# July Legislative and Regulatory Report

## LEGISLATIVE

### Rep. Mast Introduces Five Bills to Improve Supply Chain Fluidity

In July, Rep. Mast (R-FL) introduced five bills intended to address ongoing supply chain issues within the trucking industry.

Two bills were introduced to increase the amount of goods a truck driver can transport at one time by expanding truck size and weight limits. H.R. 8411, the Improving Trucking Capacity and Efficiency Act, proposes to extend the permitted length of a semitrailer from 28 to 33 feet. The Freedom to Haul Act, H.R. 8412, would increase the allowable weight of a semitrailer from 80,000 pounds to 97,000 pounds. Both bills were referred to the House Committee on Transportation and Infrastructure.

The Let Every Trucker in the U.S. Drive Act would prohibit the Secretary of Transportation from issuing restrictions on the maximum hours of service for drivers. Instead, the bill states that a commercial motor vehicle driver must be given a minimum of 10 consecutive hours off duty after informing the motor carrier that they need immediate rest. In a press release, Rep. Mast argued that the existing hours of service restrictions are unnecessary since extended exemptions have been granted to move certain goods during COVID-19. He asserted that this flexibility should be provided to all truck drivers rather than limiting exceptions to certain types of cargo. H.R. 8417 does not have any cosponsors and was referred to the House Committee on Transportation and Infrastructure.

Rep. Mast also introduced two bills aiming to lower costs for truck drivers by removing certain excise taxes. H.R. 8413, the Reduce Taxes on our Trucks Act, proposes to repeal the 12 percent federal tax on the purchase of heavy-duty trucks and trailers. A similar bill was introduced in June by Rep. LaMalfa (R-CA). Lastly, Rep. Mast introduced H.R. 8414, the Relief for our Truckers Act, which would repeal the diesel fuel excise tax of 24.3 cents per gallon. Both bills were referred to the House Committee on Ways and Means.

### House Passes FY 23 THUD Appropriations; Senate Introduces Separate THUD Proposal

On July 20, the U.S. House of Representatives passed H.R. 4550, the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act of 2022, by a party-line vote of 220-207. The legislation was passed as part of a combined package with five other fiscal year 2023 funding bills.

The House version of THUD would provide the U.S. Department of Transportation with $105.4 billion in total budgetary resources for FY23, a $2.4 billion increase from 2022. THUD provides $778 million in addition to the $1.5 billion provided by the Bipartisan Infrastructure Law for the Rebuilding American Infrastructure with Sustainability and Equity program, formally known as BUILD and TIGER; $300 million in addition to the $450 million provided by the BIL for Port Infrastructure Development Program grants; and $630 million in addition to the $1 billion provided by the BIL for the Consolidated Rail Infrastructure and Safety Improvements grant program.

Alongside the legislation, the House Committee on Appropriations provided guidance on certain funding provisions. The committee encouraged the Federal Maritime Commission to use its enforcement tools, including the expanded authority provided by the Ocean Shipping Reform Act, to investigate situations where Vessel-Operating Common Carriers engage in unfair discriminatory practices, give unreasonable preferences, or unreasonably refuse to deal or negotiate.

The committee expressed concerns about the safety and labor ramifications of the September 2020 Federal Motor Carrier Safety Administration final rule that amended its hours of service regulations for truckers. The committee directed FMCSA to conduct an analysis comparing safety data before and after the 2020 rule was implemented, as recommended in the FY21 Appropriations Act. The report further instructs FMCSA to complete this analysis annually, make the information available to the public, and post the results on the FMCSA website with the release of its FY24 budget request. FMCSA was also directed to brief the House and Senate Committees on Appropriations on its progress on the large truck crash causation study within 90 days of the legislation's enactment.

Also in the report, the committee noted that it has not received the implementation plan required by Congress in FY20 for the Transportation Research Board's Truck Size and Weight Research Plan, which outlines research projects to better understand the impacts of different truck configurations on driver safety, the service life and deterioration rates of bridges, pavement condition, and potential impacts of these changes on the long-term solvency of the Highway Trust Fund.

Additionally, the guidance directed the National Highway Traffic Safety Administration to prioritize collaboration with relevant stakeholders, including researchers, engineers, safety advocates, and the trucking industry, to facilitate the deployment and adoption of rear and side underride protection devices.

On July 28, the Senate released its own FY23 THUD appropriations proposal. While similar, the Senate bill includes different funding amounts for several major freight-eligible grant programs, including: $1.09 billion for RAISE grants; $534 million for CRISI grants; and $234 million for PIDP grants. As in the House THUD version, these amounts would be provided in addition to the FY23 funding made available for these programs under the BIL.

Both chambers must pass an identical THUD funding bill – or a short-term continuing resolution – by September 30, 2022, when the current fiscal year ends.

### Rep. Cuellar Introduces Worker Flexibility and Choice Act

Rep. Cuellar (D-TX) introduced H.R. 8442, the Worker Flexibility and Choice Act, which would establish a new relationship between a worker and a business entity defined by a voluntary "worker flexibility agreement." The bill seeks to preserve the status of workers who choose independent contractor or gig work, while also maintaining workplace protections and providing the option to offer certain benefits.

The bill would amend the Fair Labor Standards Act and Internal Revenue Code to state that individuals under a worker flexibility agreement are not considered employees for tax or FLSA purposes. These provisions would supersede all federal, state, and local laws relating to wages, hours worked, documentation and recordkeeping, applicable taxes, benefits, and contributions.

By entering into the worker flexibility agreement, workers would retain their workplace rights, including protections against discrimination, retaliation, and harassment. The worker also retains the ability to accept or reject offers to provide service without negatively impacting their ability to perform future work for the entity. Further, H.R. 8442 would allow workers to offer services to a competing company unless they enter into a bargained-for non-solicitation sales agreement. The business is also required to provide the worker with a written summary of any health, pension, training, or other benefits they may be eligible to receive throughout the agreement.

H.R. 8442 was endorsed by the Coalition for Workforce Innovation, which include members such as the American Trucking Associations, Uber, and Lyft. The Worker Flexibility and Choice Act has two Republican cosponsors and was referred to the House Committees on Ways and Means and Education and Labor.

## REGULATORY

### FRA Issues NPRM on Crew Size Requirements

The Federal Railroad Administration issued a Notice of Proposed Rulemaking to establish new requirements mandating that railroads staff most train operations with a minimum of two crewmembers. This would consist of a locomotive engineer in the cab and an additional crewmember, typically a conductor. Generally, the rule requires crewmembers to be on the moving train and would only allow them to temporarily leave the train to perform assigned duties. The proposed rule would not prevent railroads from operating with more than two crew members or from imposing more stringent requirements regarding the location of any additional crewmembers. The requirements do not apply to switching operations.

While the NPRM proposes several exceptions to the crewmember requirement, it would prohibit any exceptions for trains carrying certain hazardous materials, such as trains with over 20 car loads or intermodal portable tank loads of these materials. In total, FRA is proposing 10 exceptions for various operations. For general train operations, trains operating in helper service and locomotives not attached to any piece of equipment or are only attached to a caboose would be exempt. FRA proposed five exemptions for freight operations: certain unit train loading and unloading operations referred to as “mine load-out” or “plant dumping operations;” small operations with less than 400,000 annual employee work hours that involve a train shorter than 6,000 feet, operating at a maximum speed of 25 mph, and operating over a limited grade; small operations with a maximum speed of 25 mph, which has a second crewmember who can directly communicate with the cab engineer and is intermittently assisting with the train’s movements; “work train operations” where a non-revenue service train of 4,000 trailing tons or less is used for the administration and upkeep service of the railroad; and remote controlled locomotives traveling between yards or customer facilities, either with or without cars. There are also four exceptions for passenger and tourist operations.

Additionally, the NPRM would establish a special approval procedure allowing railroads to petition the FRA to continue legacy, one-person train operations or initiate a new single-crewmember operation. Legacy operations must be established at least two years before a final rule takes effect. Petitions would include a risk assessment and provide for the mitigation of identified hazards. Petitions for both legacy and new one-person operations would be published in the Federal Register and for public comment. If a petition is approved, the railroad must conduct a formal review and analysis of its operations annually and submit data to the FRA.

FRA noted that there are currently not any Class I freight railroads with a legacy operation, and it does not expect any to be established before the final rule is issued. Therefore, a petition for a new special approval of this operation would be needed. There are currently seven Class II or III railroads using single-person train operations, according to a 2021 FRA analysis. However, FRA requests comments on any additional short line or regional freight railroads conducting one-person train crew operations and whether the railroads are interested in conducting these operations in the future.

The Association of American Railroads stated their opposition to the proposed rule, arguing “there is no plausible safety justification” to regulate the number of crew members in an operation. However, the AFL-CIO President of the Transportation Trades Department welcomed the rule, noting that "crew size is fundamentally a safety issue at its core."

FRA issued a similar NPRM in 2016 that was withdrawn after public comments were received. In its withdrawal notice in 2019, FRA determined that the comments did not provide sufficient data suggesting that previous accidents could have been avoided by adding a second crewmember.

Comments on the proposed rule are due by September 26, 2022.

## USDOT Moves Forward with Freight Data Exchange Initiative

In March 2022, the Biden-Harris Administration announced its new Freight Logistics Optimization Works initiative, a joint effort between the U.S. Department of Transportation and freight industry partners to improve data collection and sharing. The White House hoped the initiative would result in a proof-of-concept information exchange by the end of Summer 2022.

Subsequently, the Bureau of Transportation Statistics issued a notice providing additional details on the FLOW initiative and requesting approval to collect information from participants. The initiative will begin with a pilot phase consisting of 21 representatives from ports, ocean carriers, terminal operators, equipment providers, logistics, and other businesses, and will focus on goods moving through a limited number of port terminals. Pilot members include the Ports of Los Angeles and Long Beach, CMA CGM, Direct ChassisLink Inc., FedEx, and Target. After the pilot phase, BTS expects the program to include up to 200 representatives during the first three years.

Representatives will voluntarily submit data on purchase order forecasts; cargo bookings; vessels in-transit; marine terminal space availability; drayage truck dispatch capacity; over-the-road truck dispatch capacity; chassis availability; and warehouse capacity. USDOT will use the data to assess freight congestion and supply chain performance. The White House expects FLOW to help ensure that early return dates are consistent for all stakeholders, more accurately measure chassis availability, and better understand aggregate dwell times.

Comments on the information collection request are due by September 16, 2022.