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Things To Know About The New Rail, Trucking Agency Chiefs

By **Linda Chiem**

Law360 (February 14, 2018, 7:43 PM EST) -- The U.S. Senate confirmed U.S. Department of Transportation nominees late Tuesday, including the heads of the nation's rail safety regulator and the nation's commercial motor vehicle safety regulator, filling key leadership positions amid heightened safety concerns following several high-profile accidents.

In a voice vote, the Senate confirmed President Donald Trump's picks of Ronald L. Batory as administrator of the Federal Railroad Administration and Raymond Martinez as administrator of the Federal Motor Carrier Safety Administration. Adam Sullivan was also confirmed to serve as the DOT's assistant secretary of governmental affairs.

Here are a few things to know about the newly confirmed officials.

Ronald L. Batory, Administrator of the Federal Railroad Administration

Batory is a longtime railroad industry executive with 45 years of experience under his belt who Trump picked last July to be chief of the FRA, which regulates freight and passenger rail safety.

But his confirmation had been stalled for months by Senate Minority Leader Chuck Schumer, D-N.Y., and other New York and New Jersey Democrats who opposed Batory's nomination in protest of the Trump administration's stance on funding the Gateway Program, which includes building a new, two-track heavy rail tunnel under the Hudson River from the Bergen Palisades in New Jersey to Penn Station in Manhattan.

The administration recently stated that there is no agreement on federal funding for that tunnel, or the Gateway Program overall. That throws a massive wrench in the long-in-the-works plans, especially after project backers reached a cost-sharing deal in 2015 with the Obama administration under which the federal government promised to cover half the cost of the new rail tunnel.

Sen. John Thune, R-S.D., chairman of the Senate Committee on Commerce, Science and Transportation, said in a statement Tuesday that even as Batory's confirmation languished, consensus that Batory was highly qualified to serve as the FRA's administrator never waned.

"His confirmation is a win for railroad safety and I expect him to have an impact," Thune said.

Batory is the retired former president and chief operating officer of Consolidated Rail Corp. and was previously president of the Belt Railway Co. of Chicago and held a number of other administrative and operational management positions with regional railroads.

He takes the helm just as the FRA contends with tightening its safety oversight amid a string of high-profile Amtrak train accidents and the push to get railroads to install crash-avoidance technology known as positive train control ahead of a year-end deadline.

The railroad industry lauded Batory's confirmation.

"Ron Batory is supremely qualified to guide the FRA moving forward, equipped with years of real-

world experience that will surely assist him in his oversight duties," said Edward R. Hamberger, president and CEO of the Association of American Railroads, which represents the nation's largest railroads. "We look forward to working with Administrator Batory in our collective mission to ensure maximum rail safety."

Smaller railroads are also on board.

"Ron Batory will bring a wealth of experience to the position and is well-qualified to guide the FRA through the critical work ahead of it including the oversight of positive train control implementation," said Linda Bauer Darr, president of the American Short Line and Regional Railroad Association.

Raymond Martinez, Administrator of the Federal Motor Carrier Safety Administration

The president **picked** Martinez, the former chairman and chief administrator of the New Jersey Motor Vehicle Commission, last September to be the head of the FMCSA, the nation's safety regulator for commercial motor vehicles. He has previously served as the New York state commissioner of motor vehicles and chairman of the Governor's Traffic Safety Committee as well as deputy chief of staff and special counsel to the New York attorney general. Martinez has also twice served on the board of directors of the American Association of Motor Vehicle Administrators.

Martinez takes the helm of an agency that regulates the nation's trucking industry. It enforces safety regulations and targets high-risk carriers and commercial motor vehicle drivers and has largely been focused in recent years on improving safety information systems and commercial motor vehicle technologies and strengthening commercial motor vehicle equipment and operating standards.

"Mr. Martinez will enter a regulatory environment that is dramatically and fundamentally different than that of the prior administration," Marc S. Blubaugh, co-chair of Benesch Friedlander Coplan & Aronoff LLP's transportation and logistics practice group, told Law360. "Most of the industry is very pleased with the nomination, although a small minority, usually individual owner-operators, inevitably decry that the nominee has no actual over-the-road commercial driving experience. To me, that is as puerile as saying that only candidates with military experience should be eligible to be commander-in-chief."

Under President Barack Obama's administration, the commercial trucking industry was a big target for regulation. It got hit with a batch of proposed rules resulting from industry petitions and congressional mandates laid out in the two most recent surface transportation bills — 2012's Moving Ahead for Progress in the 21st Century, known as MAP-21, and 2015's Fixing America's Surface Transportation Act, known as the FAST Act.

But the Trump administration **made quick work** of rolling back many of those, including **nixing** an advanced notice of proposed rulemaking in August 2017 that would have created new national requirements for testing and treating obstructive sleep apnea for rail workers and commercial vehicle drivers.

The administration also withdrew a proposed safety fitness determination rule, which would have updated the agency's methodology for determining when a motor carrier is unfit to operate a commercial motor vehicle, after pressure from trucking industry stakeholders who called the proposal problematic.

"Ray Martinez is a very bright leader who is an agent for change," said Ron Leibman, a New Jersey-based partner and co-chair of Riker Danzig Scherer Hyland & Perretti LLP's transportation and logistics group. "He did an excellent job at NJMVC, bringing forward significant digitization and streamlined operations. He also developed significant revenue-raising initiatives involving license plates while at the NYMVC. My hope is that he overcomes the bureaucracy, as he has [in] the past, and works with the carrier public to develop industry friendly regulations."

Trucking groups also said Martinez will steer the FMCSA well.

"As a state safety official in both New York and New Jersey, Ray Martinez was a model of professionalism and fairness," Chris Spear, president and CEO of the American Trucking Associations, said in a statement Wednesday. "He is an exceptional choice to lead FMCSA and now that he has

been confirmed, we look forward to working with him to advance the cause of highway safety."

Adam J. Sullivan, DOT Assistant Secretary of Governmental Affairs

Trump tapped Sullivan, a former congressional staffer, in May 2017 to serve as one of the DOT's chief advisers on congressional relations.

According to the White House, Sullivan's career in public service spanned both the U.S. House of Representatives and the Senate, as well as the executive branch. He most recently was on staff on the Senate Appropriations Subcommittee on Labor, Health and Human Services, and Education.

He has also served on two separate occasions as a chief of staff for members of the House of Representatives, and in other senior legislative roles focusing on a wide range of policy and appropriations-related issues. He also served as deputy assistant secretary of labor for congressional affairs during President George W. Bush's administration and worked on national security-related programs at Harris Corp., according to the White House.

Sullivan's confirmation comes days after the Trump administration **pitched** a much-anticipated proposal to spend \$200 billion and expedite environmental reviews to rebuild the nation's roads, bridges, highways, railways, waterways and other public works.

The president's **blueprint** marks the opening salvo in what will be a pitched political battle over increasing investment in American infrastructure. Congress will have to do the heavy lifting and figure out how to pay for a plan that broadly outlines \$200 billion in direct federal spending to be leveraged to generate an estimated \$1.5 trillion in new infrastructure investment from states, localities and private investors.

The plan has already garnered mixed reactions, with industry stakeholders commending the administration for prioritizing infrastructure investment but criticizing it for lacking solutions for longtime funding shortfalls.

Marc Scribner, a senior fellow with the Competitive Enterprise Institute, a Washington, D.C.-based nonprofit public policy organization, said in a statement that the president's plan misdirects money on things that won't fix real infrastructure problems.

"The federal government could help improve roads, water treatment and other critical infrastructure for Americans nationwide by lifting restrictions on construction permitting and giving more flexibility to states and local governments to fund their own infrastructure," Scribner explained.

"But increasing federal infrastructure spending by 20 percent and failing to reform existing federal infrastructure programs will just make our problems worse," Scribner added. "Until Congress and the administration commit to funding only nationally significant projects and taking care of what the federal government has already built, the United States remains on an unsustainable infrastructure investment path."

--Editing by Katherine Rautenberg and Kelly Duncan.