Monday, Oct. 31st

Ryan Thiele
610 Rile
Bushnell, Il
61422

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THE WHITE HOUSE

WASHINGTON

Amanda:

Allen called

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10/27

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American Trucking Associations

American Trucking Associations
2200 Mill Road
Alexandria, Va 22314-4677

Office of Public Affairs
703-838-1873

 3/92

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TRUCKING
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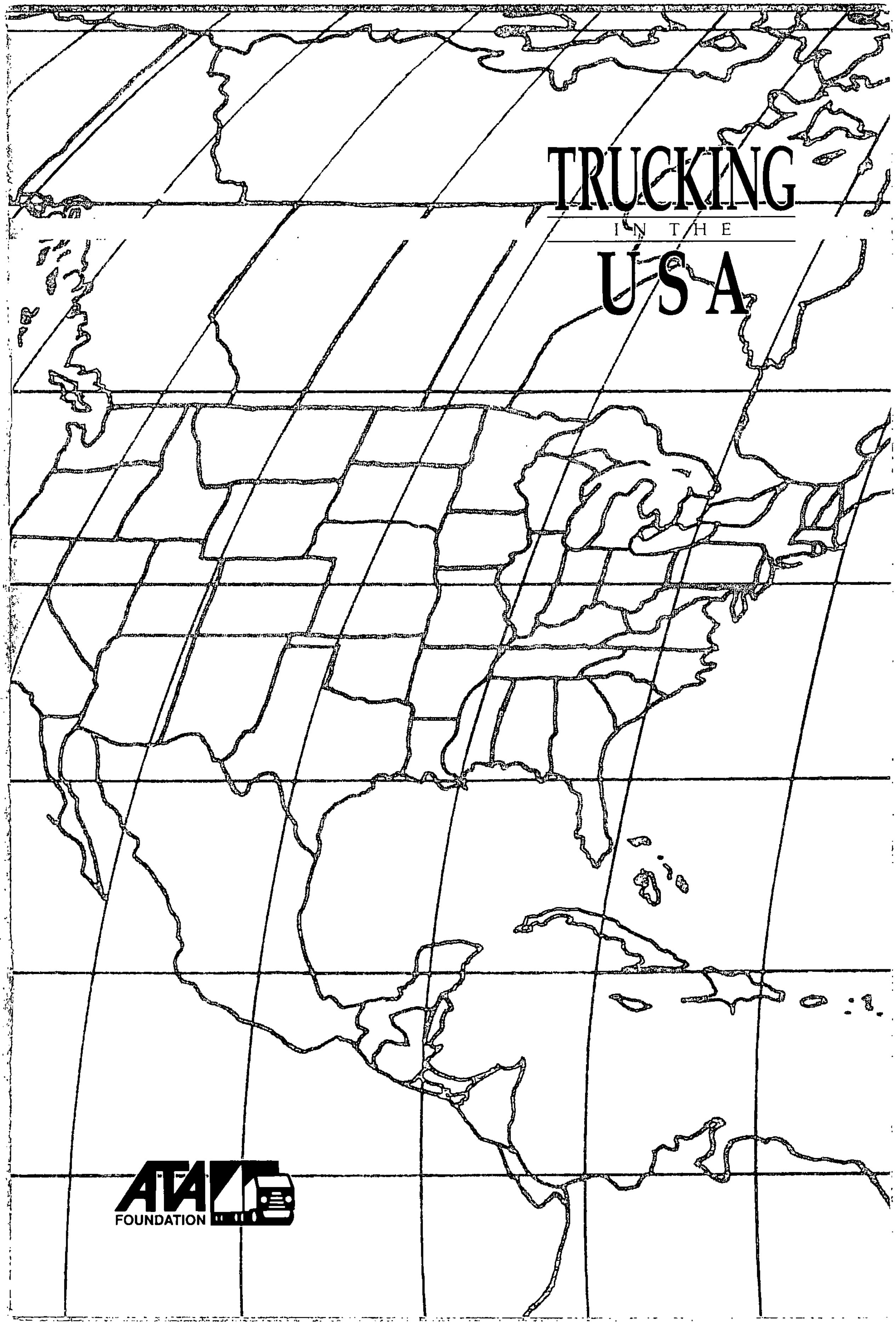

ATA FOUNDATION

Environmental Issues from page 3

on new gasoline-powered vehicles. Although the categories of trucks to be included remain unclear, light-duty trucks (up to 8,500 lbs. GVWR) are the initial focus.

In reissuing this 1987 proposal, EPA is also considering expanding it to establish refueling emissions standards for diesel- and alternative-fueled vehicles. ATA filed comments against that effort, citing an inappropriate forum, a lack of background information, and an incomplete engineering analysis as reasons not to consider expanding the mandate to other fuels. Safety concerns with the vapor recovery systems have not been fully evaluated for trucks in light of the secondary manufacturing that customizes a manufacturer-supplied cab and chassis into a fleet vehicle. This often includes the addition of more fuel capacity, which could be a problem if vapor recovery systems were required. ATA also questioned whether the increased safety risk from on-board refueling controls had been adequately evaluated in the ranges of medium- and heavy-duty trucks.

ATA has lobbied strongly against the adoption of the refueling emissions hardware on trucks over 8,500 lbs. since the proposal's inception in 1987. As a result of a lawsuit with the Natural Resources Defense Council and a subsequent consent decree, EPA is required to issue a rule by January 1994.

EPA Reorganizes Enforcement Group

Under the direction of Administrator Carol Browner, EPA's enforcement officials are reorganizing their office and approach to the enforcement of environmental violations and crimes. ATA testified at the public hearing in August, urging EPA to "replace incarceration with consultation," and to generally take a more consultative approach toward the many small businesses trying to comply but caught in the complex web of state and federal regulations. ATA also urged EPA to avoid selectively targeting high-profile national companies, when in fact these companies usually have more environmental programs than other companies.

Of three proposed options—a geographic, media, or sector approach—EPA is leaning toward a modified media approach, which will base enforcement on violations that occur in a particular medium, such as air, water, or land. The sector approach, which would have organized enforcement by industry sector, has been tabled because of implementation and fairness issues. Results will be announced later this year.

No Word on Storm Water General Permit

At press time, EPA's long-overdue storm water general permit for trucking and transportation facilities had not been released for publication in the *Federal Register*. Trucking companies in the 12 states covered by EPA's yet-to-be-proposed regulations will be unable to meet the Oct. 1 deadline for completing the requirements of the permit, which will likely include some annual monitoring and preparation and implementation of a pollution prevention plan. ATA will have reprints of the final rule available as soon as it is issued. For more information, contact **Lisa Beal** at **(703) 838-7937.** ▼

STATE HOT SPOTS

by Paul T. Stalknecht, Senior Vice President, Federation Relations

EPA's Ultimatum Puts Illinois on the Spot

Illinois has been told in no uncertain terms by the Environmental Protection Agency (EPA) that failure to pass tougher clean air rules for the Chicago area could result in the loss of $700 million in highway funds.

The action is just the tip of the iceberg as major metropolitan areas try to meet stringent standards set out in the federal Clean Air Act. The issue has already surfaced in **Indiana**, some western states, and the **Washington, D.C.**, area.

In **Chicago**, the issue is a state law that aims to increase average vehicle ridership by 25%. EPA, however, thinks the law won't reach that goal and says the Illinois Legislature will have to address the issue this fall or face highway fund sanctions. In effect, EPA wants employers to have no more than 59 cars in their parking lots per 100 employees, according to one published report.

Normally, a jurisdiction would have 18 months before the agency would impose sanctions. But EPA pointedly told Illinois that the agency has the power under the Clean Air Act to impose immediate sanctions. Chicago officials say they are confident something can be worked out and plan to meet with federal environmental representatives soon. In the meantime, the Illinois Transportation Association is closely monitoring this issue.

Farther east, 13 Northeastern state trucking associations have gone on record in opposition to the adoption of California low-emission vehicle (LEV) standards throughout the region. These state associations told the Ozone Transport Commission's LEV committee that the proposed standards would result in higher costs for fuel and vehicles, with only a minimal impact on air quality. Also, the states said, truck emissions represent a very small contribution to the pollution equation.

For more information, contact **ATA Federation Relations** at **(703) 838-1803.** ▼

FEDERAL & STATE LEGISLATIVE AND REGULATORY ISSUES OF CONCERN

TRUCKING Issues

Volume 3 ■ Number 10 October 1, 1993

AMERICAN TRUCKING ASSOCIATIONS ■ 2200 MILL ROAD ■ ALEXANDRIA, VIRGINIA 22314

EPA Grants Trucking 60-Day "Enforcement Discretion" on Low-Sulfur Diesel Fuel

The Environmental Protection Agency (EPA) said last month that it likely will not cite trucking companies for violating low-sulfur diesel fuel requirements for up to 60 days after the requirements take effect Oct. 1—as long as the company can prove that it made a good faith effort to buy low-sulfur fuel before the deadline.

Responding to ATA's concerns about the scarcity of low-sulfur diesel fuel as late as mid-September, EPA's field enforcement director said in a Sept. 15 letter to ATA that the agency "may exercise enforcement discretion" between Oct. 1 and Dec. 1.

Fleets with existing stores of high-sulfur diesel fuel that were unable to purchase low-sulfur fuel before the deadline should maintain complete records of fuel purchasing activities since June 1, including telephone logs, notices and correspondence with fuel suppliers, as well as evidence of the fleet's normal fuel-purchasing practices.

Such detailed information will be essential if a fleet is subject to an EPA enforcement action, which is most likely to occur at a fleet fueling facility, since EPA lacks the police power to stop trucks on the highway to check fuel tanks. Violators are subject to fines of up to $25,000 per day per violation, plus any economic benefit gained from the violation.

For more information, or for a free low-sulfur fuel fact sheet, contact **Allen Schaeffer**, ATA Environmental Affairs, at **(703) 838-1844.** ▼

At A Glance...

- Make plans now to attend the 60th annual ATA Management Conference & Exhibition, Oct. 31–Nov. 3 at Marriott's Orlando World Center Resort and Convention Center in Orlando, Fla. Get ready for hard-hitting industry seminars, more than 100 exhibitors of the latest in trucking industry products and services, and top-name speakers including Chairman of the Joint Chiefs of Staff Gen. Colin L. Powell. For information, call **ATA Convention Services** at **(703) 838-1755.**
- Charles Brown of the 1993 America's Road Team drove away with the Grand Championship title at the National Truck Driving Championships held Aug. 25–28 in Denver. Brown, who drives a five-axle tractor trailer for PepsiCo Food Systems of Lenexa, Kan., won a $10,000 U.S. Savings Bond from Associates Commercial Corporation. For more information, call the ATA Safety Management Council at **(703) 838-1919.** ▼

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TranSat Network on the Air Oct. 5

TranSat, the satellite communication network of ATA, takes to the airwaves Oct. 5 at 2 p.m. Eastern time for its inaugural broadcast with the premiere of "The Washington Review." The show features ATA President and CEO Thomas J. Donohue and top national political leaders in a live discussion, and answers to viewers' call-in questions.

Jointly sponsored by Associates Commercial Corporation and ATA, TranSat will initially broadcast to 40 state trucking association headquarters and will expand over the next year to include all 51 state-level associations and about 200 motor carriers.

ATA plans to offer four to six hours of TranSat programming in October, increasing to six to eight hours a month in 1994. TranSat programming will include nationwide conferences linking ATA with members and state associations in order to form political strategy; practical, how-to training seminars on management and technical subjects; and teleconferencing, which will allow prominent speakers to address distant trucking industry conferences.

For more information on receiving TranSat, contact **Jane Ziemski**, ATA Office of Public Affairs, at **(703) 838-1873.** ▼

ATA Asks ICC to Help Carriers Deal With Fuel Cost Increases

With the trucking industry facing steep fuel cost increases starting Oct. 1, ATA last month petitioned the Interstate Commerce Commission (ICC) to provide motor carriers with relief from the higher fuel costs by allowing them to pass the costs along to shippers.

Fuel cost increases include a 4.3-cent-per-gallon transportation fuel tax increase, a number of state fuel tax increases,

(continued on page 2)

Fuel Cost Increases from page 1

and a hike of up to 7 cents per gallon for low-sulfur diesel fuel mandated by the Clean Air Act.

ATA sought a number of relief options from the ICC, including a mandated fuel surcharge requiring all common and contract motor carriers to raise rates, which would be the most favorable solution for the entire trucking industry.

To aid contract carriers, ATA asked for an emergency rule reopening all transportation contracts between motor carriers and shippers so carriers can address their higher costs.

ATA also asked the ICC to give common carriers special authority to raise rates or to issue a statement explaining the "zone of rate freedom," which allows common carriers to increase rates as much as 50% without being subject to ICC review.

For more information, contact **Ken Siegel**, ATA Law Department, at **(703) 838-1857.** ▼

Unfair Investment Rights Provisions Jeopardize Trucking Industry's Support for NAFTA

ATA President and CEO Thomas J. Donohue last month stated that the nation's trucking industry may be forced to vigorously oppose the North American Free Trade Agreement (NAFTA) unless changes are made that will make it easier for U.S. citizens to invest in Mexican trucking companies.

Inequitable investment provisions are ATA's chief concern. Under NAFTA, U.S. citizens would never be able to invest in a Mexican trucking company, and only after three years would they be able to invest in Mexican trucking companies engaged exclusively in international trucking. Meanwhile, without NAFTA, Mexican citizens can invest in U.S. domestic and international trucking companies, and three years after NAFTA is ratified they would be permitted to own U.S. international trucking companies outright.

In addition, NAFTA would allow Mexico to continue to restrict U.S. used equipment imports, meaning U.S. carriers would have to purchase new equipment or use Mexican equipment in order to operate in Mexico. ATA is also concerned that NAFTA's land transport standards subcommittee, which is charged with harmonizing U.S., Canadian and Mexican size and weight standards, would exclude the U.S. trucking industry.

ATA is also asking that the Mexican government give written assurances that 53-foot trailers will be allowed on designated highways, and that U.S. trucks running on clean diesel fuel will not be precluded from operating in Mexico.

Although ATA supports the concept of a North American free trade agreement, these and other concerns must be satisfactorily addressed before the U.S. trucking industry can support the current NAFTA.

For more information, contact **Linda Bauer Darr**, ATA Office of International Affairs, at **(703) 838-7902.** ▼

TRUCKING Issues

Volume 3 ■ Number 10 October 1, 1993
Mike Mason, Editor

ATA **Trucking Issues** is published monthly for members of the American Trucking Associations, 2200 Mill Road, Alexandria, Virginia 22314, telephone (703) 838-7935. Articles may be reprinted with written permission.

UPDATE

DeliverUSA

by Patrick Jones, Executive Director, Deliver USA

On Aug. 26, Deliver USA held a meeting at ATA headquarters with representatives from several state trucking associations, state police organizations and motor carriers to plan the expansion of "Road Watch," the trucking industry's nationwide public service program.

Based on Pennsylvania's "Pike Watch" program, Road Watch is a cooperative effort between state police and the trucking industry in which truck drivers use CB radios or mobile phones to inform state police of incidents on the highway, such as drunk driving, broken-down vehicles and thefts.

An immediate result of the meeting was a commitment from the Washington D.C. Area Trucking Association to initiate Road Watch on the Capital Beltway by Oct. 13. Deliver USA also received commitments from the Georgia Motor Trucking Association and the Virginia Trucking Association to begin efforts to implement Road Watch in their states. Pennsylvania and Massachusetts currently operate Road Watch programs.

Deliver USA's initial expansion effort focuses on implementing Road Watch in the East Coast states. We'll soon be distributing a "How to Create 'Road Watch' in Your State" manual that will clearly explain steps necessary to establish the program.

For more information about Road Watch and how your state or company can get involved, please call me or Kevin Ganster at **(703) 838-7948.** ▼

ECONOMIC AND TAX REPORT

by Kenneth D. Simonson, Vice President and Chief Economist

What You Need to Know About Tax Bills—Past, Present and Future

Tax Bills Past: Carriers and others must take some steps today and in the near future as a result of the Omnibus Budget Reconciliation Act of 1993. On Oct. 1, federal fuel taxes go up by 4.3 cents per gallon. Anyone holding in storage tanks (other than vehicle tanks) 2,000 gallons or more of diesel fuel or 4,000 gallons or more of gasoline companywide must pay a "floor stocks" tax of 4.3 cents per gallon on that fuel. The tax is due Nov. 30. ATA urged Internal Revenue Service officials to exempt "dead storage" from the tax, but no answer had been received at press time.

Employers who included tuition reimbursement in employees' taxable income in the second half of 1992 must issue corrected W-2s and take several other actions now that the payments have retroactively been excluded again. ATA recommended a simplified approach for dealing with this change, but it appeared at press time that this suggestion would not be adopted.

Self-employed individuals, including many owner-operators, who bought health insurance in the second half of 1992 can file an amended return to deduct 25% of the cost. The 25% deduction was restored retroactively but will expire again at the end of 1993. Other retroactive changes that may benefit some carriers include amortization of intangibles acquired after July 25, 1991, and targeted jobs and research tax credits for expenditures incurred or paid after June 30, 1992.

Tax Bills Present: The House Ways and Means Select Revenue Measures Subcommittee held three days of hearings in September on a variety of tax proposals. Most are revenue raisers intended to pay for "members' bills," which are targeted tax breaks. The full committee may mark up a bill in early October. ATA submitted written testimony on several issues and gave congressional, IRS and Treasury officials a long white paper on why environmental cleanup costs should be expensed (immediately deducted) rather than spread out.

Tax Bills Future: The Clinton administration recently released voluminous documents on health care reform and "reinventing government." The former would directly change taxes and indirectly change the economics of using employees or independent contractors. The latter proposes much more modest changes in tax laws and administration. ATA will offer summaries and analyses of how these packages would affect trucking.

For more information, call **Ken Simonson** at **(703) 838-1798.** Also available: an internal IRS document suggesting to revenue agents items to examine in auditing trucking businesses. ▼

ENVIRONMENTAL ISSUES

by Allen Schaeffer, Director of Environmental Affairs

California Emissions Standards Could Come East by 1996

Twelve Northeastern states, all members of the Ozone Transport Commission (OTC), are seeking to require that all vehicles sold beginning in 1996 meet the California low-emission vehicle (LEV) standards. OTC, a nonregulatory body established under the Clean Air Act Amendments to advise the Environmental Protection Agency (EPA) on regional air quality issues, recently held a series of hearings on the LEV issue that began Aug. 31.

Three OTC states—Maine, Massachusetts and Maryland—recently petitioned EPA to require that all new vehicles sold in their states meet California LEV standards starting in 1996. The remaining members—Connecticut, Delaware, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and the District of Columbia—are split on the need to adopt the standards and are looking to OTC to break legal and legislative gridlock.

EPA Acting Assistant Administrator for Air Quality Michael Shapiro advised OTC not to make a recommendation and said he favored allowing states to determine their own individual approaches to air quality improvement. ATA testified Sept. 1 in Washington, D.C., in opposition to the proposal, citing the very small contribution of heavy-duty vehicles to ozone-forming emissions. OTC and member states have heard conflicting and ambiguous statements about whether to include heavy-duty trucks in the program.

ATA testified that heavy-duty trucks over 8,500 lbs. GVWR emit less than 1% of all primary ozone precursors and should be exempt from the program. Others in the trucking industry testifying in opposition included Marty Carson of the New York State Trucking Association and Dale Hannington of the Maine Motor Transport Association. In all, 13 state trucking associations and ATA filed comments or delivered oral testimony opposing the proposal. A decision is expected by the end of the year.

Truck Emissions Controls Possible

According to EPA sources, some trucks are likely to be included in the upcoming January 1994 mandate requiring refueling emissions controls, known as on-board vapor recovery.

(continued on next page)

Continued from page 3

UPDATES

- ***Retroactivity.*** In a case involving whether the federal Civil Rights Act of 1991 is retroactive, the U.S. Supreme Court heard oral argument on October 13, 1993. The Center had filed an *amicus* brief in support of Roadway Express arguing that to avoid disrupting settled business expectations, the courts should interpret all federal legislation as nonretroactive unless Congress has expressly designated otherwise. A decision is expected by the end of June 1994. *Rivers v. Roadway*, Nos. 92-757, 92-938.
- ***Drug Testing.*** OOIDA filed a new case in the U.S. District Court in Washington D.C., challenging the constitutionality of FHWA's four-state pilot project involving random roadside alcohol and drug testing. The U.S. Court of Appeals had dismissed an earlier OOIDA appeal on jurisdictional grounds. The Litigation Center had filed a brief in the appellate court in support of the drug testing program, and will participate in the new case as well. *OOIDA v. Peña*, No. 93-1427(CAR).
- ***Tax Refunds - Pennsylvania & Mississippi.*** On October 8, 1993, Pennsylvania mailed the first round of Category II axle tax refunds. These refunds are for axle taxes paid for the period April 1, 1987 through March 31, 1988. The deadline for returning the Record Taxpayer Statement Form was October 23, 1993. On September 20, 1993, the Litigation Center and the State of Mississippi mailed refund checks and Record Taxpayer Statement forms for the $12-per-truck decal fee and for $3 of the $13-per-truck stamp fee. These refunds are for decal fees paid from March 1, 1991 through June 5, 1992 and for stamp fees paid from March 1, 1989 through February 1, 1991.

The Action Report is provided as a service to all Litigation Center members. If you are not a member but would like to support the Litigation Center's activities and receive the Action Report regularly, please call Linda Lilly at (703) 838-7929.

RECENT VICTORIES AND OTHER ACTIVITIES . . .

- 8/27/83 Kentucky SHU Tax - Kentucky Circuit Court rules that the State must make post-*Scheiner* refunds to carriers who filed timely claims as to their 1987 supplemental Highway Use tax payments (State is appealing).
- 6/18/93 Pilot Drug and Alcohol Testing Program - U.S. Court of Appeals in Washington, D.C. dismisses the Owner-Operator Independent Drivers Association's challenge to USDOT's 4-state pilot program of random roadside drug and alcohol testing.
- 5/25/93 MA Flat Highway Fees - Massachusetts Supreme Judicial Court finds that the State's $14-per-truck decal fee and $200-per-truck hazardous waste hauler fee are unconstitutional.
- 4/21/93 Railroad Grade Crossing Safety - U.S. Supreme Court rules that railroads are responsible for maintaining adequate warning devices at railroad/highway grade crossings.

ATA LITIGATION CENTER OCTOBER 1993

ACTION REPORT

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STATE TAXES

Kentucky Victory: Court Clears Way To $15-20 Million In Eventual SHU Tax Refunds

In a victory for the ATA Litigation Center, the Kentucky Circuit Court ruled on September 27, 1993 that Kentucky must make full post-*Scheiner* refunds of the state's former $150-per-truck annual Supplemental Highway User's ("SHU") tax. The court rejected the State's argument that SHU tax refunds should be reduced by the amount the taxpayer would have owed under Kentucky's old weight-distance tax.

Under the court's ruling (likely to be appealed), all SHU taxpayers who filed timely refund claims will be entitled to a refund of 61% of the SHU taxes they paid for the February 1, 1987 - January 31, 1988 tax year. The 61% represents the portion of the SHU tax year remaining after the June 23, 1987 date of the U.S. Supreme Court's decision in *ATA v. Scheiner* declaring flat annual truck taxes unconstitutional. This post-*Scheiner* refund period is what the Supreme Court established as the upper limit on flat-tax refunds in 1990.

Because Kentucky law requires taxpayers to individually pursue their refunds, the Litigation Center, in 1988, provided SHU taxpayers with refund-claim and appeal forms for filing with the appropriate state agencies. Between 1,500 and 1,800 carriers filed timely claims before the expiration of the filing period in 1990. Together these motor carriers will be eligible for approximately $15-20 million in refunds (if the court's decision is not modified on appeal).

Earlier this month, the State filed a motion to alter the court's judgement so as to reduce the level of refunds ordered. The Litigation Center will be pursuing a negotiated settlement based on the court's decision. At this point, however, a further appeal seems likely. In the meantime, motor carrier claimants need take no action on their own to obtain refunds.

In early 1988, the Litigation Center won a decision from the Kentucky Supreme Court holding the SHU tax unconstitutional under *ATA v. Scheiner*. Because that flat tax was replaced with an apportioned, nondiscriminatory tax, interstate motor carriers have saved an average of $61.60 per truck annually ever since.

ATA v. Kentucky, No. 86-CI-0464. For more information, please call Dan Barney at (703) 838-1865.

HIGHWAY ACCESS

Litigation Center Fights Truck Ban On U.S. 191 Through Yellowstone National Park

The Center has intervened in support of federal officials in their fight against a citizens group's suit to enforce a ban on commercial traffic on a longtime truck route through Yellowstone National Park.

The 22-mile stretch of U.S. 191 runs just inside the Park's northwestern boundary. It is therefore governed by federal regulations barring commercial vehicles from national park areas. The prohibition technically applies to U.S. 191 even though the road is on Montana's Federal-aid Primary System and has been used by commercial vehicles since its construction many decades ago.

In 1987, the citizens group began a grass roots effort to have the National Park Service start enforcing the federal ban. After several public hearings, the Park Service decided to promulgate an exception that would allow trucks, other than those hauling hazardous materials, to use the affected portion of U.S. 191. This compromise appeared to satisfy the citizens group, and received the tacit support of the trucking industry as well.

This past summer, because the Park Service still had not started a rulemaking, the citizens group filed suit

Continued on page 2

HIGHLIGHTS

Continued from page 1
in U.S. District Court in Billings, Montana, to compel enforcement of the federal ban. Earlier this month, the Park Service finally published a Notice of Proposed Rulemaking setting forth the compromise exception. The agency also asked the court to stay the suit until the new rulemaking proceeding could be completed.

On October 14, 1993, the ATA Litigation Center filed intervention papers in support of the Park Service's position. The Center acted on behalf of ATA and the Montana, Idaho, and Wyoming trucking associations. All these organizations were concerned about the impact an adverse decision could have on trucks' continued ability to use the more than 100 other state and federal highways that similarly traverse some portion of National Parks.

Canyon Citizens for a Safer Highway v. Babbitt, No. 93-066. For more information, please call Patricia Stroud at (703) 838-1860.

HAZARDOUS MATERIALS

Litigation Center Challenges Wisconsin Hazardous Materials Fee

The Litigation Center filed suit challenging Wisconsin's new hazardous materials transporter registration fee on September 23, 1993. The fee is imposed on all hazardous materials transporters required to register with the U.S. Department of Transportation under the federal hazardous materials transporter registration program.

Under Wisconsin state law, transporters of hazardous materials must register with the Wisconsin Department of Transportation. As part of the registration, the Wisconsin State Emergency Response Board ("SERB") recently added a requirement that these transporters pay an annual per-carrier registration fee -- the SERB 4 fee.

The SERB 4 fee is assessed at a flat rate of $400 per "activity" conducted in Wisconsin. There are five categories of "activity" in this new regulation and they are identical to the hazardous materials hauling activities covered by the federal registration requirements. The five categories involve carriage of radioactive materials; explosives; materials which are toxic by inhalation; hazardous materials in bulk packaging; and hazardous materials not in bulk packaging.

The Center's complaint alleges the SERB 4 fee is a flat, unapportioned charge that is discriminatory to interstate carriers and therefore violates the Commerce Clause principles set forth in *ATA v. Scheiner*. In addition, carriers already subject to an in-state facility-related hazardous materials fee are protected from the full impact of the fee by a credit against the SERB 4 fee.

If a motor carrier that transports hazardous materials engages in activities that fall within all five categories, the assessed annual fee is $2000; for four categories, $1,600; and so forth. If other states were to follow Wisconsin's lead, the cumulative fees assessed by these state registration programs would be up to $98,000 annually per carrier.

Carriers are advised to pay the fees as charged, but carriers should note on their payments, "This payment is being made under protest because the SERB 4 fee violates the Commerce Clause."

The Center brought the class action on behalf of ATA, the National Tank Truck Carriers, and representative carrier TNT Holland Motor Express, Inc. The decision in this case is likely to have an impact on the action other states and municipalities may take with regard to hazardous materials transportation fees.

ATA v. Wisconsin, No. 93-CV-3708. For more information, please call Bob Digges at (703) 838-1889.

FEDERAL TAXES

Center To Support Carrier's Claim To Refund Of FICA Overpayment

In late November, the Litigation Center will file an *amicus* brief in support of a claim by Boyd Brothers Transportation Company, Inc. for refunds of FICA taxes incorrectly withheld from reimbursements of driver travel expenses.

Boyd Brothers, like many carriers, reimbursed its employees for travel expenses via advances or as part of the payment of regular driver wages, without designating those amounts specifically as reimbursements. During 1985 and 1986, Boyd Brothers withheld FICA tax from both the wages paid and the expenses reimbursed. In 1987, Boyd Brothers became aware that the reimbursement payments were exempt from FICA withholding and claimed a credit for the overpayment. The IRS denied Boyd's refund request.

The U.S. Court of Federal Claims ruled that FICA tax should not have been withheld from any genuine reimbursement payments. However, the Court held that the claimed reimbursements should not be treated as such unless, *at the time of payment*, they had been distinguished from payments for wages.

The Court found that the *advances* paid by Boyd Brothers satisfied this requirement and allowed Boyd refunds of the FICA taxes paid on these advances. However, when travel expense reimbursements were included with regular wages (with no separate accounting on the check stub), the Court found no refund of the FICA taxes was appropriate. The Center will argue that by this decision, the IRS transformed nontaxable expense payments into taxable wages, not only for FICA purposes, but also for unemployment taxes and income taxes.

The outcome in this case is likely to affect 500-600 other carriers' rights to similar refunds. *The period affected, however, is limited to 1985-1989. The law was changed in 1989, and now specifies very clearly what is and is not allowable in this area.* The Court is likely to issue its decision sometime in 1994.

Boyd Brothers Transportation Company, Inc. v. United States, Nos. 93-5176, 93-5177. For more information, please call Bob Digges at (703) 838-1889.

ENVIRONMENTAL AFFAIRS

Center to File Brief Supporting Continued Construction of Rhode Island Highway

In a first effort at helping states counter a new environmentalist campaign to halt highway construction, the Litigation Center will file an *amicus* brief on November 9, 1993, urging the U.S. Court of Appeals to allow continued construction of Rhode Island's Jamestown Connector.

Several environmental groups have sued Rhode Island and the Federal Highway Administration to halt construction of the four-lane, divided highway. They claim that federal, state, and local officials failed to comply with emissions reduction requirements of the Clean Air Act of 1990, known as "conformity" rules.

The environmental groups' challenges were rejected by a federal district court, and they filed an appeal on August 30, 1993. They claim that compliance with interim clean air guidelines issued by the U.S. Department of Transportation ("USDOT") and the Environmental Protection Agency ("EPA") was inadequate.

If the environmental groups win, federal funding approved under the interim guidelines could be disallowed for numerous highway projects. In effect, this could freeze highway funding in metropolitan areas around the country.

Meanwhile, USDOT and EPA are preparing to issue final clean-air conformity rules. ATA filed comments during the rulemaking, and the Litigation Center will appeal the final rules in court if necessary.

Conservation Law Foundation v. FHWA, No. 93-1976 (1st Cir.). For more information, please call Lynda Mounts at (703) 838-1857.

ICC REGULATION

ATA Files Petition Asking ICC to Enforce Single State Insurance Registration Program

On August 27, 1993, ATA asked the ICC to rule Kentucky ineligible to participate in the new Single State Insurance Registration System ("SSIRS"), the replacement for the "bingo stamp" program. ATA also requested that Texas's registration fees be limited in accordance with new statutory requirements.

Under the Intermodal Surface Transportation Efficiency Act of 1991 ("ISTEA"), states are allowed to participate in the SSIRS -- and thus charge annual per-truck fees -- only if (1) they had a "bingo" stamp registration system in place on January 1, 1991, and (2) the stamps were of a specified size, displayed specified information, and were affixed to a cab card issued by the National Association of Regulatory Utility Commissioners ("NARUC").

Further, ISTEA mandated that in any state where the program met the requirements, the new SSIRS fee could not exceed the up-to-$10-per-vehicle fee the state charged on November 15, 1991. This mandate also applied to reciprocal fees, which many states, including Texas, used. Under a reciprocal fee agreement, if a given state charges vehicles based in Texas a fee of $2 per stamp, then Texas would charge vehicles based in that state $2 per stamp.

The ATA petition argues that both Kentucky and Texas are in violation of the ISTEA requirements. ATA explained that Kentucky's identification system, implemented on January 15, 1991, used its own stamp card, which did not have the NARUC seal. The State also used its own stamp, which did not show the State seal, ID number, or stamp number as required by ISTEA.

Regarding Texas, ATA pointed out that the State had violated the provision regarding the amount of SSIRS fees to be paid. Texas previously assessed a reduced fee or a reciprocal fee on vehicles from many other states. Texas is now wrongly attempting to require an across-the-board $10 fee to all foreign-based carriers.

If the ICC rules in ATA's favor it will send a clear message that (1) states that did not participate in the bingo card program will not be allowed to participate in the SSIRS; and (2) states that participate in SSIRS must comply with the provision regarding applicable fees.

In June 1993, the Center intervened in defense of the ICC and SSIRS in related litigation in the U.S. Court of Appeals in Washington, D.C. In that litigation, NARUC challenged the final rules regarding the SSIRS, but did not ask the court to halt its implementation.

Petition of the ATA for Declaratory Order, Docket No. 41086. For more information, please call Ken Siegel at (703) 838-1857.

UPDATES

- ***Discriminatory User Fees.*** The U.S. Supreme Court has announced it will hear an Oregon case concerning whether a state may, without violating the Commerce Clause, collect a user fee only from out-of-state companies when the costs the fee is designed to recoup are imposed by in-state and out-of-state companies alike. The Center had filed a brief urging the Court to strike down such fees. Oral argument will be this winter, with a decision likely by the end of June 1994. *Oregon Waste Systems, Inc. v. Oregon*, No. 93-70.

Continued on page 4

Clinton Presidential Records
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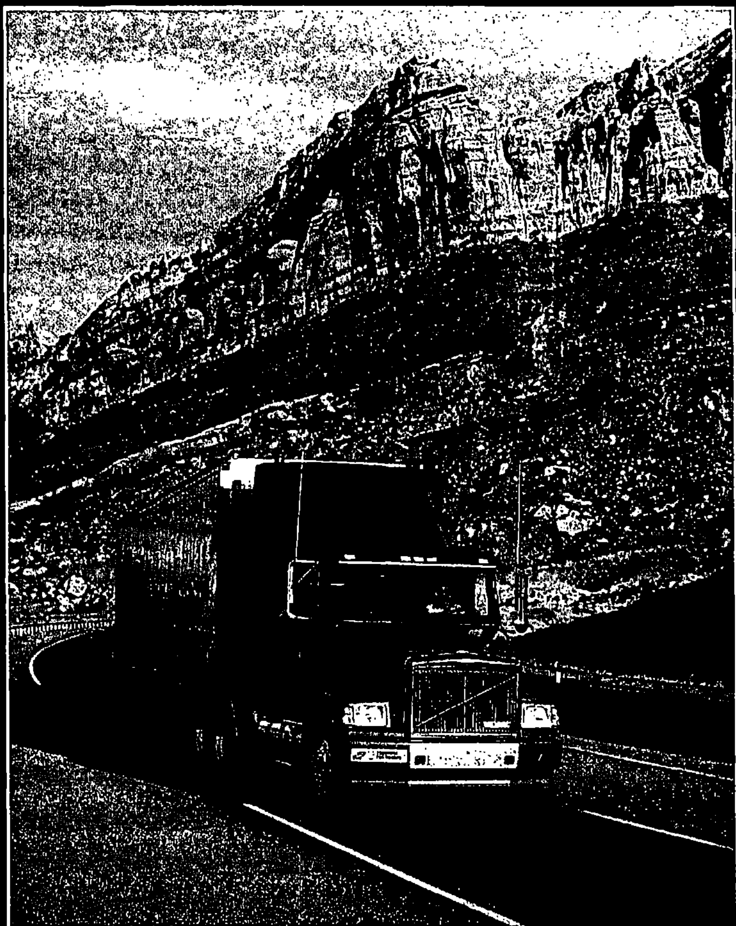
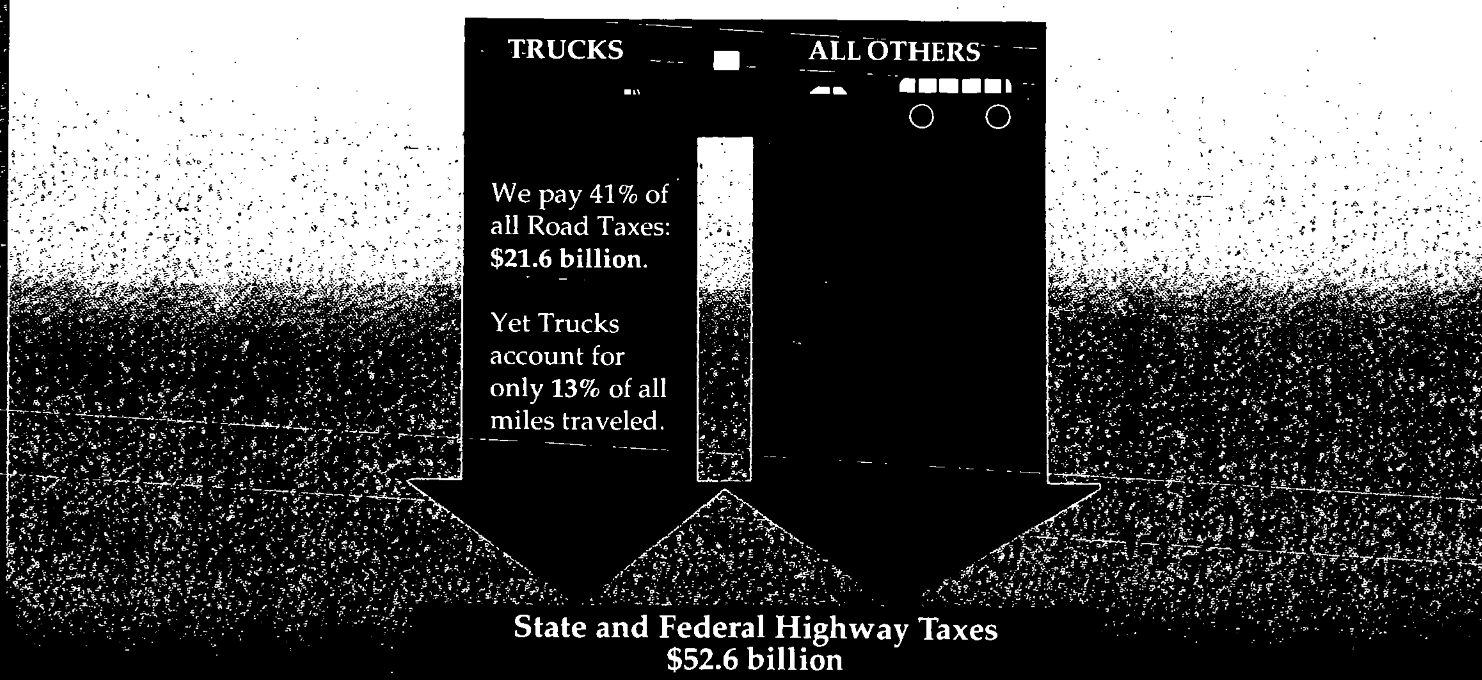
AMERICAN TRUCKING ASSOCIATIONS

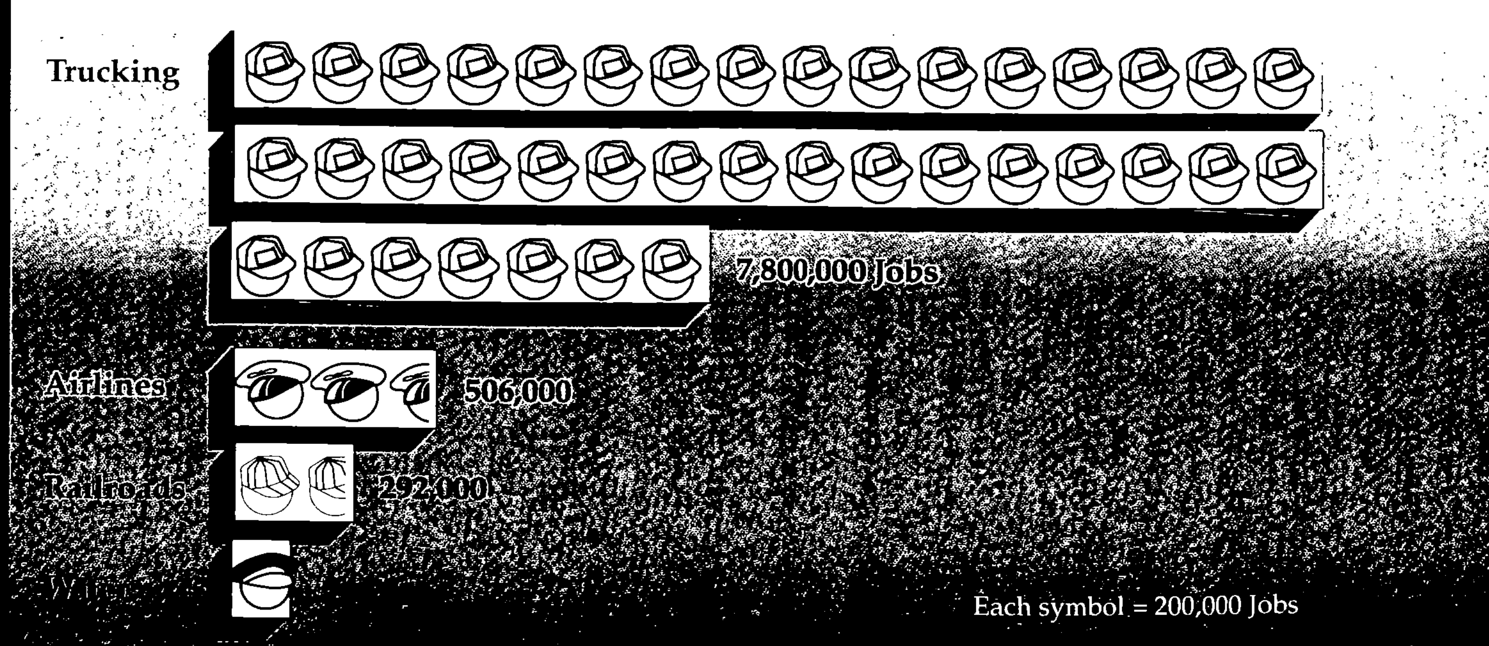
1991 REPORT TO MEMBERS



We pay for our Nation's Highways.



We provide more jobs in Transportation.



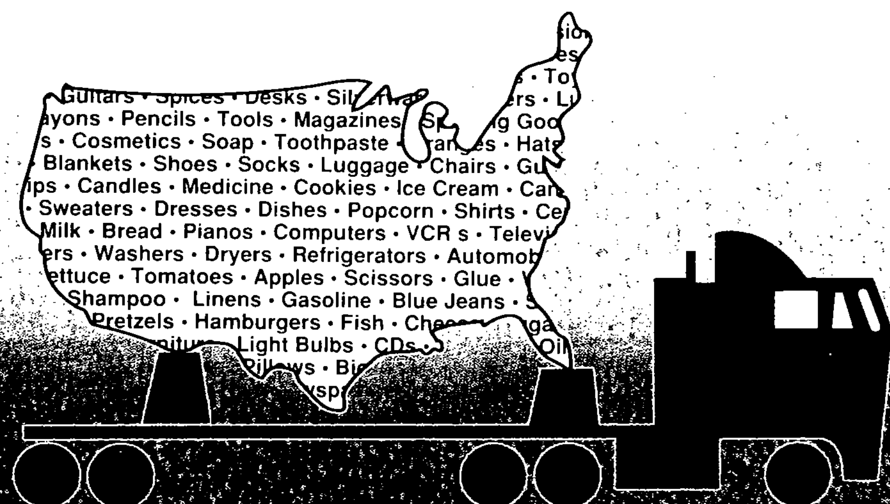
For more information about the Trucking Industry contact the American Trucking Associations,
2200 Mill Road, Alexandria, VA 22314-4677 •703/838-7948

3/93

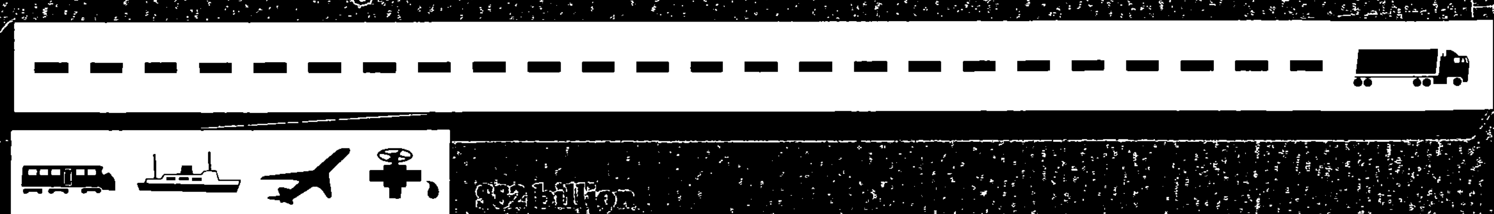
If You've Got It . . .

Photo: Information Software, Inc.

. . . A TRUCK BROUGHT IT.



We earn 77% of all Freight Revenues $278 billion



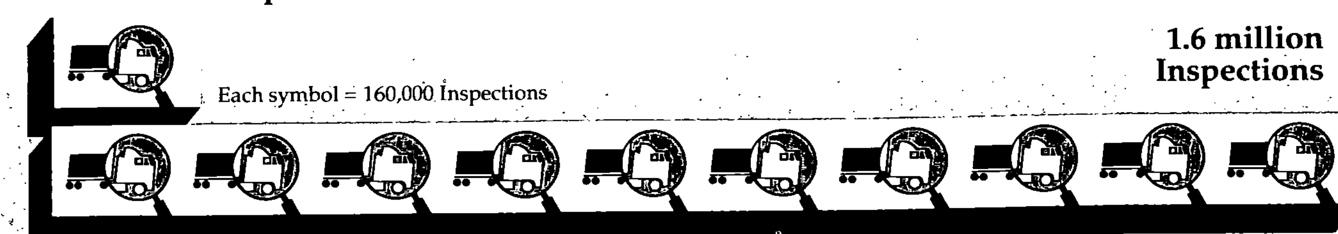
$82 billion

Safety is Our Number One Priority.

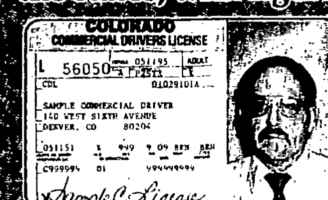
We've increased Truck Inspections 1000%.

1984

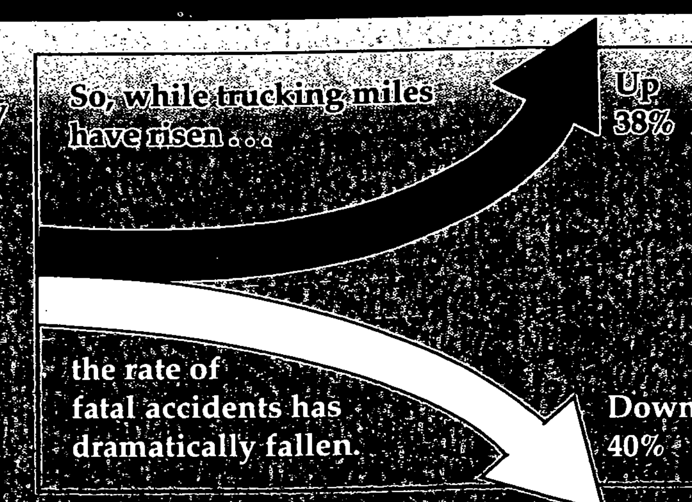
1991



We've strongly supported a law to create a single national truck driver's license, issued by the states, with rigorous testing standards . . .



and requirements for mandatory drug and alcohol testing for our drivers.



AMERICAN TRUCKING ASSOCIATIONS

2200 Mill Road • Alexandria, VA 22314-1677

Leslie Wheeler Hortum
Senior Vice President
Chairman, Management Committee

(703) 838-1866
Fax (703) 684-5751

October 19, 1993

BY FAX

Mr. Dan Wexler
Associate Director
Office of Public Liaison
The White House
Washington, D.C. 20500

Dear Dan:

Tom Donohue asked me to send you some additional information regarding the American Trucking Associations' annual meeting in Orlando later this month. For your background I've enclosed a copy of our original letter of invitation to the President, which we sent through David Gergen.

This would be an excellent opportunity for the President to address almost 3,000 leaders of one of this country's most vital and essential industries. Presidents and CEOs from the nation's major trucking companies, such as UPS, Ryder, ABF, Federal Express, JB Hunt, and Roadway and their suppliers, such as Mack Truck, Cummins Engine and Michelin Tire Company will gather to discuss current business trends and opportunities and debate the issues affecting their business. Paramount on their minds this year, as with all Americans, is health care. Of course, it would also be an opportunity for the President to address other timely issues of his choosing.

The trucking industry employs more than 7.8 million people. They and their families, which our estimates suggest total close to 30 million people, will be affected by any change in the health care system. It is understandable, then, why we chose to focus our opening general session, on Monday morning, November 1 from 8:30 a.m. to 9:45 a.m., on the health care debate. We would be honored to have the President, or Mrs. Clinton, present the Administration's viewpoint at that time, in person or via satellite. Governor Howard Dean from Vermont has already agreed to address the subject that morning; we have invited Governor Thompson from Wisconsin to join us as well.

Mr. Dan Wexler
Page Two

It may also interest you to know that General Colin Powell will address our Board of Directors on Wednesday morning, ABC correspondent Brit Hume will address our Tuesday morning breakfast session, FHWA-head Rodney Slater will address our research foundation meeting and we expect Transportation Secretary Pena at our Executive Committee meeting.

Dan, we very much appreciate your help in moving this forward. If you need any additional information at all, please just give me a call.

Sincerely,

Enclosure

AMERICAN TRUCKING ASSOCIATIONS, INC.

THOMAS J. DONOHUE
PRESIDENT AND
CHIEF EXECUTIVE OFFICER

2200 MILL ROAD
ALEXANDRIA, VIRGINIA 22314-4677
(703) 838 1800

July 16, 1993

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

On behalf of the Board of Directors of the American Trucking Associations, it is my pleasure to invite you to address our annual Management Conference and Exhibition, to be held at Marriott's Orlando World Center Resort and Convention Center, October 31 - November 3, 1993.

The trucking industry is literally the backbone of the American economy. Employing more than 7.8 million people in this country, it generates more than $278 billion in annual revenues, which accounts for 78% of our nation's freight bill and pays more than $19.6 billion in user taxes annually.

We would welcome you to speak at our Monday morning (November 1) General Session or our Wednesday morning (November 3) Board of Directors meeting. Of course, the more than 2,500 industry leaders, from large and small businesses across the country, who attend our conference would be honored to welcome you during any of our sessions at a time convenient for your schedule.

As you know, ATA is the national trade association of the trucking industry, representing every type and class of motor carrier in the country: for-hire and private; regulated and exempt. We have 51 affiliated trucking associations located in every state and the District of Columbia, thousands of individual motor carrier and supplier members, and 10 affiliated conferences. Our mission is to create a safe and profitable environment for our members. It would be an honor and pleasure to have you join us.

I look forward to hearing from you.

Sincerely,

Tom