Statement of

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before the

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&
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Hazardous Materials Subcommittee
Committee on Transportation and Infrastructure
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Field Hearing on
"Confronting Freight Challenges in
Southern California"

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Driving Trucking's Success

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Chairwoman Brown, Chairman DeFazio, members of the Subcommittees, my name is Randall Clifford, and I am Chairman of Ventura Transfer Company, located in Long Beach, California. I am appearing here today on behalf 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 – including the California Trucking Association – 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.

Southern California is a major freight generator and a significant gateway for goods moving between the U.S. and our foreign trading partners. In addition to hosting the Los Angeles and Long Beach ports complex, through which more containers move than any other port in the nation, the Southern California region is the third largest manufacturing center in the country.[1] Furthermore, warehouse, distribution, transload, and cross-dock operations occupy approximately 1.5 billion square feet of building space throughout the study area. This represents 15 percent of the nation, and 60 percent of the entire west coast markets.[2] By 2030 freight transportation demand is projected to triple, and warehouse and distribution square footage is expected to grow to 4.5 billion square feet.[3]

The trucking industry is one of California's and the nation's most important sources of employment. Nationwide, trucking-related companies employ 8.8 million people. In California, more than one million people are in trucking-related jobs, and collectively earn nearly $55 billion in wage income.

Considering existing and projected demands on freight transportation in Southern California, the region presents the trucking industry with some of its toughest challenges. We look forward to working with the Subcommittees, state and local government agencies and other stakeholders to ensure that freight transportation in the region is economical, safe and environmentally responsible.

REGIONAL FREIGHT MOBILITY

Every day thousands of trailers and containers, carrying everything from grain to machine parts, flow through our ports, across our borders, and on our rail, highway, air and waterway systems as part of a global multimodal transportation logistics system. It is a complex array of moving parts that provides millions of good jobs to Americans, broadens the choices of products on store shelves and creates new and expanding markets for U.S. businesses. Highways are the key to this system. Trucks move 69 percent of our Nation's freight tonnage, and draw 84 percent of freight revenue; the trucking industry is expected to move an even greater share of freight in the future.[4] In addition, trucks transport 69% of the value of freight moved between the U.S. and our Canadian and Mexican trading partners.[5]

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[1] Wilbur Smith Assoc., et. al. *Multi-County Goods Movement Action Plan*, April 2008
[2] *Ibid.*
[3] *Ibid*.
[4] Global Insight, *U.S. Freight Transportation Forecast to…2018*, 2007.
[5] U.S. Department of Transportation, Bureau of Transportation Statistics *Transborder Freight Data*, 2007.

However, trucks are also crucial to freight moved on rail, in the air and on the water. The highway system connects all of these modes to manufacturing and assembly plants, retail outlets, homes and warehouses. An efficient highway system is the key to a fluid global supply chain, which in turn is a fundamental element of a growing and prosperous economy.

Unfortunately, however, the highway system no longer meets our needs. While the condition of our highways and bridges has steadily improved in recent years, our infrastructure is aging and large sections will have to be repaired or replaced in the coming years, at an enormous cost.

More troubling is the seemingly endless congestion on highways in urban areas. According to the most recent congestion report from the Texas Transportation Institute, in 2005, drivers in metropolitan areas wasted 4.2 billion hours sitting in traffic, burning 2.9 billion gallons of fuel.[6] ATA estimates that if congestion in these areas ceased, 32.2 million tons of carbon would have been eliminated in 2005 and, over a 10-year period, nearly 32 billion gallons of fuel would be saved, reducing carbon emissions by 314 million tons.

The Los Angeles area has had the dubious distinction of ranking first in the TTI study's congestion index since the rankings began to be tabulated in 1982. The study paints a dismal picture of the region's highway system performance. In 2005 85% of vehicle miles traveled (VMT) during peak travel periods in the Los Angeles area occurred under congested conditions. "Rush hour" in Southern California is now eight hours long. In 2005 motorists wasted nearly 384 million gallons of fuel sitting in traffic. Congestion cost area motorists more than $9.3 billion in additional fuel expenditures and lost time that year, an average of $1,374 per person.

As bad as the situation is today, traffic projections suggest that future conditions may be even worse. The Southern California Association of Governments (SCAG) forecasts that average speeds will drop from 35.9 mph in 2005 to 31.9 mph in 2030, resulting in an average of 5.4 million hours of daily delay for all traffic.[7] Truck VMT is expected to increase by over 110% by 2030, growing from a level of 22.4 million VMT in 2000 to 48.4 million VMT by 2030. Some freeways in the region currently handle up to 40,000 trucks per day, and it is projected that these freeways may have to handle up to 80,000 trucks per day by 2025. While a significant amount of freight tonnage in Southern California has an origin or destination outside the region, over 30% of the freight moved in the Los Angeles metropolitan area remained within the region.[8] Virtually all of this freight moved on trucks. Furthermore, approximately 80% of the non-local domestic freight and the majority of the international freight in the region move by truck.[9]

While the TTI study estimated that the national congestion cost due to congestion in urban areas was $78 billion in 2005[10], since the authors do not account for shipper costs, this figure likely underestimates the real costs of an inadequate highway system to the U.S. economy. Since deregulation and completion of the Interstate Highway System over the previous quarter century, the trucking industry has made continuous improvements that have allowed its customers to

[6] Texas Transportation Institute, *2007 Urban Mobility Report*.
[7] Wilbur Smith Assoc., et. al. *Multi-County Goods Movement Action Plan,* April 2008
[8] Federal Highway Administration, Office of Freight Management and Operations, Freight Analysis Framework.
[9] *Ibid.*
[10] Texas Transportation Institute, *2007 Urban Mobility Report.*

significantly reduce inventories and create manufacturing and supply chain efficiencies that have saved the U.S. economy billions of dollars, increased salaries, slowed consumer price increases and created countless jobs. Disruptions to the movement of freight on our nation's highway system due to congestion jeopardize these gains. Congestion slows delivery times, creates unpredictability in supply chains and ultimately makes U.S. businesses less competitive and consumer products more expensive. Indeed, in its 2007 *State of Logistics Report*, the Council of Supply Chain Management Professionals described a logistics system whose costs are rising at triple the pace of general inflation.[11] The report found that business logistics costs rose over 11% in 2006 to $1.3 trillion, an increase of $130 billion over 2005. Trucking costs alone increased by $52 billion. If congestion is not addressed, these costs will continue to rise, and will translate into higher consumer prices and slower job growth, and will weaken the United States' ability to compete in the global economy.

Incremental solutions will not allow us to meet the Nation's current and future transportation needs. The federal surface transportation program in its current form will not suffice. While more resources than are currently available will be necessary to finance the transportation improvements needed to get our country out of traffic gridlock and to make driving less hazardous, we can no longer afford to spend limited federal resources on projects that do not meet our most important national needs. Therefore, federal funds must be invested in a manner that will most effectively address these requirements.

A NEW FEDERAL VISION: FOCUS ON MOVING FREIGHT

When the federal highway program was created, it had a clearly defined mission: to finance construction of the Interstate Highway System. When that mission was complete, the money was still coming into the Highway Trust Fund (HTF), but Congress did not identify a new federal role. With few exceptions, Congress and the states tend to view the HTF and the highway authorization process as simply an opportunity to address state and local interests, without putting these decisions into the context of a broader national vision. What attempts are made to focus on national priorities tend to get lost in the battle for greater state apportionments and earmarks for local projects. In the meantime, critical projects whose failings have national or broad regional implications go unfunded. The ability to plan, from a national perspective, for the transportation challenges of the 21st century, is impossible within this parochial atmosphere.

This is not to suggest that the current federal program is devoid of benefit. Local transportation challenges are necessarily dealt with by state and local governments, and the continued flow of federal resources to address these needs is important. However, because the full benefits of moving freight extend beyond metropolitan and state boundaries, projects which might otherwise receive a higher priority go unfunded, in part because many are extremely expensive and would, by themselves, eat up state budgets.

The failure by planners at all levels of government to identify and fund projects that are important to the movement of freight points to problems in the transportation planning process itself. While federal law requires states and Metropolitan Planning Organizations to identify transportation needs within their own boundaries, vehicle travel is not bounded by lines on a

[11] Council of Supply Chain Management Professionals, 18th Annual *State of Logistics Report*, June 6, 2007.

map. Transportation extends across state and local government borders, but currently the planning process does not. While some states have made great strides toward regional planning, the ability to fund projects outside of their states, even when they are likely to benefit greatly by such decisions, is tempered by political reality. The federal government is the only entity in a position to determine the national and regional benefits of highway projects that facilitate the movement of freight, and is singularly equipped to provide sufficient resources and strong leadership to ensure that these projects are completed.

ATA believes that the federal government must adopt a new mission: to provide the leadership and resources necessary to facilitate the safe and efficient movement of goods on the nation's highway system. Such a program should be segregated from the existing federal surface transportation program, and its source of funding should be walled off within the Highway Trust Fund.

While trucks serve 100 percent of American communities and utilize nearly the entire four million mile road system, freight tends to be concentrated along several major corridors. Many of these corridors are also among the most heavily congested in the nation. This presents both a challenge and an opportunity. The challenge is in finding the will and the resources to make what are often extremely expensive improvements to these corridors in order to ensure that freight does not bog down, thus disrupting supply chains throughout the nation, and causing ripple effects around the world. The great opportunity before us is to not simply keep up with freight transportation demands, but to develop a long-term vision of the transportation system which results in supply chains that are swifter and more predictable than they are today.

Freight Corridors Initiative

A recent study prepared for the Federal Highway Administration (FHWA)[12] identified the highway bottlenecks that cause the greatest amount of delay for trucks. The study estimated that the 326 identified bottlenecks cost the trucking industry 226 million hours of delay in 2006. Using newly available operational cost data,[13] it can be determined that the direct financial cost to the industry and its customers from these delays is approximately $19 billion per year. The study estimates that highway bottlenecks account for 40 percent of congestion, with the remainder caused by accidents, bad weather, construction, special events and poor signal timing.

Of the 35 worst truck bottlenecks nationwide, seven were in Southern California – including the nation's costliest bottleneck – the I-710 and I-105 interchange. This bottleneck alone caused 1.55 million hours of delay in 2006, increasing freight transportation costs by nearly $130 million. Other Southern California bottlenecks identified by the report (with hours of truck delay) were:

- SR 60 at SR 57 (1,259,700)
- I-405 at I-605 (1,221,500)
- I-110 at I-105 (860,000)

[12] Cambridge Systematics for the Federal Highway Administration, *Estimated Cost of Freight Involved in Freight Bottlenecks*, Nov. 2008.
[13] American Transportation Research Institute, *An Analysis of the Operational Costs of Trucking*, Dec. 2008

- SR 91 at SR 55 (816,700)
- SR 134 at SR 2 (598,700)
- I-10 at I-15 (513,600)

Together, these seven bottlenecks caused trucks more than 6.8 million hours of delay in 2006, at a cost of $571 million. These delays increase shipping costs, which in turn boost the price of housing, retail goods, food and every other product shipped on a truck. The increased costs also weaken the ability of American businesses to compete in the global marketplace. Furthermore, congestion at these bottlenecks cause trucks to burn more fuel, increasing our dependence on foreign sources of oil and producing greater emissions of greenhouse and criteria pollutants.

ATA is in the process of developing a new concept – the Freight Corridors Initiative (FCI) – that is designed to fund highway projects which hold the greatest potential for improving the movement of freight. We hope Congress will consider including this new program in the upcoming authorization of a new surface transportation bill. Most of the money would finance those projects identified as providing congestion relief at bottlenecks on corridors which have the most significant impacts on trucking mobility and on the U.S. economy. While details are still being worked out, we anticipate that money will be distributed to States by the U.S. Department of Transportation based on a proposed project's ability to address congestion at the points of congestion identified by USDOT as a national priority.

A smaller percentage of Freight Corridors Initiative money would be distributed to states that do not receive money for bottleneck relief. This revenue would be available for improvements to the states' Interstate Highway System. While much of the nation's attention has focused primarily on congestion in urban areas, many rural highways have inadequate capacity as well. According to the Federal Highway Administration, by 2020 nearly nine percent of rural highways serving the heaviest freight traffic will experience traffic gridlock for at least part of the day. We are confident that this approach will address immediate and long-term needs on major highway freight corridors.

In order to fund this new program, ATA is willing to support an increase in the federal diesel fuel tax. The revenue generated from this increase should be firewalled from the existing program and dedicated exclusively to the FCI.

ATA urges Congress to consider supporting this critical new initiative during the upcoming debate over authorization of a new surface transportation bill.

TRUCK PARKING SHORTAGES

The most recent national study of the availability of long-term truck parking spaces[14] found that California had the largest parking capacity shortage of any State. Overall, demand exceeded supply by more than two to one, and by more than four to one at public rest areas. This problem is in part due to actions by the State to eliminate or scale back rest areas when budget cuts are made. These actions have real and significant consequences. When drivers cannot find safe and legal places to park, they have to make a difficult choice – keep driving when they are fatigued

[14] Federal Highway Administration, *Study of Adequacy of Parking Facilities*, June 2002.

and/or in violation of their federally required hours-of-service limits – or stop on a ramp, shoulder or other illegal and potentially unsafe location.

ATA urges Congress to continue the SAFETEA-LU truck parking pilot program, with significantly greater resources. The current program's $25 million funding level can only support two projects, including one project on Interstate 5 in California. Unfortunately, California is not unique – when States face budget crises – and almost all States currently do – among the first items cut tends to be rest area funding. The federal government has placed a lot of emphasis on addressing truck driver fatigue in recent years, but all of these efforts are for naught if drivers cannot find a safe and legal place to rest for the night.

TRUCK ACCESS ISSUES

The *Surface Transportation Assistance Act of 1982* (STAA) established, among other things, a requirement that all states must allow trucks with 48 foot or shorter trailers access to a National Network (NN) of federally designated highways. Additionally, states must give these vehicles reasonable access from the NN to terminals and facilities for food, fuel, repairs, and rest. Since 1982, every state has changed its regulations to authorize the use of 53 foot trailers, which have become the industry standard. Unfortunately, federal law has not been updated to reflect the modern reality, and continue to apply only to trailers of 48 feet or less. This is especially problematic in California, where the State places severe restrictions on the ability of trucks with 53 foot trailers to access large portions of its highway system. These restrictions are incompatible with the intent of the STAA to promote interstate commerce and uniformity throughout the continental United States. ATA urges Congress to update the STAA requirements to meet the needs of the current trucking fleet by designating a tractor-semitrailer with a 53 foot trailer as a protected vehicle class.

SOUTHERN CALIFORNIA PORT ISSUES

Activities in California often serve to both initiate and shape state and federal programs and policies throughout the nation. For that reason, the debate and legal action surrounding the adoption of the Ports of Los Angeles and Long Beach Clean Truck Programs (CTP) is of utmost importance to motor carriers, shippers, retailers, other port stakeholders and consumers everywhere who depend on our maritime freight transportation system.

According to port estimates, there were approximately 1,300 motor carriers that regularly served the combined Ports complex prior to the October 1 CTP implementation. Those companies collectively deployed nearly 17,000 trucks that regularly serviced the Ports annually. In addition, a larger number of trucks (as many as 25,000) perform infrequent port drayage operations each year.

The vast majority (85% to 98%) of the trucks that regularly service the Ports are not owned by a motor carrier. The trucks are owned by Independent Owner Operators (IOOs) that contract with the motor carriers for port container transport services. Many ATA members, in fact, use only IOO drivers, and they have no employee drivers. From a national perspective, it is important for Subcommittee members to note that IOOs are routinely responsible throughout the trucking

industry for supplying the power unit truck tractors – this is not a situation unique to port drayage. It is also important to note that since passage of the *Motor Carrier Act of 1980*, motor carrier transportation has operated under a deregulated, highly competitive, open-entry business model that includes a significant number of small carriers. According to an ATA statistical analysis of motor carrier data released recently by the U.S. Department of Transportation, the vast majority of motor carriers in the U.S. (87.3%) operate six or fewer trucks and 95.9% of the fleets have 20 or fewer trucks. In addition, the motor carrier's decision to utilize IOOs, employee drivers, or a combination of both, is historically, and should remain, a free market business choice made by motor carriers and drivers, not by federal, state or local officials.

Thus, we believe that the ports' CTP plans to reshape and reregulate port truck transportation to favor resource-based operations utilizing much larger companies which own their trucks (and with employee drivers for Los Angeles) is not only illegal and impractical, but is based on a total lack of knowledge regarding both port and truck transportation business operations throughout the country.

What is most often unfortunately lost in the press coverage surrounding the CTP debate is that ATA's pending litigation discussed below is not aimed at and does not interfere with the Ports' clean air efforts to reduce air pollution from the Port truck fleets through the phased-in ban of older trucks which commenced October 1, 2008. Despite the obvious additional costs that the intermodal motor carrier industry will incur to replace trucks that are otherwise "legal" in the rest of California and all other states, the industry strongly supports the Ports' efforts to reduce truck emissions in the Los Angeles basin. ATA also does not oppose the collection of container fees to finance the truck replacement program and in fact, in a letter to the Federal Maritime Commission's (FMC) Bureau of Enforcement, ATA reiterated its support for allowing the Ports to collect a container fee, whose collection ATA noted was crucial to the Ports' ability to accomplish their environmental objectives. On February 11, the FMC announced that the fee collection could start, and the Ports could commence collections on February 18. As a result, the litigation discussed below is challenging only the illegal, intrusive and unnecessary regulatory structure being created under the Concession Plans.

Although the Ports' mandatory concession plans differ somewhat, both impose numerous regulatory requirements – submission of truck maintenance, safety and parking plans; equipment marking and tracking; financial oversight; routing mandates; periodic reviews and audits, etc. – that will dramatically affect motor carriers' operations at the Ports, impacting price, routes, and services. It is important to note that most of these requirements are already in place through other federal and state government agencies, and will add new freight costs without additional benefits. The Ports have expressly notified motor carriers that the grant of a concession is awarded at the sole discretion of the port program administrator and subject to revocation for violations of concession mandates. In addition, there are no published criteria or standards governing the granting or denial of concessions.

The Port of Los Angeles concession also requires a phased-in ban of independent owner operators (IOO) and their trucks over five years and, by 2012, all motor carrier concessionaires will have to use employee drivers. As a result of the IOO ban, motor carrier concessionaires will have to purchase their own trucks to be used by their now mandatory employee driver work

force. According to an economic analysis, the ban will cost more than 1,500 driver and back-office jobs.[15]

As stated above, the trucking industry supports the clean air goals of the Ports' CTPs. The Ports' approved clean truck tariffs, which are in fact the only actual mandates that will produce cleaner trucks (by establishing mandatory truck bans which began October 1 for pre-1989 trucks and ending in 2012 when all port trucks must be 2007 engine compliant), have been and are supported by our motor carrier members. However, we believe and assert in our complaint that the "command and control" Concession Plan mechanisms being mandated by both ports are not needed to support the truck retirement and replacement program and the associated clean air benefits otherwise attributable to the CTPs. Moreover, we firmly believe that these concession programs unlawfully re-regulate the port trucking industry to the detriment of motor carriers, shippers, other port stakeholders and the businesses and consumers that depend on the freight and products that move through America's largest port complex. The additional, duplicative re-regulation of the industry will add unnecessary costs, burdening the system and jeopardizing local jobs.

We are particularly concerned with the Port of Los Angeles' concession requirement that will lead to a complete ban of the use of independent contractor/owner operator drivers in servicing that Port's operations within five years. That requirement, which clearly has nothing to do with the clean air goals of the ports, threatens a well-established trucking industry operational practice that provides efficiencies and the flexibility needed for the trucking industry to effectively serve our customers. Since the two San Pedro ports essentially operate as a single entity, this requirement will effectively impact all carriers serving the ports.

In the lawsuit ATA asserts that the Concession Plans are preempted by federal statute. Specifically, under 49 U.S.C. § 14501(c)(1), a political subdivision of a state "may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier." The ports' Concession Plans clearly are intended to control access into the port markets and will have a major impact on motor carrier rates and services. In addition, the L.A. plan to ban owner-operators and require employee-only/company-owned trucks will greatly exacerbate concession impacts for motor carriers operating in both ports. The ban will add unnecessary costs and result in the elimination of local jobs, with no discernable benefit. The litigation also relies heavily on the United States Supreme Court's recent unanimous ruling interpreting that federal preemption provision (*Rowe v. New Hampshire Motor Transport Ass'n*, 128 S.Ct. 989, 995 (2008). Citing to language in that case, ATA asserts that laws like the port concession plans that substitute "governmental commands for 'competitive market forces' in determining the services that a motor carrier will provide" are and will be preempted.

In the lawsuit, ATA has asked the U.S. District Court for a preliminary injunction against the ports' enforcement of the October 1, 2008 imposed operational requirements of the Concession Plans. On September 5, the court heard oral arguments covering the following key issues:

- Do Concession Plans Fall Within Federal Rates, Routes and Services Preemption Scope?

[15] *San Pedro Bay Ports Clean Air Action Plan: Economic Analysis*. Husing, John E, et. al., Sep. 7, 2007.

- Are the Ports Concession Plans Exempt From Preemption because they are acting as
  -As Market Participants?
  -As Sovereign under the Tidelands Act? or
  - Do their activities fall under the Motor Vehicle Safety Exception to federal preemption?

On September 9, the Court found that:

- The Port CTP plans directly impact motor carrier rates, routes, and services;
- ATA likely would prevail on the Market Participant preemption issue, i.e. federal preemption applies;
- ATA likely would prevail on the Sovereign Tidelands preemption issue, i.e. federal preemption applies; and
- The Ports likely would prevail on the Safety Preemption Exception issue, i.e. federal preemption does not apply. Therefore, no preliminary injunction was granted.

On September 10 ATA filed an appeal with the Ninth Circuit Court of Appeals seeking an emergency injunction. The Court on September 24 denied the Emergency Injunction request and ordered the parties to instead file appeal petitions on an expedited schedule, which were completed on December 17.

Oral arguments on this appeal are scheduled for March 4. Following completion of the oral argument, the Court will consider and render a ruling on whether the District Court erred in its application of the motor vehicle safety exemption to the federal preemption law.

It is important to note that on October 20, the Department of Justice filed an *Amicus* brief supporting ATA's position and specifically advised the Court that:

- Its brief was submitted because Congress has delegated to the U.S. Department of Transportation the authority to implement this federal preemption provision;
- The application of the provision "is a matter of critical concern to the federal government…";
- Broad safety exemption construction made by the District Court would "permit the exception to swallow the rule"; and
- Aspects of the Concession Plans clearly have no relationship to motor vehicle safety and squarely fall within the scope of federal preemption;

Finally, as the Subcommittees review the testimony and consider the clean air and transportation impacts of the Ports' CTP plans, they should also consider that under regulations adopted by the California Air Resources Board (CARB) on December 7, 2007, drayage trucks serving California's ports and intermodal rail yards must also meet clean air objectives mirroring the ports' plan, but with a final goal of requiring all port diesel trucks to meet 2007 standards by December 31, 2013, not 2012 as required under the CTP. Unlike the ports' approach, however, the CARB state program does not attempt to interfere with or change port trucking operations; i.e., there are no employee, concession or operational edicts. The Ports are attempting to layer additional, in many cases duplicative, requirements on carriers serving the Ports, without demonstrating how these requirements will do anything other than to make freight transportation more costly and eliminate local jobs.

CONCLUSIONS

Thank you for giving ATA the opportunity to address freight transportation issues in Southern California. The very serious challenges facing the region are not just local problems or California problems – the freight mobility concerns of this region affect the entire country. Therefore, the federal government has an obligation to provide the leadership and resources necessary to help State and local government agencies to overcome these challenges in partnership with private sector stakeholders.

To summarize, these are ATA's recommendations:

- Shift the federal surface transportation program's mission to focus primarily on freight mobility as a national goal. Create a new Freight Corridors Initiative, funded by an increase in the federal diesel tax, to focus resources on projects designed to address congestion on nationally significant highway freight corridors. Dedicate a portion of the new revenue to Interstate Highway projects in States that do not receive FCI funding.
- Continue the SAFETEA-LU parking pilot program. Increase available funding to address a significant and growing safety problem.
- Ensure interstate highway network access by giving tractor-semitrailers with 53' trailers the access protections afforded by the *Surface Transportation Assistance Act of 1982,* effectively bringing federal regulations in line with

We look forward to working with the Subcommittees to address these issues during authorization of the federal surface transportation bill.