



October 18, 2021

U.S. Department of Transportation
Docket Operations
Room W12-140
1200 New Jersey Avenue, S.E.
Washington, DC 20590
Submitted via www.regulations.gov

Re: America's Supply Chains and the Transportation Industrial Base
Docket No. DOT-OST-2021-0106

Dear Docket Clerk:

Pursuant to the Department of Transportation's (DOT) notice requesting information to assist in preparing the report required through President Biden's executive order "America's Supply Chains," the Truckload Carriers Association (TCA) hereby submits these comments.

TCA, with offices at 555 East Braddock Road, Alexandria, VA, 22314, is the only national trade association whose collective sole focus is the truckload segment of the trucking industry. As a major part of an industry that has over 524,000 companies within the United States operating millions of power units, TCA and its trucking company members regularly comment on matters affecting the national trucking industry's common interests and the potential impacts these matters could have on our operations. With that in mind, TCA and our members are invested in the DOT's efforts to create a more efficient supply chain through various means, including identifying and reducing bottlenecks.

Trucking – especially the truckload segment of the industry – plays a crucial role in the U.S. economy.¹ In 2019 the trucking industry hauled 72.5% of all freight transported in the United States, equating to a staggering 11.8 billion tons. Internationally, trucks transport 68% of goods between the U.S. and Canada. More freight is hauled across country by truck than through any other means, making trucking the backbone on which the U.S. economy relies to move its supply of goods.

Impact of Proposed Vaccine Mandate

Considering the DOT's request for information regarding the efficiency of the U.S supply chain, TCA takes the opportunity to explain how the vaccine mandate for private businesses with over 100 employees outlined in the President's COVID-19 Action Plan will affect the trucking industry.² During the past twenty months of the pandemic, trucking has kept the American

¹ Bureau of Transportation Statistics, "Freight Facts and Figures," <https://www.bts.gov/product/freight-facts-and-figures>.

² The White House, "Path out of the Pandemic: President Biden's COVID-19 Action Plan," <https://www.whitehouse.gov/covidplan/>.

people supplied with food, personal protective equipment, and the vaccine meant to curb the spread of COVID-19. Our drivers have asked for no special accolades and have put the needs of others above their own by taking on the risk of traveling across the country in the midst of a pandemic.

With one of the most mobile workforces in the nation, the logistical challenge of vaccinating 3.6 million truck drivers as they move cross country is nearly impossible as drivers may not return to their base of operations for several days or even weeks at a time.³ This natural lack of consistency regarding the individual schedules of drivers presents an even larger challenge when considering the weekly testing provision of the forthcoming mandate. Adding to this is the exorbitant cost of implementing a weekly testing regime for our mobile workforce and the added burden on our nation's laboratories, which the industry is already heavily relying upon to detect drug and alcohol users in compliance with the Federal Motor Carrier Safety Administration's (FMCSA) Drug and Alcohol Clearinghouse.

There is widespread concern among experts that a mandate of this nature would lead to a massive driver exodus from the industry, the likes of which the nation's supply chain is not prepared to handle. Due to the already disproportionate driver to freight ratio, the trucking industry is currently short 60,000 drivers, a number that is projected to be 100,000 by the year 2023.⁴ Even with various efforts in the works to attract and retain more drivers, this shortage is not on track to diminish in the near future.

TCA believes the ramifications of the vaccine mandate on the trucking industry would decimate the current driver pool, creating unacceptably long wait times for freight deliveries across the nation and in particular hampering the truckload, over-the-road portion of the supply chain. Finding qualified drivers to haul the nation's freight safely and efficiently is already a challenge within the industry, a challenge which will only be exacerbated under a massive driver exodus.

Threats to Trucking's Owner Operator Model

Potentially one of the greatest threats to trucking's ability to move freight across the county is the immense disruption in the supply of qualified professional truck drivers if the owner operator model is eliminated through the imposition of a nationwide "ABC" test for employment status. On top of the driver departure likely to be caused by a vaccine mandate, any threat to a driver's ability to be in business for him- or herself and operate as an independent contractor, not an employee driver, will significantly hamper the trucking industry and our work on behalf of the American public.

The Protecting the Right to Organize (PRO) Act, which has passed the House of Representatives but is unlikely to receive similar passage in the Senate, would codify the ABC test adopted in California under AB 5 into federal law.⁵ The "B" prong of this test, which says that an independent contractor's work must take place outside the usual course of the business, is completely unfeasible in trucking. Without an exemption, our owner operator drivers will be forced to either become company drivers or leave the industry altogether and find another career.

³ "Truck Drivers in the US: Employment and Haul Statistics", AllTrucking.com, <https://www.alltrucking.com/faq/truck-drivers-in-the-usa>.

⁴ Ari Hawkins, "A Trucking Crisis Has the U.S. Looking for More Drivers Abroad," Bloomberg, August 2, 2021, <https://www.bloomberg.com/news/articles/2021-08-02/a-trucking-crisis-has-the-u-s-looking-for-more-drivers-abroad>.

⁵ Dave Heller and Kathryn Pobre, "Partisan PRO Act gets pushback," Truckload Indexes, July 30, 2021, <https://www.freightwaves.com/news/partisan-pro-act-gets-pushback>.

While the PRO Act will not pass in Congress in this session, TCA and others are concerned that these same changes to federal employment law could be advanced through the Department of Labor. Any action by the federal government on this front will have the opposite effect of ensuring the trucking workforce of tomorrow is robust and that these individuals have the entrepreneurial opportunities which make this profession attractive today. It will also ultimately make trucking less competitive in the overall search for quality employees in the labor market.

Need for Full Sleeper Berth Flexibility

As TCA stated in our comments regarding FMCSA's recent updates to the hours-of-service (HOS) regulations, full sleeper berth flexibility, including the ability for the driver to take the required 10-hour rest break in any interval he or she chooses, would have a dramatic impact on a driver's ability to better utilize the hours in their day.⁶ This artificial bottleneck continues to be enshrined in federal regulations through the lack of full sleeper flexibility. While the FMCSA's latest HOS updates did provide the option for a 7/3 sleeper berth split in addition to the already allowed 8/2 split, this simply does not go far enough not only to increase productivity but also to improve safety performance and reduce exposure.

Providing drivers with the flexibility to take their rest in the sleeper berth at the interval that works best for them would greatly help alleviate the stress of crowded roadways and lost efficiency in driving times. Fewer trucks on the road during rush hour presents a commonsense goal for the regulatory community. TCA also believes that the distance traveled by trucks will remain constant with additional split-sleeper berth flexibility, but the time and money it takes to complete those trips can be minimized with more flexibility in the regulations. We urge FMCSA to advance full sleeper berth flexibility through the regulatory process to ensure our nation's freight can move as safely and efficiently as possible.

As always, we wish to thank the DOT for the opportunity to comment on this important issue, and we look forward to working with the Department on similar matters in the future.

Sincerely,



John Lyboldt
President
Truckload Carriers Association

⁶ Truckload Carriers Association, "Public Comments regarding Hours of Service of Drivers, Docket No. FMCSA-2018-0248-5454," October 21, 2021, <https://www.regulations.gov/comment/FMCSA-2018-0248-7764>.