



International Right of Way Association Weekly Update

Monday, April 3, 2017

Trump Administration

- The President signed an executive order (“EO”) on Tuesday, March 28, entitled “Promoting Energy Independence and Economic Growth.” The EO directs agency heads to review and recommend action regarding existing agency regulations and policies that “potentially burden” domestically produced energy and rescinds a number of actions taken by the Obama Administration, laying the groundwork for the rescission of the Clean Power Plan and a number of other Obama Administration climate regulations. (<https://www.whitehouse.gov/the-press-office/2017/03/28/presidential-executive-order-promoting-energy-independence-and-economy-1>)
- Reports this past week indicate that President Trump wants to pursue tax reform and infrastructure simultaneously (<https://www.axios.com/scoop-trump-wants-tax-reform-infrastructure-at-same-time-2332543336.html>).
- At the U.S. Department of Transportation’s 50th Anniversary celebration on Wednesday, Secretary Chao noted that regulatory impediments slow down infrastructure development and that the infrastructure plan to be released later this year will address regulatory policy and “will cover more than transportation infrastructure—it will include energy, water and potentially broadband and veterans hospitals, as well” (<http://www.railwayage.com/index.php/sustainability/dots-chao-regulations-not-funding-holding-up-infrastructure-projects.html>).
- Jeffrey Rosen, the nominee to be Deputy Secretary of Transportation, had his nomination hearing on Wednesday, March 29, before the Senate Commerce Committee (<http://www.commerce.senate.gov/public/index.cfm/2017/3/nomination-hearing-jeffrey-a-rosen>).

Congress

- This week the Senate will consider the nomination of Judge Neil Gorsuch to fill the vacancy on the Supreme Court. The Senate Judiciary Committee plans to vote on today (Monday, April 3), with the full Senate likely voting later this week (<https://www.nytimes.com/2017/04/03/us/politics/gorsuch-confirmation.html>).

Analysis

- In the wake of the healthcare debacle, it should not be a surprise that the President wishes to move tax reform and an infrastructure package simultaneously. First of all, as noted last week, fallout from the failure of the American Health Care Act to pass the House of Representatives will continue to color political decisions going forward. The Freedom Caucus wields significant power over partisan legislation, where their votes are required for Speaker Ryan to achieve a majority in the House, but the Freedom Caucus is much less relevant when the Speaker and President can count on Democrat votes. Moving tax reform and infrastructure together makes sense not only because the President will need tax reform to help offset infrastructure spending (even though we do not yet know how much direct federal funding will be part of the overall infrastructure package), but also because a tax reform and infrastructure package could be crafted to appeal to Democrats as well, minimizing the need to negotiate with the Freedom Caucus.
- We do not yet know whether Minority Leader Schumer will force Majority Leader McConnell to invoke the “nuclear option” on Judge Neil Gorsuch’s nomination (<http://www.foxnews.com/politics/2017/04/02/mcconnell-vows-gorsuch-will-be-confirmed-this-week-schumer-predicts-wont-get-60-votes.html>). As discussed last week, the way this conformation plays out in the Senate could also be a harbinger of things to come.
- Through conversations that Nossaman attorneys have had with senior officials at the White House and at the U.S. Department of Transportation, two things are clear. First, the Administration has many infrastructure policy ideas but lacks a cohesive strategy and plan for how to advance those policies. Second, there is still a huge number of vacancies and positions yet to fill, and that fact is also hampering the Administration’s ability to advance infrastructure ideas. Traditionally, the role of the Deputy Secretary is akin to a Chief Operating Officer, ensuring that the Department is functioning well and its core missions are being advanced. When Jeffrey Rosen is confirmed, his ability to take over the day-to-day management of the Department should free up Secretary Chao and her senior staff to turn their attention more directly to advancing their policy ideas, such as regulatory reform and how to leverage non-federal funding most effectively.