



# March Legislative and Regulatory Report

## LEGISLATIVE

### Senate Passes Ocean Shipping Reform Act

In February, the Senate introduced S. 3580, the Ocean Shipping Reform Act, which serves as companion legislation to a similar House bill. The Senate passed the Ocean Shipping Reform Act by voice vote on March 31.

The Ocean Shipping Reform Act aims to improve supply chain efficiency by: requiring ocean carriers to ensure detention and demurrage charges align with federal regulations; placing the burden of proof regarding the reasonableness of detention or demurrage charges on ocean carriers instead of the invoiced party; limiting ocean carriers' ability to deny goods at ports that are ready to be exported; providing the Federal Maritime Commission with increased authority to regulate harmful shipping practices; and requiring ocean carriers to provide data to the FMC on total import and export tonnage per vessel.

Since its introduction, the Senate OSRA has incorporated several amendments, most of which were added during a Senate Commerce Committee markup in late March. The revised bill includes more detailed provisions for the assessment of penalties and refunds, this text was adopted from the FREIGHT Act, a bill introduced by Sen. Wicker (R-MS). For instance, the bill establishes several factors to consider when determining refund or civil penalty amounts: the nature, circumstances, extent, and gravity of the violation committed; the degree of culpability; any history of prior offenses; and the ability to pay. Additionally, this provision requires FMC, when conducting a civil penalty investigation, to consider whether the non-vessel-operating carrier is partially or wholly responsible for the charge and whether another party is responsible and subject to a refund or penalty.

Also originally included in the FREIGHT Act, a new section of the OSRA requires ports, marine terminal operators, and chassis owners with a fleet of more than 50 chassis that supply chassis for a fee to submit data on the total street dwell times and the percent of chassis that are out of service. Additionally, the bill requires FMC to collaborate with the Transportation Research Board to conduct a study and develop best practices for chassis pools. These best practices should assess obstacles to the implementation of chassis pools and potential solutions as well as related communications and data sharing practices.



Other adopted amendments to the bill pertain to FMC operations. First, the legislation calls on FMC to establish a webpage for comments, complaints, and requests to be submitted and direct each submission to the appropriate FMC office. The bill instructs FMC to maintain an Office of Consumer Affairs and Dispute Resolution Services to help resolve cargo shipment disputes. Additionally, the bill directs FMC to issue an information request regarding whether supply chain congestion has resulted in an emergency situation impacting the competitiveness and reliability of the international ocean transportation system. If such a determination is made, FMC may issue an emergency order requiring common carriers or marine terminal operators to share directly with relevant shippers, rail carriers, or motor carriers, information relating to cargo throughput and availability.

The bill directs the Coast Guard and TSA to expedite Transportation Worker Identification Credential applications for motor carriers who demonstrate that they offer direct assistance to a U.S. port. Additionally, the bill directs the Federal Motor Carrier Safety Administration to review its temporary waiver permitting certain examiners to administer CDL knowledge tests without completing a CDL knowledge test training course. Provided FMCSA does not identify any safety concerns, the waiver would be extended permanently. Lastly, the bill authorizes appropriations for FMC activities through fiscal year 2025.

The Ocean Shipping Reform Act has been endorsed by organizations such as the American Association of Port Authorities and American Trucking Associations as well as stakeholder groups representing shippers. However, ocean carrier representatives remain generally opposed to both the House and Senate legislation, with the World Shipping Council noting that neither bill addresses the root cause of the ongoing supply chain disruptions.

The House has already passed its version of the Ocean Shipping Reform Act three times. It passed for the first time in December 2021 as a standalone bill and more recently on March 29, when it was incorporated into the Coast Guard Authorization Act. Since the House and Senate OSRA bills are not identical, further negotiations must occur to resolve differences before final passage.

### **FY22 Appropriations Act Signed into Law**

Since October 2021, the U.S. government has operated under several continuing resolutions, which extended fiscal year 2021 funding until a long-term appropriations bill was passed. Continuing resolutions typically extend prior year amounts on a pro-rated basis and generally do not allow for changes in funding levels or the development of new programs. As a result, the U.S. Department of Transportation could not fully implement all funding increases and new programs established by the Bipartisan Infrastructure Law.



President Biden signed the Consolidated Appropriations Act of 2022 into law on March 15, providing approximately \$103 billion in total budgetary resources for USDOT through September 30, 2022.

Of note, the FY22 Appropriations Act provided additional funding for several grant programs available to goods movement projects. The Rebuilding American Infrastructure with Sustainability and Equity program, which already received \$1.5 billion from the BIL, obtained an additional \$775 million for FY22 from the Consolidated Appropriations Act to fund multimodal transportation projects. The Consolidated Rail Infrastructure and Safety Improvements program received \$625 million in addition to the \$1 billion made available by the BIL for passenger and freight rail improvements. An additional \$234 million was included for the Port Infrastructure Development Program, which received \$450 million from the BIL for investments in coastal seaports, inland port facilities, and intermodal connections.

## **REGULATORY**

### **Texas Court Reinstates Trump Administration Independent Contractor Rule**

In January 2021, the Department of Labor under the Trump Administration issued its final rule on independent contractor status. The final rule established a test intended to clarify the process to determine if a worker is classified as an employee or IC under the Fair Labor Standards Act. DOL determined that the two most important factors for this determination should be the nature and degree of control over the work and the opportunity for profit or loss based on initiative and investment. If those two factors are not conclusive, other factors should then be examined, including: the skill or expertise required by the worker; the permanency of the labor; and whether the work is part of an integrated unit of production.

Due to the primary factors considered under the test, the final rule provided more flexibility for independent contractor classification. As DOL's first federal regulation addressing IC status, the final rule was significant to the intermodal industry since the majority of drayage truck drivers operate as independent contractors.

When President Biden took office, he issued a regulatory freeze to allow the incoming Administration time to review recent agency action. DOL subsequently published a notice to delay the effective date of the IC final rule and ultimately withdrew the rule in May 2021. In withdrawing the rule, DOL reasoned that it was inconsistent with the language and intent of the Fair Labor Standards Act and could cause uncertainty as the rule represented a departure from longstanding agency and judicial precedent.



On March 14, 2022, the U.S. District Court of the Eastern District of Texas reached a decision in a case brought by the Coalition for Workforce Innovation – members of which include the American Trucking Associations, Associated Builders and Contractors, Lyft, and Uber. The court concluded that the Biden Administration’s DOL violated several components of the Administrative Procedure Act by not allowing a “meaningful opportunity for comment,” due to the scope and timeframe of the comment period for its notices to delay implementation and withdraw the final rule.

The court vacated both notices, thereby stating that the Trump Administration’s IC rule took effect as of March 8, 2021. DOL may appeal the decision and could simultaneously begin a proceeding to withdraw and replace the IC rule.

### **USDOT Issues NOFO for \$2.9 Billion in Multimodal Grant Funding**

In March, the U.S. Department of Transportation issued a combined notice of funding opportunity for the Infrastructure for Rebuilding America program, the National Infrastructure Project Assistance program, and the Rural Surface Transportation Grant Program. USDOT is soliciting applications through a single portal, allowing applicants to submit projects for one, two, or all three funding opportunities. USDOT plans to utilize the combined application to evaluate the potential for projects to receive funds from multiple grant programs and match applicants with the appropriate program(s).

The INFRA program will award \$1.55 billion toward various highway and freight projects, including intermodal, rail, port, and bridge projects. The majority of INFRA funds are reserved for large projects, typically defined as a total project cost of at least \$100 million for most states. No more than 30 percent of INFRA funding each fiscal year may be awarded to non-highway freight projects, an increase compared to the multimodal cap of roughly 11 percent under the previous surface transportation authorization.

The MEGA program is a new grant opportunity established by the Bipartisan Infrastructure Law, which provided \$1 billion for fiscal year 2022. The program aims to fund complex projects that do not meet the standards for other funding programs, such as multijurisdictional projects or projects involving multiple modes of transportation. As mandated by the BIL, 50 percent of funding is set aside for projects with a total cost above \$500 million, the other half will go toward projects with a cost between \$100 million-\$500 million. Whereas the INFRA program is freight-focused, the MEGA program is available to a wide variety of large infrastructure projects. In addition to freight intermodal, rail, port, and highway projects, the program also provides eligibility for transit projects.



Also established by the BIL is the RURAL program, which received \$300 million for fiscal year 2022. The program is available to highway, bridge, and tunnel projects in rural areas, including intermodal facilities that support rural economies.

Applications are due May 23, 2022.

### **EPA Proposes Requirements to Reduce Heavy-Duty Vehicle Emissions**

The Environmental Protection Agency announced plans in 2020 to implement a Cleaner Trucks Initiative, now known as the Clean Trucks Plan, which would establish new nitrogen emission standards for heavy-duty vehicles, including buses, commercial delivery trucks, and other types of trucks.

On March 28, EPA issued a notice of proposed rulemaking pertaining to the Clean Trucks Plan. EPA is requesting public comments regarding two options to improve air quality. Option 1, EPA's preferred option, would reduce NOx emissions for heavy-duty vehicles by 50 percent in 2040 and 60 percent in 2045. The standards would take effect in model year 2027, and stricter requirements would begin in model year 2031. Option 2 would be implemented in one step beginning in model year 2027 and is predicted to reduce NOx emissions for heavy-duty vehicles by 47 percent in 2045.

Additionally, the proposed rule includes changes to EPA's Heavy-Duty Greenhouse Gas Emissions Phase 2 program, which was established in 2016 to encourage the development of technologies to reduce greenhouse gas emissions from trucks.

The program set performance targets for manufacturers to achieve emission reductions through a variety of technologies. Since 2016, production of certain electric vehicle types has occurred more rapidly than anticipated. Therefore, EPA is considering tightening GHG requirements for transit buses, delivery trucks, and short haul tractors beginning in model year 2027.

EPA will host a virtual public hearing on April 12, 2022. Comments on the proposed rule are due May 13, 2022.