



The IWLA Government Affairs Update

January 9, 2024

Immediate Warehouse Issues

Biden Renominates Julie Su for Labor Secretary After Senate Delay

President Biden renominated Julie Su to serve as Labor secretary after her nomination was delayed in the Senate for months last year. Biden sent her nomination to the Senate on Monday. He first nominated her in February but her nomination appeared to reach a dead end come June, with Democratic leadership making little progress to get her confirmed. Su was nominated to replace ex-Labor Secretary Marty Walsh, who was the first Cabinet secretary in the line of succession to leave his post since the start of the Biden administration. The White House said last year, while the nomination was at a standstill, that they were committed to Su's confirmation and assembled a so-called war room to make calls every day about it. At issue last Congress was the inability to shake loose two of the three moderates — Sen. Joe Manchin (D-W.Va.), Jon Tester (D-Mont.) and Kyrsten Sinema (I-Ariz.) — whom Democrats need to back her nomination. Manchin was viewed as the least unlikely to back her, while Tester and Sinema's stance was unclear. [Read More](#) [Read House Education and the Workforce Committee Statement](#)

DOL Independent Contractor Final Rule Announced, Will Take Effect March 11

The U.S. Department of Labor (DOL) announced Tuesday a final rule revising its interpretation of the Fair Labor Standards Act's classification provision to determine whether a worker may be considered an independent contractor. The final rule largely tracks the agency's October 2022 proposed rule. It retains the multifactor, "totality-of-the-circumstances" framework for analyzing independent contractors' status included in that proposal. Under this framework, DOL will consider six nonexhaustive factors when examining the relationship between a worker and a potential employer: Worker's opportunity for profit or loss; Investments made by the worker and the employer; Degree of permanence of the work relationship; Nature and degree of control over performance of the work; Extent to which the work performed is an integral part of the employer's business; and Use of the worker's skill and initiative. The final rule does not adopt an "ABC" test, a framework that jurisdictions including California have adopted in order to determine independent contractor status. The rule will be published in the Federal Register on Wednesday, Jan. 10, and is slated to take effect March 11, officials said. Separately, DOL is rescinding the Trump administration's 2021 independent contractor final rule, which had been enacted during that administration's final weeks. The Biden administration attempted to withdraw the rule in May 2021, but a federal court put it back into effect, holding that the act of rescinding the 2021 rule violated the Administrative Procedure Act. [Read More](#) [Read DOL Announcement](#)

California Delays Clean Truck Rule Enforcement in Absence of EPA Waiver

California vehicle regulators are delaying enforcement of their first-in-the-nation purchasing mandate for zero-emission trucks because they don't yet have the Biden administration's permission to implement it. The California Air Resources Board said last week that it will not enforce its Advanced Clean Fleets regulation, parts of which took effect Monday, until EPA either issues a waiver letting it implement its stricter-than-federal rules under the Clean Air Act or says that a waiver isn't necessary. The agency asked the trucking industry to start transitioning to zero-emission vehicles while it waits for clarity. "CARB encourages fleet owners and operators to voluntarily comply with

the requirements during this time to facilitate future compliance,” said the agency in a statement. Vehicle/fleet owners now have until Jan. 31, 2024, to finalize the initial reporting requirement and compliance fee payment for 2023. Vehicle/fleet owners are required to report in the new Clean Truck Check-Vehicle Inspection System (CTC-VIS) [reporting database](#). [Read More](#) [Read CARB Press Release](#)

IWLA Statement on the Introduction of CTPAT Pilot Program Act

On Dec. 21, IWLA President and CEO Jay Strother issued a statement in response to the anticipated introduction of the Customs Trade Partnership Against Terrorism (CTPAT) Pilot Program Act of 2023, a bill to require a pilot program on the participation of third-party logistics providers in the CTPAT Program, to be introduced by Rep. Elissa Slotkin (D-MI), along with cosponsors Rep. Rob Menendez (D-NJ), Rep. Morgan Luttrell (R-TX), and Rep. Marianne Miller-Meeks (R-KS). “IWLA and its members are eager to participate in the in the Customs and Border Protection’s CTPAT program, a vital partnership between CBP and the trade community,” said Strother. “While more than 11,000 certified partners currently participate in the CTPAT program, 3PL warehouses are currently excluded from the program, forcing them to undergo redundant CBP examinations and forego the benefits of expedited freight and the increased efficiencies that CTPAT provides. The CTPAT Pilot Program Act will at long last remove the barriers that prevent 3PL warehouses from obtaining CTPAT designation. IWLA thanks Representatives Slotkin, Menendez, Luttrell, and Miller-Meeks for the introduction of this important bill, and we urge Congress to expeditiously pass the CTPAT Pilot Program Act to allow 3PLs to participate in the CTPAT program.” [Read IWLA Press Release](#) [Read Rep. Slotkin Press Release](#)

State Group Sues Biden Administration Over Emissions Rules

A consortium of 21 states has filed a [federal lawsuit](#) claiming that President Joe Biden and his administration have overstepped their authority in taking steps to regulate greenhouse gas emissions. In the 283-page civil complaint, filed Dec. 21 in the U.S. District Court for the Western District of Kentucky, in Paducah, the states maintain that only Congress is authorized to advance GHG rules and charge that Biden, Transportation Secretary Pete Buttigieg and Federal Highway Administration leader Shailen Bhatt have violated the law with a series of actions that target GHG reduction. “President Biden is unconstitutionally ramming his radical climate agenda through administrative agencies that lack congressional authority to implement such actions. We will not stand by while this administration attempts to circumvent the legislative process,” said now-former Kentucky Attorney General Daniel Cameron, whose state is leading the legal challenge. The states mentioned several deadlines and emission requirements they must now meet plus a new GHG performance standard added to FHWA national performance measures that will be used to evaluate how states perform in the National Highway System. Each state maintained its sovereign right in the complaint, which listed five violations of law, including restricting how states use federal highway formula funds. [Read More](#)

Red Sea Crisis Boosts Shipping Costs, Delays – and Inflation Worries

Attacks on ships in the Red Sea continue to push ocean freight rates higher, triggering warnings of inflation and delayed goods. To avoid strikes by Iran-backed Houthi militants based in Yemen, carriers have already diverted more than \$200 billion in trade over the past several weeks away from the crucial Middle East trade route, which, along with the Suez Canal, connects the Mediterranean Sea to the Indian Ocean. This has created a multiple-front storm for global trade, according to logistics managers: Freight rates increasing daily, additional surcharges, longer shipping times, and the threat that spring and summer products will be late due to vessels arriving late in China as they travel the long way around South Africa’s Cape of Good Hope. “The supply chain pressures that caused the ‘transitory’ part of inflation in 2022 may be about to return if the problems in the Red Sea and Indian Ocean continue,” said Larry Lindsey, chief executive of global economic advisory firm the Lindsey Group. “Neither the Fed nor the ECB can do anything about them and will likely ‘look through’ the inflation they cause, potentially leading to rate cuts despite somewhat heightened inflation pressures.” [Read More](#)

Updated Warehouse Issues

CBP Reopens Four Southwest Ports of Entry After Weeks-Long Closures

U.S. Customs and Border Protection resumed full commercial operations Thursday at an international bridge in Eagle Pass, Texas, as well as two Mexico crossings in Arizona. CBP said it also was reopening an international pedestrian border crossing in San Diego. An influx of migrants arriving in November along the U.S.-Mexico border prompted the agency to redirect personnel to assist U.S. Border Patrol with taking migrants into custody. The

resumption of operations reflects a drop in migrant crossings that peaked last month, according to Troy Miller, acting CBP commissioner. In Eagle Pass, the port's Bridge No. 1 had been suspended to northbound passenger vehicle traffic since Nov. 27. The closure of Bridge I affected commercial cargo truck movements carrying shipments from Mexico to the U.S., increasing wait times to more than two hours on some days when trucks normally face no delays. Along with the disruption from migrants, the Texas Department of Public Safety (DPS) began safety inspections on Nov. 28 for all cargo trucks arriving from Mexico in Eagle Pass and Del Rio, Texas. The Texas DPS continues to conduct safety inspections on all commercial tractor-trailers coming through Eagle Pass, border officials said. [Read More](#)

Biden Administration Extends China Tariff Exclusions — Again

The Biden administration opted to extend exclusions on tariffs for hundreds of products from China just days before they were set to expire on Dec. 31. Both the Trump and Biden administrations have exempted certain products from the Section 301 tariffs slapped on imports from China starting in 2018. The exclusions have been extended multiple times since then, as the tariffs have continued under both administrations. The exclusion extensions include 77 medical items exempt from the tariffs since 2020 because of COVID-19-related concerns, according to [a Federal Register Notice](#) from the Office of the U.S. Trade Representative (USTR). The Biden administration decided to seek comments on the extensions after receiving public comments related to the USTR's ongoing "four-year review" of the Section 301 tariffs launched in May 2022. The first phase of the review invited perspectives from domestic industries that have benefited from the tariffs. In extending the exclusions in December, USTR also noted that the extensions would "facilitate the alignment of further decisions on these exclusions with the ongoing four-year review." The administration extended the tariff exclusions — on 429 products in all — to May 31. Comments on the exclusions are set to open on Jan. 22 and close on Feb. 21. [Read More](#) [Read USTR Press Release](#)

SoCal Warehouse Emissions Rule, and Possible Impact on Trucks, Upheld by Judge

A rule regulating emissions at Southern California warehouses, which the state's trucking industry viewed as akin to a zero-emission vehicle (ZEV) mandate, has been upheld by a federal district court. In a ruling earlier this month, Judge John Kronstadt of the Central District of California rejected claims in a lawsuit filed by the California Trucking Association (CTA) that a warehouse emissions rule approved in May 2021 by the South Coast Air Quality Management District (SCAQMD) was preempted by the Federal Aviation Administration Authorization Act (F4A). The law has been a key point of argument in several legal cases involving the transportation industry on one side and the state of California the other, including litigation surrounding independent contractor law AB5. The CTA was later joined as a plaintiff by airline trade group Airlines for America (A4A). Its arguments were similar to those of CTA. In their lawsuit, both plaintiffs said they believed the warehouse emission requirements would require changes in operations, primarily through the purchase of ZEVs or near-zero-emission vehicles (NZEV) that could impact "prices, routes or services," the three-headed standard in both F4A and ADA that the respective federal laws say state action can not impact. But the CTA and A4A pleadings were rejected, along with the CTA and A4A requests for summary judgment in the suit. [Read More](#)

What the Red Sea Conflict Means for Domestic Transportation

Disproportionate shipping rate increases resulting from the Red Sea attacks further incentivize shippers to bring freight into the U.S. West Coast from Asia, as a pandemic-era pattern of shipping to Eastern ports continues to unwind. Spot rates for 40-foot equivalent containers moving on the ocean from China to North America's east and west coasts spiked, according to the Freightos Baltic Exchange indices, to start the year. The conflict in the Middle East is now impacting nearly all global shipping lanes. Inbound east coast rates increased more than those to the west, increasing the "Panama Spread" back over \$1,100. The Panama Spread measures the difference between maritime container shipping rates from China to the North American east and west coasts. More positive figures indicate a stronger monetary incentive to ship to the west coast. The ongoing drought in Central America has restricted the flow of freight moving through the Panama Canal and has increased transit times. [Read More](#)

Industry Takes Fresh Look at Reverse Logistics

Reverse logistics — the management and movement of returned goods — is one of the most significant systems in the economy, as it affects people and businesses in myriad ways, for example, post-holiday season when a high volume of gift returns are common. However, the returns journey, from purchase to receipt, is a complicated process. Tony Sciarrotta, Reverse Logistics Association executive director, said the transportation aspect is vital since every touch point is a cost factor. "In the reverse logistics world, returns go through 3-4 times as many touch points as forward goods," he explained. Carlton Farr II, vice president of supply chain transportation with Radial

Inc., noted reverse logistics' role in the overall supply chain impacts costs and brand image, plus customer experience and loyalty. "It can be costly for businesses along the various functions of the supply chain: They generally require double the transportation and staffing costs, as well as additional warehousing space to hold inventory," he said. "From a business perspective, consumers may not exchange products or repurchase after making a return, so this can also eat into profit margins." At the end of 2023, the National Retail Federation reported that total merchandise returns for the retail industry were \$743 billion, representing a total return rate of 14.5%. The report noted, "For every \$1 billion in sales, the average retailer incurs \$145 million in merchandise returns. Online sales do see a higher return rate, with 17.6% or \$247 billion of merchandise purchased online returned. That compares to 10.02% for pure brick-and-mortar returns (excluding online orders that are returned in-store), or \$371 billion." [Read More](#)

December Imports Surprisingly High Amid Panama, Suez Canal Woes

With all the headlines on trade disruptions, you might have expected U.S. imports to fall in December. They didn't, according to new data from Descartes. The U.S. imported 2,107,012 twenty-foot equivalent units of containerized goods in December, up 0.4% from November and up 9.2% year on year, said Descartes on Monday. December is traditionally slow from a seasonal perspective — and there was another headwind this year. A drought in Panama significantly reduced transits of larger Neopanamax-class container ships in November and December, with transit constraints intensifying last month. Container vessels that traditionally used the Panama Canal to bring Asian goods to East and Gulf Coast ports switched to the Suez Canal. Those ships then rerouted from the Suez Canal to longer voyages around the Cape of Good Hope, with diversions starting in late November and accelerating in recent weeks. Intuitively, this should have led to some pressure on U.S. import volumes in December, with weakness centered on East and Gulf Coast ports, as had been the case in November. Instead, the data points to continued import strength in December versus November, driven by higher volumes to East and Gulf Coast ports, with these ports sequentially outperforming those on the West Coast. [Read More](#)

Questions? Contact [Bruce Linderman](#) or call 847.813.4698

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The IWLA 3PL Matters Update is designed to inform you on legislative and regulatory issues that directly impact and affect your warehouse and how you conduct business. The 3PL Matters Update is disseminated every three weeks and provides a look at recent developments and activities from the prior three weeks, as well as a look at what to expect in the upcoming weeks.
