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2011 CRITICAL ISSUES IN TRUCKING

It's still the economy. Despite eight quarters of domestic growth, the slow pace of recovery has trucking executives uneasy. That fact is reflected in the latest American Transportation Research Institute based on its annual carrier survey. Survey participants chose the economy as their issue of greatest concern for the third year in a row. A unique feature of the survey is that carriers are asked to rank which of three strategies you think would best address the issue. Just over a third of those who completed the survey think the best strategy to address the sluggish economy is to "encourage economic policies that maintain the recovery and benefit the industry through increases in freight demand." That translates into policies that increase consumer confidence, consumer spending, hiring and investment. To view report go to www.atri-online.org

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CARB ADOPTS TRU AMENDMENTS; NO EXTENSION GRANTED:

On Friday, Oct. 21, the [California Air Resources Board](#) (CARB) voted unanimously to adopt a number of amendments to the existing TRU regulation; however, they rejected an industry-supported proposal to increase the current compliance period from seven to nine years. As a result, TRUs with 2004 model-year engines that operate in California must be brought into compliance by December 31, 2011 – primarily by repowering with a newer engine or retrofitting with a CARB-approved diesel particulate filter (currently only one exists). Both ATA and the California Trucking Association filed comments (attached) seeking an extension due to the limited compliance options available, the 4-7 fold increase in compliance costs, and CARB's overestimation of TRU emissions. A summary of the adopted amendments is available [online](#). For more information, contact Mike Tunnell at mtunnell@trucking.org or Eric Sauer at

Driving Too Fast For Conditions

Speed is a factor in 23% of all large truck accidents. As a responsible professional truck driver, it is extremely important to properly evaluate your surroundings and existing conditions and adjust speed accordingly. FMCSA defines "driving too fast for conditions" as: "traveling at a speed that is greater than a reasonable standard for safe driving." The challenge for all professional truck drivers is determining what "reasonable" means under what conditions.

Road conditions or environmental surroundings can change almost instantly. One minute you might be traveling down a dry road on a clear day. Suddenly your truck might be surrounded by traffic in the middle of a down pour. Anticipating these changes and knowing how to react could save your life and the life of the motorists around you. There are several rules of thumb relative to maintaining a speed appropriate for the driving conditions. They are:

- Reduce your speed by a third (1/3) on wet roads. Remember, roads tend to be even slicker at the start of a down pour as the water mixes with oil on the road surface. Also leaves can become slippery when wet. Even if that doesn't affect your vehicles handling, it could affect the smaller vehicles around you.
- Reduce your speed by half (1/2) on snow packed roads.
- On icy roads, drive extremely cautiously and pull over if you can no longer completely in control of your vehicle.
- Do not use your "Jake brake" on wet roads, it can actually trigger a loss of control.

Driving conditions encompass more than just the weather, however. Entering a curve, low visibility, construction zones, intersections and heavy traffic are all conditions that may warrant a speed adjustment. FMCSA has published several tips for adjusting speed which are useful to reiterate.

- **Enter a curve slowly** – 40% of speeding related fatalities occur in curves. In large trucks, the high center of gravity effects centrifugal force and load shift. A commercial motor vehicle driver should enter the curve well below the advised speed because posted speed limits are intended for passenger vehicles. Remember too to slow down before entering the curve because braking in a curve can cause a loss of control.
- **Slow down before entering an exit/entrance ramp** – While exit/entrance ramps make up only 5% of highway miles 20-30% of all large truck crashes happen near them.
- **Drive slowly with a loaded trailer** – Fully loaded trailers are 10 times more likely to roll over than empty ones. Because of this, be sure to leave adequate space between you and the vehicle in front of you. A typical loaded trailer requires 20-40% more stopping distance than a passenger vehicle.
- **Slow down in a work zone** – In 2006, nearly a quarter of all large vehicle crashes occurred in a work zone. Work zones can be unpredictable places. Sudden stoppage or lane shifts are common and dangerous. Drive slowly and always be prepared to stop.

FMCSA will not fight ruling, moving ahead on new EOBR mandate

10/28/2011

WASHINGTON — The Federal Motor Carrier Safety Administration says it will not be able to publish the proposed Hours of Service rule by today's court-imposed extended deadline.

FMCSA issued a statement this morning which said: "The petitioners have agreed to extend the October 28, 2011, deadline for publication of a final Hours of Service rule. FMCSA will continue to work toward publishing a final rule as quickly as possible. The parties to the settlement agreement will file their next status report with the Court on November 28, 2011."

The announcement was not a surprise to most in the trucking industry, including two of the largest carrier associations, the American Trucking Associations and the Truckload Carriers Association, both of which oppose any change in the current rule.

"We're not surprised," Sean McNally, ATA vice president of communications. "The administration had indicated at our annual Management Conference and Exhibition at Grapevine, Texas, (earlier this month) that it was unlikely the deadline would be met. We hope the agency uses this extra time to consider the overwhelming input it has received from thousands of drivers and law enforcement officers that the current rule is working. There's no need to break something that's not broken."

David Heller, director of safety and policy at the Truckload Carriers Association, echoed McNally. "We certainly hope the agency is doing its due diligence listening to all the players who have filed comments — not just industry, not just drivers, but members of Congress who have sent letters," Heller told *The Trucker*. "We hope they realize the trucking industry is the safest it's ever been under the current rules and we hope they maintain those rules in order to keep trucking down the right path like it is going now. If you look at the chart you can see the fatality rate is dropping tremendously to the lowest it's ever been. We hope the agency is taking that into consideration when looking at this rule."

"Whatever it takes to get it right," Owner-Operator Independent Drivers Association spokesperson Norita Taylor said. "We'd rather see a delay than see a huge mistake made in the final decision." OOIDA has also opposed changes to the current rule.

The October deadline had been approved last July when the FMCSA asked for additional time to rewrite the rule after entering four studies into the public docket. The agency said the studies contained data significant to formulation of the rule.

The new rule originally was scheduled to be published in July as part of a settlement agreement with the group of plaintiffs that filed suit against the current rule after it was published in November 2008.

It was the third suit against HOS rules since the FMCSA adopted the current 11-hour driving day and the 34-hour restart.

The proposed rule that was scheduled to be published today has been extremely controversial.

The plaintiffs that are part of the agreement are happy with FMCSA's stated preference for a 10-hour driving day and new restrictions on the use of the 34-hour restart.

Trucking associations, motor carriers and drivers alike have criticized the rule as published in the Notice of Proposed Rulemaking last December.

Regardless of how the new final rule is written, trucking industry stakeholders acknowledge that it will again wind up in court.

IRS CHANGES RULES ON CELL PHONES AS TAX BENEFIT

New guidance from the Internal Revenue Service mostly eliminates the need for you and your employees to keep records of non-business-use of company-provided cell phones. The old law considered non-business use of cell phones as a taxable fringe benefit. After many groups, including the American Trucking Associations, told the IRS that the rule was obsolete and burdensome, last year's federal tax bill changed the treatment of cell phones. The new IRS guidance, IRS Notice 2011-72, says that if you give an employee use of a cell phone for substantive business reasons, then non-business use of the phone will not be counted as income. If you reimburse employees for using their personal cell phones for business, the reimbursements are not counted as income either. .

IRS Publicizes Credit for Small Businesses –

The federal Internal Revenue Service is reminding small businesses that there's a new tax credit to help such companies provide their employees with health insurance. The credit, enacted as a provision of last year's federal health care act, is limited to businesses that employ no more than the equivalent of 25 full-time workers, and that pay wages averaging not more than \$50,000 a year. A firm also needs to cover at least half the cost of health insurance to get the credit. The credit starts, with the smallest businesses, at 35 per cent of its cost of premiums, and phases out for companies with more than 10 full-time equivalent employees or that pay an average wage of over \$25,000. There are more details; go here <http://www.irs.gov/newsroom/article/0..id=223666.00.html>, to see them.

New TCP National Survey: 1 in 5 Smaller fleets consider leaving industry if tonnage does not increase

The recent Third Quarter 2011 Transport Capital Partners (TCP) Business Expectations Survey found that 15% of fleets are considering leaving the industry in the next six months if volumes do not increase. Twenty percent of fleets under \$25 million revenues and 11.8% of fleets over \$25 million said they would give consideration to leaving. Richard Mikes, TCP partner, notes that "Ironically even though smaller fleets are more optimistic about volumes over the next 12 months

(54% vs. 38%), they still indicate that they are more serious about leaving the industry.” Lana Batts, TCP Partner, observes the current situation by noting that “a dichotomy still remains in our industry, even with carriers seeing more freight volumes. They are still under cost pressure from most inputs (fuel, regulations, equipment, drivers). In essence, it just isn’t any fun anymore.”

On a more long term basis, the number of carriers thinking about selling in the next 18 months (compared to the next six months discussed above), rose slightly from 25% to 28%. But this is the highest percentage of carriers that have been interested in selling long-term since TCP began the survey in Feb of 2009. Almost 40% of the smaller carriers are giving consideration to leaving the industry in the next 18 months compared to only 23% of the larger carriers. “The desire to leave the industry will significantly change the face of the industry as well as the business models that depend upon smaller carriers providing hard assets,” said Batts.

[For complete details and graphs, click here.](#)

Mikes observes: “Taken in its entirety this third quarter survey shows a ‘trend of caution’ in the overall no-growth economy, and the impact of a surge of regulations on trucking is best summed up by the halving of the number of carriers expecting growth in the year ahead.”

TCP uses this quarterly survey along with partner conversations with carriers to provide a meaningful insight into future industry expectations. Both [Mikes and Batts](#) have long term experience in the transportation industry. Carriers desiring to participate in future surveys may apply at [here](#).

About Transport Capital Partners, LLC

TCP provides advisory services related to transportation mergers and acquisitions, capital sourcing, and operations and strategy with regional offices in Florida, Iowa, Colorado, Pennsylvania,

NTTC ASKS DOT TO HALT TWO TANK TRUCK RULEMAKING

National Tank Truck Carriers said last Wednesday it has asked Transportation Secretary Ray LaHood to stop two rulemaking processes aimed at tank trucks. The first rulemaking would require a ban on gasoline in loading lines on cargo tanks, also known as wetlines, NTTC said. The other would turn over cargo tank regulatory responsibilities to a private third party and restrict public access to the regulatory process, NTTC said. In a statement, NTTC said it considers the rulemakings “unnecessary and even counterproductive to safety.” (TT)

TANK TRAILER DEMAND BOOMING

A surge in tank truck business, spurred by oil and shale gas drilling, is fueling an “incredibly hot” market for tank trailers to haul crude oil, sand and related products, industry officials said. Demand to haul those products, as well as water, has helped boost tank volumes 16% this year, outpacing the 3.1% growth in overall truckload volume, according to American Trucking Associations. Flatbed carriers serving areas such as the Marcellus shale gas formation centered in Pennsylvania also are gaining business “The market is hot, incredibly hot,” said Jim Miller, vice president of Walker Group Holdings, whose Brenner tank trailer

division serves the oil and gas business. "You can't build trailers fast enough." Well drilling has grown 17% in 2011, according to oil-field services firm Baker Hughes Inc. A single well can generate 9,000 truckloads of business, an industry source said. "The oil and gas exploration is really helping our business," Greg Heyer, vice president of sales and marketing for Heil Trailer said. Demand is strong and is outpacing supply, Heyer said, for trailers to haul crude oil and sand. That prompted Heil to add manufacturing capacity. Heyer described the market for that equipment as "crazy." (TT)

U.S. Likely to Miss Deadline on HOS Rule, Officials Say
This story appears in the Oct. 24 print edition of Transport Topics.

GRAPEVINE, Texas — The Federal Motor Carrier Safety Administration's top official said the agency is working feverishly to complete a controversial final hours-of-service rule, but trucking executives predicted last week that FMCSA won't finish by an Oct. 28 deadline set by a U.S. court.

"We continue to work toward the Oct. 28 date," FMCSA Administrator Anne Ferro told the American Trucking Associations hours-of-service panel at a meeting here on Oct. 16. "As it gets closer, of course, we have to be realistic."

At Transport Topics' press time, the final rule had yet to be sent to the White House Office of Management and Budget, which is required to review it before the rule can be published, said Dave Osiecki, an ATA senior vice president.

"It takes time," Osiecki told TT. "It just doesn't seem possible" to meet the deadline.

In a regulatory briefing at ATA's Management Conference & Exhibition, Osiecki said that while there probably have been informal discussions between OMB and the Department of Transportation leadership, the formal OMB review has not begun.

The proposed rule was the result of a settlement FMCSA reached with advocacy groups that have twice sued successfully in federal court to block the agency's revision of job limits established around the time of the Great Depression.

In its December proposal, FMCSA said it was leaning toward cutting driving hours back to 10 from 11 and modifying the 34-hour reset provision by requiring that it include two rest periods of at least six hours and mandating that the rest periods fall between midnight and 6 a.m.

ATA opposes the proposed rule and has threatened to file a lawsuit if it reduces driving hours.

ATA President Bill Graves and three ATA staff members made their case for keeping the current rule in an Oct. 7 meeting with Cass Sunstein, the head of OMB's Office of Information and Regulatory Affairs.

"We made hopefully a pretty effective case that there's no evidence that the current rule is problematic," Osiecki said of the meeting. "I think all four of us from the ATA side came away thinking that the OMB staff understood our arguments."

Sen. Kelly Ayotte (R-N.H.) said she was considering an amendment to the 2012 transportation appropriations bill to block funds to "finalize, enforce, or implement" the hours rule.

"This is yet another heavy-handed federal regulation that would disrupt business operations and increase costs for the trucking industry and consumers, and New

Hampshire's truckers are rightfully concerned about the impact of these changes," Ayotte said in an Oct. 19 statement.

The Senate appropriations committee had not considered the amendment as of TT press time, and Transportation Secretary Ray LaHood sent a letter to Ayotte urging her to reconsider.

LaHood's letter hinted that the hours rule could contain some significant changes.

"The amendment would prevent FMCSA from applying the most comprehensive and up-to-date data and analysis to the issue of driver fatigue and allowable hours of service," LaHood wrote.

"The final rule, if put in jeopardy, potentially undermines the entire regulatory process," LaHood wrote.

Sen. Patty Murray (D-Wash.), the top Democrat on the subcommittee that crafted the transportation spending bill, agreed with LaHood.

"Sen. Murray opposes this amendment because it would erode the FMCSA's ability to prevent accidents and keep roads safe," Eli Zupnick, a spokesman for Murray, told TT.

Attorneys representing Public Citizen and Advocates for Highway and Auto Safety, parties in the HOS lawsuit, said they had not been notified by FMCSA about possible delays in meeting the Oct. 28 deadline.

"It's a frustration that the hours-of-service issue is lingering on," outgoing ATA Chairman Barbara Windsor said at a news conference at MCE last week. "We all anticipated that by Oct. 28 we would see it in final, but now we find out it hasn't even reached OMB."

The OMB review process can routinely take between 60 and 90 days, said former FMCSA administrator Annette Sandberg, even for less controversial rules than the proposed HOS revision, which received 40,000 comments from myriad stakeholders.

"I've never seen OMB clear a regulation in 12 days," Sandberg told TT last week. "I will be shocked to see the rule clear by the 28th."

Unemployment Taxes Likely to Rise –

The Tax Foundation has issued a report that says that employers in most states may anticipate increases in unemployment compensation taxes still this year. Given as slow an economic recovery as the U.S. is seeing, and with lingering high unemployment, the Foundation says the unemployment benefits system is stressed. Most states have borrowed money from the federal government over the past couple of years to keep their funds solvent and to avoid raising taxes, but now the feds are requiring the states that have not paid off their loans to pay interest on them, and that alone, according to the U.S. Department of Labor, will mean that 33 states are likely to raise their unemployment taxes this fall. The report includes some suggestions for reform of the system. Joseph Henchman, *Unemployment Insurance Taxes: Options for Program Design and Insolvent Trust Funds*, Tax Foundation, Wash., DC, issued October 17, 2011, and available on-line here:

<http://taxfoundation.org/publications/show/27673.html>.

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