

## Shifting from FAST to FAA: House Proposes New Trucking Regulations

While the Fixing America's Surface Transportation Act (FAST ACT) has dominated discussion in the commercial transportation industry, the House of Representatives has shifted its focus to the Federal Aviation Administration (FAA) re-authorization bill. The House has sought to include language regarding state regulation of the trucking industry previously incorporated into, but later removed from, the House version of the FAST Act.

Not surprisingly, the FAA re-authorization bill focuses almost exclusively on aviation related matters. However, it also includes several potentially significant trucking related provisions. The three main provisions potentially affecting the trucking industry would: (1) block states from requiring drivers to take meal and rest breaks; (2) eliminate penalties for carriers which do not require drivers to take state-mandated breaks; and (3) permit carriers to avoid state laws requiring the payment of additional compensation to drivers.

A 2014 Ninth Circuit case caused considerable confusion over the application of state laws to the trucking industry. In that case, the Court held that California's state labor laws requiring meal and rest breaks did apply to truck drivers and operators. Many correctly argued that this ruling directly contradicted the principle of federal preemption of state laws as outlined in the 1994 FAA re-authorization bill.

The proposed regulation concerning driver pay has attracted perhaps the most attention and criticism. The Owner-Operator Independent Drivers Association called it "an ambitious overreach." On the other hand, the American Trucking Associations condemned the current "patchwork of state laws" as "confusing and inefficient" and welcomed the move to a potentially new uniform system of regulations.

The provisions survived the committee level, as the House Transportation and Infrastructure Committee approved the bill by a vote of 32 to 26. However, Senate leaders, including Senator Barbara Boxer of California, have vowed to keep similar language out of the Senate version.

Commentators suggest that this legislation, coupled with industry pressures, will incentivize carriers to shift to an hourly pay model. Notably, the legislation does not prohibit carriers from making additional payments to drivers. Rather, it focuses on a state's ability to require carriers to make such payments. Additionally, compensation may not fall below the minimum wage.

**Comment:** It is far from certain whether these trucking provisions will withstand a full House or Senate vote. If these provisions survive until the final bill, they might cause a paradigm shift resulting in an increase in costs.