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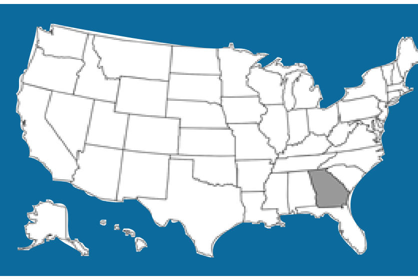

This edition of *At Issue* delves into the alphabet soup of federal acronyms as we take a look at how the FAST Act, new WHD overtime rules and BRAC impact Georgia.

The FAST Act, the Fixing America's Surface Transportation Act, is the first long-term transportation reauthorization in more than a decade to be signed into law. We take a look at the FAST Act and how it interacts with the Transportation Funding Act of 2015 (House Bill 170) as we move to modernize Georgia's transportation infrastructure.

BRAC, the Base Realignment and Closure Commission, was created by Congress to improve military efficiency both in terms of controlling costs and increasing readiness. Georgia hosts eight military installations that are vital to both our nation's security and state's economy.

WHD is the Wage and Hour Division of the Department of Labor. This federal bureaucracy is once again revising the regulations for overtime pay. Understanding the new rules is important for employers and employees throughout the state.

If you have issues you would like us to cover in future editions of *At Issue*, feel free to email me.

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In the wake of the Transportation Funding Act of 2015 (HB 170), which provided additional revenue for transportation projects, and this past session's Amended and General Appropriations Acts (HB 750 and HB 751), the Georgia Department of Transportation (GDOT) has begun to improve our state's roadways. Given this statewide focus, we often overlook the federal funding component, which represents a significant portion of total transportation funds in the state budget. Federal funds equal 47.8 percent of total transportation funds in HB 750, and 46.8 percent of total funds in HB 751.

Federal Funding Reauthorized

In the fall of 2015, with federal funds uncertain, GDOT announced that it had delayed 34 projects, worth more than $750 million, in the last fiscal year. Georgia, like other states, utilizes federal funding of transportation to complete surface transportation projects. Federal funding for the projects occurs mostly through the Federal-aid Highway program. Under the program, the federal government distributes money to states for the construction and improvement of urban and rural highway systems and for transit system capital expenditures. The program is funded from proceeds of the federal motor fuel tax, the federal heavy vehicle use tax, and federal motor carrier excise taxes collected in the Federal Highway Trust Fund (HTF) and the Mass Transit Account. The Federal Highway Act of 1956 established the HTF, and subsequent reauthorizations have established formulas for apportioning surface transportation funding to the states.

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In most programs, states must match a portion of the federal money with non-federal sources. Repeated shortfalls in the HTF over the years has led to short extensions of funding by Congress, the latest of which extended funding until October of 2015. On December 4, 2015, President Obama signed the Fixing America's Surface Transportation (FAST) Act (House Resolution 22). FAST, a five-year estimated $304.7 billion reauthorization of federal surface transportation programs, is the first long-term reauthorization in more than a decade. FAST covers Federal Fiscal Year (FFY) 2016 through FFY 2020, fully paid for, partially through a $70 billion transfer to the HTF from the General Fund (GF) of the United States Treasury. Congress also implemented a number of revenue and spending adjustments to offset the budgetary impact to the General Fund created by the transfer. As with previous authorizations, the FAST Act continues to distribute nearly 93 percent of all Federal-aid Highway contract authority to state departments of transportations, such as GDOT, through formula programs. The U.S. Department of Transportation estimates Georgia's FFY 2016 apportionment before adjustments to be around $1.3 billion, and the sum of estimated apportionments from FFY 2016 through FFY 2020 around $6.8 billion.

Georgia certainly benefits from the federal reauthorization, and in conjunction with state transportation funds, continues to make infrastructure improvements. FAST brings stability to the federal funding process, with the highway programs categorically receiving the bulk of funds ($226.3 billion of the total $304.7 billion). Within the highway programs, the Surface Transportation Block Grant Program (STBGP - previously called the Surface Transportation Program) is allocated $10.3 billion for FFY 2016. The estimated distribution of STBGP in Georgia is $330.3 million for FFY 2016. Of that, roughly 51 percent is sub-allocated based on population in FFY 2016, growing in a graduated manner until it reaches roughly 55 percent in FFY 2020. Additionally, coupled with state funds for bridges, the federal set-aside for off-system bridges is projected at $12.5 million in FFY 2016. The FAST Act also fixes the "donut hole" issue by allowing National Highway Performance Program (NHPP) dollars to be expended on non-National Highway System highway bridges that are on Federal-aid eligible highways.

Focus on Freight

As freight is key to Georgia and other states' economic development, the FAST Act creates two new grant programs to fund freight-related improvements. Under the National Highway Freight Program (NHFP), funds are distributed to states and funded at a projected $1.15 billion in FFY 2016; NHFP will be distributed based on each state's overall share of highway program apportionments. The discretionary Nationally Significant Freight and Highway Projects (NSFHP) program will provide $800 million in FFY 2016 in grants of at least $25 million to state or local government agencies for certain projects to increase competitiveness and generate national or regional economic benefits. In early July, the Georgia Ports Authority was awarded $44 million in FAST grant funding to increase rail capacity at the Port of Savannah. The grant is through the NSFHP and will fund a portion of a $128 million total project with other funds coming from the local government, State Department of Transportation and the Port itself. When completed, the project will accommodate more rail capacity and also connect GPA's rail sites. Additionally, the FAST Act requires all states using formula dollars to complete a State Freight Plan, to be updated every 5 years. The Plan must identify freight system trends and describe policies, strategies, and performance measures that will guide freight-related transportation decisions of that state. By incorporating a comprehensive approach in the funding and discussion of freight system needs, planning activities can address both immediate and long-range investment priorities.

A Significant Reauthorization

The FAST Act reauthorization is significant, both for the increased investment in national and Georgia transportation infrastructure and for the context of its passage. The FAST Act provides a slight increase in investment beyond that which would have been provided by an inflationary adjustment to the obligation levels in the previous transportation funding reauthorization bill, MAP-21. The increased investment stems from the $70 billion in transfers from the GF. Also, by passing the FAST Act, the "fiscal cliff" scenario of limited authorizations for supportable obligations, with no net new revenues provided to the HTF after 2014, has been avoided. The reauthorization of federal transportation programs not only keeps funding for highways moving forward, but this important five-year reauthorization brings increased certainty to state planning and project progress. In addition to the stability of a five-year term, the FAST Act provides a new process that speeds the distribution of funds to states. In the event that additional revenues from enacted legislation beyond the FAST Act are deposited into the HTF, perhaps following periods of volatility in motor fuels revenues, the dollars are automatically made available for obligation to states without further action by Congress.

Study and Review for the Future

Although the federal reauthorization is significant, the solvency of the HTF continues to be a concern. Funded at $15 million in FFY 2016 and $20 million in FFY 2017-2020, the FAST Act directs the Secretary of the USDOT to provide grants to states to demonstrate user based alternative revenue mechanisms that preserve a user fee structure to maintain long-term solvency of HTF. Additionally, the FAST Act expands the scope of several studies, plans, and reviews, including a future interstate system study that will seek to provide specific recommendations regarding the features, standards, capacity needs, application of technologies, and intergovernmental roles that must be coordinated to upgrade the Interstate System. Also of interest in transportation finance is the establishment of the National Surface Transportation and Innovative Finance Bureau for various purposes, including providing assistance and communicating best practices of financing and funding opportunities to eligible entities. These studies, initiatives, and research will help to ensure that we continue to review, update and fulfill our transportation infrastructure needs, both here in Georgia and across the nation. *-MD & ED*

New Overtime Rules: Relief for Workers or Burden on Employers?

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Background

Since the Great Depression, the United States has had a policy in place to provide protections for overtime workers and ensure that they are paid for the extra work they do. Currently, workers covered by the Fair Labor Standards Act (FLSA) of 1938 must be paid at least time-and-a-half for each hour they work beyond 40 hours a week. The details of implementing overtime protections outlined in the FLSA are found in the Code of Federal Regulations (CFR), which is periodically updated by the United States Department of Labor (DOL).

Under this current framework, salaried workers earning $23,660 ($455 a week) or less are eligible for overtime and are classified as "nonexempt." Workers paid hourly are also considered nonexempt and qualify for overtime pay. In general, workers meeting the following three criteria are exempt from overtime pay: (1) they must exceed the $23,660 threshold; (2) they must be paid on a salary basis; and (3) they must perform certain duties at work. Because of these three requirements, examples of workers not covered, or exempt, under the FLSA overtime rules include executive, administrative, and professional employees (sometimes referred to as "white collar" positions). Additional examples of exempt employees include certain commissioned sales employees in the retail and service industries, commercial fishermen, and most agricultural workers. The overtime rule also does not apply to "learned professions," such as lawyers, doctors, or school teachers. These occupations are exempt even if the employees are paid hourly.

In the government sector, the FLSA's overtime rules cover most, but not all, public employees. Public employees not covered by the FLSA include elected state and local government officials, as well as their policymaking appointees, their personal staff, and their legal advisors. Employees of a state's legislature, a county commission, or a city council are also exempt from overtime. State and local governments can also avoid paying overtime by implementing a comp time arrangement. With a seemingly low maximum salary threshold of $23,660, fewer workers are affected by the overtime rules each year. In response to declining overtime rule coverage, the Obama administration directed DOL in 2014 to update the overtime regulations to reflect what the administration believes to be the original intent of the FLSA. In May 2016, the Department issued a final rule that broadens the overtime provisions to cover more salaried workers.

The Updated Rules

The final rule raises, for the first time since 2004, the salary threshold that establishes overtime eligibility from $23,660 annually ($455 per week), to $47,476 annually or ($913 per week). The new rule also automatically updates the salary threshold every three years, starting on January 1, 2020. Specifically, the standard salary level will be updated to maintain a threshold equal to the 40th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region. The final rule also allows employers, for the first time, to use nondiscretionary bonuses, including commissions, to satisfy up to 10 percent of the salary threshold, provided these payments are made on a quarterly or more-frequent basis. The new rule, however, does not make any changes to the type of employment considered exempt or non-exempt under the FLSA's overtime rules. These changes will become effective on December 1, 2016. DOL estimates that the new rule will raise nationwide wages by an average $1.2 billion annually, and affect an additional 4.2 million workers across the country, 158,000 of which are working in Georgia.

Figure 1: Number of workers estimated to be affected by new overtime rules.

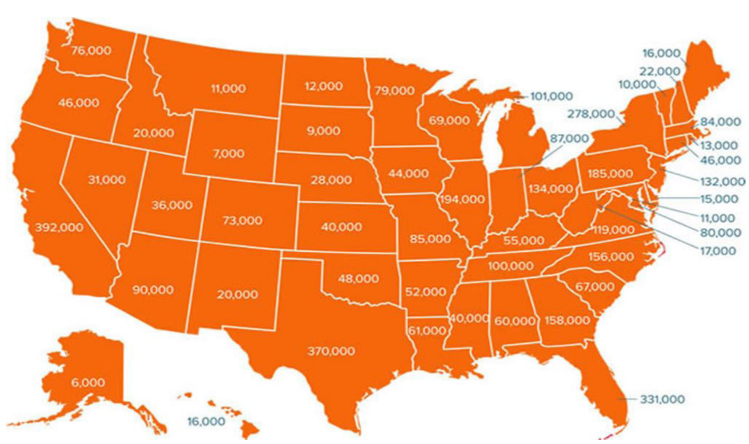

Image Source: U.S. DOL

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Employer Options

Employers will have several alternatives on how to move forward. These options include:

- Keeping salaries the same but monitoring hours worked. This may include requiring salaried employees to punch a time clock or utilize a similar device;
- Converting salaried employees to hourly and reducing their base hourly rate so that their total pay will remain the same as their current salary;
- Prohibiting employees from working more than forty hours;
- Increasing their annual salary to just above the $47,476 threshold to avoid paying overtime;
- Splitting the hours worked for the job across more people, possibly by hiring additional part-time staff;
- Reducing staff levels elsewhere in the business and/or cutting other employee expenses or benefits to offset the increased cost of overtime; or
- Curtailing certain work-related activities, such as traveling to conferences and professional development activities.

Paying overtime will obviously increase payroll and labor costs, but attempting to avoid paying overtime can also result in higher costs. For example, hiring additional workers to cover the overtime comes with fixed staffing costs such as unemployment insurance taxes on new workers, additional workers' compensation coverage, and possibly additional health insurance coverage. There is also the risk that splitting a job between multiple workers or hiring less experienced workers to cover the extra hours may reduce productivity or negatively impact morale.

Proponents

The Obama administration and supporters of the new rule have argued that the updated rule is a long overdue labor reform that expands overtime pay protection to over 4 million salaried workers, and that it will reduce excessive hours of "unpaid" work. This is because under the current rule, salaried employees making as little as $23,661 a year, such as an assistant manager at a restaurant, could be required to work 50 or 60 hours a week for no more pay than if they worked 40 hours. This newly-covered manager may now benefit from overtime pay; he may receive an increased salary if it would cost the employer less to do so than paying out additional overtime; or he may have his hours reduced to 40 hours while receiving the same salary. Supporters also argue that the new rule may create new jobs since many employers, as outlined previously, may hire additional workers instead of paying time-and-a-half to current employees.

Criticism

Critics of the new rule condemn it as an example of the Obama administration's executive overreach that does not take into consideration its negative economic consequences. Others have derided it as DOL simply decreeing that employers must spend more on wages without any corresponding improvement in performance. House Speaker Paul Ryan has been a vocal critic of the rule, arguing that the regulation hurts the very people it alleges to help. The Speaker has asserted that by "mandating overtime pay at a much higher salary threshold, many small businesses and non-profits will simply be unable to afford skilled workers and be forced to eliminate salaried positions, complete with benefits, altogether." He declared that Congress is "committed to fighting this rule and the many others that would be an absolute disaster for our economy."

While many business groups representing a diverse group of industries such as small banks, higher education, non-profits, manufacturing, and even local governments have criticized the new rules as an unfair burden, the retail and restaurant industries are expected to be negatively impacted more than any other industry. According to a May 2015 National Retail Federation study, about 3.3 million retail workers are managers or supervisors who are currently exempt from the current overtime rules. The study estimates that roughly two-thirds of those workers will be affected one way or another by the changes directly. Approximately 700,000 workers could be converted to hourly from salaried positions, and a quarter of a million workers could have their hours reduced.

Midnight Rulemaking and the Congressional Review Act

There is, however, one wildcard currently in play that could disrupt the implementation of the new overtime rules. The Congressional Review Act (CRA) is a tool intended to block "midnight rules" of outgoing presidents. In essence, this law requires major rules that are likely to have an annual impact on the economy of $100 million or more to be submitted to and considered by Congress 60 days before they take effect. By joint resolution, Congress can approve or disapprove the rule, which then goes to the President. If Congress adjourns its annual session less than 60 "legislative days" in the House of Representatives or 60 "session days" in the Senate after a rule is submitted to it, then the rule is carried over to the next session of Congress and subject to possible disapproval during that session. CRA has only been invoked once resulting in President George W. Bush canceling DOL's Clinton-era ergonomics rule.

The new overtime rules issued this Spring may not be safe from CRA disapproval by the next Congress and President because they were issued less than 60 days before the current Congress adjourns for the year (according to current schedules published by leadership of both houses of Congress). According to the Congressional Research Service, rules submitted to Congress after May 16th will be subject to a renewed CRA review period in 2017 by a new President and a new Congress. The overtime rule was issued on May 18th, two days past May 16, 2016. Assuming Congress stays on its current schedule, and depending on the outcome of presidential election in November, the next Congress and President could treat the overtime rules as "midnight rulemaking" and have them withdrawn. -*AA*

BRAC's Impact on Georgia

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BRAC Background

Commonly referred to simply as "BRAC," the Base Realignment and Closure process is the Congressionally authorized process the Department of Defense (DOD) uses to reorganize its base structure to more efficiently and effectively support the military, increase operational readiness, and reduce costs. Bases not closed can potentially face realignment, which is a process that increases or reduces the number of forces located on base, or adjusts a base's operations or mission. The review of military bases and other facilities is carried out by an independent nine-member panel known as a BRAC Commission. A BRAC Commission, also referred to as a BRAC round, is created by Congress through the Defense Base Closure and Realignment Act of 1990 to provide an objective review and analysis of a list of bases and military installations submitted by DOD that it recommends closing or realigning. The Commission can also add installations to the closure or realignment list, but only through a process in which seven of nine Commissioners vote to do so. Only Congress can authorize a BRAC round and set a deadline for its findings, although the military is free to unilaterally cut existing forces as it has been recently doing.

According to the statute governing the BRAC process, the Secretary of Defense must develop a set of criteria for selecting bases for closure and realignment that addresses a broad range of military, fiscal, and environmental considerations likely to affect closure and realignment decisions. BRAC Commissions review a host of criteria, from the strategic importance of the base down to the quality of the local school systems.

In the previous four BRAC rounds, the DOD assigned highest priority to the following four criteria related to military value:

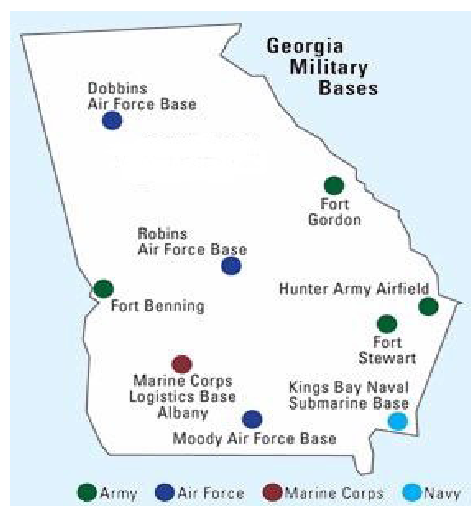
1. Current and future mission requirements and impact on overall military readiness;
2. Availability and condition of land, facilities, and associated airspace at both the existing and potential receiving locations;
3. Ability to accommodate contingency and mobilization requirements at both the existing and potential receiving locations to support operations and training; and
4. Cost and manpower implications.

In addition to the initial four criteria, DOD also considered: return on investment; economic impact; community infrastructure; and environmental impact. Once a BRAC Commission submits its finding to Congress, Congress must either approve or reject the entire list of base closures within 45 days. Closures and realignments can disrupt the economic stability of surrounding counties, cities, and even entire states. More than 350 installations have been closed in five BRAC rounds since the late 1980s: 1988, 1991, 1993, 1995, and 2005. The 2005 BRAC round saw Georgia lose four installations: Forts Gillem and McPherson in Atlanta; the Navy Supply Corps School in Athens; also, as a result of the 2005 BRAC, Naval Air Station Atlanta in Marietta was closed in 2009, and ownership of its property transferred to the Georgia Department of Defense, which opened the General Clay National Guard Center at the site.

Military Presence in Georgia

There are eight military installations in Georgia, contributing an estimated $18 billion to the state's economy each year:

1. Fort Benning: $5.5 billion;
2. Fort Stewart/Hunter Army Air Field: $5.2 billion;
3. Robins Air Force Base: $2.7 billion;
4. Fort Gordon: $2.1 billion;
5. Marine Corps Logistics Base Albany: $1.4 billion;
6. Naval Submarine Base Kings Bay: $707 million;
7. Moody Air Force Base: $461 million; and
8. Dobbins Air Reserve Base: $160 million (This figure does not include Lockheed-Martin's impact, which jointly occupies the base and relies heavily on the base's runway and control tower).



At this point, it is difficult to gauge which of Georgia's military installations could be at risk during a future BRAC round, but potential targets could be Moody Air Force Base's contingent of A-10 Close Air Support aircraft whose direct ground support role is slated someday to be replaced by the F-35 Joint Strike Fighter. If the Air Force prevails, by early next decade the A-10 will be totally removed from the Air Force's inventory, despite entrenched resistance from Congress. Robins Air Force Base is another potential target, as it is the only installation in the United States that operates the E-8 Joint Surveillance Target Attack Radar System (J-STARS), which could easily be reassigned to another base in the event Robins is deactivated. Conversely, Georgia installations could be on the receiving end of base closings in other states, as has occurred in the past when the Armor School was relocated from Fort Knox, Kentucky to Fort Benning.

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Recent Restructuring

The relocation of the Armor School consolidated the Infantry and Armor Centers and Schools to create the Maneuver Center of Excellence (MCoE) for ground forces training at Fort Benning. However, despite the lack of a BRAC round since 2005, several battalions from the base's 3rd Brigade Combat Team of the 3rd Infantry Division are in the process of departing from Fort Benning as a result of the Army reducing its total force by 40,000 soldiers. The Brigade itself will transition and downsize into an Infantry Battalion Task Force (In the United State Army, a Brigade Combat Team is composed of between 4,400 and 4,700 soldiers while a Battalion Task Force is approximately 1,000 soldiers). The 40,000 reduction will bring the number of troops in the U.S. Army from a peak Iraq-Afghanistan wartime level of 570,000 down to 450,000 by the end of Fiscal Year 2017. There also will be about 17,000 civilian positions eliminated, but the civilian cuts to Fort Benning have been minimal. Other bases slated to lose at least 1,000 soldiers include Fort Bliss and Fort Hood in Texas, Joint Base Elmendorf-Richardson in Alaska, Joint Base Lewis-McChord in Washington, and Schofield Barracks in Hawaii.

M1A2 Main Battle Tank

Fort Benning had been slated to lose 3,400 soldiers under the Army's latest round of force restructuring, but the Fort is now expected to lose only 2,200 to 2,300 soldiers due to normal attrition and the Army's decision not to staff another battalion that it had previously planned to activate. The majority of the departing soldiers are moving on to other military posts and continuing their military careers. Approximately 400 soldiers will separate from the service just as a result of normal attrition from the Army. The remaining personnel from the Brigade Combat Team will be part of a new infantry battalion task force at the installation. For the Columbus region, the impact will amount to a loss of about 6,600 residents, when family members are included. The Greater Columbus Chamber of Commerce estimates that their departure translates into an approximate economic loss of $286 million to the region based on salaries and purchasing power.

If Congress fails to undo the Budget Control Act spending caps (Sequestration), the Army will be forced to make further cuts and reduce its end strength to 420,000 by the end of Fiscal Year 2019, which could possibly affect Fort Benning again. These cuts could potentially spiral into even more military troop reductions. The result would be a cumulative loss of 150,000 soldiers from the Army — a 26 percent cut over a seven-year period. Unrelated to the downsizing at Fort Benning, a deactivation ceremony was held earlier in June at Robins Air Force Base for Marine Aircraft Group-49 (MAG-49) Detachment Alpha, as well as a consolidation ceremony for Marine Light Attack Helicopter Squadron 773 (HMLA 773), which falls under the command of MAG-49. At its peak during its time at Robins, the squadron included 150 active duty Marines and 185 Reservists who flew and supported the squadron. Despite the lack of a BRAC round in over a decade, military assets and their accompanying families continue to depart from Georgia's military installations.

Future BRAC's and Other Reductions

The 2005 Commission recommended that Congress authorize another BRAC round in 2015, and then every eight years thereafter. But potential BRAC rounds have been experiencing continued Congressional resistance since 2012 when lawmakers rejected Pentagon calls for base closures for 2015. Then-Defense Secretary Leon Panetta called for two rounds of base closures, while at the same time arguing that the alternative would be a "meat-ax" approach to cuts which would "hollow out" military forces.

Congress has continued resisting future BRAC rounds since 2012. Currently, both the House (H.R. 4909) and Senate (S. 2943) versions of the National Defense Authorization Act 2017 contain language rejecting the Obama administration's request for a BRAC round in 2019. Negotiations between the House and Senate Armed Services committees to reconcile competing versions of the defense authorization bill likely will last into the fall. It is very doubtful that another BRAC Commission will be created by Congress before 2019, but delaying future BRAC rounds may lead to a death-by-a-thousand-cuts approach, which is exactly what concerns communities that depend on military bases, according to the Association of Defense Communities (which educates and provides information on the subject). The concern, according to the Association, is that cuts are happening anyway on a smaller scale. As evidenced by Fort Benning's cuts, downsizing is occurring, but in a piecemeal manner that is still impacting local economies. -*AA*

A-10C Warthog

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