

Issue Brief for Congress

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Transportation Issues in the 108th Congress

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Transportation Issues in the 108th Congress

SUMMARY

This issue brief identifies key transportation issues facing the 108th Congress.

Transportation Budget. On November 13, 2002, Congress passed H.J. Res. 124, which provides for continuing appropriations under FY2002 funding levels and conditions through January 11, 2003. A key issue in the FY2003 budget has been a provision of the Transportation Equity Act for the 21st Century (TEA21) that provides a mechanism, revenue aligned budget authority (RABA), to adjust amounts in the highway account, but not the transit account, to reflect increased or decreased receipts in highway-generated revenues. For FY2003, revenues will decrease. The second FY2002 emergency supplemental appropriations bill (P.L. 107-206) blocked the RABA adjustment for FY2003. The net effect of this provision is to set program spending at its authorized \$27.7 billion level.

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 1st Session of the 108th Congress.

Aviation Reauthorization. The authorization for key functions of the Federal Aviation Administration (FAA) will expire at the end of FY2003. The 108th 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 108th Congress is what reasonable security actions can be taken in each transportation mode without excessively

impeding commerce and travel.

Amtrak Issues. The 108th Congress will have to reach agreement on the size of Amtrak's annual appropriation. Amtrak has stated that it needs \$1.2 billion in FY2003 or could face the possibility of a shutdown. 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. United Airlines, the Nation's 2nd largest airline, filed for Chapter 11 bankruptcy protection on December 9, 2002, joining the Nation's 6th largest airline, US Airways, in operating under bankruptcy protection. The filing followed a decision by the Air Transportation Stabilization Board (ATSB) to deny United's application for a guaranteed loan. Many Members of Congress supported the loan and several Members have made it clear that they believe the board has failed in its mission to stabilize the industry and that its mandate should be revisited during the 108th Congress. The airline industry is also publically asking Congress to provide it with tax relief, as a potential way to help stem its financial losses.

Environmental Issues. The 108th 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

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

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 Transportation Security Administration (TSA) and the Coast Guard from the Department of Transportation (DOT) to the new department.

BACKGROUND AND ANALYSIS

Introduction

This issue brief provides an overview of key issues on the transportation agenda of the 108th 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 21st Century (TEA21)(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, TEA21 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 TEA21 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 TEA21 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 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 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. For more information, see CRS Report RL31665, *Highway and Transit Program Reauthorization* and CRS Report RS20177, *Airport and Airway Trust Fund Issues in the 106th 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.

Neither the House nor the Senate passed FY2003 DOT appropriations bills in the 107th Congress, although House and Senate Appropriations Committees each approved a bill. DOT programs are currently being funded by 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 fifth in the series, provides funding through January 11, 2003.

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-aid highway program in the Federal Highway Administration received \$31.8 billion in FY2002, but the House Appropriations Committee recommended only \$27.7 billion for FY2003; it is being funded at an annual rate of \$31.8 billion prorated through the CRs, but with a cap of \$27.7 billion, as agreed by Congressional leadership. Amtrak received a total of \$1.1 billion in federal assistance in FY2002, but only \$521 million was requested for FY2003; it is being funded at an annual rate of \$1.0 billion prorated through the CRs. For programs in this situation, the further into the fiscal year the current level of funding is provided by CRs, the greater the potential problem posed by the proposed lower funding level for FY2003.

2. The Transportation Security Administration's deadline to screen all baggage by December 31, 2002 requires them to expend more than a quarter of their FY2003 budget during the first quarter of the year for explosive detection equipment purchases (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 discretionary programs have been fully earmarked in recent years. Until Congressional direction is provided for spending those programs' funds during FY2003, those programs will likely not provide any funding to recipients.

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

Agency	Enacted FY2002	Requested FY2003	House Committee	Senate Committee	Enacted FY2003
Federal Highway Administration	33,306	24,098	28,695	32,893	--
Federal Aviation Administration	13,512	13,582	13,599	13,586	--
Federal Transit Administration	6,871	7,226	7,226	7,326	--
United States Coast Guard*	5,495	6,058	6,061	5,772	--
Transportation Security Administration*	2,200	5,346	5,146	4,950	--
Federal Railroad Administration	1,045	711	958	1,423	--
National Highway Traffic Safety Administration	423	425	430	440	--
Office of the Secretary	155	141	181	172	--
Office of the Inspector General (OIG)	52	57	57	57	--
Surface Transportation Board (STB)	18	18	18	18	--
Budgetary Resources Net Grand Total	66,391	56,010	60,054	64,726	--

* Transferred to Department of Homeland Security (P.L. 107-296).

Source: Figures in **Table 1** are drawn from tables provided by the House Committee on Appropriations, except for Senate figures. 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 was \$59.6 billion (supplemental appropriations provided another \$7 billion). This was 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 funding for FY2002, as well as the FY2003 amounts proposed by the Bush Administration and Congressional action to date.

On July 26, 2002 the Senate Appropriations Committee reported its version of the FY2003 DOT appropriations bill (107th Congress: S. 2808). The Committee recommended \$64.7 billion, \$8.6 billion more than the Administration request. The major differences were an increase in federal-aid highway spending to FY2002 levels (\$31.8 billion), \$8.6 billion above the FY03 request, and an increase of \$679 million for Amtrak, to \$1.2 billion.

On October 7, 2002, the House Appropriations Committee reported its version of the DOT Appropriations bill (107th Congress: 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 federal-aid highway spending, to \$27.7 billion. For more information see CRS Report RL31008, *Appropriations for FY2003: Department of Transportation and Related Agencies*. (CRS contact: **D. Randy Peterman**.)

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 1st Session of the 108th Congress. The Transportation Equity Act for the 21st Century (TEA21)(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 TEA21 authorization was about 40% more than the amount that had been authorized in the previous 6-year program authorization. Further, a mechanism created by TEA21, RABA, has provided the program with an additional \$9.1 billion over TEA21'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 108th Congress is shaping up primarily as a debate about money. Given the large increase in funding made available by TEA21, 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.

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 TEA21; 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**.)

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 108th 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 TEA21. 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 21st 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 TEA21, 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 21st Century: Status of Implementation*. **(CRS contact: David Bearden)**

Safety Issues

During the first session of the 108th 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. Federal highway and traffic safety programs are 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. Other groups seek new safety requirements or fundamental changes in federal transportation safety programs. A key challenge will be finding the 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 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 21st Century (TEA21), 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 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 the states and managed by the National Academy of Sciences.

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 21st 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 108th 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's agenda for improving safety in the national airspace system is 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 108th 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 108th 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 government 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.

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 108th 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 108th 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: Proposals to Consolidate 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 as federal flight deck officers, allowing them to carry firearms and use force, including lethal force, to protect the flight deck. Implementation of the Federal Flight Deck Officer Program is to begin no later than February, 2003. The legislation 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 108th 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. The 108th Congress is also likely to introduce additional measures 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, indirect air carrier facilities, air cargo operations areas, and cargo acceptance areas. Another topic likely to be addressed are methods for detecting false or fraudulent passenger identification and technologies to improve the verification and validation of passenger identification. A related issue 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 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. 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. Proponents argue that such restrictions will provide for enhanced security at vulnerable locations, while opponents

of flight restrictions maintain that they will negatively affect air traffic operations and safety, as well as certain commercial entities such as aerial advertising and aerial broadcast coverage. (See 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 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 107th Congress considered, but did not pass, intercity bus and intercity rail security legislation. Surface transportation security bills will likely be taken up by the 108th Congress. A bus security bill (107th Congress: H.R. 3429, S. 1739) would have provided federal grants to intercity bus companies to protect drivers, implement passenger screening programs, train employees in threat assessments, and install video surveillance and communications equipment. 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 Rail Security Act of 2001 (107th Congress: S. 1550) would have provided funds to improve the egress and access to these tunnels by emergency responders, but did not pass during the 107th Congress. **(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 108th Congress may again face questions about how to cover the cost for enhancing port security.

In the 108th 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. 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 what implications these actions may have for U.S. agencies and port operations. The International Maritime Organization and the World Customs Organization are working towards adopting international security standards for vessels, ports, cargo, and crews. 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 a key question for policymakers. (See CRS Report RS21293, *Terrorist Nuclear Attacks on Seaports: Threat and Response*.) **(CRS contact: John Frittelli)**

Security Funding

At issue for Congress is targeting resources to those areas in the transportation system where the vulnerability and the consequences of a terrorist attack are the greatest. Most important is the issue of how to finance transportation security improvements. A key question is whether passengers, carriers, or shippers should pay for security improvements through such measures as a ticket tax or user fee, or if funding should come from the General Fund of the Treasury, or both.

Some Members of Congress have expressed concern with the growing size of the TSA budget and lack of detail about how the money will be used. When the TSA was created there was an expectation that user fees would cover the cost of TSA's annual budget. However, revenues from fees will not come close to covering the TSA's annual budget. 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). **(CRS contact: John Frittelli)**

Amtrak Issues

In the absence of a FY2003 DOT appropriations act, Amtrak is being funded through Continuing Resolutions (CRs) at an annual level of \$1.0 billion, prorated daily. The Administration's FY2003 budget requests \$521 million for Amtrak. 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 for the full year and would again face a shutdown. DOT Secretary Mineta has said the Administration would oppose any efforts to provide Amtrak with more than \$521 million unless Amtrak is significantly

reformed. The Administration's principles for Amtrak reform 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 and controversial. The House Appropriations Committee recommended \$762 million for Amtrak in its version of the FY2003 DOT appropriations bill, while requiring improved financial reporting and limited the amount of operating support for long-distance trains to \$150 million, \$50 million less than Amtrak says is required to maintain the current level of service. The Senate Appropriations Committee recommended \$1.2 billion for Amtrak.

Amtrak's authorization expired at the end of FY2002. Reauthorization proposals during the second session of the 107th Congress, other than the Administration's principles for reform, included S. 1958, which would have restructured Amtrak along the lines suggested by 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>], and S. 1991, which would have authorized greatly increased spending (around \$4.6 billion annually) on Amtrak as it is currently structured .

Amtrak revenues are around \$2 billion a year. However, 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. For more information on Amtrak, see CRS Report RL30659, *Amtrak: Overview and Options*. (CRS contact: D. Randy Peterman.)

Airline Industry Financial Turmoil

United Airlines filed for Chapter 11 bankruptcy protection on December 9, 2002. The nation's 2nd largest airline now joins the nation's 6th largest airline, US Airways in operating under bankruptcy protection. Since the events of September 11th, a couple of smaller airlines, National and Vanguard, have stopped flying. Air travel is down by at least 10% over pre-September 11th levels and the airline industry as a whole is expecting record financial losses for 2002.

Just weeks after September 11th, Congress and the Bush Administration had moved swiftly to provide the airline industry with federal financial support. The Air Transportation Safety and System Stabilization Act (P.L. 107-42) signed into law on September 22, 2001, gave the airlines access to up to \$15 billion in short-term assistance. The first \$5 billion, now largely paid out, provided 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 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), Frontier, and Aloha. It has also

rejected loan applications from United, Vanguard, Spirit, National, and Frontier Flying Service (an Alaskan based carrier not to be confused with Frontier Airlines).

The decision to deny United's loan application has been extremely controversial. Many Members of Congress had publically supported United's loan application. Several of these Members have made it clear that they believe the ATSB has failed at its mission of industry stabilization and that its mandate should be revisited during the 108th Congress. At the same time, the airline industry is publically asking Congress to provide it with tax relief, as a potential way to help stem its financial losses. Both of these issues are likely to be addressed during the 108th Congress. **(CRS contact: John Fischer)**

Environmental Issues

Several environmental issues related to transportation may also be on the agenda of the 108th Congress, either as oversight issues or in connection with TEA21 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 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 compliance by the October deadline. Six of the seven have now certified compliance, according to EPA, but until they did obtain certification, they were subject to non-conformance penalties that varied 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 TEA21, have requirements and/or provide incentives for the use of alternative fuels and vehicles. Within TEA21, 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. TEA21 allows for other incentives, including permitting states to exempt alternative fuel vehicles from HOV restrictions. Outside of TEA21 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 reallocates funding for research on other technologies toward this goal. For additional discussion, see CRS Report RL30484, *Alternative Transportation Fuels and Vehicles*, and CRS Report RL30758, *Advanced Vehicle Technologies*. **(CRS Contact: Brent Yacobucci)**