TRANSPORTATION UPDATE

JUNE, 2014

Highway issues facing Congress

Revenue and authorization issues tied to looming fiscal year-end

The fact that Congress has failed to increase the per-gallon rate of motor fuel tax (MFT) for highway use in over 20 years—or to find other sources of highway funding—has created fiscal issues now staring them directly in the face.

The $35 billion-per-year Highway Trust Fund (HTF) balance shrank to $8.1 billion at the end of May. That's a drop of 23 percent from its fiscal year beginning balance of $10.5 billion last October. Experts predict it could be insolvent by late August—well ahead of the end of the fiscal year—shutting down highway projects nationwide.

Some state DOTs could begin to slow project start-ups, postpone others, even stop some projects already in progress—as many as 6,000 according to a report from the American Association of State Highway and Transportation Officials. That's a significant loss of jobs in an economy that's sputtering to get back on track.

No state receives less than a third of its state highway funding from federal coffers; for 32 of them, it amounts to over half of their state's budget, averaging 52.6 percent according to the watchdog group Transportation for America. For Illinois, the federal share comes to 41.6 percent of IDOT's annual budget.

Congress has already appropriated $12 billion to be transferred from the general fund to the HTF for this fiscal year, but the bulk of that has already been spent. Additional supplemental funding might be needed just to finish out the commitments for this fiscal year.

*(See **Highways** on page 4)*

Inside this issue:

Covered Farm Vehicle

If you qualify, there are some significant exceptions

by Kevin Rund

Over the past two months, articles in *Transportation Update* have introduced you to the new Covered Farm Vehicle (CFV) exception. That's the federal designation that brings with it some significant relief for farmers from certain Motor Carrier Safety Regulations (MCSR).

Last month, the focus was on how to qualify. A review of that article is in order so that the implications of the exceptions listed in this article can be fully appreciated. This month, we'll look at what you can be excused from if you do quality.

I can't emphasize enough the need to be certain that you meet the qualifications of the CFV before banking on all it's exceptions. To take full advantage of all the exceptions, then find that you don't qualify could be a costly mistake.

(Continued on page 2)

8,731 CDL holders in Illinois have had their CDLs cancelled due to failure to certify the status of their medical card.

State CDL Administrator

CFV

(Continued from page 1)

The CFV provision in federal regulations lists five separate parts of the MCSR from which farmers can generally be excused [390.39(a)]. They include:

- Part 382 Drug & alcohol testing
- Part 383 CDL requirements & penalties
- Part 391 Subpart E—physical qualifications & exams
- Part 395 Hours of service of drivers
- Part 396 Inspection, repair & maintenance

Make special note that none of these parts has anything to do with the USDOT Number or the Unified Carrier Registration (UCR). That means the CFV provisions do not excuse you from those two registration requirements.

There's a stuttered start on these CFV provisions. Parts 382 and 383 have yet to have legislation passed allowing them to be implemented in this state (see sidebar). But, parts 391, 395 and 396 are all now functionally in place in Illinois.

Farmers who qualify under CFV provisions no longer have to have a DOT physical or carry a medical card (Part 391—Subpart E). Farmers driving only straight trucks have already enjoyed that relief under the Farm Vehicle Driver (FVD) exemption. But the new CFV exception will cover drivers of both straight trucks and combination vehicles.

It is still unclear how the other provisions in 391 will be applied. Some are linked with the Subpart E provisions, which could create some sticky enforcement situations.

Seasonal hours of service exemptions have existed for farmers for decades; they still do. So the new Part 395 exception offers little additional relief, though it provides a safety net under any "holes" that might otherwise have existed in the seasonal provision.

Finally, Part 396 cuts a wide swath in providing relief from MCSR equipment requirements. Included are such things as annual inspections, pre-trip and post-trip inspections, along with repair and maintenance recordkeeping.

That wide swath might be narrowed, however, by pre-existing laws in the Illinois Vehicle Code (IVC). Equipment requirements there will fill some of the gaps left by the CFV exceptions. And in the case of both sets of laws (IVC and MCSR), general provisions requiring vehicles to safe before operating on public roads are still in-play.

Rules are often hard to understand, but exceptions to the rules can be positively confounding!

The CFV provisions are loaded with exceptions, so expect confusion. It's not just farmers, but also the law enforcement community that will be struggling to understand the ins and outs of these new provisions in the months ahead.

And—as with any new law affecting trucks and drivers—there will be a break-in period where formal interpretations might be needed to sort out confusion and any contradiction within the rules.

Sure, as a farmer you are welcome to take full advantage of the exceptions from the rules that Congress intended. But where there is uncertainty, I encourage you to lean sharply to the side of safety. It's not only a good idea to help in preventing injuries or property damage, but it would also serve you well in avoiding what could be stiff fines and penalties associated with aiming for compliance, but missing the mark.

(Continued on page 4)

CFV Provisions Still to Come

Provisions passed by the Illinois General Assembly this spring will accommodate pickup trucks and duallys allowing them to qualify for the CFV exceptions when pulling a farm-plated trailer. But that law—if signed by the Governor—will not take effect until January 1, 2015.

The regulatory exceptions from Parts 382 and 383 (drug testing and the CDL) are on hold until the Illinois General Assembly can pass enacting legislation. That can't happen sooner than November, and might take until well into next year before you'll be able to count on that relief.

WRRDA signed into law

Congress now working on funding for water projects

On June 10, President Obama signed into law the first comprehensive water resources legislation since 2007. The Water Resources Reform and Development Act (WRRDA) of 2014 is the result of a Congressional conference report adopted by the House and Senate with overwhelming bipartisan support.

Included in that authorization are 34 water infrastructure projects.

But to get those projects off the ground, it'll take funding. That's the next step for Congress, something that the committees that handle water issues are working on.

The chart below shows where each of the Senate, the House and the Administration are in their initial thinking on that funding.

Meanwhile, the highway revenue title of the transportation reauthorization bill is being considered by the Senate Finance Committee. During a meeting on that topic on June 26, Senator Bob Casey (D-PA) raised consideration of an amendment to increase the barge diesel fuel user fee by nine cents-per-gallon.

Such an increase is supported by the barge industry in order to raise sufficient revenue in the Inland Waterway Trust Fund. That boost is needed if already-approved lock improvement projects are to be started sooner rather than later.

That current per-gallon rate has been in place for 20 years and the revenue it raises is not keeping up with demand. At the present pace of funding, it could be more than 50 years before lock improvements could be put into service on the Upper Mississippi and Illinois Rivers.

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FY '15 Water Funding Proposals (As of Late June)	Senate E&WDA Subcommittee	House E&WA Subcommittee	Admin. Budget Request
	Millions $	Millions $	Millions $
Corps of Engineers Civil Works Program	5,143	5,493	4,561
Inland Waterway Trust Fund	229	281	169
Operations & Maintenance	2,800	2,905	2,600
Harbor Maintenance Trust Fund	1,075	1,100	915
Investigations	125	115	80
Construction	1,421	1,704	1,125
Mississippi River & Tributaries	305	260	250

STB requires CP and BNSF to document plans and progress

Railroads still behind on moving grain in northern Great Plains

The federal Surface Transportation Board (STB)—the agency that oversees US railroads—is watching out for agriculture. On June 20, that board handed down a requirement that the Canadian Pacific Railway Company (CP) and BNSF Railway Company (BNSF) "publicly file their plans to resolve their backlogs of grain car orders, as well as weekly status reports pertaining to grain car service."

The order is aimed at problems occurring across significant portions of the nation's rail network, particularly in regions near developing shale gas and oil fields in the Upper Great Plains.

Although new data indicates some initial progress toward reducing the backlog, the STB remains very concerned about the limited time until this year's harvest and the large quantities of grain yet to be moved.

That concern has led to this latest requirement for filing plans and weekly updates from the two railroads. These reports will be required until each carrier has resolved it backlog of unfilled grain car orders.

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BACK PAGE

CFV

(Continued from page 2)

As the Illinois General Assembly makes progress on implementing CDL and drug testing exemptions, we'll keep you posted. That legislation could be taken up as early as November in the veto session. If not then, it would be spring and a new session of the General Assembly before it is considered. Rulemaking and implementation would likely add a couple more months to the effective date.

Be careful to not confuse the covered farm vehicle exceptions with the farm vehicle driver exemptions. A misstep there could be costly.

To recap, we have a new set of MCSR exceptions known as the CFV approved by Congress but only partially implemented by the State of Illinois. The remainder of that implementation could take up to a year.

The older Farm Vehicle Driver (FVD) exemptions are still in-place. Once fully implemented, the CFV exemption would be the preferred option for farmers, but for now it offers no relief from the CDL. For that, farmers must continue to turn to the FVD exemption.

Be careful to not confuse the covered farm vehicle exceptions with the farm vehicle driver exemptions. A misstep there could be costly. See the May issue of TU for details.

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April NAFTA Freight Numbers

BTS release shows slight rise in trade

Source: USDOT

Two of five transportation modes - pipeline and trucks - carried more U.S.-NAFTA trade in April 2014 than in April 2013 as U.S.-NAFTA trade rose to $100.1 billion, according to the freight data released today by the U.S. Department of Transportation's Bureau of Transportation Statistics (BTS).

The increases came in two modes that combined carry more than two-thirds of total U.S.-NAFTA trade. Trucks, at 60.3 percent of the April trade, and pipeline, at 8.6 percent, carried a total of 69.0 percent of the trade.

The April 2014 trade total was a 1.2 percent increase from April 2013. U.S.-NAFTA trade has increased from the same month of the previous year in nine of the last 10 months, interrupted by a 0.2 percent decrease in January. The January decline reflected the severe weather in the northern states and along the U.S.-Canada border.

In April, commodities moving by pipeline grew the most of any mode, 27.8 percent. Truck freight increased 0.7 percent, rail declined 1.8 percent followed by declines in air at 3.1 and vessel at 13.2.

Trucks carry three-fifths of U.S.-NAFTA trade and are the most heavily utilized mode for moving goods to and from both U.S.-NAFTA partners. Trucks carried 60.3 percent of U.S.-NAFTA trade in April 2014, accounting for $30.6 billion of exports and $29.8 billion of imports.

Although the value of freight carried by rail decreased from year to year, rail remained the second largest mode moving 14.7 percent of all U.S.-NAFTA trade, followed by pipeline at 8.6 percent, vessel at 7.9 percent and air at 3.7 percent. The surface transportation modes of truck, rail and pipeline carried 83.7 percent of the total U.S.-NAFTA freight flows.

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Highways

(Continued from page 1)

With that as the setting, Senate Finance Committee Chairman Ron Wyden (D-OR) has proposed a bill to transfer $9 billion from the general fund to the HTF to carry it through September. Wyden includes a hodge-podge of revenue sources to pay for it.

Already that bill has undergone significant modification in the Senate Finance Committee as the Democrat Chairman attempts to avoid a partisan fight. Republican objections to any tax increase is forcing legislators to find cuts in other programs to carry the highway package through to the end of the year.

On top of all this, the MAP-21 extension ends in September, too. So in addition to finding a funding patch, Congress will have to sew on an extension or renewal of that major transportation package, well before the November election.

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