

Calendar No. 364

109TH CONGRESS }
2nd Session }

SENATE

{ REPORT
{ 109-216

TRANSPORTATION SECURITY IMPROVEMENT
ACT OF 2005

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 1052



FEBRUARY 27, 2006.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

49-010

WASHINGTON : 2006

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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Mr. STEVENS, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 1052]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1052) to improve transportation security, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

S. 1052 would set policy, provide agency guidance, authorize funding and create new programs addressing the security of all modes of transportation, including aviation, rail, maritime, pipeline, and the transportation of hazardous materials. The legislation also would require greater cooperation and coordination between the Departments of Transportation (DOT) and Homeland Security (DHS) to delineate and further clarify the federal roles and responsibilities with respect to transportation safety and security.

BACKGROUND AND NEEDS

On November 16, 2001, Congress passed the Aviation and Transportation Security Act (ATSA) (P.L. 107-71) in response to the September 11, 2001, terrorist attacks. ATSA, which was signed into law on November 19, 2001, required a new regime for aviation security and created the Transportation Security Administration (TSA) within DOT to oversee security for all modes of transportation. On March 31, 2003, as mandated under the Homeland Security Act of 2002 (P.L. 107-296), the TSA was transferred from DOT to DHS where it remains a distinct entity within DHS.

Aviation Security

Aviation security has been the major focus of transportation security policy since the terrorist attacks of September 11, 2001, and was the primary emphasis of the previously cited ATSA legislation. ATSA, known in part for mandating a Federalized workforce of security screeners to inspect airline passengers and their baggage, set out an overarching regime to address aviation security needs. It gave the TSA broad authority to assess vulnerabilities in the system of aviation security and take steps to mitigate these risks. Aviation security policy since September 11, 2001 has consisted of two fundamental principles: transportation security is national security; and a multi-layered strategy will establish redundancies to most effectively thwart a potential terrorist attack.

Upon the creation of TSA as a new Federal agency, it was required to meet various Congressional mandates and timelines set forth in ATSA to strengthen and coordinate the nation's transportation security regime. Additional directives for the TSA have been included in a number of appropriations bills, including on December 17, 2004, when President Bush signed the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458), which added further mandates to bring transportation security in the United States in line with the recommendations of the National Commission on Terrorist Attacks Upon the United States (9/11 Commission). The TSA's progress on aviation security has been the subject of considerable oversight by Congress over the past four years and continues to receive scrutiny as the agency moves forward in fulfilling existing obligations and addressing new challenges. Pursuant with the recommendations of the 911 Commission, the TSA has moved towards a risk-based approach for allocating limited security resources to where such resources are most needed.

Recognizing the significant commitment made to improve air transportation security in the United States since September 11, 2001, S. 1052 focuses on a few primary aviation issues, including a provision to consider options for improving the collection of aviation passenger security fees, while ensuring Congressional review of security fee increase proposals. Other aviation security provisions in the legislation would require that TSA create a pilot program to establish screener workforce internship programs at airports, and prohibit the certification of foreign repair stations until TSA and FAA review, audit, and develop security regulations for such facilities.

Railroad Security

The terrorist attacks of September 11, 2001, the March 2004 bombings of commuter trains in Madrid, Spain, and the July 2004 transit bombings in London, England, heightened concerns about the susceptibility of the passenger and freight rail system in the United States to terrorist attack. While no similar attack has occurred to date against the rail system in the United States, the openness and vast size of our rail transportation network and the public reports that terrorists might be targeting U.S. rail assets¹

¹In 2002, and on several occasions since, the FBI has warned that al-Qaeda may directly target U.S. trains, key rail bridges, and sections of track to cause train accidents and derailments. Despite these vulnerabilities and the importance of the passenger and freight railroad industry to the nation, minimal Federal resources have gone towards improving rail security.

has raised significant concerns regarding the various security efforts in place to defend and prepare the nation's railroads against a terrorist attack. As a result of this intelligence and the attacks overseas, the U.S. rail industry has increased its proactive security efforts in the face of public concern and potential threats. Similarly, DHS raised the national threat level for rail transportation systems, which triggered more stringent security requirements under homeland security directives aimed at mass transit and passenger rail. The change to the threat level also triggered modifications to some aspects of individual security plans voluntarily adopted by many in the industry.

The nation's freight railroads operate more than 140,000 miles of track over which nearly 28 million carloads are transported annually and provide the primary transportation of essential commodities vital to the U.S. economy, including the majority of coal used in electricity generation, over nine million trailers and containers, and two million carloads of chemicals.² The magnitude of rail operations preclude constant monitoring of all track and facilities and, like passenger rail systems, makes the freight rail system vulnerable to terrorist acts. There are seven Class railroads³ and more than 550 total freight railroads operating in the United States. This network transports an estimated 42 percent of all domestic intercity freight. Inter-modal freight rail traffic has more than tripled since 1980 from 3.1 million trailers and containers to 11 million in 2004. For the week of August 20, 2005, U.S. freight railroads originated more inter-modal cargo containers (179,472) than in any previous week on record, which surpassed the previous high that was established three weeks earlier. DOT projects that freight traffic via rail will increase nearly 70 percent by 2020. The problem of securing such a vast system is compounded by the variety of freight hauled—as diverse as dry bulk (e.g., grain) and hazardous materials (e.g., chlorine).

Similarly, the size and scope of the U.S. passenger rail network presents security challenges. In 2005, more than 25 million passengers rode intercity passenger trains and approximately 3.5 billion passengers rode public transit and commuter rail services, such as Washington's Metrorail system, Chicago's Metra commuter system and Maryland's MARC service. Along with critical rail infrastructure and equipment, passenger rail facilities and stations, which often serve as central hubs for multiple public transportation services, represent tempting targets for terrorist attacks. The RAND Corporation estimated that there were a total of 181 terrorist attacks on trains and rail-related targets worldwide between 1998 and 2003, an average of 30 per year. Brian Jenkins of the RAND Corporation has noted that, "for terrorists determined to kill in quantity and willing to kill indiscriminately, public transportation is an ideal target. It offers terrorists ease of access and escape. Crowds of strangers guarantee anonymity. Contained environments enhance the effect of explosives. Attacks on public transport also cause disruption and alarm—traditional terrorist goals."

²Association of American Railroads, *Railroad Facts, 2003 Edition*.

³U.S. Class I Railroads are line haul freight railroads with operating revenue in excess of \$277.7 million. In 2004, the U.S. Class I railroads were: BNSF Railway, CSX Transportation, Canadian National's Grand Trunk Corporation, Kansas City Southern Railway, Norfolk Southern Combined Railroad Subsidiaries, Canadian Pacific's Soo Line Railroad, and Union Pacific Railroad.

Recognizing the security challenges facing the rail sector, the Committee has held numerous hearings and favorably reported several rail security enhancement proposals since 2001. The rail security provisions of S.1052, contained in title III, represent the latest iteration of this effort and incorporate updated versions of provisions contained within the Rail Security Act of 2004, which passed the Senate by unanimous consent in the 108th Congress, after being favorably reported by the Committee.

Maritime Security

Port security in the United States is complex because of the varied nature and structure of the maritime industry and the geographic scope of our system of waterways. Unlike many nations, the United States has no national port authority: jurisdiction is shared by Federal, State, and local governments. Port authorities in the United States are instruments of State or local governments, established by State or local enactment. The U.S. Constitution does not grant regulation over seaports to the Federal government; however, the Constitution does explicitly vest the authority to regulate navigable waterways to the Federal government, a task largely delegated to the United States Army Corps of Engineers and the United States Coast Guard. In addition, the Federal government is delegated the right to regulate interstate and foreign commerce, and pursuant to this authority, has plenary powers to regulate port practices.

The United States has more than 1,000 harbor channels and 25,000 miles of inland, intra-coastal, and coastal waterways that serve over 360 ports. There are approximately 3,700 terminals located at these ports that facilitate passenger and cargo movements. These waterways and ports link to 152,000 miles of railways, 460,000 miles of underground pipelines, and 45,000 miles of interstate highways. The U.S. marine transportation system moves more than 2 billion tons of domestic and international freight, imports 3.3 billion tons of oil, and services 134 million passengers by ferry. The system also hosts more than 6 million cruise ship passengers. The vast majority of ships entering U.S. ports are foreign owned and crewed, and, in 2001, roughly 5,400 commercial ships made over 60,000 calls at U.S. ports.

The U.S. maritime transportation system provides more than \$742 billion to U.S. gross domestic product and creates employment for more than 13 million citizens. U.S. ports handle more than 95 percent of our nation's overseas trade, and the total volume of goods shipped to or from the United States is expected to double over the next 20 years. The top 50 U.S. ports handle approximately 90 percent of all cargo tonnage, and 25 of those ports handle 98 percent of all container shipments. The maritime transportation system is vital to the continued operation of U.S. retailers who import much of the merchandise that they sell, and U.S. manufacturers who commonly rely on foreign components for their products.

To establish a framework for maritime security standards, the Senate Committee on Commerce, Science, and Transportation developed legislation that Congress passed, the Maritime Transportation Security Act of 2002 (MTSA). MTSA requires Federal agencies, State and local authorities, and private sector stakeholders to work together to define critical portions of the U.S. maritime trans-

portation system and determine how best to protect these assets against terrorist attacks.

Other Surface Transportation Security

While much attention has been focused on the security needs of domestic commercial aviation, and to a lesser extent, the security needs of the U.S. maritime and rail industries, little has been done at the Federal level to address security vulnerabilities within the motor carrier, intercity bus, and pipeline industries.

Motor Carrier Security

The motor carrier industry is the backbone of the nation's freight system, carrying 85 percent of domestic cargo by value and 70 percent by weight. Nearly everything American consumers utilize throughout a given day has been transported by a motor carrier. Even freight carried by other modes such as aviation, rail, and maritime often depends on trucking at some point through the supply chain. Trucks move cargo from airports, rail yards, and seaport terminals. In 2003, U.S. trucking hauled 9.1 billions of freight and employed 5.6 million people in trucking-related fields⁴. Trucking is also an essential part of North American international trade hauling two-thirds (67 percent) of the goods transported between the United States and Canada and over four-fifths (80 percent) of the goods transported between the United States and Mexico⁵.

Truck security has become an important issue both because of the size and essential nature of the industry, and the potential ease of access to trucks. With two deadly domestic terrorist attacks at the World Trade Center in 1993 and on the Oklahoma City Federal Building in 1995, the United States had already faced truck-based terrorism before the attacks of September 11, 2001. Despite this, Federal involvement in truck security has been limited, with the bulk of security efforts being implemented on an ad-hoc basis by individual companies or by groups representing sectors of the motor carrier industry.

Presently, there is only one motor carrier security program specifically mandated by statute. Acting out of concern for the security of the transportation of hazardous materials by truck, Congress authored legislation requiring the DHS to implement a program to ensure that commercial drivers that transport hazardous materials do not pose a security threat to the nation.⁶ Under the requirements of the statute, a driver must undergo a security background check as a prerequisite for hazardous materials endorsement on a commercial driver's license. The only other mandatory security program is a DOT security regulation requiring all shippers of hazardous materials to develop and implement security plans.

The Federal government has implemented a few voluntary security initiatives for this transportation sector. The most notable truck freight security initiatives are the U.S. Customs and Border Protection (CBP) program known as the "Customs-Trade Partnership Against Terrorism (C-TPAT)" and the TSA partnership with American Trucking Associations (ATA) called "Highway Watch." To address increasing security checks at U.S. border-crossings with

⁴ Ibid.

⁵ Ibid.

⁶ P.L. 107-56, title X, § 1012(a)(1), 115 Stat. 396, October 26, 2001, amended August 10, 2005, P.L. 109-59 ("Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" or "SAFETEA-LU").

Mexico and Canada following the September 11 attacks, motor carriers agreed to participate in C-TPAT, a voluntary program for shipments between the United States and Canada, or the United States and Mexico. C-TPAT participants agree to follow a set of security guidelines outlined in written agreement in return for reduced delays at border-crossing from Customs inspections⁷. To gain additional expedited treatment at the U.S. borders, motor carriers may choose to participate in the Free and Secure Trade (FAST) program, which utilizes electronic transmission of shipping data and use of transponder technologies and barcode technology for verification. Participation in C-TPAT is a prerequisite to membership in the FAST program. While C-TPAT and FAST are focused on cross-border cargo clearance, Highway Watch focuses on security training for the drivers. Through Highway Watch, transportation professionals are trained to recognize and report potential safety and security threats. DHS provides the funding and ATA administers the program.

These programs begin to address the security concerns of the 85 percent of domestic cargo that moves by trucks. However, these modest steps highlight the need for more robust action. The motor carrier and truck security provisions contained in title IV of S.1052 takes the next steps by focusing on the key issues related to the secure transportation of hazardous materials, such as routing, tracking, training, and enforcement.

Intercity Bus Security

Along with automobile, air, and rail services, intercity bus service has long been one of the primary modes of transportation within the United States. The intercity bus industry serves more than 5,000 destinations in the United States. The industry comprises mostly small businesses. Sixty-five percent of known carriers operate fewer than 10 buses, but those smallest of companies carry an estimated 97 million passengers. Over-the-road buses transport approximately 774 million passengers annually and are the only viable means of transportation for many people throughout the country. Between fixed routes, intercity, community services, charter and tour, and airport shuttle services, the industry has a significant impact in the lives of many Americans. However, most important, they serve thousands of communities that have no other form of intercity public transportation, and provide the only affordable means of transportation for millions in urban areas.

Since September 11, Congress has noted the importance of making intercity bus facilities secure, and have appropriated funding for security enhancement and training. \$10 million was appropriated to the DHS for intercity bus security grants program in both fiscal years 2005 and 2006.⁸ Funds have been used for priority upgrades such as monitoring, tracking, and communication upgrades, including GPS tracking technology, cellular communications or identification materials, and security training. This funding, however, is not enough. Federal financial support is needed for

⁷U.S. Customs and Border Protection. Securing the Global Supply Chain: Customs-Trade Partnership Against Terrorism (C-TPAT) Strategic Plan. 2004. Available at http://www.cbp.gov/linkhandler/cgov/import/commercial_enforcement/ctpat/ctpat—strategicplan.ctt/ctpat_strategicplan.pdf. Accessed January 2006.

⁸Department of Homeland Security Appropriations, 2006, P.L. 109–90, October 18, 2005; and P.L. 108–334, October 18, 2004.

system-wide improvements, such as passenger and baggage screening in terminals; implementation of a ticket identification system; emergency communications systems linked to police and emergency personnel; enhanced driver compartment security; increased security training; development and maintenance of information and communications systems with law enforcement; installation of cameras and video surveillance equipment; and other measures to make buses, terminals, and garages more secure. S. 1052 would provide \$50 million for these needed system-wide security improvements.

Pipeline Security

The U.S. liquid pipeline industry is large, diverse and vital to the economy. Comprised of approximately 200,000 miles of pipes in all of the fifty States, during 2001, liquid pipelines carried more than 40 million barrels per day, or 4 trillion barrel-miles, of crude oil and refined products.⁹ Because of the volume that must be transported, pipelines are the only feasible method for moving the enormous quantities of petroleum and other key products that America requires to keep going each day. It is projected that the liquid pipeline industry will grow significantly during the next 25 years.

Pipeline operators have managed the integrity, safety, and security of their system for years. By April 1, 2003, operators of 95 percent of the oil pipeline infrastructure had certified with DOT their compliance with contingency planning guidelines. While pipeline operators have voluntarily conducted vulnerability assessments of critical pipeline facilities, there is no security requirement to do so, and thus, no enforcement. The pipeline security provisions of S.1052 would address this security gap by requiring the Federal government to develop a Pipeline Security and Incident Recovery Plan to provide for increased security support to the most critical transmission pipeline infrastructure and operations during periods of elevated threat, and ensure no disruption of commerce in the event of an incident. The bill also would require DHS to issue pipeline security regulations that include provisions for inspection of facilities and enforcement action.

SUMMARY OF PROVISIONS

The provisions of the proposed aviation security title in S. 1052 would: preclude TSA from increasing the aviation security infrastructure fee without submitting the proposed rule to Congress; require TSA to study the feasibility of collecting the commercial aviation passenger security fee directly from passengers at, or before, they reach the airport through a system developed or approved by TSA, including the use of vending kiosks, other automated vending devices, the Internet, or other remote vending sites; require TSA to establish a pilot program at not more than three airports for training students as interns to perform screening of passengers and property in exchange for a commitment to become a screener post-graduation; and preclude the FAA from certifying foreign repair stations if DHS fails to issue repair station regulations within 90 days of the enactment of this Act.

⁹Richard Rabinow, *The Liquid Pipeline Industry in the United States: Where It's Been, Where It's Going*, Association of Oil Pipe Lines, April 2004.

The major provisions of the rail security title of S. 1052 would: create a new grant program within DHS to assist Amtrak, freight railroads, and other stakeholders in upgrading security across the railroad system; provide funding through DOT for security and safety enhancements to Amtrak railroad tunnels in New York, Washington, D.C., and Baltimore; create a rail security research and development program; encourage the deployment of rail car tracking equipment for high-hazard materials rail shipments; require railroads shipping high hazard materials to create threat mitigation plans; require DHS and DOT to clarify their roles for rail security and safety; issue guidance for a rail worker security training program; and provide for a whistleblower protection program for rail workers who report security concerns.

The major provisions of the maritime security title of S. 1052, augmenting MTSA, would: require the establishment of inter-agency operational centers for port security at all high priority ports; establish prioritization of vessels to resume trade following an incident; improve tracking data for cargo; and establish technical requirements for improved cargo inspection; and develop plans for enhanced random physical inspection of containers. The legislation also would serve to strengthen current DHS initiatives for cargo as well as secure systems of international inter-modal transportation.

S. 1052 also addresses transportation security issues related to pipelines and pipeline facilities, motor carriers, the transport of hazardous materials by all modes, and over-the-road buses. The major provisions of the proposed surface transportation title of S. 1052, in addition to those described for railroad security, would: strengthen hazardous material transportation security efforts; propose security guidelines for truck rental and leasing operations; require the development of pipeline security incident recovery plans; and provide grants for improving over-the-road bus and bus terminal security.

LEGISLATIVE HISTORY

Chairman Stevens and Co-Chairman Inouye introduced S. 1052, “The Transportation Security Improvement Act of 2005” on May 17, 2005. Senators Boxer, Dorgan, Lautenberg, Rockefeller, Snowe, Cantwell, and Pryor originally cosponsored the bill.

During the 109th Congress, the Committee held multiple hearings on transportation security. On May 17, 2005, the Committee held a hearing chaired by Chairman Stevens on measures that have been taken since September 11, 2001, to secure U.S. ports. Those testifying before the Committee were members of Congress, representatives of CBP, U.S. Coast Guard, DHS, the General Accountability Office (GAO), and various trade associations.

On October 20, 2005, the Committee held a hearing chaired by Chairman Stevens on the state of passenger and freight rail security, as well as relevant provisions of S. 1052. Those testifying before the Committee were representatives of TSA, the Federal Railroad Administration (FRA), GAO, Amtrak, and various business and labor associations.

On November 17, 2005, the Committee met in Executive Session during which S. 1052 was considered. A substitute amendment that streamlined the provisions of S. 1052 was offered by Chairman Stevens and Co-Chairman Inouye, and approved by the Committee

unanimously by voice vote. Several amendments filed by Senators Cantwell, Pryor, Kerry, Lautenberg and Dorgan also were offered and incorporated into S. 1052 via a manager's package.

The amendments sponsored by Senator Cantwell would increase research and development for ferry security, increase security for car ferries entering U.S. waters from Canada, and ensure that the strategic plan for transportation research and development is aligned with interoperable communications research and development in Federal agency strategic plans. The amendments sponsored by Senator Pryor would require the DHS Secretary to transmit a preliminary report of security issues related to the trucking industry, require demonstration projects for alternative collection methods for passenger security fees, and require that pilot programs for employee retention internships be conducted at three airports of various size facilities. The amendment sponsored by Senators Kerry, Lautenberg and Dorgan would repeal TSA's exemption from Federal procurement laws under the Federal Acquisition Regulation (FAR).

The substitute and manager's amendments were adopted by the Committee and amended to the bill; the Committee ordered the bill reported.

ESTIMATED COSTS

In compliance with subsection (a)(3) of paragraph 11 of rule XXVI of the Standing Rules of the Senate, the Committee states that, in its opinion, it is necessary to dispense with the requirements of paragraphs (1) and (2) of that subsection in order to expedite the business of the Senate.

REGULATORY IMPACT STATEMENT

NUMBER OF PERSONS COVERED

S. 1052 is intended to improve transportation security by making modifications to ATSA and MTSA. While S. 1052 affects DHS and DOT, it would be consistent with the number of individuals affected by ATSA and MTSA.

ECONOMIC IMPACT

S. 1052 is not expected to have an adverse impact on the U.S. economy. It is anticipated that titles I-V would have positive economic impacts to their respective areas and should provide significant support to the corresponding transportation sector modes. The bill would authorize the necessary funding to establish a more secure system by requiring DHS, and in some cases DOT, as well as the corresponding industries to take steps to protect the system.

PRIVACY

S. 1052 would have minimal effect on the privacy rights of individuals.

PAPERWORK

The Committee anticipates a slight increase in paperwork burdens on requirements for private individuals or businesses. In

those areas where the bill does require additional paperwork, it is aimed at improving the transportation security infrastructure.

S. 1052 would require a range of plans, communications, budget analyses, agreements, and rulemakings. In certain sections, such as section 103, the Secretary of DHS would be required to promulgate strategic plans to Congress, or in the case of sections 310 and 403, the Secretaries of DHS and DOT would be required to develop and issue detailed guidance to the pertinent industry stakeholders, while section 507 would require that DHS develop a plan for random physical inspection of shipping containers. Two provisions of S. 1052, section 313 and 408, would require that the Secretaries of DHS and DOT enter into an annex of a previously established Memorandum of Agreement to delineate roles and responsibilities. Section 315 would require the DHS and DOT Secretaries to develop a national plan for improved public outreach, which would entail communication with citizens, although not necessarily in print format. Section 407 would require the DHS Secretary to promulgate regulations; section 506 would require initiation of a rulemaking; section 508 would require promulgation of standards and procedures for cargo screening and section 511 would require the DHS Secretary to issue a final rule for transportation security cards.

The paperwork burden on industry or private individuals concerns plans that would be developed and/or submitted for review to DHS and DOT: these plans would be used for strategic purposes or would be a pre-requisite for distributing grants. For example, in section 312, rail carriers would be required to develop and submit security threat mitigation plans which would be updated and re-submitted for review, while section 401 would require certain motor carriers to develop and maintain written route plans. Illustrations of grant requirements are found in section 304, where the DOT Secretary would have to approve plans submitted by Amtrak before distributing grants for fire and life-safety improvements; in section 307, where the DHS Secretary would be authorized to award grants; however, prior to award, applicants would have to follow qualification procedures, including a requirement that the applicant have a security plan; and in section 410, where the DHS Secretary would not be required to award grants until private bus operators submitted a plan for making security improvements.

SECTION-BY-SECTION ANALYSIS

TITLE I—AUTHORIZATIONS

Section 101. Transportation Security Administration authorization.

This section would authorize sums to be appropriated to DHS for each of fiscal years 2007 through 2009 for aviation, surface transportation security, intelligence, research and development, and administration; \$15.75 billion for aviation security; \$723 million for surface transportation security; \$96 million for intelligence; and \$1.6 billion for administration.

Section 102. Department of Transportation authorization.

This section would authorize sums to be appropriated to DOT for each of fiscal years 2007 through 2009 to carry out title III and IV of this Act. The total sums authorized to be appropriated are \$671 million over three years.

Section 103. Technology for transportation security.

Subsection (a) of this section would amend section 70107(i)(2)(B) of title 46, U.S.C. to insert “not less than” after Secretary.

Subsection (b) of this section would require the Secretary to ensure that beginning after the date of enactment of this Act, not less than eight percent of amounts appropriated to TSA and the DHS Directorate of Science and Technology are used for research and development for maritime security projects or programs, including ferry systems, and not less than two percent of such amounts are used for rail security projects or programs.

Subsection (c) of this section would require within 120 days of enactment of this Act the DHS Secretary to promulgate a strategic plan for transportation research and development, and update the plan not less than every two years. In promulgating the plan, the Secretary would be required to ensure the research needs of all major modes of transportation, identify goals and objectives, include an adequate amount of basic research, define the research and development roles of TSA and the DHS Directorate of Science and Technology, coordinate transportation research, including interoperable communications, with other Federal agencies, and base the plan on vulnerability and criticality assessments. This subsection also would require the Homeland Security Science and Technology Advisory Committee to evaluate the plan annually and recommend changes to the research program under the plan.

The Secretary would be required to submit to Congress a copy of the strategic plan, as well as a copy of the annual evaluations and recommendations made by the Advisory Committee.

Subsection (d) would authorize the DHS Secretary to transfer up to \$15,000,000 to the National Institute of Science and Technology to be obligated and expended for a focused program in transportation security.

Subsection (e) would amend title III of the Homeland Security Act of 2002 by adding a new section 314. This new section would require the DHS Secretary, acting through the Under Secretary for Science and Technology, to establish a competitive research program within the Directorate. A Director appointed by the Secretary would head the program. The Director would: establish a co-funding mechanism for States and academic facilities to support their security-related science and technology programs; provide for conferences and other assistance to researchers and academic institutions on topics related to science and technology expertise; monitor States’ efforts to develop programs that support DHS’s mission; implement a merit review program to ensure the quality of research conducted with program funding; and provide annual reports to the Secretary on the progress and achievements of the program.

This subsection would require the Director to provide assistance under the program for research and development projects that are related to or qualify as homeland security research. Such assistance may take the form as grants, contracts, or cooperative agreements. For the first three fiscal years of the program, assistance would be limited to academic institutions located in States with academic institutions with a grant from, or contract or cooperative agreement with, the National Science Foundation.

Section 104. Reorganizations.

This section would require the DHS Secretary to notify Congress in writing not less than 15 days before reorganizing or renaming offices, reorganizing programs or activities, or contracting out or privatizing any functions or activities presently performed by Federal employees.

The Committee is concerned that reorganizations of DHS and TSA have been undertaken without sufficient notice or explanation to the Committee. While such reorganization may be necessary and appropriate from time to time, the undertaking without notice or explanation has complicated the Committee's efforts to oversee and analyze DHS's programs, staff, and policies within the Committee's jurisdiction. This section would require that the Committee be notified of substantial changes in DHS or TSA structure or policy before they occur to ensure that the Committee can perform its oversight function over areas within its jurisdiction.

Section 105. TSA acquisition management policy.

This section would amend section 114 of title 49 U.S.C. by striking subsection (o), thus repealing TSA's exemption from Federal procurement laws under FAR. This section would take effect 180 days after the date of enactment of this Act.

TITLE II— IMPROVED AVIATION SECURITY

Section 201. Post-fiscal year 2006 air carrier security fees.

This section would amend section 44940(a)(2) of title 49, U.S.C., by precluding the Assistant Secretary of TSA from increasing the aviation security infrastructure fee after September 30, 2006, unless the fee or increase is imposed by rule, and the rule is submitted to Congress not less than 60 days before its proposed effective date.

Section 202. Alternative collection methods for passenger security fee.

This section would require the Assistant Secretary of TSA to study the feasibility of collecting the commercial aviation passenger security fee authorized by section 44940 of title 49, U.S.C., directly from passengers at, or before they reach, the airport through a system developed or approved by TSA, including the use of vending kiosks, other automated vending devices, the Internet, or other remote vending sites.

Based on the study required by this section, the Secretary would be required to develop such alternative collection systems as the Assistant Secretary determines to be feasible. The Secretary would be required to report to Congress within six months the results of the study, along with recommendations the Secretary deems appropriate. If the Secretary determines that a system of direct collection from passengers is feasible, the Secretary would be required to conduct demonstration projects at no more than three airports within one year of submitting the report to Congress.

Section 203. Employee retention internship program.

This section would require the Assistant Secretary of TSA to establish a pilot program at not more than three airports for training

students to perform screening of passengers and property. The program would be an internship for pre-employment training of final-year students from public and private secondary schools. Students would be compensated and be required to agree, as a condition of participation in the program, to accept employment as a screener upon successful completion of the internship and upon graduation from the secondary school. The Assistant Secretary would be required to conduct these pilots at airports of various sizes, small, medium and large.

Section 204. Repair station security.

Subsection (a) of this section would preclude the Administrator of the Federal Aviation Administration from certifying foreign repair stations under part 145 of title 14, Code of Federal Regulations (CFR), if the regulations required by section 44924(e) of title 49, U.S.C., are not issued within 90 days of the enactment of this Act.

Subsection (b) of this section amends section 44924 of title 49, U.S.C., and would mandate a 6-month deadline for security review and audit, rather than 18 months.

TITLE III — IMPROVED RAIL SECURITY

Section 301. Short title.

Section 301 would indicate that this title may be cited as the “Rail Security Act of 2005.”

Section 302. Rail transportation security risk assessment.

This section would require the DHS Secretary to establish a task force to complete a vulnerability and risk assessment of freight and passenger rail transportation. The Secretary would be required to take into account actions taken or planned by both public and private entities. Based on the findings of the task force, within 180 days of enactment of this Act, the Secretary would be required to develop and report to Congress prioritized recommendations for improving rail security, including any recommendations for: improving the security of tunnels, bridges, and other infrastructure; deploying explosive detection technologies and surveillance equipment; training railroad or railroad shipper employees; educating rail passengers; and identifying immediate and long-term costs associated with addressing risks. This report, containing prioritized recommendations, plans and cost estimates for the security of the domestic rail system, would be updated and submitted annually to Congress.

The Secretary would be required to include in his recommendations a plan for the Federal government to provide increased security support at high threat levels of alert, a plan for coordinating existing and planned rail security initiatives undertaken by the public and private sectors, and a contingency plan developed in conjunction with the intercity and commuter passenger railroads to ensure the continued movement of freight and passengers in the event of an attack. This section would authorize to be appropriated \$5,000,000 for fiscal year 2007 to carry out this section.

The Committee has long awaited a comprehensive rail security risk assessment from DHS and TSA, and the enactment of this pro-

vision would be intended to hasten its development. Recognizing that, in addition to TSA's lead role, DOT, other DHS agencies, and other Federal agencies contribute towards Federal rail security efforts, this provision envisions the establishment of a task force led by the DHS Secretary to develop the assessment. The Committee also hopes that this process will help led to the further delineation of roles and responsibilities between the Federal entities involved.

Section 303. System-wide Amtrak security upgrades.

This section would authorize the DHS Secretary to make grants to Amtrak to: secure major tunnel access points in New York, Baltimore, and Washington, D.C.; secure Amtrak trains and stations; obtain a watch list identification system and interoperable communication system; hire additional police and security officers; and expand emergency preparedness efforts. The Secretary would be authorized to distribute grants to Amtrak for projects contained in a system-wide security plan approved by the Secretary. The Secretary would be required to ensure that grants are distributed to areas outside of the Northeast Corridor, consistent with the risk assessment required under section 302 and in accordance with the highest security needs of the Amtrak system.

This section would authorize to be appropriated \$63,500,000 for fiscal year 2007, and \$30,000,000 for each of fiscal years 2008 and 2009 for the DHS Secretary to carry out this section.

Section 304. Fire and life-safety improvements.

This section would authorize the DOT Secretary to make grants to Amtrak for fire and life-safety improvements to Amtrak tunnels on the Northeast Corridor.

This section would authorize \$190,000,000 in funding for DOT for each of fiscal years 2007 through 2009 to make fire and life-safety improvements to the six New York tunnels; \$19,000,000 for each of fiscal years 2007 through 2009 for improvements of the Baltimore & Potomac and Union tunnels in Baltimore, Maryland; and \$13,333,000 for each of fiscal years 2007 through 2009 for improvements of the Washington, D.C., Union Station tunnels. The DOT Secretary would be required to approve plans submitted by Amtrak before distributing grants. In addition, the Secretary may consider the feasibility of seeking a financial contribution from other rail carriers towards the cost of the project. This section also would authorize \$3 million for the preliminary design of a new rail tunnel in downtown Baltimore, Maryland to provide redundancy and augment existing capacity.

The amounts authorized by this section would allow Amtrak to complete ongoing safety and security improvements primarily focused on improving access and egress to and from Amtrak's major Northeast Corridor rail tunnels and better lighting and ventilation.

Section 305. Freight and passenger rail security upgrades.

This section would authorize the DHS Secretary to make grants to freight railroads, the Alaska Railroad, hazardous materials shippers, owners of rail cars used to transport hazardous materials, institutions of higher education, State and local governments, and, through the DOT Secretary, Amtrak, for full or partial reimbursement of costs incurred to prevent or respond to acts of terrorism,

sabotage, or other vulnerabilities or risks. The DHS Secretary would be required to adopt necessary procedures to ensure that grants made under this section are expended in accordance with the purposes of this Act. Eligible activities for funding under this program include: the development of secure and redundant communications and tracking systems; explosive detection and screening equipment; intercity passenger train and facility security; hazardous materials rail transportation security; employee security training; and canine teams and additional security personnel. Grants available to Amtrak through this program would be limited to no more than \$45 million per year to ensure that adequate funding is available for other purposes and to other entities.

This section would authorize to be appropriated (subject to certain limitations) \$100,000,000 in funding for DHS for each of fiscal years 2007 through 2009 for the Secretary to carry out this section.

Section 306. Rail security research and development.

This section would require the DHS Secretary, in conjunction with the DHS Under Secretary for Science and Technology and the Assistant Secretary for TSA, and in consultation with the DOT Secretary, to carry out a research and development program for the purpose of improving freight and intercity passenger rail security. In carrying out this section, the DHS Secretary would be required to coordinate with other research and development initiatives at DOT. This section would authorize to be appropriated \$35,000,000 in funding for DHS for each of fiscal years 2007 through 2009 for the Secretary to carry out this section.

The Committee believes that technology is an essential aspect of efforts to improve security of the nation's railroads and seeks to further the development of new, or the adaptation of existing, technology for rail security uses. The Committee expects this program to be a joint effort between DHS's Science and Technology Directorate and TSA, with each agency providing expertise and context to the endeavor.

Section 307. Oversight and grant procedures.

This section would authorize the DHS Secretary to use up to .5 percent of amounts made available under the Rail Security Act of 2005 to enter into contracts for the review of proposed capital projects and related program management plans and to oversee construction of such projects. The Secretary would be required to prescribe procedures and schedules for the awarding of grants under this Act, including application and qualification procedures.

Section 308. Amtrak plan to assist families of passengers involved in rail passenger accidents.

This section would require, not later than six months after the date of enactment of this Act, Amtrak to submit to the Chairman of the National Transportation Safety Board (NTSB), the DOT Secretary and the DHS Secretary, a plan for addressing the needs of families of passengers involved in any rail passenger accident involving an Amtrak intercity train and resulting in loss of life. The NTSB and various passenger carriers currently offer assistance to the families of passengers involved in transportation accidents. This provision would require Amtrak, as well as enable NTSB, to

offer similar services to those impacted by accidents involving Amtrak trains. This new section would authorize to be appropriated \$500,000 in funding for fiscal year 2007 from this Act for the DOT Secretary to carry out this new section.

Section 309. Northern border rail passenger report.

This section would require the DHS Secretary, in consultation with the DOT Secretary, heads of other appropriate Federal departments and agencies, and the National Railroad Passenger Corporation, within 180 days of enactment of this Act, to submit a report to Congress that contains: a description of the current system for screening passengers and baggage on rail service between the United States and Canada; an assessment of the current program to provide pre-clearance of airline passengers between the United States and Canada; an assessment of the current program to provide pre-clearance of freight railroad traffic between the United States and Canada; information on progress by the Federal government towards finalizing a bilateral protocol with Canada that would provide for pre-clearance of passengers on trains operating between the United States and Canada; a description of legislative, regulatory, budgetary, or policy barriers to providing pre-screened passenger lists for such passengers; a description of the Canadian position with respect to pre-clearance; a draft of any changes to Federal law necessary to allow for pre-screening; and a feasibility analysis of reinstating in-transit inspections onboard international Amtrak trains.

The Committee is concerned that passenger and baggage screening procedures at rail lines on the northern border are seriously delaying Amtrak trains. The Committee understands that delays at the border in Michigan were so severe that Amtrak and its connecting Canadian rail carrier, VIA Canada, were forced to discontinue service between Chicago and Toronto. While the Committee supports robust border protection, the process used should not unduly impact Amtrak service when possible. The Committee expects the DHS Secretary to work with agencies within the Department to minimize delays affecting trans-national Amtrak passengers at the border.

Section 310. Rail worker security training program.

This section would require the DHS and DOT Secretaries, within 180 days after the enactment of this Act, to work with law enforcement officials, and terrorism and rail experts, to develop and issue detailed guidance for a railroad worker security training program to prepare front-line workers for potential security threats. This section also would require railroad carriers to adopt a worker security training program in accordance with the guidance and submit it to the DHS Secretary for review and comment. Within one year after the Secretary reviews the rail carriers' training programs, the railroad carriers would be required to complete the training of front-line workers.

The Committee is concerned that while many rail carriers may have developed security training program plans, that not all front-line rail workers have received training. Testimony before the Committee highlighted this issue as the plans have been developed, but those plans need to be implemented more robustly. Additionally,

the Committee believes that labor organizations representing rail workers should play a stronger role providing security training and awareness to their members. The guidance developed by Secretaries through this section should reflect these concerns and also take into account the different security concerns, resources, and expertise associated with different types and sizes of rail carriers.

Section 311. Whistleblower protection program.

This section would preclude rail carriers from discharging a railroad employee or otherwise discriminate against a railroad employee because the employee: provided, caused to be provided, or is about to provide, to the employer or the Federal government information relating to a reasonably perceived threat to security; provided, caused to be provided, or is about to provide testimony before a Federal or State proceeding; or refused to violate or assist in violation of any law or regulation related to rail security. This section also addresses dispute resolution, procedural requirements, election of remedies, and disclosure of identity of whistleblowers.

The Committee believes that extending whistleblower protection to employees, patterned off existing protection in other transportation sectors, would help to ensure that employees can safely raise legitimate and reasonable security concerns to employees or others without fear of reprisal.

Section 312. High hazard material security threat mitigation plans.

This section would direct the DHS and DOT Secretaries to require rail carriers transporting a high hazard material to develop security threat mitigation plans, including alternative routing and temporary shipments suspension options, and to address assessed risks to high-consequence targets. These threat mitigation plans would be implemented when the threat levels of the Homeland Security Advisory System are high or severe and specific intelligence of probable or imminent threat exists toward high-consequence rail targets or infrastructure. Route plans would be required to be submitted within 60 days of enactment of this Act; mitigation plans would be required to be submitted within 180 days upon notification of high consequence targets by the Secretary. The plan and related information submitted to the Secretary for review and comment would be protected as sensitive security information (SSI). Each rail carrier would be required to update and resubmit its plan for review not less than every 2 years.

The Committee believes that the plans required under this section would help to ensure that high-consequence targets near rail lines (major government buildings, public gatherings; critical assets or infrastructure, etc.) are protected during elevated security threat levels. The DHS Secretary would designate the high-consequence targets on routes over which high-hazard materials are transported and rail carriers would develop plans to mitigate risks for those targets in accordance with threat levels and other intelligence.

Section 313. Memorandum of agreement.

This section would require within one year of the date of enactment of this Act the DHS and DOT Secretaries to enter into an annex to their September 28, 2004 memorandum of agreement to delineate certain roles, resources, and commitments of DHS and

DOT in addressing railroad transportation security matters, including the processes the departments will follow to promote communications, efficiency, and non-duplication of efforts.

Section 314. Rail security enhancements.

This section would amend section 28101 of title 49, U.S.C., to expand the law enforcement authority of rail police officers to rail properties other than those owned or operated by a rail police officers' employer. This change enhances rail police officers' ability to respond to emergencies and pursue law enforcement actions in railroad terminal areas where several railroads operate in close proximity. This section would require that the DOT Secretary, in consultation with the DHS Secretary, review within one year after the date of enactment of this Act, the DOT's current rail regulations for the purpose of identifying possible revisions that would improve rail security.

Section 315. Public awareness.

This section would require within 90 days of enactment of this Act the DHS Secretary, in consultation with the DOT Secretary, to develop a national plan for improved public outreach and awareness of measures that the general public, railroad passengers, and railroad employees can take to increase railroad system security. Not later than nine months after the date of enactment of this Act, the DHS Secretary would implement this plan.

Section 316. Railroad high hazard material tracking.

This section would require the DHS Secretary to develop a program that will encourage the equipping of rail cars transporting high hazard materials with wireless terrestrial or satellite communications technology that provides information concerning car position, depressurization, and the release of hazardous materials. The Secretary of DHS would be required to consult with the Secretary of DOT to coordinate the program with any similar efforts for rail car tracking within DOT and with DHS hazardous material tank rail car tracking pilot programs. This section would authorize to be appropriated \$3,000,000 in funding for each of fiscal years 2007 through 2009 for the Secretary to carry out this section.

The Committee understands that there are on-going rail car tracking pilot programs now underway and that some rail car owners are already deploying tracking and monitoring equipment for tank cars carrying hazardous materials. The Committee seeks to encourage further deployment and development of this technology for both security and safety reasons.

TITLE IV—IMPROVED MOTOR CARRIER, BUS, AND HAZARDOUS
MATERIAL SECURITY

Section 401. Written plans for hazardous materials highway routing.

This section would require, within 180 days of enactment of this Act, the DOT Secretary to mandate that each motor carrier that is required to have a hazardous material safety permit under part 385 of title 49, CFR, maintain a written route plan that meets the components of section 397.101 of that title when transporting the

type and quantity of hazardous materials described in section 385.403 of that title.

Section 402. Motor carrier high-hazard material tracking.

This section would require the DHS Secretary, through TSA, and in consultation with the DOT Secretary, to develop a program to encourage the equipping of motor carriers transporting high-hazard materials in specified quantities with wireless communications technology that provides continuous communications, vehicle position and location and tracking capabilities, and an emergency broadcast capability. This section would make available \$3,000,000 of the funds appropriated under section 114(u)(2) of title 49, U.S.C., to carry out this Act for each of fiscal years 2007 through 2009.

The Committee's review of the Federal Motor Carrier Safety Administration's Field Operation Test of hazardous material truck tracking technology and current wide deployment of tracking and monitoring equipment for trucks carrying hazardous materials leads the Committee to seek to encourage further deployment and development of this technology for both security and safety reasons.

Section 403. Truck leasing security training guidelines.

This section would require within 180 days of enactment of this Act the DHS Secretary, through TSA, and in consultation with the Federal Motor Carrier Safety Administration, to develop and make available security training guidelines for short-term truck leasing operations consistent with existing industry best practices as determined by the DHS Secretary. This section would make available \$1,000,000 of the funds appropriated under section 114(u)(2) of title 49, U.S.C., to carry out this Act for fiscal year 2007.

The Committee encourages the DHS Secretary to conduct outreach sessions and communicate proposed guidelines to industry.

Section 404. Hazardous materials security inspections and enforcement.

This section would require the DHS Secretary to establish a program within TSA, in consultation with the DOT Secretary, for reviewing hazardous materials security plans as required under part 172, title 49, CFR, within 180 days of the enactment of this Act. Failure by any covered person under part 172 to comply with any applicable section of that part within 180 days after being notified by the DHS Secretary would be punishable by a civil penalty. In reviewing compliance with part 172, the Secretary would be required to utilize risk assessment methodologies to prioritize review and enforcement actions to the most vulnerable and critical hazardous materials transportation operations.

This section also would require within one year of enactment of this Act the DOT Secretary, in conjunction with the DHS Secretary, to study to what extent the insurance, security, and safety costs borne by carriers of hazardous materials are reflected in the rates paid by shippers of such commodities, as compared to such costs and rates borne and paid, respectively, for the transportation of non-hazardous materials.

This section would make available \$2,000,000 of the funds appropriated under section 114(u)(2) of title 49, U.S.C., to carry out this Act for each of fiscal years 2007 through 2009.

Section 405. Truck security assessment.

This section would require the DOT Secretary to transmit a report to Congress on trucking security issues. This report would be required to include an assessment of security related measures taken by both public and private entities; an assessment of economic impact on the trucking industry, including employees and independent owner-operators, of upgrading trucks, equipment and facilities; an assessment of current research and the need for additional research on truck security; and an assessment of industry best practices to enhance security.

Section 406. Pipeline security and incident recovery plan.

This section would require the DHS Secretary, in consultation with the DOT Secretary and the Pipeline and Hazardous Materials Safety Administration, and in accordance with the Memorandum of Understanding Annex executed under section 407 of this Act, to develop a Pipeline Security and Incident Recovery Protocols Plan. The Plan would be required to include a plan for the Federal government to provide increased security support to the most critical natural gas and hazardous liquid transmission pipeline infrastructures and operations during periods of elevated threat levels, and when specific threat information relating to such pipeline infrastructure or operations exists. The plan would also be required to include an incident recovery protocol plan, developed in conjunction with industry, to ensure no disruption of commerce in the event of an incident. The plan would also include current or planned actions by public and private entities to address pipeline security issues and an evaluation of the plans' effective integration.

This section also would require that within one year of enactment of this Act the DHS Secretary transmit to Congress a report containing the plan required in this section, along with an estimate of the private and public sector costs to implement any recommendations. This section would make available \$1,000,000 of the funds appropriated under section 114(u)(2) of title 49, U.S.C., to carry out this Act for fiscal year 2007.

The Committee understands that one of the most significant effects of a terrorist or other attack against pipelines assets would be disruption to the nation's energy supply. With this in mind, this section is designed to promote active planning and coordination between Federal entities and the pipeline industries to protect against pipeline disruptions and ensure that the recovery for any incident is swift and efficient in order to protect the integrity of the nation's energy supply.

Section 407. Pipeline security inspections and enforcement.

This section would require within one year of enactment of this Act the DHS Secretary, in consultation with the DOT Secretary, to establish a program to review pipeline operators' adoption of recommendations in the September 5, 2002, DOT Research and Special Programs Administration Pipeline Security Information Circular. The DHS Secretary would be required to complete within nine months a review of pipeline security plan and inspection of the 100 most critical pipeline operators covered by the Circular, and where such facilities have not been inspected for security purposes by either DHS or DOT. In reviewing operator compliance, the

DHS Secretary would be required to utilize risk assessment methodologies to prioritize vulnerabilities and focus enforcement actions.

This section also would require within one year of enactment of this Act the DHS Secretary to promulgate regulations for securing natural gas and hazardous liquid pipelines and pipeline facilities and carry out necessary inspection and enforcement actions. This section would make available \$2,000,000 of the funds appropriated under section 114(u)(2) of title 49, U.S.C., to carry out this Act for each of fiscal years 2007 and 2008.

The Committee would encourage DHS to cooperate with DOT, specifically the Pipeline and Hazardous Materials Safety Administration, in the review of the pipeline plans as well as the inspection of critical infrastructure.

Section 408. Memorandum of agreement.

This section would require within six months of enactment of this Act the DOT Secretary and the DHS Secretary to execute and develop an annex to the memorandum of agreement between the two departments signed on September 28, 2004, in addressing pipeline security and hazardous materials transportation security matters.

Section 409. National public sector response system.

This section would require the DHS Secretary, in conjunction with the DOT Secretary, to develop a national public sector response system to receive security alerts, which can provide actionable information to appropriate first responder, law enforcement and public safety, and homeland security officials. The DHS Secretary would be required to consult with public and private stakeholders in developing this system. The system would be required to have certain capabilities and characteristics as described in this Act.

This section would also require within 180 days of enactment of this Act the DHS Secretary to transmit to Congress a report on the estimated public and private costs to establish and annually operate the system.

This section would make available \$1,000,000 of the funds appropriated under section 114(u)(2) of title 49, U.S.C., to carry out this Act for each of fiscal years 2007 through 2009.

Section 410. Over-the-road bus security assistance.

This section would require the DHS Secretary to establish within TSA a program for making grants to private operators of over-the-road buses (characterized by an elevated passenger deck located over a baggage compartment) or over-the-road bus terminals for system-wide security improvements to their operations. This section would require the Federal share of the cost for which any grant is made to be 80 percent. All grants made under this section would be subject to the terms and conditions that a grant is subject to under section 3038(f) of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note; 112 Stat. 393). No grant would be made under this section to a private bus operator until the operator has first submitted a plan for making security improvements to the DHS Secretary, along with any other information the DHS Secretary may require.

This section would require within 180 days of enactment of this Act the DHS Secretary to submit to Congress a preliminary report containing an assessment of actions already taken by public and private entities, whether additional legislation is necessary, the economic impact of security upgrades on the bus industry, ongoing research on bus security, and best practices to enhance bus security.

This section would make available \$50,000,000 of the funds appropriated under section 114(u)(2) of title 49, U.S.C., to carry out this Act for each of fiscal years 2007 through 2009.

TITLE V—IMPROVED MARITIME SECURITY

Section 501. Establishment of additional interagency operational centers for port security.

This section would direct the Commandant of the Coast Guard to develop additional Joint Operations Command Centers with the appropriate Federal, State and local jurisdictions stationed at each port area to co-locate assets and resources to improve interagency cooperation and the sharing of intelligence information in the maritime domain. There are currently four pilot centers in Miami, Florida; Norfolk, Virginia; Charleston, South Carolina; and San Diego, California. Specifically, the subsections would do the following:

Subsection (a) of this section would require the Secretary of Homeland Security, through the Commandant of the Coast Guard, to establish interagency operational centers for port security at all high priority ports.

Subsection (b) of this section would set forth characteristics to be met by the interagency operational centers including: being based on the most appropriate compositional and operational characteristics of existing pilot centers; being adapted to meet the security needs, requirements, and resources of the individual port area at which the center operates; include participants from CPB, TSA, the Department of Defense, State and local law enforcement of port security agencies and personnel, and other appropriate Federal agencies; and being incorporated into plans developed pursuant to provisions of MTSA.

Subsection (c) of this section would maintain the requirement that the Commandant issue a report pursuant to the Coast Guard and Maritime Transportation Act of 2005 and utilize the information derived from it to carry out this section.

Subsection (d) of this section would require the DHS Secretary to transmit a proposed budget analysis for establishing the interagency operational centers, including cost-sharing arrangements with other Federal departments and agencies involved in the operation of the centers.

It is the Committee's intent that creation of additional interagency operational centers will foster greater cooperation and communication among Federal, State and local stakeholders and thereby enhance security of port operations.

Section 502. Area maritime transportation security plan to include salvage response plan.

Pursuant to MTSA (P.L. 107-295), all port areas were required to conduct an Area Maritime Transportation Security Plan (AMTSP)

to deter a transportation security incident in or near the area to the maximum extent possible. The plan is required to integrate facility and vessel vulnerability assessments to develop a unity of command in preparing, preventing, and responding to a transportation security incident. Additionally, the plans must identify critical assets in the region of special importance to national security and implement standards and procedures to protect such facilities. The plans are required to be updated every five years.

Upon the next renewal of the AMTSP, the Coast Guard is required to identify salvage vessels and equipment in the region to ensure the flow of cargo through U.S. ports is re-established as efficiently and quickly as possible should a transportation security incident occur.

This section would amend section 70103(b)(2) of title 46, U.S.C., to include the requirement that the Federal Maritime Security Coordinator incorporate a salvage response plan in its existing AMTSPs.

Section 503. Priority to certain vessels in post-incident resumption of trade.

To facilitate the flow of maritime commerce as expeditiously as possible without compromising national security, this provision would direct the Coast Guard to allow vessels with Coast Guard approved vessel security plans, manned by Merchant Mariners who have undergone background checks or have a Transportation Worker Identification Credential (TWIC), and whose cargo has been screened through the Automated Targeting System (ATS), to enter into U.S. ports.

This section would amend section 70103(a)(2)(J) of title 46, U.S.C., to extend preference to certain vessels after a transportation security incident. Specifically, the plan would, to the extent practicable, grant preference to vessels that have a security plan approved under 70103(c); vessels manned by individuals with a license, certificate of registry, or merchant mariners document and who have undergone a background records check or who hold a transportation worker identification card; and vessels on which all the cargo has undergone screening and inspection at foreign ports as required by section 70116(b)(2) of title 49, U.S.C.

Section 504. Assistance for foreign ports.

Subsection (a) would strike the current title of section 70109, rename it "International cooperation and coordination," and would add a new subsection (c) requiring the DHS Secretary, in consultation with the Secretaries of Transportation, State, and Energy, and the Commandant of the Coast Guard, to identify foreign assistance programs that could facilitate implementation of port security antiterrorism measures at ports in foreign countries. The new subsection would also require such programs focus on assistance to the Caribbean Basin.

Subsection (b) would require the Comptroller General to submit a report on the security of ports in the Caribbean Basin specifically assessing the effectiveness of the measures currently in place to improve security at those ports and make recommendations for any additional measures to improve such security. In addition, the Comptroller General would be required to estimate the number of

ports in the Basin that will not be secured by January 1, 2007; estimate the financial impact in the United States of any action taken when foreign ports do not maintain effective antiterrorism measures as called for by section 70110 of title 49, U.S.C.; and assess what additional resources and program changes are necessary to maximize security at ports in the Basin.

In an effort to improve international port security standards, the Committee placed emphasis in this section on the Caribbean Basin countries because they pose unique security and safety threats due to their strategic location between South America and the United States, the relative openness of their ports, and the significant numbers of transshipments of narcotics to the United States from that region. It is also the intent of the Committee to encourage ongoing efforts by DHS regarding programs such as the Container Security Initiative (CSI).

Section 505. Improved data used for targeted cargo searches.

Under 46 U.S.C. 70116 and (b)(1) and section 108 of MTSA, P.L. 107–295, the Committee-led effort mandated the advanced notification of cargo entering the United States to the Customs Service prior to being loaded on a vessel bound for the United States for the screening and the evaluation of threats to our national security. Much of this information is based on manifest data being input electronically by the shipper to CBP for screening by ATS. Since the screening cargo shipment information means that in essence we are relying in the veracity of the entity shipping cargo, the manifest information is only as reliable as the entity inputting the information. While it may help identify anomalies based on historical shipping behavior and irregularities that could point to potential security breaches, someone with a degree of knowledge of shipping could avoid detection. CBP inspectors at ports visited by GAO “characterized the ship’s manifest as one of the least reliable or useful types of information for targeting purposes.” (11, GAO-04-325T) Additionally, various types of shipments lend themselves to a cloaking of the real parties of interest, either by virtue of the change of title after goods have arrived in the United States, or by virtue of using a cargo consolidator.

Therefore, this section would require importers also to file more complete entry data to CBP allowing CBP to compare the two data sets for consistency and potential discrepancy thereby improving the targeting of high-risk cargo by the ATS system. Entry data is widely recognized and the best and most comprehensive cargo information available.

This section would require the DHS Secretary to require importers shipping goods to the United States via cargo container to supply entry data not later than 24 hours in advance of loading a container under the advance notification requirements of section 484(a)(2) of the Tariff Act of 1930 (19 U.S.C. 1484(a)(2)). This section would apply to goods shipped after July 1, 2006.

This section would authorize to be appropriated \$30,700,000 in funding to carry out this section for fiscal year 2007, \$33,200,000 for fiscal year 2008, and \$35,700,000 for fiscal year 2009. Such amounts would be in addition to any other amounts authorized to carry out that program.

The term “entry data” may also be read as “Advanced Trade Data.”

Section 506. Technical requirements for non-intrusive inspection equipment.

In a recent report (GAO-05-187SU), GAO found that DHS lacked minimum technical requirements for the non-intrusive inspection equipment used as part of CSI. Thereby, CBP has limited assurances that the equipment in use can successfully detect weapons of mass destruction. Concerns have been raised that the technology being used to screen high-risk cargo entering the United States is not sufficiently robust to carry out this critical mission. Therefore, this section requires CBP, in consultation with the National Institute of Science and Technology, to develop minimal technical requirements for the performance of non-intrusive inspection equipment.

This section would require within two years of enactment of this Act the CBP Commissioner, in consultation with the National Institute of Science and Technology, to initiate a rulemaking to establish minimum technical requirements for the capabilities of non-intrusive inspection equipment that help ensure that all equipment used can detect risks and threats as determined appropriate by the DHS Secretary.

The term “non-intrusive inspection equipment” may also be defined as a container security device (CSD), global positioning system (GPS), or other technological advancement that would be considered in this category. Such equipment would be used by “trusted shippers” who meet the applicable security criteria as defined by the DHS Secretary.

Section 507. Random inspection of containers.

This section would require within one year of the enactment of this Act the CBP Commissioner to develop and implement a plan, utilizing best practices for empirical scientific research design and random sampling standards, for random physical inspection of shipping containers in addition to any targeted or pre-shipment inspection of such containers as required by law.

Section 508. Cargo security.

This section would amend chapter 701 of title 46, U.S.C., by inserting a new section 70121. The new section 70121 would require the DHS Secretary to promulgate standards and procedures for evaluating and screening cargo documents prior to loading cargo in a foreign port for shipment to the United States, and the inspection of high-risk cargo in a foreign port intended for shipment to the United States. This section also would require the CBP Commissioner to execute inspection and screening protocols with authorities in foreign ports to ensure that the standards and procedures required by this section are implemented in an effective manner.

This section would authorize the DHS Secretary to extend this container security initiative by designating additional foreign seaports under certain circumstances, including after making a determination that the Secretary of State has completed negotiations with representatives of the foreign country to ensure compliance with the initiative.

This section would authorize to be appropriated \$142,000,000 in funding to carry out this section for fiscal year 2007, \$144,000,000 for fiscal year 2008, and \$146,000,000 for fiscal year 2009.

Section 509. Secure systems of international inter-modal transportation.

This section would amend section 70116 of title 46, U.S.C., by bolstering existing law to ensure more robust protection of goods entering the United States. The DHS Secretary would be required to establish a program to evaluate and certify secure systems of international inter-modal transportation to ensure the security and integrity of shipments of goods entering the United States from the time such goods are initially packed into a cargo container for international shipment until they arrive at the ultimate U.S. destination. The Secretary would be required to facilitate the movement of such goods through the entire supply chain through an expedited security and clearance process.

This section also would require the DHS Secretary to establish standards and procedures to verify that cargo containers are: free of unauthorized hazardous chemical, biological, or nuclear materials and securely sealed; screened and evaluated prior to loading at the foreign ports and monitored while in transit; contained with authorized seals and locks; and in compliance as validated by the United States Government. Lastly, the Commissioner of Custom and Border Protection would be granted authority to provide expedited clearance of cargo as a benefit of compliance.

Section 510. Port security user fee study.

This section would require the DHS Secretary to conduct a study of the feasibility of establishing a system of oceanborne and port-related inter-modal transportation user fees imposed and collected as a revenue source to provide necessary funding for the maintenance and enhancement of port security. The DHS Secretary would be required within one year of the enactment of this Act to submit a report to Congress containing the Secretary's findings and recommendations, including legislative proposals if necessary. The report to Congress also should include an assessment of the annual amount of custom fees and duties collected and percentage dedicated to security.

Section 511. Deadline for transportation security cards.

This section would require that the DHS Secretary issue a final rule under 70105 of title 46, U.S.C., no later than January 1, 2007.

Section 512. Port security grants.

This section would amend section 70107(a) of title 46, U.S.C., by ensuring that port security grants are allocated based on an analysis by the DHS Secretary of risk and vulnerability, and the purposes for which grants may be used. This section also would amend section 70107(e) by authorizing the DHS Secretary to execute a letter of intent to commit funding to port sponsors from the grant fund.

Section 513. Customs-Trade Partnership Against Terrorism (C-TPAT) Security Validation Program.

This section would further amend chapter 701 of title 46, U.S.C., as amended by section 508 of this Act, by creating a new section 70122. This new section would require the CBP Commissioner to: strengthen the process to validate the security programs of C-TPAT members; within six months after the enactment of this Act complete human capital plans describing how the program will recruit, train, and retain sufficient staff to carry out the program successfully; and implement a records management system that documents key decisions and significant operational events accurately and in a timely manner.

This section would authorize to be appropriated \$60,000,000 in funding to carry out this Act for fiscal year 2007, \$65,000,000 for fiscal year 2008, and \$72,000,000 for fiscal year 2009.

Section 514. Work stoppages and employee-employer disputes.

This section would amend section 70101(6) of title 46, U.S.C., by making clear that the definition of “economic disruption” does not include a work stoppage or other non-violent employee-related action resulting from an employee-employer dispute.

Section 515. Appeal of denial of waiver for transportation security card.

This section would amend section 70105(c)(3) of title 46, U.S.C., to afford those individuals denied a waiver by the DHS Secretary to receive a transportation security card the ability to appeal the decision.

Section 516. Inspection of car ferries entering from Canada.

This section would require the DHS Secretary, within 120 days of enactment of this act, to develop a plan for the inspection of passengers and vehicles prior to any boarding of a ferry bound for a U.S. port. The DHS Secretary would coordinate this planning with the Secretary of State and with relevant Canadian counterparts.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

HOMELAND SECURITY ACT OF 2002

TITLE III—SCIENCE AND TECHNOLOGY IN SUPPORT OF HOMELAND SECURITY

SEC. 314. COMPETITIVE RESEARCH PROGRAM.

(a) *IN GENERAL.*—

(1) *ESTABLISHMENT.*—*The Secretary, acting through the Under Secretary for Science and Technology, shall establish a competitive research program within the Directorate.*

(2) *DIRECTOR.*—*The program shall be headed by a Director, who shall be appointed by the Secretary. The Director shall report to the Under Secretary.*

(3) *DUTIES OF DIRECTOR.*—*In the administration of the program, the Director shall—*

(A) establish a cofunding mechanism for States with academic facilities that have not fully developed security-related science and technology to support burgeoning research efforts by the faculty or link them to established investigators;

(B) provide for conferences, workshops, outreach, and technical assistance to researchers and institutions of higher education in States on topics related to developing science and technology expertise in areas of high interest and relevance to the Department;

(C) monitor the efforts of States to develop programs that support the Department's mission;

(D) implement a merit review program, consistent with program objectives, to ensure the quality of research conducted with Program funding; and

(E) provide annual reports on the progress and achievements of the Program to the Secretary.

(b) *ASSISTANCE UNDER THE PROGRAM.*—

(1) *SCOPE.*—*The Director shall provide assistance under the program for research and development projects that are related to, or qualify as, homeland security research (as defined in section 307(a)(2)) under the program.*

(2) *FORM OF ASSISTANCE.*—*Assistance under the program can take the form of grants, contracts, or cooperative arrangements.*

(3) *APPLICATIONS.*—Applicants shall submit proposals or applications in such form, at such times, and containing such information as the Director may require.

(c) *IMPLEMENTATION.*—

(1) *START-UP PHASES.*—For the first 3 fiscal years beginning after the date of enactment of the Border Infrastructure and Technology Integration Act of 2004, assistance under the program shall be limited to institutions of higher education located in States in which an institution of higher education with a grant from, or a contract or cooperative agreement with, the National Science Foundation under section 113 of the National Science Foundation Act of 1988 (42 U.S.C. 1862) is located.

(2) *SUBSEQUENT FISCAL YEARS.*—

(A) *IN GENERAL.*—Beginning with the 4th fiscal year after the date of enactment of this Act, the Director shall rank order the States (excluding any noncontiguous State (as defined in section 2(14)) other than Alaska, Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands) in descending order in terms of the average amount of funds received by institutions of higher education (as that term is defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)) in each State that received financial assistance in the form of grants, contracts, or cooperative arrangements under this title during each of the preceding 3 fiscal years.

(B) *ALLOCATION.*—Beginning with the 4th fiscal year after the date of enactment of this Act, assistance under the program for any fiscal year is limited to institutions of higher education located in States in the lowest third of those ranked under subparagraph (A) for that fiscal year.

(C) *DETERMINATION OF LOCATION.*—For purposes of this paragraph, an institution of higher education shall be considered to be located in the State in which its home campus is located, except that assistance provided under the program to a division, institute, or other facility located in another State for use in that State shall be considered to have been provided to an institution of higher education located in that other State.

(D) *MULTIYEAR ASSISTANCE.*—For purposes of this paragraph, assistance under the program that is provided on a multi-year basis shall be counted as provided in each such year in the amount so provided for that year.

(d) *FUNDING.*—The Secretary shall ensure that no less than 5 percent of the amount appropriated for each fiscal year to the Acceleration Fund for Research and Development of Homeland Security Technologies established by section 307(c)(1) is allocated to the program established by subsection (a).

TITLE 46, UNITED STATES CODE

CHAPTER 701. PORT SECURITY

§ 70101. Definitions

For the purpose of this chapter:

(1) The term “Area Maritime Transportation Security Plan” means an Area Maritime Transportation Security Plan prepared under section 70103(b).

(2) The term “facility” means any structure or facility of any kind located in, on, under, or adjacent to any waters subject to the jurisdiction of the United States.

(3) The term “National Maritime Transportation Security Plan” means the National Maritime Transportation Security Plan prepared and published under section 70103(a).

(4) The term “owner or operator” means—

(A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel; and

(B) in the case of a facility, any person owning, leasing, or operating such facility.

(5) The term “Secretary” means the Secretary of the department in which the Coast Guard is operating.

(6) The term “transportation security incident” means a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area. *In this paragraph, the term ‘economic disruption’ does not include a work stoppage or other nonviolent employee-related action resulting from an employee-employer dispute.*

§ 70103. Maritime transportation security plans

(a) NATIONAL MARITIME TRANSPORTATION SECURITY PLAN.—

(1) Not later than April 1, 2005, the Secretary shall prepare a National Maritime Transportation Security Plan for deterring and responding to a transportation security incident.

(2) The National Maritime Transportation Security Plan shall provide for efficient, coordinated, and effective action to deter and minimize damage from a transportation security incident, and shall include the following:

(A) Assignment of duties and responsibilities among Federal departments and agencies and coordination with State and local governmental agencies.

(B) Identification of security resources.

(C) Procedures and techniques to be employed in deterring a national transportation security incident.

(D) Establishment of procedures for the coordination of activities of—

(i) Coast Guard maritime security teams established under this chapter; and

(ii) Federal Maritime Security Coordinators required under this chapter.

(E) A system of surveillance and notice designed to safeguard against as well as ensure earliest possible notice of a transportation security incident and imminent threats of such a security incident to the appropriate State and Federal agencies.

(F) Establishment of criteria and procedures to ensure immediate and effective Federal identification of a transportation security incident, or the substantial threat of such a security incident.

(G) Designation of—

(i) areas for which Area Maritime Transportation Security Plans are required to be prepared under subsection (b); and

(ii) a Coast Guard official who shall be the Federal Maritime Security Coordinator for each such area.

(H) A risk-based system for evaluating the potential for violations of security zones designated by the Secretary on the waters subject to the jurisdiction of the United States.

(I) A recognition of certified systems of intermodal transportation.

(J) A plan for ensuring that the flow of cargo through United States ports is reestablished as efficiently and quickly as possible after a transportation security incident. *The plan shall provide, to the extent practicable, preference in the reestablishment of the flow of cargo through United States ports after a transportation security incident to—*

(i) vessels that have a vessel security plan approved under subsection (c);

(ii) vessels manned by individuals who are described in section 70105(b)(2)(B) and who have undergone a background records check under section 70105(d) or who hold transportation security cards issued under section 70105; and

(iii) vessels on which all the cargo has undergone screening and inspection under standards and procedures established under section 70116(b)(2) of this title.

(3) The Secretary shall, as the Secretary considers advisable, revise or otherwise amend the National Maritime Transportation Security Plan.

(4) Actions by Federal agencies to deter and minimize damage from a transportation security incident shall, to the greatest extent possible, be in accordance with the National Maritime Transportation Security Plan.

(5) The Secretary shall inform vessel and facility owners or operators of the provisions in the National Transportation Security Plan that the Secretary considers necessary for security purposes.

(b) AREA MARITIME TRANSPORTATION SECURITY PLANS.—

(1) The Federal Maritime Security Coordinator designated under subsection (a)(2)(G) for an area shall—

(A) submit to the Secretary an Area Maritime Transportation Security Plan for the area; and

(B) solicit advice from the Area Security Advisory Committee required under this chapter, for the area to assure preplanning of joint deterrence efforts, including appropriate procedures for deterrence of a transportation security incident.

(2) The Area Maritime Transportation Security Plan for an area shall—

(A) when implemented in conjunction with the National Maritime Transportation Security Plan, be adequate to deter a transportation security incident in or near the area to the maximum extent practicable;

(B) describe the area and infrastructure covered by the plan, including the areas of population or special economic, environmental, or national security importance that might be damaged by a transportation security incident;

(C) describe in detail how the plan is integrated with other Area Maritime Transportation Security Plans, and with facility security plans and vessel security plans under this section;

(D) include consultation and coordination with the Department of Defense on matters relating to Department of Defense facilities and vessels;

(E) include any other information the Secretary requires; **[and]**

(F) include a salvage response plan—

(i) to identify salvage equipment capable of restoring operational trade capacity; and

(ii) to ensure that the flow of cargo through United States ports is re-established as efficiently and quickly as possible after a transportation security incident; and

[(F)] (G) be updated at least every 5 years by the Federal Maritime Security Coordinator.

(3) The Secretary shall—

(A) review and approve Area Maritime Transportation Security Plans under this subsection; and

(B) periodically review previously approved Area Maritime Transportation Security Plans.

(4) In security zones designated by the Secretary in each Area Maritime Transportation Security Plan, the Secretary shall consider—

(A) the use of public/private partnerships to enforce security within the security zones, shoreside protection alternatives, and the environmental, public safety, and relative effectiveness of such alternatives; and

(B) technological means of enhancing the security zones of port, territorial waters, and waterways of the United States.

(c) VESSEL AND FACILITY SECURITY PLANS.—

(1) Within 6 months after the prescription of interim final regulations on vessel and facility security plans, an owner or operator of a vessel or facility described in paragraph (2) shall prepare and submit to the Secretary a security plan for the vessel or facility, for deterring a transportation security incident to the maximum extent practicable.

(2) The vessels and facilities referred to in paragraph (1)—

(A) except as provided in subparagraph (B), are vessels and facilities that the Secretary believes may be involved in a transportation security incident; and

(B) do not include any vessel or facility owned or operated by the Department of Defense.

(3) A security plan required under this subsection shall—

(A) be consistent with the requirements of the National Maritime Transportation Security Plan and Area Maritime Transportation Security Plans;

- (B) identify the qualified individual having full authority to implement security actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment pursuant to subparagraph (C);
 - (C) include provisions for—
 - (i) establishing and maintaining physical security, passenger and cargo security, and personnel security;
 - (ii) establishing and controlling access to secure areas of the vessel or facility;
 - (iii) procedural security policies;
 - (iv) communications systems; and
 - (v) other security systems;
 - (D) identify, and ensure by contract or other means approved by the Secretary, the availability of security measures necessary to deter to the maximum extent practicable a transportation security incident or a substantial threat of such a security incident;
 - (E) describe the training, periodic unannounced drills, and security actions of persons on the vessel or at the facility, to be carried out under the plan to deter to the maximum extent practicable a transportation security incident, or a substantial threat of such a security incident;
 - (F) be updated at least every 5 years; and
 - (G) be resubmitted for approval of each change to the vessel or facility that may substantially affect the security of the vessel or facility.
- (4) The Secretary shall—
- (A) promptly review each such plan;
 - (B) require amendments to any plan that does not meet the requirements of this subsection;
 - (C) approve any plan that meets the requirements of this subsection; and
 - (D) review each plan periodically thereafter.
- (5) A vessel or facility for which a plan is required to be submitted under this subsection may not operate after the end of the 12-month period beginning on the date of the prescription of interim final regulations on vessel and facility security plans, unless—
- (A) the plan has been approved by the Secretary; and
 - (B) the vessel or facility is operating in compliance with the plan.
- (6) Notwithstanding paragraph (5), the Secretary may authorize a vessel or facility to operate without a security plan approved under this subsection, until not later than 1 year after the date of the submission to the Secretary of a plan for the vessel or facility, if the owner or operator of the vessel or facility certifies that the owner or operator has ensured by contract or other means approved by the Secretary to deter to the maximum extent practicable a transportation security incident or a substantial threat of such a security incident.
- (7) The Secretary shall require each owner or operator of a vessel or facility located within or adjacent to waters subject to the jurisdiction of the United States to implement any nec-

essary interim security measures, including cargo security programs, to deter to the maximum extent practicable a transportation security incident until the security plan for that vessel or facility operator is approved.

(d) NONDISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, information developed under this chapter is not required to be disclosed to the public, including—

- (1) facility security plans, vessel security plans, and port vulnerability assessments; and
- (2) other information related to security plans, procedures, or programs for vessels or facilities authorized under this chapter.

§ 70105. Transportation security cards

(a) PROHIBITION.—

(1) The Secretary shall prescribe regulations to prevent an individual from entering an area of a vessel or facility that is designated as a secure area by the Secretary for purposes of a security plan for the vessel or facility that is approved by the Secretary under section 70103 of this title unless the individual—

(A) holds a transportation security card issued under this section and is authorized to be in the area in accordance with the plan; or

(B) is accompanied by another individual who holds a transportation security card issued under this section and is authorized to be in the area in accordance with the plan.

(2) A person shall not admit an individual into such a secure area unless the entry of the individual into the area is in compliance with paragraph (1).

(b) ISSUANCE OF CARDS.—

(1) The Secretary shall issue a biometric transportation security card to an individual specified in paragraph (2), unless the Secretary decides that the individual poses a security risk under subsection (c) warranting denial of the card.

(2) This subsection applies to—

(A) an individual allowed unescorted access to a secure area designated in a vessel or facility security plan approved under section 70103 of this title;

(B) an individual issued a license, certificate of registry, or merchant mariners document under part E of subtitle II of this title;

(C) a vessel pilot;

(D) an individual engaged on a towing vessel that pushes, pulls, or hauls alongside a tank vessel;

(E) an individual with access to security sensitive information as determined by the Secretary; and

(F) other individuals engaged in port security activities as determined by the Secretary.

(c) DETERMINATION OF TERRORISM SECURITY RISK.—

(1) An individual may not be denied a transportation security card under subsection (b) unless the Secretary determines that individual—

(A) has been convicted within the preceding 7-year period of a felony or found not guilty by reason of insanity of a felony—

(i) that the Secretary believes could cause the individual to be a terrorism security risk to the United States; or

(ii) for causing a severe transportation security incident;

(B) has been released from incarceration within the preceding 5-year period for committing a felony described in subparagraph (A);

(C) may be denied admission to the United States or removed from the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

(D) otherwise poses a terrorism security risk to the United States.

(2) The Secretary shall prescribe regulations that establish a waiver process for issuing a transportation security card to an individual found to be otherwise ineligible for such a card under paragraph (1). In deciding to issue a card to such an individual, the Secretary shall—

(A) give consideration to the circumstances of any disqualifying act or offense, restitution made by the individual, Federal and State mitigation remedies, and other factors from which it may be concluded that the individual does not pose a terrorism risk warranting denial of the card; and

(B) issue a waiver to an individual without regard to whether that individual would otherwise be disqualified if the individual's employer establishes alternate security arrangements acceptable to the Secretary.

(3) The Secretary shall establish an appeals process under this section for individuals found to be ineligible for a transportation security card *or a waiver under paragraph (2)* that includes notice and an opportunity for a hearing.

(4) Upon application, the Secretary may issue a transportation security card to an individual if the Secretary has previously determined, under section 5103a of title 49, that the individual does not pose a security risk.

(d) BACKGROUND RECORDS CHECK.—

(1) On request of the Secretary, the Attorney General shall—

(A) conduct a background records check regarding the individual; and

(B) upon completing the background records check, notify the Secretary of the completion and results of the background records check.

(2) A background records check regarding an individual under this subsection shall consist of the following:

(A) A check of the relevant criminal history databases.

(B) In the case of an alien, a check of the relevant databases to determine the status of the alien under the immigration laws of the United States.

(C) As appropriate, a check of the relevant international databases or other appropriate means.

- (D) Review of any other national security-related information or database identified by the Attorney General for purposes of such a background records check.
- (e) RESTRICTIONS ON USE AND MAINTENANCE OF INFORMATION.—
- (1) Information obtained by the Attorney General or the Secretary under this section may not be made available to the public, including the individual’s employer.
- (2) Any information constituting grounds for denial of a transportation security card under this section shall be maintained confidentially by the Secretary and may be used only for making determinations under this section. The Secretary may share any such information with other Federal law enforcement agencies. An individual’s employer may only be informed of whether or not the individual has been issued the card under this section.
- (f) DEFINITION.—In this section, the term “alien” has the meaning given the term in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)).

§ 70107. Grants

(a) IN GENERAL.—The Secretary shall establish a grant program **【for making a fair and equitable allocation of funds】** *based on risk and vulnerability* to implement Area Maritime Transportation Security Plans and facility security plans among port authorities, facility operators, and State and local government agencies required to provide port security services. Before awarding a grant under the program, the Secretary shall provide for review and comment by the appropriate Federal Maritime Security Coordinators and the Maritime Administrator. In administering the grant program, the Secretary shall take into account national economic and strategic defense concerns.

(b) ELIGIBLE COSTS.—The following costs of funding the correction of Coast Guard identified vulnerabilities in port security and ensuring compliance with Area Maritime Transportation Security Plans and facility security plans are eligible to be funded:

【(1) Salary, benefits, overtime compensation, retirement contributions, and other costs of additional Coast Guard mandated security personnel.】

【(2) (1) The cost of acquisition, operation, and maintenance of security equipment or facilities to be used for security monitoring and recording, security gates and fencing, marine barriers for designated security zones, security-related lighting systems, remote surveillance, concealed video systems, security vessels, and other security-related infrastructure or equipment that contributes to the overall security of passengers, cargo, or crewmembers.】

【(3) (2) The cost of screening equipment, including equipment that detects weapons of mass destruction and conventional explosives, and of testing and evaluating such equipment, to certify secure systems of transportation.】

【(4) (3) The cost of conducting vulnerability assessments to evaluate and make recommendations with respect to security.】

(c) MATCHING REQUIREMENTS.—

(1) 75-PERCENT FEDERAL FUNDING.—Except as provided in paragraph (2), Federal funds for any eligible project under this section shall not exceed 75 percent of the total cost of such project.

(2) EXCEPTIONS.—

(A) SMALL PROJECTS.—There are no matching requirements for grants under subsection (a) for projects costing not more than \$25,000.

(B) HIGHER LEVEL OF SUPPORT REQUIRED.—If the Secretary determines that a proposed project merits support and cannot be undertaken without a higher rate of Federal support, then the Secretary may approve grants under this section with a matching requirement other than that specified in paragraph (1).

(d) COORDINATION AND COOPERATION AGREEMENTS.—The Secretary shall ensure that projects paid for, or the costs of which are reimbursed, under this section within any area or port are coordinated with other projects, and may require cooperative agreements among users of the port and port facilities with respect to projects funded under this section.

(e) ADMINISTRATION.—

(1) IN GENERAL.—The program shall require eligible port authorities, facility operators, and State and local agencies required to provide security services, to submit an application, at such time, in such form, and containing such information and assurances as the Secretary may require, and shall include appropriate application, review, and delivery mechanisms.

(2) MINIMUM STANDARDS FOR PAYMENT OR REIMBURSEMENT.—Each application for payment or reimbursement of eligible costs shall include, at a minimum, the following:

(A) A copy of the applicable Area Maritime Transportation Security Plan or facility security plan.

(B) A comprehensive description of the need for the project, and a statement of the project's relationship to the applicable Area Maritime Transportation Security Plan or facility security plan.

(C) A determination by the Captain of the Port that the security project addresses or corrects Coast Guard identified vulnerabilities in security and ensures compliance with Area Maritime Transportation Security Plans and facility security plans.

(3) PROCEDURAL SAFEGUARDS.—The Secretary shall by regulation establish appropriate accounting, reporting, and review procedures to ensure that amounts paid or reimbursed under this section are used for the purposes for which they were made available, all expenditures are properly accounted for, and amounts not used for such purposes and amounts not obligated or expended are recovered.

(4) PROJECT APPROVAL REQUIRED.—The Secretary may approve an application for the payment or reimbursement of costs under this section only if the Secretary is satisfied that—

(A) the project is consistent with Coast Guard vulnerability assessments and ensures compliance with Area

Maritime Transportation Security Plans and facility security plans;

(B) enough money is available to pay the project costs that will not be reimbursed by the United States Government under this section;

(C) the project will be completed without unreasonable delay; and

(D) the recipient has authority to carry out the project as proposed.

(5) *LETTERS OF INTENT.*—*The Secretary may execute letters of intent to commit funding to port sponsors from the Fund.*

(f) *AUDITS AND EXAMINATIONS.*—A recipient of amounts made available under this section shall keep such records as the Secretary may require, and make them available for review and audit by the Secretary, the Comptroller General of the United States, or the Inspector General of the department in which the Coast Guard is operating.

(g) *REPORTS ON SECURITY FUNDING AND COMPLIANCE.*—

(1) *INITIAL REPORT.*—Within 6 months after the date of enactment of this Act, the Secretary shall transmit an unclassified report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure, that—

(A) includes a funding proposal and rationale to fund the correction of Coast Guard identified vulnerabilities in port security and to help ensure compliance with Area Maritime Transportation Security Plans and facility security plans for fiscal years 2003 through 2008; and

(B) includes projected funding proposals for fiscal years 2003 through 2008 for the following security programs:

(i) The Sea Marshall program.

(ii) The Automated Identification System and a system of polling vessels on entry into United States waters.

(iii) The maritime intelligence requirements in this Act.

(iv) The issuance of transportation security cards required by section 70105.

(v) The program of certifying secure systems of transportation.

(2) *OTHER EXPENDITURES.*—The Secretary shall, as part of the report required by paragraph (1) report, in coordination with the Commissioner of Customs, on projected expenditures of screening and detection equipment and on cargo security programs over fiscal years 2003 through 2008.

(3) *ANNUAL REPORTS.*—Annually, beginning 1 year after transmittal of the report required by paragraph (1) until October 1, 2009, the Secretary shall transmit an unclassified annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure, on progress in achieving compliance with the correction of Coast Guard identified vulnerabilities in port security and compliance with Area

Maritime Transportation Security Plans and facility security plans that—

(A) identifies any modifications necessary in funding to ensure the correction of Coast Guard identified vulnerabilities and ensure compliance with Area Maritime Transportation Security Plans and facility security plans;

(B) includes an assessment of progress in implementing the grant program established by subsection (a);

(C) includes any recommendations the Secretary may make to improve these programs; and

(D) with respect to a port selected by the Secretary, describes progress and enhancements of applicable Area Maritime Transportation Security Plans and facility security plans and how the Maritime Transportation Security Act of 2002 has improved security at that port.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of fiscal years 2003 through 2008 such sums as are necessary to carry out subsections (a) through (g).

(i) INVESTIGATIONS.—

(1) IN GENERAL.—The Secretary shall conduct investigations, fund pilot programs, and award grants, to examine or develop—

(A) methods or programs to increase the ability to target for inspection vessels, cargo, crewmembers, or passengers that will arrive or have arrived at any port or place in the United States;

(B) equipment to detect accurately explosives, chemical, or biological agents that could be used in a transportation security incident against the United States;

(C) equipment to detect accurately nuclear or radiological materials, including scintillation-based detection equipment capable of signalling the presence of nuclear or radiological materials;

(D) improved tags and seals designed for use on shipping containers to track the transportation of the merchandise in such containers, including sensors that are able to track a container throughout its entire supply chain, detect hazardous and radioactive materials within that container, and transmit that information to the appropriate law enforcement authorities;

(E) tools, including the use of satellite tracking systems, to increase the awareness of maritime areas and to identify potential transportation security incidents that could have an impact on facilities, vessels, and infrastructure on or adjacent to navigable waterways, including underwater access;

(F) tools to mitigate the consequences of a transportation security incident on, adjacent to, or under navigable waters of the United States, including sensor equipment, and other tools to help coordinate effective response to a transportation security incident;

(G) applications to apply existing technologies from other areas or industries to increase overall port security;

- (H) improved container design, including blast-resistant containers; and
- (I) methods to improve security and sustainability of port facilities in the event of a maritime transportation security incident, including specialized inspection facilities.

(2) IMPLEMENTATION OF TECHNOLOGY.—

(A) IN GENERAL.—In conjunction with ongoing efforts to improve security at United States ports, the Secretary may conduct pilot projects at United States ports to test the effectiveness and applicability of new port security projects, including—

- (i) testing of new detection and screening technologies;
- (ii) projects to protect United States ports and infrastructure on or adjacent to the navigable waters of the United States, including underwater access; and
- (iii) tools for responding to a transportation security incident at United States ports and infrastructure on or adjacent to the navigable waters of the United States, including underwater access.

(B) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary *not less than* \$35,000,000 for each of fiscal years 2005 through 2009 to carry out this subsection.

(3) NATIONAL PORT SECURITY CENTERS.—

(A) IN GENERAL.—The Secretary may make grants or enter into cooperative agreements with eligible nonprofit institutions of higher learning to conduct investigations in collaboration with ports and the maritime transportation industry focused on enhancing security of the Nation's ports in accordance with this subsection through National Port Security Centers.

(B) APPLICATIONS.—To be eligible to receive a grant under this paragraph, a nonprofit institution of higher learning, or a consortium of such institutions, shall submit an application to the Secretary in such form and containing such information as the Secretary may require.

(C) COMPETITIVE SELECTION PROCESS.—The Secretary shall select grant recipients under this paragraph through a competitive process on the basis of the following criteria:

- (i) Whether the applicant can demonstrate that personnel, laboratory, and organizational resources will be available to the applicant to carry out the investigations authorized in this paragraph.
- (ii) The applicant's capability to provide leadership in making national and regional contributions to the solution of immediate and long-range port and maritime transportation security and risk mitigation problems.
- (iii) Whether the applicant can demonstrate that it has an established, nationally recognized program in disciplines that contribute directly to maritime transportation safety and education.

(iv) Whether the applicant's investigations will involve major United States ports on the East Coast, the Gulf Coast, and the West Coast, and Federal agencies and other entities with expertise in port and maritime transportation.

(v) Whether the applicant has a strategic plan for carrying out the proposed investigations under the grant.

(4) ADMINISTRATIVE PROVISIONS.—

(A) NO DUPLICATION OF EFFORT.—Before making any grant, the Secretary shall coordinate with other Federal agencies to ensure the grant will not duplicate work already being conducted with Federal funding.

(B) ACCOUNTING.—The Secretary shall by regulation establish accounting, reporting, and review procedures to ensure that funds made available under paragraph (1) are used for the purpose for which they were made available, that all expenditures are properly accounted for, and that amounts not used for such purposes and amounts not expended are recovered.

(C) RECORDKEEPING.—Recipients of grants shall keep all records related to expenditures and obligations of funds provided under paragraph (1) and make them available upon request to the Inspector General of the department in which the Coast Guard is operating and the Secretary for audit and examination.

(5) ANNUAL REVIEW AND REPORT.—The Inspector General of the department in which the Coast Guard is operating shall annually review the programs established under this subsection to ensure that the expenditures and obligations of funds are consistent with the purposes for which they are provided, and report the findings to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

[§ 70109. Notifying foreign authorities]

§ 70109. International cooperation and coordination

(a) IN GENERAL.—If the Secretary, after conducting an assessment under section 70108, finds that a port in a foreign country does not maintain effective antiterrorism measures, the Secretary shall notify the appropriate authorities of the government of the foreign country of the finding and recommend the steps necessary to improve the antiterrorism measures in use at the port.

(b) TRAINING PROGRAM.—The Secretary, in cooperation with the Secretary of State, shall operate a port security training program for ports in foreign countries that are found under section 70108 to lack effective antiterrorism measures.

(c) FOREIGN ASSISTANCE PROGRAMS.—

(1) IN GENERAL.—*The Secretary, in consultation with the Secretary of Transportation, the Secretary of State, the Secretary of Energy, and the Commandant of the United States Coast Guard, shall identify foreign assistance programs that could fa-*

facilitate implementation of port security antiterrorism measures in foreign countries. The Secretary shall establish a program to utilize those programs that are capable of implementing port security antiterrorism measures at ports in foreign countries that the Secretary finds, under section 70108, to lack effective antiterrorism measures.

(2) *CARIBBEAN BASIN.—The Secretary, in coordination with the Secretary of State and in consultation with the Organization of American States and the Commandant of the United States Coast Guard, shall place particular emphasis on utilizing programs to facilitate the implementation of port security antiterrorism measures at the ports located in the Caribbean Basin, as such ports pose unique security and safety threats to the United States due to—*

(A) the strategic location of such ports between South America and United States;

(B) the relative openness of such ports; and

(C) the significant number of shipments of narcotics to the United States that are moved through such ports.

(d) *INTERNATIONAL CARGO SECURITY STANDARDS.—The Secretary of State, in consultation with the Secretary acting through the Commissioner of Customs and Border Protection, shall enter into negotiations with foreign governments and international organizations, including the International Maritime Organization, the World Customs Organization, the International Labor Organization, and the International Standards Organization, as appropriate—*

(1) to promote standards for the security of containers and other cargo moving within the international supply chain;

(2) to encourage compliance with minimum technical requirements for the capabilities of nonintrusive inspection equipment, including imaging and radiation detection devices, established under section 506 of the Transportation Security Improvement Act of 2005;

(3) to implement the requirements of the container security initiative under section 70121; and

(4) to implement standards and procedures established under section 70116.

§ 70116. Secure systems of transportation

(a) *IN GENERAL.—The Secretary, in consultation with the Transportation Security Oversight Board, shall establish a program to evaluate and certify secure systems of international intermodal [transportation.] transportation—*

(1) to ensure the security and integrity of shipments of goods to the United States from the point at which such goods are initially packed or loaded into a cargo container for international shipment until they reach their ultimate destination; and

(2) to facilitate the movement of such goods through the entire supply chain through an expedited security and clearance program.

(b) *ELEMENTS OF PROGRAM.—The program shall include—*

(1) establishing standards and procedures for screening and evaluating cargo prior to loading in a foreign port for shipment to the United States either directly or via a foreign port;

【(2) establishing standards and procedures for securing cargo and monitoring that security while in transit;

【(3) developing performance standards to enhance the physical security of shipping containers, including standards for seals and locks;

【(4) establishing standards and procedures for allowing the United States Government to ensure and validate compliance with this program; and

【(5) any other measures the Secretary considers necessary to ensure the security and integrity of international intermodal transport movements.】

(b) *PROGRAM ELEMENTS.*—*In establishing and conducting the program under subsection (a) the Secretary, acting through the Commissioner of Customs and Border Protection, shall—*

(1) establish standards and procedures for verifying, at the point at which goods are placed in a cargo container for shipping, that the container is free of unauthorized hazardous chemical, biological, or nuclear material and for securely sealing such containers after the contents are so verified;

(2) establish standards and procedures for screening and evaluating cargo prior to loading in a foreign port for shipment to the United States either directly or via a foreign port;

(3) establish standards and procedures for securing cargo and monitoring that security while in transit;

(4) develop performance standards to enhance the physical security of shipping containers, including performance standards for seals and locks;

(5) establish standards and procedures for allowing the United States Government to ensure and validate compliance with this program; and

(6) incorporate any other measures the Secretary considers necessary to ensure the security and integrity of international intermodal transport movements.

(c) *BENEFITS FROM PARTICIPATION.*—*The Commissioner of Customs and Border Protection may provide expedited clearance of cargo to an entity that—*

(1) meets or exceeds the standards established under subsection (b); and

(2) certifies the security of its supply chain not less often than once every 2 years to the Secretary.

§ 70117. In rem liability for civil penalties and certain costs

(a) *CIVIL PENALTIES.*—*Any vessel operated in violation of this chapter or any regulations prescribed under this chapter shall be liable in rem for any civil penalty assessed pursuant to [section 70120] section 70123 for such violation, and may be proceeded against for such liability in the United States district court for any district in which the vessel may be found.*

(b) *REIMBURSABLE COSTS OF SERVICE PROVIDERS.*—*A vessel shall be liable in rem for the reimbursable costs incurred by any service provider related to implementation and enforcement of this chapter and arising from a violation by the operator of the vessel of this chapter or any regulations prescribed under this chapter, and may*

be proceeded against for such liability in the United States district court for any district in which such vessel may be found.

(c) DEFINITIONS.—In this subsection—

(1) the term “reimbursable costs” means costs incurred by any service provider acting in conformity with a lawful order of the Federal government or in conformity with the instructions of the vessel operator; and

(2) the term “service provider” means any port authority, facility or terminal operator, shipping agent, Federal, State, or local government agency, or other person to whom the management of the vessel at the port of supply is entrusted, for—

(A) services rendered to or in relation to vessel crew on board the vessel, or in transit to or from the vessel, including accommodation, detention, transportation, and medical expenses; and

(B) required handling of cargo or other items on board the vessel.

[§ 70118. Withholding of clearance]

§ 70119. *Withholding of clearance*

(a) REFUSAL OR REVOCATION OF CLEARANCE.—If any owner, agent, master, officer, or person in charge of a vessel is liable for a penalty [under section 70119,] *under section 70123*, or if reasonable cause exists to believe that the owner, agent, master, officer, or person in charge may be subject to a penalty [under section 70120,] *under that section*, the Secretary may, with respect to such vessel, refuse or revoke any clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91).

(b) CLEARANCE UPON FILING OF BOND OR OTHER SURETY.—The Secretary may require the filing of a bond or other surety as a condition of granting clearance refused or revoked under this subsection. [

§ 70119. Enforcement by State and local officers]

§ 70120. *Enforcement by State and local officers*

(a) IN GENERAL.—Any State or local government law enforcement officer who has authority to enforce State criminal laws may make an arrest for violation of a security zone regulation prescribed under section 1 of title II of the Act of June 15, 1917 (chapter 30; 50 U.S.C. 191) or security or safety zone regulation under section 7(b) of the Ports and Waterways Safety Act (33 U.S.C. 1226(b)) or a safety zone regulation prescribed under section 10(d) of the Deepwater Port Act of 1974 (33 U.S.C. 1509(d)) by a Coast Guard official authorized by law to prescribe such regulations, if—

(1) such violation is a felony; and

(2) the officer has reasonable grounds to believe that the person to be arrested has committed or is committing such violation.

(b) OTHER POWERS NOT AFFECTED.—The provisions of this section are in addition to any power conferred by law to such officers. This section shall not be construed as a limitation of any power conferred by law to such officers, or any other officer of the United States or any State. This section does not grant to such officers any

powers not authorized by the law of the State in which those officers are employed.

§ 70121. Container security initiative

(a) *IN GENERAL.*—Pursuant to the standards established under subsection (b)(1) of section 70116—

(1) *the Secretary, through the Commissioner of Customs and Border Protection, shall issue regulations to—*

(A) *evaluate and screen cargo documents prior to loading in a foreign port for shipment to the United States, either directly or via a foreign port; and*

(B) *inspect high-risk cargo in a foreign port intended for shipment to the United States by physical examination or nonintrusive examination by technological means; and*

(2) *the Commissioner of Customs and Border Protection shall execute inspection and screening protocols with authorities in foreign ports to ensure that the standards and procedures promulgated under paragraph (1) are implemented in an effective manner.*

(b) *EXTENSION OF CONTAINER SECURITY INITIATIVE TO OTHER PORTS.*—The Secretary, through the Commissioner of Customs and Border Protection, may designate foreign seaports under this section if, with respect to any such seaport, the Secretary determines that—

(1) *the seaport—*

(A) *presents a significant level of risk;*

(B) *is a significant port or origin or transshipment, in terms of volume or value, for cargo being imported to the United States; and*

(C) *is potentially capable of validating a secure system of transportation pursuant to section 70116; and*

(2) *the Department of State and representatives of the country with jurisdiction over the port have completed negotiations to ensure compliance with the requirements of the container security initiative.*

(c) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated to the Secretary to carry out this section—

(1) *\$142,000,000 for fiscal year 2007;*

(2) *\$144,000,000 for fiscal year 2008; and*

(3) *\$146,000,000 for fiscal year 2009.*

§ 70122. Customs-Trade Partnership Against Terrorism validation program.

(a) *VALIDATION; RECORDS MANAGEMENT.*—The Secretary of Homeland Security, through the Commissioner of Customs and Border Protection, shall issue regulations—

(1) *to strengthen the validation process to verify that security programs of members of the Customs-Trade Partnership Against Terrorism have been implemented and that the program benefits should continue by providing appropriate guidance to specialists conducting such validations, including establishing what level of review is adequate to determine whether member security practices are reliable, accurate, and effective; and*

(2) to implement a records management system that documents key decisions and significant operational events accurately and in a timely manner, including a reliable system for—

(A) documenting and maintaining records of all decisions in the application through validation processes, including documentation of the objectives, scope, methodologies, and limitations of validations; and

(B) tracking member status.

(b) *HUMAN CAPITAL PLAN.*—Within 6 months after the date of enactment of the Transportation Security Improvement Act of 2005, the Secretary shall complete a human capital plan, that clearly describes how the Customs-Trade Partnership Against Terrorism program will recruit, train, and retain sufficient staff to conduct the work of the program successfully, including reviewing security profiles, vetting, and conducting validations to mitigate program risk.

[§ 70119. Civil penalty]

§ 70123. Civil penalty

Any person that violates this chapter or any regulation under this chapter shall be liable to the United States for a civil penalty of not more than \$25,000 for each violation.

TITLE 49, UNITED STATES CODE

**SUBTITLE I—DEPARTMENT OF
TRANSPORTATION**

CHAPTER 1. ORGANIZATION

§ 114. Transportation Security Administration

(a) *IN GENERAL.*—The Transportation Security Administration shall be an administration of the Department of Transportation.

(b) *UNDER SECRETARY.*—

(1) *APPOINTMENT.*—The head of the Administration shall be the Under Secretary of Transportation for Security. The Under Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

(2) *QUALIFICATIONS.*—The Under Secretary must—

(A) be a citizen of the United States; and

(B) have experience in a field directly related to transportation or security.

(3) *TERM.*—The term of office of an individual appointed as the Under Secretary shall be 5 years.

(c) *LIMITATION ON OWNERSHIP OF STOCKS AND BONDS.*—The Under Secretary may not own stock in or bonds of a transportation or security enterprise or an enterprise that makes equipment that could be used for security purposes.

(d) *FUNCTIONS.*—The Under Secretary shall be responsible for security in all modes of transportation, including—

(1) carrying out chapter 449, relating to civil aviation security, and related research and development activities; and

(2) security responsibilities over other modes of transportation that are exercised by the Department of Transportation.

(e) SCREENING OPERATIONS.—The Under Secretary shall—

(1) be responsible for day-to-day Federal security screening operations for passenger air transportation and intrastate air transportation under sections 44901 and 44935;

(2) develop standards for the hiring and retention of security screening personnel;

(3) train and test security screening personnel; and

(4) be responsible for hiring and training personnel to provide security screening at all airports in the United States where screening is required under section 44901, in consultation with the Secretary of Transportation and the heads of other appropriate Federal agencies and departments.

(f) ADDITIONAL DUTIES AND POWERS.—In addition to carrying out the functions specified in subsections (d) and (e), the Under Secretary shall—

(1) receive, assess, and distribute intelligence information related to transportation security;

(2) assess threats to transportation;

(3) develop policies, strategies, and plans for dealing with threats to transportation security;

(4) make other plans related to transportation security, including coordinating countermeasures with appropriate departments, agencies, and instrumentalities of the United States Government;

(5) serve as the primary liaison for transportation security to the intelligence and law enforcement communities;

(6) on a day-to-day basis, manage and provide operational guidance to the field security resources of the Administration, including Federal Security Managers as provided by section 44933;

(7) enforce security-related regulations and requirements;

(8) identify and undertake research and development activities necessary to enhance transportation security;

(9) inspect, maintain, and test security facilities, equipment, and systems;

(10) ensure the adequacy of security measures for the transportation of cargo;

(11) oversee the implementation, and ensure the adequacy, of security measures at airports and other transportation facilities;

(12) require background checks for airport security screening personnel, individuals with access to secure areas of airports, and other transportation security personnel;

(13) work in conjunction with the Administrator of the Federal Aviation Administration with respect to any actions or activities that may affect aviation safety or air carrier operations;

(14) work with the International Civil Aviation Organization and appropriate aeronautic authorities of foreign governments under section 44907 to address security concerns on passenger flights by foreign air carriers in foreign air transportation; and

(15) carry out such other duties, and exercise such other powers, relating to transportation security as the Under Secretary considers appropriate, to the extent authorized by law.

(g) NATIONAL EMERGENCY RESPONSIBILITIES.—

(1) IN GENERAL.—Subject to the direction and control of the Secretary, the Under Secretary, during a national emergency, shall have the following responsibilities:

(A) To coordinate domestic transportation, including aviation, rail, and other surface transportation, and maritime transportation (including port security).

(B) To coordinate and oversee the transportation-related responsibilities of other departments and agencies of the Federal Government other than the Department of Defense and the military departments.

(C) To coordinate and provide notice to other departments and agencies of the Federal Government, and appropriate agencies of State and local governments, including departments and agencies for transportation, law enforcement, and border control, about threats to transportation.

(D) To carry out such other duties, and exercise such other powers, relating to transportation during a national emergency as the Secretary shall prescribe.

(2) AUTHORITY OF OTHER DEPARTMENTS AND AGENCIES.—The authority of the Under Secretary under this subsection shall not supersede the authority of any other department or agency of the Federal Government under law with respect to transportation or transportation-related matters, whether or not during a national emergency.

(3) CIRCUMSTANCES.—The Secretary shall prescribe the circumstances constituting a national emergency for purposes of this subsection.

(h) MANAGEMENT OF SECURITY INFORMATION.—In consultation with the Transportation Security Oversight Board, the Under Secretary shall—

(1) enter into memoranda of understanding with Federal agencies or other entities to share or otherwise cross-check as necessary data on individuals identified on Federal agency databases who may pose a risk to transportation or national security;

(2) establish procedures for notifying the Administrator of the Federal Aviation Administration, appropriate State and local law enforcement officials, and airport or airline security officers of the identity of individuals known to pose, or suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety;

(3) in consultation with other appropriate Federal agencies and air carriers, establish policies and procedures requiring air carriers—

(A) to use information from government agencies to identify individuals on passenger lists who may be a threat to civil aviation or national security; and

(B) if such an individual is identified, notify appropriate law enforcement agencies, prevent the individual from boarding an aircraft, or take other appropriate action with respect to that individual; and

(4) consider requiring passenger air carriers to share passenger lists with appropriate Federal agencies for the purpose

of identifying individuals who may pose a threat to aviation safety or national security.

(i) VIEW OF NTSB.—In taking any action under this section that could affect safety, the Under Secretary shall give great weight to the timely views of the National Transportation Safety Board.

(j) ACQUISITIONS.—

(1) IN GENERAL.—The Under Secretary is authorized—

(A) to acquire (by purchase, lease, condemnation, or otherwise) such real property, or any interest therein, within and outside the continental United States, as the Under Secretary considers necessary;

(B) to acquire (by purchase, lease, condemnation, or otherwise) and to construct, repair, operate, and maintain such personal property (including office space and patents), or any interest therein, within and outside the continental United States, as the Under Secretary considers necessary;

(C) to lease to others such real and personal property and to provide by contract or otherwise for necessary facilities for the welfare of its employees and to acquire, maintain, and operate equipment for these facilities;

(D) to acquire services, including such personal services as the Secretary determines necessary, and to acquire (by purchase, lease, condemnation, or otherwise) and to construct, repair, operate, and maintain research and testing sites and facilities; and

(E) in cooperation with the Administrator of the Federal Aviation Administration, to utilize the research and development facilities of the Federal Aviation Administration.

(2) TITLE.—Title to any property or interest therein acquired pursuant to this subsection shall be held by the Government of the United States.

(k) TRANSFERS OF FUNDS.—The Under Secretary is authorized to accept transfers of unobligated balances and unexpended balances of funds appropriated to other Federal agencies (as such term is defined in section 551(1) of title 5) to carry out functions transferred, on or after the date of enactment of the Aviation and Transportation Security Act, by law to the Under Secretary.

(l) REGULATIONS.—

(1) IN GENERAL.—The Under Secretary is authorized to issue, rescind, and revise such regulations as are necessary to carry out the functions of the Administration.

(2) EMERGENCY PROCEDURES.—

(A) IN GENERAL.—Notwithstanding any other provision of law or executive order (including an executive order requiring a cost-benefit analysis), if the Under Secretary determines that a regulation or security directive must be issued immediately in order to protect transportation security, the Under Secretary shall issue the regulation or security directive without providing notice or an opportunity for comment and without prior approval of the Secretary.

(B) REVIEW BY TRANSPORTATION SECURITY OVERSIGHT BOARD.—Any regulation or security directive issued under this paragraph shall be subject to review by the Transpor-

tation Security Oversight Board established under section 115. Any regulation or security directive issued under this paragraph shall remain effective for a period not to exceed 90 days unless ratified or disapproved by the Board or rescinded by the Under Secretary.

(3) FACTORS TO CONSIDER.—In determining whether to issue, rescind, or revise a regulation under this section, the Under Secretary shall consider, as a factor in the final determination, whether the costs of the regulation are excessive in relation to the enhancement of security the regulation will provide. The Under Secretary may waive requirements for an analysis that estimates the number of lives that will be saved by the regulation and the monetary value of such lives if the Under Secretary determines that it is not feasible to make such an estimate.

(4) AIRWORTHINESS OBJECTIONS BY FAA.—

(A) IN GENERAL.—The Under Secretary shall not take an aviation security action under this title if the Administrator of the Federal Aviation Administration notifies the Under Secretary that the action could adversely affect the airworthiness of an aircraft.

(B) REVIEW BY SECRETARY.—Notwithstanding subparagraph (A), the Under Secretary may take such an action, after receiving a notification concerning the action from the Administrator under subparagraph (A), if the Secretary of Transportation subsequently approves the action.

(m) PERSONNEL AND SERVICES; COOPERATION BY UNDER SECRETARY.—

(1) AUTHORITY OF UNDER SECRETARY.—In carrying out the functions of the Administration, the Under Secretary shall have the same authority as is provided to the Administrator of the Federal Aviation Administration under subsections (l) and (m) of section 106.

(2) AUTHORITY OF AGENCY HEADS.—The head of a Federal agency shall have the same authority to provide services, supplies, equipment, personnel, and facilities to the Under Secretary as the head has to provide services, supplies, equipment, personnel, and facilities to the Administrator of the Federal Aviation Administration under section 106(m).

(n) PERSONNEL MANAGEMENT SYSTEM.—The personnel management system established by the Administrator of the Federal Aviation Administration under section 40122 shall apply to employees of the Transportation Security Administration, or, subject to the requirements of such section, the Under Secretary may make such modifications to the personnel management system with respect to such employees as the Under Secretary considers appropriate, such as adopting aspects of other personnel systems of the Department of Transportation.

[(o) ACQUISITION MANAGEMENT SYSTEM.—The acquisition management system established by the Administrator of the Federal Aviation Administration under section 40110 shall apply to acquisitions of equipment, supplies, and materials by the Transportation Security Administration, or, subject to the requirements of such section, the Under Secretary may make such modifications to the

acquisition management system with respect to such acquisitions of equipment, supplies, and materials as the Under Secretary considers appropriate, such as adopting aspects of other acquisition management systems of the Department of Transportation.]

[(p)] (o) AUTHORITY OF INSPECTOR GENERAL.—The Transportation Security Administration shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.) and other laws relating to the authority of the Inspector General of the Department of Transportation.

[(q)] (p) LAW ENFORCEMENT POWERS.—

(1) IN GENERAL.—The Under Secretary may designate an employee of the Transportation Security Administration or other Federal agency to serve as a law enforcement officer.

(2) POWERS.—While engaged in official duties of the Administration as required to fulfill the responsibilities under this section, a law enforcement officer designated under paragraph (1) may—

(A) carry a firearm;

(B) make an arrest without a warrant for any offense against the United States committed in the presence of the officer, or for any felony cognizable under the laws of the United States if the officer has probable cause to believe that the person to be arrested has committed or is committing the felony; and

(C) seek and execute warrants for arrest or seizure of evidence issued under the authority of the United States upon probable cause that a violation has been committed.

(3) GUIDELINES ON EXERCISE OF AUTHORITY.—The authority provided by this subsection shall be exercised in accordance with guidelines prescribed by the Under Secretary, in consultation with the Attorney General of the United States, and shall include adherence to the Attorney General's policy on use of deadly force.

(4) REVOCATION OR SUSPENSION OF AUTHORITY.—The powers authorized by this subsection may be rescinded or suspended should the Attorney General determine that the Under Secretary has not complied with the guidelines prescribed in paragraph (3) and conveys the determination in writing to the Secretary of Transportation and the Under Secretary.

[(r)] (q) AUTHORITY TO EXEMPT.—The Under Secretary may grant an exemption from a regulation prescribed in carrying out this section if the Under Secretary determines that the exemption is in the public interest.

[(s)] (r) NONDISCLOSURE OF SECURITY ACTIVITIES.—

(1) IN GENERAL.—Notwithstanding section 552 of title 5, the Under Secretary shall prescribe regulations prohibiting the disclosure of information obtained or developed in carrying out security under authority of the Aviation and Transportation Security Act (Public Law 107-71) or under chapter 449 of this title if the Under Secretary decides that disclosing the information would—

(A) be an unwarranted invasion of personal privacy;

(B) reveal a trade secret or privileged or confidential commercial or financial information; or

(C) be detrimental to the security of transportation.

(2) AVAILABILITY OF INFORMATION TO CONGRESS.—Paragraph (1) does not authorize information to be withheld from a committee of Congress authorized to have the information.

(3) LIMITATION ON TRANSFERABILITY OF DUTIES.—Except as otherwise provided by law, the Under Secretary may not transfer a duty or power under this subsection to another department, agency, or instrumentality of the United States.

[(t)] (s) TRANSPORTATION SECURITY STRATEGIC PLANNING.—

(1) IN GENERAL.—The Secretary of Homeland Security shall develop, prepare, implement, and update, as needed—

- (A) a National Strategy for Transportation Security; and
- (B) transportation modal security plans.

(2) ROLE OF SECRETARY OF TRANSPORTATION.—The Secretary of Homeland Security shall work jointly with the Secretary of Transportation in developing, revising, and updating the documents required by paragraph (1).

(3) CONTENTS OF NATIONAL STRATEGY FOR TRANSPORTATION SECURITY.—The National Strategy for Transportation Security shall include the following:

(A) An identification and evaluation of the transportation assets in the United States that, in the interests of national security and commerce, must be protected from attack or disruption by terrorist or other hostile forces, including modal security plans for aviation, bridge and tunnel, commuter rail and ferry, highway, maritime, pipeline, rail, mass transit, over-the-road bus, and other public transportation infrastructure assets that could be at risk of such an attack or disruption.

(B) The development of risk-based priorities across all transportation modes and realistic deadlines for addressing security needs associated with those assets referred to in subparagraph (A).

(C) The most appropriate, practical, and cost-effective means of defending those assets against threats to their security.

(D) A forward-looking strategic plan that sets forth the agreed upon roles and missions of Federal, State, regional, and local authorities and establishes mechanisms for encouraging private sector cooperation and participation in the implementation of such plan.

(E) A comprehensive delineation of response and recovery responsibilities and issues regarding threatened and executed acts of terrorism within the United States.

(F) A prioritization of research and development objectives that support transportation security needs, giving a higher priority to research and development directed toward protecting vital transportation assets.

(4) SUBMISSIONS OF PLANS TO CONGRESS.—

(A) INITIAL STRATEGY.—The Secretary of Homeland Security shall submit the National Strategy for Transportation Security, including the transportation modal security plans, developed under this subsection to the appro-

appropriate congressional committees not later than April 1, 2005.

(B) SUBSEQUENT VERSIONS.—After December 31, 2005, the Secretary of Homeland Security shall submit the National Strategy for Transportation Security, including the transportation modal security plans and any revisions to the National Strategy for Transportation Security and the transportation modal security plans, to appropriate congressional committees not less frequently than April 1 of each even-numbered year.

(C) PERIODIC PROGRESS REPORT.—

(i) REQUIREMENT FOR REPORT.—Each year, in conjunction with the submission of the budget to Congress under section 1105(a) of title 31, United States Code, the Secretary of Homeland Security shall submit to the appropriate congressional committees an assessment of the progress made on implementing the National Strategy for Transportation Security.

(ii) CONTENT.—Each progress report under this subparagraph shall include, at a minimum, recommendations for improving and implementing the National Strategy for Transportation Security and the transportation modal security plans that the Secretary, in consultation with the Secretary of Transportation, considers appropriate.

(D) CLASSIFIED MATERIAL.—Any part of the National Strategy for Transportation Security or the transportation modal security plans that involve information that is properly classified under criteria established by Executive order shall be submitted to the appropriate congressional committees separately in a classified format.

(E) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this subsection, the term “appropriate congressional committees” means the Committee on Transportation and Infrastructure and the Select Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation and the Committee on Homeland Security and Governmental Affairs of the Senate.

(5) PRIORITY STATUS.—

(A) IN GENERAL.—The National Strategy for Transportation Security shall be the governing document for Federal transportation security efforts.

(B) OTHER PLANS AND REPORTS.—The National Strategy for Transportation Security shall include, as an integral part or as an appendix—

(i) the current National Maritime Transportation Security Plan under section 70103 of title 46;

(ii) the report required by section 44938 of this title;

(iii) transportation modal security plans required under this section; and

(iv) any other transportation security plan or report that the Secretary of Homeland Security determines appropriate for inclusion.

(u) *AUTHORIZATION OF APPROPRIATIONS.*—*There are authorized to be appropriated to the Secretary of Homeland Security—*

(1) *for Aviation Security—*

- (A) *\$5,000,000,000 for fiscal year 2007;*
- (B) *\$5,250,000,000 for fiscal year 2008; and*
- (C) *\$5,500,000,000 for fiscal year 2009;*

(2) *for Surface Transportation Security—*

- (A) *\$265,000,000 for fiscal year 2007;*
- (B) *\$228,000,000 for fiscal year 2008; and*
- (C) *\$230,000,000 for fiscal year 2009;*

(3) *for Intelligence—*

- (A) *\$30,000,000 for fiscal year 2007;*
- (B) *\$32,000,000 for fiscal year 2008; and*
- (C) *\$34,000,000 for fiscal year 2009;*

(4) *for Research and Development—*

- (A) *\$65,000,000 for fiscal year 2007;*
- (B) *\$67,000,000 for fiscal year 2008; and*
- (C) *\$69,000,000 for fiscal year 2009; and*

(5) *for Administration—*

- (A) *\$530,000,000 for fiscal year 2007;*
- (B) *\$535,000,000 for fiscal year 2008; and* I24 (C)
- \$540,000,000 for fiscal year 2009.*

SUBTITLE V—RAIL PROGRAMS

PART A—SAFETY

CHAPTER 201. GENERAL

SUBCHAPTER I. GENERAL

§ 20103. General authority

(a) *REGULATIONS AND ORDERS.*—The Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad ~~【safety】~~ *safety, including security*, supplementing laws and regulations in effect on October 16, 1970. When prescribing a security regulation or issuing a security order that affects the safety of railroad operations, the Secretary of Homeland Security shall consult with the Secretary.

(b) *REGULATIONS OF PRACTICE FOR PROCEEDINGS.*—The Secretary shall prescribe regulations of practice applicable to each proceeding under this chapter. The regulations shall reflect the varying nature of the proceedings and include time limits for disposition of the proceedings. The time limit for disposition of a proceeding may not be more than 12 months after the date it begins.

(c) *CONSIDERATION OF INFORMATION AND STANDARDS.*—In prescribing regulations and issuing orders under this section, the Secretary shall consider existing relevant safety information and standards.

(d) *Waivers.* The Secretary may waive compliance with any part of a regulation prescribed or order issued under this chapter if the waiver is in the public interest and consistent with railroad safety. The Secretary shall make public the reasons for granting the waiver.

(e) HEARINGS.—The Secretary shall conduct a hearing as provided by section 553 of title 5 when prescribing a regulation or issuing an order under this chapter, including a regulation or order establishing, amending, or waiving compliance with a railroad safety regulation prescribed or order issued under this chapter. An opportunity for an oral presentation shall be provided.

(f) TOURIST RAILROAD CARRIERS.—In prescribing regulations that pertain to railroad safety that affect tourist, historic, scenic, or excursion railroad carriers, the Secretary of Transportation shall take into consideration any financial, operational, or other factors that may be unique to such railroad carriers. The Secretary shall submit a report to Congress not later than September 30, 1995, on actions taken under this subsection.

* * * * *

§ 20118. Whistleblower protection for rail security matters

(a) *DISCRIMINATION AGAINST EMPLOYEE.*—No rail carrier engaged in interstate or foreign commerce may discharge a railroad employee or otherwise discriminate against a railroad employee because the employee (or any person acting pursuant to a request of the employee)—

(1) provided, caused to be provided, or is about to provide or cause to be provided, to the employer or the Federal Government information relating to a reasonably perceived threat, in good faith, to security; or

(2) provided, caused to be provided, or is about to provide or cause to be provided, testimony before Congress or at any Federal or State proceeding regarding a reasonably perceived threat, in good faith, to security; or

(3) refused to violate or assist in the violation of any law, rule or regulation related to rail security.

(b) *DISPUTE RESOLUTION.*—A dispute, grievance, or claim arising under this section is subject to resolution under section 3 of the Railway Labor Act (45 U.S.C. 153). In a proceeding by the National Railroad Adjustment Board, a division or delegate of the Board, or another board of adjustment established under section 3 to resolve the dispute, grievance, or claim the proceeding shall be expedited and the dispute, grievance, or claim shall be resolved not later than 180 days after it is filed. If the violation is a form of discrimination that does not involve discharge, suspension, or another action affecting pay, and no other remedy is available under this subsection, the Board, division, delegate, or other board of adjustment may award the employee reasonable damages, including punitive damages, of not more than \$20,000.

(c) *PROCEDURAL REQUIREMENTS.*—Except as provided in subsection (b), the procedure set forth in section 42121(b)(2)(B) of this title, including the burdens of proof, applies to any complaint brought under this section.

(d) *ELECTION OF REMEDIES.*—An employee of a railroad carrier may not seek protection under both this section and another provision of law for the same allegedly unlawful act of the carrier.

(e) *DISCLOSURE OF IDENTITY.*—

(1) *Except as provided in paragraph (2) of this subsection, or with the written consent of the employee, the Secretary of Transportation may not disclose the name of an employee of a railroad carrier who has provided information about an alleged violation of this section.*

(2) *The Secretary shall disclose to the Attorney General the name of an employee described in paragraph (1) of this subsection if the matter is referred to the Attorney General for enforcement.*

PART C—PASSENGER TRANSPORTATION

CHAPTER 243. AMTRAK

§24316. Plans to address needs of families of passengers involved in rail passenger accidents

(a) *SUBMISSION OF PLAN.—Not later than 6 months after the date of the enactment of the Rail Security Act of 2005, Amtrak shall submit to the Chairman of the National Transportation Safety Board, the Secretary of Transportation, and the Secretary of Homeland Security a plan for addressing the needs of the families of passengers involved in any rail passenger accident involving an Amtrak intercity train and resulting in a loss of life.*

(b) *CONTENTS OF PLANS.—The plan to be submitted by Amtrak under subsection (a) shall include, at a minimum, the following:*

(1) *A process by which Amtrak will maintain and provide to the National Transportation Safety Board and the Secretary of Transportation, immediately upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the train (whether or not such names have been verified), and will periodically update the list. The plan shall include a procedure, with respect to unreserved trains and passengers not holding reservations on other trains, for Amtrak to use reasonable efforts to ascertain the number and names of passengers aboard a train involved in an accident.*

(2) *A plan for creating and publicizing a reliable, toll-free telephone number within 4 hours after such an accident occurs, and for providing staff, to handle calls from the families of the passengers.*

(3) *A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, by suitably trained individuals.*

(4) *A process for providing the notice described in paragraph (2) to the family of a passenger as soon as Amtrak has verified that the passenger was aboard the train (whether or not the names of all of the passengers have been verified).*

(5) *A process by which the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger within Amtrak's control; that any possession of the passenger within Amtrak's control will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation; and that any un-*

claimed possession of a passenger within Amtrak's control will be retained by the rail passenger carrier for at least 18 months.

(6) A process by which the treatment of the families of nonrevenue passengers will be the same as the treatment of the families of revenue passengers.

(7) An assurance that Amtrak will provide adequate training to its employees and agents to meet the needs of survivors and family members following an accident.

(c) USE OF INFORMATION.—The National Transportation Safety Board, the Secretary of Transportation, and Amtrak may not release any personal information on a list obtained under subsection (b)(1) but may provide information on the list about a passenger to the family of the passenger to the extent that the Board or Amtrak considers appropriate.

(d) LIMITATION ON LIABILITY.—Amtrak shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of Amtrak in preparing or providing a passenger list, or in providing information concerning a train reservation, pursuant to a plan submitted by Amtrak under subsection (b), unless such liability was caused by Amtrak's conduct.

(e) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be construed as limiting the actions that Amtrak may take, or the obligations that Amtrak may have, in providing assistance to the families of passengers involved in a rail passenger accident.

(f) FUNDING.—Out of funds appropriated pursuant to section 102 of the Rail Security Act of 2005, there shall be made available to the Secretary of Transportation for the use of Amtrak \$500,000 for fiscal year 2007 to carry out this section. Amounts made available pursuant to this subsection shall remain available until expended.

PART E—MISCELLANEOUS

CHAPTER 281. LAW ENFORCEMENT

§ 28101. Rail police officers

*(a) IN GENERAL.—Under regulations prescribed by the Secretary of Transportation, a rail police officer who is employed by a rail carrier and certified or commissioned as a police officer under the laws of a State may enforce the laws of any jurisdiction in which **the rail carrier** any rail carrier owns property, to the extent of the authority of a police officer certified or commissioned under the laws of that jurisdiction, to protect—*

*(1) employees, passengers, or patrons of **the rail carrier** any rail carrier;*

(2) property, equipment, and facilities owned, leased, operated, or maintained by the rail carrier;

(3) property moving in interstate or foreign commerce in the possession of the rail carrier; and

(4) personnel, equipment, and material moving by rail that are vital to the national defense.

SUBTITLE VII. AVIATION PROGRAMS

SUBPART III. SAFETY

CHAPTER 449. SECURITY

SUBCHAPTER I. REQUIREMENTS

§ 44924. Repair station security

(a) SECURITY REVIEW AND AUDIT.—To ensure the security of maintenance and repair work conducted on air carrier aircraft and components at foreign repair stations, the Under Secretary for Border and Transportation Security of the Department of Homeland Security, in consultation with the Administrator of the Federal Aviation Administration, shall complete a security review and audit of foreign repair stations that are certified by the Administrator under part 145 of title 14, Code of Federal Regulations, and that work on air carrier aircraft and components. The review shall be completed not later than ~~【18 months】~~ *6 months* after the date on which the Under Secretary issues regulations under subsection (f).

(b) ADDRESSING SECURITY CONCERNS.—The Under Secretary shall require a foreign repair station to address the security issues and vulnerabilities identified in a security audit conducted under subsection (a) within 90 days of providing notice to the repair station of the security issues and vulnerabilities so identified and shall notify the Administrator that a deficiency was identified in the security audit.

(c) SUSPENSIONS AND REVOCATIONS OF CERTIFICATES.—

(1) FAILURE TO CARRY OUT EFFECTIVE SECURITY MEASURES.—

If, after the 90th day on which a notice is provided to a foreign repair station under subsection (b), the Under Secretary determines that the foreign repair station does not maintain and carry out effective security measures, the Under Secretary shall notify the Administrator of the determination. Upon receipt of the determination, the Administrator shall suspend the certification of the repair station until such time as the Under Secretary determines that the repair station maintains and carries out effective security measures and transmits the determination to the Administrator.

(2) IMMEDIATE SECURITY RISK.—If the Under Secretary determines that a foreign repair station poses an immediate security risk, the Under Secretary shall notify the Administrator of the determination. Upon receipt of the determination, the Administrator shall revoke the certification of the repair station.

(3) PROCEDURES FOR APPEALS.—The Under Secretary, in consultation with the Administrator, shall establish procedures for appealing a revocation of a certificate under this subsection.

(d) FAILURE TO MEET AUDIT DEADLINE.—If the security audits required by subsection (a) are not completed on or before the date that is ~~【18 months】~~ *6 months* after the date on which the Under Secretary issues regulations under subsection (f), the Administrator shall be barred from certifying any foreign repair station until such audits are completed for existing stations.

(e) **PRIORITY FOR AUDITS.**—In conducting the audits described in subsection (a), the Under Secretary and the Administrator shall give priority to foreign repair stations located in countries identified by the Government as posing the most significant security risks.

(f) **REGULATIONS.**—Not later than 240 days after the date of enactment of this section, the Under Secretary, in consultation with the Administrator, shall issue final regulations to ensure the security of foreign and domestic aircraft repair stations.

(g) **REPORT TO CONGRESS.**—If the Under Secretary does not issue final regulations before the deadline specified in subsection (f), the Under Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing an explanation as to why the deadline was not met and a schedule for issuing the final regulations.

SUBCHAPTER II. ADMINISTRATION AND PERSONNEL

§ 44940. Security service fees

(a) **GENERAL AUTHORITY.**—

(1) **PASSENGER FEES.**—The Under Secretary of Transportation for Security shall impose a uniform fee, on passengers of air carriers and foreign air carriers in air transportation and intrastate air transportation originating at airports in the United States, to pay for the following costs of providing civil aviation security services:

(A) Salary, benefits, overtime, retirement and other costs of screening personnel, their supervisors and managers, and Federal law enforcement personnel deployed at airport security screening locations under section 44901.

(B) The costs of training personnel described in subparagraph (A), and the acquisition, operation, and maintenance of equipment used by such personnel.

(C) The costs of performing background investigations of personnel described in subparagraphs (A), (D), (F), and (G).

(D) The costs of the Federal air marshals program.

(E) The costs of performing civil aviation security research and development under this title.

(F) The costs of Federal Security Managers under section 44903.

(G) The costs of deploying Federal law enforcement personnel pursuant to section 44903(h). The amount of such costs shall be determined by the Under Secretary and shall not be subject to judicial review. For purposes of subparagraph (A), the term “Federal law enforcement personnel” includes State and local law enforcement officers who are deputized under section 44922.

(H) The costs of security-related capital improvements at airports.

(I) The costs of training pilots and flight attendants under sections 44918 and 44921.

(2) **AIR CARRIER FEES.**—

(A) **AUTHORITY.**—In addition to the fee imposed pursuant to paragraph (1), and only to the extent that the Under Secretary estimates that such fee will be insufficient to pay for the costs of providing civil aviation security services described in paragraph (1), the Under Secretary may impose a fee on air carriers and foreign air carriers engaged in air transportation and intrastate air transportation to pay for the difference between any such costs and the amount collected from such fee, as estimated by the Under Secretary at the beginning of each fiscal year. The estimates of the Under Secretary under this subparagraph are not subject to judicial review.

(B) **LIMITATIONS.**—

(i) **OVERALL LIMIT.**—The amounts of fees collected under this paragraph for each fiscal year may not exceed, in the aggregate, the amounts paid in calendar year 2000 by carriers described in subparagraph (A) for screening passengers and property, as determined by the Under Secretary.

(ii) **PER-CARRIER LIMIT.**—The amount of fees collected under this paragraph from an air carrier described in subparagraph (A) for each of fiscal years 2002, 2003, and 2004 may not exceed the amount paid in calendar year 2000 by that carrier for screening passengers and property, as determined by the Under Secretary.

(iii) **ADJUSTMENT OF PER-CARRIER LIMIT.**—For fiscal year 2005 and subsequent fiscal years, the per-carrier limitation under clause (ii) may be determined by the Under Secretary on the basis of market share or any other appropriate measure in lieu of actual screening costs in calendar year 2000.

(iv) **FINALITY OF DETERMINATIONS.**—Determinations of the Under Secretary under this subparagraph are not subject to judicial review.

(C) **SPECIAL RULE FOR FISCAL YEAR 2002.**—The amount of fees collected under this paragraph from any carrier for fiscal year 2002 may not exceed the amounts paid by that carrier for screening passengers and property for a period of time in calendar year 2000 proportionate to the period of time in fiscal year 2002 during which fees are collected under this paragraph.

(D) **FISCAL YEARS 2007 AND LATER.**—*The Assistant Secretary may not increase the aviation security infrastructure fee authorized by subparagraph (A), or impose any additional fees under that subparagraph, after September 30, 2006, unless—*

(i) the fee or increase is imposed by rule promulgated by the Assistant Secretary; and

(ii) not less than 60 days before its proposed effective date, the Assistant Secretary submits the rule to—

(I) the Senate Committee on Commerce, Science, and Transportation;

(II) the Senate Committee on Appropriations;

(III) the House of Representatives Committee on Transportation and Infrastructure;

(IV) the House of Representatives Committee on Homeland Security; and

(V) the House of Representatives Committee on Appropriations .

(E) APPLICATION OF CHAPTER 8 OF TITLE 5.—Chapter 8 of title 5 applies to any rule promulgated by the Assistant Secretary imposing a fee or increasing fees under subparagraph (A) after September 30, 2006.

(b) SCHEDULE OF FEES.—In imposing fees under subsection (a), the Under Secretary shall ensure that the fees are reasonably related to the Transportation Security Administration’s costs of providing services rendered.

(c) LIMITATION ON FEE.—Fees imposed under subsection (a)(1) may not exceed \$2.50 per enplanement in air transportation or intrastate air transportation that originates at an airport in the United States, except that the total amount of such fees may not exceed \$5.00 per one-way trip.

(d) IMPOSITION OF FEE.—

(1) IN GENERAL.—Notwithstanding section 9701 of title 31 and the procedural requirements of section 553 of title 5, the Under Secretary shall impose the fee under subsection (a)(1), and may impose a fee under subsection (a)(2), through the publication of notice of such fee in the Federal Register and begin collection of the fee within 60 days of the date of enactment of this Act, or as soon as possible thereafter.

(2) SPECIAL RULES PASSENGER FEES.—A fee imposed under subsection (a)(1) through the procedures under subsection (d) shall apply only to tickets sold after the date on which such fee is imposed. If a fee imposed under subsection (a)(1) through the procedures under subsection (d) on transportation of a passenger of a carrier described in subsection (a)(1) is not collected from the passenger, the amount of the fee shall be paid by the carrier.

(3) SUBSEQUENT MODIFICATION OF FEE.—After imposing a fee in accordance with paragraph (1), the Under Secretary may modify, from time to time through publication of notice in the Federal Register, the imposition or collection of such fee, or both.

(4) LIMITATION ON COLLECTION.—No fee may be collected under this section except to the extent that the expenditure of the fee to pay the costs of activities and services for which the fee is imposed is provided for in advance in an appropriations Act or in section 44923.

(e) ADMINISTRATION OF FEES.—

(1) FEES PAYABLE TO UNDER SECRETARY.—All fees imposed and amounts collected under this section are payable to the Under Secretary.

(2) FEES COLLECTED BY AIR CARRIER.—A fee imposed under subsection (a)(1) shall be collected by the air carrier or foreign air carrier that sells a ticket for transportation described in subsection (a)(1).

(3) DUE DATE FOR REMITTANCE.—A fee collected under this section shall be remitted on the last day of each calendar month by the carrier collecting the fee. The amount to be remitted shall be for the calendar month preceding the calendar month in which the remittance is made.

(4) INFORMATION.—The Under Secretary may require the provision of such information as the Under Secretary decides is necessary to verify that fees have been collected and remitted at the proper times and in the proper amounts.

(5) FEE NOT SUBJECT TO TAX.—For purposes of section 4261 of the Internal Revenue Code of 1986 (26 U.S.C. 4261), a fee imposed under this section shall not be considered to be part of the amount paid for taxable transportation.

(6) COST OF COLLECTING FEE.—No portion of the fee collected under this section may be retained by the air carrier or foreign air carrier for the costs of collecting, handling, or remitting the fee except for interest accruing to the carrier after collection and before remittance.

(f) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, any fee collected under this section—

(1) shall be credited as offsetting collections to the account that finances the activities and services for which the fee is imposed;

(2) shall be available for expenditure only to pay the costs of activities and services for which the fee is imposed; and

(3) shall remain available until expended.

(g) REFUNDS.—The Under Secretary may refund any fee paid by mistake or any amount paid in excess of that required.

(h) EXEMPTIONS.—The Under Secretary may exempt from the passenger fee imposed under subsection (a)(1) any passenger enplaning at an airport in the United States that does not receive screening services under section 44901 for that segment of the trip for which the passenger does not receive screening.

MARITIME TRANSPORTATION SECURITY ACT OF 2002

[SEC. 111. PERFORMANCE STANDARDS.

[Not later than January 1, 2004, the Secretary of the department in which the Coast Guard is operating, in consultation with the Transportation Security Oversight Board, shall—

[(1) develop and maintain an antiterrorism cargo identification, tracking, and screening system for containerized cargo shipped to and from the United States either directly or via a foreign port; and

[(2) develop performance standards to enhance the physical security of shipping containers, including standards for seals and locks.**]**