

US Supply Chain and Transportation Stakeholders Receive Several Provisions from the CARES Act

Related People:
Ronald M. Leibman

Coronavirus Legal Advisory

03.31.2020

Since its passage last week, the Coronavirus Aid, Relief, and Economic Security (CARES) Act (the Act) has produced endless summaries and analyses of its text, most notably in regard to the increased access to Small Business Administration loans and what some are calling the “bailout” provisions for certain larger concerns. While the general terms of the Act have a cross-industry relevance, certain of its provisions target various private and public supply chain and transportation stakeholders, many of which are summarized in this article.

Small Business, Sole Proprietor, and Independent Contractor Relief

Title 1 of Division A

The Keeping American Workers Paid and Employed Act includes provisions regarding loans to small businesses for items such as payroll, healthcare benefits and premiums, employee compensation, mortgage interest, rent, utilities, and interest on preexisting debt. This is particularly relevant to the motor carrier industry, which is overwhelmingly made up of small businesses. Division A makes this abundantly clear by its inclusion of sole proprietors, a heavily populated motor carrier business type, and independent contractors, as are impliedly represented by owner-operators. This Title also provides for small-business relief in the industrial supply chain, where there is disruption stemming from issues of quantity and lead time (including involving the number of shipments and shipment delays) and quality of goods (including shortages in supply for quality control reasons).

Title II of Division A addresses the Railroad Unemployment Insurance Act, providing \$425 million for enhanced and extended benefits to workers.

Report on Supply Chain Dependencies

Title III, Part 1

This section of the Act should be of particular interest to supply chain professionals as it deals with shortages of supplies. In particular, Section 3101 calls for the National Academies of Sciences, Engineering, and Medicine to report on the US supply chain within 60 days of the Act’s effective date. More specifically, the National Academies are charged with assessing the dependency of the nation’s government and commercial sectors

on critical medicines and devices sourced or manufactured outside of the US. The report must address:

- critical drugs and devices of greatest priority;
- health or national security concerns stemming from reliance on drugs and devices sourced or manufactured outside of the US;
- existing supply chain information gaps;
- the potential economic impact of increased domestic manufacturing; and
- identifying potential strategies to improve and address supply chain resiliency, vulnerability, and disruption, and to avoid drug and medical device shortages.

Economic Stabilization and Assistance to Severely Distressed Sectors

Title IV, Subtitle A

This section makes relief available to air carriers with losses directly or indirectly resulting from the coronavirus, and includes support for relevant employees, as that term is defined under the National Labor Relations Act or the Railway Labor Act. Relief can come in the form of loans, guarantees, or other investments from a pool of \$500 billion, with:

- \$25 billion reserved for passenger air carriers, ticket agents, and repair stations;
- \$4 billion reserved for cargo carriers; and
- \$17 billion reserved for businesses critical to maintaining national security.

Requirements for Funding

In order to gain access to these funds, a business must have incurred or expect to incur losses that could jeopardize its operations. Additional requirements include the following:

- (i) The business must maintain March 24, 2020, employment levels to the extent practicable, and if it cannot, layoffs cannot exceed more than 10% of those employed on that date.
- (ii) No officer or employee whose compensation exceeded \$425,000 in 2019 (other than pursuant to a collective bargaining agreement entered into before March 1, 2010) can receive compensation in excess of that amount during the term of the loan or loan guarantee, or receive termination benefits in excess of twice that amount.
- (iii) No officer or employee whose compensation exceeded \$3 million in 2019 can receive more than \$3 million in any 12-month period during the term, plus 50% of the amount of compensation received above \$3 million in 2019.

This Title also specifies that the Secretaries of Treasury and Transportation will coordinate implementation of its terms, and eliminates certain excise taxes on air transportation and taxes on kerosene used by commercial aviation.

Support for Air Carrier Workers

Subtitle B of Title IV

The Act seeks to preserve aviation jobs and air carrier workers' wages, salaries, and benefits using the period of April 1, 2019, through September 30, 2019, as a base. To effectuate this goal, an aggregate amount of:

- \$25 billion has been set aside for passenger air carriers;
- \$4 billion has been set aside for cargo air carriers;
- \$3 billion has been set aside for contractors servicing air carriers; and
- \$100 million has been set aside for costs and administrative expenses associated with providing the financial assistance.

In determining how to allocate these funds, the Secretary of Transportation must place an emphasis on assuring service for small and rural communities, and maintaining well-functioning healthcare and pharmaceutical supply chains, including for medical devices and supplies.

Emergency Appropriations for Coronavirus Health Response and Agency Operations

Title VI Division B

An allocation of \$5 million is provided to the Railroad Retirement Board for its use in preventing, preparing for, and responding to the coronavirus, including obtaining equipment to improve work-life mobility, and providing for additional hiring or overtime hours to administer the Railroad Unemployment Insurance Act. Allocations of funds are also made to various federal agencies, including, as relevant here, the Department of Transportation (Department) and the agencies it oversees. These Department funds are largely targeted for use in preventing, preparing for, and responding to the coronavirus, and are allocated as follows:

- \$1.7 million for the Department, including for necessary operating costs and capital expenses;
- \$56 million from General Treasury Funds for the Essential Air Service program and the Rural Improvement Fund;
- \$10 billion to the Federal Aviation Administration for Grants-in-Aid to public agencies and public use airports, with such funds to be utilized only for purposes directly related to airports, including \$100 million specifically designated for general aviation airports;
- \$250,000 in additional funds for the Federal Railway Administration for “Safety and Operations”
- \$150,000 of Federal Motor Carrier Safety Administration Safety and Operations Program funds, including from SAFETEA-LU, which have been repurposed here;
- \$492 million to Amtrak for activities in the Northeast Corridor and \$529 million for activities in the national network;
- \$25 billion in Transit Infrastructure Grants to the Federal Transit Administration; and
- \$3 million to the Federal Maritime Administration, including \$1 million to the U.S. Merchant Marine Academy and \$1 million for State Maritime Academy Operations.

While the Act is certainly a general-purpose statute for a wide range of industries, Congress’s decision to support many logistics stakeholders highlights how important the supply chain and transportation — in particular the airline industry — are in resolving the issues brought upon the country by the coronavirus pandemic. For more information on this or other supply chain, transportation, or logistics subjects, please contact [Ronald Leibman](#), Chair of McCarter’s Supply Chain, Logistics, and Transportation Group and a member of the Firm’s COVID-19 Task Force. For more information on the pandemic’s effects on business and the law, please visit McCarter’s [Coronavirus Resource Center](#).