically underestimates the cost to the trucking industry. *Congress should preclude PHMSA from finalizing this regulation and require the National Academy of Sciences to quantify the risk and costs of abating infrequent wetlines incidents.*

#### *Equitable and Uniform Enforcement [49 U.S.C. §5125(j)]*

The hazardous materials regulations (HMRs) consist of more than 500 pages of regulatory text that varies depending upon the types and quantities of materials being transported. Compliance with many of these regulations rests with the offeror of the materials, who must properly classify the material, select appropriate packaging, mark and label the package and prepare a compliant hazardous materials shipping paper. Because most violations of the HMRs are discovered during roadside inspections, drivers and motor carriers frequently receive citations for violations of the HMRs that they cannot reasonably be expected to discover. To address this inequity, *Congress should distinguish between functions that are normally performed by a shipper and functions that are the responsibility of the carrier, and clarify that a carrier is not responsible for violations that result from pre-transportation functions performed by another person, unless the carrier has actual knowledge of the violation.* Carriers would continue to be responsible for compliance with the HMRs for activities that they perform (placarding, load securement, segregation, etc.). *State enforcement actions must be based on “knowing” or “willful” violations of the HMRs.*

#### *State Hazmat Transportation Permits [49 U.S.C. §§5119 and 5125(c)(1)(F)]*

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. At the same time the incremental safety benefit is questionable, especially in light of PHMSA’s federal registration requirements and the ability of states to inspect hazardous materials carriers at roadside. 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. In light of existing federal registration and permitting requirements, *Congress should preempt state-based hazardous materials transportation permitting programs.*

*Incident Reporting Requirements [49 U.S.C. §5125(c)(1)(G)]*

ATA recognizes the need for government entities to obtain information concerning hazardous materials incidents. Unfortunately, there are dozens of individual reporting requirements that vary from jurisdiction to jurisdiction. As a result, drivers have no way of knowing whether a particular incident triggers a local reporting requirement, where the incident occurred or how to comply with such requirements. Off the shelf technology now exists that would enable a centralized reporting system. Existing federal notification requirements (49 CFR § 171.15) can ensure that the appropriate local emergency response officials are notified in the event of a hazardous materials incident and can replace the dozens of state and local reporting requirements. *Congress should preempt state-based incident reporting requirements.*

*OSHA'S Overlapping Jurisdiction [49 U.S.C. § 5107(f)]*

ATA supports a modification to the joint regulatory authority that OSHA and DOT exercise with respect to the transportation of hazardous materials. This overlapping jurisdiction erodes the regulatory uniformity necessary for the safe and efficient transportation of hazardous materials and makes it difficult to train drivers who must perform their duties in multiple jurisdictions. *ATA supports a solution that would require the Secretary of Labor to identify any gaps in the hazardous materials regulations that create an unsafe condition for employees and require the Secretary of Transportation to address those gaps.*

*Highway Routing Disclosure by States [49 U.S.C § 5125(d)]*

Highway routing of hazardous materials is a shared responsibility between the federal and state governments. The procedural requirements for designating hazardous materials routes has worked well and helps ensure that routing designations enhance the safety and security of hazardous materials shipments and do not simply export the risk from these materials to other jurisdictions. Motor carriers are responsible for ensuring that they travel on appropriately designated routes. *To facilitate compliance with hazardous materials routing designations, states must be required to report route restrictions to FMCSA, and FMCSA must add them to the published route registry.* Hazardous materials route restrictions that do not appear on FMCSA's hazmat route registry should be invalidated.

## **CONCLUSIONS**

Mr. Chairman, thank you for the opportunity to offer our views on how, collectively, we can further improve truck and highway mobility and safety. A strong federal highway program is necessary to improve freight and passenger mobility. Significant additional resources must be made available to this purpose. However, in the absence of new

resources, the federal program should be reformed to ensure that revenues are invested in critical projects that serve the national interest. Furthermore, outdated project review and size and weight regulations should be changed to improve the efficiency of our highway system.

The trucking industry is justifiably proud of its recent safety accomplishments as well as its excellent long-term safety improvement. While as an industry we will strive to continue this safety progress, it will be incremental at best if we don't have the political will to change the fundamental government approach to truck safety oversight.

We must move beyond the current regulatory compliance and enforcement model as the primary means to improve truck safety. Instead, we must move toward an active safety management model that more directly attacks the main causes of crashes. This new model must be based on understanding the factors that create crash risk and the behaviors and events that precipitate crashes. It must also focus resources on giving motor carriers tools, like a drug and alcohol clearinghouse and an employer notification system, which will help motor carriers to more effectively facilitate truck and highway safety improvements.