

Statement of

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Before the

**SENATE COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION**

**SUBCOMMITTEE ON
SURFACE TRANSPORTATION AND MERCHANT MARINE
INFRASTRUCTURE, SAFETY, AND SECURITY**

Hearing on Reauthorization of the Motor Carrier Safety Programs

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Driving Trucking's Success

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Introduction

Chairman Lautenberg, Ranking Member Wicker, and members of the Subcommittee, my name is Dan England, and I am the Chairman of the Board and President C.R. England, a nationwide transportation company specializing in the movement of temperature-controlled products. Founded in 1920, we are a family-owned business employing more than 4,600 drivers and operating 3,500 trucks.

I also currently serve as Vice-Chairman of the American Trucking Associations (ATA). ATA is the national trade association for the trucking industry, and is a federation of affiliated State trucking associations, conferences and organizations that together have more than 37,000 motor carrier members representing every type and class of motor carrier in the country. Thank you for the opportunity to testify before the Subcommittee today.

Mr. Chairman, today I have been asked to speak about ways to ensure that only safe motor carriers and drivers are able to enter the industry; steps to strengthen laws and regulations governing drivers and vehicles that are permitted to operate; and the tools federal and State authorities need to remove unfit drivers and carriers from the industry. I will also address a number of other opportunities to improve highway safety later in my testimony.

The Industry's Safety Record

It is important to point out that the trucking industry has long supported sensible and effective measures to improve highway safety. Because the highway is our workplace, we are concerned whenever any motorist - professional truck driver or passenger vehicle operator - engages in risky behavior behind the wheel. ATA was an early advocate of mandatory drug and alcohol testing for drivers and the ban on radar detectors in trucks. More recently, we successfully petitioned the National Highway Traffic Safety Administration (NHTSA) to initiate a rulemaking to mandate that speed limiters in all large trucks be set at time of manufacture to no more than 65 mph. In addition, we have published an 18-point Safety Agenda, a series of policy recommendations that, if implemented, would go a long way to further improving highway safety.

We have seen a truly incredible improvement in truck safety, especially over the last decade. In fact, in 2009 the number of injuries and fatalities in truck-involved crashes reached its lowest level in recorded history. Some may try to discredit these accomplishments by attributing them to the recession. However, these crash reductions have occurred even though truck mileage has increased. As a result, the *rate* of trucks involved in fatal and injury crashes has also reached a record low level. Charts depicting these improvements can be found at the end of my testimony.

Preventing Unsafe Motor Carriers and Drivers From Entering the Industry

New Entrant Requirements

In order to continue the positive trends in truck safety, FMCSA must further strengthen the requirements for new motor carriers entering the industry. As a study conducted by the Volpe National Transportation Systems Center (Volpe Center) demonstrated, new motor carriers have significantly higher violation and crash rates. For instance, the violation rate of critical safety regulations for new entrants was 206.3 per 1,000 drivers compared to 11.8 per 1,000 drivers for experienced carriers. Similarly, the violation rate of acute safety regulations for new entrants

was found to be 128.8 per 1,000 drivers versus 34.1 for experienced carriers.¹ Not surprisingly, the rate of crashes for new carriers was found to be higher as well. The crash rate for carriers in their first year of operation was 0.505 per million vehicle miles traveled, compared to 0.411 for carriers with more than a year of operating experience.²

Despite these risks, FMCSA currently grants operating authority to new motor carriers without any demonstration of the carrier's understanding of, or compliance with, federal safety regulations. Instead, an initial new entrant safety audit occurs up to 18 months after a carrier has commenced operations. Regrettably, 41% of carriers fail these initial safety audits and 24% ultimately have their authority revoked.³

Clearly, more needs to be done to ensure the safety of new entrants before they begin operating, and new entrant safety audits must be done sooner. As the Subcommittee may be aware, the Motor Carrier Safety Improvement Act (MCSIA) of 1999 directed the Secretary of Transportation to "consider the establishment of a proficiency examination for applicant motor carriers. . .to ensure such applicants understand applicable safety regulations before being granted operating authority". However, in implementing the new entrant program, the Federal Motor Carrier Safety Administration (FMCSA) opted not to require such an exam but instead created a self-certification process. Carriers merely had to answer "yes" or "no" to a series of questions about whether they complied with federal safety regulations.

In March 2003, the National Transportation Safety Board (NTSB) criticized the new entrant safety assurance process in its safety recommendations stemming from a tragic motorcoach accident. NTSB noted that the self-certification process "...does little more to screen new motor carrier applicants than the previous new entrant form requirements did. . . In other countries and territories, the new applicant process is more stringent. . . In all member countries of the European Union, a new motor carrier must take an examination to ensure that he knows the rules and regulations. . . The Safety Board therefore concludes that FMCSA's New Entrant Safety Assurance Process lacks meaningful safeguards to ensure that a motor carrier is aware of, understands, and has a safety management system in place to comply with the FMCSRs (Federal Motor Carrier Safety Regulations). "

In a rulemaking completed in 2008, FMCSA subsequently eliminated the self-certification process, noting that "Many carriers were discovered to have falsely certified having such knowledge, and commenters urged the Agency to remove this requirement. The Agency concluded that enhanced educational materials and technical assistance materials would provide most carriers with sufficient knowledge of applicable regulations and of how to comply with such regulations. . ."

With the elimination of the self-certification process, there is now no means to effectively ensure knowledge and compliance with the regulations by new entrants before they begin operations. ATA recognizes that strengthening the new entrant safety assurance process is a large task for FMCSA to tackle. Over 40,000 new motor carriers file for authority to operate annually, but FMCSA must focus its limited resources on auditing existing carriers that present known safety risks. However, it is clear that the new entrant process must be improved.

¹ Acute regulations those where a single violation is indicative of a breakdown in, or lack of, safety management controls. Critical violations are those a pattern of violations (e.g., more than 10% of records check) is indicative of a breakdown in, or lack of, safety management controls.

² *Background to New Entrant Safety Fitness Assurance Process*, John A. Volpe National Transportation Systems Center, March 2000.

³ Presentation at 2011 Commercial Vehicle Safety Alliance Spring Workshop by Jack Van Steenburg, Director, Office of Enforcement and Compliance, FMCSA, April 2011.

ATA urges mandatory minimum training requirements, pre-authority proficiency exams, and accelerated initial safety audits as components of highway reauthorization legislation.

Specifically, every new entrant should be required to successfully complete comprehensive on-line training on compliance with the Federal Motor Carrier Safety Regulations and an examination prior to initiating operations. Further, FMCSA should conduct the initial safety audits sooner, specifically, within 6 months of the carrier's start date.

Drug and Alcohol Clearinghouse

There are also steps FMCSA can take to prevent unsafe drivers from entering the industry. In particular, FMCSA can leverage the industry's shared desire to prevent these drivers from operating by providing motor carriers with tools to more effectively screen driver applicants. For instance, the creation of a clearinghouse for drug and alcohol test results would help carriers identify applicants that have violated the drug and alcohol regulations. The clearinghouse would represent a major step toward closing a known loophole that allows unsafe drivers to evade the consequences of their actions by simply failing to disclose to hiring carriers the names of motor carrier they worked for when they committed drug or alcohol violations.

Driver Safety Measurement System Scores

FMCSA could also leverage the power of the industry to remove unsafe operators from the industry by providing carriers with driver applicants' Driver Safety Measurement System (DSMS) scores. These scores are generated by the agency's new safety Measurement System and represent each driver's safety performance reflected as a percentile ranking compared to all other drivers. Currently, these scores are only accessible by agency enforcement officials.

Hair Testing For Drugs

Finally, the Department of Transportation (DOT) should work with the Department of Health and Human Services to develop standards for the acceptance of hair testing as a component of the Federal Workplace Drug Testing program. Motor carriers are increasingly relying on hair testing as a means to identify unsafe drivers who make drug use part of their lifestyles. These carriers have found that hair is far superior to the only currently accepted specimen – urine – in its ability to detect drug use. Specifically, they have found that hair tests are up to 30% more likely to reveal drug use. Further, hair testing is less subject to subversion than urine and has a longer window of detection time – up to 30 days.

However, carriers that employ hair testing must still conduct redundant urine tests. Also, they are prohibited from sharing positive hair test results with former drivers' prospective employers. As a result, a driver who is terminated for testing positive on a hair test can merely apply for employment with another motor carrier without fear that the new employer will learn of his failed drug test.

Improve Laws and Regulations that Govern Drivers and Vehicles

Employer Notification System

Once drivers are permitted to enter the industry, both FMCSA and motor carriers need the tools to assure their continued safety. One such tool that is desperately needed is a system to proactively notify employers of drivers' convictions for moving violations and of other licensing actions (e.g., license suspensions). Such systems have been shown to function effectively in several states and could serve as models for a federal program.

Research has repeatedly shown the strong predictive value of moving violations. One such study, an April 2011 analysis published by the American Transportation Research Institute⁴ (ATRI), showed that drivers convicted of moving violations are far more likely to be involved in future crashes. For instance, drivers convicted of improper passing, improper turns or improper/erratic lane changes are over 80% more likely to be involved in a future crash than those who have not. More timely notification of such violations would improve safety by revealing problem driving behavior promptly so that corrective action (e.g., training, progressive discipline) can be taken more quickly.

Consistent with ATRI's findings, a 2004 FMCSA study *Driver Violation Notification Service Feasibility* concluded that a national ENS could save approximately 15 lives and avoid up to 373 injuries and 6,828 crashes per year. More recently, two States – Colorado and Minnesota – participated in an ENS pilot program mandated by Section 4022 of the Transportation Equity Act for the 21st Century (TEA-21). Nearly 1,100 drivers participated in the pilot which generated 229 notifications to the drivers' employers. In its final report on the pilot, FMCSA estimated that a national DRNS system would prevent between 2,500 and 3,500 crashes and generate \$240.5 million in societal safety benefits annually.

Under the current Federal process, motor carriers often do not learn of drivers' convictions in a timely manner. Employers are required to check drivers' records annually, however these records may reveal violations committed up to 11 months earlier. Similarly, CDL holders are required to notify their employers of violations within 30 days of a conviction, but are often reluctant to do so fearing repercussions. FMCSA estimates that at least 50% of drivers do not notify employers of convictions and licensing actions (e.g., suspensions, revocations) within the required time-frames.

For these reasons, ATA strongly advocates swift development of a national employer notification system. DOT can deploy such a system relatively quickly and easily by endorsing a hybrid approach - combining the capabilities and expertise of a third parties with strong federal guidance.

Electronic Logging Devices

FMCSA could also better ensure safe operation of commercial motor vehicles by moving forward with its proposed mandate for electronic logging devices. ATA supports mandating such devices as a means to improve compliance with the hours of service rules. FMCSA's data generated in the context of its Compliance, Safety, Accountability (CSA) program, shows a very strong correlation between compliance with the current hours of service rules and safe operation. Hence, the proper course of action is to improve compliance with the rules, rather than change them.

Moreover, FMCSA's proposed changes to the hours of service rules are unnecessary and unjustified. Truck safety has improved to unprecedented levels since 2003 when the basic framework for the current hours of service regulations was first published. The numbers of truck-related injuries and fatalities have both dropped more than 30% to their lowest levels in recorded history.

Also, the productivity losses and other negative impacts of the proposed rule would be dramatic. Past estimates by DOT placed the net cost to society of similar changes at over \$2 billion annually. In fact, FMCSA's own cost benefit analysis acknowledges that the safety benefits of

⁴ *Predicting Truck Crash Involvement: A 2011 Update*; American Transportation Research Institute, April 2011.

the proposed rule do not outweigh the costs. Only by applying creative “driver health” benefits can the agency justify making these changes. However, the agency mischaracterized the findings of the research upon which it makes this tenuous claim.

Given these many reasons, the best course of action is for FMCSA to abandon its proposal, retain the current hours of service regulations, and devote attention to improving compliance with the rules by, among other things, mandating electronic logging devices.

Speed Limiters

Perhaps one of the most effective means to ensuring continued safe operation is to reduce the speed of vehicles. As the Subcommittee may know, in 2006 ATA petitioned FMCSA and NHTSA to require speed limiters be set at time of manufacture. Also, ATA subsequently recommended a maximum national speed limit to 65 miles-per-hour for all vehicles. NHTSA recently agreed to grant ATA’s petition and will initiate a rulemaking on this matter. However, the agency has delayed its planned initiation of this rulemaking until the end of 2012. Including this mandate in the safety title of reauthorization would raise the visibility and priority of this issue causing NHTSA to begin its rulemaking process sooner.

Tools to Remove Unsafe Drivers and Carriers From the Industry

ATA shares Congress’ strong desire to remove unsafe drivers and carriers from the industry. Perhaps the most important part of that process is the accurate identification of bad actors. Fortunately, FMCSA’s new CSA program represents an important means to this end. By design, the system uses real-time performance data, measures relative crash risk, and creates scores of comparative performance. These scores are then used to identify the most unsafe actors (carriers and drivers) and prioritize them for enforcement intervention.

Data Quality Issues

ATA has supported CSA from the outset since it is generally performance-based, provides real time measurements, and has the potential to distinguish responsible carriers from those that may not share their commitment to safety. However, the integrity of the system is hindered by underlying data quality issues. As such, its use as a system to reliably identify unsafe carriers and drivers is somewhat limited.

Given the heightened impact of safety data (roadside inspection results, crashes) on carriers’ performance measurements, carriers are increasingly scrutinizing their data and challenging erroneous records. These challenges are made through a program called DataQs, which channels correction requests to the appropriate state agencies. However, since the launch of CSA, DataQ correction requests have skyrocketed, challenging the states’ abilities to correct erroneous reports in a timely fashion. To help resolve this data crisis, ATA strongly encourages Congress to expand Motor Carrier Safety Assistance Program (MCSAP) funding dedicated to State DataQ resources. At a minimum, each state will need to add a full time employee (or two) in order to keep pace with the increasing demand for data corrections.

Scoring Methodology Improvements

It is also necessary for FMCSA to make some changes to the methodology CSA uses to develop carriers’ scores. Most importantly, FMCSA should modify the severity weights or “points” assigned to violations so that they more accurately correspond to relative crash risk. Several, if not many, of the violation severity weights are illogical and inappropriate, in that they do not accurately reflect relative crash risk. As a result, the system targets the wrong carriers – those that may not present the greatest crash risk.

For instance, a tire with less than 2/32nd tread on the trailer bears the same weight (8 points on a scale of 1 – 10) as a tire in the same condition mounted on the steering axle. Naturally, these two mounting positions present very different relative risks. Also, failing to have all four hazardous materials placards mounted horizontally bears the same weight (5 points) as having no placards mounted at all.

To develop these severity weights, FMCSA initially relied on data generated through a crash risk analysis. However, the agency later modified the weights based on “subject matter expert input” and is now in the process of seeking recommendations for additional changes based on the opinions expressed by members of the agency’s Motor Carrier Safety Advisory Committee. In order to ensure that the system accurately identifies drivers and carriers that represent the greatest crash risk, FMCSA should carefully weight each violation on its statistical relationship to crashes.

Crash Accountability

Perhaps the most pressing area for improvement with the CSA program is with respect to how the system measures carriers’ crash involvement. Currently, the system measures carrier performance by considering all carrier involved crashes, including those for which the motor carrier could not reasonably be held accountable. Accordingly, a carrier involved in a number of crashes for which it was not responsible is seen as just as safe/unsafe as a like-sized carrier who was involved in the same number of crashes – but caused the majority of them.

As a result, safe carriers are erroneously labeled as crash prone and targeted for interventions and roadside inspections. Conversely, unsafe carriers (those with a pattern of *causing* crashes) with slightly fewer crashes may appear safer by comparison and escape scrutiny.

Undoubtedly, one of the best predictors of future crash involvement is a carrier’s past at-fault crash involvement. However, because the current system does not consider crash accountability, carriers’ scores in this area are less meaningful and reliable. Hence, in order to use the system to its fullest potential as a means to target unsafe drivers and carriers for intervention and potentially remove them from the industry, FMCSA should only measure carrier performance based on crashes for which they could reasonably be held accountable.

Additional Opportunities to Improve Safety

While dedicating attention to the enforcement and regulatory issues discussed above is important, doing so is restrictive and will yield limited results for two primary reasons. First, this approach focuses exclusively on motor carriers and drivers, despite the fact that the majority of car/truck crashes are initiated by actions committed by other motorists. Second, it emphasizes enforcement and compliance as the primary means to improve safety. Though enforcement programs are necessary and important, seeing them as the only avenue to improving highway safety is severely limiting and discounts the potential of other solutions that would leverage the power of the industry to achieve additional improvements.

Focuses On A Small Part of the Problem

As the committee is well aware, FMCSA is primarily focused on regulating only part of the highway safety equation: motor carriers and commercial motor vehicles. Yet the single largest factor impacting truck safety is the behavior of other motorists. Hence, focusing almost exclusively on motor carriers and their drivers directs attention to a small part of the equation.

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).⁵ Numerous additional studies have analyzed crash data and arrived at similar conclusions. 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 trucks drivers 26% of them. 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.⁶ In fact, the VTTI study said:

“... the current study lends further credibility to the hypothesis that light vehicle drivers are responsible for a substantial proportion of the light vehicle/heavy vehicle interactions and that addressing this problem should include focusing on the light vehicle driver.”⁷

Since meaningful solutions to commercial motor vehicle safety require a focus on the primary causes of crashes, FMCSA should devote its awareness and education resources and promote traffic enforcement programs to address the role of passenger vehicles in car/truck crashes. Due to the agency’s statutory limitation on regulating only commercial motor vehicles, the agency must continue find new and creative ways to address this part of the truck-involved crash problem. FMCSA’s *Ticketing Aggressive Cars and Trucks* (TACT) program is one such program, albeit a small one, aimed directly at the high risk behaviors - those that cause crashes - of both car and truck drivers. This program that has been evaluated and shown to be effective. As a result, FMCSA should work to implement it as part of each state’s motor carrier safety assistance program.

Motor carriers recognize that the key to reducing crashes is finding ways to prevent them, regardless of fault. Congress and FMCSA must adopt this approach as well. In order to further reduce commercial motor vehicle crashes, we must acknowledge the primary causes of these crashes and accept the need to initiate programs that will address them.

The Regulatory Compliance and Enforcement Model

Again, ATA recognizes that truck safety regulations are important and we support them. However, regulations alone are insufficient to achieve optimum results. Employing more creative solutions and employing tools to leverage the mutual interest of the industry to improve highway safety will bring about even greater safety improvements. I have already mentioned a few of these tools such as a drug and alcohol clearinghouse, an employer notification system and access to DSMS scores. They represent good examples of ways to provide the industry with the means to help achieve our mutual goals. To achieve the fullest potential, Congress and FMCSA should explore additional tools that will bring about safety gains.

Incentives for Safety Technologies

Congress and FMCSA should consider tax and/or regulatory incentives for carriers to adopt systems and programs with potential safety benefits. For instance, FMCSA might consider providing positive credits in the CSA scoring methodology for carriers that voluntarily adopt emerging safety technologies. Also, ATA strongly supports passage of S. 1233/H.R. 1706, legislation that would provide a tax credit equal to 50 percent of the cost of qualified advanced safety systems, including brake stroke monitoring systems, lane departure warning systems, collision warning systems, and vehicle stability systems. These technologies are very

⁵ Department of Transportation: Federal Motor Carrier Safety Administration, *Report to Congress on the Large Truck Crash Causation Study*, (2006).

⁶ Virginia Tech Transportation Institute, *A Descriptive Analysis of Light Vehicle-Heavy Vehicle Interactions Using In Situ Driving Data*, (2006).

⁷ Ibid.

promising, but their relative risks and benefits are not fully known. Hence, mandating their use on every truck in all segments of the industry would be premature. However, providing incentives for voluntary use would promote real world testing of the devices to provide data in support of a potential future mandate. Further, such incentives could driver carriers to adopt the devices sooner, since such voluntary incentives can be introduced more quickly than a regulatory mandate.

More Productive Trucks

ATA supports giving states more flexibility to adjust their truck size and weight regulations in order to address local needs. More productive vehicles would 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.⁸ 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.^{9,10} 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.

Conclusion

Mr. Chairman, I appreciate the opportunity to offer ATA's views on how best to collaboratively improve highway safety. The trucking industry is justifiably proud of its recent safety accomplishments, but recognizes there is much more that needs to be done. Please know we strongly support your desire to improve the safety of our workplace, as demonstrated by our broad safety agenda. We share your interest in preventing unsafe carriers and drivers from entering the industry and means to ensure that rogue operators are effectively identified and removed from the roadways.

As I mentioned earlier, further meaningful improvements will require a departure from the traditional approach to truck safety. The government must acknowledge the role other motorists play in truck crashes and identify the programs we can put in place to prevent these crashes. Further, we must be more creative in our approach to improving driver and carrier safety. Providing carriers will safety tools will leverage the size and power of the industry to achieve the mutual objective of improving highway safety.

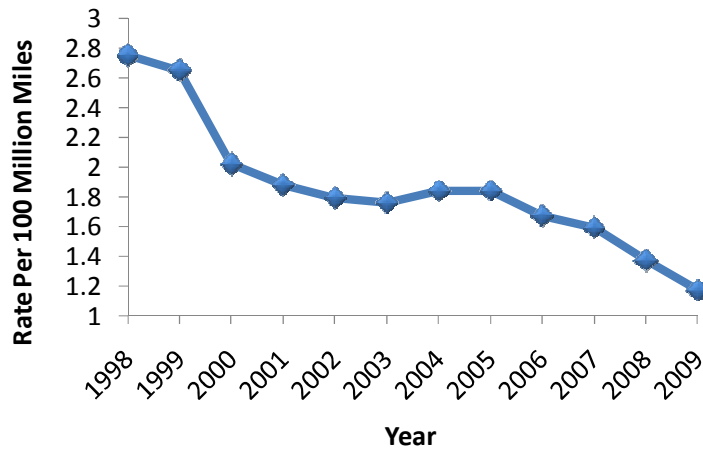
Thank you and I would be happy to answer any questions you may have.

⁸ American Transportation Research Institute, *Energy and Emissions Impacts of Operating Higher Productivity Vehicles*, March 2008.

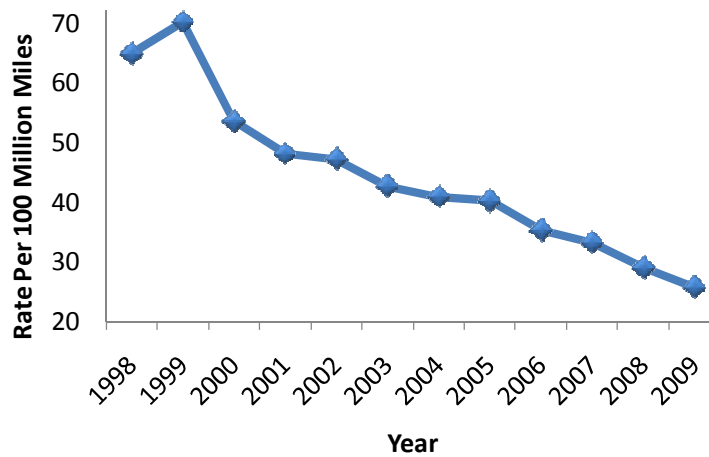
⁹ See for example: Campbell, K.L., *et al.*, "Analysis of Accident Rates of Heavy-Duty Vehicles," University of Michigan Transportation Research Institute (UMTRI), Report No. UMTRI-88-17, Ann Arbor, MI, 1988.; Transportation Research Board, National Research Council, "Truck Weight Limits," Special Report 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.

¹⁰ Though ATA expects truck traffic to increase as the economy grows, productivity increases will slow the rate of this growth.

LARGE TRUCK FATALITY AND INJURY RATES 1998 – 2009



Large Truck Fatality Rate
Per 100 Million Vehicle Miles Traveled
1998-2008



Large Truck Injury Rate
Per 100 Million Vehicle Miles Traveled
1998-2008