

# Issue Brief for Congress

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## Transportation Issues in the 108<sup>th</sup> Congress

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## Transportation Issues in the 108<sup>th</sup> Congress

### SUMMARY

This issue brief identifies key transportation issues facing the 108<sup>th</sup> Congress.

**Transportation Budget.** **Transportation Budget.** The Administration has requested \$53.9 billion for the Department of Transportation for FY2004, or 4% less than comparable funding for FY2003 (\$56.1 billion, excluding funds for programs transferred to the Department of Homeland Security in FY2003).

**Surface Transportation Reauthorization.** Authorizing legislation for the existing federal highway and transit programs will expire at the end of FY2003. Reauthorization of these programs will be considered in the 1<sup>st</sup> Session of the 108<sup>th</sup> Congress.

**Aviation Reauthorization.** The authorization for key functions of the Federal Aviation Administration (FAA) will expire at the end of FY2003. The FAA recently released its proposals for reauthorization. The FAA's bill, the Centennial of Flight Aviation Authorization (FLIGHT-100), provides for essentially flat funding during the next four years. The 108<sup>th</sup> Congress will likely address the issue of reauthorization for FAA programs beyond FY2003.

**Transportation Security.** Since September 11, 2001, transportation security has emerged as a key policy issue for Congress. The overarching issue for the 108<sup>th</sup> Congress is what reasonable security actions can be taken in each transportation mode without excessively impeding commerce and travel. Congress continues to consider legislative proposals to strengthen aviation and surface transportation security.

**Amtrak Issues.** The 108<sup>th</sup> Congress will have to reach agreement on the size of Amtrak's annual appropriation. Amtrak has stated that it needs about \$2 billion annually through FY2008. In FY2003, Amtrak is set to receive \$1.05 billion, plus a \$105 million loan repayment extension, which is considerably more than the Administration's FY2003 request of \$521 million. Because Amtrak's authorization expired at the end of FY2002, Congress is also likely to take up reauthorization. In doing so, it may consider the future of the railroad, including Amtrak's long-haul routes.

**Airline Industry Turmoil.** The war in Iraq and, more recently, the outbreak of a virus known as Severe Acute Respiratory Syndrome (SARS) have dramatically affected the airline industry. Air travel has dropped approximately 10% and advance bookings for the months ahead appear to be dropping by about 30%. All of this is happening against the backdrop of the events of September 11<sup>th</sup>, which also had a huge negative impact on the industry. The airlines lost record amounts of money in 2002, which followed what had been the previous record loss experienced in 2001. Congress has proposed providing some short-term relief for the ailing airline industry.

**Environmental Issues.** The 108<sup>th</sup> Congress may consider, either through oversight or in connection with surface transportation reauthorization, several environmental issues related to transportation. These include the conformity of transportation plans with the Clean Air Act, implementation of more stringent regulations on diesel engines and fuel, and alternative fuels and vehicles programs.



## **MOST RECENT DEVELOPMENTS**

Congress passed the Omnibus FY2003 Appropriations bill (H.J.Res. 2) on February 13, 2003, and the President signed the resolution on February 20, 2003. It provides a total of \$64.6 billion for the Department of Transportation. Highway spending was set at \$32.6 billion, or \$8.5 billion more than the Administration request. In an effort to keep total non-defense spending in line with the Administration's request, the act included a 0.65% across-the-board cut. Amtrak is set to receive \$1.05 billion (plus a \$105 million loan repayment extension), which is considerably more than the Administration's FY2003 request of \$521 million.

For FY2004, the Administration has requested \$53.9 billion for DOT, 4% less than the comparable figure for FY2003 (\$56.1, excluding funds for the Coast Guard and the Transportation Security Administration, which were transferred to the Department of Homeland Security in FY2003). The major difference is a proposed 7% reduction in funding for the Federal Highway Administration (FHWA), from \$32.6 billion to \$30.4 billion.

## **BACKGROUND AND ANALYSIS**

### **Introduction**

This issue brief provides an overview of key issues on the transportation agenda of the 108<sup>th</sup> Congress. The issues are organized under the headings of budget, highway and transit reauthorization, aviation reauthorization, transportation security, Amtrak, airline industry financial turmoil, and environmental issues, with the author of each issue identified. Relevant Congressional Research Service (CRS) reports are cited in the text. Consult the CRS Home Page [<http://www.crs.gov/>] or the *Guide to CRS Products*, or call CRS on (202) 707-5700 to obtain the cited reports or identify materials in other subject areas.

### **Budget**

#### **Transportation Budgeting**

The Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21)(P.L. 105-178) enacted in late 1998, changed the way the highway trust fund relates to the Federal Unified Budget. First, it created new budget categories and, second, it set statutory limitations on obligations. The Act amended the Balanced Budget and Emergency Deficit Control Act of 1985 to create two new budget categories: highway and mass transit. The Act further amended the budget process by creating a statutory level for the limitation on obligations in each fiscal year from FY1999 to FY2003. In addition, TEA-21 provided a mechanism, revenue aligned budget authority (RABA), to adjust these amounts in the highway account, but not the transit account, so as to correspond with increased or decreased receipts in highway generated revenues.

The net effect of the changes was to set a predetermined level of funding for core highway and transit programs, referred to in TEA-21 as a discretionary spending guarantee. These categories are separated from the rest of the discretionary budget in a way that prevents the use of funds assigned to these categories for any other purpose. These so called “firewalls” were viewed, in the TEA-21 context, as guaranteed and/or minimum levels of funding for highway and transit programs. Additional funds above the firewall level could be made available for highway and transit programs through the annual appropriations process, but for the most part this has not occurred.

The Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century (FAIR21 or AIR21)(P.L. 106-181) provides a so-called “guarantee” for Federal Aviation Administration (FAA) program spending. The guarantee for aviation spending, however, is significantly different from that provided by TEA-21. Instead of creating new budget categories, the FAIR21 guarantee rests on adoption of two point-of-order rules for the House and the Senate. Supporters of FAIR21 believe the new law requires significant new spending on aviation programs; and, for at least the FY2001 appropriations cycle, new spending was significantly higher. Most observers view the FAIR21 guarantees, however, as being somewhat weaker than those provided by TEA-21. Congress can, and sometimes does, waive points-of-order during consideration of legislation. Enactment of TEA-21 and FAIR21 means that transportation appropriators now have total control only over spending for the Coast Guard (now in the Department of Homeland Security, together with the Transportation Security Administration), the Federal Railroad Administration (including Amtrak), and a number of smaller DOT agencies. All of these agencies are concerned about their funding prospects in a constrained budgetary environment. Also, all of these funding mechanisms are subject to review as part of the surface transportation and aviation reauthorization bills likely to be considered in the 108<sup>th</sup> Congress. For more information, see CRS Report RL31665, *Highway and Transit Program Reauthorization* and CRS Report RS20177, *Airport and Airway Trust Fund Issues in the 106<sup>th</sup> Congress*. (CRS contact: John Fischer.)

## Department of Transportation Appropriations

Appropriations for the Department of Transportation (DOT) (Function 400 in the federal budget) provide funding to a variety of programs that include regulatory, safety, research, and construction activities. Money for over half of DOT programs comes from highway fuel taxes, which are credited to the highway trust fund. In turn, the trust fund supports two accounts: the federal-aid highway account and the mass transit account. Aviation programs are also supported, in part, by fuel taxes but rely more heavily on other user fees such as the airline ticket tax. The DOT annual appropriations also include significant monies from Treasury general-fund revenues.

DOT appropriations for FY2003 were part of an Omnibus FY2003 Appropriations bill (H.J.Res. 2/P.L. 108-7) which Congress passed on February 13, 2003 and the President signed on February 20, 2003. It provided a total of \$64.6 billion for the Department of Transportation (see **Table 1**), \$9.4 billion more than the Administration’s FY2003 request; two major differences were \$8.5 billion more in highway spending and \$529 million more for Amtrak (see below for more discussion of Amtrak issues). In an effort to keep total non-defense spending in line with the Administration’s request, the act included a 0.65% across-the-board cut (the numbers in **Table 1** do not reflect that cut).

The Administration requested \$53.9 billion for DOT for FY2004, 4% less than the comparable figure for FY2003 (the FY2003 DOT appropriation included funds for the Coast Guard and the Transportation Security Administration, which were transferred to the Department of Homeland Security during FY2003 and are not part of DOT's FY2004 appropriation request). The major difference is a 7% reduction in funding requested for the Federal Highway Administration.

**Table 1** shows funding for FY2003, as well as the FY2004 amounts proposed by the Bush Administration and Congressional action to date. For more information see CRS Report RL31008, *Appropriations for FY2003: Department of Transportation and Related Agencies*. (CRS contact: D. Randy Peterman.)

**Table 1. Department of Transportation Appropriations\***  
(for selected agencies, in millions)

Agency	Enacted FY2003	Requested FY2004	House Committee	Senate Committee	Enacted FY2004
Federal Highway Administration	32,617	30,412			
Federal Aviation Administration	13,578	14,007			
Federal Transit Administration	7,226	7,226			
Federal Railroad Administration	1,269	1,089			
National Highway Traffic Safety Administration	437	665			
Federal Motor Carrier Safety Administration	307	447			
Office of the Secretary	175	210			
Office of the Inspector General (OIG)	57	55			
Surface Transportation Board (STB)	18	18			
Budgetary Resources Net Grand Total	56,095	53,924			

\* The Maritime Administration is part of the DOT but is not included in the DOT appropriations bill. The United States Coast Guard and the Transportation Security Administration were included in the DOT appropriations bill through FY2003; they were transferred to Department of Homeland Security during FY2003 (P.L. 107-296), and so are no longer included in DOT's appropriation. For comparison purposes, their FY2003 numbers have been deleted from this table.

Source: Figures in **Table 1** are drawn from tables provided by the House Committee on Appropriations, except for "Requested FY2004" figures, which are from the President's budget request. Some figures include offsetting collections. Enacted FY2003 figures will be reduced by a 0.65% across-the-board cut, which will reduce the Net Grand Total to approximately \$55,730 million.

## Surface Transportation Reauthorization

### Highway and Transit Program Reauthorization Issues

Authorizing legislation for the existing federal highway, highway safety, and transit programs will expire at the end of FY2003. Reauthorization of these programs is likely to be considered in the 1<sup>st</sup> Session of the 108<sup>th</sup> Congress. The Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21)(P.L.105-178 & P.L. 105-206) provided for a dramatic increase in funding for federal surface transportation programs. This was in large part the result of a successful effort to link the revenue stream for the highway trust fund to significant increases in spending for the highway, highway safety, and transit programs. The total TEA-21 authorization was about 40% more than the amount that had been authorized in the previous 6-year program authorization. Further, a mechanism created by TEA-21, RABA, has provided the program with an additional \$9.1 billion over TEA-21's 6-year life.

From the public's perspective, the surface transportation reauthorization is taking place against the backdrop of growing concern about congestion and sprawl in urbanized areas, and increased concern about maintaining access to the national system in rural areas. The congressional debate that will take place as part of the highway and transit program reauthorization process in the 108<sup>th</sup> Congress is shaping up primarily as a debate about money. Given the large increase in funding made available by TEA-21, there appears to be an expectation in some quarters that the reauthorization under discussion should also provide for a large increase in funding. Much of the lobbying in preparation for reauthorization is predicated on the belief that some significant level of new funding can be identified for the highway, highway safety, and transit programs. Given the existing state of the economy and concerns about the costs associated with the war on terrorism and a possible war with Iraq, such a conclusion, however, is far from foregone. In fact, the Bush Administration FY2004 budget proposal suggests that the Administration will propose only a limited increase in funding over the reauthorization period as part of its proposal due out next month.

The money question aside, there appears to be very little interest in making major changes to the overall structure of the highway, highway safety, and transit programs. Rather, the interest appears to be in tweaking these programs to allow spending for some additional activities and perhaps adding some new stand alone programs or consolidating several traffic safety programs into a single program. Among the issues likely to be considered are: allowing states greater flexibility in how they use their transportation funds; retention of the existing highway trust fund funding framework established by TEA-21; financial assistance for physical infrastructure security; streamlining of environmental evaluations required by the project approval process; a new categorical grant program for highway safety; and an increased focus on reducing drunk driving and increasing seat belt use. For more information see: CRS Report RL31665, *Highway and Transit Program Reauthorization*. (CRS contact: John Fischer.)

**Transit.** The Administration's FY2004 budget request for FTA reflects changes that the Administration will seek in its reauthorization bill. Foremost among these is a proposal to eliminate the Bus and Bus Facilities Program and divide its funding (\$607 million in FY2003) between the Urbanized Areas Formula Program and the New Starts Program. This would eliminate the largest discretionary FTA program and reduce the overall amount of money available annually for purchase of buses and bus facilities, while increasing the amount of funding available for new and enlarged fixed guideway systems (including bus rapid transit systems). (CRS contact: D. Randy Peterman.)

**Congestion.** There are few individuals living near major urbanized areas who could honestly claim to be unaffected by congestion-caused delays. In the last several decades there have been numerous attempts to reduce traffic congestion, primarily at the state, local, and regional levels. DOT has often provided funding for specific projects, and has offered the expertise of its employees in the battle against congestion. The crux of federal transportation spending, however, has been and continues to be aimed at overall infrastructure improvement, while air quality improvement, congestion improvement, and other issues essentially have been secondary goals. There is a sense that there is no one good solution to congestion problems and that successful congestion reduction strategies require multiple remedies. New infrastructure alone, at the level currently being constructed, has not been able to stay ahead of the congestion problem. Efforts aimed at alleviating congestion by changing individual travel behaviors have also been largely unsuccessful. During the

108<sup>th</sup> Congress' reauthorization discussion, congestion issues can be expected to play a major role. (CRS contact: John Fischer.)

## Environmental Issues

The use of federal highway funding to mitigate the environmental impacts of surface transportation will be a likely topic of discussion in the reauthorization of TEA-21. The law authorized over \$12 billion for several environmental programs. The majority of this funding was reserved for the Congestion Mitigation and Air Quality Improvement Program (CMAQ) to assist states in complying with the National Ambient Air Quality Standards. Reauthorization of this program is likely to receive attention due to questions that have been raised as to whether it has made a significant impact on state compliance. Proposals to enhance the program's effectiveness, or to shift its focus away from air quality to reducing traffic congestion in general, may be considered. The adequacy of funding to continue other environmental programs will likely be discussed as well. For more information, refer to CRS Report 98-646 ENR, *Transportation Equity Act for the 21<sup>st</sup> Century (P.L. 105-178): An Overview of Environmental Protection Provisions*. In addition to specific programs, another issue that may arise during reauthorization is whether to take further legislative action to streamline the environmental review process for highway and transit projects. Some Members of Congress have expressed disappointment that the Secretary of Transportation has not finalized regulations to implement the streamlining requirements of TEA-21, and proposals to establish a statutory process to streamline project reviews may be subject to debate. For more information, refer to CRS Report RS20841, *Environmental Streamlining Provisions in the Transportation Equity Act for the 21<sup>st</sup> Century: Status of Implementation*. (CRS contact: David Bearden)

## Safety Issues

During the first session of the 108<sup>th</sup> Congress, debate over the purpose, structure, and funding amounts for various highway safety programs is likely to be conducted within the larger context of federal surface transportation reauthorization. With federal highway and traffic safety programs set to expire at the end of FY2003, various interest groups seek additional funding to improve highway infrastructure and operations, increase seat belt use rates, reduce impaired driving, strengthen driver licensing, and increase commercial motor vehicle safety. Some groups seek new safety requirements or fundamental changes in federal transportation safety programs. Key challenges will be finding additional funds to increase federal support for safety and evaluating the costs and benefits of changes in federal policy. These issue areas can be grouped into four categories:

**Infrastructure.** Billions of dollars derived from federal highway categorical grants are used each year by state and local governments to improve the design, throughput, and overall performance of the highway infrastructure. Collectively, these investments are intended to improve safety. For example, the authorization for the Surface Transportation Program found in Title I of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), as amended, includes mandatory set asides to eliminate hazards (such as by installing barriers and guard rails) and improve grade crossings (such as by installing signals and signs). Congress will decide the authorization levels for various federal highway categorical grants, the amount of set asides for safety, and whether a separate categorical grant for safety is established.

**Traffic Safety and Associated Grants.** Congress will likely decide how much funding to authorize for Section 403 of Title 23 of the U.S. Code, which funds the National Highway Traffic Safety Administration (NHTSA) driver/passenger (behavioral) program, and whether funding emphasis and priority setting regarding these activities should be changed. TEA-21 reauthorized two traffic safety grants, and authorized six new grant programs. In retrospect, many state officials maintain that TEA-21 authorized too many traffic safety grants to administer effectively. Not surprisingly, the states seek a unified grant approach with rewards for a states' performance. Congress is debating how to structure such a unified traffic safety incentive program, perhaps combining the existing Section 402 (state and community grants), and alcohol countermeasures and occupant protection enhancement grants.

**Truck and Bus Safety.** Key concerns include funding levels for various motor carrier safety activities conducted by the Federal Motor Carrier Safety Administration (FMCSA); grants and programs overseen by FMCSA; and changes to federal regulations regarding motor carrier safety. Attention is focusing on the issues of: how the Motor Carrier Safety Assistance Program could be made a more effective federal/state partnership; how the Commercial Drivers Licensing Program could be improved; and whether the federal truck and bus safety programs should focus more on the role of the noncommercial driver.

**Intelligent Transportation Systems (ITS) and Surface Transportation Research.** Advances in safety depend partly on investments made to develop and test new technologies to "push the envelope." ITS crash avoidance technologies offer much promise, but substantial costs and lead times before widespread deployment are generally involved. Debate is likely to focus on the funding level and purposes of the federal surface transportation research program and whether to authorize a new Strategic Highway Research Program financed by an administrative takedown off of the federal aid program, and managed by the National Research Council/ Transportation Research Board.

A recent NHTSA study estimating the costs to society of all traffic crashes at over \$230 billion per year raises questions of whether a sufficient amount of federal funds are allocated to promote traffic safety and whether existing funds are being wisely allocated. Requests for additional funding to enhance safety are likely to be considered within the context of the financial status of the Federal Highway Trust Fund, numerous other requests for alternative use of these funds, and the desire of the states to gain maximum flexibility in the use of federal funds. (CRS contact: Paul Rothberg.)

## Aviation Reauthorization

The Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century (FAIR21 or AIR21)(P.L. 106-181) provides authorization for key functions of the Federal Aviation Administration (FAA) through FY2003. Consequently, the first session of the 108<sup>th</sup> Congress will likely address the issue of reauthorization for FAA programs beyond FY2003. With the core aviation security function transferred from the FAA to the Transportation Safety Administration (TSA), FAA's program agenda will be primarily focused on issues related to the safety and capacity of the national airspace system. However, these FAA programs are likely to face fiscal challenges arising from the economic downturn in the

aviation industry that has resulted in significantly reduced revenues for the Airport and Airway Trust Fund.

The FAA recently released its proposals for reauthorization. The FAA's bill, the Centennial of Flight Aviation Authorization (FLIGHT-100), provides for essentially flat funding during the next four years. The FAA's bill is largely based on its existing agenda for improving safety in the national airspace system, detailed in the agency's *Safer Skies* initiative. FAA announced the initiative in 1998 and established goals to significantly reduce accident rates across the entire spectrum of aviation operations, including a target reduction in fatal accidents among commercial aviation operations of 80% by 2007. Key issues in the debate over FAA reauthorization will likely focus on FAA's progress in achieving these safety objectives. One key safety issue for FAA reauthorization is progress on FAA initiatives to reduce runway incursions and improve runway safety. Another key issue that may be examined during discussion of FAA safety programs is FAA regulations and oversight to ensure the continued airworthiness of aging aircraft and aircraft components. Other key safety issues that may arise during congressional review of FAA programs include: safety of carry-on baggage, passenger seat-belt usage, aircraft certification standards, flight operations quality assurance (FOQA) programs, FAA oversight of air carrier maintenance practices, and operator fatigue.

FAA management of efforts to modernize the national airspace system and improve system capacity to meet projected increases in demand will likely be scrutinized by the 108<sup>th</sup> Congress. Despite the economic downturn that has significantly reduced demand on the national airspace system over the past 2 years, FAA forecasts suggest that, with stabilization and recovery, growth in the airline industry will return to near normal levels at some point requiring future expansion of air traffic services to meet increasing demand for air travel. Congress may scrutinize FAA's management of technology and infrastructure improvement programs to modernize air traffic control systems.

Another key issue related to air traffic services likely to be debated by the 108<sup>th</sup> Congress is whether air traffic services can be safely and effectively carried out by commercial sources or whether air traffic services are an inherently governmental function. Executive Order (E.O.) 13180, signed by President Clinton on December 7, 2000, established a performance-based organization known as the "Air Traffic Organization," which encompasses FAA's air traffic services and related research and acquisition functions. That Executive Order designated air traffic services as an inherently governmental function; that is, a function that is so intimately related to the public interest as to require performance by federal government employees. However, on June 6, 2002, President Bush issued E.O. 13264 removing the designation of air traffic services as an inherently governmental function, thereby allowing consideration of such services as commercial activities. Consequently, "privatization" of air traffic services and the associated risks and benefits to system safety, efficiency, and cost will likely be an issue for debate during consideration of FAA reauthorization. Senator Frank Lautenberg has introduced legislation (S. 338) that would classify air traffic control as an inherently governmental function and prohibit the use of any funds to privatize air traffic control functions except for the existing contract tower program.

With regard to improving capacity and efficiency of the national airspace system, Congress may also debate programs for funding airport improvements. Under FAIR21, the Airport Improvement Program (AIP) provides federal grants that are typically expended on

capital projects to support airport operations such as runways, taxiways, and noise abatement. Since September 11, 2001, much AIP funding has been used instead to fund airport security improvements, potentially affecting other airport improvement projects. Congress is likely to consider options for funding capital programs to improve capacity at various airports as part of long range planning to meet increased demand for aviation service. Congress may also debate whether streamlining environmental assessments of airport capital projects would serve to expedite airport improvement programs. Another potential issue for debate is the effectiveness of alternative methods for relieving demand at certain airports, including the potential use of demand management techniques (such as slots) at busy airports, and using economic incentives, like pricing and fee structures, to relieve congestion during busy periods.

While primary aviation security functions such as passenger and baggage screening and the Federal Air Marshal program have been transferred to the TSA, FAA still faces significant challenges to ensure the security of critical infrastructure that supports the national airspace system. This infrastructure includes facilities and information technology that comprise critical navigation, air traffic control, weather, and communications systems. In addressing FAA reauthorization, Congress may debate policy regarding the protection of these assets. With continued focus on aviation security, the 108<sup>th</sup> Congress may also debate the continued role of FAA certification programs for aircraft security measures such as blast-resistant cargo containers, reinforced cockpit doors and bulkheads, and technologies to protect passenger aircraft against missile attacks. **(CRS Contacts: Bart Elias and John Fisher)**

## Transportation Security

Since September 11, 2001, transportation security has emerged as a key policy issue for Congress. The 108<sup>th</sup> Congress is likely to assess a number of proposed security measures and determine if the proposals increase security without excessively impeding commerce and travel. On November 19, 2001, President Bush signed the Aviation and Transportation Security Act (ATSA, P.L. 107-071). The Act established a new Transportation Security Administration (TSA) that is responsible for the security of all modes of transportation, passenger and cargo. On November 25, 2002, President Bush signed the Homeland Security Act of 2002 (P.L. 107-296). The Act creates a new cabinet-level Department of Homeland Security which will consolidate the antiterrorist activities of 22 federal agencies and transfer the TSA and the Coast Guard from the DOT to the new department. (See CRS Report RL31549, *Department of Homeland Security: Consolidation of Border and Transportation Security Agencies*).

### Aviation Security

ATSA established a timetable for the federalization of security functions at airports with commercial passenger air service. These functions include screening of passengers, carry-on and checked baggage, cargo, mail, and other articles carried aboard passenger aircraft. Other airport security enhancements under ATSA involve improved airport perimeter security and improved secured-area access control. ATSA also provided for the transfer of a greatly expanded Federal Air Marshal Service to the TSA, and mandated deployment of federal air marshals on every flight that is judged to present a high security risk. ATSA required

strengthening of cockpit doors, further limited access to the cockpit, and provided for security training for flight and cabin crew. Over 44,000 federal screeners have been hired by TSA and are in place at all 429 commercial airports, including 5 airports participating in a pilot program using federally trained private screeners. Under ATSA, airports may elect to return to a system utilizing private security screeners on November 19, 2004.

The Homeland Security Act of 2002 contained provisions for training and deputizing volunteer pilots of commercial passenger aircraft as federal flight deck officers, allowing them to carry firearms and use force, including lethal force, to protect the flight deck. A prototype program to train 48 pilots as federal flight deck officers has been initiated by TSA, and legislation (H.R. 765; S. 516; Amendment to S. 165) has been introduced that would allow cargo pilots to participate in the program. The Homeland Security Act of 2002 also established a requirement for crew training in self-defense and cabin security, and completion of a study examining the benefits and risks associated with arming cabin crew with non-lethal weapons. Further provisions under the Homeland Security Act of 2002 allow the TSA to implement interim alternative baggage screening methods at airports unable to meet a December 31, 2002, deadline for deployment of explosive detection systems and establish a plan for compliance with requirements to screen all checked baggage with explosive detection systems no later than December 31, 2003.

During the first session of the 108<sup>th</sup> Congress, attention is expected to be focused on oversight of the aforementioned aviation security initiatives. Key issues include the comparative effectiveness of the federal aviation security workforce, and the effectiveness and efficiency of baggage and cargo screening. Additionally, implementation of in-flight security measures, especially the Federal Flight Deck Officer program, will likely be the subject of congressional scrutiny. Legislation to enhance aviation security, such as the screening and inspection of cargo transported on all-cargo aircraft as well as passenger aircraft, security measures at air cargo shipping facilities, air cargo operations areas, and air cargo acceptance areas has been introduced in both the Senate and the House (S. 165, H. R. 1103). On March 13, 2003, the Senate Committee on Commerce, Science and Transportation ordered S. 165 reported with amendments including an amendment to include all-cargo pilots in the Federal Flight Deck Officer Program.

Another topic under consideration is the use of methods for detecting false or fraudulent transportation worker and passenger identification and technologies to improve the verification and validation of passenger and employee identification. For example, The Aviation Biometric Badge Act (H.R. 115) introduced by Rep. Hefley would require biometric identification of airport security screeners. A related issue that may be addressed during the first session of the 108<sup>th</sup> Congress is the use of passenger background screening and concerns over the protection of privacy and civil liberties while using methods to identify passengers that may pose security risks.

Other issues that may be debated during the first session of the 108<sup>th</sup> Congress include civil and criminal penalties for interfering with or attempting to circumvent aviation security systems and procedures, and requirements for background checks of individuals seeking to obtain certain types of flight training in the United States. While current regulations require background checks of aliens seeking training in aircraft weighing more than 12,500 pounds, legislation introduced by Senator Bill Nelson (S. 236; Amendment to S. 165) seeks to require background checks for aliens seeking flight training regardless of aircraft weight, but would

waive this requirement for applicants who are already qualified to fly aircraft weighing more than 12,500 pounds. Congress may also address the use and effectiveness of temporary flight restrictions to protect airspace, particularly over stadiums during sporting events and other public assemblies, and in the vicinity of certain locations and special events. A provision in the FY2003 consolidated appropriations bill (P.L. 108-7) extends restrictions on stadium overflights during major events for a period of one year and places tighter controls on the issuance of waivers to this restriction. Legislation (H.R. 580; S. 311) has also been introduced that seeks to protect U.S. airliners from terrorist missiles by installing missile countermeasure systems on aircraft, and in the interim deploying National Guard and Coast Guard Units to patrol areas near airports. An amendment to S. 165 offered by Sen. Boxer and adopted by the Senate Committee on Commerce, Science, and Transportation seeks a study of the shoulder-launched missile threat and recommendations from the Secretary of Homeland Security. (See CRS Report RL31151, *Aviation Security Technology and Procedures: Screening Passengers and Baggage*; CRS Report RL31150, *Selected Aviation Security Legislation in the Aftermath of the September 11 Attack*; and CRS Report RL31741, *Homeland Security: Protecting Airliners from Terrorist Missiles*) **(CRS contact: Bart Elias - Aviation; Dan Morgan - Security Technology)**

## Surface Transportation Security

World-wide, roughly one-third of terrorist attacks target transportation systems; the most common transportation mode attacked is public transit. The effectiveness of transit depends on ease of access. As a result, security measures applied in aviation cannot be easily applied to transit. Likewise, the many miles of rail, highway, and pipeline networks are impossible to guard thoroughly. Of particular concern are the daily shipments by rail and truck of hazardous materials (especially flammable and poisonous gases). The overland crossings with Canada and Mexico are also a concern.

The FY2003 Omnibus Appropriations bill (H.J.Res. 2) provides \$244.8 million to the Transportation Security Administration for maritime and land security activities, including \$25 million for trucking industry security grants and \$10 million for intercity bus security grants. Surface transportation security legislation will likely be taken up by the 108<sup>th</sup> Congress. Among the major concerns regarding rail security are the rail tunnels leading to the train stations in New York City, Washington, DC, and Baltimore. The National Defense Rail Act (S. 104) would provide funds for improvements to these tunnels, as well as for an assessment of security risks in rail transportation. **(CRS contacts: Transit and Passenger Rail - D. Randy Peterman; Freight Railroads - John Frittelli; Highways and Pipelines - Paul Rothberg. )**

## Ports and Maritime Security

Government leaders and security experts are concerned that the maritime transportation system could be used by terrorists to smuggle a weapon of mass destruction into the United States. Experts have found ports to be vulnerable to terrorist attack because of their size, easy accessibility by water and land, proximity to urban areas, and the tremendous amount of cargo that is typically transferred through them.

On November 14, 2002, Congress passed the Maritime Transportation Security Act of 2002 (P.L. 107-295). The Act creates a U.S. maritime security system and requires federal

agencies, ports, and vessel owners to take numerous steps to upgrade security. Some of the major provisions include developing standardized port security plans; conducting vulnerability assessments at each port; creating port security committees at each port to plan and oversee security measures; and establishing background checks and access control to sensitive areas for port workers. A dispute over how to pay for the cost of enhancing seaport security was resolved by eliminating controversial user fee provisions from the conference report. The 108<sup>th</sup> Congress may again face questions about how to cover the cost for enhancing port security.

In the 108<sup>th</sup> Congress, policymakers are likely to focus on the implementation of the port security provisions in the Act. Some of the broader policy issues likely to be debated include finding the best way to strike a balance between port security and port, or trade, efficiency. For example, what is the best way to ensure that cargo containers are not used to smuggle terrorist weapons or terrorists themselves without disrupting the flow of legitimate commerce. Another challenge is finding the right balance between standardized versus site-specific security measures. A key question is what elements of seaport security might be best addressed through a standardized, top-down approach, and what elements of seaport security might be best addressed through a tailored, bottom-up approach.

Congress is also likely to consider how much of the potential solution lies in international actions and the implications these actions may have for U.S. agencies and port operations. The International Maritime Organization recently adopted international standards for vessel and port security and the World Customs Organization is working towards adopting standards for cargo security. Improving seaport security will require effective cooperation between all levels of government – federal, state, and local – as well as between government agencies and private sector entities. The proper division of roles between all of these interests and how to ensure their cooperation is an important issue for U.S. policymakers. (See CRS Report RL31733, *Port and Maritime Security: Background and Issues for Congress*.) (CRS contact: John Frittelli)

## Amtrak Issues

Amtrak does not earn enough revenue or receive enough federal assistance to cover its operating and capital needs. Amtrak revenues are around \$2 billion a year, but it spends nearly \$3 billion a year, producing operating deficits of almost \$1 billion in recent years. In addition, it has around \$3 billion in long-term debt and capital lease obligations, and nearly \$6 billion in backlogged capital maintenance work. The Amtrak Reform Council and the DOT Inspector General's Office have both estimated that Amtrak, as currently structured, requires around half a billion in operating support and around a billion in capital spending annually, a considerably higher level of funding than Amtrak has ever consistently received.

The Omnibus Appropriations bill for FY2003 (P.L. 108-7/H.J.Res. 2) provides \$1.05 billion for Amtrak (minus a 0.65% across the board cut), plus a \$105 million loan repayment extension (H.J.Res. 2, the FY2003 Omnibus Appropriations bill). This is considerably more than the Administration's FY2003 request of \$521 million. In a press release, Amtrak stated that "the funding level should be sufficient to operate the national system for the remainder of the fiscal year." However, in a March 13, 2003 hearing, the DOT Inspector General cautioned that lower than projected revenues for Amtrak in recent months raise the possibility of another Amtrak cash crisis before the end of the current fiscal year.

In a change of policy, Congress directed (in P.L. 108-7) that Amtrak funding not go directly to Amtrak; instead, funding is allocated to the Secretary of Transportation, who will make quarterly grants to Amtrak. P.L. 108-7 also provides for tighter control over Amtrak's activities by requiring Amtrak to submit capital and operating plans to Congress and the Secretary; Amtrak may not spend money on projects not in the plans, and must submit changes to the plans to Congress, with justifications. These plans are due May 1, 2003. With limited exceptions, Amtrak will have to follow DOT guidelines for reprogramming funding. Before the Secretary can release any funds to Amtrak, Amtrak must agree to continue to abide by provisions of the loan agreement of June 28, 2002, including financial reporting requirements and the identification of \$100 million in cost saving options for 2003. The Secretary will also have to vouch for the accuracy of financial information that Amtrak reports to Congress.

Amtrak's president has said that the corporation needs at least \$2 billion annually through FY2008. The Bush Administration requested \$900 million for Amtrak for FY2004. On February 20, 2003, Amtrak requested \$1.8 billion in federal capital and operating subsidies for FY2004, with \$1.04 billion in support for capital needs and \$768 for operations.

In June 2002, DOT Secretary Mineta proposed a set of principles for Amtrak reform, including the elimination of Federal operating support; separation of ownership of the Northeast Corridor infrastructure from train operations; introduction of competition for certain routes; and shared responsibility for passenger rail financing between the Federal government and the states. These reforms are extensive, controversial, and are expected to figure in the debate over Amtrak reauthorization.

Amtrak's authorization expired at the end of FY2002. Reauthorization proposals introduced in the 108<sup>th</sup> Congress include S. 104 (Hollings), which would authorize significant increases in funding for Amtrak, with detailed allocations of funding to specific purposes. Senator McCain is expected to introduce reauthorization legislation; in the second session of the 107<sup>th</sup> Congress he introduced S. 1958, which would have restructured Amtrak along the lines proposed in the Amtrak Reform Council's plan, *An Action Plan for the Restructuring and Rationalization of the National Intercity Rail Passenger System*, February 7, 2002, available at [<http://www.amtrakreformcouncil.gov>]. No legislation has yet been introduced embodying the Administration's principles for Amtrak reauthorization. For more information on Amtrak, see CRS Report RL31743, *Amtrak Issues in the 108<sup>th</sup> Congress*. (CRS contact: D. Randy Peterman.)

## Airline Industry Financial Turmoil

The onset of the War in Iraq and, more recently, the outbreak of a virus known as Severe Acute Respiratory Syndrome (SARS), have dramatically affected the airline industry. Air travel in the short term has dropped approximately 10% according to the Air Transport Association (ATA). More worrisome for the airlines, advance bookings for the months ahead appear to be dropping on an order of magnitude of approximately 30%. All of this is happening against the backdrop of the events of September 11<sup>th</sup>, which also had a huge negative impact on the industry. The airlines lost record amounts of money in 2002, which followed what had been the previous record loss experienced in 2001.

Among major airlines, only Southwest was profitable in 2002, and Southwest is the only major carrier believed to have a shot at profitability in 2003. The industry's second largest airline United, is operating in receivership and the possibility exists that other carriers could find themselves in this position in the near future. There is, therefore, considerable concern that the airline industry as we have known it over the last few years is likely to go through a period of major structural change.

After September 11<sup>th</sup>, Congress and the Bush Administration moved swiftly to provide the airline industry with \$15 billion in federal financial support (Air Transportation Safety and System Stabilization Act (Stabilization Act)(P.L. 107-42). The first \$5 billion provided direct aid to pay for industry losses associated with the results of the September 11th attacks. The vast majority of these funds have already been distributed to the airlines (a listing of airlines receiving funds is available from the Department of Transportation at [<http://ostpxweb.dot.gov/aviation/>]). A second source of funding, access to \$10 billion in government backed loans, required approval by the newly created Air Transportation Stabilization Board (ATSB). Thirteen airlines applied for the loan program. The majority received some form of assistance, but the largest single applicant, United, was denied a loan. Of the \$10 billion authorized by this program only about \$1.5 billion has been committed.

In the FY2003 Emergency Supplemental under consideration at this time, Congress has again proposed providing some short term relief to the airline industry. At the time of this writing the House appears to be willing to provide \$3.2 billion in assistance while the Senate would provide \$3.5 billion. Both bills have the same intent, but there are differences in how aid would be provided. Both the House and the Senate would provide significant funding for security costs and both would provide a tax holiday for collections of the existing \$2.50 per flight segment security fee charged to airline passengers. The Senate would also extend war risk insurance provisions in existing legislation that expire at the end of this year to the end of 2004. In addition, the Senate would provide \$225 million to fund additional unemployment insurance to displace airline industry employees. Both bills have provisions that would limit airline industry executive compensation.

**(CRS contact: John Fischer)**

## Environmental Issues

Several environmental issues related to transportation may also be on the agenda of the 108<sup>th</sup> Congress, either as oversight issues or in connection with TEA-21 reauthorization. These include the conformity of transportation plans with the Clean Air Act, implementation of more stringent regulations on diesel engines and fuel, and alternative fuels and vehicles programs. Streamlining the environmental review process for highway and transit projects is another likely issue (which is discussed elsewhere in this document as a topic under surface transportation reauthorization).

## Conformity

Under the Clean Air Act, areas that have not attained any of the six National Ambient Air Quality Standards established by EPA must develop State Implementation Plans (SIPs) demonstrating how they will reach attainment. As of December 2002, 107 areas with a

combined population of 97.8 million people were subject to the SIP requirements. Section 176 of the Clean Air Act prohibits federal agencies from funding projects in these areas unless they “conform” to the SIPs. Specifically, projects must not “cause or contribute to any new violation of any standard,” “increase the frequency or severity of any existing violation,” or “delay timely attainment of any standard.” Because new highways generally lead to an increase in emissions, both the statute and regulations require that an area’s Transportation Improvement Program (TIP) provide a new demonstration of conformity no less frequently than every three years. Highway and transit projects cannot receive federal funds unless they are part of a conforming TIP.

As a result of growth of emissions from SUVs and other light trucks, greater than expected increases in vehicle miles traveled, recent court decisions that tightened conformity rules, and the scheduled implementation of more stringent air quality standards in 2004, the impact of conformity requirements is expected to grow in the next several years. Numerous metropolitan areas will face a cutoff of highway and transit funds unless they impose sharp reductions in vehicle and industrial emissions. The Clean Air Act provides no authority for waivers or grace periods; and, during a conformity lapse, only a limited set of exempt projects (mostly safety-related or replacement and repair of existing transit facilities) can be funded. The rules do not allow funding of new projects that might reduce emissions, such as new transit lines. These factors, as well as the need for better coordination between the TIP and SIP planning cycles, may be raised by those seeking to amend the conformity provisions. Modifying conformity would be controversial, however, since it provides one of the most effective tools for ensuring that transportation and air quality planning are coordinated. **(CRS Contact: Jim McCarthy)**

## **Diesel Engines and Fuel**

New emission standards for highway diesel engines took effect October 1, 2002, but 6 of the 7 engine manufacturers that serve the U.S. market were unable to certify a compliant engine by the October deadline. All seven have now certified at least one compliant engine, according to EPA, but until they obtain certification for all of their engines, they are subject to non-conformance penalties that vary depending on the size of the engine and the amount by which its emissions exceed the standard. Far more stringent standards will take effect in the 2007 model year, and the manufacturers generally argue that they will be unable to meet these standards as well. Diesel fuel will be subject to new standards beginning in 2006; these may pose difficulty for some refiners, and could add to the cost of diesel fuel. EPA and a Federal Advisory Committee Act panel have both reviewed the engine and fuel standards and concluded that they are achievable; but given the importance of diesel engines and fuel to the nation’s economy, Congress may conduct its own oversight of diesel-related issues. **(CRS Contacts: Jim McCarthy, 7-7225, and Brent Yacobucci, 7-9662)**

## **Alternative Fuels and Vehicles**

Several federal laws, including TEA-21, have requirements and/or provide incentives for the use of alternative fuels and vehicles. Within TEA-21, the Congestion Mitigation and Air Quality (CMAQ) Improvement Program provides funding for state and local initiatives to reduce air pollution. Eligible initiatives include the purchase of alternative fuels and vehicles, as well as the development of alternative fuel infrastructure. TEA-21 allows for other incentives, including permitting states to exempt alternative fuel vehicles from HOV

restrictions. Outside of TEA-21 reauthorization, the Bush Administration has made research and development of fuel cell vehicles and hydrogen fuel a priority. In January 2002, the Administration announced the FreedomCAR program, which increases federal research on fuel cell vehicles. In January 2003, the Administration announced the FreedomFuel program, which complements FreedomCAR and increases research funding for hydrogen fuel. For additional discussion, see CRS Report RL30484, *Alternative Transportation Fuels and Vehicles*, and CRS Report RL30758, *Advanced Vehicle Technologies*. (**CRS Contact: Brent Yacobucci**).