

**THE NORTHWEST SEAPORT ALLIANCE**  
**MEMORANDUM**

**MANAGING MEMBERS**  
**STAFF BRIEFING**

Item No.	9A
Date of Meeting	June 7, 2022

**DATE:** May 23, 2022  
**TO:** Managing Members  
**FROM:** John Wolfe, CEO

Project Manager: Lindsay Wolpa, Sr. Manager, Strategic Projects

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**SUBJECT: Trucks and NWSA: Our Intersection with a Key Supply Chain Industry**

**A. SYNOPSIS**

The trucking industry provides a critical link in the supply chain and will continue to do so well into the future. The ongoing cargo surge has highlighted challenges within the industry, garnering attention from a variety of stakeholders. Commissioners have expressed their own interest and formed an ad-hoc working group to take a deeper dive, including two commissioners from each harbor. Today's presentation will provide a high-level overview of certain aspects of the industry as well as areas where we have some level of influence.

**B. BACKGROUND**

As staff began exploring how to best organize our approach to support of truck industry issues, we have organized our focus in the following four areas:

1. **Job quality:** as we explore ways to support drivers and other workers, we will begin with a review of the federal and state regulatory framework governing the trucking industry and drivers from our government relations staff. See additional background details in the next section.
2. **Congestion:** since prior to the ongoing cargo surge, we have recognized that truck congestion at marine terminals do not only have implications on the efficiency of our operations, but also is directly connected to job quality for the truckers. Faster turn times provides greater economic returns and supports better experience for drivers overall. Today's presentation from our operations team will talk about NWSA's role in encouraging efficiency.
3. **Truck parking:** the ability for drayage drivers to park their trucks near terminals provides enough "turns" supporting the independent trucking company's business model. Some NWSA-managed facilities in the North Harbor provide limited parking

but needs to continue to evolve in how to best support cargo operations. Our real estate team will review our current plans to support truck parking related to NWSA assets and City engagement in both North and South Harbor. An “NWSA and North Harbor Truck Parking” memorandum dated December 20, 2021, was provided to the Managing Members which can be referenced for additional context related to truck parking related matters within the gateway.

4. **Clean Truck Program:** a key component of our Northwest Ports Clean Air Strategy is our Clean Truck Program, including our work with various stakeholders to support the drayage fleet’s transition to zero-emission vehicles by 2050. Our air quality team has been working with several consultants to support this work and is solidifying our roadmap to that transition, including standing up the “Puget Sound Clean Truck Collaborative.” Today’s overview will talk about next steps on that work, as well as the existing diesel program, where all trucks entering international container terminals must have a 2007 or newer engine.

## **C. JOB QUALITY – OVERVIEW OF REGULATORY FRAMEWORK & EMERGING ISSUES**

The purpose of this section of the memo is to introduce the agencies and laws that make up the regulatory framework for the trucking industry and drivers. This section also includes an outline of ongoing and emerging issues and other activities at the state and federal levels relevant to our discussion about job quality and the trucking industry in general.

### **Federal Trucking Regulations**

#### The Federal Motor Carrier Safety Administration (FMCSA)

FMCSA is the primary regulatory agency for commercial trucks. Established in 2000 through the Motor Carrier Safety Improvement Act of 1999, the FMCSA is one of 11 sub-agencies of the Department of Transportation. The FMCSA’s main mission is to prevent commercial motor vehicle-related fatalities and injuries. The FMCSA’s responsibilities include:

- *Commercial Driver’s Licenses (CDL):* The FMCSA develops standards to test and license commercial motor vehicle drivers. Each state is responsible for building their testing and licensing procedures pursuant to FMCSA regulations and issuing CDLs.
- *Data and Analysis:* FMCSA collects and disseminates data on motor carrier safety and directs resources to improve motor carrier safety.
- *Regulatory Compliance and Enforcement:* The FMCSA operates a program to improve safety performance, remove high-risk carriers from the nation’s highways, and enforce compliance with commercial vehicle safety regulations.
- *Research and Technology:* The FMCSA coordinates research to improve the safety of motor carrier operations, vehicles and drivers.
- *Safety Assistance:* The FMCSA provides financial assistance to states for roadside inspections and other vehicle safety programs.

#### Federal Highway Administration (FHWA)

FHWA implements trailer weight and length maximums for the national Interstate Highway System. States can set their own standards for any roads not covered by federal jurisdiction.

National Highway Traffic Safety Administration (NHTSA)

NHTSA is responsible for vehicle safety on the road through enforcement of vehicle performance standards, developing new technology, and issuing recalls.

Occupational Safety and Health Administration (OSHA)

OSHA regulations govern the safety and health of workers, including truckers, at warehouses, docks, construction sites, airport terminals, and in all other places truckers go to deliver or pick up loads. When on the roads, their safety is the jurisdiction of the USDOT agencies described above.

The Fair Labor Standards Act (FLSA)

The FLSA guarantees minimum wage to employees of trucking companies, but they are explicitly excluded from provisions on overtime pay. Drivers who operate as independent contractors are not covered by the FLSA. The FLSA, and individual states, have guides for determining whether a worker should be considered an employee or may operate as an independent contractor, but disagreements frequently arise.

The Federal Aviation Administration Authorization Act (FAAAA) of 1994

FAAAA included a provision declaring federal law supreme regarding the trucking industry. The goal was to facilitate interstate commerce by providing a uniform system of federal rules. The provision stipulates that “a state, political subdivision of a state, or political authority of 2 or more states may not enact or enforce [laws and regulations] related to a price, route, or service of any motor carrier.” States and municipalities considering any additional regulations in the trucking industry must review this statute and how it might apply in each case. One notable example of the potential impact on port policies occurred in 2013 when the City of Los Angeles had a Clean Truck Program struck down by the Supreme Court, who found the concession agreements required for entry to the ports of Long Beach and Los Angeles violated the FAAAAA preemption provision.

**State-level initiatives**

Clean Air & Emissions Reduction

Washington state has been most active in trucking issues in recent years when it comes to air emissions.

In 2018, at the request of the NWSA, the legislature passed SB 6027 allowing port authorities to invest in clean air technology. The state appropriated \$1.2 million that year from the supplemental capital budget to support the NWSA’s clean truck program, assisting truckers calling in the gateway in converting to 2007 model year or newer vehicles.

In 2021, the state removed a previous legislative prohibition of the Department of Ecology from establishing a clean fuel standard through the passage of HB 1091. It also adopted the Climate Commitment Act cap-and-trade mechanism (SB 5126). These two measures established a regulatory framework for reducing air emissions from a variety of sources (including trucks) as well as created a source of funding for future projects. The NWSA lobbied in support of both bills.

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This year—again at the request of the NWSA—the state adopted a proviso to the supplemental transportation budget directing \$400,000 to the NWSA for the establishment of a Zero Truck Emission Truck Collaborative. The purpose of the collaborative is to facilitate the development and implementation of one or more zero-emissions drayage truck demonstration projects in Washington state and develop a roadmap for transitioning the entire drayage truck fleet to zero-emissions vehicles by 2050.

### Truck Parking and Bathrooms

In recent legislative sessions, two bills that would have allowed for increased parking availability for commercial vehicles failed to pass the legislature or earn Governor Inslee's approval. The first would have provided tax incentives for the provision of truck parking, and the other would have allowed some parking in chain-up sites along the interstate during the off-season. The NWSA supported both bills and will continue to advocate for more parking flexibility and pilot projects.

In 2022, the state legislature passed HB 1706, requiring marine terminal operators to provide access to bathrooms for truck drivers. NWSA terminal operators already do so, and the Alliance testified in support of the bill. The departments of Health and Labor and Industries are finalizing plans for implementation.

### Workforce Development

The final 2023 supplemental operating budget directs \$2.5 million to the State Board of Community and Technical colleges for grants to promote workforce development in trucking and trucking-related supply chain industries by expanding registered apprenticeships, pre-apprenticeships, and trucking related training programs.

The budget also included funds for a pilot project with the Department of Corrections for incarcerated individuals to participate in a pre-release CDL training program. \$100,000 was also allocated to the DOL to study current CDL requirements and determine whether adjustments could be made to address the current shortage of truck drivers.

### Freight Mobility

The state in the last seven years adopted two major transportation packages—*Connecting Washington* and *Move Ahead WA*. Both packages included meaningful investments in freight projects that benefit the truck operators serving NWSA facilities. Government Affairs staff will provide a list of projects upon request. Separately, the Port of Tacoma secured state capital budget funding in 2022 for the Port of Tacoma Off Dock Container yard to directly support NWSA tenants in Tacoma.

## **Ongoing and emerging issues in trucking**

### Hours of service (HOS)

In 2020, the FMCSA updated HOS regulations after soliciting comments from industry members and studying the impacts of potential changes. The debate on the issue centered around safety and the need for drivers to be alert and well-rested versus schedule flexibility and adaptability, particularly for short-haul and local operators. The final rule included a

requirement that in 2020, the FMCSA updated HOS regulations after soliciting comments from industry members and studying the impacts of potential changes. Drivers may be on duty for 14 hours but may drive for a maximum of 11 hours within that period. Short-haul drivers who operate within a 150-air mile radius of the normal work reporting location are exempt from some data recording requirements but are still subject to the 14-hour maximum duty requirement.

### Driver classification—employees or independent contractors?

As mentioned above, drivers who operate as independent contractors are not covered by the Fair Labor Standards Act. In recent years, particularly with the rise of the gig economy, several states have passed or introduced misclassification laws attempting to clarify the distinction and narrow the definition of independent contractor to give more workers wage, overtime, and benefit protections. These laws attempt to correct a perceived problem of companies misclassifying workers as independent contractors when they might reasonably be considered employers instead. Companies like Lyft and Uber whose income relies entirely on a network of independent contractors have often been the focus of these laws, but changes would in most cases apply to the trucking industry as well.

Representing a significant development in the labor landscape, California's Assembly Bill 5 (AB5) took effect January 1, 2020. AB5 creates a three-part "ABC" test to determine whether a worker is an employee or independent contractor. Many in the trucking industry believe that misclassification laws will result in many independent operators being classified as employees and causing major disruptions to the financial model of the sector. The California Trucking Association has sued to stop the law from going into effect for the trucking industry, and the Supreme Court is currently weighing whether to accept the case or deny it, in which case the lower court ruling would stand and AB5 would stand. The heart of the issue is the "B" clause in the ABC test, which requires that independent contractors provide a service outside the usual course of the hiring entity's business.

In Washington state, workers may be classified as independent contractors if they provide more than personal labor, meaning that they bring their own employees to do the work or bring heavy or costly specialized equipment to do the work, and they must meet all six conditions of the 6-Part Test, similar to federal standards.

A handful of bills on the question of worker classification have been introduced in the Washington State Legislature in recent years. Between 2012 and 2014, two bills were introduced specifically targeting independent contractor drayage truckers around the ports of Seattle and Tacoma, attempting to reclassify them as employees either of the company who hired them or the ports themselves. Other bills would have reclassified independent contractors more broadly, including truck drivers, and likely would have eliminated owner-operators from the trucking workforce entirely. All failed to advance. In more recent years, the Legislature has also considered proposals related to the underground economy and the gig economy conceptually also would affect classification.

### Trucker overtime

As mentioned above, there is a specific exemption in the FLSA overtime provisions for all truckers, regardless of whether they are classified as employees or independent

contractors. By federal law, truck drivers are not entitled to overtime pay beyond 40 hours per work week. A bill recently introduced by several Democrats including Rep. Jayapal and one Republican would eliminate this exemption. The bill is supported by OOIDA and the Truck Safety Coalition but opposed by major shippers and customers of the trucking industry.

#### EPA proposed rule to reduce heavy-duty vehicle emissions

In March 2022, the Environmental Protection Agency (EPA) published a proposed rule that would set new, more stringent standards to reduce pollution from heavy-duty vehicles and engines starting in model year 2027. This is the first rulemaking of a series of regulations EPA intends to issue over the next three years to reduce pollution from trucks and to advance the transition to zero-emissions transportation.

#### **Biden-Harris Administration Trucking Action Plan**

In the wake of supply chain disruptions and congestion nationwide, the Biden-Harris Administration released its “Trucking Action Plan” in December 2021 to strengthen America’s trucking workforce. The plan seeks to work with labor, industry, and all levels of government to identify and implement solutions to grow and retain the workforce and ensure commercial vehicle operation is a high-quality occupation. Highlights include:

- Reducing barriers to drivers getting CDLs: The FMCSA is helping states to streamline and expedite the process for issuing CDLs without cutting corners or compromising safety.
- Expand registered apprenticeships for commercial vehicle operators: USDOT recruited dozens of companies to jumpstart registered apprenticeships for new drivers to accelerate entrance into the field.
- Recruit veterans to the trucking sector: The Department of Labor is working with the VA and other veterans’ organizations to help veterans with certified trucking experience to qualify for a CDL.
- Women in Trucking Advisory Board: Applications for this Advisory Board closed in April. Its members, representing different parts of the industry, will advise on ways to support women in the trucking industry, expand scholarship opportunities, and enhance training, mentorship, and education opportunities for women.
- Truck Leasing Task Force: This task force will advise the administration on improvements to common leasing arrangements, with a focus on equitable terms and transparency. They will also examine truck leasing arrangements related to zero emissions priorities such as the program at the Ports of Los Angeles and Long Beach. Applications for the task force closed in May 2022.
- The FMCSA will also charter a study on driver detention time and its impacts on safety and compensation, and study different models of driver compensation more broadly.

**D. ATTACHMENTS TO THIS REQUEST**

PowerPoint Presentation

**D. PREVIOUS ACTIONS OR BRIEFINGS**

April 5, 2022: Staff Briefing, "Update to Port Community System Expansion: Appointment System Data"

December 7, 2021: Second Reading, "Northwest Ports Clean Air Strategy Implementation and Resolution 2021-08: Request the Managing Members of the NWSA adopt Resolution 2021-08 adopting the NWSA's 2021-2025 Clean Air Implementation Plan."

November 2, 2021: First Reading, "NWSA 2021-2025 Clean Air Implementation Plan"

September 8, 2021: Project Authorization, "Authorization to expand Port Community System (PCS) to include Appointment Capacity Dashboard: Proof of Concept (Phase I)"

**E. NEXT STEPS**

Following today's presentation, staff plans on providing deeper dives into the four topic areas at two truck work group meetings before August.