Highway Bill Conference Agreement Summary

House and Senate conferees settled yesterday on a conference agreement on a five-year highway bill. The bill is expected to be voted upon in the House on Thursday and perhaps as early as Friday in the Senate. Since conference agreements cannot be amended on the floor and the President has not threatened a veto, it is expected that the bill will become law. Please find below a very brief summary of some of the key policy provisions that made it into the bill and two that did not (1. clarification of the scope of FAAAA preemption to apply to state meal and rest break laws and state laws inhibiting piece-rate pay and 2. a national hiring standard).

CSA Reform – The conference agreement requires the Federal Motor Carrier Safety Administration (FMCSA) to engage the National Research Council to conduct a study of the agency’s Compliance, Safety, Accountability (CSA) program and the Safety Measurement System (SMS) utilized by the CSA program. The study will analyze a number of criticisms of the program – including its methodology - in order to determine how accurately the program identifies high risk carriers and how its Behavior Analysis and Safety Improvement Categories (BASIC) predict or are correlated with future crash risk and crash severity. The provision requires the submission of a report by FMCSA on the Council's study, a corrective action plan, and a report by the Inspector General on the responsiveness of the corrective action plan. Until the Inspector General certifies, among other things, that the corrective action plan has been implemented, CSA data and BASIC alerts and percentiles under the CSA program will not be made available to the general public (effective one day after the President signs the bill). Raw inspection and violation data submitted to FMCSA by inspectors and law enforcement, out-of-service rates, and absolute measures shall still remain available to the public.

Beyond Compliance – The conference agreement directs FMCSA to establish a program as part of CSA to allow recognition, including credit or an improved SMS percentile, for carriers that install: advanced safety equipment; use enhanced driver fitness measures; adopt fleet safety management tools,
technologies, and programs; or satisfy other standards determined by the FMCSA. FMCSA is required to establish this program no later than 18 months after enactment.

**Crash Accountability** – The conference agreement directs DOT to task the Motor Carrier Safety Advisory Committee to review the treatment of non-preventable crashes under the SMS program and make recommendations on a process to allow carriers and drivers to request that FMCSA make a determination with respect to crash preventability. The end goal would be to remove non-preventable accidents from a carrier’s SMS data.

**Hair Testing** – The conference agreement contains a provision allowing carriers to use hair testing as an alternative to urine testing for preemployment testing for the use of controlled substances and for random testing if the individual was subject to hair testing for preemployment testing. The provision directs the Secretary of Health and Human Services to issue scientific and technical guidelines for hair testing within 1 year of the date of enactment.

**Commercial Driver Pilot Program** – The conference agreement directs the DOT to establish a pilot program to study the feasibility, benefits, and safety impacts of allowing certain individuals between the ages of 18 and 21 to operate a CMV in interstate commerce. Qualifying individuals must be in the armed forces or reserve components and qualified in a Military Occupation Specialty to operate a CMV or similar vehicle.

**Regulatory Reform** – The conference agreement requires FMCSA, in conducting its regulatory impact analysis for each proposed or final major rule to consider a variety of improved and more representative data sources to analyze the impacts of the rule on segments of the industry. This provision underscores the importance of participating in notice and comment rulemaking when possible. The conference agreement also requires FMCSA to endeavor to incorporate guidance into regulations and, if not possible, to review and update guidance on a five-year basis.

Items that did not make it into the conference agreement:

**Clarification of FAAAA Preemption** – The House bill had a provision that was intended to clarify that federal preemption of state laws relating to prices, routes, and services of a motor carrier extended to state meal and rest break laws and state laws that required separate and additional compensation to employees paid on a piece-rate basis for “non-productive” time (i.e., when the wheels are not turning). The clarification was sought in response to a spate of class actions against motor carriers alleging violation of California laws and an erroneous decision by the United States Court of Appeals for the 9th Circuit.
**National Hiring Standard** – Both the Senate version reported out of Committee and the House-passed versions of the highway bill contained a provision sought by brokers and shippers that would have set a national standard for civil actions for damages from claims of negligent selection or retention of a motor carrier. The provisions would have required the entity selecting the motor carrier to ensure the carrier was registered, had minimum insurance required by law and, in the Senate version, did not have an unsatisfactory rating. The House version of this provision required a motor carrier to have a satisfactory rating, which would have proven problematic in actual practice. The provision would have excluded the introduction of CSA evidence in negligent selection or retention proceedings. Neither the House nor the earlier Senate version was retained in the conference agreement; the final highway bill will not implement a national hiring standard.

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