

March 26, 2020

Practice Group(s):

Maritime

*Public Policy and
Law*

COVID-19: Impacts to Transportation & Logistics

By Darrell L. Conner, Mark Ruge, Brody Garland, Elle M. Stuart

The search for legislative solutions to the global COVID-19 outbreak continued this week, as Congress attempted to provide stability to a staggering economy, and stimulate growth for the multitude of sectors affected by the economic halt. After a tumultuous week of negotiations, highlighted by contentious Senate floor debates and multiple closed-door meetings between Secretary Mnuchin and Senate leadership, lawmakers agreed to the framework for a third COVID-19 stimulus package early Wednesday morning. After repeated failed attempts to secure enough votes for a [stimulus bill](#) driven by Majority Leader McConnell, House Democrats countered with a competing [\\$2.5 trillion bill](#) of their own, before finally signaling support for [H.R. 748](#), the Coronavirus Aid, Relief, and Economic Security Act. The Senate advanced the bill late Wednesday evening by a unanimous 96-0 vote. The House is hoping to clear the bill by voice vote on Friday.

Notably, the proposed bill would include: direct payments to individual taxpayers, expansion of unemployment benefits, \$349 billion for a small-business interruption loan program, and \$500 billion for the Department of Treasury's Exchange Stabilization Fund, which will provide loans, loan guarantees, and other investments to distressed facilities.

Transportation related investments in the bill include both direct grants and loans/loan guarantees. Grants are provided for the exclusive use of paying employee wages, salaries and benefits, and includes:

- \$25 billion for passenger air carriers;
- \$4 billion for air cargo carriers; and
- \$3 billion for contractors (airport security, baggage handling, catering services, etc.).

Within the Treasury's Stabilization Fund, \$46 billion in loans and loan guarantee payments will be set aside for the aviation sector, including:

- \$25 billion for passenger air carriers;
- \$4 billion for air cargo carriers; and
- \$17 billion for businesses critical to maintaining national security.

Other transit related appropriations in the package include:

- \$454 billion in loans/loan guarantees for other facilities established by the Federal Reserve;
- \$25 billion for Public Transit Infrastructure Grants;
- \$10 billion in AIP grants for publically-owned, commercial airports;
- \$56 million for the Essential Air Service program;
- \$100 million for Transportation Security Administration, Operations and Support;
- \$141 million for Coast Guard, Operations and Support;

COVID-19: Impacts to Transportation & Logistics

- \$1 billion for Amtrak; including \$492 million for Northeast Corridor Grants;
- \$250 thousand for Federal Railroad Administration, Safety and Operations;
- \$150 thousand for Federal Motor Carrier Safety Operations and Programs;
- \$3.1 million for Maritime Administration Operations; and
- \$1 million for State Maritime Academy Operations.

In addition to direct appropriations, the Phase III relief package includes the following transportation related provisions:

Continuation of Certain Air Service

Authorizes the Secretary of Transportation to require, to the extent reasonable and practicable, an air carrier receiving loans and loan guarantees to maintain scheduled air transportation service as deemed necessary to ensure services to any point previously served by that carrier.

Suspension of Certain Aviation Excise Tax

Establishes an “excise tax holiday period” on taxable transportation by air, beginning after the date of the enactment, and ending before January 1, 2021.

REAL ID Implementation

Extends the deadline for states to meet the requirements of the REAL ID Act to not earlier than September 30, 2021.

Highway Safety Grants Emergency Authority

Permits states to issue special permits for overweight vehicles and loads to allow for the free flow of critical relief supplies for the duration of the fiscal year.

Critical Infrastructure Funding

Provides \$9.1 million for the Cybersecurity and Infrastructure Security Agency for support of interagency critical infrastructure coordination.

Harbor Maintenance Trust Fund

Modifies estimates for discretionary appropriations derived from the Harbor Maintenance Trust Fund.

For more in-depth analysis on the legislation, the KL Gates Hub has commentary [here](#). A breakdown of previous congressional actions related to COVID-19 can be viewed below:

Coronavirus Preparedness and Response Supplemental Appropriations Act
(Public Law No: 116-123)

- [Full Text](#)

COVID-19: Impacts to Transportation & Logistics

- [Analysis](#)

Families First Coronavirus Response Act
(Public Law No: 116-127)

- [Full Text](#)
- [Analysis](#)

In addition to legislative action, we are tracking the following regulatory and industry developments related to transportation and logistics:

Ports/Logistics

The vast majority of port operations continue to function under normal conditions after being deemed essential businesses. Notable port developments include the following:

- Representatives Jerrold Nadler (D-NY) and Albio Sires (D-NJ) have both called for emergency financial assistance for the Port Authority of New York and New Jersey in a letter to congressional leadership.
- Low cargo volumes have triggered the closure of the Port of Baltimore's only dedicated container terminal, Seagirt Marine Terminal, for two additional days at the end of March.
- Terminal operators in the ports of Los Angeles, Long Beach, and Oakland Tuesday will begin delaying the start of their night shift by one hour so cargo-handling equipment can be sanitized.
- Essential staff supporting the ports of Los Angeles and Long Beach, including longshore workers and drayage drivers are exempt from California Governor Gavin Newsom's shelter-in-place order.
- Gene Seroka, Executive Director of the Port of Los Angeles, said that the port is running at about 80% of normal volume, and the difference is China's manufacturing capacity.
- The International Longshore & Warehouse Union (ILWU) and the Pacific Maritime Association, which represents shipping lines and terminal operators, have worked out their own safety protocol, which includes social distancing and reliance on electronic dispatching.
- The Port of Oakland reaffirmed its status as a provider of essential services, and ILWU Local 10 tweeted it will be taking safety precautions while it continued to move cargo.
- The Port of Charleston in South Carolina is exempt from a stay-at-home order issued by the mayor of Mount Pleasant, where the Wando Welch Terminal is located.
- The Ports of Virginia, Wilmington, Charleston, Jacksonville, and Everglades are all operating at normal hours.
- Terminals at the ports of Seattle and Tacoma were all operating normally this week, had no confirmed cases of the COVID-19 and, for the time being, had enough disinfecting supplies.
- In Savannah, Saturday terminal gate hours have been canceled through mid-April.

COVID-19: Impacts to Transportation & Logistics

- New Jersey Governor Phil Murphy announced the closure of non-essential businesses, but port workers have not been affected.
- The Association of Bi State Motor Carriers, the largest trucker group in New York-New Jersey, said marine terminal operators and the Port Authority of New York and New Jersey have implemented a variety of trucker safety changes.

Air Traffic Control Facilities

An interactive map of all Federal Aviation Administration Air Traffic Control facilities affected by the COVID-19 crisis can be viewed [here](#).

U.S. Coast Guard (USCG)

To mitigate the impact to the seafarers and the industry caused by COVID-19, the Coast Guard has taken the following actions: postponed testing at Regional Exam Centers and Monitoring Units, extended all Merchant Mariner Credentials and Medical Certificates that expire between March 1, 2020 and July 31, 2020, and relaxed requirements for Pilot Annual Physical examinations. More on the actions taken regarding mariner credentialing can be viewed [here](#). Additionally, the USCG issued further clarification and guidance related to Declarations of Security, Declarations of Inspection, Seafarer's Access, Waste Reception Facilities, and COA Waivers. More information on the latest release can be viewed [here](#).

Department of Defense

The Navy has been preparing both its hospital ships, Mercy and Comfort, to aid in responding to the COVID-19 pandemic. The Mercy departed San Diego on Monday with 800 Navy medical personnel and 70 civilian mariners aboard. President Trump announced during a White House briefing that the ship would go to Los Angeles, while the Comfort is expected to go to New York after undergoing maintenance. The Phase III stimulus bill included \$260 million for Navy operations and maintenance to support their deployment.

Trucking Industry

In addition to the [national emergency declaration](#) providing hours-of-service regulatory relief to commercial vehicle drivers transporting emergency relief in response to the nationwide COVID-19 outbreak, the Federal Motor Carrier Safety Administration issued [a waiver](#) from certain regulations applicable to interstate and intrastate commercial driver's license, commercial learner's permit holders, and interstate drivers operating commercial motor vehicles.

DHS Critical Industry Designation

Earlier this week, the Cybersecurity and Infrastructure Security Agency released a technical update to clarify the description of a small number of essential services and functions identified in its list of "Essential Critical Infrastructure Workers". The updated list can be viewed [here](#).

COVID-19: Impacts to Transportation & Logistics

State Responses

Several governors have issued statewide stay-at-home orders placing restrictions on non-essential movement and non-essential business operations:

[California](#), [Connecticut](#), [Delaware](#), [Hawaii](#), [Illinois](#), [Indiana](#), [Kentucky](#), [Louisiana](#), [Maryland](#), [Massachusetts](#), [Michigan](#), [Nevada](#), [New Jersey](#), [New Mexico](#), [New York](#), [Ohio](#), [Oregon](#), [Pennsylvania](#), [Virginia](#), [Washington](#), [Wisconsin](#), [West Virginia](#)

As the crisis continues, representatives from several affected industries have been advocating for direct government intervention. Recent efforts have included the following:

Airlines

The latest stimulus package promises to deliver \$58 billion in grants, loans, and loan guarantees to domestic airlines and air cargo carriers, matching the nearly \$60 billion previous request from the industry.

Airports

The nation's airports would receive \$10 billion in grants under the most recent Senate proposal, equaling the amount they requested last week from lawmakers. According to draft text, \$3.7 billion would be split between commercial airports based on how many passengers boarded planes in 2018, with another \$3.7 billion allocated to airports based on their debt. Airports that serve private, small, and charter planes would receive \$100 million. U.S. airports have estimated that their facilities could lose almost \$14 billion in revenue because of the virus's harm to the transportation industry.

Ports

The American Association of Port Authorities is reportedly seeking \$6.5 billion in grants and direct assistance in the wake of a steep decline in port and cruise line traffic as a result of the advance of COVID-19, according to a letter to congressional leaders. The group is asking for \$1 billion in port grants, \$1 billion in direct assistance, and \$4.5 billion for federal navigation channel improvement and maintenance projects.

Public Transit

The latest proposal from the Senate includes \$25 billion in grants for public transit systems, with \$4 billion of that marked for rural areas only, alongside \$1 billion for Amtrak, with roughly half earmarked for the Northeast Corridor. The nation's largest public transit agencies said Monday that they need at least \$25 billion in federal aid to survive the impact the coronavirus pandemic has had on their systems.

Auto Industry

The auto industry is escalating its push for assistance to help weather the impact of a global pandemic that has halted or will soon stop production at 42 out of 44 plants that assemble vehicles in the country. The closures are expected to affect over 164,000 workers. In a letter to congressional leadership, the industry urged Congress to create a pool of loans and loan

COVID-19: Impacts to Transportation & Logistics

guarantees to help large, medium, and small companies as part of economic stimulus plans being negotiated in Washington.

List of Agency Actions

Finally this week, Republican Members of the House Transportation & Infrastructure Committee released a resource guide of relevant agency actions that have been taken during the COVID-19 crisis. The full list can be viewed [here](#).

Authors:

Darrell L. Conner

Darrell.conner@klgates.com

+1.202.661.6220

Mark Ruge

Mark.ruge@klgates.com

+1.202.661.6231

Brody Garland

Brody.garland@klgates.com

+1.202.778.9189

Elle M. Stuart

Elle.stuart@klgates.com

+1.202.778.9081

K&L GATES

K&L Gates is a fully integrated global law firm with lawyers located across five continents. The firm represents leading multinational corporations, growth and middle-market companies, capital markets participants and entrepreneurs in every major industry group as well as public sector entities, educational institutions, philanthropic organizations and individuals. For more information about K&L Gates or its locations, practices and registrations, visit www.klgates.com.

This publication is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.

©2020 K&L Gates LLP. All Rights Reserved.