LEGISLATIVE

Senate Committee Passes FY20 MARAD Authorization Bill

On May 14, 2019, Commerce Committee Chairman Wicker (R-MS) and Ranking Member Cantwell (D-WA) introduced the Maritime Administration Authorization and Enhancement Act of 2019, which authorizes MARAD appropriations for fiscal year 2020. Included in the bill is $600 million for the Port Operations, Research and Technology Act, which makes grants for port and intermodal projects available. The bill stipulates that “no funds shall be used for a grant award to purchase fully automated cargo handling equipment that is remotely operated or remotely monitored with or without the exercise of human intervention or control, if the Secretary determines such equipment would result in a net loss of jobs that relate to the movement of goods through a port and its intermodal connections.” Additionally, it provides $33 million for the Title XI loan guarantee program and $40 million for the Small Shipyard Grant Program.

The bill was referred to the Senate Commerce, Science, and Transportation Committee and passed the Committee on May 15, 2019.

House Appropriations Subcommittee Approves Draft THUD Funding Bill

The House Appropriations Subcommittee on Transportation, and Housing and Urban Development, and Related Agencies on May 23, 2019 approved draft legislative text for the fiscal year 2020 THUD appropriations bill. Although the $75.8 billion proposal is $4.7 billion higher than fiscal year 2019 levels, proposed funding for the U.S. Department of Transportation has actually decreased, totaling $25.3 billion, $1.2 billion below FY19 enacted levels.

The bill includes $1 billion, a $100 million increase compared to FY19, for the BUILD grant program and $350 million, a $95 million increase, for the CRISI grant program. It also provides $225 million for the Port Infrastructure Grant Program, less than FY19, but removes the FY19 set aside for the 15 coastal seaports that handled the greatest number of loaded foreign and domestic TEUs in 2016, with priority given to projects that “construct treatment facilities defined in section 305.1 of title 7, Code of Federal Regulations.”

The House THUD Subcommittee also included in this draft a number of policy riders, or provisions unrelated to traditional appropriations bills. The bill mandates that the Federal Motor Carrier Safety Administration not use any funds made available to them to “review and issue a decision on a petition to preempt State meal and rest break laws that may
differ from those in 49 C.F.R. 395." The bill also includes a provision that would require rear underride guards be inspected annually.

Additionally, the bill prohibits FMCSA from using any of funds to “promulgate or enforce a rule that eliminates the 30-minute rest break specified in part 395 of title 49, Code of Federal Regulations, as it was in operation effect on May 15, 2019.” In April 2018, FMCSA issued an advanced notice of proposed rulemaking seeking public comment on various portions of existing hours of service regulations, including the potential of eliminating the 30-minute rest break. FMCSA concluded that process in early-2019 and has indicated that a notice of proposed rulemaking could be published in June 2019. This provision would prevent FMCSA from eliminating the break, regardless of the results of the ANPRM process.

The bill would require FMCSA to make publicly available information regarding analysis of violations developed under the Compliance, Safety, Accountability program “consistent with the data that the agency made publicly available immediately before December 4, 2015” (when the Fixing America’s Surface Transportation Act was signed into law). The bill notes that this should be implemented “notwithstanding any restriction under part II of subtitle B of title V of the FAST Act.” The FAST Act hid all Behavior Analysis and Safety Improvement Categories scores from public view until an independent review of the CSA program was conducted and reforms are made. The independent review was completed in June 2017 and found that the program, while conceptually sound, needs improvements and, among other items, directed FMCSA to study the consequences of public knowledge of BASIC scores before making any changes their availability. Reforms to the CSA program are ongoing.

The full Appropriations Committee is scheduled to mark up the bill the on June 4, 2019.

**Legislation Introduced to Establish Freight Transportation Infrastructure Trust Fund**

On May 14, 2019, Congressman Lowenthal (D-CA) reintroduced the National Multimodal and Sustainable Freight Infrastructure Act. The bill would establish the Freight Transportation Infrastructure Trust Fund, funded through a national one percent fee on the cost of transporting goods. The funds collected through this fee would be distributed through two programs: a formula program to provide funds to each state based on the amount of existing infrastructure within the state, and a competitive grant program what would be open to all local, regional, and state governments. According to a press release
by the Congressman’s office, the bill would raise over $10 billion annually for freight infrastructure improvements.

The bill has 12 cosponsors, one Republican, and has been referred to the House Transportation and Infrastructure and Ways and Means Committees.

REGULATORY

**USTR Increases Tariffs on $200 Billion of Chinese Products; Proposes Additional Tariffs**

At the direction of President Trump, the Office of the United States Trade Representative ordered a tariff increase from 10 to 25 percent on a list of Chinese products worth approximately $200 billion, effective May 10, 2019. Chassis and pneumatic truck tires are included in the products that are subject to these duties. The tariff level increase was originally scheduled to go into effect January 1, 2019, but was postponed twice as a result of ongoing trade negotiations between China and the U.S. However, in early-May the White House indicated that China had reneged on major parts of these trade talks and decided to move forward with the increase. In retaliation, China raised tariffs on more than 5,000 U.S. goods, effective June 1, 2019.

On May 21, 2019, USTR submitted a request to the Office of Management and Budget to initiate a process for stakeholders to seek tariff exclusions for certain products on the $200 billion list. USTR expects to begin accepting these exclusion requests around June 30, 2019.

In a separate notice published on May 17, 2019, USTR proposed an ad valorem duty of up to 25 percent on an additional $300 billion worth of Chinese imported goods. According to the notice, the proposed list of 3,805 full and partial tariff subheadings covers “essentially all products not currently covered by action in this investigation” excluding certain pharmaceuticals, rare earth materials, critical minerals, and products from previously released Section 301 tariff lists that were granted exemptions. This new list includes containers (including containers for transport of fluids) specially designed and equipped for carriage by one or more modes of transport as well as transporter cranes, gantry cranes, and bridge cranes. A public hearing on the proposed tariff action will be held June 17, 2019. Requests to appear at the hearing are due June 10 and written comments are due by June 17.

**FMCSA Seeks Comments on Pilot Program for Drivers under 21**

The Federal Motor Carrier Safety Administration published a notice requesting comments on a potential three-year pilot program that would allow 18- to 20-year-old non-military
drivers to operate commercial motor vehicles in interstate commerce. Currently, drivers in this age group are limited to intrastate commerce.

In July 2018, FMCSA initiated an interstate pilot program for certain drivers under 21 with military experience operating heavy duty vehicles. Now FMCSA is considering an additional pilot program open to a broader array of young drivers. To help FMCSA determine whether it should propose this younger driver pilot program and what parameters should be considered, the Administration is seeking comments on topics including requirements for training, qualifications, driving limitations, and vehicle safety systems.

The American Trucking Associations applauded FMCSA for this first step toward a pilot program for younger drivers, while the Owner-Operator Independent Drivers Association and the International Brotherhood of Teamsters voiced their opposition. Comments on the potential pilot program are due by July 15, 2019.

**STB Holds Public Hearing on Demurrage and Accessorial Charges**

On May 22 and 23, 2019 the Surface Transportation Board held a public hearing on demurrage and accessorial charges in the rail industry. STB members heard from 12 panels composed of representatives from Class I railroads, shippers, warehouse and terminal operators, and other industry stakeholders.

All seven Class I railroads testified, as directed by STB, and provided data on their respective revenues from demurrage and accessorial charges as well as their dispute and credit processes. The railroads stated that they do not view these charges as a tool to generate revenue, but instead as a means to incentivize their customers to act efficiently in order to promote network fluidity. They highlighted their dispute resolution mechanisms and offered suggestions for avoiding charges such as expanding operating capacity or increasing business hours.

Shippers and intermediaries expressed frustration with the current system, stating that they felt they were often charged for situations out of their control. Some of the main issues they brought up were related to railcar bunching (when railcar deliveries to shippers are not spaced out properly), pre-billing reviews to ensure invoice accuracy, amount of free time before charges are issued, and limitations on the use of credits issued when railways are determined to be at fault for a delay.

STB members asked witnesses many questions about their experiences with demurrage and accessorial charges. They questioned railroads on the breakdown between compensation and penalty in their fees, under what circumstances credits are issued, and how and when they assess the accuracy of their invoices. Shippers were asked to
discuss steps they have taken to not incur charges, their suggestions for credit use flexibility and first- and last mile improvements.

**FMCSA and NHTSA Seek Comments on Automated Driving Systems Implementation**

The Federal Motor Carrier Safety Administration and the National Highway Traffic Safety Administration each published an advanced notice of proposed rulemaking on May 22, 2019 regarding automated driving systems.

FMCSA’s ANPRM seeks comments on changes to its current regulations that may be necessary to facilitate automated driving systems, especially to account for differences between these systems and human operators. In the ANPRM, FMCSA responds to comments received following a March 2018 request for comment on this topic. They are now seeking input on questions related to requirements of human drivers; commercial driver’s license endorsements; Hours of Service rules; medical qualifications; distracted driving; safe driving, inspection, repair, and maintenance; roadside inspections; and cybersecurity.

NHTSA requests comments on existing Federal Motor Vehicle Safety Standards that could pose a barrier to the deployment of automated driving systems. Additionally, NHTSA is seeking input on how compliance with the FMVSS could be measured when vehicles lack steering wheels, brake pedals, and other conventional controls.

Comments on both ANPRMs are due July 29, 2019.