

Issue Brief for Congress

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Transportation Issues in the 107th Congress

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Glennon J. Harrison, Coordinator
Resources, Science, and Industry Division

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Transportation Issues in the 107th Congress

SUMMARY

This issue brief identifies key transportation issues facing the 107th Congress.

Department of Homeland Security. The House has passed a compromise bill, H.R. 5710, to create a new cabinet-level Department of Homeland Security. The Senate is expected to pass the legislation before Congress adjourns. The new department would consolidate the antiterrorist activities of 22 federal agencies and would transfer the Transportation Security Administration (TSA) and Coast Guard from the DOT to the new department.

On November 14, 2002, the Senate passed the conference report on S. 1214, the Maritime Transportation Security Act of 2002 by a vote of 95-0. The House also passed the conference report on S. 1214 on November 14, 2002 on a voice vote.

On Nov. 19, 2001, the President signed the **Aviation and Transportation Security Act** (ATSA), establishing the Transportation Security Administration. Congress is expected to continue to pay close attention to the security of all modes of transportation as the ATSA is implemented. Transportation security funding has been authorized through FY2005. The major issue for all modes is what reasonable transportation security measures can be taken without excessively inhibiting commerce and travel. Increased emphasis is also being placed on the security of pipelines and transport of hazardous materials.

Transportation Budgeting. Under the Transportation Equity Act for the 21st Century (TEA21), spending for highway and transit programs is linked directly to revenue collected, with additional highway funds

provided through a mechanism called "Revenue Aligned Budget Authority" (RABA). **RABA funds** accrue to the trust fund as a result of increased trust fund revenues. For FY2003, revenues will decrease, with an estimated year-over-year \$8.6 billion drop in the availability of highway obligational funding. The second FY2002 emergency supplemental appropriations bill (P.L. 107-206) contained a provision that blocked the RABA adjustment for FY2003. The net effect of this provision is to set program spending at its authorized \$27.7 billion level. On November 13, 2002, Congress passed H.J. Res. 124, which provides for continuing appropriations under FY2002 terms and conditions through January 11, 2003.

Airline Industry Financial Turmoil. Following September 11th, Congress and the Administration moved quickly to pass the Air Transportation Safety and System Stabilization Act (P.L. 107-42) to provide airlines access to up to \$15 billion in short-term assistance. The first \$5 billion, now largely paid out, provided direct aid for industry losses associated with the Sept. 11th attacks. Access to the remaining \$10 billion, available as guaranteed loans, is subject to approval by the Air Transportation Stabilization Board. To date, the Board has approved a loan for America West Airlines and tentatively approved a loan for US Airways.

Amtrak. Amtrak's current authorization expired at the end of FY2002. Because of Amtrak's financial situation, Congress faces questions about Amtrak's future.

MOST RECENT DEVELOPMENTS

On June 6, 2002, President George W. Bush unveiled a plan to create a new cabinet-level Department of Homeland Security (H.R. 5005, introduced by request). The new department would consolidate the antiterrorist activities of 22 federal agencies and would transfer the Transportation Security Administration (TSA) and Coast Guard from the DOT to the new department. On July 26, 2002, the House passed H.R. 5005, as amended, to create a new cabinet-level Department of Homeland Security. As passed, the bill closely resembles the plan put forward by President Bush. In the Senate the National Homeland Security and Combating Terrorism Act of 2002 (S. 2452) was agreed to by the Committee on Governmental affairs on July 25, 2002. On August 1, 2002, Senator Lieberman submitted S. Amdt.4467 (which corresponds to the text of S. 2452) as a substitute amendment to H.R. 5005. The Senate began consideration of H.R. 5005 on September 4, 2002. For the most part the transportation security provisions could be considered to be in conformance with the President's plan. The major area of conflict in the debate in the Senate were provisions for increased flexibility in organizing, hiring, firing, and managing the new department's personnel. An agreement was reached on November 12, 2002 that allows the administration to create a new personnel system. A compromise bill, H.R. 5710, was passed by the House on November 13, 2002 and is expected to pass the Senate before Congress adjourns.

On November 13, 2002, Congress passed H.J. Res. 124, which provides for continuing appropriations under FY2002 terms and conditions through January 11, 2003.

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BACKGROUND AND ANALYSIS

Introduction

This issue brief provides an overview of key issues on the transportation agenda of the 107th Congress. The issues are organized under the headings of homeland security, Coast Guard issues, transportation security, budget, aviation, surface transportation, and maritime, 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.

Department of Homeland Security

On June 6, 2002, President George W. Bush unveiled a plan to create a new cabinet-level Department of Homeland Security (H.R. 5005, introduced by request). The new department would consolidate the antiterrorist activities of 22 federal agencies and would

transfer the Transportation Security Administration (TSA) and Coast Guard from the DOT to the new department. The proposal builds significantly on congressional proposals (see H.R. 4660; S. 2452) that were introduced on May 2, 2002.

On July 26, 2002, the House passed an amended version of H.R.5005 which was substantially in conformance with President Bush's plan. The House-passed bill did, however, include some modifications of the plan as unveiled. The Transportation Security Administration (TSA) would be transferred, to the new department, as a distinct entity and would remain a distinct entity for two years. In addition, the bill would: prohibit the use of funds derived from the transportation trust funds to be transferred or otherwise made available to the new department; prohibit the department from spending any Airport Improvement Program (AIP) funds, but require FAA to consult with the department before it makes security related airport grants; and establish a liaison office within the department to facilitate consultation with the Federal Aviation Administration (FAA) on any action that might affect aviation safety, air carrier operations, airworthiness of aircraft, or airspace use. The bill also includes a provision that, in effect, gives airports an extra year to meet the requirement that all checked baggage be screened for explosives. The bill accomplishes this by allowing airports that cannot make the modifications to their terminal buildings needed to accept explosive detection systems (EDS) in a cost effective manner by the December 31, 2002 deadline, to submit a plans for completing the necessary modifications by December 31, 2003.

In the Senate, the National Homeland Security and Combating Terrorism Act of 2002 (S. 2452) was agreed to by the Committee on Governmental affairs on July 25, 2002. For the most part the transportation security provisions could be considered to be in conformance with the President's plan. S. 2452 does, however, differ from H. R. 5005's transportation security provisions in that S. 2452, as reported, does not require that the TSA be maintained as an entity within the DHS for two years, does not extend the EDS deadline, and does not prohibit the use of transportation trust fund revenues for the proposed department.

The debate in the Senate, which had deadlocked over the President's statement that he would only sign a homeland security bill if it includes provisions for increased flexibility in organizing, hiring, firing, and managing the new department's personnel. S. 2452 would restrict the President's ability to exclude the new agency from certain employee protections that generally apply to U.S. civil servants. On November 12, 2002, compromise legislation (H.R. 5710) was introduced by Rep. Armey. The bill requires the President to certify in writing waivers of employee collective bargaining rights and to notify Congress of such waivers. The House passed H.R. 5710 on November 13, 2002 and the Senate is expected to take the bill up before it adjourns. (See CRS Report RS21244, *Department of Homeland Security: Should the Transportation Security Administration Be Included?*; CRS Report RL31513, *Homeland Security: Side-by-side Comparison of H.R. 5005 and S. 2452, 107th Congress*; CRS Report RL31549, *Department of Homeland Security: proposals to Consolidate Border and Transportation Security Agencies*). (CRS contact: Bob Kirk.)

Coast Guard Issues

In the 107th Congress, a major issue has been how effectively the Coast Guard is managing its increased responsibilities to protect the U.S. and interdict illegal drugs and immigrants while continuing its traditional functions of search and rescue and aiding

navigation. Coast Guard capital needs are at the core of this issue. Congress generally authorizes funds for the Coast Guard for 2-year periods and appropriates these monies annually in the DOT appropriations bill. Issues for the 107th Congress include how the agency is operationally responding to new demands and managing plans to replace many of its aging vessels and aircraft.

The Coast Guard's major acquisition program, the "Integrated Deepwater System," would require an estimated \$9.6 billion to fund acquisitions over 20 years beginning in FY2002. Planning funds only were provided in FY2000 and FY2001 appropriations. In FY2002, the first acquisition funds were appropriated (\$320 million) and the FY2003 budget seeks \$500 million. A major \$17 billion multi-year contract was made in June 2002. The main issue is how effectively the Coast Guard will administer this major acquisition contract. (For further discussion see CRS Report RS21019, *Coast Guard Deepwater Program: Background and Issues for Congress*.)

The House passed under suspension an FY2002 authorization bill, H.R. 3507, on December 20, 2001. It would authorize Coast Guard programs at \$5.9 billion. Another bill, H.R. 1099, the Coast Guard Personnel and Maritime Safety Act, has already passed the House and has been referred to the Senate. A Senate authorization bill, S. 951, introduced May 24, 2001, would authorize Coast Guard programs at \$5.2 billion. It was reported October 31, 2001 (S.Rept. 107-89) by the Senate Committee on Commerce, Science, and Transportation. Another House bill, H.R. 2481 reported (H.Rept 107-243) on October 16, 2001, by the Committee on Transportation and Infrastructure, includes numerous provisions on Coast Guard operations. The Senate passed a port security bill S. 1214 (S.Rept. 107-64) on December 20, 2001. On June 4, 2002, the House passed a similar bill, H.R. 3983, after incorporating the FY2002 authorization provisions of House-passed H.R. 3507. They are now in conference. The Senate Commerce Committee approved a seaport security bill, S. 2329, on May 17. (For further discussion of port security, see CRS Report RS21079 *Maritime Security: Overview of Issues*.)

The Administration requested \$5.056 billion for Coast Guard funding in FY2002. The final version, P.L. 107-87 (H.Rept. 107-308), included \$5.03 billion for the Coast Guard. P.L. 107-20 (H.R. 2216), the FY2001 emergency supplemental appropriations bill, increased FY2001 Coast Guard funding by \$92 million. A terrorism FY2001 supplemental of September 21, 2001, P.L. 107-38, included \$18 million in additional FY2001 funds for the recall of Coast Guard reservists, search and rescue. The terrorism supplemental, P.L. 107-117 (H.R. 3338, Division B), included \$209 million in FY2002 supplemental funds for Coast Guard terrorism-related activities. Another FY2002 supplemental, P.L. 107-206 (H.R. 4775), included \$189.0 million.

The Administration requests discretionary budget authority of \$5.9 billion for Coast Guard funding in FY2003. Compared to the \$5.702 billion appropriated in FY2002, the FY2003 request would be \$862 million or 17%, more. Planned increases of \$733 million for Coast Guard operating expenses, \$92 million for acquisitions, and a new \$736 retirement fund payment account for most of the proposed increase. The chief current issue is how Coast Guard is handling heightened security responsibilities with its many other responsibilities such as search and rescue, and enforcement of laws and treaties. The planned \$733 million increase for operating activities is to be allocated among Homeland Security and these traditional activities. On July 26, the Senate Committee on Appropriations

approved S. 2808 (S. Rept. 107-224), providing \$6.1 billion for the agency and, on October 7, 2002, the House committee on Appropriations recommended \$6.1 billion in H.R. 5559 (H.Rept. 107-722). (**CRS contact: Martin Lee.**)

Transportation Security

Transportation Security in the Aftermath of the September 11 Attack

The September 11, 2001 hijacking of four airliners from three different airports and the enormous loss of life that resulted from terrorist attacks using those aircraft as weapons has focused concerns in Congress on aviation security and on the security of the other modes of transportation in the United States. The overarching issue for all modes is what reasonable transportation security actions can be taken without excessively inhibiting commerce and travel. For aviation security in particular, the issue is implementation of recently passed transportation security legislation within the tight deadlines set forth in the Act.

On November 19, 2001, President Bush signed the Aviation and Transportation Security Act (ATSA). The Act established a new Transportation Security Administration (TSA) headed by an Under Secretary of Transportation Security. The Under Secretary is responsible for the security of all modes of transportation. (**CRS contact: Bob Kirk.**)

Aviation Security. There are three overall areas of concern in aviation security: the screening of passengers, baggage, and cargo; the security of restricted areas at an airport (access to the aprons, taxiways, runways, baggage and cargo processing areas, etc.); and security measures on board the aircraft (stationing of air marshals, securing of cockpit doors, cabin video cameras, etc.). ATSA provides for a one-year transition during which federal workers will be phased in to replace contract screeners. For the next two years federal workers will provide all screening activities at all commercial service airports (except at five pilot program airports that would contract private screening services under federal oversight). After the two years (i.e. three years after enactment), airports will have the option of ending this arrangement and contracting private companies. The Act requires the screening of all individuals, goods, property, vehicles, and other equipment seeking access to secure areas at airports. ATSA provides for the transfer of a greatly expanded Federal Air Marshal program to the TSA. The marshals may be deployed on every passenger flight but must be deployed on every flight determined to present a high security risk. ATSA also requires the strengthening of cockpit doors and limits cockpit access to authorized persons. As of this writing, TSA maintains that, to date, it has successfully implemented the ATSA's provisions within the time-line required by the Act. Despite this success so far, most observers argue that the most difficult deadlines are the upcoming November 19, 2002 deadline to have all federal screener personnel in place at all commercial service airports and the December 31, 2002 deadline for having all checked baggage screened by explosive detection systems (EDS). A compromise Department of Homeland Security bill, H.R. 5710, would, in effect, provide for extensions of the EDS deadline, on a case-by-case basis, until Dec. 31, 2003.

During the process of forming the TSA and implementing ATSA, some airport, as well as airline, executives have complained that TSA employees and contractors have shown a lack of understanding of, and concern for, airport and air carrier methods of operation. Some

speculate that, in part, this as an outgrowth of a tension between the law enforcement perspective of many of TSA's recently hired former law enforcement officials and the transportation industry perspective of airport and airline officials. Many also complained that the fledgling TSA also exhibited an institutional reticence in its dealings with Congress that weakened the agency's support on the Hill. In July, 2002, DOT Secretary Mineta asked for and received the resignation of TSA Director John W. Magaw and replaced him with former U.S. Coast Guard commandant James M. Loy. Director Loy has since made efforts to improve relations with airport directors as well as with members of Congress. He has also begun reviewing TSA's position on policy issues such as arming pilots, implementing trusted traveler program, and has conceded that TSA cannot meet its bomb detection deadline. (See Aviation Security [<http://www.congress.gov/brbk/html/ebter116.html>] in the CRS Terrorism Electronic Briefing Book as well as CRS Report RL31151, *Aviation Security Technology and Procedures: Screening Passengers and Baggage*, and CRS Report RL31150, *Selected Aviation Security Legislation in the Aftermath of the September 11 Attack*). (CRS contacts: John Fischer and Bob Kirk.)

Surface Transportation Security. The TSA is responsible for the security of all modes of transportation, passenger and cargo. The September 11 attack has led to increased concerns about the security of rail, highway, pipeline, transit, and maritime transportation. World-wide, roughly one-third of terrorist attacks target transportation systems; the most common transportation mode attacked is public transit. Because transit systems' effectiveness depends on ease of access to the system, security measures common in aviation are difficult to nearly impossible to apply. 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). Seaports, which are typically located in large urban areas, are also vulnerable to attack as are the inland cities to which containers are shipped, often without inspection. DOT has asked the domestic transportation industry to assume a heightened state of alert and to take security measures accordingly. One of the items the TSA is working on in surface modes is establishing a standardized credentialing program for transportation workers to ensure that only authorized workers have access to secure areas.

Numerous bills have been introduced in the 107th Congress to address surface and maritime security concerns. In addition to the bill creating the Department of Homeland Security, which was passed by the House on a vote of 229-121 on November 13, 2002. The Senate and House passed the Maritime Transportation Security Act of 2002 (S. 1214) on November 14, 2002. The port security legislation establishes a U.S. maritime security system and requires ports and vessels to take numerous steps to upgrade security. (See Surface Transportation Systems in the CRS Terrorism Electronic Briefing Book [<http://www.congress.gov/brbk/html/ebter151.html>]) (CRS contacts: Transit-D. Randy Peterman; Railroads and Seaports-John Frittelli; and Highways and Pipelines-Paul Rothberg.)

Transportation Security Funding. ATSA authorizes such sums as may be necessary for aviation security for FY2002, FY2003, FY2004, and FY2005. To pay the costs of the new and expanded aviation security programs, ATSA authorizes a passenger fee of \$2.50 per enplanement (capped at \$5 per one-way ticket; projected annual revenue \$1.5 billion). Additional funds may be appropriated or come from a fee imposed on air carriers (projected annual revenue, \$1.5 billion). The Act authorizes a total of \$1.5 billion for

FY2002 and FY2003 to reimburse airport operators and on-airport service providers for the cost of post-September 11 FAA security mandates. ATSA also authorizes \$500 million for air carriers to defray the costs of security enhancements to aircraft such as fortifying cockpit doors or installing video surveillance cameras. In addition, the eligibility of Airport Improvement Program and Passenger Facility Charge grants for security purposes is expanded significantly.

The TSA budget for FY2002 has been derived under a variety of sources. The FY2002 Transportation Appropriations Act (P.L. 107-87), the 2001 Terrorism Emergency Supplemental Appropriations Act (P.L. 107-38), and the 2002 Supplemental Appropriations Act (P.L. 107-206) as well as transferred funds from the DOT and the Federal Emergency Management Agency, all provided funding for TSA. According to TSA, the agency's total appropriation for FY2002 was \$5.84 billion. Of this amount, \$5.17 billion was for aviation security, including: \$2.3 billion for passenger screening; \$1.93 billion for baggage screening; and \$944 million for security direction and enforcement. In addition, for FY2002, the TSA budget included: \$261 million for maritime and land security; \$1.5 million for intelligence; \$164 million for research and development; and \$244 million for headquarters staff, start-up costs, administrative contracts, and information technology projects.

For FY2003, the amended Bush Administration budget request would provide \$5.35 billion for TSA. In the House, an appropriations bill, agreed to by the Committee on Appropriations (H.R. 5559; H. Rept. 107-722), has recommended \$5.15 billion. The Senate Committee on appropriations has recommended \$4.95 billion (S. 2808; S. Rept. 107-224). **(CRS contact: Bob Kirk.)**

Hazardous Materials Transportation Safety

The 107th Congress considered several bills that would reauthorize the Hazardous Materials Transportation Act (HMTA), as amended (including P.L. 93-633 and P.L. 101-500). That body of law specifies the broad purposes and operating authorities for DOT's hazardous materials (hazmat) safety program. Although recent hearings have been held, none of the committees of jurisdiction reported out a reauthorization bill. Among the key issues under consideration are: the level of funding to support DOT's hazmat emergency preparedness grant program; development of cost-effective strategies to improve further hazmat safety; and the appropriate role of DOT in the regulation of hazmat transportation and in the promotion of hazmat security. Similar issues are likely to be debated during the 108th Congress. **(CRS contact: Paul Rothberg.)**

Pipeline Security and Safety

The terrorists attacks of September 11, 2001, placed increased emphasis on pipeline security. S. 235, as amended, the "Pipeline Safety Improvement Act of 2001," passed the Senate. S. 517, as amended, includes the previously passed Senate pipeline safety bill (S. 235) plus a new provision seeking a balance between the release of information to meet "community right to know" interests and the withholding of security-sensitive data about pipeline vulnerabilities. S. 517, as amended, has been included with minor changes into the Senate-passed version of the omnibus energy bill, H.R. 4. Different versions of H.R. 3609, the "Pipeline Infrastructure Protection To Enhance Security and Safety Act," have been reported out of the House Energy and Commerce Committee and the House Transportation

and Infrastructure Committee. On July 23, 2002, the House passed a modified version of H.R. 3609. Agreement on the pipeline section of the omnibus energy bill appears to have been reached, but it remains uncertain as to whether the entire bill will be approved by a conference committee. The pipeline safety portion of the agreement would significantly amend federal pipeline safety law, which directs the U.S. Secretary of Transportation to regulate pipeline transportation and storage of natural gases and hazardous liquids. The agreement would authorize future funding for the Office of Pipeline Safety (OPS) of the U.S. Department of Transportation (DOT), which is charged with implementing federal pipeline safety law, and administering various pipeline safety state grants. The agreement also authorizes programs pertaining to the qualification of pipeline operators, integrity management programs for gas pipelines, and an expanded research program on pipeline safety and security. **(CRS contact: Paul Rothberg.)**

Budget

Transportation Budgeting

During the 105th and 106th Congresses, major legislation changed the relationships between the largest transportation trust funds and the federal budget. The Transportation Equity Act for the 21st Century (TEA21)(P.L. 105-178) linked spending for highway programs directly to revenue collections for the highway trust fund. In addition, core highway and mass transit program funding were given special status in the discretionary portion of the federal budget by virtue of the creation of two new budget categories. The Act thereby creates a virtual “firewall” around highway and mass transportation spending programs. The funding guarantees are set up in a way that makes it difficult for funding levels to be altered as part of the annual budget/appropriations process. Additional highway funds can be provided annually by a mechanism called “Revenue Aligned Budget Authority” (RABA). RABA funds accrue to the trust fund as a result of increased trust fund revenues. For FY2003, however, the RABA adjustment would have led to a significant and unexpected drop in the availability of highway obligational funding. It now appears that Congress will restore at least some of this funding.

The Wendell H. Ford Aviation Investment and Reform Act for the 21st 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 TEA21. 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 TEA21. Congress can, and sometimes does, waive points-of-order during consideration of legislation. Enactment of TEA21 and FAIR21 means that transportation appropriators have total control over spending for the Coast Guard, 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. For more information, see CRS Report 98-749E, *The Transportation Equity Act for the 21st Century (TEA21) and the Federal Budget* and CRS Report RS20177, *Airport and Airway Trust Fund Issues in the 106th Congress*. **(CRS contact: John Fischer.)**

Highway Finance, FY2003: The RABA Dilemma

According to estimates by the Department of Transportation (DOT), revenues (fuel taxes and other fees) accruing to the Highway Trust Fund decreased in FY2001 as a result high fuel prices and the onset of the recession. Most of the decrease in the transportation sector seems to be related to problems in the trucking industry. The RABA process created by TEA21 requires that federal highway obligational authority be adjusted accordingly. In simple terms, this meant that the RABA adjustment for FY2003 would have been a negative \$4.369 billion. Core highway program obligational authority for FY2003 would therefore have been limited to approximately \$23.3 billion, an \$8.6 billion reduction from the FY2002 level. This was an unexpected and unwelcome development for state and local governments whose long-term transportation improvement plans (TIPs) are largely predicated on continued growth in the federal contribution to highway-program funding.

As a result of a provision included in the second FY2002 emergency supplemental appropriations bill (P.L. 107-206)(August 2, 2002) the RABA adjustment proposed for FY2003 has been blocked. The net effect of this provision is to set the program at its authorized \$27.7 billion level. Prior to this action both the House and the Senate held hearings on this issue. Also legislation raising the existing limitation on obligations was introduced, H.R. 3694 and S. 1917. A majority of both the House and Senate signed on as cosponsors of this legislation. An amended version of H.R. 3694 was reported out of the House Committee on Transportation and Infrastructure on May 1st. S. 1917 as reported to the Senate on June 17th allows for an additional \$1.3 billion in spending over the \$27.7 billion level. Most recently the Senate Committee on Appropriations reported S. 2808 which would increase spending to the FY2002 level. It remains to be seen if any of these increases over the \$27.7 level will survive conference with the House. (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.

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

Agency	Enacted FY2002	Requested FY2003	House Passed	Senate Passed	Enacted FY2003
Federal Highway Administration	33,081	24,694	—	—	—
Federal Aviation Administration	13,512	13,582	—	—	—
Federal Transit Administration	6,871	7,226	—	—	—
United States Coast Guard	5,240	5,893	—	—	—
Transportation Security Administration	2,200	4,800	—	—	—
Federal Railroad Administration	840	711	—	—	—
National Highway Traffic Safety Administration	423	425	—	—	—
Office of the Secretary	155	141	—	—	—
Office of the Inspector General (OIG)	52	57	—	—	—
Surface Transportation Board (STB)	18	18	—	—	—
Budgetary Resources Net Grand Total	59,588	56,060			

Source: Figures in **Table 1** are drawn from tables provided by the House Committee on Appropriations. Some figures include offsetting collections. Enacted FY2002 figures have been adjusted to reflect the emergency supplemental, rescissions, additional appropriations, transfers, and carry-overs.

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.

The FY2002 enacted appropriation (H.R. 2299/P.L. 107-87) for DOT is \$59.6 billion. This is 2.5% above the \$58.1 billion provided for FY2001 and 6% above the \$56.1 billion requested by the Bush Administration for FY2003. **Table 1** shows, for selected agencies and offices that receive funding under the DOT appropriations act each year, the amounts enacted for FY2002, as well as the FY2003 amounts proposed by the Bush Administration.

Following the September 11 terrorist attack Congress quickly passed the 2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States (H.R. 2888/P.L. 107-38). The Act provided \$40 billion for a variety of responses to the attacks, including “providing for increased transportation security.” P.L. 107-38 provided roughly \$1.9 billion for transportation security purposes, most of which went to the new Transportation Security Administration.

On February 4, 2002, President Bush submitted his FY2003 budget request. For DOT, the budget requests just over \$59 billion (the Administration figure includes some proposed user fees and offsets normally not included in Appropriations Committee figures, which total \$56.1 billion). This would represent a slight decrease from FY2002; however, this decrease is not evenly spread. The features of the budget that have generated the most interest are the impact of the \$4.369 billion RABA reduction on highway spending, the large increase in the Transportation Security Administration budget, and the record increase for the Coast Guard.

On July 26, 2002 the Senate Appropriations Committee reported its version of the DOT appropriations bill (S. 2808). The Committee recommended \$64.7 billion, \$8.6 billion more than the Administration request. The major differences were an increase in FHWA spending to FY2002 levels (\$32.9 billion), \$8.8 billion above the FY03 request, and an increase of \$679 million for Amtrak, to \$1.2 billion.

On August 2, 2002, the President signed the second FY2002 emergency supplemental bill (H.R. 4775/P.L. 107-206). This bill included an additional \$6.6 billion for the DOT for FY2002. This included \$3.9 billion for the Transportation Security Administration, \$1.8 billion for the Federal Transit Administration (for grants to rebuild New York City’s subway system in Manhattan), \$728 million for the Coast Guard, and \$205 million for Amtrak.

On August 9, 2002, the President announced that he would not ask for the \$5.1 billion in contingency emergency funding that was included in the supplemental bill (P.L. 107-206). The act provides that if the President requests any of the contingency emergency funding, all of it is released. This decision will reduce the supplemental funding to DOT by \$1.1 billion, from \$6.6 billion to \$5.5 billion. The biggest reductions are to the TSA (\$480 million), the Coast Guard (\$262 million), and the FAA’s Grants-in-Aid to Airports (\$150 million).

On October 7, 2002, the House Appropriations Committee reported its version of the DOT Appropriations bill (H.R. 5559). The Committee recommended \$60.1 billion, \$4.0 billion more than the Administration request. The major difference was a \$4.6 billion increase in FHWA spending, to \$27.7 billion.

FY2003 began without a DOT appropriations act; the department's programs are currently being funded by a series of continuing resolutions (CRs), which provide agencies the same level of funding they received in FY2002 (minus extraordinary one-time appropriations) prorated on a daily basis for the life of the CR. The current CR, the fourth in the series, provides funding through November 22, 2002.

Funding through CRs creates complications for several types of programs: (1) those that may receive less funding in FY2003 than in FY2002; (2) those whose expenses are clustered early in the year rather than evenly distributed throughout the year; and (3) those that are earmarked.

(1): The Federal Highway Administration received \$31.8 billion in FY2002, but only \$24.1 billion was requested for FY2003; it is receiving \$31.8 billion prorated through the CRs. Amtrak received a total of \$1.1 billion in federal assistance in FY2002, but only \$521 million was requested for FY2003; it is receiving \$1.0 billion prorated through the CRs. For programs in this situation, the further into the fiscal year funding is provided by CRs, the greater the problem likely to be created by the proposed lower funding level in the FY2003 request, as the rate at which the programs received funding would drop abruptly if a lower FY2003 appropriation was enacted midyear.

(2) The Transportation Security Administration's deadline to screen all baggage by December 31, 2002 requires them to expend more than 1/4 of their FY2003 budget during the first quarter of the year for explosive detection equipment purchases (though the October 28, 2002 *Washington Letter on Transportation* suggests that inter-agency transfers may provide them the needed cash in time).

(3) Several Federal Highway Administration and Federal Transportation Administration programs have been fully earmarked in recent years; until Congressional direction for expending those programs' funds during FY2003 is provided in an appropriations bill, those programs will not provide any funding to recipients.

For more information see CRS Report RL31008, *Appropriations for FY2002: Department of Transportation and Related Agencies*. (CRS contact: D. Randy Peterman.)

Aviation

FAA's Airport Improvement Program (AIP)

The Airport Improvement Program (AIP) provides federal grants for airport development and planning. AIP grants are usually spent on capital projects that support airport operations including runways, taxiways, aprons, and noise abatement. A number of issues that could be subject to congressional scrutiny in the 107th Congress include: whether the pattern of spending of both AIP grants and Passenger Facility Charge (PFC) revenues

encourage competition or benefit incumbent carriers; how well FAIR21's spending guarantees hold up; the effectiveness of aircraft noise mitigation at or near airports; the earmarking of dollar amounts for airports identified in the report language of the FY2001 and FY2002 conference reports (H. Rept. 106-940; H. Rept. 107-308) and impact this extensive earmarking on the FAA's grant application process.

An issue of increasing prominence is the impact of the use of AIP grants to defray post-September 11 airport security costs on the availability of funding for AIP's other traditional priorities of assuring safety, stimulating capacity and mitigating airport noise. An October 2002 General Accounting Office report (GAO-03-27; available on the GAO web site at [<http://www.gao.gov/docdb/lite/form.php?entry=1>]), concluded that extensive use of AIP funds for security projects has affected some airport development projects.

President Bush's FY2003 budget called for funding AIP at the fully authorized level of \$3.4 billion. For FY2003, the House Committee on Appropriations (H.R. 5559; H. Rept. 107-722) as well as the Senate Committee on Appropriations (S. 2808; S. Rept. 107-224) have also recommended \$3.4 billion for AIP. In addition, the FY2002 Emergency Supplemental Appropriations Act (P.L. 107-206) includes a provision for \$150 million for emergency grants, contingent on a request by the Administration for their use, to airports to offset the costs of FAA security mandates. The Bush Administration, however, has announced that it will not utilize any of the contingent emergency funds in P.L. 107-206.

The September 11 terrorist attack led to increased interest in using AIP and PFC funds for security projects. Following the attack FAA lifted some policies that restricted AIP funding to broaden its use for security improvements. AIP and PFC funds can be used a broad range of security projects including, blast fences, bomb detection dogs and kennels, cameras, security lighting, body armor, reconstruction of terminals to isolate threats, cargo area security equipment or facilities, and others. Items that remained ineligible included, personnel costs, utility costs, maintenance costs, and operational costs. Provisions in ATSA (P.L. 107-71) broaden eligibility for FY2002 to cover the costs to airports of post-September 11 security mandates. Also eligible in FY2002 are payment for debt service to certain airport sponsors under certain conditions. For non-primary airports affected by post-September 11 airspace restrictions, FY2002-FY2003 AIP apportionments can be used to defray any costs incurred while the restriction was in effect. For more information on AIP, see CRS Issue Brief IB10026, *Airport Improvement Program*. (CRS contact: Bob Kirk.)

Airline Industry Financial Turmoil

Congress and the Bush Administration moved swiftly to provide the airline industry with federal financial support in the wake of the events of September 11, 2001. The Air Transportation Safety and System Stabilization Act (P.L. 107-42) signed into law on September 22, 2001, gives the airlines access to up to \$15 billion in short-term assistance. The first \$5 billion, now largely paid out, provides direct aid to pay for industry losses associated with the results of the World Trade Center and Pentagon attacks. Access to the remaining \$10 billion, available as guaranteed loans, is subject to approval by the Air Transportation Stabilization Board (ATSB) and to stringent regulatory requirements established by the Office of Management and Budget. To date, the Board has approved a loan for America West Airlines and tentatively approved loans for US Airways, American Trans Air (ATA), Aloha, and Frontier. It has also rejected loan applications from Vanguard (now

in receivership), National (also in receivership), Spirit, and Frontier Flying Service (an Alaskan based carrier not to be confused with Frontier Airlines). Only a few additional airlines have applied for loan funds, most notably United Airlines.

In the time since the attacks, significant airline employee layoffs and scheduled-flight reductions have taken place. United and American, for example, both announced layoffs of 20,000 employees and both announced schedule reductions of approximately 20%. Other airlines made similar announcements, and layoffs industry-wide exceeded 100,000 and still continue. Over 1,000 aircraft are now in storage and additional aircraft, primarily Boeing 727s, have been retired. The actions of the airlines are obviously affecting related industries. Boeing announced layoffs of up to 30,000 employees by the end of 2002, and expects to reduce production of new aircraft proportionately. Airline service providers, such as caterers, airports, and the travel industry, are also losing revenue.

The airline industry was already in financial trouble before the attacks. Most Wall Street analysts were projecting an overall financial loss for the industry in the range of \$1-\$2 billion for 2001. Actual losses for 2001, largely due to September 11, were over \$7 billion. Losses are continuing into 2002 and may even exceed those experienced in 2001. US Airways has filed for Chapter 11 bankruptcy protection and United has suggested it may need to follow suit if it does not receive a loan from the ATSB. There are concerns that continued financial problems could lead to further airline business failures and perhaps to a new round of airline mergers in the foreseeable future.

Even with the ATSB operating, the issue of how much aid will ultimately be distributed remains. This is because of a clear desire amongst policymakers to limit aid to a level needed to stabilize the industry, but not to pay for losses incurred by the industry before September 11. Further, there is concern that the industry remain competitive after its financial stabilization. This means making sure that any aid distribution scheme ensures that a sufficient number of airlines survive the current turmoil. **(CRS contact: John Fischer)**

Surface Transportation

Oversight of the Environmental Provisions of TEA21

Meeting public needs for surface transportation, while ensuring that the protection of the environment is not comprised, has been a longstanding issue among states and affected communities in local areas. TEA21 authorized funding for federal highway and mass transit programs from FY1998 to FY2003, and set aside approximately \$12.5 billion for several programs to mitigate the environmental impacts of surface transportation. Most of this funding is reserved for air quality projects to assist states in complying with federal air quality standards. The law also increased funding for environmentally related transportation enhancements, established several new programs, and required the Secretary of Transportation to streamline the environmental review process for highway projects. For additional information, refer to CRS Report 98-646 ENR, *Transportation Equity Act for the 21st Century (P.L. 105-178): An Overview of Environmental Protection Provisions*.

In the 107th Congress, several oversight hearings have been held to examine the Department of Transportation's implementation of TEA21. Oversight of the law's

environmental provisions has focused on the implementation of requirements to streamline the environmental review process for highway projects. While the law did not specify a deadline for meeting these requirements, some Members of Congress have expressed concerns over the pace at which implementation has proceeded. Final regulations to implement the environmental streamlining requirements under TEA21 have not been issued to date. The FHWA, however, has proposed regulations that address some of the provisions of TEA21 for a coordinated environmental review, signed a National Memorandum of Understanding with six other federal agencies, and established a pilot program to gain practical experiences in exercising the principles of streamlining before applying them on a national scale.

The Administration has requested \$6 million to support the FHWA's streamlining initiatives in FY2003, about \$3 million more than in FY2002. As reported, the Department of Transportation and Related Agencies Appropriations Act for FY2003 (S. 2808, S.Rept. 107-224) does not indicate how much funding would be provided for streamlining projects, nor does report language include commentary on the pace at which the FHWA has implemented the streamlining provisions in TEA21. In addition to federal efforts, numerous states are implementing a variety of demonstration projects that may help to identify environmental requirements earlier in the planning stage and speed the review process.

The FHWA's proposed streamlining regulations have been at the center of the oversight debate. Some Members of Congress have criticized the proposal for not fully addressing the streamlining requirements under TEA21, and for addressing other planning and regulatory issues not required under the law. Some of the principal criticisms are that there is no requirement for environmental reviews to be conducted concurrently, rather than sequentially, and to be completed within a cooperatively determined time period. Thus far, this requirement has been addressed only outside of the regulatory process through a memorandum of understanding with the federal agencies that are responsible for performing environmental reviews. Some Members also have criticized the proposal for not fulfilling the law's requirement to develop procedures for resolving disputes when federal agencies do not complete their reviews within mutually agreed upon time frames. To address this requirement, the FHWA has been working with the U.S. Institute for Environmental Conflict Resolution, and has issued a discussion draft for dispute resolution procedures, which the Administration expects to complete by the end of 2002.

The Department of Transportation reports that its regulatory proposal lacked requirements to establish time frames for review, and to resolve disputes, due to its absence of authority over other federal agencies and a concern that "one-size-fits-all" approaches could limit flexibility. A decision on whether to proceed with the original proposal, or to withdraw it and possibly draft a new regulatory proposal, has not been announced to date. Congressional oversight of this issue will likely continue as the Department of Transportation proceeds with its streamlining initiatives and as Congress considers the reauthorization of TEA21. For additional information, refer to CRS Report RS20841, *Environmental Streamlining Provisions in the Transportation Equity Act for the 21st Century: Status of Implementation*. (CRS contact: David Bearden)

Amtrak Funding

In June of 2002, Amtrak announced that it had lost access to its line of short-term credit, and consequently needed \$205 million from the Federal government to continue operating until the end of the fiscal year (September 30). Otherwise, it would have to begin shutting down its system in July. The DOT agreed to provide Amtrak with a \$100 million loan guarantee on June 28, in exchange for certain conditions, saying that it would be up to Congress to provide the remaining \$105 million. In the 2nd FY2002 emergency supplemental bill (P.L. 107-206), Congress provided \$205 million to Amtrak, to cover the remaining \$105 deficit and repay the \$100 million loan.

The Administration's FY2003 budget requests \$521 million for Amtrak, while noting that figure is only a placeholder while the Administration develops a proposal for Amtrak reauthorization. Amtrak's new President, David Gunn, appointed on April 28, 2002, has said that if Amtrak does not receive at least \$1.2 billion in FY2003, it would not be able to operate throughout the year and would again face a shutdown. However, in statements during the negotiations to keep Amtrak operating, DOT Secretary Mineta said the Administration would oppose any efforts to provide Amtrak with more than \$521 million for FY2003 unless Amtrak was significantly reformed. Secretary Mineta presented a list of principles for Amtrak reform; they include eliminating Federal operating support, separating ownership of the Northeast Corridor infrastructure from train operations, introducing competition for certain routes, and sharing responsibility for passenger rail financing between the Federal government and the states. These reforms are extensive; given the other issues Congress is dealing with, it is unlikely that Congress could develop and pass Amtrak reauthorization legislation before making Amtrak's FY2003 appropriation, even if there was consensus on the Administration's principles, which there is not. The House Appropriations Committee recommended \$762 million for Amtrak in its version of the FY2003 DOT appropriations bill; the Senate Appropriations Committee recommended \$1.2 billion for Amtrak in its version.

Amtrak's authorization expired at the end of FY2002. It is currently (through November 22) being funded through Continuing Resolutions (CRs), which provide agencies lacking FY2003 appropriation acts funding at their FY2002 level prorated on a daily basis. Amtrak received a total of \$1.1 billion in federal assistance in FY2002; it is receiving \$1.0 billion, prorated daily, through the CRs. One proposal for dealing with the current appropriations situation is for Congress to pass a CR through March 2003. If that should occur, by the time the CR expired, halfway through FY2003, Amtrak would have received about what the Administration requested for it for all of FY2003, and about two-thirds of what the House Appropriations Committee recommended for it for all of FY2003 (though CRs can contain provisions for specific programs, and even the text of one or more regular appropriations bills, so it would be possible for specific directions governing Amtrak to be provided in a CR).

Amtrak earns around \$2 billion a year. Unfortunately, it spends nearly \$3 billion a year, producing operating deficits of around \$900 million 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. In the summer of 2001, Amtrak mortgaged part of its Pennsylvania Station in New York City to raise \$300 million to cover operating expenses until the start of FY2002. At that time, the Secretary of Transportation observed that it was

clear that Amtrak would not be able to cover its operating expenses without federal support by December 2002, as is called for by the Amtrak Reform and Accountability Act of 1997 (P.L. 105-134). This observation was formalized by the Amtrak Reform Council in November 2001, when it declared that Amtrak will not meet the deadline set by the Act; in accordance with the Act, the Reform Council submitted a plan to restructure Amtrak on February 7, 2002.

After September 11th, Amtrak ridership rose nationwide as some travelers sought alternatives to flying. Also, heightened airline security increased the amount of time required for air travel, making train travel more competitive in some corridors. However, this surge in ridership proved temporary; by November, Amtrak's ridership declined as Americans cut back on travel. Moreover, while Amtrak revenues rose in the weeks after September 11th, so did its security costs. S. 1550, the Rail Security Act of 2001, would provide \$1.77 billion in emergency assistance to Amtrak for security needs, including both new security personnel and equipment and life-safety improvements to the escape routes of tunnels in New York. It also calls for a DOT study of security improvements needed for rail transportation. S. 1991 would authorize \$1.3 to Amtrak for security and life-safety needs. These bills have been passed out of committee. **(CRS contact: D. Randy Peterman.)**

Amtrak Oversight

Amtrak's current authorization expired at the end of FY2002. Its previous authorizing legislation, the Amtrak Reform and Accountability Act of 1997 (P.L. 105-134), required Amtrak to operate without using federal funds to cover operating expenses by the end of FY2002; that is, to be able to cover its operating expenses out of revenues. The Amtrak Reform Council, a creation of the Act, was to notify the Congress if it judges that Amtrak will not meet that goal. On November 9, 2001 the Council formally declared that Amtrak would not meet the deadline. However, the Act did not prescribe any penalty if Amtrak failed to meet that goal. The Act provided that the Council was to present a plan for a restructured national intercity rail passenger system to Congress within 90 days of that finding (i.e., by February 7, 2002); the Act also called for Amtrak to present a plan to liquidate itself to Congress by the same date. After receipt of these plans, the Act gave Congress 90 working days to pass a restructuring plan; failing that, a liquidation disapproval resolution was to be introduced in the Senate. However, nothing was prescribed in the Act in case that resolution was passed or failed to pass. Also, a provision in the FY2002 Defense Appropriation Act conference committee report (H.Rept. 107-350, p. 448) prohibited Amtrak from using any of its own revenues or appropriated funds to develop a liquidation plan until after enactment of an Amtrak reauthorization act.

Four Amtrak reauthorization bills have been introduced. The National Defense Rail Act (S. 1991/H.R. 5216) would authorize \$14.5 billion for Amtrak over the next five years and remove the requirement that Amtrak be operationally self-sufficient after December 2002. It would also direct the Secretary of Transportation to develop a national high-speed rail transportation policy and provide for federal support in both planning and implementing high-speed rail corridors; it would authorize \$9.3 billion over six years for that purpose. It would also increase the authorization for the Rail Revitalization and Regulatory Reform Act of 1976 to \$35 billion. This bill was reported out of the Senate Commerce Committee on April 18, 2002.

The Rail Passenger Service Improvement Act (S. 1958) would authorize \$1 billion for operations, \$3.6 billion for capital improvements, and \$1.4 billion for safety and security improvements for Amtrak over the next four years. This bill reflects, to some degree, the proposal of the Amtrak Reform Council. It would require Amtrak to divide itself into three separate subsidiaries with transparent accounting systems, and these organizations would be privatized within four years of passage of the bill. The bill would also allow competition for passenger rail operations through franchising of various routes. Amtrak would turn over control of the Northeast Corridor to the Department of Transportation, and by October 1, 2002, would cease operating any route whose revenue does not cover its expense unless Amtrak has an agreement with some entity that will cover the deficit.

The Railroad Advancement and Infrastructure Law for the 21st Century (S. 1530; RAIL-21) would remove the requirement that Amtrak operate without federal support for operating costs by December 2002 that was created by the Amtrak Reform and Accountability Act of 1997. It would also reauthorize Amtrak for one year (at \$1.2 billion); authorize \$3.2 billion in emergency spending on security personnel, infrastructure improvements and new equipment for Amtrak over the next two years; and increase the authorization for the Railroad Rehabilitation and Infrastructure Financing loan and loan guarantee program to \$35 billion. No action has been taken on this bill.

H.R. 4545 would reauthorize Amtrak for one year at \$1.9 billion; it would also require that Amtrak's appropriation be administered by the Department of Transportation, rather than being given to the corporation directly. This provision is controversial; supporters say it would increase Amtrak's accountability. This bill was reported out of the Railroad Subcommittee of the House Transportation & Infrastructure Committee, but has been held up in the full committee by the Chairman's insistence that it pass with H.R. 2950, which authorizes funding for construction of high-speed rail lines, but which is stalled over labor issues.

All of these bills, if not passed by the Congress before then, will die at the end of the 107th Congress. For more information on Amtrak, see CRS Report RL30659, *Amtrak: Overview and Options*. (CRS contact: D. Randy Peterman.)