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Memorandum

To: FCA Affiliate Executives
From: Michael Oscar / Robert Gray
Subject: LEGISLATIVE UPDATE: The week of September 26
Date: September 30, 2011

Periodically and while Congress is in session, we will update you on legislative issues that may be important to FCA.

ANOTHER CONTINUING RESOLUTION: On Monday, Monday, September 26, 2011, a deal on a \$1.043 continuing resolution and disaster aid funding averted a government shutdown, but it highlights the inability of a divided Congress to agree on almost any spending measure without brinkmanship and cross-chamber sniping. Due to updated FEMA accounting, both parties found cover to agree to a “clean” CR through Nov. 18. The Senate also passed a short-term, week-long CR to give the recessed House time to take up the CR next week when they return. A dispute over offsetting disaster aid could recur in November, one of many potential hurdles as Congress works on a CR for the remainder of FY12.

Additionally, on Thursday, September 29, 2011, the House, with hardly any lawmakers physically present, consented to a measure to keep government funded through Tuesday, when members are to consider yet another Senate-passed stop-gap measure through mid-November. While passage of Thursday’s “bridge” measure, through unanimous consent during a pro forma session, went off without drama, House Republicans are not yet predicting the same smooth ride for next week’s vote.

THE TRAIN ACT: On Friday, September 23, 2011, the Transparency in Regulatory Analysis of Impacts on the Nation Act of 2011 (H.R. 2401), or TRAIN Act, was approved in the House by a vote of 249-169, with all but 19 Democrats voting no and all but four Republicans voting yes. The TRAIN ACT would mandate a study of cumulative cost of more than a dozen environmental rules and further delaying two key air pollution rules. As amended, the bill would block implementation of Cross-State Air Pollution Rule and Utility MACT rule by EPA. No Senate action is planned on a similar measure and the Obama administration has threatened a veto.

The TRAIN Act does include an amendment from Rep. Whitfield (KY) that would add years of additional delay to two air pollutant rules that were already slated to be delayed until 2013 under the bill. Whitfield’s amendment, which passed on a 234-188 vote, would nullify the Obama administration’s Cross-State Air Pollution Rule issued by EPA in July requiring 27 states to reduce power plant emissions that contribute to ozone and fine particle pollution in other states. Under the amendment, EPA would be barred from issuing a revised rule on interstate pollution until at least 2015 and would be required to revert in the interim to the less stringent Bush administration Clean Air Interstate Rule (CAIR). Any future EPA rule to address interstate emissions would have to be based on monitored, not modeled, data under the Whitfield amendment, and would have to allow trading of emissions allowances regardless of the states in which sources are located. Finally, his amendment would block EPA’s proposed maximum achievable control technology rule for air toxics emissions from power plants and direct the agency to issue new, less burdensome regulations no sooner than 2013. The so-called Utility MACT rule’s compliance date would be delayed another five years after that.

Other amendments included in the TRAIN Act are: Rep. Latta (OH)’s amendment directing EPA to consider feasibility and costs when promulgating national ambient air quality standards. It passed on a 227-192 vote; Reps. Kinzinger (IL) and Gonzalez (TX)’s amendment to require the cost review to include future EPA actions that would regulate gasoline and other fuel. It passed by a vote of 269-145; and an amendment by Rep.

Dent (R-Pa.), approved by a vote of 269-150, would extend the cumulative cost study to National Emissions Standards for Hazardous Air Pollutants that cover the portland cement industry.

The TRAIN Act would establish an interagency panel that would have until Aug. 1, 2012, to complete the cumulative cost study. This legislation is more than a “study bill” to examine cumulative costs of mostly air pollution rules, but it turned into the single biggest assault on the Clean Air Act in history.

NLRB: In the last two weeks, three major employer groups have filed federal lawsuits against the NLRB stating it overstepped its bounds on August 25, 2011, when it set new regulations requiring employers to hang posters, which inform employees that they have the legal right to form unions.

MOODY’S ON PRESIDENT OBAMA’S JOBS PLAN: On Monday, September 26, 2011, Moody's Investor Service released a [report](#) in support of President Obama's Jobs Plan. Moody’s stated, “although the plan would have a positive effect on the American economy, the odds of the plan ever getting a chance to make an impact were minuscule.” Additionally, Moody’s dismissed the viability of Obama’s proposals, charging that “none of the plans so far presented will be adopted.” Report author Steven Hess stated, “that even if the plan had a future, growth in the country is projected to be weak. We think that economic growth in the U.S. will remain well below potential through at least 2012 and will be below growth rates assumed in all of the plan's projections.”

U.S. CHAMBER OF COMMERCE AND CANADA: On Monday, September 26, 2011, while delivering the keynote address at the annual Global Business Forum, U.S. Chamber President and CEO Thomas J. Donohue called for an immediate increase in domestic energy production and strengthening of the U.S.-Canada energy partnership. “A solid foundation for a competitive and economically vibrant North America is an abundant and affordable supply of energy,” Donohue told the crowd of international business, academic, and government leaders. The U.S.-Canada relationship must remain a bedrock of that foundation. To ensure jobs, growth, and competitiveness for our continent, the United States must immediately begin increasing its domestic production and strengthening its energy partnership with Canada.”

In his speech, Donohue noted that China, Brazil, Argentina, and Canada are taking steps to secure more energy to fuel economic growth while America is lagging behind. He highlighted the Chamber’s efforts to move forward on the Keystone XL Pipeline, which would safely link Canada’s oil sands projects to Gulf Coast refineries. The environmental review of Keystone XL has taken more than three years to complete. Last month, the Final Environmental Impact Statement was released and found that the pipeline would have no significant impact on the environment.

The Chamber’s Energy Institute has launched the Partnership to Fuel America to promote the benefits of Canadian oil sands and support investment in critical North American energy projects. The Partnership is comprised of American businesses that understand that Canada’s energy resources can help the U.S. meet its growing demand for energy.

NEXT WEEK: Senate will take up the China Currency Manipulation Bill. Stay tuned!