



International Right of Way Association Weekly Update

Monday, September 23, 2019

The White House

- The President announced that he will revoke California's waiver under the Clean Air Act to regulate greenhouse gas emissions from automobiles, which are more stringent than corresponding federal regulations. The Environmental Protection Agency (EPA) and U.S. Department of Transportation (USDOT) are working on a joint rulemaking that would set revised federal emissions standards.
<https://www.epa.gov/newsreleases/trump-administration-announces-one-national-program-rule-federal-preemption-state-fuel>

Congress

- Both Chambers are in session this week.
- The House Oversight and Government Reform ("OGR") Committee announced an investigation into Transportation Secretary Chao's actions with respect to certain business interests. <https://thehill.com/homenews/house/461604-house-committee-launches-investigation-into-chao>
- The Senate Appropriations Committee passed the fiscal year 2020 transportation funding bill this week, but there will not be time to consider the measure, along with all other government-funding measures, individually before government funding expires at the end of the month. The House passed a continuing resolution that would extend funding until the Thanksgiving congressional recess.
<https://www.cbsnews.com/news/continuing-resolution-house-of-representatives-votes-to-extend-federal-government-funding-through-november/>

Analysis

- The emissions preemption/waiver issue is relevant to infrastructure development insofar as the Federal-aid Highway Program funds are tied to transportation conformity measures. For non-attainment or maintenance areas under the Clean Air Act, transportation planning must conform with air quality goals. In California, with so many areas in non-attainment or maintenance, there has been an historic balancing act between mobility concerns and air quality concerns and the Federal Highway Administration has granted numerous exceptions to this rule. The more contentious the relationship between California and this Administration becomes relating to the Clean Air

Act, the greater the possibility that Federal-aid Highway Program funding may be directly implicated.

- While the Senate, the House, and USDOT are all working in their own silos on surface transportation reauthorization policy, the investigation into Secretary Chao will certainly slow the ability of USDOT to develop and vet policy recommendations. When congressional investigations are launched into individuals within the Executive Branch, the work of the impacted Department/Administration becomes filtered through that lens. As a result, the gears of government begin to turn even more slowly than usual. In this case, coordinating with congressional authorizing committees on reauthorization policy may take a back seat to addressing the investigative inquiries of the OGR Committee.