



December 8, 2021



## Tuesday Ruling Pauses Implementation of Executive Order Mandating COVID Vaccines

In a [ruling yesterday](#), the United States District Court for the Southern District of Georgia issued a nationwide stay of the implementation of Executive Order 14042 requiring government contractors to adopt COVID-19 vaccine mandates.

The court found that President Joe Biden exceeded his authority granted under the Federal Property and Administrative Services Act (FPASA) when issuing the order but did not address other arguments made by the plaintiffs to support a preliminary injunction. Yesterday's decision comes after a ruling last Friday granting a preliminary injunction for similar reasons, but only in the states of Kentucky, Tennessee and Ohio.

For more information about the various legal efforts being made to contest vaccine mandates for businesses, partners at ASLRRRA member Stinson have published [an article](#) explaining other challenges that have resulted in pauses to Path Out of the Pandemic plan implementation and enforcement.

A nationwide stay has put a temporary halt to the Occupational Safety and Health Administration's (OSHA) Emergency Temporary Standard (ETS), which required companies with 100 or more employees to have a COVID-19 vaccination policy. Also, a judge in Missouri has prevented the government from enforcing an interim final rule issued by the Centers for Medicare and Medicaid Services (CMS) requiring vaccination of staff in Medicare- and Medicaid-certified facilities. The first order affected the CMS rule in 10 states, and the next day a judge in Louisiana extended the stay to the rest of the U.S.

The article discusses each of these challenges at length, noting that the issues are not likely to be resolved soon. Those with questions about these cases are encouraged to contact one of the Stinson employees listed in the article, or the Stinson contact with whom they regularly work.

## TSA Requires Incident Reporting, Response Plans and Self-Assessments from Some Short Lines

On Dec. 2, the Transportation Security Administration (TSA) issued [two security directives \(SD\) and a related informational circular](#) that would mandate the following actions for what TSA estimates will be a small group comprising less than 35 short lines:

- The appointment of cybersecurity coordinators
- Reporting cybersecurity incidents to the Cybersecurity & Infrastructure Security Agency (CISA)
- Performing an organizational cybersecurity review based on TSA guidance
- Developing an organizational cybersecurity response plan

The two SDs are scheduled to go into effect on Dec. 31, 2021, with all related deadlines starting from that date. In the meantime, TSA is working with ASLRRRA and Association of American Railroads (AAR)

security staff on producing additional guidance and FAQs to help organizations better comply with the directives once they become effective. For those railroads not included in the mandate, TSA is recommending similar actions in the related informational circular.

More analysis will be provided to ASLRRRA members later in this week on the security directive with more specific information, including detailed information on what criteria determines whether a railroad falls under the mandate. In the meantime, please feel free to reach out to ASLRRRA's [Fred Oelsner](#) with any questions.

## CONNECT REMOTELY AND CONTINUE LEARNING WITH ASLRRRA WEBINARS

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### ASLRRRA Petitions FRA for Hours-of-Service Waiver Extension

ASLRRRA petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of federal hours-of-service laws. The FRA [published a notice](#) of the petition in the *Federal Register* yesterday.

The Association's petition notes that the waiver currently in place has not compromised safety, and ASLRRRA is unaware of any incidents during the waiver period involving employees of participating railroads wherein fatigue was a factor.

Moreover, the waiver has allowed railroads in the current supply-chain crunch to have more flexibility in their operations and serve their customers more efficiently. Employees have also been able to enhance their wages.

The FRA invites interested parties to submit written views, data or comments by Jan. 21.

### FRA Renews Advisory Committee, ASLRRRA Representatives Attend Virtual Committee Meeting

The Federal Railroad Administration (FRA) has [renewed the charter](#) of the Railroad Safety Advisory Committee (RSAC) for two years. The FRA will also add three more represented organizations and 17 individual voting members.

There will now be 26 organizations represented and 51 voting members, which according to an FRA press release will "increase the diversity of perspectives...and improve [RSAC's] ability to provide inclusive and balanced recommendations."

RSAC working groups offer advice and recommendations to the FRA to implement new rail safety regulations or revise current ones. They also help identify ways to improve rail safety without

regulations. ASLRRA represents short lines on the RSAC and is currently part of the working group focused on 49 CFR Part 213 – Track Safety Standards. ASLRRA also worked on the recently closed group focused on Part 225 – Accident/Incident Reporting.

Today, ASLRRA's JR Gelnar, Jo Strang and Sarah Yurasko participated in a virtual meeting of the full RSAC. Working groups provided updates on accident reporting, passenger safety, track standards and tourist and historic railroads, and there were also three new proposed tasks offered for consideration: roadway worker protection, confidential close call reporting systems, and Part 220 Subpart C, Electronic Devices.

### **ASLRRA and AAR File Amicus Brief in Rail Freight Fuel Surcharge Antitrust Litigation**

On Nov. 18, ASLRRA and the Association of American Railroads (AAR) filed an [amicus brief](#) supporting defendants BNSF Railway Company and Union Pacific Railroad Company in the case before the United States Court of Appeals for the District of Columbia.

The question before the DC Circuit is the proper scope of 49 USC 10706's provision regarding admissibility of communications between railroads regarding interline traffic. The lower court ruling reflects a very restricted view of the protections afforded to railroads by the statute.

The associations' amicus brief seeks to educate the Court regarding the scope, importance and complexity of interline traffic, and the need for railroads to be able to communicate broadly and effectively with each other regarding that service to offer competitive transportation products.

### **Railroad Retirement Board News Releases Discuss Information for 2022 and Reporting Events**

A trio of Railroad Retirement Board (RRB) news releases informs railroad employees about upcoming changes for 2022, and reminds them about reporting events to the RRB.

One release discusses [Medicare Part B premiums](#), which will increase to \$170.10 in 2022. The article includes tables showing next year's income-related premium adjustments for individual and joint tax return filers, as well as those who are married but file separate tax returns.

A second release talks about an [increase in 2022 to the amounts of compensation](#) subject to railroad retirement tier I and tier II payroll taxes. The release also notes that tax rates on employers and employees will stay the same, and railroad employers' unemployment insurance contribution rates will include a 3.5 percent surcharge.

The third release, the RRB's monthly [question and answer \(Q&A\) article](#), reminds employees that they are responsible for reporting to the RRB any event that could affect their retirement benefit payments. The RRB points out that overpayments must be repaid, sometimes with interest and penalties, and knowingly deceiving the agency to receive benefits is a crime.

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## Congress Averts Government Shutdown, Closes in on Debt Limit Deal

Last week, with mere hours to go before a federal government shutdown, Congress passed an extension of government funding through Feb. 18. This should give Congress more time to iron out some major disagreements in funding levels and related policy before taking up long-term spending bills that would govern funding levels through September and the end of fiscal year 2022.

Meanwhile, with the U.S. coming closer to hitting its debt limit and being unable to pay its bills as soon as next week, Senate and House leaders worked out a complex legislative deal this week to lift the debt limit by a specific dollar amount. The Senate is expected to advance the debt ceiling measure this week before sending it to the House, which is expected to pass the bill before sending it to the president's desk for signature.

To get there, the House and Senate must pass bipartisan legislation into law that will allow for the Senate to waive the filibuster and take up the debt ceiling with only partisan Democrat support. The House passed its version last night. If all goes as planned, the bargain means the issue will be resolved until 2023, after the upcoming midterm elections.



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## ASLRRRA New Members

Know a company that would benefit from joining and participating in ASLRRRA? Please contact ASLRRRA's Vice President of Membership and Business Development Kathy Keeney via [email](#) or on (202) 585-3439.

## ASLRRRA Welcomes Two New Members



[Broco Energy](#), based in Haverhill, Massachusetts, operates a rail transload facility that can receive multiple products, including petroleum, ethanol, propane, biofuels, steel, lumber, construction materials & debris, scrap metal, resin plastics, and any other dry good products. It also offers warehousing and storage. Our primary contact is [Judith Page](#), senior director - account development, who can also be reached on (781) 246-1130.



[Unified Industries Incorporated \(UII\)](#), based in Kingstowne, Virginia, is a certified Disadvantaged Business Enterprise that has served government and commercial industry since 1970. UII's expertise in rail car inspection, logistics, engineering, training, information technology, metrology, calibration, and quality assurance has given it the opportunity to fulfill thousands of contractual obligations. Our primary contact is President and CEO Theodore Adams, III, who can be reached on (703) 922-9800.

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## ASLRRA Announcements

### Preferred Provider Loram's Top-Notch Inspection Technology Helps ASLRRA Members Ensure Compliance

Loram's Aurora Track Inspection Technology is available to ASLRRA members with preferred pricing. Features of Aurora Track Inspection Technology include state-of-the-art imaging technology, with scans revealing the exact condition of every tie along the way.

The technology also pinpoints potential problems and marks their exact location; helps railroad to plan repairs in the most efficient way possible; provides detailed report that enables railroad to streamline capital maintenance programs; and helps ensure railroad is in line with industry regulations with compliance reports.

Turn tie inspections into savings and safety with four scale tie grading 1-4, GPS coordinates for all ties, tie grade summaries per mile, 39' FRA tie condition report, joint bar location report and a joint tie condition report.

Visit [www.aslrra.org/discount](http://www.aslrra.org/discount) to learn how Loram's Aurora® Track Inspection Technology can make your operations safer and more efficient.

### Join ASLRRA's Member Discount Program as a Preferred Provider

Becoming a Preferred Provider in ASLRRA's Member Discount Program boosts your visibility and underscores your commitment to delivering an exceptional price, product and service to member railroads. The Member Discount Program leverages the buying power of the entire short line industry and the program is designed to:

- Secure significant cost savings on industry products and services;
- Create a vetting process for potential partners and establish exceptional service expectations;
- Generate non-dues revenue to support ASLRRA programs and services.

Preferred Providers benefit from enhanced marketing opportunities that include exposure across a wide range of electronic, print and event platforms. Visit [ASLRRA's Member Discount Program page](#)

for details and to learn more about ASLRRA's Tier I and Tier II Member Discount Program Preferred Providers. Companies interested in becoming a Preferred Provider may contact [Sabrina Waiss](#).

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## ASLRRA Out and About

### Baker's Column Talks Early Christmas Presents for Short Lines

In his [column in \*Railway Age\* magazine](#), ASLRRA President Chuck Baker applauds the passage of the Infrastructure Investment and Jobs Act (IIJA). Its lack of burdensome regulatory provisions and dramatically increased grant-funding opportunities make it an early Christmas gift for short line freight railroads.

Baker points out one particular highlight of the bill, the \$1 billion per year in funding allotted for the Consolidated Rail Infrastructure and Safety Improvements (CRISI) grant program, a significant increase. In comparison, CRISI funding for 2021 was only \$375 million.

After pointing out the bill's benefits for short lines, Baker talks about next steps for both railroads and ASLRRA. He encourages small railroads to consider how they can position themselves to take advantage of these funding opportunities, and suggests they begin collecting cost and benefit information for important projects and building support for these projects with local officials and congressional representatives.

For ASLRRA, the main task will be to help short lines "understand what is available, how to apply...and how to effectively communicate their project benefits to the Washington decision-makers," wrote Baker.





## ASLRRA Webinars – Live or On-Demand

### Missing Our Live Webinars?

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On-demand webinars cover a wide variety of industry hot topics for all members of your railroad team. They include the popular railroad retirement and unemployment information series, which features a discussion of COVID-19-related issues. There are also tips for social media engagement and crisis communications; webinars about the Environmental Protection Agency's SmartWay program; explanations of legal and regulatory issues; and much more.

ASLRRA members can view recordings at any time for free, while non-members can purchase a subscription to access our library. Go to [aslrta.org/webinars](https://aslrta.org/webinars) and log in to see what is available.

[Click here](#) for a calendar of ASLRRA events.

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## Industry Events and Announcements

[Click here](#) for a calendar of industry events.

Views & News is published by American Short Line and Regional Railroad Association. Please contact [Amy Krouse](#), editor, with questions or comments.