



THE “SHIPPERS’ VOICE”: A LEGISLATIVE/ REGULATORY/ACTIVITY 2011

MID- YEAR UPDATE

July 31, 2011

For over a century the League has been the *Shippers’ Voice* and a respected leader in the freight transportation industry. The League is a strong and consistent advocate for Members’ views on a wide variety of important legislative, regulatory and policy issues across all modes.

Members express their views on key freight transportation issues by participating in our standing modal committees. The League then advocates on their behalf before Congress, Executive Branch agencies and the independent regulatory agencies. The League has also been a proven resource for Members in promoting education, information exchange, networking and professional advancement. Our service to Members reflects our Mission Statement: *To advance the views of shippers on freight transportation issues and enhance their professional development.*

This special report has been prepared to recap where the League stands today on matters important to Members and the transportation industry. Below is a brief outline of key issues and positions taken by the League through mid-2011, with links to *Notice* stories, testimony and other statements of League policy.

AIR ISSUES

To access *Notice* stories referenced please click here: <http://www.nitl.org/NoticeStories-RegLegUpdate7-31-11.pdf>

Legislative Issues

- FAA Reauthorization – The League supports legislation to reauthorize the FAA without encumbering amendments. The Senate cleared a three week extension to keep the agency running after the current authorization expired on June 30. The House passed its own three-week extension on June 24.
On June 22, 2011 the House considered and approved H.R. 2279 to extend FAA programs until July 22, 2011. While there is good support in both the House and Senate to pass a long term authorization bill for the FAA, there are some difficult matters still in dispute. One is whether or not federal subsidies should continue to be paid to maintain service in a number of rural areas. The other concerns labor issues.
On Saturday, July 23, 2011 funding for certain FAA programs expired, some 4,000 employee were furloughed and \$2.5 billion in funding construction projects ended. At the time of this publication there is an impasse between House Republicans and Democrats as well as with Senate leaders as to how to resolve these differences.

Regulatory Issues

- New rules governing air shipments of lithium batteries remain unresolved. To see the League’s comments, click here: [http://www.nitl.org/PHMSA-2009-0095\(HM-224F\)NITLComments.pdf](http://www.nitl.org/PHMSA-2009-0095(HM-224F)NITLComments.pdf).

- Transportation Security Administration (TSA) issued a new air cargo rule on inbound overseas shipments to the U.S. The League supports initiatives which promote safety and security. The principal issues of concern are the new requirements being established by the TSA on inbound overseas shipments to the U.S. The League continues to work with TSA as well as inform the industry on the latest changes.
- The League also continues to serve on the *Air Cargo Security Advisory Committee* which advises TSA on the impacts that security initiatives can have on the air freight industry.

Other

- The League through its membership in the Global Shippers' Forum (GSF) has continued to play a key role in the Global Air Cargo Advisory Group (GACAG), a group which represents global organizations engaged on issues affecting the international air cargo industry. Along with the GSF, the GACAG includes the International Air Cargo Industry Association (TIACA), the International Air Transport Association (IATA) and the International Federation of Freight Forwarders Associations (FIATA).
- GACAG in December, 2010 issued a policy statement regarding air cargo security.

HIGHWAY ISSUES

To access *Notice* stories referenced please click here: <http://www.nitl.org/NoticeStories-RegLegUpdate7-31-11.pdf>

Legislative Issues

- On July 7 a new six-year \$230 billion legislative reauthorization proposal affecting highway, transit and highway safety programs was unveiled by Rep. John Mica (R-FL), Chairman of the House Transportation and Infrastructure Committee. Democrats on the Committee are critical of the outline stating that authorized levels of funding are too small. Highlights of the Republican plan include:
 - Streamlining the project delivery process;
 - Allow states to toll new roads;
 - Ensures Harbor Maintenance Trust Fund revenues are invested only for purposes for which funds are collected (dredging);
 - Increasing short-sea shipping;
 - No provision for changing current truck sizes and weights.

The Obama Administration has not to date released a bill.

The Senate Environment and Public Works Committee in mid-July unveiled a draft two-year authorization plan providing \$109 billion to fund current levels of highway spending, plus inflation.

- The League testified before the Senate Environment and Public Works Committee on January 26 (*Notice*, January 31), and on March 29 in the House Transportation and Infrastructure's Subcommittee on Highways and Transit urging Congress to invest in the nation's transportation infrastructure. For a copy of the League's House testimony, click here: <http://www.nitl.org/Testimony03292011.pdf>. For a copy of the Senate testimony, click here: <http://www.nitl.org/testimony1262011.pdf>.
- The League's *Washington Freight Transportation Policy Forum* on March 29, 2011, focused largely on prospects to advance a new surface authorization measure.

Participating speakers included:

- The Hon. Polly Trottenberg, Assistant Secretary for Transportation Policy, U.S. Department of Transportation;
 - The Hon. John L. Mica (R-FL), Chairman, House of Representatives Committee on Transportation and Infrastructure;
 - Robyn M. Boerstling, Director Transportation and Infrastructure for the National Association of Manufacturers;
 - Emil H. Frankel, Director of Transportation Policy for the Bipartisan Policy Center;
 - Jennifer L. Hall, Republican Counsel For The Subcommittee on Highways and Transit, House Transportation and Infrastructure Committee;
 - Alex H. Herrgott, Professional Staff Member, Committee on Environment and Public Works, United States Senate;
 - Janet F. Kavinoky, Director of Transportation Infrastructure of the Congressional and Public Affairs Division at the U.S. Chamber Of Commerce;
 - James Kolb, Democratic Staff Director of the House Highways and Transit Subcommittee of The Committee on Transportation and Infrastructure;
 - Melissa Porter, Senior Transportation Counsel to the Senate Committee on Commerce, Science and Transportation; and,
 - Joshua Schank, President and CEO of Eno Transportation Foundation.
- The League's Board of Directors approved a resolution clearing the way to join the Cleaner Safer Trucking Coalition. The Coalition's goal is to persuade Congress to restore authority to the States to regulate trucking configurations. This would provide states with the authority to regulate what kinds of vehicles drive on their roads and to permit, where appropriate, the use of longer combination vehicles (LCV).

Regulatory Issues

- Hours of Service (HOS): In December 2010, the DOT's Federal Motor Carrier Safety Administration (FMCSA) proposed changes to the HOS rules. Among those are a 34-hour restart time and a reduction from 11 hours to 10 hours in the allowable time a driver may work in a single shift.
The League surveyed members of the Highway Transportation Committee on this matter. The League strongly opposes the proposal as it would significantly decrease productivity and do little (if anything) to increase or induce safer operations. For a copy of the League's comments, click here: <http://www.nitl.org/NITL-FMCSA-2004-19608.pdf>.
- The League filed supplemental comments with the FMCSA in June in response to a request from the agency for comments on four studies related to driver fatigue. The League said the studies are not persuasive. It went on to provide detailed accounts for this conclusion, and argued that the agency should maintain the current HOS rule. A final rule is now anticipated for release this October.
For a copy of the League's latest comments, click here: <http://www.nitl.org/FMCSA-2004-19608NITLLetter.pdf>.
- The League supports a congressional hearing on HOS to examine the implications and impacts of these proposed changes to the hours of service rules. For a copy of the letter, click here: <http://www.nitl.org/HOSCoalitionhrgrequest1-19.pdf>.
- Cross-Border Trucking: On July 6, U.S. DOT and Mexican authorities reached a conceptual agreement for a long-haul cross-border Mexican trucking program. The League supports this NAFTA commitment with appropriate provisions for safety. The controversial program immediately ran into opposition on Capitol Hill. Rep. Duncan Hunter (R-CA) and Peter DeFazio (D-OR) said they planned to introduce legislation placing additional restrictions on the bi-lateral agreement.

MARITIME ISSUES

To access *Notice* stories referenced please click here: <http://www.nitl.org/NoticeStories-RegLegUpdate7-31-11.pdf>

Legislative Issues

- No significant maritime legislative issues are currently pending before Congress.
- Repeal of Liner Carrier Antitrust Immunity (as it applies to collective ratemaking) is under review and discussion as of mid-2011. Talks have been held with House and Senate offices following a joint letter that was sent to key committee leaders (see below).
- Last year Rep. James Oberstar (D-MN) introduced a broad and comprehensive measure to reform U.S. shipping laws. This initiative was prompted by problems experienced by U.S. exporters and importers in the 2009-2010 transpacific trade. While it was too late in the last Congress for it to be acted upon, in January the League joined with 32 other organizations asking House and Senate leaders to introduce legislation in the current Congress that would repeal carrier antitrust immunity, particularly as it impacts collective rate-making . For a copy of the letters, click here: <http://www.nitl.org/ShippingActLtrs.pdf>. Over the course of this Congress in 2011, the League has been actively meeting with Senate and House offices along with the above industry groups to encourage legislative reform of the *Shipping Act*—particularly with respect to the need to eliminate the current rate-making authority of carrier discussion groups.
- Rotterdam Rules – Adoption of this new convention would change international cargo liability rules by bringing about a compatible international regime that would provide both shippers and carriers reasonable predictability for recovery, reduce litigation and eliminate antiquated provisions no longer applicable in liner shipping today. The League supports the Rules and ratification by the United States. By mid-July, Sweden became the 24th country to sign the convention. The League, along with other U.S. industry groups, is actively working with U.S. government agencies to advance a transmittal package to Congress with a goal of U.S. ratification.

Regulatory Issues

- The League surveyed its Ocean Transportation Committee members on a Federal Maritime Commission (FMC) inquiry into slow-speed steaming practices by carriers. The League submitted comments on April 5, 2011, click here: <http://www.nitl.org/NITLResponse04-05-11.pdf>.
- Fact-Finding 26 – Federal Maritime Commission - The League was critical that the public version of the FMC fact finding into practices and capacity shortages in the transpacific trade failed to include specific findings.
- The League is cooperating with the U.S. Federal Maritime Commission in its inquiry and analysis of the impact of the repeal of the European block exemption on the U.S. trades.
- Tariff Filing Exemption for NVOCCs – the League supports a petition to the FMC filed by the National Customs Brokers and Freight Forwarders Association of America (NCBFAA) to end most tariff filing requirements for NVOCCs, and the FMC approved the petition as it applied to domestically licensed freight forwarders.

Other

- The Global Shippers' Forum (GSF) representing shipper organizations from across the world met in Leipzig, Germany in May to reconstitute and restructure itself into a formal organization that represents freight shippers on key international issues before national governments and international bodies. The League is a founding member of the GSF and serves on its new Board of Directors.

- In July the GSF launched a new web-site: <http://www.globalshippersforum.com/>.
- Through its membership in the GSF, the League is also represented in the Global Air Cargo Advisory Group (GACAG) [See *Air Issues* – “Other”].
- The new GSF will host its inaugural event in November 2011 in Atlanta, GA.

RAILROAD ISSUES

To access *Notice* stories referenced please click here: <http://www.nitl.org/NoticeStories-RegLegUpdate7-31-11.pdf>

Legislative Issues

- At the June 22 Surface Transportation Board’s (STB) hearing on Ex Parte No. 705 on the state of competition in the freight rail industry (see story under regulatory issues), Senator Jay Rockefeller (D-WV) said that while he has long believed that legislative reform would be necessary to enact required fairness from the Board and the rail industry, legislative gridlock on Capitol Hill makes that unlikely in the new term. In June the Commerce Committee scheduled Rockefeller’s bill S. 158 for markup. The markup was postponed indefinitely.
- S. 158, *The Surface Transportation Board Reauthorization Act of 2011* – This bill is nearly identical to S. 2899 introduced by Senator Rockefeller in the last Congress. S. 2889 passed in the last Congress by the Senate Commerce, Science and Transportation Committee, but never saw action by the full Senate. The League supports the new bill (S. 158), but the outlook for advancing this legislation is marginal.
- S. 49 *Railroad Antitrust Enforcement Act of 2011*- This bill is identical to S. 146 introduced by Senator Herb Kohl in the last Congressional session. It was approved in March by the Judiciary Committee and is awaiting floor action. The League supports this legislation. There is no companion bill in the House.

Regulatory Issues

- STB Ex Parte 705 – *Competition in the Railroad Industry* – The League supports the Surface Transportation Board’s (STB) initiative and participated in the agency’s hearing on June 22/23, 2011. On June 22 and 23, the Class I Railroads and their customers expressed widely divergent views over whether changes are warranted in the STB’s rules governing rail competition. Shippers largely argued for regulatory changes which would foster greater competition among the Class I rail carriers which over a 30 year period have shrunk to only seven railroads operating today in North America. In contrast, the Class I carriers cautioned the Board that any changes could adversely impact their ability to continue to invest in their operations thus jeopardizing the service they provide to their customers.
- The League’s witness was Mr. Curt Warfel of AkzoNobel Sourcing and Past League Chairman. He told the agency that it should open up a proceeding after the hearing for the purpose of “developing new administratively simple reciprocal switching rules that would provide competitive access where appropriate.” To view the League’s testimony, click here: <http://www.nitl.org/CWarfelTestimony6-21-2011.pdf>
- STB Ex Parte 711 – On July 7 the League filed a petition with the STB asking the agency to adopt new rules governing competitive switching between Class I rail carriers when a shipper, or group of shippers and/or receivers can show that certain operating conditions exist. To view a summary of the League petition, click here: <http://www.nitl.org/NITLPetitionCompetitiveswitchingrules-summary.pdf> To download the petition, click here:

<http://www.nitl.org/NITLPetitionCompetitiveswitchingrules-summary.pdf>

- Earlier in the Ex Parte No. 705 proceeding, the League filed extensive comments with the STB staking out its views on competition in the rail industry. The League noted in its April 12 filing that decreased competition was evident in the rail industry; STB standards fail to reflect the railroads' true financial health; and, competitive access/ bottleneck policies need revision to enhance competition. For a complete copy of the League's comments, click here: <http://www.nitl.org/ExParte705Comments4-12-11.pdf>.
- STB Ex Parte 704 – *Review of Commodity, Boxcar, and TOFC/COFC Exemptions* – The League testified on February 24, 2011, and urged the Board to undertake a full analysis of the appropriateness of maintaining dated commodity and service exemptions. For a copy of the League's testimony, click here: <http://www.nitl.org/ExParte704NITLComments.pdf>.
- In a letter to the STB, the League said it supports the Western Coal Traffic League which has requested the agency to exclude for regulatory purposes a \$7.5 billion premium that Berkshire Hathaway paid to acquire the Burlington Northern Santa Fe Railroad in 2010. For a copy of the League's letter, click here: <http://www.nitl.org/NITL.WCTLSupportLtr.pdf>.
- Ex Parte No. 542 (Sub-No. 18) *Regulations Governing Fees* – The League told the STB that it supports the proposal to reduce and codify the filing fees for certain formal complaints alleging unlawful rates and practices of carriers. The letter sent to the agency was in response to the STB's *Notice of Proposed Rulemaking* which proposed to reduce the fees for "all other formal complaints, except competitive access" from \$20,600 to \$350. The STB adopted this proposal to reduce filing fees on July 1, 2011.

SECURITY ISSUES

To access *Notice* stories referenced please click here: <http://www.nitl.org/NoticeStories-RegLegUpdate7-31-11.pdf>

(See "Air Issues" section for specific issues impacting air cargo)

- Cargo Residue Rule – U.S. Customs and Border Protection (CBP) announced in May that it intended to advance a rule requiring shippers to manifest residue in re-imported containers. The agency explained that this change was designed to address risks to national security and the health and safety of CBP officials.
- 2011 "10 + 2 Compliance Program" - The 10 + 2 initiative made effective by Customs and Border Protection in January 2010 requires U.S. importers of ocean freight to provide key data elements on the import manifest in order for the agency to conduct a threat assessment. The League has instituted a program at a reduced cost for members to receive help in preparing and executing this data submission to avoid serious fines and penalties: http://www.nitl.org/NITL_10+2_Security_Compliance.pdf.
- League Board Member named to COAC – U.S. Customs and Border Protection (CBP) named Leman "Chip" Bown, Jr., managing director, regulatory compliance, FedEx Trade Networks to the Commercial Operations Advisory Committee (COAC).

NITL EDUCATIONAL PROGRAMS/ INFORMATIONAL NEWS OUTLETS 2011 (Held and Currently Scheduled)

- Hours of Service Webinar – January 19, 2011

- Understanding INCOTERMS – February 28, 2011 – New York City
- Washington Freight Transportation Policy Forum – March 28-29, 2011 – Arlington, VA
- Executing Successful Ocean Service Contracts – April 6, 2011
- Changes in Chassis Procedures – May 4, 2011
- Demystifying Container Derivatives in Ocean Contracting – June 14, 2011
- League Summer Committee Meetings – Ocean, Highway and Railroad Transportation Committee Meetings – August 1-2, 2011, Louisville, KY
- 2011 Annual Meeting/ TransComp – November 12-16, 2011: Atlanta, GA
- Weekly *Notice*: reports to members on top freight transportation issues. E-mailed every Monday.
- 2010 Annual Report/ 2011 Membership Handbook – Mailed July, 2011 – Available also at www.nitl.org
- *Breaking News*: e-mailed to all Members to provide immediate access and analysis of major legislative, regulatory, and related matters impacting the freight transportation industry.

The League provides all Members with:

Policy Development and Advocacy

The League has long been recognized as a leader in promoting sound freight policies over all transportation modes. Both domestically and internationally, the League is respected and is looked to as a reliable and credible resource in understanding how new initiatives will impact the freight industry. Through its standing committees and Board of Directors, our Members are the driving force in shaping freight transportation policy.

Networking

Our diverse membership includes transportation decision-makers, suppliers, intermediaries as well as a nucleus of individuals dedicated to moving commerce both in the U.S. and abroad. As a result, the League is one of the largest professional freight transportation associations in the nation today. Developing new relationships with your peers in the League will not only assist you in your daily responsibilities, but they will help advance your own professional status and standing in the industry.

Education

Career advancement, meeting new challenges and taking advantage of the latest opportunities and trends requires today's freight transportation professional to be up-to-date on the latest developments. The League has a proven track record of providing educational forums which meet all these needs. From seminars on critical emerging issues, to webinars on best practices in every aspect of supply chain management, the League's constantly evolving education program for Members is an industry leader.

For the latest information, go to the League's website at: www.nitl.org.