# September Legislative and Regulatory Report

## LEGISLATIVE

### Senator Rounds Introduces Legislation to Ease Trucking Regulations

This month, Senator Rounds (R-SD) introduced the Trucking Regulations Unduly Constricting Known Service-providers Act to reduce regulations on the trucking industry.

S. 4861 would allow states to issue a new type of commercial driver's license; a small business restricted CDL, exempting small businesses with nine or fewer CDLs from Entry-Level Driver Trainer requirements. The legislation states that drivers would not be allowed to transfer the restricted CDL to a larger company. Additionally, the TRUCKS Act would allow states to exempt employees of agriculture industries and state and local governments from ELDT requirements when obtaining a CDL. The bill sponsors stated in a press release that the TRUCKS Act would help small businesses fill truck driver positions and improve supply chain reliability.

The Moving Ahead for Progress in the 21st Century Act, enacted in 2012, directed the Secretary of Transportation to establish minimum ELDT requirements. The ELDT final rule took effect in February 2022 and included additional requirements for individuals obtaining a Class A or B CDL for the first time; a Passenger, HAZMAT, or School Bus endorsement for the first time; or individuals upgrading their CDL. The bill sponsors argued these additional regulations are burdensome to the trucking industry, particularly given the current driver shortage.

The TRUCKS Act is supported by the Associated School Boards of South Dakota and endorsed by the U.S. Custom Harvesters. The legislation has three Republican cosponsors and was referred to the Senate Committee on Commerce, Science, and Transportation.

## REGULATORY

### CTA Continues Pursuit Challenging California AB5 Law

At the end of August, the U.S. District Court for the Southern District of California formally lifted the injunction that had previously exempted California's trucking industry

from the state's Assembly Bill 5 worker classification law. The action comes after the U.S. Supreme Court declined to review the California Trucking Association's petition for review of its lawsuit challenging AB5. AB5 was signed into law in 2019 and established a new test to determine whether workers should be classified as employees or independent contractors. The changes – which generally favor employee classification – will have a significant impact on the intermodal trucking industry given that the majority of drivers were previously classified as independent contractors.

CTA's original lawsuit challenging AB5 has not yet received a trial or oral arguments as the underlying case was put on hold while the injunction moved through the appeals process. Now that the injunction has been dissolved and the AB5 law applies to the trucking industry, the case will proceed. CTA maintains that the Federal Aviation Administration Authorization Act, which prohibits states from implementing laws that impact motor carrier prices, routes, and services, preempts the trucking industry from being subject to AB5. CTA intends to request a new injunction on AB5 enforcement, for which a motion is due by October 11. Opposition briefs will be due by November 15.

The U.S. District Court for the Southern District of California ruled this month that the Owner-Operator Independent Drivers Association is allowed to intervene in CTA's lawsuit. In contrast to CTA's argument, OOIDA's objection to AB5 is centered on the U.S. Constitution's Dorman Commerce Clause, which provides Congress the authority to regulate interstate commerce and restrict states' ability to interfere. Despite the State of California's opposition to OOIDA's motion to intervene, the court concluded it is appropriate for OOIDA to "prosecute its claim for relief." The decision noted that there was no party to the current litigation that primarily represents interstate truck owner-operator independent contractors and that the "Commerce Clause question" has yet to be considered in a trial.

### Stakeholders Petition NHTSA to Reconsider Rule on Underride Guard Requirements

Earlier this year, the National Highway Traffic Safety Administration issued a final rule adopting new requirements for trailer and semitrailer rear underride guards. The final rule required rear impact guards to provide sufficient strength and energy absorption to withstand impact at 35 mph and is scheduled to go into effect on January 11, 2023.

Now, the Advocates for Highway and Auto Safety and the Truck Safety Coalition – a partnership between Citizens for Reliable and Safe Highways and Parents Against Tired Truckers – have filed a petition for NHTSA to reconsider the final rule. In the final rule, NHSTA stated that the requirements would improve protection during a crash where a

passenger car hits the center of a trailer's rear and 50 percent of the width of the passenger vehicle overlaps with the rear. Petitioners allege that the final rule's requirements are inadequate as the rule failed to consider data on crashes where the passenger car slides under the rear end of a trailer due to insufficient protection.

The Bipartisan Infrastructure Law, enacted in 2021, directed NHTSA to complete the underride rulemaking and develop stricter standards. The petitioners argue that the final rule fails to meet this BIL requirement and sets an unreasonably low standard, noting that 94 percent of trailers already comply with the rule. Further, the petitioners asserted that the low standards would have other implications by reducing market demand for strong underride guards.

The groups have requested a stay of the rule's effective date until NHTSA issues a decision on the petition.

### FMC issues Notice of Proposed Rulemaking on the Unreasonable Refusal to Deal

The Ocean Shipping Reform Act, signed into law in June 2022, directed the Federal Maritime Commission to define the unreasonable refusal to deal or negotiate on vessel space accommodations made by an ocean common carrier. This month, FMC began implementing this requirement by issuing a Notice of Proposed Rulemaking seeking public comment on its suggested definitions.

The NPRM applies to both import and export shipments and outlines the elements needed to establish a violation and the criteria FMC will use to assess the reasonableness of the refusal. FMC proposes to define vessel space accommodations as "space provided aboard a vessel of an ocean common carrier for laden containers being imported to, or exported from, the United States." The NPRM notes that "refusal to deal or negotiate" cannot be generally defined and instead will be evaluated on a case-by-case basis. Among other criteria, FMC will assess whether the ocean common carrier followed a documented export strategy; engaged in good faith negotiations; and demonstrated legitimate transportation factors, such as the character of the cargo, vessel safety and stability, operational schedules, and the adequacy of facilities.

Further, the NPRM proposes to shift the burden of proof after a complaint is submitted to ocean common carriers to justify why their refusal was reasonable. However, FMC notes that the "ultimate burden of persuasion remains with the complainant to show that the refusal to deal or negotiate was unreasonable."

The proposal seeks to establish a balance between the space given to importers and exporters following reports received by the FMC of carriers profiting from import rates at the expense of exporters. FMC explained in a statement after issuing the NPRM that comments will help the Commission "best facilitate allocation of vessel space for U.S. exports." Comments on the proposal are due by October 21, 2022.