

Comments on FMCSA's 2010 Strategy

My name is Buster Anderson; I'm vice president of the National Association of Small Trucking Companies (NASTC.) I have reviewed your 2010 Strategy and attended a meeting hosted by the Tennessee division of the FMCSA. Following are my comments and observations on this document, the FMCSA in general, and some specific suggestions.

The document itself was very well prepared and even better presented by Clint Magby at our meeting. My primary objection to the document is in the very introduction. Our industry has reduced the rate of fatal accidents by an impressive 50% from 4.6 fatalities per 100 million miles traveled to 2.3. Yet the language of this document would have us believe that we have not improved at all. This reduction should be applauded and recognized as a result of hard work by our industry and the regulators alike. Yes, there is still much work to do. There is only one acceptable number of fatalities for us to all strive for, zero. Yes, we need to work harder; yes we need to work smarter; and yes, now more than ever, we need to work together.

I have never met a company owner who was not pro-safety. The problem the regulators have in delivering their safety message is that they have it too closely linked to their enforcement actions. Trucking companies would graciously accept new technology to help them operate more safely if there were assurances that technology would not be used to punish them for non-compliance. You will find that accomplishing our joint goal of reducing fatalities will be much easier if we elicit the help and full cooperation of our partners, the trucking companies and their staffs particularly their drivers.

In my opinion, the first year of the FMCSA was a dismal failure. This failure can be laid squarely at the feet of a horrible attitude toward your partners. First there was the “The era of cooperation is over,” comment which really endeared us all to the new agency. Then there was the proposed rulemaking on Hours of Service that was an absolute farce. It began with “We want your comment, but do not ask for more time,” and continued with statements about “unbiased science” (give me a break) “improving the driver’s home life” and other ridiculous statements and justifications that left many in the industry wondering if anyone in

Washington really knows what a truck looks like. The whole change of attitude in Washington has infected many of the field officers who are no longer the helpful partners they should be but overtly aggressive, badge flashing, intimidating jerks that are giving your agency a bad name. While we in Tennessee have been particularly blessed with excellent leadership that demands professionalism and courtesy from its field agents, other areas of the country are not so lucky. The number of complaints we have received about overly aggressive and even abusive treatment have more than quadrupled over the past year. When following up on these complaints I have been told more than once that “..this is coming from Washington. They want us to be more aggressive. They want to let everybody know that their new *‘less cooperation, get-tough’* policy is real.” Perhaps you can understand why a trucking company owner doesn’t believe you when you say “putting this on your truck will make you safer.” What he hears is ‘Put this on your truck so we can check you easier and fine you more.’ Your agency reminds me of a quarterback who takes all the credit and doesn’t recognize his lineman for the protection they provide; he usually lives to regret it. If you want to survive and accomplish any progress towards your goals you need to enlist the enthusiastic help of the industry. We are all on the same side, or should be. We all want safer highways.

Although I am a carrier advocate, let there be no mistake, I am seriously committed to safety. If a carrier doesn't take their compelling responsibility to public safety seriously, they should be shut down. I will be happy to assist you in any way I can to deliver that message. My family is equally at risk on the highways as is everyone else.

We were asked at the meeting to respond to a few key questions. The first of these was "Will the strategies described here (2010 Strategy) achieve the goals?" I am afraid the answer is no. First of all, I don't think even your agency believes that the goal is realistic, much less attainable. I think the goal is admirable and I think anything that will approach success in the pursuit of these goals will come from the concerted effort of concerned partners. You must become much less adversarial with your partners. Let's work together in pursuit of safer highways, and let's involve the driver.

The second question asked, "Are we overlooking any strategies or solutions?" I think the most overlooked strategy concerns the driver. You make mention of the driver shortage and the negative effect it has on safety, but there is no mention of trying to uplift the spirit of the professional driver.

Our industry has done a bad job of public relations for ourselves and a worse job for our drivers. Professional drivers should be portrayed as the “good Samaritans of the highway” they were when I was growing up. If we did a better job of making the driver look as important as he really is, we might be surprised at the quality and quantity of the people we attract to our industry. Although driver compensation is an issue, it is overrated and not nearly as important as driver self esteem.

Another area overlooked is your approach to driver fatigue. If you are serious about driver fatigue then pass rules that prohibit long haul drivers from loading and unloading freight. Any time this issue is raised we hear about how difficult it is to regulate the shippers and receivers of goods. That is nonsense and you know it. In the first place, you don't have to regulate them at all. You simply prohibit the trucking company from requiring or permitting their long haul drivers from engaging in these activities. You could further require these carriers, who you do regulate, to notify all the shippers and receivers of goods shipped in truckload traffic that they would be required by rule to provide for the safe and timely loading and unloading of their goods. If they cannot load or unload their freight in a timely manner they will be charged and expected to pay for detaining the driver. If they

want their freight handled by the motor carrier let them ship it with a LTL carrier and pay the significantly higher rates and forget about the timely service they expect from truckload carriers. These rules would encourage shippers and receivers to ship more freight on pallets and get the drivers in and out in a timely manner. Shippers that do not abide by these rules for using truckload carriers should be denied the privilege of using these carriers. This could be done in the same manner that you intend to black list providers under the new Part 40 rules establishing PIE regulations. These rules recognize that you have no regulatory authority over these providers but can prohibit the carriers you do have regulatory authority over from doing business with them. The nasty business of abusing drivers by delaying them and coercing them to work for free or employ lumpers is rampant in some segments of the industry and should be put to a stop.

The other area you could help our industry immensely in would be to lobby for laws that require the timely payment of freight charges, require the shipper and consignee of the freight to be responsible for the payment getting to the trucking company in a timely manner, and make the payment of freight charges an obligation that cannot be discharged through bankruptcy. Since the bulk of freight charges cover expenses already

incurred, this is fair. I also believe that there could be great value in setting minimum acceptable rates and charges for miles driven and detention so carriers could not effectively skirt these rules. Minimum rates would also level the competitive playing field and eliminate private carriers, who don't need to be profitable, and the very large carriers from hauling freight for ridiculously low rates in the name of operational convenience. If shippers want to ship freight for less than what it cost to use a truck, let them ship it by rail or boat. If they expect the timely service that is standard in the truckload industry they should expect to pay a reasonable rate.

Your plan did mention new entrants but I don't think your plans are enough to weed out bad operators. New entrants should be required to demonstrate that they understand their regulatory obligations and the relationship those obligations have to running a safe operation. They should have to pass a licensing exam and be certified before they can be granted authority. If that certification is ever revoked they should have to go through the process all over again and if it is revoked twice they should be banned from the industry for life. Even corporate entities should be required to demonstrate that they have qualified personnel running their trucking operations and to the extent they lose those key people they should have no

more than three months to replace them with certified operators or lose their right to operate trucks.

This brings us to how to fairly treat the many thousands of people that you have issued authority to that have not had to be certified. We should offer incentives to them some how to obtain certification voluntarily or schedule a compliance review for the express purpose of allowing them to demonstrate their understanding of their responsibilities. The compliance review should result in no fines unless there is a blatant disregard for safety. If a company does fail their review they will be given 6 months to get with the program or get out of the business.

I think most compliance reviews should be done in a similar manner. When a carrier is audited and the regulator finds mistakes they should be pointed out to the carrier and explained how they can be corrected or what programs the carrier can implement to address the problem. Follow up reviews should follow in six months to see if those problems have been addressed. If they have not been corrected then punitive, even harsh punitive, action may be warranted. If however the carrier has corrected all of the areas pointed out in the first audit they should be congratulated and

uplifted, not rewarded with a fine for an area they didn't know needed to be fixed. The vast majority of carriers will respond very favorably to these kinds of audits, particularly if they are about "how we, working together, can make you a safer carrier." Imagine your field agents being greeted with enthusiastic anticipation because the carrier knows they really are there to help. It would be better for everybody.

This is particularly a concern for me because I am an advocate for small trucking companies. I'm still not sure that "high risk assessments" that are being determined by your department are not somewhat biased against small carriers. I believe that there are many in your department that believe that small carriers are less safe than larger carriers. You may be able to manipulate statistics to prove this point much like it appears was done to manipulate them to prove that a reduction in fatalities from 4.6 to 2.3 was insignificant. There are many quality small carriers with excellent safety records that deserve better.

Finally the question "Do we have the right priorities and balance?" Again I'm afraid I must say no. Most of the accidents that happen are not our fault. Are we dividing our resources to equally address these other

contributing factors? We are told that other agencies are working on that; all we can work on is our group of regulated carriers. If that were true then a more realistic goal would be to reduce by 70% the total number of fatalities and injuries where the actions of the commercial vehicle driver or the trucking company are found to have contributed to the accident. Our stretch goal should be to eliminate all commercial driver fatalities by implementing better safety practices, encouraging defensive driving, employing technology to assist the safe operation of commercial motor vehicles and automobiles and offer incentives to commercial vehicle manufacturers and automobile manufacturers to produce safer vehicles that protect the driver in a crash.

In closing, I would just like to say that I appreciate the opportunity to comment on your proposal and appreciate the invitation to meet Clint Magby. I do think we will all get farther working together.

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