December Legislative and Regulatory Report

Legislative

Congress Passes Fiscal Year 2023 Omnibus Funding Bill

In December, Congress released its fiscal year 2023 omnibus appropriations bill that combines 12 federal funding packages. Both chambers of Congress released their own appropriations proposals earlier this year, but the bills stalled and lawmakers enacted several short-term continuing resolutions to sustain government funding until a full appropriations bill could be passed. The legislation advanced through both chambers in late December and was signed into law by the President.

The FY23 appropriations bill allocates $106.3 billion in total budgetary resources for the U.S. Department of Transportation, a $3.4 billion increase from FY22. The bill provides funding for various USDOT grant programs in FY23, including: $800 million for the Rebuilding American Infrastructure with Sustainability and Equity program in addition to the $1.5 billion provided by the Bipartisan Infrastructure Law; $560 million for the Consolidated Rail Infrastructure and Safety Improvements grant program in addition to the $1 billion provided by the BIL; and $212 million for Port Infrastructure Development Program grants, in addition to the $450 million provided by the BIL. The bill also contains approximately $1.86 billion in earmarks for transportation projects.

Accompanying the legislation, Congress provided an explanatory statement containing various agency directives. The explanatory statement directed the Federal Motor Carrier Safety Administration to finalize its guidance clarifying the terms "broker," "bona fide agent," and "dispatch service" by June 16, 2023. FMCSA issued interim guidance on its interpretation of the terms in November 2022. The report further instructs FMCSA to provide interim updates on the Safe Driver Apprenticeship Pilot program, which allows certain drivers under the age of 21 to operate commercial motor vehicles in interstate commerce. FMCSA was also asked to update its inspection guidelines for rear underride guards, a recommendation first made by the Government Accountability Office in 2019.

Also in the report, Congress directed the U.S. Maritime Administration, Federal Maritime Commission, Department of Defense, and Department of Homeland Security to increase the use of composite shipping containers by utilizing the America's Marine Highway program and PIDP grants. According to the explanatory statement, the transition to composite containers would improve security, shipment visibility, and cargo facilitation.

Additionally, lawmakers directed the Federal Highway Administration to report to the House and Senate Committees on Appropriations within 30 days of the bill's enactment on its implementation plan for conducting research outlined in the Transportation Research Board's Truck Size and Weight Research Plan. TRB's research plan outlined various projects to improve understanding of 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. Congress first directed FHWA to establish an implementation process for the TRB research plan in FY20.

President Biden Signs Resolution Preventing Rail Strike

On December 2, President Biden signed a resolution ending the labor negotiations between railroads and their unions that had been ongoing since 2020. The action prevented a potential rail strike that would have otherwise begun in December.

In September, the Presidential Emergency Board issued non-binding recommendations to resolve the rail labor disputes. Following the release of the report, eight of the 12 unions voted to accept the PEB recommendations.

The resolution ending the negotiations passed the Senate by a vote of 80-15 and passed the House by a vote of 290-107. The legislation implemented the recommendations published by the PEB in September, including a 24 percent pay increase by 2024. One of the unions' primary demands – 15 days of paid sick leave – was not included in the final resolution. The signed resolution provided one extra paid day off. Under the resolution, rail employees are unable to go on strike. While the unions have the option to stage a walkout, they then risk being replaced by the railroads. Alternatively, railroads could also request a federal injunction mandating the employees return to work.

Lawmakers voted on several amendments to adjust the recommendations, though all of them ultimately failed and were not included in the final resolution. These amendments included a provision to incorporate seven days of paid sick leave and a proposal to extend negotiations for an additional 60 days.

On December 8, a group of 75 Members of Congress sent a letter to the President urging him to use all tools within his authority to guarantee rail workers seven days of paid sick leave. The Members of Congress specifically recommended that President Biden issue an executive order or initiate an agency rulemaking requiring paid sick leave for rail workers.

REGULATORY

STB Issues Two Final Rules to Address Small Rate Disputes

The Surface Transportation Board issued two final rules this month to establish new rate resolution procedures for small cases.

The first notice announced the Final Offer Rate Review procedure, which establishes a new process for challenging the reasonableness of railroad rates for cases up to $4 million. STB explained in the notice that under the new rule, if the Board deems a rate to be unreasonable, it may decide a case by selecting either the complainant's or the defendant's final offer. The Board issued a separate final rule exempting Class I rail carriers from the FORR process if they agree to a new voluntary arbitration program.

The new arbitration program would also be used to resolve small rate disputes up to $4 million. STB noted that it pursued the new arbitration program to provide shippers access to a rate relief process that guarantees railroad engagement as STB expected rail carriers to legally challenge the FORR process. To ensure that all shippers can access the same means of relief, all Class I railroads must participate in the arbitration program for it to become operable or they will be subject to FORR. Class I carriers have 20 days from the effective date of the rule to signal their participation in the program. If all carriers agree to participate in the program, STB will issue a notice commencing the program and issuing the FORR exemption. By participating in the program, carriers commit to participating in arbitration brought against them for five years.

In STB's announcement of the final rules, Chairman Oberman stated that the two rules attempt to strike a balance between the railroad community's preference for the arbitration program and shippers' preference for the FORR process. The Association of American Railroads disapproved of both final rules, stating that the FORR procedure goes beyond STB's authority and allows the agency to decide a case without conducting independent analysis. AAR also criticized the arbitration process for requiring full industry participation because if one railroad opts out, it results in a "missed opportunity to create a workable solution for shippers and railroads alike." Other industry stakeholders, such as the National Grain and Feed Association, applauded STB for the rulemaking, acknowledging that the FORR process creates a timely and cost-effective rate resolution process for shippers.

The FORR process will take effect 60 days after it is published in the Federal Register. The arbitration program will go into effect 30 days after the notice is published.

EPA Issues Final Rule on Emissions Standards for Heavy-Duty Vehicles

In 2020, the Environmental Protection Agency announced plans to implement a Cleaner Trucks Initiative, now known as the Clean Trucks Plan, a series of regulations over the next three years to reduce pollution from heavy-duty vehicles, including buses, commercial delivery trucks, and other types of trucks. This month, EPA finalized the first step of the Clean Trucks Plan by issuing a final rule establishing new nitrogen emission standards for heavy-duty vehicles. The new standards will take effect beginning in model year 2027.

According to the EPA, the clean air standards for heavy-duty trucks have not been updated in over 20 years. EPA estimates that the new standards will reduce NOx emissions from heavy-duty vehicles by more than 40 percent by 2040 and by 50 percent by 2045. To ensure the new standards are consistently met throughout the operational life of heavy-duty vehicles, the final rule requires manufacturers to provide more in-depth regulatory useful life and emission-related warranty information. Additionally, the final rule requires manufacturers to meet emission standards while having less scheduled maintenance for emission-related parts and systems.

The notice of proposed rulemaking issued by EPA in March 2022 suggested changes to the agency's Heavy-Duty Greenhouse Gas Emissions Phase 2 program, which encourages the development of technologies to reduce greenhouse gas emissions from trucks. EPA was specifically considering tightening GHG requirements for transit buses, delivery trucks, and short haul tractors beginning in model year 2027. While the final rule did not alter the program, EPA announced it would consider such potential changes in a subsequent rulemaking.

Following EPA's announcement, the Truck and Engine Manufacturers Association expressed concern that the final rule would be challenging to implement, acknowledging that the success of the new standards would depend on fleets' ability and willingness to purchase new technology.

The final rule is the first of three significant actions to carry out the Clean Trucks Program. EPA announced plans to release proposals for the two other actions in the coming months. The two upcoming actions will propose Phase 3 GHG standards for heavy-duty vehicles and stricter standards for light- and medium-duty vehicles, both of which would begin in model year 2027.

Comments on the final rule will be due 60 days after the final rule is published in the Federal Register.