

Transportation Update

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Top Stories

8/1/18 – The Senate [passed](#), 92-6, its FY 2019 transportation appropriations bill with \$26.6 billion in discretionary funding for the Department of Transportation (DOT). Under the legislation, the Federal Aviation Administration (FAA) would receive \$17.7 billion in "total budgetary resources," highways would get \$45 billion plus a \$3.3 billion transfer from the general fund, Amtrak would receive \$1.9 billion and transit would receive \$9.9 billion in formula grants plus an additional \$800 million injection from the general fund. The Federal Transit Administration's (FTA) Capital Investment Grant program would receive \$2.6 billion. BUILD grants would be funded at \$1 billion. One amendment the Senate included was to prevent FTA from using funding to execute policies that forbid federal loans from being used by state and local governments as local contributions (see below).

7/23/18 – Housing Transportation and Infrastructure Committee Chairman Representative Bill Shuster (R-Penn.), [released](#) a 108-page "infrastructure proposal" he hopes can serve as a "discussion draft" intended to "further the national conversation about the current state of America's infrastructure and highlight some of the major roadblocks to funding and improving our transportation network." The proposal includes particular focus on several key surface transportation issues, including an increase to federal motor fuel taxes on gasoline and diesel by 15 and 20 cents, respectively, then indexing those taxes for inflation. However, those fuel taxes would be completely phased out after 10 years. Second, to further address near-term revenue shortfalls in the Highway Trust Fund, the proposal would create "new levies" on electric vehicles and bicycles—a 10 percent fee on the wholesale price of electric vehicle batteries and a 10 percent user fee on the wholesale price of adult bicycle tires—as well as reinstate the 4.3 cent per gallon fuel tax on diesel fuel (indexed to inflation) used by passenger

trains eligible for funding under certain federal public transportation programs. Third, the proposal would extend the Fixing America's Surface Transportation or FAST Act of 2015 by one year through FY 2021. On the project delivery side of the equation, the proposal would statutorily codify the "One Federal Decision" executive order from the administration, while expanding categorical exclusion under the National Environmental Policy Act (NEPA) to apply to all transportation projects, beyond just highway and multimodal projects.

7/16/18 – The FTA [issued](#) a request for comment on "What is a federal project?" Specifically, the FTA was inviting comment on "how it defines a 'federal project' and the effects of that definition on project implementation." Comments are to be submitted outside of the federal register system using a specifically designated website where comments can also support other submissions through a process of upvoting. Additional questions include how the agency should examine the impact of federal requirements on private participation, project delivery and cost, including NEPA, Buy America and procurement rules.

7/6/18 – The U.S. Court of Appeals for the District of Columbia [rejected](#) a challenge to the FAA's rule regulating small drones, often referred to as the [Part 107 rule](#), noting in its decision that the ability to regulate is well within the agency's purview.

7/2/18 – The Environmental Protection Agency and the National Highway Traffic Safety Administration (NHTSA) issued a proposed rulemaking, the ["Safer Affordable Fuel-Efficient \(SAFE\) Vehicles Rule for Model Years \(MY\) 2021-2026 Passenger Cars and Light Trucks,"](#) to amend existing Corporate Average Fuel Economy (CAFE) standards and motor

vehicle greenhouse gas (GHG) emission requirements. Specifically, NHTSA is tasked with promulgating CAFE standards, while the EPA is tasked with regulating tailpipe greenhouse gas emissions from vehicles. This proposal acts on that April announcement, requesting comments on [various options to amend the existing standards](#), including a “preferred scenario” that would freeze fuel economy standards at 2020 levels for vehicle model years 2021-2027 at an average of 37 mpg, as well as a revocation of California’s Clean Air Act Section 209 waiver. For more information, read [NCSL’s Info Alert](#).

6/29/18 – The FTA is shifting how it views loans used by states to represent the state share of a project. FTA Administrator Jane Williams [wrote](#) that the FTA will no longer allow federal transit grant recipients to count a federal loan as their portion of the non-federal project share, even though such loans are paid back with state or local funds. Such a change could have a significant impact on the demand for TIFIA loans, which have been used by states, in the past, to cover the required state share. The change is expected to further slow the development of a new rail tunnel between New Jersey and Manhattan.

From Congress

7/24/18 – The Senate confirmed [Bruce Landsberg](#) and [Jennifer Homendy](#) to the National Transportation Safety Board by voice vote. Landsberg is the former executive director of the AOPA Foundation and president of the AOPA Foundation and the Air Safety Institute. Homendy is a former Democratic staff director of the subcommittee on railroads, pipelines and hazardous materials for the committee on transportation and infrastructure. The board is now returned to its full five-member board.

7/18/18 – House Homeland Security Committee Chairman Michael McCaul (R-Texas) introduced a bill, [H.R. 6401](#), that would grant the Department of Homeland Security (DHS) new counter-drone authorities. The bill’s summary said it would give the DHS power to “prevent emerging threats from unmanned aircraft and vehicles.” Both the DHS and the Department of Justice (DOJ) have urged Congress to grant them relief from Title 18, the law that prohibits the destruction of aircraft. It is unclear if the House bill also would address the DOJ.

Additionally, on June 13, the Senate Homeland Security Committee approved the [Preventing Emerging Threats Act of 2018](#) that would grant the DHS and DO new authority to track and destroy threatening drones. Although the bill does not provide such authority to state law enforcement employees, it does direct both departments to work closely with their state and local counterparts.

6/27/18 – The Senate Commerce Committee approved [Heidi King’s](#) nomination, 14-13, to become the administrator of the National Highway Traffic Safety Administration (NHTSA). King was formerly a chief economist for the House Committee on Energy and Commerce and a regulatory policy analyst in the White House’s Office of Management and Budget from 1998-2000, and from 2007-2011.

From the Administration

8/24/18 – The Federal Railroad Administration (FRA) [awarded](#) \$203.7 million in grant funding for 28 projects in 15 states to assist with the deployment of positive train control (PTC) systems. Of the \$203.7 million, 78 percent (\$159.3 million) went directly to commuter railroad operating agencies, and the remainder went to small freight railroads (though some of that funding is for interoperability with passenger railroads that in some instances may share track with them).

8/24/18 – The FTA [announced](#) \$84.45 million in grant selections through the Low- or No-Emission (Low-No) Grant program, which funds the deployment of transit buses and infrastructure that use advanced propulsion technologies. Fifty-two projects in 41 states will receive a share of the funding.

8/24/18 – The FAA [announced](#) it will award \$616.9 million in airport infrastructure grants, as part of the total \$3.18 billion in FY 2018 Airport Improvement Program (AIP) funding for airports across the United States. This fourth increment of funding provides 242 grants to 226 airports and will fund 408 infrastructure projects. The release follows a July [announcement](#) it will award \$770.8 million under the AIP to airports in 50 states and five territories. Airports receive a certain amount of AIP entitlement funding each year based on

activity levels and project needs. If their capital project needs exceed their available entitlement funds, the FAA can supplement their entitlements with discretionary funding.

8/23/18 – The FRA [reported](#) that railroads have made significant progress on PTC implementation. Two-thirds of the freight rail route miles required to install positive train control technology already have it in operation, according to the report, although just one-quarter of passenger rail route miles have PTC in operation—virtually unchanged from December 2016. Nine railroads are currently considered to be at risk of missing the Dec. 31, 2018 deadline: New Mexico Rail Runner Express (Rio Metro), Capital Metropolitan Transportation Authority, New Jersey Transit, Altamont Corridor Express, Maryland Area Regional Commuter, Trinity Railway Express, South Florida Regional Transportation Authority, Peninsula Corridor Joint Powers Board (Caltrain) and Central Florida Rail Corridor (SunRail). PTC is designed to provide a system capable of reliably and functionally preventing train-to-train collisions, overspeed derailments, incursions into established work zone limits and the movement of a train through a main line switch in the wrong position.

8/21/18 – The Federal Motor Carrier Safety Administration (FMCSA) [released](#) an advanced notice of proposed rulemaking (ANPRM) related to changing hours-of-service (HOS) rules for interstate truck drivers. The ANPRM notes that "areas under consideration for revision include short-haul operations, adverse driving conditions and 30-minute break and split sleeper-berth." The FMCSA also noted that while a separate requirement that interstate truck drivers use electronic logs instead of paper logs to record their hours-of-service "has reached nearly 99 percent," it has also "brought focus to [HOS regulations](#), especially with regard to certain regulations having a significant impact on agriculture and other sectors of trucking." The public will have 30 days to comment on the ANPRM. The agency is also asking for comments on petitions by the Owner-Operators Independent Drivers Association and TruckerNation related to hours of service.

7/25/18 – The FTA [approved](#) rail transit [State Safety Oversight \(SSO\) programs](#) for Arkansas, Louisiana, Texas and Wisconsin. All states with rail systems must obtain certification

by April 15, 2019; this announcement brings the total to 21 out of 30 states that require certification. By federal law, the deadline cannot be waived or extended. The purpose of the SSO program is to oversee safety at rail transit systems.

7/23/18 – The FRA [announced](#) it will propose the maximum civil penalty allowed under the law for 13 railroads that didn't meet positive train control hardware installation or spectrum acquisition milestones required by the end of 2017. The FRA issued similar fines last summer for railroads that didn't meet 2016 benchmarks.

7/18/18 – The FTA published two congressionally-mandated rules on transit safety plans and training. [The first rule](#), which takes effect in July 2019, requires states and some transit systems to develop Public Transportation Agency Safety Plans that include systematic procedures, practices and policies for risk management. Additionally, states and transit systems will have to include in their safety plans performance targets based on the safety performance criteria established under the National Public Transportation Safety Plan, and they must establish a process and timeline for annual reviews and updates of the plan. The [second rule](#) reduces the minimum number of training hours required for federal and state transit safety auditors and personnel and contractors who conduct safety audits and examinations of transit systems and for those responsible for safety oversight. That rule takes effect in one month.

7/18/18 – The DOT inspector general [issued](#) a report finding that NHTSA's process for monitoring vehicle recalls has been "inadequate" as a result of poor documentation and management controls. The report stated that "the Agency also does not verify recall completion rates, although it has the authority to do so." Further, the report noted that even after NHTSA's authority was expanded following the Takata airbag recalls in 2015, NHTSA "did not follow its own procedures to address low recall completion rates for earlier Takata recalls."

7/16/18 – The Federal Transit Administration (FTA) [published](#) a notice announcing FY 2018 apportionments and allocation for all of its major formula grant programs. It also provides priorities

for programs in FY 2018 and describes plans for several competitive programs.

7/2/18 – The Federal Highway Administration (FHWA) [released](#) its Highway Freight Conditions and Performance Report to Congress, as required by the Fixing America's Surface Transportation (FAST) Act. The report, the first ever issued by the FHWA on the National Highway Freight Network (NHFN), uses data from FHWA's Freight Performance Measurement program to analyze the impacts of congestion and determine the operational capacity and efficiency of key freight routes throughout the United States. The latest data shows the National Highway System is handling a record amount of freight, with trucks moving nearly 60 percent of the nation's total freight volume (representing 30 million tons), and close to 70 percent of total freight value (representing about \$34 billion), each year.

7/2/18 – The FHWA [announced](#) the distribution of FY 2018 funding for the Ferry Boat Program by state and ferry service.

6/29/18 – The FHWA gave [advance notification](#) of anticipated FY 2019 federal-aid highway apportionments to be apportioned on Oct. 1, 2018. The notice also provides procedures for states to opt out of the Recreation Trails Program to designate certain funds for border infrastructure projects.