

January 7, 2020

President-Elect Joseph R. Biden Jr.
c/o Biden-Harris Transportation Transition Team
1401 Constitution Avenue, NW
Washington, D.C. 20230

Dear President-Elect Biden:

The undersigned agricultural producer, commodity, agribusiness and food-related national organizations respectfully request your Administration's support to advance transportation infrastructure and policies for truck, rail, waterways and ports that will enhance the efficient and cost-effective transport of agricultural and food products. The farmers, ranchers, food and beverage manufacturers, processors, package suppliers, farm supply dealers and agricultural product marketers that comprise our collective memberships are dedicated to providing safe, abundant, affordable and sustainably produced human and animal food, fiber and other agricultural products that directly benefit U.S. and global consumers and contribute significantly to U.S. economic growth and trade. Importantly, they also support and sustain millions of American jobs, many in rural communities.

During the early stages of the COVID-19 pandemic, various supply chains experienced major disruptions, including the food and agricultural supply chain, whose employees and transportation providers have been designated as essential critical infrastructure workers in guidance from the U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency. The critical importance of a strong transportation infrastructure and flexible transportation policy was reinforced as the food, agricultural and transportation sectors worked to transform and adapt their supply chains to ensure essential products continued to be available when and where they were needed.

But more needs to be done to institutionalize the lessons learned during the early stages of the pandemic concerning transportation policies that are essential to ensure resiliency of the food and agricultural supply chain. We respectfully offer for your consideration the following recommendations for the three major freight transportation modes: trucking, rail and barge/inland waterways.

TRUCKING

We offer the following recommendations regarding motor carrier transportation:

Exemptions

Exemptions to hours-of-service (HOS) rules remain vitally important to the food and agriculture sector given surges in trucking capacity that are needed for various reasons throughout the year. These include the need to accommodate seasonal spikes in transportation of food, fiber and other agricultural supplies to facilitate the growing, harvesting, processing and distribution

of food and agricultural products. Since its inception in 1995, the agricultural exemption has provided the required flexibility. Given the strong safety record of the U.S. agricultural trucking sector, Congress and the Federal Motor Carrier Safety Administration (FMCSA) periodically have modified policies to enhance its usefulness to help ensure a more efficient and cost-effective freight transportation distribution system.

We urge four more important incremental changes to the agricultural exemption to the HOS rules [C.F.R. 49, sec. 395.1(k)] to help our sector meet seasonal spikes in transportation of food, fiber and other agricultural supplies.

- First, we recommend eliminating the “planting and harvesting periods” requirements to ensure uniformity within all states. Most states already have adopted a year-round agricultural exemption (Jan. 1 – Dec. 31) given the diverse range of crops and modern agricultural practices that result in truck movements throughout the year.
- Second, we urge providing a 150-air-miles exemption from HOS regulations on the backend of truck movements for those transporting agricultural commodities. This would build on the current exemption for the beginning of hauls at the “source” and simply would add the term “destination.” Originally, the front-end exemption was put in place to give farmers and ranchers extra time to safely and slowly navigate rural roads, which frequently are minimally maintained and have significantly slower travel speeds. This change also would avoid penalizing drivers for doing their job safely in remote areas away from major highways, as well as to provide for proper animal health and welfare practices for livestock being transported.

All the identified concerns (rural roads, slower travel to achieve safety, and slower animal handling to achieve safety and animal welfare) also exist at the destination of a haul. Destination feed yards and pastures often are in areas just as remote as source pastures and sale barns. In addition, processing facilities typically have long lines and demand the same need for slow and careful animal handling. This language also would address the very real concern of those who come close to their destinations and then “run out of time,” forcing them to leave livestock on their trailers while only being a short distance from their destination. This is impractical, illogical and detrimental to animal welfare.

- Third, we request the inclusion of an FMCSA pilot program for transporters of farm supplies who would be allowed to operate under an expanded air-mile radius where the agency can collect data from participating agribusinesses over a multi-year period to confirm there are no adverse impacts on transportation safety. Farm supply transporters continue to be adversely affected by industry consolidation and driver shortages.
- Fourth, we support finalizing the FMCSA’s interim rule updating the definition of an agricultural commodity for purposes of determining eligible freight for the agricultural

exemption. We believe the updated definition appropriately covers current agricultural products and allows for continued evolution of any agricultural commodities in the future.

Load-Shifting

Load-shifting during transport, combined with fixed axle weight limits, either can result in reduced efficiency resulting from intentional underloading to ensure compliance or ticketing of drivers carrying legal weight loads by total weight, but not by axle group. We urge the adoption of a 10 percent load-shift axle tolerance for trucks transporting cargo in trailers specifically designed to hold dry bulk goods. Such a load-shift tolerance would increase the maximum weight limit for axles or axle groups but would leave the maximum gross vehicle weight limit unchanged.

Minimum Financial Responsibility

We support the current \$750,000 minimum financial responsibility requirement for motor carriers. Anecdotally, our understanding is that the average annual insurance premium to comply with the current \$750,000 minimum financial responsibility requirement is about \$5,000 per truck. Meanwhile, the minimum automobile liability insurance for most states is less than \$100,000 and the premium is significantly less than \$5,000. We oppose any increase in the minimum financial responsibility requirement for motor carriers, which would cause even greater targeting of truckers and increase the cost burden for trucking and lead to the introduction of higher truck freight rates and fewer for-hire motor carriers, with no demonstrable improvement in motor carrier safety. Factors other than financial requirements influence the safety of truck drivers on U.S. roadways, including such elements as the condition of roadway surfaces and the behavior of other drivers, including those driving passenger vehicles.

Driver Shortage

Federal-level commercial driving license (CDL) restrictions on drivers aged 18 to 20 create an obstacle to recruiting a new generation of drivers into the industry. Forty-nine states and the District of Columbia allow 18- to 20-year-old CDL holders to operate in intrastate commerce. We request your support of pathways for CDL holders aged 18-20 to drive on the Interstate Highway System and drive across state lines to help remove the constraint posed by this obstacle to recruiting drivers. FMCSA's proposed pilot project to allow drivers 18-20 years old to operate commercial motor vehicles in interstate commerce contains many concepts from the DRIVE SAFE Act to increase safety and we encourage FMCSA to continue the pilot.

Harmonizing State Road and Interstate Highway System Truck Weight Limits

Lower Interstate Highway System truck weights compared to state road truck weight limits reduce economic and environmental efficiency. We believe the solution is to give states flexibility to increase and harmonize the maximum gross vehicle weight for trucks on the Interstate Highway System in their jurisdictions, depending upon current state highway limitations.

In March 2020, Congress provided states with the option to determine truck weight limits through Section 22003 of the “Coronavirus Aid Relief, and Economic Security Act” (CARES Act). We are aware that approximately 20 states utilized the emergency authority to increase and harmonize truck weight limits for state and Interstate Highways within their jurisdictions.

Increased and harmonized truck weight limits improve our sector’s efficiency and reduce its carbon footprint. For example, if a state’s truck weight limit is 90,000 pounds for state roads, but the Interstate Highway weight limit is 80,000 pounds, the driver’s utilized freight limit is only 80,000 pounds if the best shipping route includes connection to an Interstate Highway, even though the Interstate Highways are our nation’s safest and best- built and maintained roads.

Usually, an unloaded tractor-trailer combination weighs approximately 30,000 pounds. Thus, a tractor-trailer combination loaded to 80,000 pounds would carry approximately 50,000 pounds of freight. At 90,000 pounds, the tractor-trailer combination would carry approximately 60,000 pounds of freight, amounting to a 20 percent increase in freight efficiency and a commensurate reduced carbon footprint per pound, all while reducing the number of trucks that otherwise would traverse congested highways.

Unfortunately, under statute that was **not** modified by the CARES Act, states’ authority to increase truck weight limits on Interstate Highways ended 120 days following a Presidential disaster declaration. Thus, following the March 13, 2020 Presidential declaration for coronavirus, states were required to rescind the higher truck weight limits on Interstate Highways on July 12, 2020.

We respectfully request your support to provide states with the flexibility to increase and harmonize the maximum gross vehicle weight for trucks on the Interstate Highway System in their jurisdictions in a way that is compatible with their current state highway limitations.

RAIL

Rail transportation remains an important mode for transporting agricultural products, even though its modal share has declined significantly given the rapid consolidation of the rail industry. Today, four railroads haul more than 90 percent of all freight rail traffic, with duopolies existing in the East (CSX and Norfolk Southern) and the West (BNSF and the Union Pacific). Further, six of the seven Class I U.S. freight railroads (the largest carriers) have implemented a form of the so-called precision-scheduled railroad operating model, which at its core involves dramatic reductions in what they spend to run the railroad. This results in furloughing of crews, downsizing of customer service personnel, and idling of locomotive assets while generating ever-increasing revenues to reward shareholders.

While we believe it is important for railroads to earn sufficient revenues to invest in their networks and earn reasonable profits, the balance has shifted to the point that carriers are increasingly and arbitrarily dictating the terms and conditions under which they will provide

service to our sector. Many facilities are captive to a single railroad and in some cases, railroads have “demarketed” traffic by either increasing rates or imposing service conditions that make rail infeasible for shippers and receivers.

In response to these and other developments associated with railroads exercising their overwhelming market power, the Surface Transportation Board (STB) – the independent federal agency responsible for providing regulatory oversight of freight rail practices – has initiated significant efforts to better balance the needs of railroads to earn revenues with the need for rail customers to have access to cost-effective and reliable rail service. These efforts have included the Agency’s instituting rulemakings to provide rail customers with a more streamlined, simplified and less costly process for challenging unreasonable rail rates – known as the Final Offer Rate Review procedure – as well as issuing guidelines addressing egregious and one-sided demurrage and accessorial practices imposed by carriers. But as with each mode, much more needs to be done if freight rail is to remain a viable mode for efficiently and reliably transporting U.S. agricultural products in the highly competitive global market.

An immediate need is for the President to nominate a Democrat to fill the vacancy that occurred when former STB Chairman Ann Begeman’s term expired on December 31, 2020. Former Chairman Begeman did a commendable job with current Commissioners Martin Oberman and Patrick Fuchs in moving the agency forward. In this regard, we respectfully recommend that the new President appoint Mr. Oberman as the new chairman. He is a highly respected, impartial and knowledgeable current Democratic STB member who previously headed Chicago’s commuter rail system (Metra). In addition, we look forward to working with President Biden and the Senate to identify and confirm nominees that possess the expertise, knowledge, objectivity, impartiality and sound judgment to again restore the STB to its full complement of five members.

The STB will mark its 25th anniversary in 2021. However, many of its regulations and policies that were implemented decades ago by the STB and its predecessor, the Interstate Commerce Commission are no longer relevant in today’s rail marketplace and need to be updated or eliminated, as was borne out in a landmark 2015 study conducted by the National Academy of Sciences’ Transportation Research Board. These include the need to instill more rail-to-rail competition; define the meaning of railroad’s legal common carrier obligation “to provide service upon reasonable request;” implement meaningful rail rate reform, and to review the current commodity exemptions from STB regulation, including those for certain forest and paper products.

It is critical that the STB provide meaningful regulatory oversight and serve as a neutral body to adjudicate rail marketplace disputes. Continuing efforts to modernize this critical agency under the Biden administration will help farmers, agribusinesses and manufacturers be more viable and competitive while still preserving a vibrant and profitable rail industry.

WATER

Inland Waterways

Our nation and agricultural community rely upon a resilient, efficient, and modern inland waterways transportation system to help ensure U.S. and global food security. America's inland waterways system, comprised of 12,000 miles of navigable waterways in 38 states, is critical to the transportation supply chain. This vast network typically transports nearly 600 million tons of freight valued at \$250 billion over what, mile-for-mile, is the safest and most environmentally responsible mode of goods transport. Barge transportation is highly fuel efficient, with towboats moving one ton of cargo 647 ton-miles per gallon of fuel, compared to trucks moving that same weight 145 ton-miles for each gallon of fuel burned, and locomotives transporting such cargo 477 ton-miles per gallon. A standard inland river configuration of one towboat pushing 15 barges of dry cargo moves as much as 1,050 semi-trucks on our highly congested roadways, or six locomotives pulling 216 rail cars.

We urge the new administration to invest in infrastructure investments to modernize the outdated locks and dams on the Upper Mississippi and Illinois River System – most of which are well beyond their 50-year lifespan and are only 600-feet, far short of the 1,200-foot capacity to handle today's barge tows. We commend Congress for the recent passage of the Water Resources Development Act (WRDA) bill that updates the cost-share formula for inland waterway projects and provides access to the existing balance of funds within the Harbor Maintenance Trust Fund over a 10-year period to facilitate port-dredging activities. Further investment is needed to upgrade locks and dams and we recommend the administration support congressional efforts to continue its recent practice of enacting WRDA bills every two years to ensure important policy updates are made in a timely manner.

Detention and Demurrage, Export Container Availability and Container Return Practices

Finally, we are strongly supportive of the Federal Maritime Commission's (FMC) investigation of detention and demurrage, export container availability and container return practices of ocean carriers. Concerns over ocean carrier and terminal practices at U.S. ports include ignoring the agency's existing Demurrage and Detention Guidelines, making containers unavailable to carry agricultural export cargo, cancelling or refusing export container bookings and a persistent lack of timely notice of changes to U.S. shippers. All these harmful patterns are contributing to supply chain dysfunction, increased costs for U.S. agricultural exporters and preventing U.S. shippers from capturing export opportunities. In a similar manner to the rail environment, the ocean shipping industry has vastly changed in recent years and increasingly to the detriment of U.S. exporters. We seek solutions to better balance the needs of shipping lines with the needs of our agricultural exports.

Conclusion

We look forward to working with you toward a successful transition to a new Administration and in support of the agriculture community and transportation infrastructure of our great nation.

Sincerely,

Agricultural and Food Transporters Conference
Agricultural Retailers Association
Agriculture Transportation Coalition
American Beekeeping Federation
American Cotton Shippers Association
American Farm Bureau Federation
American Forest and Paper Association
American Frozen Food Institute
American Honey Producers Association
American Pulse Association
American Sheep Industry Association
American Soybean Association
Corn Refiners Association
Cotton Warehouse Association of America
Growth Energy
Hardwood Federation
Institute of Shortening and Edible Oils
Livestock Marketing Association
National Aquaculture Association
National Association of Wheat Growers
National Barley Growers Association
National Cattlemen's Beef Association
National Corn Growers Association
National Cotton Council
National Council of Farmer Cooperatives
National Grain and Feed Association
National Milk Producers Federation
National Oilseed Processors Association
National Pasta Association
National Pork Producers Council
National Potato Council
National Sorghum Producers
National Sunflower Association
National Turkey Federation
North American Meat Institute
North American Millers' Association
North American Renderers Association
Pet Food Institute
Southwest Council of Agribusiness
Specialty Soya & Grains Alliance
The Fertilizer Institute
United Fresh Produce Association

USA Dry Pea & Lentil Council
U.S. Canola Association
U.S. Dry Bean Council
U.S. Pea & Lentil Trade Association
Waterways Council, Inc
Western Growers Association
Western Peanut Growers Association

CC: Mr. Mike Rodriguez, U.S. Department of Transportation Agency Review Team
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