Top Challenges for Trucking

Presented by:
Prasad Sharma
General Economic Themes & Truck Freight

The Good/OK
1. Consumer spending drives a significant amount of dry van, dedicated, and temperature controlled truckload freight.
2. Housing starts are important for some flatbed fleets and dry van.

The Bad
1. Factory output is quite soft, which impacts LTL fleets and many TL sectors (dry van, tank truck, flatbed).
2. Energy production (frack well drilling) has hurt many tank truck and flatbed carriers.
3. Current inventory cycle is a big drag on freight volumes.
General Trucking Themes

1. Truck freight volumes weakened considerably through 2015 and 2016 YTD. Loads for the rest of this year will remain uneven by sector.

2. Combination of more trucks and lackluster demand softened capacity. While the industry added some OTR capacity (mainly small TLs and LTLs) in 2015, tractor counts remain well below all-time highs. Some sectors are adding trailers to boost trailer-to-tractor ratios. Expect capacity to tighten going into 2017 as volumes gradually improve and the ELD mandate gets closer.

3. Combination of pay hikes and oil field weakness helped a little in the short-term with the driver shortage, but this is not the long-term trend.

4. Fleets continue to see rising costs x fuel. Fleets used fuel savings to pay drivers more, replace trucks and add trailers.
Tractor Count Changes

Source: ATA’s Trucking Activity Report

Includes company tractors and independent contractors. 2016 data is January through June.
### Truck Driver Age Demographics

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Truck Transportation</th>
<th>Construction</th>
<th>Professional / Business Services</th>
<th>ALL Industry</th>
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</thead>
<tbody>
<tr>
<td>20-24 years</td>
<td>4.9%</td>
<td>7.1%</td>
<td>7.5%</td>
<td>9.8%</td>
</tr>
<tr>
<td>25-34 years</td>
<td>15.6%</td>
<td>23.3%</td>
<td>24.3%</td>
<td>22.4%</td>
</tr>
<tr>
<td>35-44 years</td>
<td>24.0%</td>
<td>24.5%</td>
<td>23.5%</td>
<td>22.0%</td>
</tr>
<tr>
<td>45-54 years</td>
<td>29.3%</td>
<td>25.3%</td>
<td>22.9%</td>
<td>23.3%</td>
</tr>
<tr>
<td>55-64 years</td>
<td>20.1%</td>
<td>15.8%</td>
<td>15.8%</td>
<td>17.0%</td>
</tr>
<tr>
<td>65 years +</td>
<td>6.1%</td>
<td>4.0%</td>
<td>5.9%</td>
<td>5.5%</td>
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Truck Driver Age Demographics

<table>
<thead>
<tr>
<th>Age Group</th>
<th>2013</th>
<th>2003</th>
<th>1994</th>
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<tr>
<td>20-24 years</td>
<td>4.9%</td>
<td>5.6%</td>
<td>9.2%</td>
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<tr>
<td>25-34 years</td>
<td>15.6%</td>
<td>21.7%</td>
<td>30.4%</td>
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<tr>
<td>35-44 years</td>
<td>24.0%</td>
<td>28.7%</td>
<td>29.5%</td>
</tr>
<tr>
<td>45-54 years</td>
<td>29.3%</td>
<td>26.1%</td>
<td>20.0%</td>
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<tr>
<td>55-64 years</td>
<td>20.1%</td>
<td>14.0%</td>
<td>9.1%</td>
</tr>
<tr>
<td>65 years +</td>
<td>6.1%</td>
<td>2.8%</td>
<td>1.9%</td>
</tr>
</tbody>
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IC Model Under Fire

- **U.S. DOL IC-Status Interpretation (July 15, 2015)**
  - Advice memorandum from the Wage & Hour Division regarding IC-status under FLSA
  - Grafted expansive view of “suffer or permit to work” (definition of employ) and focus on economic dependence
  - “In sum, most workers are employees under the FLSA’s broad definitions.”
  - Elevates one factor (whether work is integral part of employer’s business) over control factor (“the “control” factor should not play oversized role in the analysis”)
IC Model Under Fire

- **DOL Joint Employer Status Interpretation (Jan. 2016)**
  - Advice memorandum from the Wage & Hour Division regarding Joint Employer status under FLSA.
  - Identifies the “core question” in joint employment determinations as “whether the employee is economically dependent on the potential joint employer who, via an arrangement with the intermediary employer, is benefitting from the work.”
  - Candidly describes the DOL’s intention to shift FLSA liability upstream to “larger and more established [businesses], with a greater ability to implement policy or systemic changes to ensure compliance.”
IC Model Under Fire

- President Obama’s Labor Department has made rooting out alleged misclassification a priority.
- MOUs with 30 states, including Iowa, to share information and coordinate enforcement (AL, AK, AR, CA, CO, CT, FL, HI, ID, IL, IA, KY, LA, MD, MA, MN, MO, MT, NH, NM, NY, OR, RI, SD, TX, UT, VT, WA, WI, WY).
- In FY 2015, federal WHD investigations led to recovery of $74 million in back wages.
Wage and Hour Class Actions

• Applying to both employee driver and IC drivers (who get reclassified)
• Primarily in California but spreading; meal and rest break violations, wage statement violations, how minimum wage is calculated
# FMCSA Regulatory Agenda

<table>
<thead>
<tr>
<th>Subject</th>
<th>Status</th>
<th>Comments Due</th>
<th>Compliance Date</th>
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<tbody>
<tr>
<td>Entry-level driver training</td>
<td>NPRM</td>
<td>N/A (closed April 6)</td>
<td>3 years from final rule</td>
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<tr>
<td>Electronic Logging Devices (“ELDs”)</td>
<td>Final Rule</td>
<td>N/A</td>
<td>December 18, 2017; December 16, 2019 (for AOBR replacement)</td>
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<tr>
<td>Carrier Safety Fitness Determinations (“SFD”)</td>
<td>NPRM</td>
<td>N/A (closed May 23, 2016 (initial); June 23, 2016 (reply))</td>
<td>90 days following publication of final rule</td>
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<td>Driver Coercion</td>
<td>Final Rule</td>
<td>N/A</td>
<td>January 29, 2016</td>
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<tr>
<td>Sleep Apnea</td>
<td>ANPRM</td>
<td>N/A (closed July 8, 2016)</td>
<td>Unknown</td>
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<tr>
<td>Drug &amp; Alcohol Clearinghouse</td>
<td>Expected Soon</td>
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<td>N/A</td>
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<tr>
<td>Subject</td>
<td>Status</td>
<td>Comments Due</td>
<td>Compliance Date</td>
</tr>
<tr>
<td>-------------------------------</td>
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<td>---------------------------------------</td>
</tr>
<tr>
<td>Heavy Vehicle Speed Limiters</td>
<td>Expected Soon</td>
<td>N/A</td>
<td>N/A</td>
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<tr>
<td>Sanitary Food Transportation</td>
<td>Final Rule</td>
<td>N/A</td>
<td>April 2017/April 2018 (for small businesses)</td>
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<tr>
<td>Greenhouse Gas (Phase 2)</td>
<td>NPRM</td>
<td>N/A (closed October 1, 2015)</td>
<td>Phased in starting in MY 2018 (for trailers) and MY 2021 (for tractors)</td>
</tr>
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</table>
Safety Fitness Determinations

• Current Safety Rating Process
  – Three-tier rating: Satisfactory, Conditional, Unsatisfactory
  – Assigned following on-site, comprehensive compliance review
  – Based on number of “acute” and “critical” violations discovered in six broad factors: general compliance, driver fitness, hours-of-service, vehicle maintenance, hazardous materials, and accident rate
<table>
<thead>
<tr>
<th>Factor Ratings</th>
<th>Overall Rating</th>
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<tr>
<td>Unsatisfactory</td>
<td>Conditional</td>
</tr>
<tr>
<td>0</td>
<td>2 or fewer</td>
</tr>
<tr>
<td>0</td>
<td>More than 2</td>
</tr>
<tr>
<td>1</td>
<td>2 or fewer</td>
</tr>
<tr>
<td>1</td>
<td>More than 2</td>
</tr>
<tr>
<td>2 or more</td>
<td>0 or more</td>
</tr>
</tbody>
</table>
Safety Fitness Determinations (cont’d)

• Current Safety Rating Process
  – “Proposed” rating following review
  – Administrative review
    • 49 C.F.R. 385.15 (legal challenges)
    • 49 C.F.R. 385.17 (upgrade request based on corrective actions)

• Proposed Safety Rating Process
  – One-tier rating: Unfit
Safety Fitness Determinations (cont’d)

• Proposed Safety Rating Process
  – Assigned one of three ways:
    • Agency investigations
    • On-road safety data (i.e., SMS)
    • Combination investigation/on-road safety data
  – FMCSA’s justification for new methodology
    • Currently, the agency can only investigate 17,000 carriers per year out of approx. 525,000; 1,000 of which result in proposed Unsatisfactory ratings
    • New methodology would expand the reach and would result in additional 2,000 carriers per year receiving proposed Unfit ratings
Safety Fitness Determinations (cont’d)

• Proposed Safety Rating Process
  – Monthly assessment of performance in the seven BASICs
  – 2 or more failed BASICs in a given month results in proposed Unfit rating
  – Roadside BASIC failures
    • Only 5 of the 7 BASICs are evaluated using roadside data: unsafe driving, hours-of-service, driver fitness, vehicle maintenance, and hazardous materials (crash indicator and controlled substances/alcohol compliance is investigation only)
    • In order to fail a BASIC using roadside data, a carrier must have a minimum of 11 inspections with violations in a given BASIC in a 24-month period
Safety Fitness Determinations (cont’d)

• Proposed Safety Rating Process
  – Roadside BASIC failures
    • FMCSA proposes “absolute failure standards” for the 5 BASICS; carriers whose SMS scores exceed the standards in any BASIC will fail that BASIC
    • “Absolute failure standards” vs. intervention thresholds
Safety Fitness Determinations (cont’d)

• Proposed Safety Rating Process
  – Roadside BASIC failures
    • Absolute failure standards will be set by rule (proposal is to use standard that is equivalent to the 96th (Unsafe Driving and HOS BASICS) and 99th percentile (Driver Fitness, Vehicle Maintenance, and HM Compliance BASICS)
    • BASIC measure = sum of time- and severity-weighted violations divided by total time weight of vehicle inspections
    • Safety Event Groups (number of inspections with violations)
  – FMCSA investigation failures
    • On-site or off-site investigations
    • A single “acute” or “critical” violation in any BASIC = failure of that BASIC
Safety Fitness Determinations (cont’d)

• Proposed Safety Rating Process
  – Administrative Review
    • 49 C.F.R. 385.15 (must be filed within 15 days of proposed Unfit rating)
    • 49 C.F.R. 385.17 (new Compliance Agreement requirements)
    • Unconsidered inspection data
CSA and Carrier Selection

• What is CSA?
  – A program to measure and carrier and driver safety performance based on inspections and crashes in order (the Safety Measurement System or SMS) in order to identify those most likely to get into crashes
  – Carriers measured in 7 BASICs (Unsafe Driving, HOS, Driver Fitness, Controlled Substances/Alcohol, Vehicle Maintenance, Hazmat, Crash Indicator) within peer groups
CSA and Carrier Selection

• Problems include:
  – Lack of data, particularly on small carriers who are the bulk of the industry
  – Regional enforcement disparities
  – Questionable assignment of severity weights
  – Underreporting of crashes by states
  – Inclusion of non-preventable crashes
  – Increased exposure to crashes for carriers in urban environments
CSA Reform

• “We did not find any meaningful statistical correlation between BASIC scores and actual accident incidence on the basis of miles driven or number of power units in our 4,600 carrier dataset.” -- Wells Fargo report Jul. 2012

• Though ATRI found a positive statistical correlation between BASIC scores and crashes in 3 of the publicly available measurement categories, this only established a trend based on hundreds of thousands of carriers; tens of thousands had scores contrary to the trend

• Not reliable for making safety judgments on individual carriers
Coercion
Prohibited Conduct

• The rule prohibits coercing a driver to operate a commercial motor vehicle (“CMV”) where the driver has objected that such operation would require the driver to violate regulations of the FMCSA, including the Federal Motor Carrier Safety Regulations (“FMCSR”).
  – The rule applies to direct coercion of the driver.
  – A decision to withhold business from a motor carrier is not covered by the rule (but could be a violation if the “driver is the carrier”).
Coercion (cont’d)

• Among the regulations that the driver cannot be coerced into violating are:
  – Hours of service regulations;
  – Equipment inspection, repair and maintenance regulations;
  – Intermodal roadability regulations; and
  – Regulations regarding load securement.
Coercion (cont’d)

• Broadly. The definition includes:
  – withholding of business;
  – withholding employment or work opportunities;
    or
  – taking or permitting any adverse employment action against the driver.
Coercion (cont’d)

• There is no duty to ask the driver whether or not he or she can complete the requested services without running afoul of regulations.

• However, for carriers, there is a duty to ensure compliance by drivers employed or leased to the carrier with the regulations.

• A claim of coercion requires the driver to object and to at least generally identify the regulation that would be violated.
Coercion (cont’d)

• Examples (for an intermediary):
  – Direct threats against the driver, including:
    • Refusal to work with the driver in the future; or
    • threatening to make a negative report about the driver to the driver’s carrier.
Coercion (cont’d)

- Examples (for a carrier):
  - firing or laying off a driver that has voiced an objection;
  - decreasing dispatch opportunities, reducing pay, or reducing hours;
  - reassigning the driver in such a manner as to impact promotion prospects;
  - reassignment to less favorable shifts or routes;
  - moving the driver to the “bottom” of the dispatch list after rejecting dispatch (if the driver would not have otherwise moved to the bottom had the load been accepted); or
  - reporting negative information in an employment history (though FMCSA has recognized that there will be significant evidentiary obstacles to making a coercion case tying the report to the driver’s refusal to be coerced).
Entry-Level Driver Training

• Current Requirements
  – CDL drivers with less than 1 year experience must receive training in four areas: driver qualification, hours-of-service, driver wellness, whistleblower protection
  – Evidence of training must be kept in DQ file

• Proposed Requirements
  – Applicable to those applying for a CDL, those reapplying following disqualification, and those seeking to upgrade their CDL or add endorsements (e.g., hazmat endorsement, tank truck endorsement)
  – Exceptions for military, farmers, and firefighters
  – Core Curriculum (theory & behind-the-wheel)
Entry-Level Driver Training (cont’d)

• Proposed Requirements
  – Core Curriculum (theory & behind-the-wheel)
    • Class A – minimum 30 hours BTW (at least 10 on range and at least 10 on public roads)
    • Class B – minimum 15 hours BTW (at least 7 on public roads)
  – Rules for training providers (i.e., curriculum, administration, trainer qualifications, assessments, training certificates)
  – Training providers must be listed on FMCSA’s Training Provider Registry
Electronic Logging Devices

• Current Rules (permissive use of AOBR)
• Revised Rules (effective Dec. 18, 2017)
  – Mandated ELD use for all drivers required to fill out RODS
  – Exemptions
    • Drivers who complete RODS fewer than 8 days in any 30-day period
    • Driveaway-towaway operations
    • Vehicles manufactured before 2000
Electronic Logging Devices (cont’d)

• Revised Rules (cont.)
  – Minimum ELD capabilities
    • Integral synchronization
    • Recording location
    • Graph grid display
    • Clock time drift
    • Communications methods
    • Tampering resistance
    • Sensor failure and edited data
Electronic Logging Devices (cont’d)

• Revised Rules (cont.)
  – Supporting Documents
    • Must retain up to 8 supporting documents for every 24-hour period
    • Docs should list driver’s name or ID number, date, time, and location (e.g., fuel records, toll receipts, GPS, trip sheets, dispatch records, payroll)
  – Privacy/Driver Harrassment
    • ELD must have “mute” function
    • GPS location captured during personal conveyance must be larger area
    • Drivers must certify carrier edits
    • Drivers must have access to logs for six-month period
Sleep Apnea

• ANPRM in which agency is seeking information on prevalence of the condition, diagnostic and treatment options, and costs and benefits thereof

• Screening recommended by NTSB and had been recommended by FMCSA’s Medical Review Board
Drug & Alcohol Clearinghouse

- Proposal pushed by Congress to ensure a central database to report results of drug and alcohol tests for CDL drivers
- Would require carriers, Medical Review Officers, Substance Abuse Professionals, and labs to report failed tests, refusals, and successful return-to-duty tests
Questions?