

Washington Update

HPCLC Fall Conference

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Washington Update Topics

- Trump Administration Priorities
- 115th Congress Scorecard
- Modal Updates—truck, ocean, air and rail
- International Trade Updates
- Questions (?)

Federal Policy in the Trump Era

- **“America First”** agenda
- Key priorities: **jobs growth, reducing regulation, fair trade, modernizing infrastructure**, border security and immigration, health care and tax reform



115th Congress: Scorecard

- Mixed results so far on the **Trump Agenda**
- Largest tax reform law in history, Veterans reform, progress on trade, including NAFTA renegotiation (US-M-C Trade Agreement), and 2 Supreme Court Justices
- **BUT** no repeal of the ACA (Obama Care); no funding of “the Wall” for border security; and no major progress yet on infrastructure modernization

115th Congress: Scorecard

- Supreme Court and upcoming Mid-term election has **eliminated** any near-term opportunity for bi-partisanship



- Midterm Elections:
 - House leaning toward Democrats?
 - Senate leaning toward Republicans?
 - **Kavanaugh affect?**

115th Congress: Transportation

- FAA Reauthorization Act became law on Oct. 5
 - 5- year reauthorization of FAA programs that invests in airport infrastructure, promotes safety
 - FAA must determine standards for minimum airline seat sizes
 - Addresses transportation of **lithium batteries by air**, including promoting consistency with international regulations; and **allowing exceptions for medical device batteries to remote areas**
 - Creates reporting and dissemination standards for **cyber incidents involving maritime ports**
 - Promotes safe, efficient integration of Unmanned Aircraft Systems, i.e. **drones**

Trucking Update: FMCSA Activities

- Trucking market is experiencing reduced capacity and driver shortages, which is driving up costs
- In response to requests from Congress and the public, FMCSA issued an ANPRM on driver Hours of Service
- FMCSA is interested in evaluating if revisions to the HOS rules would alleviate unnecessary burdens on drivers while maintaining safety on the highways?
- Comments due on Oct. 10

FMCSA ANPRM on Driver HOS

- FMCSA's ANPRM identifies 4 areas for potential reform:
 - **1. Short-haul HOS limit:** FMCSA is considering whether to expand the 100 air-mile “short haul” exemption from 12 consecutive hours on duty to 14 consecutive hours on duty.
 - **2. HOS exception for adverse driving conditions:** FMCSA is considering whether to expand the 14-hour on-duty window to 16 hours if a driver encounters adverse driving conditions (driving time is already expanded from 11 to 13).

FMCSA ANPRM on Driver HOS

- FMCSA's ANPRM identifies 4 areas for potential reform:
 - **3. 30-minute rest break provision:** FMCSA is considering whether to eliminate or modify the current 30-minute rest break requirement which applies after 8 consecutive hours of on-duty.
 - **4. Split Sleeper Berth:** FMCSA is considering whether to increase flexibility under the rules and announced its Pilot Program to Allow Commercial Drivers to Split Sleeper Berth Time on June 6, 2017.

Trucking Update: California Commercial Driver Meal and Rest Breaks

- CA requires a 30 minute rest break for each 5 hours on-duty but break is before the end of the 5 hours and a 10 minute break for each 4 hour period on duty, preferably in the middle of such period, i.e. after 2 hours
- ATA has petitioned FMCSA requesting a finding that California's meal and rest break rules are preempted by Federal law, based on the **effect on interstate commerce**
- **Concerns over a patchwork regulatory system with different rules in each state**
- Comments must be received on or before October 29, 2018.

Trucking Update: California SB 1402— drayage customers jointly liable for driver labor judgments

- A **customer (i.e. the shipper)** that engages or uses a port drayage motor carrier in California shall be **jointly and severally liable with the motor carrier** for driver claims when a final judgment exists for:
 - all unpaid wages
 - unreimbursed expenses
 - damages and penalties
 - applicable interest
- Applies if you use a drayage operator contracted by an ocean carrier or if you contract directly with the drayman

California SB 1402—drayage customers jointly liable for driver claims

- CA Division of Labor Standards for Enforcement:
 - will post on its website, and update monthly, a list of the port drayage motor carriers who have failed to pay final judgements
 - shall provide at least 15 business days' prior notice via to the port drayage motor carrier information as to unpaid judgements

California SB 1402—drayage customers jointly liable for driver claims

- **Exceptions:**

- (1) use of a port drayage motor carrier whose employees are covered by a **collective bargaining agreement**; or
- (2) if the customer and port drayman had a contract for port drayage at the time the dray operator is listed on the website and the customer undertakes to **terminate the contract**, then no liability until the contract expires or 90 business days following the listing, whichever is shorter

California SB 1402—drayage customers jointly liable for driver claims

- What to do?
- Attempt to negotiate protections in your ocean contracts and motor carrier contracts where port drayage in CA is involved
 - responsibility to monitor the website
 - restrictions on use of operators listed on the website
 - notice provisions
 - indemnification

Ocean Update: FMC Activities

- FMC issued Interim Report in its Fact-Finding Investigation on demurrage/detention practices
 - following Petition for Rulemaking, public comments, and public hearings
- FMC finds concerns with demurrage/detention are more systemic than episodic
- Final Report to be issued by Dec. 2, 2018

FMC Interim Report on Demurrage/Detention Practices

- FMC identified the following areas for possible action:
- **Standardization of language:** Unambiguous, standard terminology that accurately reflects the nature of detention and demurrage charges.
- **Increasing billing clarity and accessibility:** Carriers' and MTOs' demurrage and detention policies should be available in an easily accessible website.
- **Dispute resolution transparency:** More transparency into demurrage and detention dispute resolution procedures is needed.

FMC Interim Report on Demurrage/Detention Practices

- **Tender and notice of container availability:** How should **reasonable notice of container availability and a reasonable opportunity to retrieve cargo** be addressed?
- **Optional billing model:** Should MTOs bill shippers directly for storage on terminal and carriers bill for use of a container (whether on or off terminal)?
- **FMC Shipper Advisory Board or Innovation Team:** FMC seeks continual input from U.S. shippers on issues affecting the international freight delivery system.

Rail Update: UP Announcement

- UP Announces Plan to Implement Precision Scheduled Railroading
 - Given the recent CSXT service failures following its implementation of PSR, the STB is proactively requiring planning and implementation information be provided by UP

Rail Update: STB Activities

- STB has held meetings with industry stakeholders on whether and how to reform its Emergency Service Rules and Rail Rate Reasonableness methodologies
- 3 STB member nominations awaiting confirmation but Deb Miller rolls off the STB at the end of 2018
- Major policy proceedings remain delayed pending board confirmations: EP 711—Reciprocal Switching; EP 704—Review of Commodity Exemptions; EP 661—Rail Fuel Surcharges; EP 722—Railroad Revenue Adequacy

Questions(?)

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