

**JURISDICTION AND ACTIVITIES  
SUBCOMMITTEE ON AVIATION  
111<sup>TH</sup> CONGRESS**

*January 2009*

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## I. EXECUTIVE SUMMARY

The Subcommittee on Aviation has jurisdiction over all aspects of civil aviation, including safety, infrastructure, labor, and international issues. This jurisdiction covers all Federal Aviation Administration (“FAA”) programs, except for research activities, which are within the jurisdiction of the Committee on Science. In addition, the Subcommittee has jurisdiction over the National Transportation Safety Board (“NTSB”). This jurisdiction is shared with the other subcommittees of the Committee on Transportation and Infrastructure (“T&I Committee”), but the Aviation Subcommittee has traditionally taken the lead on this issue. Other areas of the Subcommittee’s jurisdiction include the Essential Air Service (“EAS”) program and the war risk insurance program. On September 20, 2007, the House passed H.R. 2881, *The FAA Reauthorization Act of 2007*. However, the Senate failed to enact corresponding legislation during the 110th Congress.

Since 2001, the Subcommittee has exercised jurisdiction over transportation security, including programs administered by the Transportation Security Administration (“TSA”), which is within the U.S. Department of Homeland Security (“DHS”). The Subcommittee will continue to exercise oversight jurisdiction, in cooperation with the Committee on Homeland Security, over TSA’s aviation security programs, and the impact that such security measures may have on the aviation industry. Issues under the Aviation Subcommittee’s jurisdiction include:

- Federal Aviation Administration
- Air Traffic Control Modernization
- Use of the Navigable Airspace
- Airport Improvement Program Grants
- Airport Capacity/Environment
- Aviation Safety
- Aviation Antitrust Issues
- Commercial Aviation
- General Aviation
- Aircraft Manufacturing
- Air Carrier Operations
- Essential Air Service for Small Communities
- National Transportation Safety Board
- International Aviation
- War Risk Insurance
- Aviation Labor and the Railway Labor Act
- Aviation Security, including the Transportation Security Administration

## II. FAA OVERVIEW

The FAA's prime mission is to ensure the safe operation of the aviation system. It has the responsibility to certify, monitor, and regulate the operations and safety of airlines, airports, and aircraft manufacturers as well as establish licensing and training requirements for pilots and other aviation-related professionals. One of the FAA's most visible functions is the operation of the Air Traffic Control ("ATC") system. The ATC is a complex system of air traffic controllers, computers, procedures, and navigation, surveillance, and communications equipment designed to control the air space over the United States and portions of the Atlantic and Pacific oceans. The ATC has been built to be 99.99999 percent reliable and operates 7 days a week, 24 hours a day.

### A. Funding

The Airport and Airway Revenue Act of 1970 (P.L. 91-258) established the Airport and Airway Trust Fund ("Trust Fund") to help fund the development of a nationwide airport and airway system, as well as FAA investments in ATC facilities. The Trust Fund supplies all of the funding for the Airport Improvement Program ("AIP"), which provides grants for construction and safety projects at airports; the Facilities and Equipment ("F&E") program, which funds technological improvements to the ATC system; and a Research, Engineering, and Development ("RE&D") program. The Trust Fund also partially pays for FAA salaries, expenses, and operations. The Trust Fund contribution to FAA operations varies from year to year depending on Trust Fund receipts and the amount invested in capital programs. Under the Vision 100-Century of Aviation Reauthorization Act ("Vision 100") (P.L. 108-176), the Trust Fund share is calculated by subtracting total projected Trust Fund tax receipts and interest minus the amount appropriated for capital programs. The FAA's capital and research programs are 100 percent funded from the Trust Fund. In terms of FAA's total budget (operations, capital, and research programs), the Trust Fund has provided approximately 79-85 percent of FAA's total funding in each of the last four years.

The Trust Fund, in turn, is supported by the following taxes on aviation users (as well as interest earned on the cash balance), grouped below per IRS/Treasury Line Items for fiscal year ("FY") 2008:

#### **Transportation of Persons: \$8.440 billion, accounting for 70.4 percent of Trust Fund Tax Revenue**

- **Passenger ticket tax – 7.5 percent**
  - *Description:* A percentage of the fare that the passenger pays on a domestic flight.
- **Passenger flight segment tax – \$3.50 (increased to \$3.60 in 2009)**
  - *Description:* An additional tax paid by the passenger based on the number of segments in that passenger's trip. A segment is a take-off and a landing. For example, a person who flew from point A to point B would pay one segment tax while a person who flew from A to B with a stop at C would pay 2 segment taxes. Note that this tax does not apply to passengers departing from a rural airport, defined as an airport that has less than 100,000 passengers per year.
- **Rural airport tax – 7.5 percent**
  - *Description:* A ticket tax on passengers whose flights begin/end at rural airports. This tax is assessed in lieu of the general passenger ticket tax. When the rural airport tax applies, there is no segment fee assessed.

- **Frequent flyer award tax – 7.5 percent**
  - *Description:* A percentage tax on amounts paid by companies under frequent flyer marketing arrangements with airlines (e.g., credit card).

**Transportation of Property: \$521 million, accounting for 4.3 percent of Trust Fund Tax Revenue**

- **Freight waybill tax – 6.25 percent**
  - *Description:* A percentage of the amount that an air carrier charges a shipper for the carriage of domestic freight by air.

**Use of International Air Facilities: \$2.462 billion, accounting for 20.5 percent of Trust Fund Tax Revenue**

- **International departure and arrival taxes – \$15.40 per passenger (increased to \$16.10 in 2009)**
  - *Description:* A tax imposed on passengers on international flights departing or arriving in the United States.
- **Alaska/Hawaii Facilities Tax – \$7.70 per passenger (increased to \$8.00 in 2009)**
  - *Description:* A tax imposed on passengers on domestic flights to or from Alaska or Hawaii.

**Aviation Fuel Taxes: \$568.5 million, accounting for 4.7 percent of Trust Fund Tax Revenue**

- **4.3 cents on commercial aviation jet fuel;**
- **19.3 cents on general aviation gasoline; and**
- **21.8 cents on general aviation jet fuel.**

Accordingly, in FY 2008, the Trust Fund supported 73 percent of the FAA's operations budget and the AIP, F&E, and RE&D programs. The \$2.343 billion remainder of the FAA operations budget is provided from the General Fund of the Treasury. The General Fund contribution to FAA's total budget has varied over time, and has ranged between 16-21 percent over the last four years. The table below summarizes the FAA's FY 2008 enacted levels of funding (in millions):

<b>FAA Program</b>	<b>FY 2008 Enacted</b>
<b>Operations</b>	\$8,740      TF: \$6,397.1 GF: \$2,342.9
<b>F&amp;E</b>	\$2,513.6
<b>AIP</b>	\$3,514.5
<b>RE&amp;D</b>	\$146.8
<b>Total</b>	<b>\$14,914.9</b>

In 2000, Congress, with the leadership of the T&I Committee, passed the Aviation Investment and Reform Act for the 21st Century ("AIR 21") (P.L. 106-181), to unlock the Trust Fund and substantially increase the funding available for the FAA. The following table summarizes historical FAA funding levels.

## FAA FUNDING FISCAL YEARS 1996-2008

(in billions)

Program	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
<b>Operations</b>	4.6	5.0	5.3	5.6	6.0	6.9	7.1	7.0	7.5	7.7	8.2	8.4	8.7
<b>F&amp;E</b>	1.9	1.9	1.9	2.1	2.0	2.7	3.0	2.9	2.9	2.5	2.6	2.5	2.5
<b>AIP</b>	1.5	1.5	1.7	1.95	1.95	3.2	3.3	3.4	3.4	3.5	3.6	3.5	3.5
<b>RE&amp;D</b>	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.1	0.1	0.1	0.1	.1	.1
<b>Total*</b>	8.1	8.6	9.1	9.8	10.1	13.0	13.6	13.5	13.9	13.8	14.5	14.5	14.9

\*Total may not add due to rounding.

### B. Activities in the 110th Congress

#### Hearings

On February 14, 2007, *President's FY 2008 Federal Aviation Administration Budget*. This hearing's purpose was to examine the President's \$14 billion budget request for the FAA. The proposal was criticized by the Subcommittee for cutting funding for key programs, such as Next Generation Air Transportation System ("NextGen"), the AIP, and safety inspector and controller staffing.

On March 14, 2007, *The Administration's Federal Aviation Administration Reauthorization Proposal*. This hearing's purpose was to review the Administration's reauthorization proposal for the FAA, the *Next Generation Air Transportation Financing Reform Act of 2007*. The three-year authorization request, of about \$44.77 billion, proposed to move from the Trust Fund financing system, which supports most of FAA's major programs (AIP, F&E, and RE&D), to a cost-based user fee system.

On March 21, 2007, *The Federal Aviation Administration's Financing Proposal*. This hearing's purpose was to review the Administration's financing proposal for the FAA. Under the proposal, the Trust Fund tax structure would be changed to eliminate a number of excise taxes, increase fuel taxes and decrease the International Arrival/Departure tax. FAA asserted that in this system the airspace users would be charged based on the costs that they impose on the system. This proposal was strongly criticized at the hearing.

On February 7, 2008, *The President's FY 2009 Federal Aviation Administration Budget*. This hearing's purpose was to consider the Administration's FY 2009 \$14.64 billion budget request for the FAA. Similar to the FY 2008 budget request, this proposal requested to transform the FAA's current excise tax system to a hybrid cost-based user fee system. Many issues were raised with the proposal, including ATC modernization and controller workforce staffing.

#### Legislation

H.R. 2881 provided historic funding levels for FAA capital programs between FY 2008 and FY 2011, including \$15.8 billion for the AIP, \$13 billion for F&E, \$37.2 billion for operations, and \$1.82 billion for RE&D. H.R. 2881 also included a modest increase in the general aviation jet fuel tax rate from 21.8 cents per gallon to 35.9 cents per gallon; and an increase in the aviation gasoline tax rate from 19.3 cents per gallon to 24.1 cents per gallon to provide for the robust capital funding required to modernize the ATC system, as well as to stabilize and strengthen the Trust Fund.

### **III. AIRPORT IMPROVEMENT PROGRAM**

#### **A. Background**

The AIP funds projects for new and improved facilities at airports, including runways, taxiways, terminal buildings, land acquisition, and noise abatement. AIR 21 guaranteed that the AIP program will be funded at its authorized levels through a series of parliamentary protections (i.e., points of order) that apply to consideration of FAA funding bills in the House of Representatives. Vision 100 continued these AIR 21 parliamentary points of order.

AIP is subject to periodic legislative reauthorizations. Vision 100 was enacted in December 2003 and was expected to expire at the end of FY 2007. However, AIP is currently operating under extension of the Vision 100 reauthorization.

Each reauthorization act sets forth the method by which AIP funds are distributed among the various airports in the nation. Under current law, AIP money is divided into two broad categories: entitlement funds (also called apportionment funds) and discretionary funds.

Passenger and cargo entitlement funds are distributed to primary, commercial service airports (airports that board at least 10,000 passengers), and cargo service airports in accordance with a formula that takes account of the number of passengers and amount of cargo that go through each airport. AIR 21 ensured that beginning in FY 2001, primary, commercial service airports must receive at least \$650,000 (\$1 million if AIP is at least \$3.2 billion) per year. Larger airports can receive a passenger entitlement as high as \$26 million per year.

Each state is entitled to AIP funds for its general aviation airports and commercial service non-primary airports. The formula for the distribution of this money is based on the area and population of the state. In most states, the FAA, working with the state aviation authority, decides which general aviation airports receive AIP funding. Ten states (out of a total of 10 authorized slots) have authority to allocate the money themselves through the "Block Grant" program. (The states are Illinois, Missouri, North Carolina, Michigan, Texas, Wisconsin, Pennsylvania and Tennessee, New Hampshire and Georgia. New Jersey has withdrawn from the program due to changes in the state's aviation program.) Alaskan airports receive their own separate entitlement, in addition to the amount apportioned to Alaska as a state.

Beginning in FY 2001, general aviation airports, commercial service, non-primary airports and reliever airports received entitlements based on one-fifth of their expected five year costs for airport improvements, as listed in the National Plan of Integrated Airports System ("NPIAS"), capped at \$150,000 annually.

The FAA has discretion over the allocation of any AIP money remaining after all entitlements have been funded. However, provisions requiring that a certain percentage go to designated set-asides limit this discretion. The law requires that 35 percent be allocated to noise abatement projects and four percent to current or former military airports designated by the FAA. An additional set-aside for reliever airports equal to 0.66 percent of the discretionary fund is distributed when AIP is at or above \$3.2 billion.



After the entitlements and set-asides are funded, the FAA is statutorily required to satisfy Letter of Intent (“LOI”) commitments. The FAA then allocates the remaining funds using a priority-based system and other pertinent information, and subject to the requirement that 75 percent of funds be invested to enhance capacity, safety, or security or to reduce noise.

The FAA’s LOI program helps fund large-scale capacity projects at primary or reliever airports. In an LOI, the FAA commits to obligate discretionary and entitlement funds from future budget authority in an amount not greater than the Federal Government share of allowable costs for that project.

The FAA works with airport sponsors to develop a three-year airport capital improvement plan and to identify projects that will compete well for AIP discretionary funds. When potential AIP discretionary funding has been identified for a project, the airport files an application with the FAA. If the FAA decides to award a grant, it pays 75 percent of the cost of a project at medium- and large-hub airports (80 percent for noise projects). The Federal share at other airports is temporarily set by Vision 100 at 95 percent of the cost (after FY 2007, the share was scheduled to return to 90 percent; however, AIP is still operating under an extension to the Vision 100 reauthorization).

However, AIP meets only a portion of airport infrastructure needs. To provide additional resources for airport improvements, the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) permitted an airport to assess a fee on passengers. This airport fee is known as the Passenger Facility Charge (“PFC”). PFC eligibility is similar to AIP eligibility but with fewer limitations. PFCs are more likely to be used for “groundside” projects (e.g., terminals, airport access (roads and rail), and gates). The PFC is added to the ticket price, collected by the airlines, and then turned over to the airport imposing the fee. The FAA approves PFC applications from public agencies controlling commercial airports and PFC authority is only in effect as long as is necessary to fund projects in approved applications for the airport. PFCs also differ from AIP in that PFC revenue can be used to fund debt service for approved projects. The PFC is a supplemental funding source to AIP.

AIR 21 increased the cap on the PFC from \$3 to \$4.50 per passenger per flight segment, and no passenger can be required to pay more than \$18 in PFCs per round-trip. In addition, no airport can implement a PFC until the FAA approves it. FAA has approved PFC collections at 378 airports. If a medium- or large-hub airport charges a PFC of \$3 or less, it must forego up to one-half of its AIP entitlement. If one of these airports charges a fee greater than \$3, it must forego 75 percent of its AIP entitlement. The foregone entitlements go into a small airport fund that is distributed primarily to non-hub and general aviation airports.

Over the life of the PFC program, \$64.9 billion has been approved for collection in revenue (\$61.7 billion excluding Denver International Airport), including: \$11.7 billion for airside projects (18 percent); \$23.4 billion for landside projects (36 percent); \$2.6 billion for noise mitigation projects (four percent); \$3.9 billion for access projects (i.e. roads, rail, land) (six percent); and \$20.2 billion to pay interest on debt (31 percent). For Denver Airport, \$3.2 billion (five percent of total PFC revenue) has been raised.

## **B. Airport Capacity Issues**

During the last 20 years, air travel in the United States has grown faster than any other mode of transportation. As a result of increased guaranteed funding under Vision 100 and its predecessor FAA reauthorization acts, 15 new runways have been opened at some of the nation's busiest airports since 2001, including runways at airports in Chicago, Seattle, Washington, D.C. (Dulles), Boston, Atlanta, St. Louis, Detroit, Cleveland, Denver, Miami, Houston, Orlando, Minneapolis-St. Paul, and Cincinnati. In addition, two end-around taxiways were opened (Atlanta and Dallas/Fort Worth) and Los Angeles reconfigured (relocated a runway and constructed a new center taxiway) the south side of its airfield. These projects have provided these airports with the potential to accommodate almost 2 million more annual operations.

In the next five years, one new runway, one runway extension, and one taxiway will be commissioned. In addition, Chicago O'Hare will commission the third runway project, which is part of the initial phase the O'Hare Modernization Program.

Yet, despite this progress, much more is needed. The FAA forecasts that airlines are expected to carry more than 1 billion passengers by 2016, increasing from approximately 765 million in 2007. The FAA estimates that \$49.7 billion of AIP-eligible infrastructure development will be needed between 2009 and 2013 based on the latest NPIAS report dated September 30, 2008. An airport association's most recent Capital Needs Survey estimates that airport capital development costs for AIP-eligible and other necessary projects will total approximately \$80 billion during the same time frame. In addition, projections developed by the U.S. Department of Transportation ("DOT"), FAA, and the MITRE Corporation indicate that by as early as 2015, 18 airports and seven metropolitan areas will need additional capacity to meet expected demand if planned airport improvements at some of these airports are not completed.

## **C. Environmental Issues**

An issue closely related to airport capacity is the noise that airports generate in the surrounding areas. The United States faces obstacles in trying to expand airport capacity through infrastructure improvements, like new runways. Oftentimes, local governments do not engage in meaningful zoning regulations or land-use planning, creating communities in close proximity to airports. Aircraft noise, or the shifting of that noise, sparks controversy with airport neighbors and communities, and can act as a capacity constraint. Advanced technology, new operational procedures, and land use measures have all contributed to noise reductions at airports. An airport can apply for funding under both the AIP and PFC programs to undertake noise mitigation projects, including: acquiring homes and relocating people, soundproofing homes and other buildings, and constructing noise barriers.

## **D. Activities in the 110th Congress**

### **Hearings**

On March 28, 2007, *The Federal Aviation Administration's Airport Improvement Program*. This hearing's purpose was to consider the FAA's AIP, as part of a series of hearings on the Administration's FAA reauthorization proposal. FAA proposed \$8.7 billion from FY 2008 – FY 2010 for the AIP, which is \$1.8 billion less than the program received in the previous two-year

period. Airports testified to their needs for increased capital projects under the program, such as new runways and runway extensions.

On October 24, 2007, *Aviation and the Environment: Noise*. This hearing's purpose was to review the impact of aircraft noise in the aviation environment, primarily focusing on the FAA's part 150 program through which AIP funds are distributed, and whether or not certain airports are availing themselves of it. Because the part 150 program is voluntary, some airports have chosen not to participate for reasons including: an airport may have a long-standing noise program that is essentially equivalent, the cost of conducting the study itself, and numerous incompatible land uses surrounding the airport, and cost limitations. Land use issues were also discussed.

## **Legislation**

H.R. 2881 provided \$15.8 billion in AIP funding, and increased the PFC cap to \$7.00 from \$4.50 to combat inflation and to help airports meet increased capital needs. The bill also provided significant increases in AIP funding for smaller airports that are particularly reliant on AIP for capital financing. In addition, the bill contained several environmental-related provisions to ease noise and air emissions: a phase-out of stage 2 aircraft over the next five years; a pilot program for developing, maturing, and certifying continuous lower energy, emissions, and noise engine and airframe technology; and a program to fund six projects at public-use airports to take promising environmental research concepts into the actual airport environment.

## **IV. FACILITIES AND EQUIPMENT**

### **A. Background**

The FAA's F&E program includes development, installation, and transitional maintenance of navigational and communication equipment to aid aircraft travel. This program supplies equipment for more than 3,500 facilities, including ATC towers, flight service stations in Alaska, and radar facilities. The F&E program is funded completely by the Trust Fund. Like the AIP program, Vision 100 guaranteed that the F&E program will be funded at its authorized levels through a series of parliamentary protections (i.e., points of order) that apply to consideration of FAA funding bills in the House of Representatives.

F&E programs are first identified in FAA's National Airspace System ("NAS") Enterprise Architecture. The NAS architecture is a planning document published by the FAA outlining all of its current and future modernization and replacement projects. The most recent NAS Enterprise Architecture update covers FYs 2006 through 2025, and will be published in January 2009.

Future benefits outlined in the NAS Architecture include: (1) fuel savings for air carriers due to more direct routes instead of following designated airways determined by land-based navigational aids; (2) increased airport and air space capacity and safety, especially in poor weather; and (3) reductions in the number of government personnel needed at remote facilities as a result of installing FAA equipment with automatic monitoring systems.

The FAA's ATC facilities and equipment are aging. According to the FAA's own analysis, two-thirds of its \$30 billion worth of assets is beyond their useful life. ATC towers average 28 years

in age. Terminal Radar Approach Control (“TRACON”) facilities average 26 years. Primary En Route Radar Systems average 27 years. En Route Control Centers average 46 years, and about 30 percent of the centers are rated as being in poor condition. The FAA estimates requirements of more than \$30 billion over the next ten years just to maintain the current condition of the system.

## **B. ATC Modernization**

The ATC modernization effort is geared toward replacing most of the air traffic controllers’ radar screens, computers, navigation, surveillance equipment, and software. Benefits of this project include: color radar displays, which highlight weather and emergency situations; increased capacity, accuracy, and reliability in the equipment and software; and the capability for future computer enhancements.

However, this effort experienced substantial problems and program changes since it began in the early 1980s. Several programs have been fraught with significant cost overruns and delays, including: the Standard Terminal Automation Replacement System (“STARS”); the Wide Area Augmentation System (“WAAS”); and the Airport Surveillance Radar-Model 11 (“ASR-11”). The FAA has been working to address the problems with several of these programs.

Over the past four years, the FAA’s Air Traffic Organization (“ATO”) has made progress in cost control of the operations and capital budgets. Through capital program reviews, quarterly reviews, and service level reviews, the focus on cost, schedule, and performance has resulted in more efficient program execution. During the past four years, five major projects have been significantly restructured or segmented to ensure delivery of capabilities in the most efficient time period. In addition, four projects were terminated. For FY 2008, more than 90 percent of the capital investment programs met or exceeded ATO cost and acquisition goals.

## **V. FAA OPERATIONS**

### **A. ATC**

#### **1. Overview**

The FAA’s ATC system operates 24 hours a day, 365 days a year, providing aircraft separation and guidance services to commercial, military, and general aviation users. The ATC system consists of ATC and flight services facilities, navigation, and landing aids, staff to operate and maintain existing facilities, and staff that conducts research into future ATC systems.

The United States operates the largest and safest ATC system in the world. The fatal accident rate for commercial aircraft for the last three years is .017 per 100,000 flights, or one fatal accident for every 5 million flights.

Fourteen of the world’s 15 busiest commercial airports (in terms of commercial aircraft operations) are in the United States. The United States handles almost one-half of the world’s air traffic. The DOT predicts that by 2025, U.S. airline passenger and cargo traffic will be two to two and a half times what it was in 2000. This will require about a threefold increase in system capacity.

The major types of ATC facilities include the following:

**Air Route Traffic Control Centers (“ARTCCs”)**, also known as "en route" centers. The FAA operates 21 ARTCCs, which provide radar separation for aircraft flying at high altitudes between terminal areas.

**Oceanic ATC Centers.** The FAA has been allocated 80 percent of the world’s controlled oceanic airspace by the International Civil Aviation Organization (“ICAO”). The FAA has three centers, located in New York, New York; Oakland, California; and Anchorage, Alaska. Until the Advanced Technologies and Oceanic Procedures (“ATOP”) automation and display system was deployed, there were no surveillance systems to provide the aircraft’s exact location over the ocean. ATOP provides controllers with a more precise display of aircraft position, which allows reduced separation of aircraft flying over the oceans – from 100 nautical miles to 30 miles, thus increasing capacity.

The FAA operates and oversees over 500 facilities that provide ATC services to airports. These facilities are divided into the following types of facilities:

**TRACONs.** The FAA operates 164 radar approach control facilities that provide separation services for aircraft operating in busy terminal areas (the airspace located within 40 miles of a major airport). Of the 164 TRACONs, 136 include Air Traffic Control Towers (“ATCTs”), 26 are stand-alone facilities, and two are Combined Control Facilities that include en route operations and one of them includes an ATC tower. The Department of Defense (“DOD”) also operates radar approach control facilities, which serve both civil and military traffic. The FAA has consolidated some TRACON facilities and is reviewing whether to consolidate others.

**ATCTs.** These 127 FAA-operated stand-alone ATCTs control aircraft on the airport surface and aircraft landing or taking off at the airport.

**Contract Towers.** Since 1982, the FAA has contracted with the private sector to provide ATC services at visual flight rule airports. There are currently 240 contract towers in the NAS.

**Flight Service Stations (“FSS”).** FSS principally serve general aviation, providing flight plan filing and pre-flight weather briefing services. FSS also remain in contact with flights to provide updated weather information and to provide advisory and other services. The FAA consolidated FSS facilities into automated flight service stations (“AFSS”) in the mid-1980s. The FAA recently transitioned the AFSS in the continental United States, Hawaii, and Puerto Rico to contractor-operated services and capabilities. The contractor operates three large hubs and 15 refurbished continuing sites. In October 2008, the contractor announced that effective February 1, 2009, it is closing five continuing (refurbished) sites and will transfer operations of those sites to the appropriate hub. The FAA provides oversight of this service. This effort does not include Alaska’s three AFSS and 14 FSS, which FAA still operates and maintains.

## **2. NextGen**

Vision 100 directed the Administration to create a comprehensive plan for a NextGen to improve the level of safety, security, efficiency, environmental performance, quality, and affordability of the NAS and aviation services. Several departments and agencies, including the FAA, the National Aeronautics and Space Administration, the DOD, the Department of Commerce, the DHS, and the Office of Science and Technology Policy, are working in coordination with the Joint Planning and Development Office (“JPDO”), which develops the plan for NextGen, along with the private sector, to meet the broad objectives of NextGen through the year 2025 and beyond. Efforts are focused on leveraging investments in civil aviation, homeland security, and national security to build upon the NAS to meet the needs of all system users, civil and military. The ATC system upgrades are intended to accommodate and encourage substantial growth in domestic and international transportation and improvement in environmental performance while encouraging continuing future technology enhancements.

## **3. Air Traffic Controller Workforce**

FAA controllers staff some 314 federally operated facilities. The FAA states that to address expected air traffic controller retirements, more than 17,000 controllers will need to be hired through FY 2017. Since the end of FY 2005, the FAA has hired more than 5,000 controllers.

There were 583 controller retirements in 2006, 828 in 2007, 781 in 2008 and, between 2009 and 2017, the FAA projects that 6,259 of the current controller workforce will retire. In addition, the FAA estimates that an additional 4,798 controllers will leave for other reasons, including promotion, reassignment, resignation and removal. The FAA hired 1,815 developmental controllers in 2007, 2,196 in 2008, and in 2009, the target is 1,914. This pace is expected to continue for at least the next ten years.

However, hiring new controllers is a complex process. Controllers are highly skilled professionals and it takes several years to train a controller. According to the FAA, the failure rate for controller trainees in both the FAA Academy and in ATC facilities is approximately four and ten percent, respectively, averaging overall at eight percent. Replacing a controller who retires must begin several years in advance. In addition, the Department of Transportation Inspector General (“DOT IG”) has raised concerns about the ratio of experienced controllers and controller trainees at ATC facilities, which could present safety and operational issues. The National Air Traffic Controllers Association (“NATCA”) has expressed concerns that the shortfall in the number of experienced controllers has led to: more controller fatigue because controllers are working longer days for sustained periods; an alleged increase in the number of operational errors; and increased delays because there are not enough controllers available to safely manage demand.

## **4. Activities in the 110th Congress**

### **Hearings**

On May 9, 2007, *The Future of Air Traffic Control Modernization*. This hearing’s purpose was to consider the future of ATC modernization. Concerns were raised about the ability of all participants – JPDO, FAA, and DOT – to integrate planning, development, and implementation of NextGen.

On July 24, 2007, *FAA's Aging Air Traffic Control Facilities: Investigating the Need to Improve Facilities and Worker Conditions*. This hearing's purpose was to examine the status of FAA's aging TRACONs, towers, and en route ATC facilities. Many FAA facilities have severe maintenance problems and there is a backlog of approximately \$250-350 million in repairs. In addition, FAA employees report health-related problems that may be attributable to poor facility conditions.

On October 10, 2007, *The Transition from FAA to Contractor-Operated Flight Service Stations: Lessons Learned*. This hearing's purpose was to consider the problems created by FAA's new contract with Lockheed Martin to operate FSS and the subsequent fixes. In 2007, Lockheed Martin launched an aggressive implementation plan, declaring its three hub locations operational and consolidating three other FSS facilities per week. This created a huge strain on the system and pilots experienced major problems during this time. Many of these problems have since been fixed.

On October 17, 2007, *NextGen: The FAA's Automatic Dependent Surveillance – Broadcast (ADS-B) Contract*. This hearing's purpose was to examine FAA's ADS-B contract. ADS-B is the FAA's flagship program to transition to satellite-based aircraft surveillance; it is part the NextGen plan. The concept is that ADS-B will reduce distances between aircraft in congested airspace and it will provide a better level of service than radar.

On June 11, 2008, *Air Traffic Control Facility Staffing*. This hearing's purpose was to examine the FAA's plans for dealing with controller staffing. The controller retirement rate is projected to increase dramatically over the next ten years. The FAA is hiring and training thousands of new controllers over the next few years to cope with this problem; however, they will be lacking significant experience.

## **Briefings**

On February 28, 2007, Briefing by the MITRE Corporation on *The Next Generation Air Transportation System*.

On March 15, 2007, Briefing by the FAA on *The Next Generation Air Transportation System*.

## **Legislation**

H.R. 2881 provided \$13 billion for FAA F&E—the FAA's primary vehicle for modernizing the NAS—over \$1 billion more than the Administration's proposal. Increased funding will: accelerate the implementation of NextGen; enable FAA to replace and repair existing facilities and equipment; and provide for the implementation of high-priority safety-related systems, including systems to prevent runway incursions as well as mitigate weather and aircraft wake vortex hazards. To increase the authority and visibility of the JPDO, H.R. 2881 elevates the Director of the JPDO to the status of Associate Administrator of NextGen within the FAA, reporting directly to the FAA Administrator. In addition, H.R. 2881 requires annual reporting on NextGen-related deliverables and contains provisions to hold FAA vendors accountable for providing safe, quality services for ADS-B and FSS. Moreover, H.R. 2881 authorizes Government Accountability Office ("GAO"), DOT IG, and National Research Council audits and reports related to NextGen that will help Congress exercise its oversight responsibilities. It also establishes a process for including and collaborating with employee groups in the planning, development, and deployment of ATC modernization projects, including NextGen.

To address controller workforce staffing issues, H.R. 2881 requires FAA to enter into an arrangement with the National Academy of Sciences to conduct a study of the assumptions and methods used by the FAA to estimate ATC staffing needs. In addition, H.R. 2881 authorizes studies on training options for graduates of the Collegiate Training Initiative and on the adequacy of training programs for air traffic controllers. Moreover, H.R. 2881 requires that, if the FAA and one of its bargaining units do not reach agreement, the services of the Federal Mediation and Conciliation Service shall be used or the parties may agree to an alternative dispute resolution procedure. This requirement applies the new dispute resolution process to the ongoing dispute between NATCA and the FAA.

## **B. Aviation Safety**

The FAA's Office of Aviation Safety ("AVS") has the responsibility to promote aviation safety by regulating and overseeing the civil aviation industry. To fulfill this mission, AVS establishes aviation safety standards; monitors safety performance; conducts aviation safety education and research; issues and maintains aviation certificates and licenses; and manages the FAA rulemaking program.

AVS consists of eight distinct organizational elements employing over 7,000 personnel. Five of these organizations – the Office of Accident Investigation, the Office of Rulemaking, the Air Traffic Safety Oversight Service, the Office of Aviation Safety Analytical Services, and the Office of Quality, Integration, and Executive Services – are primarily managed by FAA headquarters in Washington, D.C. The other three organizations – Flight Standards Service, Aircraft Certification Service, and the Office of Aerospace Medicine – also have extensive field structures (including some overseas offices).

The FAA leverages its resources through the designee system. The designee program authorizes private persons and organizations to perform many activities acting on behalf of the FAA. According to the FAA, the use of designees allows it to concentrate on the most critical safety areas, while designees conduct more routine functions. AVS currently uses more than 11,000 designees, plus another 28,000 people involved in programs such as Flight Check Pilots and Mechanics with Inspection Authority.

Much of the AVS workload is demand driven. These workload drivers can be grouped into four general areas: (1) growth in aviation activity, both commercial and general aviation, by existing operators; (2) the introduction of new operators, aircraft, equipment, and technology; (3) the introduction of new practices; and (4) the globalization of the aviation industry and the increasing need for international standardization of regulations and safety criteria.

The major activities of AVS are performed by the following organizations:

The **Flight Standards Service** ensures compliance with the operations and maintenance safety standards and certification standards for air carriers, commercial operators, air agencies, airmen, and civil aircraft, including aircraft registration.

The **Aircraft Certification Service** develops and administers safety standards governing the type, production, and original airworthiness certification of aircraft, engines, propellers, and



appliances, and noise-level certification.

The **Office of Aerospace Medicine** administers medical standards and certification for airmen (pilots and air traffic controllers) and compliance and enforcement of drug and alcohol programs for employees in safety-sensitive positions both in the aviation industry and the FAA.

The **Office of Accident Investigation** investigates aviation accidents and incidents to identify unsafe conditions and trends in the NAS and coordinates the corrective action process.

The **Office of Rulemaking** directs and manages the FAA rulemaking program and process, and supports the Agency's regulatory priorities.

The **Office of Aviation Safety Analytical Services** responds to the systemic analytical needs of AVS and FAA with sound safety analyses based on data and information from a variety of sources.

The **Air Traffic Safety Oversight Service** provides safety oversight of ATO, including oversight of safety management systems, new acquisitions, ATC procedures and operations, technical operations, and personnel certification criteria.

The **Office of Quality, Integration, and Executive Services** provides overall planning, direction, management, and evaluation of AVS programs. This office also directs and manages the implementation of an ISO-9001:2001 based Quality Management System for all AVS services and offices and establishes integration policy and processes for safety systems.

## **C. Activities in the 110th Congress**

### **Hearings**

On March 22, 2007, *A Review of Federal Aviation Administration Operational and Safety Programs*. This hearing's purpose was to review FAA's operational and safety programs. NextGen is touted as the solution to improving the operation and safety of the NAS. GAO testified that FAA needs to improve its safety data. NATCA testified to the need for additional air traffic controllers to improve operation and safety; and others addressed the need for more safety inspectors to oversee outsourced air carrier maintenance.

On March 29, 2007, *The FAA's Oversight of Outsourced Air Carrier Maintenance*. This hearing's purpose was to review FAA's oversight of maintenance that is performed by outside companies (both domestic and foreign) to perform critical long-term maintenance on aircraft. The DOT IG made several recommendations to improve the safety of these facilities overseas and called for greater FAA oversight.

On July 17, 2007, *FAA's Oversight of Falsified Airman Medical Certificate Applications* (Oversight & Investigations ("O&I")). This hearing's purpose was to examine FAA's oversight of airman medical certification, per an investigation by the DOT IG that found thousands of cases of airmen holding current medical certificates, while collecting full medical disability pay from the government for debilitating medical conditions. The DOT IG recommended greater oversight of the

certification process. The FAA committed to establishing a process to determine if false statements are being made on applications.

On February 13, 2008, *Runway Safety*. This hearing's purpose was to review FAA's efforts to improve runway safety in airport ground operations. The 2007 rate of runway incursions had increased by 12 percent over 2006. FAA testified that it is working on several safety initiatives to increase runway safety, including technology deployment, and improved runway markings.

On April 3, 2008, *Critical Lapses in FAA Safety Oversight of Airlines: Abuses of Regulatory "Partnership Programs"* (O&I, Full Committee). This hearing's purpose was to examine FAA's safety oversight of airlines in the context of regulatory "partnership programs." An investigation revealed an overly "cozy" relationship between FAA and Southwest Airlines ("SWA") where SWA flew planes past inspection deadlines with FAA knowledge. The hearing demonstrated a systemic pattern of failure by the FAA office overseeing SWA to exercise its oversight authority.

On September 17, 2008, *FAA Aircraft Certification: Alleged Regulatory Lapses in the Certification and Manufacture of the Eclipse EA-500* (O&I). This hearing's purpose was to examine FAA's role in the certification and manufacture of the Eclipse EA-500 very light jet. The hearing reviewed investigations by the DOT IG and the O&I staff pertaining to allegations that FAA rushed to approve and certify the EA-500 despite concerns raised by FAA certification engineers and inspectors about serious design deficiencies.

On September 25, 2008, *Runway Safety: An Update*. This hearing's purpose was to review the progress that FAA has made since the February 13<sup>th</sup> hearing on the subject. GAO reported an increase in the rate of incursions for the first three quarters of 2008 and one more serious incursion from the previous year. GAO indicated that FAA had made significant progress in deploying safety technologies but that FAA needs to better address human factors by increasing training for pilots and controllers.

## **Briefing**

On June 12, 2008, Briefing by Nick Sabatini, FAA, on actions taken as a result of T&I investigation and hearing on critical lapses in aviation safety.

## **Legislation**

H.R. 2881 includes several safety provisions, such as authorizing \$42 million for runway incursion reduction programs and \$74 million for runway status light acquisition and installation, as well as requiring FAA to develop a plan to install and deploy systems to alert controllers or flight crews to potential runway incursions. This bill increases the number of aviation safety inspectors and also requires safety inspections of foreign repair stations at least twice a year. Moreover, H.R. 2881 requires the FAA to commence a rulemaking to ensure that covered maintenance work (substantial, regularly scheduled, and required inspection items) on air carrier aircraft is performed by part 145 repair stations or part 121 air carriers. There are also provisions dedicated to studying fatigue, as well as directing the FAA to initiate action to ensure crewmember safety by applying occupational health standards on-board aircraft.

In addition, on July 22, 2008, the House passed H.R. 6493, the Aviation Safety Enhancement Act of 2008, which addresses several issues raised by FAA whistleblowers and others at the April 3, 2008, hearing on *Critical Lapses in FAA Safety Oversight of Airlines: Abuses of Regulatory Partnership Programs.* H.R. 6493 creates an independent Aviation Safety Whistleblower Investigation Office within the FAA, charged with receiving safety complaints and information submitted by both FAA employees and employees of certificated entities, investigating them, and then recommending appropriate corrective actions to the FAA. It would direct the FAA to modify its customer service initiative to remove air carriers or other entities regulated by the Agency as “customers,” to clarify that in regulating safety the only customers of the Agency are individuals traveling on aircraft. In addition, a two-year “post-service” cooling off period for FAA inspectors is established, and FAA is required to rotate principle maintenance inspectors between airline oversight offices every five years. Monthly reviews of the Air Transportation Oversight System database is required to ensure that trends in regulatory compliance are identified and appropriate corrective actions taken.

## **VI. ESSENTIAL AIR SERVICE**

### **A. Background**

Prior to airline deregulation, domestic air transportation was subject to detailed economic regulation. Each airline was issued a certificate by the Federal Government specifying which routes the airline would fly. A minimum level of service was required to be maintained at each airport. Air service could be terminated at a community only after the government held hearings and decided that deleting the community from the airline's certificate would be in the public interest. Despite this protection, about 120 communities were deleted from airline certificates in the 10 years prior to deregulation.

In 1978, the Airline Deregulation Act (“ADA”) was enacted. This law phased out economic regulation of the airline industry. It permitted airlines to decide which routes to fly and, except as described below, to terminate service at communities without seeking government approval. The rationale was that reliance on free market forces would be the best way to ensure an efficient air transportation system.

However, it was recognized that market forces alone would not ensure air service to many small communities because some communities do not produce enough passenger traffic to support profitable air service. Accordingly, the ADA included a provision, known as the Essential Air Service (“EAS”) program, to guarantee a minimum level of air service to small communities. The program was originally authorized for 10 years and was later made permanent.

Under the EAS program, DOT establishes a minimum level of air service for each of the eligible communities. The minimum level is usually two round-trips per day to a medium- or large-hub airport using 15-seat or larger aircraft. Eligible communities are those communities that were listed on an airline's certificate when the Deregulation Act was passed. Tying eligibility to the old certificates ensures that communities that had service before deregulation will continue to receive it.

If an airline serving an eligible community wants to terminate service, which would reduce air service below the level that DOT deemed essential, it must notify DOT and the community 90

days before the termination or reduction would take effect. DOT then attempts to find a replacement airline. DOT must prohibit the service termination until a replacement is found. If no airline is willing to provide the service on its own, DOT must offer a subsidy to attract a carrier to provide the essential air service.

The EAS budget has ranged from about \$100 million early in the program down to \$26 million as recently as FY 1997. Beginning in FY 1998, Congress set up a permanent funding mechanism to guarantee at least \$50 million for EAS each year, derived from over-flight fees or FAA's budget. Funding requirements for the EAS program increased significantly after the September 11, 2001, terrorist attacks, which caused carriers' revenues to decrease and costs to increase. The carrier's increased costs, in turn, caused existing EAS contract costs to increase. In addition to existing contracts requiring more subsidy upon renewal, the number of subsidized EAS communities increased from 75 to 115 (not counting Alaska) as formerly profitable routes became unprofitable, and carriers filed notice to suspend service, thus triggering first-time subsidies. The number of subsidized communities increased each year before reaching 154 subsidized communities (including Alaska) in 2006. About 150 communities currently benefit from the EAS subsidies. The program is currently funded by the FY 2009 Continuing Resolution (P.L. 110-329), which funds the program at FY 2008 levels through March 6, 2009. The FY 2008 funding level for EAS was \$125 million, including \$50 million from overflight fees, \$60 million appropriated from the Trust Fund, and \$15 million from spectrum auction proceeds.

## **B. Activities in the 110th Congress**

### **Hearings**

On April 25, 2007, *Essential Air Service Program/Small Community Air Service Development Program* ("SCASD"). This hearing's purpose was to determine what changes, if any, should be made to the EAS and SCASD programs in the FAA reauthorization bill. GAO reported that many small communities would not have service if EAS subsidies were discontinued and that the number of air carriers flying suitable aircraft for EAS communities could decrease.

### **Legislation**

H.R. 2881 rejects the Administration's proposal to cut funding for the EAS program by more than one-half, to \$50 million, and instead increases the total amount authorized for EAS each year from \$127 million to \$133 million (including \$50 million derived from overflight fees). To improve the quality of air service received by EAS communities, the bill authorizes the Secretary of Transportation ("Secretary") to incorporate financial incentives into EAS contracts based on specified performance goals. To encourage increased air carrier participation, the bill authorizes the Secretary to enter into long-term EAS contracts that would provide more stability for participating air carriers. In addition, H.R. 2881 reduces the local share of AIP project costs from ten percent to five percent for certain economically depressed communities that receive subsidized air service under the EAS program and have one of the following economic conditions: (1) a per capita income of 80 percent or less of the national average; (2) an unemployment rate that is at least one percent greater than the national average; or (3) a special need arising from actual or threatened severe unemployment or economic adjustment problems.

In contrast to the Administration's proposal to sunset the SCASD program on September 30, 2008, H.R. 2881 extends the program through FY 2011, at the current authorized funding level of \$35 million per year.

## **VII. U.S. COMMERCIAL AVIATION**

### **A. Commercial Airlines**

According to an October 2008 study published by the FAA, commercial aviation helps contribute \$1.1 trillion in U.S. economic output and approximately \$10.2 million U.S. jobs. From 2001 through 2007, the U.S. airline industry, including air cargo carriers, posted \$27 billion in cumulative net losses. These losses, which included modest profits in 2006-2007, were the result of many different factors, including: the economic slowdown, a decline in business travel, the aftermath of the September 11, 2001, terrorist attacks, the SARS epidemic, excess seating capacity, and most recently, record fuel prices followed by an economic recession broadly thought to be the worst downturn since the Great Depression. As a result, more than 68,000 airline employees have lost their jobs since January 2003, including more than 22,000 since December 2007, with thousands more slated for furlough.

According to an airline association, high fuel prices have had an overwhelming impact on the airline business. For the first ten months of 2008, U.S. airlines spent \$50.9 billion on fuel, as opposed to the \$41.6 billion spent in all of 2007. Among the consequences of the fuel spike and subsequent recession, thus far, are a 10-12 percent reduction in seating capacity, tens of thousands of layoffs and the lack of financing to invest in new aircraft and engines. More than ten carriers liquidated over the past year.

As to the future financial condition of the airlines, an airline association is forecasting an aggregate net loss (excluding bankruptcy restructuring and/or reorganization charges) of \$4-6 billion for 2008 and has determined that the picture is too cloudy at this time to project financial results for 2009.

### **B. Aircraft Manufacturers**

According to an aerospace industry association, the U.S. aerospace industry (both defense and civilian) was highly successful in 2008 with total sales over \$204 billion, up 2.1 percent from 2007. Due to the Boeing work-stoppage, civil aircraft sales remained roughly equal to the previous year's levels. A predicted 433 civil transport aircraft will be delivered in 2008, with a value estimated over \$27 billion. The total revenue for civil aircraft deliveries in 2008, including helicopters, aircraft, engines and related components, is estimated at \$80.6 billion.

In addition, the association states that as of the end of third quarter 2008, a total of 3,721 commercial transport aircraft remained in the unfulfilled order backlog. Over three-fourths of that backlog comes from foreign orders.

According to a general aviation manufacturers association, in the first three quarters of 2008, the U.S. general aviation manufacturing industry produced 2,297 new airplanes for \$9.7 billion,

which accounts for approximately 77 percent of the number of general aviation airplanes produced worldwide. This production level is an increase of close to 100 airplanes compared to last year's 2,205 new airplanes during the same three quarters. While growth has again been strong this year, in the face of the recession, orders and sales are stagnating and many companies have had to lay off workers.

### **C. Aviation Consumer Issues**

In 2007, 765 million passengers flew in the United States and the FAA predicts this figure will reach one billion by 2016. Flight arrival delays have increased with the growing traffic. The introduction of extreme weather situations to the already crowded NAS system led to two highly publicized events where passengers were stranded on aircraft for hours without adequate food, water, and amenities. As a result, there were strong calls for increased oversight of airline customer service. In late 2007, the DOT IG was asked to examine the airlines' customer service commitments, contracts of carriage and policies dealing with extended ground delays aboard aircraft, as well as requested recommendations for what airlines, airports and the Federal Government can do to prevent such situations in the future.

### **D. Activities in the 110th Congress**

#### **Hearings/Briefings**

On April 20, 2007, *Aviation Consumer Issues*. This hearing's purpose was to examine aviation consumer issues and what progress the FAA, airlines, and airports made in addressing those issues. The air carrier industry, including the CEO of JetBlue, testified at the hearing that they were improving their policies for passengers.

On September 26, 2007, *Airline Delays and Consumer Issues*. This hearing's purpose was to look at the progress that was made regarding airline delays and consumer issues since the April 20<sup>th</sup> hearing. The first half of 2007 was the worst for airline delays since statistics on delays were kept. The hearing reviewed industry trends that contribute to delays, scheduling, capacity benchmarks and delay reduction actions, infrastructure, and consumer protections.

On November 15, 2007, *Airlines and Airport Holiday Travel Preparations*. This hearing's purpose was to examine what the Federal Government, airlines, and airports were doing to prepare for the busy 2007 holiday travel season. Air carriers testified they were encouraging passengers to use online check-in and self-service kiosks, sending automated travel notifications to wireless devices, increasing staff, and implementing earlier boarding times. Airports announced that they were increasing staff in the areas of parking, passenger assistance, maintenance, concessionaires, and law enforcement; and that they were working with TSA to ensure checkpoints were fully staffed and passengers were informed of checkpoint procedures.

On April 9, 2008, *Aviation Delays and Consumer Issues*. This hearing's purpose was to review the progress by the DOT, FAA, airlines, and airports to implement customer service actions recommended by the DOT IG; and to review the DOT IG's report on airline delays during the summer of 2007. DOT testified that it had initiated a rulemaking project and formed a Federal advisory task force on delays and consumer issues.

On May 14, 2008, *Impact of Consolidation on the Aviation Industry, with a Focus on the Proposed Merger between Delta Air Lines and Northwest Airlines*. This hearing's purpose was to examine the impact of consolidation in the aviation industry, focusing on the effects of the proposed merger of Delta and Northwest. The carriers contended the transaction would generate over \$1 billion in annual revenue and cost synergies. However, several concerns were raised about decreased competition, higher fares, and deterioration in the quality of service.

On September 16, 2008, *The Effects of the Proposed Arrangement between DHL and UPS on Competition, Customer Service, and Employment* (Full Committee). This hearing's purpose was to examine the effects of the proposed arrangement for UPS to provide airlift services for DHL's U.S. express package delivery, on competition, customer service, and employment. DHL testified that the agreement would be the only way that it could continue to maintain its presence in the U.S. market due to the economic losses that it has experienced. Several antitrust and anticompetitive concerns were raised about the proposal.

### **Briefings**

On July 16, 2008, Briefing by experts regarding *The Impact of Fuel Prices on the Aviation Industry*.

On September 18, 2008, Briefing by industry experts regarding *Congestion, Delays, and Consumer Issues*.

### **Legislation**

H.R. 2881 included several provisions addressing delays, congestion, and consumer protection. For airline delays and congestion, H.R. 2881 requires FAA to convene schedule reduction meetings at airports where congestion is a major issue to try to achieve voluntarily reductions in volume; if no voluntary agreement is reached then administrative actions must be taken to ease congestion. In addition, for consumers, H.R. 2881 requires airlines and airports to develop contingency plans for passengers who experience long delays; and requires the DOT to establish a consumer complaints hotline number for the DOT Aviation Consumer Protection Division.

## **VIII. INTERNATIONAL AVIATION**

### **A. Background**

Over the next decade, for U.S. airlines, international air travel is expected to grow more rapidly than U.S. domestic travel. From 2008 to 2025, the FAA is projecting international revenue passenger miles ("RPM") on U.S. carriers to grow at an average annual rate of 5.2 percent, outpacing forecast domestic RPMs at 3.7 percent.

### **B. Bilateral Agreements/Open Skies**

International aviation relations are typically governed by "bilateral aviation agreements." Since the mid-1990s, U.S. aviation policy has been to seek "Open-Skies" agreements with our aviation partners. Open Skies agreements, strongly advocated by the U.S. Government, allow

airlines of each signatory country the freedom to establish rates, routes, and services between the two (or more) participating countries based on commercial considerations. The U.S. Government takes the position that open aviation competition between countries generates superior international service at the lowest prices. The United States currently has 94 Open Skies partners.

Although some agreements, such as those with Japan and China, still limit the routes that can be flown between the two countries and the fares that can be charged, U.S. Government policy has been to work to liberalize those regimes. Congress has also given DOT broad authority to redress situations when a foreign country has treated U.S. airlines unfairly and the problem has not been resolved through negotiations.

## **1. United States and European Union Relations**

On March 2, 2007, the United States and the European Union (“EU”) reached agreement on the text of a first-stage comprehensive air transport agreement and related Memorandum of Consultations. The Open Skies agreement, which went into effect in March of 2008, grants new rights for United States and EU air carriers. The first round of second-stage United States-EU negotiations on air services liberalization took place in Slovenia in May 2008, and the second round took place on September 22, 2008, in Washington, DC. A third round of negotiations will be held in spring 2009. Although not formally a part of the Open Skies agreement, the issue of foreign investment in U.S. air carriers became a pivotal issue to the discussions between the United States and the EU during the early stages of negotiation. The EU insisted that the United States give foreign investors opportunities to control U.S. airlines. The Bush Administration attempted to accommodate these demands, which were contrary to long standing U.S. law and precedent. After several votes in the Congress rejecting the Administration’s proposals, the Administration withdrew a Notice of Proposed Rulemaking in late 2006, which would have given foreign investors substantial rights to control U.S. airlines. During the second stage of Open Skies negotiations, the issue of foreign investment was raised by the EU, but it remains an outstanding issue as both sides understood the matter would have to be addressed by the new Administration. Any changes in the regime applicable to U.S. airlines would require Congressional action.

## **2. Emissions Trading**

On October 24, 2008, the EU Council of Ministers adopted a directive to cover civil aviation under the EU Emissions Trading Scheme (“ETS”), which is intended to reduce carbon dioxide (“CO<sub>2</sub>”) and other greenhouse gases. According to the EU, its aviation emissions have increased by 87 percent since 1990. The directive unilaterally includes United States and other non-EU airlines and sidesteps the normal process for dealing with aircraft emissions through the ICAO. Under the directive, emissions will be capped at 97 percent of the 2004-06 level starting in 2012. Air carriers landing in EU countries would receive 85 percent of their allowances free of charge, but would be required to buy the other 15 percent at auction. Under the directive, each airline would have to surrender emissions allowances for the entire duration of its trip. For example, an airline flying from Los Angeles to London, England would pay for the entire 5,400 miles and not just the portion flown in EU airspace. Additionally, not only would the airline be required to pay the EU carbon allowances, adoption of the EU ETS offers no protection from additional taxes and fees put in place by EU member states. Great Britain doubled its air passenger duty tax last year based on an emissions justification. Other EU nations are considering additional fees. The United States has led international opposition to the EU scheme, stating that it is unworkable and violates international



aviation law, offers no protection from multiple charges, diverts revenue to subsidize EU industry and governments, and unilaterally mandates a single solution rather than a negotiated, performance-based approach that recognizes each country's sovereignty to implement appropriate measures.

At its September 2007 assembly meeting, ICAO agreed that any type of trading system should only be applied based on mutual consent between countries. ICAO approved guidance for establishing the structural and legal basis for aviation's participation in an open trading system, and including key elements such as reporting, monitoring, and compliance, while providing flexibility. ICAO also chartered a Group on International Aviation and Climate Change ("GIACC") to discuss an international plan to actively address aviation greenhouse gases. Composed of political level officials from 15 key aviation states, the GIACC seeks to find multiple avenues for addressing aviation's climate change contributions. Before the next ICAO Assembly meets in 2010, it will develop a menu of measures from which states may choose to address emissions. These could include performance targets (e.g., fuel efficiency), operational measures, technological advances, positive economic incentives and cost-beneficial market-based measures (e.g., charges or emissions trading). GIACC's goal is to develop a global framework while maintaining flexibility so that states choose what is appropriate for their particular market and industry situation.

### **C. Activities in the 110th Congress**

#### **Legislation**

With regard to foreign investment, H.R. 2881 clarifies the term "actual control" as it pertains to the definition of a "citizen of the United States." This provision states that an air carrier shall not be deemed to be under the "actual control" of U.S. citizens unless U.S. citizens control all matters pertaining to the business and structure of the air carrier, including operational matters such as marketing, branding, fleet composition, route selection, pricing, and labor relations.

H.R. 2881 also includes a sense of Congress that the EU directive should not extend its emissions trading proposal to international civil aviation without working through the ICAO.

#### **Hearings**

On May 6, 2008, *Aviation and the Environment: Emissions*. This hearing's purpose was to examine aviation CO<sub>2</sub> emissions and current efforts to mitigate emissions. The airline industry testified to the cost savings it would experience from greater fuel efficiency; and discussed the procedures it is employing to reduce fuel consumption, such as single-engine taxi procedures. An EU representative briefed the Subcommittee about its proposed directive to cover civil aviation under its ETS.

## **IX. NATIONAL TRANSPORTATION SAFETY BOARD**

### **A. NTSB Structure**

The NTSB is composed of five members appointed by the President and confirmed by the Senate. No more than three members may be appointed from the same political party. The term of office of each member is five years. An individual appointed to fill an unexpired term is appointed

for the remainder of that term. When the term of office of a member ends, that member may continue to serve until a successor is appointed and qualified. The President designates, by and with the advice and consent of the Senate, a Chairman of the Board. The President also designates a Vice Chairman of the Board. The terms of office of both the Chairman and Vice Chairman are 2 years.

<b>Board Member</b>	<b>Appointment</b>	<b>Term Expires</b>
Mark V. Rosenker, Vice Chairman	August 9, 2008	August 8, 2010
Acting Chairman	August 9, 2008	
Mark V. Rosenker, Member	March 23, 2003	December 31, 2010
Robert L. Sumwalt, Member	August 9, 2006	December 31, 2011
Deborah A. P. Hersman, Member	June 21, 2004	December 31, 2008
Kathryn O'Leary Higgins, Member	January 3, 2006	December 31, 2009
Steven R. Chealander, Member	January 3, 2007	December 31, 2007

## **B. NTSB's Responsibilities**

The NTSB investigates many transportation accidents, including aviation accidents and major highway, railroad, pipeline, maritime, and public transit accidents. After investigating an accident, the NTSB determines the probable cause(s) of the accident and issues a formal report. This process typically takes from nine to eighteen months.

The NTSB is statutorily required to make a probable cause determination on all aviation accidents. In general, the NTSB relies upon the FAA to conduct the on-scene investigation on its behalf for most non-fatal aviation accidents and for some fatal aviation accidents in which the cause is obvious and there is little chance of deriving a safety benefit from the investigation. States or other agencies often investigate accidents in other modes of transportation.

Since its inception in 1967, the NTSB has investigated more than 124,000 aviation accidents and over 10,000 surface transportation accidents, making it the world's premier accident investigation agency. In the last six years alone, the NTSB has investigated, or caused to be investigated, more than 11,000 aviation accidents, 205 highway accidents, 91 railroad accidents, 33 pipeline accidents, 38 marine accidents; and a total of 1,129 safety recommendations have been issued. This record is significant because the NTSB only has a total of 387 employees located in Washington, DC and ten regional offices.

## **C. Activities in the 110th Congress**

### **Hearings**

On June 6, 2007, *The National Transportation Safety Board's Most Wanted Aviation Safety Improvements*. This hearing's purpose was to review the NTSB's list of its top aviation safety improvements for 2007. This included aircraft icing, fuel tank flammability, runway incursions, improved audio and data recorders, fatigue, and part 135 crew resource management. The FAA

highlighted what it was doing to try to address these issues, including publishing guidance and initiating rulemaking projects.

On April 23, 2008, *Reauthorization of the National Transportation Safety Board*. This hearing's purpose was to review the Administration's three-year reauthorization request for the NTSB's programs, which was \$87.9 million for FY 2009, \$107 million for FY 2010, and \$113 million for FY 2011. The proposal included staff increases; and the authorization to: investigate accidents, issue subpoenas for financial records and obtain medical records, and conduct accident investigations in foreign countries.

## **X. WAR RISK INSURANCE**

### **A. Background**

Aircraft insurance is essential to any airline operation. However, commercial insurance companies often will not insure flights to high-risk areas, such as countries at war or on the verge of war. In many cases, these flights are required to further U.S. foreign policy or national security. For example, during Operation Desert Shield and Desert Storm, commercial airlines were needed to ferry troops and equipment to the Middle East.

Chapter 443 of title 49 of the U.S. Code authorizes the Secretary to provide insurance or reinsurance to air carriers if certain conditions specified in it are met. This authority applies to "any risk" from the operation of an aircraft 49 U.S.C. § 44302(a). However, the Secretary has most often used this authority to provide war risk insurance. Prior to the September 11, 2001, terrorist attacks, the use of this authority typically involved the Secretary providing war risk insurance for flights operated to foreign locations that were considered high risk and which commercial insurance companies would not insure.

Before the Secretary can issue insurance, two tests must be satisfied. First, the Secretary must find that the airline cannot acquire the insurance from an insurance company on reasonable terms and conditions. Second, the President must find that the continued operation of the aircraft to be insured is necessary in the interest of air commerce or national security, or to carry out the foreign policy of the U.S. Government. The insurance can be provided for a period of not more than one year but can be extended for additional periods of not more than one year each if the President determines that an extension is needed. The FAA issues and administers the insurance policies.

The war risk insurance program that the Secretary has provided under this authority offers both a premium and a non-premium policy. Under the premium policy, the FAA issues insurance and a premium is paid by the airline for the coverage. The non-premium policy is issued to airlines operating under contract to a government agency, usually the State Department or DOD. Although no premium is required to be paid by the airline under this policy, the contracting government agency would have to indemnify the FAA for any claims it had to pay. Premiums paid for coverage and any sums appropriated support a revolving fund that is used to defray the cost of operating the war risk program.

The war risk insurance program was first authorized in 1951. Insurance was provided under this program in the early 1970s in the aftermath of attacks on aircraft by Palestinian terrorists, and also during the final days of the Vietnam War.

Related to the issue of war risk insurance is the Civil Reserve Air Fleet (“CRAF”) Program. Airlines performing missions for the DOD under CRAF are insured under the war risk program. DOD has an indemnity agreement with DOT whereby the FAA extends war risk insurance to airlines without a premium with the understanding that any losses resulting from insurance claims will be reimbursed by the DOD.

The CRAF program arose out of the experience of World War II and the Berlin Airlift where the problems of a massive military mobilization were first encountered. In 1951, President Truman issued Executive Order 10219 directing that a plan be established for the utilization of the nation's civilian airlines during a national emergency.

The CRAF program is voluntary. Its purpose is to provide civil aircraft to augment DOD's military airlift capability. Without it, the military would have to keep many more aircraft in reserve. Currently, about 20 airlines have contracted with the Military Airlift Command to provide 674 aircraft for the CRAF program. In return for agreeing to make their aircraft available during an emergency, the DOD gives these airlines preference in selecting carriers for commercial peacetime flights.

Until the Persian Gulf War, CRAF had never been utilized. Activation during that war did not necessitate calling up all the aircraft that had agreed to participate. If that had happened, it probably would have caused many civilian flights to be cancelled. At the time, a drop in civilian traffic meant that there were aircraft available for the limited CRAF that was needed. The general consensus seems to be that the CRAF program has worked well both during the Persian Gulf War and the current Iraq War.

The Air Transportation Safety and System Stabilization Act (“Stabilization Act”) (P.L. 107-42), allowed war risk insurance to be offered for domestic flights, not just international ones, and limited the liability of airlines for third party damages from an act of terrorism to \$100 million for a six-month period. This limit does not apply to passengers but only to people on the ground.

The Aviation and Transportation Security Act of 2001 (“ATSA”) (P.L. 107-71) allowed DOT and the FAA to extend aviation insurance policies for one-year increments rather than the 60-day periods that had previously been the limit.

The Homeland Security Act of 2002 (P.L. 107-296) extended existing airline war risk insurance policies to the end of August 2003 and gave the Secretary the discretionary authority to extend the policies through December 31, 2003. In addition, DOT and the FAA were directed to extend the coverage of those policies to hull, passenger and crew losses at a total premium that is no more than double what the airlines were paying on June 19, 2002. Previously, these policies had only covered losses suffered by third parties. In addition, the law reinstated the \$100 million liability limit initially established in the Stabilization Act to the end of 2003. Both the requirement to provide airline war risk insurance policies and the \$100 million liability limit have been extended, generally in one-year increments, on a nearly continual basis ever since. As a result of these

extensions as well as the Secretary's use of discretionary authority, the insurance policies have remained in effect uninterrupted.

## **B. Activities in the 110th Congress**

### **Legislation**

The Federal Aviation Administration Extension Act of 2008, Part II (P.L. 110-330) requires DOT to extend war risk insurance policies to March 31, 2009, and gives the Secretary the discretionary authority to extend air carrier liability limits for third party damages resulting from acts of terrorism through May 31, 2009. In addition, the law extends the \$100 million liability limit through May 31, 2009.

Current law requires the FAA, for insurance that was in effect on November 25, 2002, to provide U.S. airlines aviation insurance until September 30, 2007, from the first dollar of loss at capped premium rates. H.R. 2881 extends this requirement until September 30, 2011, after which the requirement becomes discretionary until September 30, 2017. After December 31, 2017, such insurance must be provided instead by an airline industry sponsored risk-sharing arrangement approved by the Secretary. In addition, H.R. 2881 extends through December 31, 2012, air carrier liability limits for third party damages resulting from acts of terrorism.

The "National Defense Authorization Act for Fiscal Year 2008" (P.L. 110-181) was signed into law on January 28, 2008. Section 378 of this Act extends the war risk insurance program from March 30, 2008, to December 31, 2013.

## **XI. LABOR**

### **A. Background**

The National Mediation Board ("NMB") was established in 1934 by an act of Congress as an independent Federal agency charged with overseeing labor-management relations in the aviation and rail industries. The NMB administers the specific terms of the Railway Labor Act ("RLA") (45 U.S.C. § 151) governing the representation of workers and mediation and arbitration of collective bargaining and other disputes.

The purposes of the RLA, as set out in statute, are to: (1) avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) forbid any limitation upon freedom of association among employees or any denial as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; and (5) provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

The RLA affirms the rights of workers in the rail and aviation industries to elect to be represented by a labor organization and to bargain collectively. The NMB investigates and resolves representation disputes in the air and rail industries. Employees of the air and rail industries are under different rules than workers in other private industries, who are covered by the National Labor Relations Act (“NLRA”) and settle their disputes and arbitrate their grievances before the National Labor Relations Board (“NLRB”). Organizing under the RLA is more difficult because it requires a national election, while the NLRA permits a local election. This has created a disparity that has eliminated the opportunity for some workers to bargain for better wages, benefits and workplace improvements.

## **B. Activities in the 110th Congress**

### **Legislation**

H.R. 2881 amends the RLA to clarify that employees of an “express carrier” shall only be covered by the RLA if they are employed in a position that is eligible for certification under FAA’s rules, such as mechanics or pilots, and they are actually performing that type of work for the express carrier. All other express carrier employees would be governed by the NLRA. Because of historical anomalies involving different companies in the express package industry, drivers and package handlers working for one major company in the industry do not have the same rights to organize and bargain collectively as employees performing the exact same jobs at other companies. This provision gives all truck delivery employees who work for express carriers providing integrated air and truck delivery systems equal treatment under the law and the right to organize locally under the NLRA.

### **Hearings**

On September 24, 2008, *National Mediation Board Oversight of Elections for Union Representation* (Full Committee). This hearing’s purpose was to examine the NMB’s oversight of elections for union representation and arbitration of collective bargaining, as determined under the RLA. The Association of Flight Attendants-CWA testified about two recent campaigns to file for union representation where carrier interference was alleged. NMB members discussed the NMB’s discretion to interpret and apply its rules during a representation election.

## **XII. AVIATION SECURITY**

Pursuant to H. Res. 5, establishing the Rules of the House of Representatives for the 109<sup>th</sup> Congress, jurisdiction over TSA was generally transferred from the Committee on Transportation and Infrastructure to the new Committee on Homeland Security. The T&I Committee retains legislative jurisdiction over the DOT, transportation safety, DOT’s transportation security programs, and expenditures from the Trust Fund and other transportation trust funds. In addition, with regard to civil aviation, Congress specifically reserved jurisdiction over civil aviation safety, air carrier operations, aircraft airworthiness, and the use of the navigable airspace to the FAA in the Homeland Security Act (P.L. 107-296, Sec. 423(j); *see also* ATSA (P.L. 107-71) and 49 U.S.C. 114(f)(13). Finally, pursuant to the legislative history included in the *Congressional Record* to accompany H. Res. 5, the

T&I Committee also retain its oversight authority over homeland security activities to the extent that such activities directly affect matters within the jurisdiction of the T&I Committee.

In response to recommendations of the National Commission on Terrorist Attacks Upon the United States (the “9/11 Commission”) Report, Congress passed the Intelligence Reform and Terrorism Prevention Act of 2004 (the “Intelligence Reform Act”) (P.L. 108-458). The Intelligence Reform Act also included provisions addressing aviation security needs including: strategic planning, pilot licensing, biometrics technology for airport access control, screening technology at airport passenger checkpoints and checked baggage systems, and missile defense systems for civil aircraft.

The Intelligence Reform Act followed earlier laws that responded to the September 11, 2001, terrorist attacks, including the Aviation and Transportation Security Act of 2001 (“ATSA”) (P.L. 107-71), which created TSA within the DOT and transferred responsibility for aviation security from the FAA to TSA. In addition, in 2002, Congress passed the Homeland Security Act of 2002 (P.L. 107-296), which created DHS to oversee and coordinate Federal homeland security activities. Under the Homeland Security Act, TSA was transferred from DOT to DHS.

Congress enacted the “Implementing Recommendations of the 9/11 Commission Act of 2007” (P.L. 110-53) to further address security vulnerabilities in the nation’s aviation system and to fully implement the recommendations of the 9/11 Commission.

#### **A. Explosive Detection Systems**

ATSA required TSA to deploy enough explosive detection systems by December 31, 2002, to screen all checked baggage. To meet this requirement, TSA employed a strategy of using both bulk explosive detection systems (“EDS”) and manual explosive trace detection systems (“ETDS”). Many of these machines were placed in the lobbies of the Nation’s airports. This arrangement was intended to be temporary; however, many of these machines have remained in airport lobbies, negatively impacting airport operations. The installation of in-line baggage screening systems that integrate security screening with the baggage systems behind the “check-in counters” improves both baggage security screening and airport efficiency.

In Vision 100, Congress gave DHS the authority to issue LOI to obligate from future budget authority the government’s share of airport security projects, including the installation of in-line baggage screening systems. Congress also created the Aviation Security Capital Fund to fund such projects.

According to TSA and the airport community, a total of 18 airports have converted to full in-line EDS systems. TSA and airports also report that 18 airports have partially converted to in-line EDS systems. Eight airport authorities have signed LOIs with TSA to fund in-line installation and have facility modifications underway or completed at nine airports. TSA does not expect to issue any additional LOIs. Over the next year, TSA expects full and partial in-line systems to become operational at 25 additional airports.

Yet, based on TSA’s February 2006 “Strategic Planning Framework for the Electronic Baggage Screening Program,” between \$4-6 billion will be needed to achieve TSA’s *optimal* performance solution for EDS systems (including in-line EDS systems) by 2019. Based on the TSA

Strategic Plan, the top 25 airports requiring EDS installations will cost approximately \$1.4 billion and approximately 200 airports still require some form of in-line system.

## **B. Funding**

Commercial airline passengers are assessed a \$2.50 security fee for every flight segment, with no passenger paying more than \$10 per round trip ticket. The passenger fee is expected to raise roughly \$2.2 billion in FY 2009 to help defray some of TSA's passenger and property screening costs. Air carriers are also assessed a security fee. This air carrier fee is equal to the amount an air carrier spent on passenger and property screening during calendar year 2000. This air carrier security fee is expected to generate approximately \$496 million in FY 2009, which also helps to defray some of TSA's passenger and property screening costs.

## **C. Activities in the 110th Congress**

### **Legislation**

The "Implementing Recommendations of the 9/11 Commission Act of 2007" (P.L. 110-53) was enacted in the 110<sup>th</sup> Congress to address the nation's aviation security vulnerabilities.

The 9/11 Commission recommended improvements to airline passenger pre-screening; better airline screening checkpoints to detect explosives; and enhancements to checked bag and cargo screening. Title XVI of P.L. 110-53 implements these recommendations by requiring the DHS to: establish a system to screen 100 percent of cargo transported on passenger aircraft, within three years; provide grants for specified airport security improvement projects including in-line baggage screening deployment; issue a strategic plan, originally due in 2005, to deploy explosive detection equipment at airports to screen individuals and baggage, and begin full implementation of the strategic plan within one year; develop and implement a program to acquire, maintain, and replace blast-resistant cargo containers and make such containers available to air carriers by July 1, 2008, based on risk; and advance research and development for technology to prevent terrorist acts against civil aviation, including by establishing a grant program to fund pilot projects to deploy such technology.

This Act also prohibits the FAA Administrator from certifying any new foreign repair station if the TSA does not issue regulations within one year governing foreign repair station security. The regulations were required by prior law to be issued by August 2004.

### **Hearings**

On July 24, 2008, *Aviation Security: An Update*. This hearing's purpose was to examine the progress made in aviation security following September 11, 2001. Topics that were covered included: security procedures and technologies, domestic passenger air cargo, secure flight U.S. visitor and immigrant status indicator technology, foreign repair stations, and screening procedures and technologies for passenger and carry-on baggage, checked baggage, employees, registered travelers, and biometrics.



## **Briefings**

On March 8, 2007, Classified Briefing by TSA Administrator Kip Hawley covering a variety of aviation security issues.

On April 17, 2007, Classified Briefing by TSA Administrator Kip Hawley regarding passenger checkpoint screening issues.

On August 1, 2007, Classified Security Briefing by TSA regarding threats to aviation.