

WERNER ENTERPRISES INC

Form 10-K

February 27, 2012

[Table of Contents](#)

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2011

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from to

Commission File Number 0-14690

WERNER ENTERPRISES, INC.

(Exact name of registrant as specified in its charter)

Edgar Filing: WERNER ENTERPRISES INC - Form 10-K

NEBRASKA
(State or other jurisdiction of
incorporation or organization)

47-0648386
(I.R.S. Employer
Identification No.)

14507 FRONTIER ROAD
POST OFFICE BOX 45308
OMAHA, NEBRASKA
(Address of principal executive offices)

68145-0308
(Zip code)

Registrant's telephone number, including area code: (402) 895-6640

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock, \$.01 Par Value	The NASDAQ Stock Market LLC

Securities registered pursuant to Section 12(g) of the Act:

NONE

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. YES NO

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. YES NO

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES NO

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). YES NO

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer
Non-accelerated filer Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). YES NO

The aggregate market value of the common equity held by non-affiliates of the Registrant (assuming for these purposes that all executive officers and Directors are affiliates of the Registrant) as of June 30, 2011, the last business day of the Registrant's most recently completed second fiscal quarter, was approximately \$1.123 billion (based on the closing sale price of the Registrant's Common Stock on that date as reported by Nasdaq).

As of February 15, 2012, 72,856,851 shares of the registrant's common stock were outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Proxy Statement of Registrant for the Annual Meeting of Stockholders to be held May 8, 2012, are incorporated in Part III of this report.

Table of Contents

TABLE OF CONTENTS

	Page
<u>PART I</u>	
Item 1. <u>Business</u>	1
Item 1A. <u>Risk Factors</u>	7
Item 1B. <u>Unresolved Staff Comments</u>	10
Item 2. <u>Properties</u>	10
Item 3. <u>Legal Proceedings</u>	10
Item 4. <u>Mine Safety Disclosures</u>	11
<u>PART II</u>	
Item 5. <u>Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</u>	12
Item 6. <u>Selected Financial Data</u>	14
Item 7. <u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	14
Item 7A. <u>Quantitative and Qualitative Disclosures about Market Risk</u>	27
Item 8. <u>Financial Statements and Supplementary Data</u>	29
Item 9. <u>Changes in and Disagreements with Accountants on Accounting and Financial Disclosure</u>	46
Item 9A. <u>Controls and Procedures</u>	46
Item 9B. <u>Other Information</u>	48
<u>PART III</u>	
Item 10. <u>Directors, Executive Officers and Corporate Governance</u>	49
Item 11. <u>Executive Compensation</u>	49
Item 12. <u>Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters</u>	49
Item 13. <u>Certain Relationships and Related Transactions, and Director Independence</u>	49
Item 14. <u>Principal Accounting Fees and Services</u>	49
<u>PART IV</u>	
Item 15. <u>Exhibits, Financial Statement Schedules</u>	50

Table of Contents

This Annual Report on Form 10-K for the year ended December 31, 2011 (this Form 10-K) and the documents incorporated herein by reference contain forward-looking statements based on expectations, estimates and projections as of the date of this filing. Actual results may differ materially from those expressed in such forward-looking statements. For further guidance, see Item 1A of Part I and Item 7 of Part II of this Form 10-K.

PART I

ITEM 1. BUSINESS

General

We are a transportation and logistics company engaged primarily in hauling truckload shipments of general commodities in both interstate and intrastate commerce. We also provide logistics services through our Value Added Services (VAS) division. We believe we are one of the five largest truckload carriers in the United States (based on total operating revenues), and our headquarters are located in Omaha, Nebraska, near the geographic center of our truckload service area. We were founded in 1956 by Clarence L. Werner, who started the business with one truck at the age of 19 and is our Chairman Emeritus. We were incorporated in the State of Nebraska in September 1982 and completed our initial public offering in June 1986 with a fleet of 632 trucks as of February 1986. At the end of 2011, we had a fleet of 7,200 trucks, of which 6,600 were company-operated and 600 were owned and operated by independent contractors.

We have two reportable segments Truckload Transportation Services (Truckload) and VAS. You can find financial information regarding these segments and the geographic areas in which we conduct business in the Notes to Consolidated Financial Statements under Item 8 of this Form 10-K.

Our Truckload segment is comprised of the One-Way Truckload and Specialized Services units. One-Way Truckload includes the following operating fleets: (i) the regional short-haul (Regional) fleet transports a variety of consumer nondurable products and other commodities in truckload quantities within geographic regions across the United States using dry van trailers; (ii) the medium-to-long-haul van (Van) fleet provides comparable truckload van service over irregular routes; (iii) the expedited (Expedited) fleet provides time-sensitive truckload services utilizing driver teams. Specialized Services provides truckload services dedicated to a specific customer, generally for a retail distribution center or manufacturing facility, including services for products requiring specialized trailers such as flatbed or temperature-controlled trailers. Our Truckload fleets operate throughout the 48 contiguous U.S. states pursuant to operating authority, both common and contract, granted by the U.S. Department of Transportation (DOT) and pursuant to intrastate authority granted by various U.S. states. We also have authority to operate in several provinces of Canada and to provide through-trailer service into and out of Mexico. The principal types of freight we transport include retail store merchandise, consumer products, grocery products and manufactured products. We focus on transporting consumer nondurable products that generally ship more consistently throughout the year and whose volumes are generally more stable during a slowdown in the economy.

Our VAS segment is a non-asset-based transportation and logistics provider. VAS is comprised of the following four operating units that provide non-trucking services to our customers: (i) truck brokerage (Brokerage) uses contracted carriers to complete customer shipments; (ii) freight management (Freight Management) offers a full range of single-source logistics management services and solutions; (iii) the intermodal (Intermodal) unit offers rail transportation through alliances with rail and drayage providers as an alternative to truck transportation; and (iv) Werner Global Logistics international (WGL) provides complete management of global shipments from origin to destination using a combination of air, ocean, truck and rail transportation modes. Our Brokerage unit had transportation services contracts with approximately 8,000 carriers as of December 31, 2011.

Marketing and Operations

Our business philosophy is to provide superior on-time customer service at a significant value for our customers. To accomplish this, we operate premium modern tractors and trailers. This equipment has fewer mechanical and maintenance issues and helps attract and retain experienced drivers. We continually develop our business processes and technology to improve customer service and driver retention. We focus on customers who value the broad geographic coverage, diversified truck and logistics services, equipment capacity, technology, customized services and flexibility available from a large financially-stable transportation and logistics provider.

We operate in the truckload and logistics sectors of the transportation industry. Our Truckload segment provides specialized services to customers based on (i) each customer's trailer needs (such as van, flatbed and temperature-controlled trailers), (ii) geographic area (regional and medium-to-long-haul van, including transport throughout Mexico and Canada), (iii) time-sensitive shipments (expedited) or (iv) conversion of

Edgar Filing: WERNER ENTERPRISES INC - Form 10-K

their private fleet to us (dedicated). In 2011, trucking revenues (net of fuel surcharge) and trucking fuel surcharge revenues accounted

Table of Contents

for 84% of total operating revenues, and non-trucking and other operating revenues (primarily VAS revenues) accounted for 16% of total operating revenues. Our VAS segment manages the transportation and logistics requirements for customers, providing customers with additional sources of truck capacity, alternative modes of transportation, a global delivery network and systems analysis to optimize transportation needs. VAS services include (i) truck brokerage, (ii) freight management, (iii) intermodal transport and (iv) international. The VAS international services are provided through our domestic and global subsidiary companies and include (i) ocean, air and ground transportation services, (ii) door-to-door freight forwarding and (iii) customs brokerage. Most VAS international services are provided throughout North America, Asia and Australia, with additional coverage throughout Europe, South America and Africa. VAS is a non-asset-based transportation and logistics provider that is highly dependent on qualified associates, information systems and the services of qualified third-party capacity providers. You can find the revenues generated by services that accounted for more than 10% of our consolidated revenues, consisting of Truckload and VAS, for the last three years under Item 7 of Part II of this Form 10-K.

We have a diversified freight base but are dependent on a relatively small number of customers for a significant portion of our freight. During 2011, our largest 5, 10, 25 and 50 customers comprised 26%, 40%, 60% and 74% of our revenues, respectively. No single customer generated more than 10% of our revenues in 2011. The industry groups of our top 50 customers are 51% retail and consumer products, 24% grocery products, 16% manufacturing/industrial and 9% logistics and other. Many of our One-Way Truckload customer contracts may be terminated upon 30 days' notice, which is common in the truckload industry. Most of our Specialized Services customer contracts are one to three years in length and may be terminated upon 90 days' notice following the expiration of the contract's first year.

Virtually all of our company and independent contractor tractors are equipped with satellite communication devices manufactured by Qualcomm. These devices enable us and our drivers to conduct two-way communication using standardized and freeform messages. This satellite technology also allows us to plan and monitor shipment progress. We obtain specific data on the location of all trucks in the fleet at least every hour of every day. Using the real-time data obtained from the satellite devices, we have advanced application systems to improve customer and driver service. Examples of such application systems include: (i) our proprietary paperless log system used to electronically pre-plan driver shipment assignments based on real-time available driving hours and to automatically monitor truck movement and drivers' hours of service; (ii) software that pre-plans shipments drivers can trade enroute to meet driver home-time needs without compromising on-time delivery schedules; (iii) automated possible late load tracking that informs the operations department of trucks possibly operating behind schedule, allowing us to take preventive measures to avoid late deliveries; and (iv) automated engine diagnostics that continually monitor mechanical fault tolerances. In 1998, we began a successful pilot program and subsequently became the first trucking company in the United States to receive an exemption from the DOT to use a global positioning system-based paperless log system as an alternative to the paper logbooks traditionally used by truck drivers to track their daily work activities. In 2009, the Federal Motor Carrier Safety Administration (FMCSA) agency of the DOT announced in the Federal Register its determination that our paperless log system satisfies the FMCSA's Automatic On-Board Recording Device requirements and that an exemption is not required.

Seasonality

In the trucking industry, revenues generally follow a seasonal pattern. Peak freight demand has historically occurred in the months of September, October and November. After the December holiday season and during the remaining winter months, our freight volumes are typically lower because some customers reduce shipment levels. Our operating expenses have historically been higher in the winter months due primarily to decreased fuel efficiency, increased cold weather-related maintenance costs of revenue equipment and increased insurance and claims costs attributed to adverse winter weather conditions. We attempt to minimize the impact of seasonality through our marketing program by seeking additional freight from certain customers during traditionally slower shipping periods and focusing on transporting consumer nondurable products. Revenue can also be affected by bad weather, holidays and the number of business days that occur during a given period because revenue is directly related to the available working days of shippers.

Employee Associates and Independent Contractors

As of December 31, 2011, we employed 8,823 drivers; 656 mechanics and maintenance associates for the trucking operation; 1,171 office associates for the trucking operation; and 733 associates for VAS, international and other non-trucking operations. We also had 600 service contracts with independent contractors who provide both a tractor and a driver or drivers. None of our U.S., Canadian, Chinese or Australian associates are represented by a collective bargaining unit, and we consider relations with our associates to be good.

We recognize that our professional driver workforce is one of our most valuable assets. Most of our professional drivers are compensated on a per-mile basis. For most company-employed drivers, the rate per mile generally increases with the drivers' length of service. Professional drivers may earn additional compensation through a

Table of Contents

safety bonus, annual achievement bonus and for performing additional work associated with their job (such as loading and unloading freight and making extra stops and shorter mileage trips).

At times, there are driver shortages in the trucking industry. Availability of experienced drivers can be affected by (i) changes in the demographic composition of the workforce; (ii) alternative employment opportunities other than truck driving that become available in the economy; and (iii) individual drivers' desire to be home more frequently. The driver market was increasingly more competitive in 2011 compared to 2010, and experienced driver supply continues to tighten. While historically higher national unemployment rates have aided our driver recruiting and retention efforts, we believe that an improved freight market, extended unemployment benefit payment programs, a reduction in available truck driving school graduates and changing industry safety regulations are tightening driver supply. We believe our strong mileage utilization, financial strength and safety record are attractive to drivers when compared to other carriers. Additionally, we believe our large percentage of driving jobs in shorter-haul operations (such as Dedicated and Regional) that allow drivers to return home more often is attractive to drivers.

We utilize recent driving school graduates as a significant source of new drivers. These drivers have completed a training program at a truck driving school, hold a commercial driver's license (CDL) and are further trained by Werner-certified trainer drivers for approximately 275 driving hours prior to that driver becoming a solo driver with their own truck. The recruiting environment for recent driving school graduates became more challenging in 2011 compared to 2010. The same factors described above that have affected our experienced driver recruiting efforts have also resulted in an inadequate supply of driving school graduates. The availability of these drivers has also been negatively impacted by the decreased availability of student loan financing for driving schools and may be further impacted by a potential decrease in the number of driving schools and proposed federal rule changes regarding minimum requirements for entry-level driver training.

As economic conditions improve, competition for experienced drivers and recent driving school graduates has increased and we expect will become more challenging in 2012. We cannot predict whether we will experience future shortages in the availability of experienced drivers or driving school graduates. If such a shortage were to occur and driver pay rate increases became necessary to attract and retain experienced drivers or driving school graduates, our results of operations would be negatively impacted to the extent that we could not obtain corresponding freight rate increases.

We also recognize that independent contractors complement our company-employed drivers. Independent contractors supply their own tractors and drivers and are responsible for their operating expenses. Because independent contractors provide their own tractors, less financial capital is required from us. Also, independent contractors provide us with another source of drivers to support our fleet. We intend to maintain our emphasis on independent contractor recruiting, in addition to company driver recruitment. We, along with others in the trucking industry, however, continue to experience independent contractor recruitment and retention difficulties that have persisted over the past several years. Challenging operating conditions, including inflationary cost increases that are the responsibility of independent contractors and tightened equipment financing standards, have made it difficult to recruit and retain independent contractors. If a shortage of independent contractors occurs, increases in per mile settlement rates (for independent contractors) and driver pay rates (for company drivers) may become necessary to attract and retain a sufficient number of drivers. This could negatively affect our results of operations to the extent that we would be unable to obtain corresponding freight rate increases.

Revenue Equipment

As of December 31, 2011, we operated 6,600 company tractors and had contracts for 600 tractors owned by independent contractors. The company tractors were manufactured by Freightliner (a Daimler company), Peterbilt and Kenworth (both divisions of PACCAR), International (a Navistar company) and Volvo. We adhere to a comprehensive maintenance program for both company tractors and trailers. We inspect independent contractor tractors prior to acceptance for compliance with Werner and DOT operational and safety requirements. We periodically inspect these tractors, in a manner similar to company tractor inspections, to monitor continued compliance. We also regulate the vehicle speed of company trucks to improve safety and fuel efficiency. Over half of our company trucks are limited to a maximum speed of 62 miles per hour, and the rest are set to not exceed 65 miles per hour.

The average age of our company truck fleet was 2.4 years at December 31, 2011. In 2010, because of the ongoing cost increases for new trucks and the weak used truck market, we extended the replacement cycle for company-owned tractors. In third quarter 2010, we began buying new trucks with engines that comply with the U.S. Environmental Protection Agency (EPA) engine emissions standards that became effective in January 2010 to replace older trucks we sell or trade. As of December 31, 2011, approximately 30% of our company tractors have engines that comply with the 2010 emissions standards. We currently expect to further reduce our company truck fleet age to approximately 2.1 years by December 31, 2012.

Table of Contents

We operated 23,045 trailers at December 31, 2011. This total is comprised of 21,918 dry vans; 224 flatbeds; 897 temperature-controlled trailers; and 6 specialized trailers. Most of our trailers were manufactured by Wabash National Corporation. As of December 31, 2011, of our dry van trailer fleet, 99% consisted of 53-foot trailers, and 100% was comprised of aluminum plate or composite (DuraPlate®) trailers. We also provide other trailer lengths, such as 48-foot and 57-foot trailers, to meet the specialized needs of certain customers.

Our wholly-owned subsidiary, Fleet Truck Sales, sells our used trucks and trailers, and we believe it is one of the larger domestic Class 8 truck and equipment retail entities in the United States. Fleet Truck Sales has been in business since 1992 and operates in six locations. We may also trade used trucks to original equipment manufacturers when purchasing new trucks.

Fuel

In 2011, we purchased approximately 97% of our fuel from a predetermined network of fuel stops throughout the United States. Of this 97%, approximately 93% of our fuel was purchased from three large fuel stop vendors. We negotiate discounted pricing based on historical purchase volumes with these fuel stop vendors. Bulk fueling facilities are maintained at seven of our terminals and three dedicated customer locations.

Shortages of fuel, increases in fuel prices and rationing of petroleum products can have a material adverse effect on our operations and profitability. Our customer fuel surcharge reimbursement programs generally enable us to recover from our customers a majority, but not all, of higher fuel prices compared to normalized average fuel prices. These fuel surcharges, which automatically adjust depending on the U.S. Department of Energy (DOE) weekly retail on-highway diesel fuel prices, enable us to recoup much of the higher cost of fuel when prices increase. We do not generally recoup higher fuel costs for miles not billable to customers, out-of-route miles and truck engine idling. During 2011, our fuel expense and fuel reimbursements to independent contractors increased by \$109.5 million because of increased fuel prices throughout the year, partially offset by fuel savings resulting from our initiatives to improve fuel efficiency. We cannot predict whether fuel prices will increase or decrease in the future or the extent to which fuel surcharges will be collected from customers. As of December 31, 2011, we had no derivative financial instruments to reduce our exposure to fuel price fluctuations.

We maintain aboveground and underground fuel storage tanks at many of our terminals. Leakage or damage to these facilities could expose us to environmental clean-up costs. The tanks are routinely inspected to help prevent and detect such problems.

Regulation

We are a motor carrier regulated by the DOT in the United States and similar governmental transportation agencies in foreign countries in which we operate. The DOT generally governs matters such as safety requirements, registration to engage in motor carrier operations, drivers' hours of service and certain mergers, consolidations and acquisitions. We currently have, and have always maintained, a satisfactory DOT safety rating, which is the highest available rating, and we continually take efforts to maintain our satisfactory rating. A conditional or unsatisfactory DOT safety rating could adversely affect us because some of our customer contracts require a satisfactory rating. Equipment weight and dimensions are also subject to federal, state and international regulations with which we strive to comply.

The FMCSA continues its implementation of the new Compliance, Safety, Accountability (CSA) safety initiative, which monitors the safety performance of both individual drivers and carriers. In December 2010, the FMCSA made public on its website the Safety Measurement System (SMS), which includes specific safety rating measurement and percentile ranking scores for over 500,000 trucking companies. Through the SMS, the public can access carrier scores and data (including a carrier's roadside safety inspection, out-of-service and moving violation histories) for five Behavior Analysis and Safety Improvement Categories (BASICs). Our current CSA scores for each of the five publicly available BASICs meet the FMCSA's acceptable performance threshold. In April 2012, the FMCSA is projected to release proposed rules that will replace the current safety rating process with a new Safety Fitness Determination (SFD) that will use the SMS to determine safety ratings. As carriers, shippers, brokers, vendors and others review, evaluate and make operational and business decisions using CSA data, we anticipate that drivers and trucking companies will leave the market, although it is difficult to predict the duration and extent to which this may occur and the extent to which this could affect our business. This may limit our ability to attract and retain experienced drivers. We will continue to monitor any CSA developments and continue our CSA compliance efforts.

All truckload carriers are subject to the hours of service (HOS) regulations (the HOS Regulations) issued by the FMCSA. In December 2011, the FMCSA adopted and issued a final rule that amended the HOS Regulations as follows: (i) drivers can only use the 34-hour restart once every seven calendar days and the 34-hour period must include two periods between 1:00 a.m. and 5:00 a.m.; (ii) drivers may drive only if eight hours or less

Table of Contents

have passed since the end of the driver's last off-duty period of at least 30 minutes; (iii) on-duty time does not include any time resting in a parked commercial motor vehicle (CMV) and in a moving property-carrying CMV, it does not include up to two hours in the passenger seat immediately before or after the eight consecutive hours in the sleeper-berth; and (iv) driving (or allowing a driver to drive) three or more hours beyond the driving-time limit may be considered an egregious violation and may be subject to the maximum civil penalties. The final rule for the limitations on the minimum 34-hour restarts and the rest breaks is effective on July 1, 2013, and the final rule for the on-duty time and penalties is effective on February 27, 2012. When implemented, more drivers and more trucks may be needed to transport the existing amount of truck freight in the market, and the resulting negative effect would likely be cost increases to carriers, shippers and consumers. We are currently evaluating the new provisions and the expected impact on our truck productivity and operating costs.

In first quarter 2010, the FMCSA approved a new final rule regarding the trucking industry's use of Electronic On-Board Recorders (EOBRS) for HOS regulatory compliance. Such rule (the April 2010 EOBRS Rule) was published in the Federal Register on April 5, 2010, and the compliance date is June 4, 2012. The April 2010 EOBRS Rule includes (i) performance requirements for EOBRS used to monitor drivers' HOS recording devices, (ii) incentives for voluntary EOBRS use by motor carriers and (iii) remedial directives requiring EOBRS installation, maintenance and use by motor carriers with serious HOS noncompliance. The April 2010 EOBRS Rule applied to carriers who, during an FMCSA compliance review, were found to have a demonstrated record of poor HOS compliance and threshold HOS regulatory violations or who choose to voluntarily use compliant EOBRS. Such noncompliant carriers would be ordered to install and use EOBRS for HOS recording within sixty (60) days of receiving notice from the FMCSA. On January 31, 2011, the FMCSA issued proposed rules regarding the required installation and use of EOBRS by nearly all carriers to enhance the monitoring and enforcement of the driver HOS rules. On August 26, 2011, the U.S. Court of Appeals for the Seventh Circuit ruled in favor of an appeal of the April 2010 EOBRS Rule regarding the use of EOBRS by carriers with significant HOS violations and remanded the rule back to the FMCSA for further consideration. The FMCSA has announced that it does not intend to pursue the April 2010 EOBRS Rule further. However, they are continuing with the analysis of mandatory EOBRS for nearly all carriers. The FMCSA has stated that such rule would be postponed until late 2012 or early 2013. Our paperless log system satisfies the current automatic on-board recording device regulations, and we are therefore permitted to continue using our system. While we do not believe the rules, as proposed, would have a significant effect on our operations and profitability, we will continue to monitor future developments.

In May 2011, the FMCSA published a final rule that (i) sets new standards that must be met before states issue commercial learner's permits (CLP), (ii) revises the knowledge and skills testing standards that must be met to obtain both a CLP and a CDL, and (iii) improves anti-fraud measures with the CDL program. States must be in compliance with the new requirements by three years from the effective date of the final rule. The FMCSA has not yet issued a final rule regarding minimum requirements for entry level driver training programs, but has projected that it will issue a final rule in July 2012. Under the 2007 proposed rule, entry-level drivers applying for a Class A CDL would be required to complete a minimum of 120 hours of training, consisting of 76 classroom hours and 44 driving hours. Current regulations do not require a minimum number of training hours and require only classroom education. Either of these rules could materially impact the number of potential new drivers entering the industry, and we currently cannot predict how the adoption of such rules would affect our driver recruitment and the overall driver market.

We have unlimited authority to carry general commodities in interstate commerce throughout the 48 contiguous U.S. states. We also have authority to carry freight on an intrastate basis in 46 states. The Federal Aviation Administration Authorization Act of 1994 (the FAAA Act) amended sections of the Interstate Commerce Act to prevent states from regulating motor carrier rates, routes or service after January 1, 1995. The FAAA Act did not address state oversight of motor carrier safety and financial responsibility or state taxation of transportation. If a carrier wishes to operate in intrastate commerce in a state where the carrier did not previously have intrastate authority, the carrier must, in most cases, still apply for authority in such state.

WGL, through its domestic and global subsidiary companies, holds a variety of licenses required to carry out its international services. These licenses permit us to provide services as a Non-Vessel Operating Common Carrier (NVOCC), customs broker, freight forwarder, indirect air carrier, accredited cargo agent and others. These international services subject us to regulation by the Transportation Security Administration (TSA) and Customs and Borders Protection (CBP) agencies of the U.S. Department of Homeland Security, the U.S. Federal Maritime Commission (FMC), the International Air Transport Association (IATA), as well as similar regulatory agencies in foreign jurisdictions.

Table of Contents

Our operations are subject to various federal, state and local environmental laws and regulations, many of which are implemented by the EPA and similar state regulatory agencies. These laws and regulations govern the management of hazardous wastes, discharge of pollutants into the air and surface and underground waters and disposal of certain substances. We do not believe that compliance with these regulations has a material effect on our capital expenditures, earnings and competitive position.

The EPA mandated a series of stringent engine emissions standards for all newly manufactured truck engines, which became effective in October 2002, January 2007 and January 2010, resulting in increases in the costs of new trucks. The 2010 regulations required a significant decrease in particulate matter (soot and ash) and nitrogen oxide emitted from on-road diesel engines. Engine manufacturers responded to the 2010 standards by modifying engines to produce cleaner combustion with selective catalytic reduction (SCR) or exhaust gas recirculation (EGR) technologies to remove pollutants from exhaust gases exiting the combustion chamber. The SCR technology also requires the ongoing periodic use of a urea-based diesel exhaust fluid. Trucks with 2010-standard engines have a higher purchase price than trucks manufactured to meet the 2007 standards but are more fuel efficient. In 2011, we continued to purchase new trucks with the 2010-standard engines to replace older trucks we sell or trade.

California also enacted restrictions on transport refrigeration unit (TRU) emissions that require companies to operate compliant TRUs in California. The California regulations apply not only to California intrastate carriers, but also to carriers outside of California who wish to enter the state with TRUs. In January 2009, the EPA enabled California to phase in its Low-Emission TRU In-Use Performance Standards over several years. Enforcement of California's in-use performance standards for TRU engines began in January 2010 for 2002 and older TRUs and will be phased in annually for later model years. We have complied with all compliance deadlines through December 31, 2011 that applied to model year 2004 and older TRU engines. California also required the registration of all California-based TRUs by July 31, 2009. For compliance purposes, we completed the California TRU registration process and continue to structure our plan to operate compliant TRUs over the next several years as the regulations gradually become effective.

California also adopted new regulations to improve the fuel efficiency of heavy-duty tractors that pull 53-foot or longer box-type trailers within the state. The tractors and trailers subject to these regulations must either use EPA SmartWay-certified tractors and trailers or retrofit their existing fleet with SmartWay-verified technologies that have been demonstrated to meet or exceed fuel savings percentages specified in the regulations. Examples of these technologies include tractor and trailer aerodynamics packages (such as tractor fairings and trailer skirts) and the use of low-rolling resistance tires on both tractors and trailers. Enforcement of these regulations for 2011 model year equipment began in January 2010 and will be phased in over several years for older equipment. In order to comply with the California Air Resources Board's (CARB) fuel efficiency regulations, we submitted a large fleet compliance plan to CARB on June 30, 2010 to install skirting on our dry van trailers by certain deadlines through 2016. Going forward, we will continue monitoring our compliance with these CARB regulations.

Various provisions of the North American Free Trade Agreement (NAFTA) may alter the competitive environment for shipping into and out of Mexico. We believe we are sufficiently prepared to respond to the potential changes in cross-border trucking that may result from the July 2011 agreement between the United States and Mexico permitting carriers from either country to travel beyond the border zone. We conduct a substantial amount of business in international freight shipments to and from the United States and Mexico (see Note 9 in the Notes to Consolidated Financial Statements under Item 8 of Part II of this Form 10-K) and continue preparing for various scenarios that may result. We believe we are one of the five largest truckload carriers in terms of freight volume shipped to and from the United States and Mexico.

Competition

The freight transportation industry is highly competitive and includes thousands of trucking and non-asset-based logistics companies. We have a small share of the markets we target. Our Truckload segment competes primarily with other truckload carriers. Logistics companies, intermodal companies, railroads, less-than-truckload carriers and private carriers provide competition for both our Truckload and VAS segments. Our VAS segment also competes for the services of third-party capacity providers.

Competition for the freight we transport is based primarily on service, efficiency, available capacity and, to some degree, on freight rates alone. We believe that few other truckload carriers have greater financial resources, own more equipment or carry a larger volume of freight than us. We believe we are one of the five largest carriers in the truckload transportation industry based on total operating revenues.

Table of Contents

Internet Website

We maintain an Internet website where you can find additional information regarding our business and operations. The website address is www.werner.com. On the website, we make certain investor information available free of charge, including our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, stock ownership reports filed under Section 16 of the Securities Exchange Act of 1934, as amended (the Exchange Act), and any amendments to such reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act. This information is included on our website as soon as reasonably practicable after we electronically file or furnish such materials to the U.S. Securities and Exchange Commission (SEC). The website also includes Interactive Data Files required to be posted pursuant to Rule 405 of SEC Regulation S-T. We also provide our corporate governance materials, such as Board committee charters and our Code of Corporate Conduct, on our website free of charge, and we may occasionally update these materials when necessary to comply with SEC and NASDAQ rules or to promote the effective and efficient governance of our company. Information provided on our website is not incorporated by reference into this Form 10-K.

ITEM 1A. RISK FACTORS

The following risks and uncertainties may cause our actual results, business, financial condition and cash flows to materially differ from those anticipated in the forward-looking statements included in this Form 10-K. Caution should be taken not to place undue reliance on forward-looking statements made herein because such statements speak only to the date they were made. Unless otherwise required by applicable securities laws, we undertake no obligation or duty to revise or update any forward-looking statements contained herein to reflect subsequent events or circumstances or the occurrence of unanticipated events. Also refer to the Cautionary Note Regarding Forward-Looking Statements in Item 7 of Part II of this Form 10-K.

Our business is subject to overall economic conditions that could have a material adverse effect on our results of operations.

We are sensitive to changes in overall economic conditions that impact customer shipping volumes, industry freight demand and industry truck capacity. When shipping volumes decline or available truck capacity increases, freight pricing generally becomes more competitive as carriers compete for loads to maintain truck productivity. We may be negatively affected by future economic conditions including employment levels, business conditions, fuel and energy costs, interest rates and tax rates. Economic conditions may also impact the financial condition of our customers, resulting in a greater risk of bad debt losses, and that of our suppliers, which may affect negotiated pricing or availability of needed goods and services.

Increases in fuel prices and shortages of fuel can have a material adverse effect on the results of operations and profitability.

To lessen the effect of fluctuating fuel prices on our margins, we have fuel surcharge programs with our customers. These programs generally enable us to recover a majority, but not all, of the fuel price increases. The remaining portion is generally not recoverable because it results from empty and out-of-route miles (which are not billable to customers) and truck idle time. Fuel prices that change rapidly in short time periods also impact our recovery because the surcharge rate in most programs only changes once per week. Fuel shortages, increases in fuel prices and petroleum product rationing could have a material adverse impact on our operations and profitability. To the extent that we cannot recover the higher cost of fuel through customer fuel surcharges, our financial results would be negatively impacted. As of December 31, 2011, we had no derivative financial instruments to reduce our exposure to fuel price fluctuations.

Difficulty in recruiting and retaining experienced drivers, recent driving school graduates and independent contractors could impact our results of operations and limit growth opportunities.

At times, the trucking industry has experienced driver shortages. Driver availability may be affected by changing workforce demographics, alternative employment opportunities, national unemployment rates, freight market conditions, availability of financial aid for driving schools, extended unemployment benefit payment programs and changing industry regulations. If such a shortage were to occur and driver pay rate increases were necessary to attract and retain drivers, our results of operations would be negatively impacted to the extent that we could not obtain corresponding freight rate increases. Additionally, a shortage of drivers could result in idled equipment, which could affect our profitability.

Independent contractor availability may also be affected by both inflationary cost increases that are the responsibility of independent contractors and the availability of equipment financing. If a shortage of independent contractors occurs, increases in per mile settlement rates (for independent contractors) and driver pay rates (for company drivers) may become necessary to attract and retain a sufficient number of drivers. This could negatively affect our results of operations to the extent that we would be unable to obtain corresponding freight rate increases.

Table of Contents

We operate in a highly competitive industry, which may limit growth opportunities and reduce profitability.

The freight transportation industry is highly competitive and includes thousands of trucking and non-asset-based logistics companies. We compete primarily with other truckload carriers in our Truckload segment. Logistics companies, intermodal companies, railroads, less-than-truckload carriers and private carriers also provide a lesser degree of competition in our Truckload segment, but such carriers are more direct competitors in our VAS segment. Competition for the freight we transport or manage is based primarily on service, efficiency, available capacity and, to some degree, on freight rates alone. This competition could have an adverse effect on either the number of shipments we transport or the freight rates we receive, which could limit our growth opportunities and reduce our profitability.

We operate in a highly regulated industry. Changes in existing regulations or violations of existing or future regulations could adversely affect our operations and profitability.

We are regulated by the DOT in the United States and similar governmental transportation agencies in foreign countries in which we operate. We are also regulated by agencies in certain U.S. states. These regulatory agencies have the authority to govern transportation-related activities, such as safety, authorization to conduct motor carrier operations and other matters. The Regulation subsection in Item 1 of Part I of this Form 10-K describes several proposed and pending regulations that may have a significant effect on our operations including our productivity, driver recruitment and retention and capital expenditures. The subsidiaries of WGL hold a variety of licenses required to carry out its international services, and the loss of any of these licenses could adversely impact the operations of WGL.

The seasonal pattern generally experienced in the trucking industry may affect our periodic results during traditionally slower shipping periods and winter months.

In the trucking industry, revenues generally follow a seasonal pattern which may affect our results of operations. After the December holiday season and during the remaining winter months, our freight volumes are typically lower because some customers reduce shipment levels. Our operating expenses have historically been higher in the winter months because of cold temperatures and other adverse winter weather conditions which result in decreased fuel efficiency, increased cold weather-related maintenance costs of revenue equipment and increased insurance and claims costs. Revenue can also be affected by bad weather, holidays and the number of business days during a given period because revenue is directly related to the available working days of shippers.

We depend on key customers, the loss or financial failure of which may have a material adverse effect on our operations and profitability.

A significant portion of our revenue is generated from key customers. During 2011, our largest 5, 10 and 25 customers accounted for 26%, 40% and 60% of revenues, respectively. No single customer generated more than 10% of our revenues in 2011, and our largest customer accounted for 7% of our revenues in 2011. We do not have long-term contractual relationships with many of our key One-Way Truckload customers. Our contractual relationships with our Specialized Services customers are typically one to three years in length and may be terminated upon 90 days notice following the expiration of the contract's first year. We cannot provide any assurance that key customer relationships will continue at the same levels. If a significant customer reduced or terminated our services, it could have a material adverse effect on our business and results of operations. We review our customers' financial conditions for granting credit, monitor changes in customers' financial conditions on an ongoing basis, review individual past-due balances and collection concerns and maintain credit insurance for some customer accounts. However, a key customer's financial failure may negatively affect our results of operations.

We depend on the services of third-party capacity providers, the availability of which could affect our profitability and limit growth in our VAS segment.

Our VAS segment is highly dependent on the services of third-party capacity providers, such as other truckload carriers, less-than-truckload carriers, railroads, ocean carriers and airlines. Many of those providers face the same economic challenges as we do and therefore are actively and competitively soliciting business. These economic conditions may have an adverse effect on the availability and cost of third-party capacity. If we are unable to secure the services of these third-party capacity providers at reasonable rates, our results of operations could be adversely affected.

If we cannot effectively manage the challenges associated with doing business internationally, our revenues and profitability may suffer.

Our results are affected by the success of our operations in Mexico and other foreign countries in which we operate. We are subject to risks of doing business internationally, including fluctuations in foreign currencies, changes in the economic strength of the countries in which we do business, difficulties in enforcing contractual obligations and intellectual property rights, burdens of complying with a wide variety of international and United States export and import laws, and social, political, and economic instability. Additional risks associated with our

Edgar Filing: WERNER ENTERPRISES INC - Form 10-K

foreign operations, including restrictive trade policies and imposition of duties, taxes, or government royalties by foreign governments, are present but largely mitigated by the terms of NAFTA for Mexico and Canada. The recent agreement permitting cross border movements for both United States and Mexican based carriers into the United States

Table of Contents

and Mexico presents additional risks in the form of increased competition and the potential for increased congestion on our cross border lanes.

Our earnings could be reduced by increases in the number of insurance claims, cost per claim, costs of insurance premiums or availability of insurance coverage.

We are self-insured for a significant portion of liability resulting from bodily injury, property damage, cargo and associate workers compensation and health benefit claims. This is supplemented by premium-based insurance with licensed insurance companies above our self-insurance level for each type of coverage. To the extent we experience a significant increase in the number of claims, cost per claim or insurance premium costs for coverage in excess of our retention amounts, our operating results would be negatively affected. Healthcare legislation and inflationary cost increases could also have a negative effect on our results.

Decreased demand for our used revenue equipment could result in lower unit sales, resale values and gains on sales of assets.

We are sensitive to changes in used equipment prices and demand, especially with respect to tractors. We have been in the business of selling our company-owned trucks since 1992, when we formed our wholly-owned subsidiary Fleet Truck Sales. Reduced demand for used equipment could result in a lower volume of sales or lower sales prices, either of which could negatively affect our gains on sales of assets.

Our operations are subject to various environmental laws and regulations, the violation of which could result in substantial fines or penalties.

In addition to direct regulation by the DOT, EPA and other agencies, we are subject to various environmental laws and regulations dealing with the handling of hazardous materials, underground fuel storage tanks, discharge and retention of storm-water, and emissions from our vehicles. We operate in industrial areas, where truck terminals and other industrial activities are located and where groundwater or other forms of environmental contamination have occurred. Our operations involve the risks of fuel spillage or seepage, environmental damage and hazardous waste disposal, among others. We also maintain bulk fuel storage at several of our facilities. If we are involved in a spill or other accident involving hazardous substances, or if we are found to be in violation of applicable laws or regulations, it could have a material adverse effect on our business and operating results. If we fail to comply with applicable environmental regulations, we could be subject to substantial fines or penalties and to civil and criminal liability. Tractors and trailers used in our daily operations have been affected by regulatory changes related to air emissions and fuel efficiency, and may be adversely affected in the future by new regulatory actions.

We rely on the services of key personnel, the loss of which could impact our future success.

We are highly dependent on the services of key personnel, including Clarence L. Werner, Gary L. Werner, Gregory L. Werner and our executive officers. Although we believe we have an experienced and highly qualified management team, the loss of the services of these key personnel could have a significant adverse impact on us and our future profitability.

Difficulty in obtaining goods and services from our vendors and suppliers could adversely affect our business.

We are dependent on our vendors and suppliers. We believe we have good vendor relationships and that we are generally able to obtain favorable pricing and other terms from vendors and suppliers. If we fail to maintain satisfactory relationships with our vendors and suppliers, or if our vendors and suppliers experience significant financial problems, we could experience difficulty in obtaining needed goods and services because of production interruptions or other reasons. Consequently, our business could be adversely affected.

We use our information systems extensively for day-to-day operations, and service disruptions could have an adverse impact on our operations.

The efficient operation of our business is highly dependent on our information systems. Much of our software was developed internally or by adapting purchased software applications to suit our needs. Our information systems are used for receiving and planning loads, dispatching drivers and other capacity providers, billing customers and providing financial reports. If any of our critical information systems fail or become unavailable, we would have to perform certain functions manually, which could temporarily affect our ability to manage our operations efficiently. We maintain information security policies to protect our systems and data from cyber security events and threats. We purchased redundant computer hardware systems and have our own off-site disaster recovery facility approximately ten miles from our headquarters for use in the event of a disaster. We took these steps to reduce the risk of disruption to our business operation if a disaster occurred. We believe any such disruption would be minimal or moderate; however, we cannot predict the degree to which any disaster would affect our information systems or disaster recovery facility. Any system failure, disruption, or security breach could interrupt or delay our operations, damage our reputation, cause us to lose customers, or impact our ability to manage our operations, any of which could have an adverse effect on our

operations.

Table of Contents**ITEM 1B. UNRESOLVED STAFF COMMENTS**

We have not received any written comments from SEC staff regarding our periodic or current reports that were issued 180 days or more preceding the end of our 2011 fiscal year and that remain unresolved.

ITEM 2. PROPERTIES

Our headquarters are located on approximately 197 acres near U.S. Interstate 80 west of Omaha, Nebraska, 107 acres of which are held for future expansion. Our headquarters office building includes a computer center, drivers lounges, cafeteria and company store. The Omaha headquarters also includes a driver training facility, equipment maintenance and repair facilities and a sales office for selling used trucks and trailers. These maintenance facilities contain a central parts warehouse, frame straightening and alignment machine, truck and trailer wash areas, equipment safety lanes, body shops for tractors and trailers, paint booth and reclaim center. Our headquarter facilities have suitable space available to accommodate planned needs for at least the next three to five years.

We also have several terminals throughout the United States, consisting of office and/or maintenance facilities. Our terminal locations are described below:

Location	Owned or Leased	Description	Segment
Omaha, Nebraska	Owned	Corporate headquarters, maintenance	Truckload, VAS, Corporate
Omaha, Nebraska	Owned	Disaster recovery, warehouse	Corporate
Phoenix, Arizona	Owned	Office, maintenance	Truckload
Fontana, California	Owned	Office, maintenance	Truckload
Denver, Colorado	Owned	Office, maintenance	Truckload
Atlanta, Georgia	Owned	Office, maintenance	Truckload, VAS
Indianapolis, Indiana	Leased	Office, maintenance	Truckload
Springfield, Ohio	Owned	Office, maintenance	Truckload
Allentown, Pennsylvania	Leased	Office, maintenance	Truckload
Dallas, Texas	Owned	Office, maintenance	Truckload, VAS
Laredo, Texas	Owned	Office, maintenance, transloading	Truckload, VAS
Lakeland, Florida	Leased	Office	Truckload
El Paso, Texas	Owned	Office, maintenance	Truckload
Brownstown, Michigan	Owned	Maintenance	Truckload
Ardmore, Oklahoma	Leased	Maintenance	Truckload, VAS
Indianola, Mississippi	Leased	Maintenance	Truckload, VAS
Scottsville, Kentucky	Leased	Maintenance	Truckload, VAS
Fulton, Missouri	Leased	Maintenance	Truckload, VAS
Tomah, Wisconsin	Leased	Maintenance	Truckload
Newbern, Tennessee	Leased	Maintenance	Truckload
Chicago, Illinois	Leased	Maintenance	Truckload
Alachua, Florida	Leased	Maintenance	Truckload, VAS
South Boston, Virginia	Leased	Maintenance	Truckload, VAS
Garrett, Indiana	Leased	Maintenance	Truckload

We currently lease (i) approximately 70 small sales offices, Brokerage offices and trailer parking yards in various locations throughout the United States and (ii) office space in Mexico, Canada, China and Australia. We own (i) a 96-room motel located near our Omaha headquarters; (ii) a 71-room private driver lodging facility at our Dallas terminal; (iii) four low-income housing apartment complexes in the Omaha area; (iv) a warehouse facility in Omaha; and (v) a terminal facility in Queretaro, Mexico, which we lease to a related party (see Note 8 in the Notes to Consolidated Financial Statements under Item 8 of Part II of this Form 10-K). We also have 50% ownership in a 125,000 square-foot warehouse located near our headquarters in Omaha. The Fleet Truck Sales network currently has six locations, which are located in our terminals listed above.

ITEM 3. LEGAL PROCEEDINGS

Edgar Filing: WERNER ENTERPRISES INC - Form 10-K

We are a party subject to routine litigation incidental to our business, primarily involving claims for bodily injury, property damage, cargo and workers' compensation incurred in the transportation of freight. We have maintained a self-insurance program with a qualified department of risk management professionals since 1988. These associates manage our bodily injury, property damage, cargo and workers' compensation claims. An actuary reviews our self-insurance reserves for bodily injury, property damage and workers' compensation claims every six months.

Table of Contents

We were responsible for liability claims up to \$500,000, plus administrative expenses, for each occurrence involving bodily injury or property damage since August 1, 1992. Beginning August 1, 2004, we increased our self-insured retention (SIR) and deductible amount to \$2.0 million per occurrence. We are also responsible for varying annual aggregate amounts of liability for claims in excess of the SIR/deductible. The following table reflects the SIR/deductible levels and aggregate amounts of liability for bodily injury and property damage claims since August 1, 2008:

Coverage Period		Primary Coverage	Primary Coverage SIR/Deductible
August 1, 2008	July 31, 2009	\$5.0 million	\$2.0 million (1)
August 1, 2009	July 31, 2010	\$5.0 million	\$2.0 million (2)
August 1, 2010	July 31, 2011	\$5.0 million	\$2.0 million (2)
August 1, 2011	July 31, 2012	\$5.0 million	\$2.0 million (2)

(1) Subject to an additional \$8.0 million aggregate in the \$2.0 to \$5.0 million layer and a \$4.0 million aggregate in the \$5.0 to \$10.0 million layer.

(2) Subject to an additional \$8.0 million aggregate in the \$2.0 to \$5.0 million layer and a \$5.0 million aggregate in the \$5.0 to \$10.0 million layer.

Our primary insurance covers the range of liability under which we expect most claims to occur. If any liability claims are substantially in excess of coverage amounts listed in the table above, such claims are covered under premium-based policies (issued by insurance companies) to coverage levels that our management considers adequate. We are also responsible for administrative expenses for each occurrence involving bodily injury or property damage. See also Note 1 and Note 7 in the Notes to Consolidated Financial Statements under Item 8 of Part II of this Form 10-K.

We are responsible for workers' compensation up to \$1.0 million per claim. We also maintain a \$28.9 million bond for the State of Nebraska and a \$6.9 million bond for our workers' compensation insurance carrier and have insurance for individual claims above \$1.0 million.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable

Table of Contents

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Price Range of Common Stock

Our common stock trades on the NASDAQ Global Select MarketSM tier of the NASDAQ Stock Market under the symbol WERN. The following table sets forth, for the quarters indicated from January 1, 2010 through December 31, 2011, (i) the high and low trade prices per share of our common stock quoted on the NASDAQ Global Select MarketSM and (ii) our dividends declared per common share.