AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

110TH CONGRESS 1st Session | HOUSE OF REPRESENTATIVES | REPT. 110–65 Part 1

RAIL AND PUBLIC TRANSPORTATION SECURITY ACT OF 2007

MARCH 22, 2007.—Ordered to be printed

Mr. THOMPSON of Mississippi, from the Committee on Homeland Security, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 1401]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 1401) to improve the security of railroads, public transportation, and over-the-road buses in the United States, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary	30
Background and Need for Legislation	30
Hearings	31
Committee Consideration	32
Committee Votes	32
Committee Oversight Findings	43
New Budget Authority, Entitlement Authority, and Tax Expenditures	43
Committee Cost Estimate	43
Statement of General Performance Goals and Objectives	51
Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits	51
Federal Mandates Statement	52
Advisory Committee Statement	52
Constitutional Authority Statement	52
Applicability to Legislative Branch	52
Section-by-Section Analysis of the Legislation	52
Changes in Existing Law Made by the Bill, as Reported	67
Additional Views	71
Letters and Correspondence	78

59–006

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Rail and Public Transportation Security Act of 2007".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—RAIL AND PUBLIC TRANSPORTATION SECURITY

Sec. 101. National strategy for rail and public transportation security.
Sec. 102. Assignment of providers of covered transportation to risk-based tiers.
Sec. 103. Rail and public transportation assessments and plans.
Sec. 104. Information sharing plan.
Sec. 105. Rail security assistance.
Sec. 106. Public transportation security assistance.
Sec. 107. Over-the-road bus security assistance.
Sec. 108. Fire and life safety improvements.
Sec. 109. Security training program.
Sec. 110. Security exercises.
Sec. 111. Security research and development.
Sec. 112. Whistleblower protections.
Sec. 113. Increase in surface transportation security inspectors.
Sec. 114. National domestic preparedness consortium.
Sec. 115. Authorization of Visible Intermodal Protection Response Teams.
Sec. 116. National Transportation Security Center of Excellence.
Sec. 117. TSA personnel limitations.
Sec. 118. Homeland security grants.
Sec. 119. Threat assessment screening.
Sec. 120. Background checks for covered individuals.
Sec. 121. Task force on disqualifying crimes.
Sec. 122. Penalties.
Sec. 123. School bus transportation security.
Sec. 124. Enhanced security measures for shipments of security sensitive materials.
Sec. 125. Technology standards and clearinghouse to improve security of covered transportation.
Sec. 126. Rail tank car security testing.
Sec. 127. Rail radiological and nuclear detection.
Sec. 128. Requirement to provide preference to qualified anti-terrorism technologies.
Sec. 129. Promoting liability protections for providers of covered transportation and related technologies.
Sec. 130. International rail security program.
Sec. 131. Terrorist watchlist and immigration status review at high-risk transportation sites.

TITLE II—SECURE TRANSPORTATION THROUGH INCREASED USE OF CANINE DETECTION TEAMS

Sec. 201. Increasing the number of canine detection teams for transportation security.
Sec. 202. National explosives detection canine team program increase.
Sec. 203. Transportation security administration breeding program increase.

SEC. 2. DEFINITIONS.

In this Act, the following definitions apply:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" has the meaning that term has in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101) and includes the Committees on Homeland Security and Transportation and Infrastructure of the House of Representatives and the Committees on Homeland Security and Governmental Affairs and Commerce, Science, and Transportation of the Senate.

(2) APPROPRIATE STAKEHOLDERS.—The term "appropriate stakeholders" means—

(A) providers of covered transportation;

(B) organizations representing providers of covered transportation;

(C) nonprofit employee labor organizations representing railroad, public transportation, or over-the-road bus workers;

(D) shippers of hazardous material;

(E) manufacturers of railroad and transit cars;

(F) State departments of transportation, regional agencies, and metropolitan planning organizations;

(G) public safety officials;

(H) law enforcement and fire service officials; and

(I) other relevant persons.

(3) COVERED TRANSPORTATION.—The term "covered transportation" means transportation provided by a railroad carrier, a provider of public transportation, or an over-the-road bus.

(4) DEPARTMENT.—The term "Department" means the Department of Homeland Security.

(5) DESIGNATED RECIPIENT.—The term "designated recipient" has the meaning that the term has in section 5307(a) of title 49, United States Code.

(6) PROVIDER OF COVERED TRANSPORTATION.—The term "provider of covered transportation" means—

(A) with respect to transportation provided by a railroad carrier, the railroad carrier;

(B) with respect to public transportation, the public transportation designated recipient providing the transportation; and

(C) with respect to transportation provided by an over-the-road bus, the private operator.

(7) OVER-THE-ROAD BUS.—The term "over-the-road bus" means a bus characterized by an elevated passenger deck located over a baggage compartment.

(8) PUBLIC TRANSPORTATION.—The term "public transportation" has the meaning that term has in section 5302(a) of title 49, United States Code.

(9) RAILROAD.—The term "railroad" has the meaning that term has in section 20102 of title 49, United States Code.

(10) RAILROAD CARRIER.—The term "railroad carrier" has the meaning that term has in section 20102 of title 49, United States Code.

(11) SECRETARY.—The term "Secretary" means the Secretary of Homeland Security.

(12) STATE.—The term "State" means any one of the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States.

(13) TERRORISM.—The term "terrorism" has the meaning that term has in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101).

(14) TRANSPORTATION.—The term "transportation", as used with respect to an over-the-road-bus, means the movement of passengers or property by an over-the-road-bus.

(A) in the jurisdiction of the United States between a place in a State and a place outside the State (including a place outside the United States); or

(B) in a State that affects trade, traffic, and transportation described in subparagraph (A).

(15) UNITED STATES.—The term "United States" means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States.

TITLE I—RAIL AND PUBLIC TRANSPORTATION SECURITY

SEC. 101. NATIONAL STRATEGY FOR RAIL AND PUBLIC TRANSPORTATION SECURITY.

(a) MODAL PLAN.—Not later than 6 months after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Transportation, shall develop and implement the modal plan for covered transportation as required by section 114(t)(1)(B) of title 49, United States Code. The modal plan shall be entitled the "National Strategy for Rail and Public Transportation Security" and shall include, at a minimum—

(1) a description of the roles, responsibilities, and authorities of Federal, State, and local agencies, government sponsored entities, tribal governments, and appropriate stakeholders under the plan;

(2) identification of, and a plan to address, gaps and unnecessary overlaps in the roles, responsibilities, and authorities described in paragraph (1);

(3) a methodology for how the Department will work with the entities described in paragraph (1), and make use of existing Federal expertise within the Department, the Department of Transportation, and other appropriate agencies;

(4) a process for providing security clearances to facilitate intelligence and information sharing with the entities described in paragraph (1);

(5) a description of—

(A) how the Department has reviewed terrorist attacks on covered transportation throughout the world in the last 25 years;

(B) the lessons learned from those reviews; and

(C) how those lessons are being used in current and future efforts to secure covered transportation;

(6) a strategy and timeline for the Department, the Department of Transportation, other appropriate Federal agencies and private entities to research and develop new technologies for securing covered transportation;

(7) measurable goals, including objectives, mechanisms, and a schedule for enhancing the security of covered transportation;

(8) a framework for resuming the operation of covered transportation in the event of an act of terrorism and prioritizing resumption of such operations;

(9) a description of current and future public outreach and educational initiatives designed to inform the public on how to prevent, prepare for, respond to, and recover from a terrorist attack on covered transportation; and

(10) a process for coordinating covered transportation security strategies and plans, including the National Infrastructure Protection Plan required by Homeland Security Presidential Directive 7; Executive Order: Strengthening Surface Transportation Security dated December 5, 2006; the Memorandum of Understanding between the Department and the Department of Transportation on Roles and Responsibilities dated September 28, 2004; the Annex to the Memorandum of Understanding between the Department and the Department of Transportation on Roles and Responsibilities concerning railroad security dated September 28, 2006, and the Annex to the Memorandum of Understanding between the Department and the Department of Transportation on Roles and Responsibilities concering Public Transportation Security dated September 8, 2005.

(b) ADEQUACY OF EXISTING PLANS AND STRATEGIES.—Nothing in this section shall prevent the Secretary from using existing plans and strategies, including those developed or implemented pursuant to section 114(t) of title 49, United States Code, or Homeland Security Presidential Directive–7, in meeting the requirements of subsection (a).

SEC. 102. ASSIGNMENT OF PROVIDERS OF COVERED TRANSPORTATION TO RISK-BASED TIERS.

(a) ASSIGNMENT.—The Secretary shall assign each provider of covered transportation to one of the not less than three risk-based tiers established by the Secretary.

(b) PROVISION OF INFORMATION.—The Secretary may request, and the provider of covered transportation shall provide, information necessary for the Secretary to assign a provider of covered transportation to the appropriate tier under subsection (a).

(c) NOTIFICATION.—Not later than 60 days after the date a provider of covered transportation is assigned to a tier under this section, the Secretary shall notify the provider of the tier to which the provider is assigned and the reasons for such assignment.

(d) HIGH- AND MEDIUM-RISK TIERS.—At least two of the tiers established by the Secretary under this section shall be tiers designated for high- and medium-risk providers of covered transportation.

SEC. 103. RAIL AND PUBLIC TRANSPORTATION ASSESSMENTS AND PLANS.

(a) IN GENERAL.—Not later than 12 months after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Transportation, shall issue regulations that—

(1) require each provider of covered transportation assigned to a high- or medium-risk tier under section 102—

(A) to conduct a vulnerability assessment in accordance with subsections (b) and (c); and

(B) to prepare, submit to the Secretary for approval, and implement a security plan in accordance with this section that addresses security performance requirements under subsection (f); and

(2) establish standards, and guidelines for vulnerability assessments under subsection (c) and security plans under subsection (d) and for developing and implementing such security plans.

(3) establish a security program for providers of covered transportation not assigned to a high or medium-risk tier under section 102, including a process for providers to conduct vulnerability assessments and prepare and implement security plans, as determined appropriate by the Secretary.

(b) DEADLINE FOR SUBMISSION.—Not later than 6 months after the date of issuance of the regulations under subsection (a), the vulnerability assessments and security plans required by such regulations for a provider of covered transportation assigned to a high- or medium-risk tier shall be completed and submitted to the Secretary for review and approval.

(c) VULNERABILITY ASSESSMENTS.—

(1) REQUIREMENTS.—The Secretary, in consultation with the Secretary of Transportation, shall provide technical assistance and guidance to providers of covered transportation in conducting vulnerability assessments under this section and shall require that each vulnerability assessment of a provider of cov-

ered transportation assigned to a high-or medium-risk tier under section 102 include, at a minimum—

(A) identification and evaluation of critical covered transportation assets and infrastructures of the provider, including platforms, stations, bus and intermodal terminals, tunnels, bridges, switching and storage areas, and information systems;

(B) identification of the threats to those assets and infrastructures;

(C) identification of the security weaknesses of the covered transportation in—

(i) physical security;

(ii) passenger and cargo security;

(iii) programmable electronic devices, computers, or other automated systems which are used in providing the transportation;

(iv) alarms, cameras, and other protection systems;

(v) communications systems, including dispatching services and mobile service equipment systems, to provide access to emergency services in underground fixed guideway systems;

(vi) utilities;

(vii) emergency response planning;

(viii) employee training; and

(ix) such other matters as the Secretary determines appropriate; and

(D) identification of redundant and backup systems required to ensure the continued operations of critical elements of the covered transportation in the event of an attack or other incident, including disruption of commercial electric power or communications network.

(2) THREAT INFORMATION.—A provider of covered transportation conducting a vulnerability assessment under this section shall incorporate in the assessment any threat information provided by the Secretary and other sources.

(d) SECURITY PLANS.—

(1) REQUIREMENTS.—The Secretary, in consultation with the Secretary of Transportation, shall provide technical assistance and guidance to providers of covered transportation in preparing and implementing security plans under this section and shall require that each security plan of each provider of covered transportation assigned a high- or medium-risk under section 102 include, at a minimum—

(A) identification of a security coordinator having authority—

(i) to implement security actions under the plan;

(ii) to coordinate security improvements described in sections 105, 106, and 107; and

(iii) to receive immediate communications from appropriate Federal officials regarding covered transportation security;

(B) plans for periodic exercises under section 110 that include participation by local law enforcement agencies and emergency responders as appropriate;

(C) a list of needed capital and operational improvements such as those described in sections 105, 106, and 107;

(D) procedures to be implemented or used by the provider in response to a terrorist attack, including evacuation and passenger communication plans that include individuals with disabilities;

(E) identification of steps taken with State and local law enforcement agencies, emergency responders, and Federal officials to coordinate security measures and plans for response to a terrorist attack;

(F) a strategy and timeline for conducting training under section 109, including recurrent training and periodic unannounced exercises for employees of the provider to be carried out under the plan to prevent, prepare for, or respond to a terrorist attack;

(G) enhanced security measures to be taken by the provider when the Secretary declares a period of heightened security risk;

(H) plans for redundant and backup systems required to ensure the continued operation of critical covered transportation elements of the provider in the event of a terrorist attack or other incident;

(I) plans for locating, including by covert electronic devices, shipments of railroad cars transporting security sensitive materials or nuclear waste so that, if the assets are lost or stolen, the provider or law enforcement authorities may locate, track, and recover the assets;

(J) a strategy for implementing enhanced security for shipments of security sensitive materials under section 124; and

(K) such other actions or procedures as the Secretary determines are appropriate to address the covered transportation security of the provider to a terrorist attack.

(2) SECURITY COORDINATOR REQUIREMENTS.—The Secretary shall require that the individual serving as the security coordinator identified in paragraph (1)(A) is a citizen of the United States. The Secretary may waive this requirement with respect to an individual if the Secretary determines that it is appropriate to do so based on a background check of the individual and a review of terrorist watch lists to ensure that the individual is not identified on any such terrorist watch list.

(3) CONSISTENCY WITH OTHER PLANS.—The Secretary, in consultation with the Secretary of Transportation, shall ensure that each security plan under this section is consistent with the requirements of the National Strategy for Rail and Public Transportation Security described in section 101.

(e) PROVIDED BY SECRETARY.—The Secretary shall provide, in a timely manner to the maximum extent practicable under applicable authority and in the interest of national security, to the provider of the covered transportation threat information that is relevant to the provider when preparing and submitting vulnerabilities and security plans, including an assessment of the most likely method that could be used by terrorists to exploit weaknesses in the covered transportation security and the likelihood of success by such terrorists.

(f) SECURITY PERFORMANCE REQUIREMENTS.—The Secretary shall, by regulation, establish security performance requirements for the security plans required for providers of covered transportation. The regulations shall—

(1) require separate and increasingly stringent security performance requirements for security plans as the level of risk associated with the tier increases; and

(2) permit each provider of covered transportation submitting a security plan to select a combination of security measures that satisfy the security performance requirements established by the Secretary under this subsection.

(g) DEADLINE FOR REVIEW PROCESS.—Not later than 12 months after the date of the issuance of the regulations under subsection (a), the Secretary, in consultation with the Secretary of Transportation, shall—

(1) review each vulnerability assessment and security plan submitted to the Secretary in accordance with subsection (b);

(2) require amendments to any security plan that does not meet the requirements of this section, including the regulations issued under subsection (a);

(3) approve any vulnerability assessment or security plan that meets the requirements of this section, including such regulations; and

(4) review each security plan periodically thereafter.

(h) INTERIM SECURITY MEASURES.—The Secretary, in consultation with the Secretary of Transportation, shall require, during the period before the deadline established under subsection (b), each provider of covered transportation required to submit a security plan under subsection (b) to implement any necessary interim security measures to deter, mitigate, and respond to, to the maximum extent practicable, a transportation security incident with respect to the covered transportation or a substantive threat of such an incident until the security plan of the provider is approved.

(i) NONDISCLOSURE OF INFORMATION.—

(1) IN GENERAL.—Nothing in this Act shall be construed to require the disclosure of a vulnerability assessment or a security plan of a provider of covered transportation to the extent that such information is exempted from mandatory disclosure under section 552 of title 5, United States Code.

(2) OTHER OBLIGATIONS UNAFFECTED.—Nothing in this section shall affect any obligation of the provider of covered transportation to submit or make available information to covered transportation employees, nonprofit employee labor organizations, or a Federal, State, or local government agency under, or otherwise to comply with, any other law.

(3) SUBMISSION OF INFORMATION TO CONGRESS.—Nothing in this section shall be construed as authorizing the withholding of any information from Congress.

(4) DISCLOSURE OF INDEPENDENTLY FURNISHED INFORMATION.—Nothing in this section shall be construed as affecting any authority or obligation of a Federal agency to disclose any record or information that the Federal agency obtains from a provider of covered transportation under any other law.

(j) PENALTIES.—

(1) ADMINISTRATIVE PENALTIES.—

(A) IN GENERAL.—The Secretary may impose an administrative penalty of not more than $100,000 for failure to comply with this section, including regulations issued under subsection (a).

(B) NOTICE AND OPPORTUNITY TO REQUEST HEARING.—Before imposing a penalty under subparagraph (A), the Secretary shall provide to the person against whom the penalty is to be imposed—

(i) written notice of the proposed penalty; and

(ii) the opportunity to request, not later than 30 days after the date on which the person receives the notice, a hearing on the proposed penalty.

(C) REGULATIONS.—The Secretary may issue regulations establishing the procedures for administrative hearings and appropriate review of penalties imposed under this Act, including deadlines.

(2) CIVIL PENALTIES.—

(A) IN GENERAL.—The Secretary may bring an action in a United States district court against any provider of covered transportation that violates or fails to comply with this Act, including regulations issued under subsection (a), or a security plan approved by the Secretary under this section.

(B) RELIEF.—In any action under this Act, a court may issue an order for injunctive relief and may impose a civil penalty of not more than $75,000 for each day on which a violation occurs or a failure to comply continues.

(3) CRIMINAL PENALTIES.—A provider of covered transportation who intentionally violates this section, including regulations issued under subsection (a), shall be fined not more than $50,000 for each day of such violation, imprisoned for not more than 2 years, or both.

(k) EXISTING PROCEDURES, PROTOCOLS AND STANDARDS.—

(1) DETERMINATION.—In response to a petition by a provider of covered transportation or at the discretion of the Secretary, the Secretary may recognize existing procedures, protocols, and standards of a provider of covered transportation that the Secretary determines to meet all or part of the requirements of this section, including regulations issued under subsection (a), regarding vulnerability assessments and security plans.

(2) ELECTION.—Upon review and written determination by the Secretary that existing procedures, protocols, or standards of a provider of covered transportation satisfy all of the requirements of this section, including regulations issued under subsection (a), the provider may elect to comply with those procedures, protocols, or standards instead of the requirements of this section.

(3) PARTIAL APPROVAL.—If the Secretary determines that the existing procedures, protocols, or standards of a provider of covered transportation satisfy only part of the requirements of this section, including regulations issued under subsection (a), the Secretary may accept those submissions, but shall require submission by the provider of any additional information relevant to vulnerability assessments and security plans of the provider to ensure that the remaining requirements of this section are fulfilled.

(4) NOTIFICATION.—If the Secretary determines that particular existing procedures, protocols, or standards of a provider of covered transportation under this subsection do not satisfy the requirements of this section, including regulations issued under subsection (a), the Secretary shall provide to such provider a written notification that includes an explanation of the reasons why the determination could not be made.

(5) REVIEW.—Nothing in this subsection shall relieve the Secretary of the obligation—

(A) to review the vulnerability assessment and security plan submitted by a provider of covered transportation under this section; and

(B) to approve or disapprove each submission on an individual basis.

(l) PERIODIC REVIEW BY PROVIDER OF COVERED TRANSPORTATION REQUIRED.—

(1) SUBMISSION OF REVIEW.—Not later than 3 years after the date on which a vulnerability assessment or security plan required to be submitted to the Secretary under subsection (b) is submitted, and at least once every 5 years thereafter (or on such a schedule as the Secretary may establish by regulation), the provider of covered transportation who submitted the vulnerability assessment or security plan shall also submit to the Secretary a review of the adequacy of the vulnerability assessment or security plan that includes a description of any material changes made to the vulnerability assessment or security plan.

(2) REVIEW OF REVIEW.—Not later than 180 days after the date on which a review is submitted, the Secretary shall review the review and notify the provider of covered transportation submitting the review of the Secretary's approval or disapproval of such review.

(m) SHARED FACILITIES.—The Secretary, in consultation with the Secretary of Transportation, may permit under this section the development and implementation of coordinated vulnerability assessments and security plans to the extent 2 or more

providers of covered transportation have shared facilities (such as tunnels, bridges, or stations, or facilities) that are geographically close or otherwise co-located.

(n) FERRY EXEMPTION.—This section does not apply to any ferry system for which a vulnerability assessment and security plan is required pursuant to chapter 701 of title 46, United States Code.

(o) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Transportation, shall submit a report to the appropriate congressional committees regarding the feasibility of implementing name-based checks against terrorist watch lists for all National Railroad Passenger Corporation, hereinafter referred to as "Amtrak" passengers.

SEC. 104. INFORMATION SHARING PLAN.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Transportation, shall develop and submit to the appropriate congressional committees a railroad, public transportation, and over-the-road bus information sharing plan to ensure the development of both tactical and strategic intelligence products pertaining to the threats and vulnerabilities to covered transportation for dissemination to Federal, State, and local agencies, tribal governments, and appropriate stakeholders.

(b) CONTENT OF PLAN.—The plan submitted under subsection (a) shall include—

(1) a description of how intelligence analysts in the Transportation Security Administration are coordinating with other intelligence analysts in the Department and other Federal, State, and local agencies;

(2) reasonable deadlines for the completion of any organizational changes within the Department to accommodate implementation of the plan; and

(3) a description of resource needs for fulfilling the plan.

(c) UPDATES.—

(1) CERTIFICATION OF IMPLEMENTATION.—After the plan is submitted under subsection (a), the Secretary shall certify to the appropriate congressional committees when the plan has been implemented.

(2) ANNUAL REPORTS.—After the Secretary provides the certification under paragraph (1), the Secretary shall provide a report to the appropriate congressional committees each year thereafter on the following:

(A) The number and brief description of each railroad, public transportation, and over-the-road bus intelligence report created and disseminated under the plan.

(B) The classification of each report as tactical or strategic.

(C) The numbers of different government, law enforcement, and public or private sector partners who the Department provided with each intelligence product.

(d) ANNUAL SURVEYS.—The Secretary shall conduct an annual survey of the satisfaction of each of the recipients of railroad, public transportation, and over-the-road bus intelligence reports created and disseminated under the plan and include the results of the survey as part of the corresponding annual report provided under subsection (c)(2).

(e) CLASSIFICATION OF MATERIAL.—To the greatest extent possible, the Department shall provide appropriate stakeholders with information in an unclassified format.

(f) SECURITY CLEARANCES.—The Department shall assist the appropriate Federal, State, regional, local, and tribal authorities, in addition to appropriate stakeholders, in obtaining the security clearances needed to receive classified covered transportation security information as necessary if this information cannot be disseminated in an unclassified format.

SEC. 105. RAIL SECURITY ASSISTANCE.

(a) IN GENERAL.—The Secretary, in consultation with the Secretary of Transportation, shall establish a program for making grants to eligible entities for security improvements described in subsection (b).

(b) USES OF FUNDS.—A recipient of a grant under this section shall use the grant funds for one or more of the following:

(1) Perimeter protection systems, including access control, installation of improved lighting, fencing, and barricades at railroad facilities.

(2) Technologies to reduce the vulnerability of rail cars.

(3) Passenger railroad station security redevelopment and capital improvement projects that the Secretary determines enhance rail station security.

(4) Security improvements to passenger railroad stations and other railroad transportation infrastructure.

(5) Tunnel protection systems.

(6) Evacuation improvements.

(7) Inspection technologies, including verified visual inspection technologies using hand-held readers and discs.

(8) Communications equipment, including equipment that is interoperable with Federal, State, and local agencies and tribal governments.

(9) Chemical, biological, radiological, or explosive detection, including canine patrols for such detection.

(10) Surveillance equipment.

(11) Cargo or passenger screening equipment.

(12) Railroad inspection facilities and related infrastructure at United States international borders, including additional side railroad track necessary for passenger and freight train inspection.

(13) Emergency response equipment, including fire suppression and decontamination equipment, personal protective equipment, and defibrillators.

(14) Global positioning or tracking and recovery equipment.

(15) Redundant critical operations control systems.

(16) Operating and capital costs associated with security awareness, preparedness, and response training, including training under section 109 and training developed by universities and institutions of higher education and by nonprofit employee labor organizations, for front-line railroad employees.

(17) Live or simulated exercises described in section 110.

(18) Overtime reimbursement for additional security personnel during periods of heightened security as determined by the Secretary.

(19) Public awareness campaigns for enhanced rail security.

(20) Operational costs for personnel assigned to full-time security or counterterrorism duties related to rail transportation.

(21) Such other security improvements as the Secretary considers appropriate.

(c) SECURITY IMPROVEMENT PRIORITIES.—In establishing guidelines for applications for grants under this section, the Secretary shall establish a list in order of priority regarding uses of funds for grant recipients under this section

(d) MULTIYEAR AWARDS.—Pursuant to this section, the Secretary may issue multiyear grants for not longer than a 5-year period.

(e) LETTERS OF INTENT.—

(1) ISSUANCE.—The Secretary may issue a letter of intent to a recipient of a grant under this section, to commit funding from future budget authority of an amount, not more than the Federal Government's share of the project's cost, for a capital improvement project.

(2) SCHEDULE.—The letter of intent under this subsection shall establish a schedule under which the Secretary will reimburse the recipient for the Federal Government's share of the project's costs, as amounts become available, if the recipient, after the Secretary issues that letter, carries out the project without receiving amounts under a grant issued under this section.

(3) NOTICE TO SECRETARY.—A recipient that has been issued a letter of intent under this section shall notify the Secretary of the recipient's intent to carry out a project before the project begins.

(4) NOTICE TO CONGRESS.—The Secretary shall transmit to the appropriate congressional committees a written notification at least 3 days before the issuance of a letter of intent under this subsection.

(5) LIMITATIONS.—A letter of intent issued under this subsection is not an obligation of the Federal Government under section 1501 of title 31, United States Code, and the letter is not deemed to be an administrative commitment for financing. An obligation or administrative commitment may be made only as amounts are provided in authorization and appropriations laws.

(6) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to prohibit the obligation of amounts pursuant to a letter of intent under this section in the same fiscal year as the letter of intent is issued.

(f) ELIGIBILITY.—

(1) IN GENERAL.—Eligible entities for a grant under this section may include State, local, and tribal governmental entities, Amtrak, infrastructure owners, including railroad carriers, private entities, and public-private entities, or their designees.

(2) PROJECT ELIGIBILITY.—A recipient of a grant under this section may use grant funds only for permissible uses under subsection (b) to further a rail security plan developed, submitted to, and approved by the Secretary.

(g) FEDERAL SHARE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), a grant for a project under this section shall be for 80 percent of the net cost of the project.

(2) SMALL PROJECT EXCEPTION.—If a grant under this section is for a project with a net cost of $25,000 or less, the Federal share for the grant shall be for 100 percent of such cost.

(3) NATIONAL SECURITY EXCEPTION.—If the Secretary determines, upon written notice to the appropriate congressional committees, that a higher Federal share for a grant under this section is necessary to respond to an urgent threat to national security, the Secretary may increase the Federal share for the grant to up to 100 percent of the net cost of the project.

(4) APPLICABILITY.—This subsection shall only apply to freight rail carriers.

(h) SUBJECT TO CERTAIN STANDARDS.—The Secretary shall require a recipient of a grant under this section and section 108 to comply with the standards of section 24312 of title 49, United States Code, as in effect on January 1, 2007, with respect to the project in the same manner as Amtrak is required to comply with such standards for construction work financed under an agreement made under section 24308(a) of that title.

(i) LIMITATION ON USES OF FUNDS.—A grant made under this section may not be used—

(1) to supplant State or local funds; and

(2) to make any State or local government cost-sharing contribution under any other law.

(j) ANNUAL REPORTS.—Each recipient of a grant under this section shall report annually to the Secretary on the use of grant funds.

(k) GUIDELINES.—Before distribution of funds to recipients of grants under this section, the Secretary, in consultation with the Secretary of Transportation, shall issue guidelines to ensure that recipients of grants under this section use small, minority, women-owned, or disadvantaged businesses as contractors or subcontractors to the extent practicable.

(l) MONITORING.—The Secretary shall be responsible for monitoring the manner in which the grants are used.

(m) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary $600,000,000 for each of fiscal years 2008 through 2011 for making grants under this section.

(2) PERIOD OF AVAILABILITY.—Sums appropriated to carry out this section shall remain available until expended.

SEC. 106. PUBLIC TRANSPORTATION SECURITY ASSISTANCE.

(a) IN GENERAL.—The Secretary, in consultation with the Secretary of Transportation, shall establish a program for making grants to an eligible public transportation designated recipient for security improvements described in subsection (b).

(b) USES OF FUNDS.—A recipient of a grant under subsection (a) shall use the grant funds for one or more of the following:

(1) Perimeter protection systems, including access control, installation of improved lighting, fencing, and barricades.

(2) Security improvements to stations and other public transportation infrastructure.

(3) Tunnel protection systems.

(4) Evacuation improvements.

(5) Inspection technologies, including verified visual inspection technologies using hand-held readers and discs.

(6) Communications equipment, including mobile service equipment to provide access to emergency services in an underground fixed guideway system.

(7) Chemical, biological, or radiological or explosive detection, including canine patrols for such detection.

(8) Surveillance equipment.

(9) Emergency response equipment, including fire suppression and decontamination equipment, personal protective equipment, and defibrillators.

(10) Global positioning or tracking and recovery equipment.

(11) Redundant critical operations control systems.

(12) Live or simulated exercises described in section 110.

(13) Public awareness campaigns for enhanced public transportation security.

(14) Operating and capital costs associated with security awareness, preparedness, and response training, including training under section 109 and training developed by universities and institutions of higher education and by nonprofit employee labor organizations, for front-line public transportation employees.

(15) Overtime reimbursement for additional security personnel during periods of heightened security as determined by the Secretary.

(16) Operational costs for personnel assigned to full-time security or counterterrorism duties related to public transportation.

(17) Such other security improvements as the Secretary considers appropriate.

(c) ELIGIBILITY.—

(1) IN GENERAL.—Eligible entities for a grant under this section may include public transportation agencies and State, local, and tribal governmental entities that provide security or counterterrorism related services to public transportation.

(2) PROJECT ELIGIBILITY.—A recipient of a grant under this section may use grant funds only for permissible uses under subsection (b) to further a public transportation security plan developed, submitted to, and approved by the Secretary.

(d) SECURITY IMPROVEMENT PRIORITIES.—In establishing guidelines for applications for grants under this section, the Secretary shall establish a list in order of priority regarding uses of funds for grant recipients under this section.

(e) SUBJECT TO CERTAIN TERMS AND CONDITIONS.—Except as otherwise specifically provided in this section, a grant provided under this section shall be subject to the terms and conditions applicable to a grant made under section 5307 of title 49, United States Code, under effect on January 1, 2007, and such other terms and conditions as are determined necessary by the Secretary.

(f) LIMITATION ON USES OF FUNDS.—Grants made under this section may not be used—

(1) to supplant State or local funds; and

(2) to make any State or local government cost-sharing contribution under any other law.

(g) ANNUAL REPORTS.—Each recipient of a grant under this section shall report annually to the Secretary on the use of the grant funds.

(h) GUIDELINES.—Before distribution of funds to recipients of grants under this section, the Secretary, in consultation with the Secretary of Transportation, shall issue guidelines to ensure that recipients of grants under this section use small, minority, women-owned, or disadvantaged businesses as contractors or subcontractors to the extent practicable.

(i) MONITORING.—The Secretary shall be responsible for monitoring the manner in which the grants are used.

(j) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary to make grants under this section—

(A) $775,000,000 for fiscal year 2008;

(B) $825,000,000 for fiscal year 2009;

(C) $880,000,000 for fiscal year 2010; and

(D) $880,000,000 for fiscal year 2011.

(2) PERIOD OF AVAILABILITY.—Sums appropriated to carry out this section shall remain available until expended.

SEC. 107. OVER-THE-ROAD BUS SECURITY ASSISTANCE.

(a) IN GENERAL.—The Secretary, in consultation with the Secretary of Transportation, shall establish a program for making grants for eligible private operators providing transportation by an over-the-road bus for security improvements described in subsection (b).

(b) USES OF FUNDS.—A recipient of a grant received under subsection (a) shall use the grant funds for one or more of the following:

(1) Constructing and modifying terminals, garages, facilities, or over-the-road buses to increase their security.

(2) Protecting or isolating the driver of an over-the-road bus.

(3) Acquiring, upgrading, installing, or operating equipment, software, or accessorial services for collection, storage, or exchange of passenger and driver information through ticketing systems or otherwise and for information links with government agencies.

(4) Installing cameras and video surveillance equipment on over-the-road buses and at terminals, garages, and over-the-road bus facilities.

(5) Establishing and improving an emergency communications system linking drivers and over-the-road buses to the recipient's operations center or linking the operations center to law enforcement and emergency personnel.

(6) Implementing and operating passenger screening programs for weapons and explosives.

(7) Public awareness campaigns for enhanced over-the-road bus security.

(8) Operating and capital costs associated with security awareness, preparedness, and response training, including training under section 109 and training

developed by universities and institutions of higher education and by nonprofit employee labor organizations, for front-line over-the-road bus employees.

(9) Chemical, biological, radiological, or explosive detection, including canine patrols for such detection.

(10) Overtime reimbursement for additional security personnel during periods of heightened security as determined by the Secretary.

(11) Live or simulated exercises described in section 110.

(12) Operational costs for personnel assigned to full-time security or counterterrorism duties related to over-the-road bus transportation.

(13) Such other improvements as the Secretary considers appropriate.

(c) ELIGIBILITY.—

(1) IN GENERAL.—Eligible entities for a grant under this section may include over-the-road bus providers and State, local, and tribal governmental entities that provide security or counterterrorism related services to over-the-road bus providers.

(2) PROJECT ELIGIBILITY.—A recipient of a grant under this section may use grant funds only for permissible uses under subsection (b) to further an over-the-road bus security plan developed, submitted to, and approved by the Secretary.

(d) SECURITY IMPROVEMENT PRIORITIES.—In establishing guidelines for applications for grants under this section, the Secretary shall establish a list in order of priority regarding uses of funds for grant recipients under this section.

(e) SUBJECT TO CERTAIN TERMS AND CONDITIONS.—Except as otherwise specifically provided in this section, a grant made under this section shall be subject to the terms and conditions applicable to subrecipients who provide intercity bus transportation under section 5311(f) of title 49, United States Code, and such other terms and conditions as are determined necessary by the Secretary.

(f) LIMITATION ON USES OF FUNDS.—A grant made under this section may not be used to—

(1) supplant State or local funds for activities; and

(2) make any State or local government cost-sharing contribution under any other law.

(g) ANNUAL REPORTS.—Each recipient of a grant under this section shall report annually to the Secretary and the Secretary of Transportation on the use of such grant funds

(h) GUIDELINES.—Before distribution of funds to recipients of grants under this section, the Secretary, in consultation with the Secretary of Transportation, shall issue guidelines to ensure that recipients of grants under this section use small, minority, women-owned, and disadvantaged businesses as contractors or subcontractors to the extent practicable.

(i) MONITORING.—The Secretary shall be responsible for monitoring the manner in which the grants are used.

(j) AUTHORIZATION.—

(1) IN GENERAL.—There is authorized to be appropriated to the Secretary to make grants under this section—

(A) $12,000,000 for fiscal year 2008; and

(B) $25,000,000 for each of fiscal years 2009 through 2011.

(2) PERIOD OF AVAILABILITY.—Sums appropriated to carry out this section shall remain available until expended.

SEC. 108. FIRE AND LIFE SAFETY IMPROVEMENTS.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation for making grants to Amtrak, for the purpose of carrying out projects to make fire and life safety improvements to Amtrak tunnels on the Northeast Corridor the following amounts:

(1) For the 6 tunnels in New York City, New York, to provide ventilation, electrical, and fire safety technology improvements, emergency communication and lighting systems, and emergency access and egress for passengers—

(A) $25,000,000 for fiscal year 2008;

(B) $25,000,000 for fiscal year 2009;

(C) $25,000,000 for fiscal year 2010; and

(D) $25,000,000 for fiscal year 2011.

(2) For the Baltimore & Potomac Tunnel and the Union Tunnel in Baltimore, Maryland, to provide adequate drainage and ventilation, communication, lighting, standpipe, and passenger egress improvements—

(A) $5,000,000 for fiscal year 2008;

(B) $5,000,000 for fiscal year 2009;

(C) $5,000,000 for fiscal year 2010; and

(D) $5,000,000 for fiscal year 2011.

(3) For the Union Station tunnels in the District of Columbia to provide ventilation, communication, lighting, and passenger egress improvements—

(A) $5,000,000 for fiscal year 2008;

(B) $5,000,000 for fiscal year 2009;

(C) $5,000,000 for fiscal year 2010; and

(D) $5,000,000 for fiscal year 2011.

(b) AVAILABILITY OF AMOUNTS.—Amounts appropriated pursuant to this section shall remain available until expended.

(c) GUIDELINES.—Before distribution of funds to recipients of grants under this section, the Secretary of Transportation shall issue guidelines to ensure that recipients of grants under this section use small, minority, women-owned, or disadvantaged businesses as the contractors or subcontractors to the extent practicable.

SEC. 109. SECURITY TRAINING PROGRAM.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Transportation, shall—

(1) develop security training programs to prepare all railroad, public transportation, and over-the-road bus workers, including front-line employees for potential threat conditions; and

(2) issue detailed guidance for the program.

(b) CONSULTATION.—The Secretary shall develop the guidance under subsection (a)(2) in consultation with—

(1) appropriate law enforcement, fire service, security, and terrorism experts;

(2) representatives of providers of covered transportation; and

(3) nonprofit employee labor organizations representing railroad, public transportation, over-the-road bus workers, and fire fighter workers.

(c) PROGRAM ELEMENTS.—The guidance developed under subsection (a)(2) shall require security training programs described in subsection (a) to include, at a minimum, elements to address the following:

(1) Determination of the seriousness of any occurrence or threat.

(2) Crew and passenger communication and coordination.

(3) Appropriate responses to defend oneself, including using nonlethal defense devises.

(4) Evacuation procedures for passengers and workers, including individuals with disabilities.

(5) Live situational training exercises regarding various threat conditions, including tunnel evacuation procedures.

(6) Recognition and reporting of dangerous substances and suspicious packages, persons, and situations.

(7) Understanding security incident procedures, including procedures for communicating with governmental and nongovernmental emergency response providers and for on-scene interaction with such emergency response providers.

(8) Operation and maintenance of security equipment and systems.

(9) Any other subject the Secretary considers appropriate.

(d) REQUIRED PROGRAMS.—

(1) DEVELOPMENT AND SUBMISSION TO SECRETARY.—Not later than 60 days after the Secretary issues guidance under subsection (a)(2) in final form, each provider of covered transportation shall develop a security training program in accordance with the guidance developed under subsection (2) and submit the program to the Secretary for approval.

(2) APPROVAL.—Not later than 60 days after receiving a security training program under this subsection, the Secretary shall approve the program or require the provider of covered transportation that developed the program to make any revisions to the program that the Secretary considers necessary for the program to meet the guidance requirements.

(3) TRAINING.—Not later than 1 year after the Secretary approves a security training program under this subsection, the provider of covered transportation that developed the program shall complete the training of all workers covered under the program.

(4) UPDATES.—The Secretary shall periodically review and update as appropriate the training guidance issued under subsection (a)(2) to reflect new or changing security threats and require providers of covered transportation to revise their programs accordingly and provide additional training to their workers.

(e) NATIONAL TRAINING PROGRAM.—The Secretary shall ensure that the training program developed under subsection (a) is a component of the National Training Program established under section 648 of the Department of Homeland Security Appropriations Act of 2007 (6 U.S.C. 748).

(f) FERRY EXEMPTION.—This section does not apply to any ferry system for which training is required to be conducted pursuant to section 70103 of title 46, United States Code.

SEC. 110. SECURITY EXERCISES.

(a) IN GENERAL.—The Secretary, in consultation with the Secretary of Transportation, shall establish a program for conducting security exercises for covered transportation for the purpose of assessing and improving the capabilities of entities described in subsection (b) to prevent, prepare for, mitigate against, respond to, and recover from acts of terrorism involving covered transportation.

(b) COVERED ENTITIES.—Entities to be assessed under the program shall include—

(1) Federal, State, and local agencies and tribal governments;

(2) employees and managers of providers of covered transportation;

(3) governmental and nongovernmental emergency response providers and law enforcement personnel, including railroad and transit police; and

(4) any other organization or entity that the Secretary determines appropriate.

(c) REQUIREMENTS.—The Secretary, in consultation with the Secretary of Transportation, shall ensure that the program—

(1) consolidates all existing security exercises for covered transportation administered by the Department and the Department of Transportation;

(2) requires, on a periodic basis, at the facilities a provider of covered transportation, exercises to be conducted that are—

(A) scaled and tailored to the needs of the facilities, including individuals with disabilities;

(B) live, in the case of the most at-risk facilities to a terrorist attack;

(C) coordinated with appropriate officials of covered transportation providers;

(D) as realistic as practicable and based on current risk assessments, including credible threats, vulnerabilities, and consequences; and

(E) consistent with the National Incident Management System, the National Response Plan, the National Infrastructure Protection Plan, the National Preparedness Guidance, the National Preparedness Goal, and other such national initiatives;

(3) provides that exercises described in paragraph (2) will be—

(A) evaluated against clear and consistent performance measures;

(B) assessed to learn best practices, which shall be shared with appropriate Federal, State, local, and tribal officials, governmental and nongovernmental emergency response providers, law enforcement personnel, including railroad and transit police, and appropriate stakeholders; and

(C) followed by remedial action in response to lessons learned;

(4) includes exercises involving covered transportation at or near the international land borders of the United States and in coordination with international stakeholders;

(5) involves individuals in neighborhoods around the infrastructure of a provider of covered transportation; and

(6) assists State, local, and tribal governments and providers of covered transportation in designing, implementing, and evaluating exercises that conform to the requirements of paragraph (2).

(d) REMEDIAL ACTION MANAGEMENT PROGRAM.—The Secretary shall utilize the remedial action management program of the Federal Emergency Management Agency to—

(1) identify and analyze each exercise conducted under the program for lessons learned and best practices;

(2) disseminate lessons learned and best practices to participants in the program;

(3) monitor the implementation of lessons learned and best practices by participants in the program; and

(4) conduct remedial action tracking and long-term trend analysis.

(e) NATIONAL TRAINING PROGRAM.—The Secretary shall ensure that the training program developed under subsection (a) is a component of the National Training Program established under section 648 of the Department of Homeland Security Appropriations Act of 2007 (6 U.S.C. 748).

(f) FERRY SYSTEM EXEMPTION.—This section does not apply to any ferry for which drills are required to be conducted pursuant to section 70103 of title 46, United States Code.

SEC. 111. SECURITY RESEARCH AND DEVELOPMENT.

(a) ESTABLISHMENT OF RESEARCH AND DEVELOPMENT PROGRAM.—The Secretary shall carry out a research and development program for the purpose of improving the security of covered transportation.

(b) ELIGIBLE PROJECTS.—The research and development program may include projects—

(1) to reduce the vulnerability of passenger trains, stations, and equipment to explosives and hazardous chemical, biological, and radioactive substances including the development of technology to screen passengers in large numbers at peak commuting times with minimal interference and disruption;

(2) to test new emergency response and recovery techniques and technologies, including those used at international borders;

(3) to develop improved freight railroad technologies, including—

(A) technologies for sealing or modifying railroad tank cars;

(B) automatic inspection of railroad cars;

(C) communication-based train controls;

(D) signal system integrity at switches;

(E) emergency response training, including training in a tunnel environment;

(F) security and redundancy for critical communications, electrical power, computer, and train control systems; and

(G) technologies for securing bridges and tunnels;

(4) to test wayside detectors that can detect tampering;

(5) to support enhanced security for the transportation of security sensitive materials by railroad;

(6) to mitigate damages in the event of a cyberattack; and

(7) to address other vulnerabilities and risks identified by the Secretary.

(c) COORDINATION WITH OTHER RESEARCH INITIATIVES.—The Secretary shall—

(1) ensure that the research and development program is consistent with the National Strategy for Rail and Public Transportation Security developed under section 101; and

(2) to the greatest extent practicable, coordinate the research and development activities of the Department with other ongoing research and development security related initiatives, including research being conducted by—

(A) the National Academy of Sciences;

(B) the Department of Transportation, including University Transportation Centers and other institutes, centers, and simulators funded by the Department of Transportation;

(C) the Technical Support Working Group;

(D) other Federal departments and agencies; and

(E) other Federal and private research laboratories, research entities, and universities and institutions of higher education including, Historically Black Colleges or Universities, and Hispanic Serving Institution or Tribal University, with the capability to conduct both practical and theoretical research and technical systems analysis on subjects that include bridge, tunnel, blast, and infrastructure protection;

(3) carry out any research and development project authorized by this section through a reimbursable agreement with the appropriate agency or entity official, if the agency or entity—

(A) is currently sponsoring a research and development project in a similar area; or

(B) has a unique facility or capability that would be useful in carrying out the project;

(4) award grants, cooperative agreements, contracts, other transactions, or reimbursable agreements to the entities described in subsection (c)(2) and shall adopt necessary procedures, including audits, to ensure that awards made under this section are expended in accordance with the purposes of this title and the priorities and other criteria developed by the Secretary; and

(5) make reasonable efforts to enter into memoranda of understanding, contracts, grants, cooperative agreements, or other transactions with owners and operators of freight and intercity passenger rail and over-the-road bus facilities willing to contribute both physical space and other resources.

(d) PRIVACY AND CIVIL RIGHTS AND CIVIL LIBERTIES ISSUES.—

(1) CONSULTATION.—In carrying out research and development projects under this section, the Secretary shall consult with the Chief Privacy Officer of the Department and the Officer for Civil Rights and Civil Liberties of the Department as appropriate and in accordance with section 222 of the Homeland Security Act of 2002 (6 U.S.C. 142).

(2) PRIVACY IMPACT ASSESSMENTS.—In accordance with sections 222 and 705 of the Homeland Security Act of 2002 (6 U.S.C. 142; 345), the Chief Privacy Officer shall conduct privacy impact assessments and the Officer for Civil Rights and Civil Liberties shall conduct reviews, as appropriate, for research and development initiatives developed under this section.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out this section—

(1) $50,000,000 for fiscal year 2008;

(2) $50,000,000 for fiscal year 2009;

(3) $50,000,000 for fiscal year 2010; and

(4) $50,000,000 for fiscal year 2011.

Such sums shall remain available until expended.

SEC. 112. WHISTLEBLOWER PROTECTIONS.

(a) IN GENERAL.—No covered individual may be discharged, demoted, suspended, threatened, harassed, reprimanded, investigated, or in any other manner discriminated against, including by a denial, suspension, or revocation of a security clearance or by any other security access determination, if such discrimination is due, in whole or in part, to any lawful act done, perceived to have been done, or intended to be done by the covered individual—

(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the covered individual reasonably believes constitutes a violation of any law, rule, or regulation relating to rail, public transportation, or over-the-road-bus security, which the covered individual reasonably believes constitutes a threat to rail, public transportation, or over-the-road-bus security, or which the covered individual reasonably believes constitutes fraud, waste, or mismanagement of Government funds intended to be used for rail, public transportation, or over-the-road-bus security, if the information or assistance is provided to or the investigation is conducted by—

(A) by a Federal, State, or local regulatory or law enforcement agency (including an office of the Inspector General under the Inspector General Act of 1978 (5 U.S.C. app.; Public Law 95–452);

(B) any Member of Congress, any committee of Congress, or the Government Accountability Office; or

(C) a person with supervisory authority over the covered individual (or such other person who has the authority to investigate, discover, or terminate misconduct);

(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding or action filed or about to be filed relating to an alleged violation of any law, rule, or regulation relating to rail, public transportation, or over-the-road bus security; or

(3) to refuse to violate or assist in the violation of any law, rule, or regulation relating to rail public transportation, or over-the-road bus security.

(b) ENFORCEMENT ACTION.—

(1) IN GENERAL.—A covered individual who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c)—

(A) for covered individuals who are employees of the Department or the Department of Transportation, by filing a complaint with the Merit Systems Protection Board;

(B) for contractors or subcontractors of the Department or Department of Transportation, by filing a complaint with their respective Inspector General;

(C) for all other covered individuals, by filing a complaint with the Secretary of Labor; and

(D) if the Secretary of Labor, Merit System Protection Board, or the respective Inspector General has not issued a final decision not later than 180 days after the filing of the complaint, or in the event that a final order or decision is issued by the Secretary of Labor, Merit System Protection Board, or the respective Inspector General, whether within the 180-day period or thereafter, when, not later than 90 days after such an order or decision is issued, bringing an original action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and then, at the request of either party to such action, be tried by the court with a jury.

(2) PROCEDURE.—

(A) IN GENERAL.—An action under paragraph (1) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

(B) EXCEPTION.—Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the person's employer.

(C) BURDENS OF PROOF.—An action brought under paragraph (1) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.

(D) STATUTE OF LIMITATIONS.—An action under paragraph (1) shall be commenced not later than 1 year after the date on which the violation occurs.

(c) REMEDIES.—

(1) IN GENERAL.—A covered individual prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the covered individual whole.

(2) DAMAGES.—Relief for an action under subsection (b)(1) shall include remedies under subparagraphs (A) through (C) and if appropriate, may include subparagraph (D) of such subsection—

(A) reinstatement with the same seniority status that the covered individual would have had, but for the discrimination;

(B) the amount of any backpay, with interest; and

(C) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees; and

(3) POSSIBLE RELIEF.—Relief from an action under paragraph (1) may include punitive damages in an amount not to exceed the greater of 3 times the amount of any compensatory damages awarded under this section or $5,000,000.

(d) USE OF STATE SECRETS PRIVILEGE.—If the Government, in a court of competent jurisdiction, asserts as a defense the privilege commonly referred to as the "state secrets privilege" then—

(1) the parties will act expeditiously to settle the case and the court shall grant the parties 60 days by which to reach settlement of the pending matter to avoid disclosure of any sensitive government information, including classified or sensitive intelligence information. The parties may certify to the court that settlement cannot be reached before the end of the 60-day period;

(2) if the parties cannot settle the matter and the parties continue to litigate the matter, the parties and court shall apply special procedures in order to protect classified or sensitive intelligence information in a manner consistent with sections 1 through 10 of the Classified Information and Procedures Act, and shall adhere to the Classified Information Procedures Act (18 U.S.C. App.; Public Law 96–456; 4 Stat. 2025); and

(3) if, in any action brought under subsection (b)(1), the Government asserts the state secrets privilege and the assertion of such privilege either is frivolous, without merit, or is asserted and causes undue delay or hardship to the plaintiff, or prevents the plaintiff from establishing a prima facie case in support of the plaintiff's claim or from rebutting an affirmative defense, then the court shall enter judgment for the plaintiff and shall determine the relief to be granted.

(e) CRIMINAL PENALTIES.—

(1) IN GENERAL.—It shall be unlawful for any person employing a covered individual to commit an act prohibited by subsection (a). Any person who willfully violates this section by terminating or retaliating against any covered individual who makes a claim under this section shall be fined under title 18, United States Code, imprisoned not more than 1 year, or both.

(2) REPORTING REQUIREMENT.—

(A) IN GENERAL.—The Attorney General shall submit to the appropriate congressional committees an annual report on the enforcement of paragraph (1).

(B) CONTENTS.—Each such report shall—

(i) identify each case in which formal charges under paragraph (1) were brought;

(ii) describe the status or disposition of each such case; and

(iii) in any actions under subsection (b)(1) in which the covered individual was the prevailing party or the substantially prevailing party, indicate whether or not any formal charges under paragraph (1) have been brought and, if not, the reasons therefor.

(f) NO PREEMPTION.—Nothing in this section preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harass-

ment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law.

(g) RIGHTS RETAINED BY COVERED INDIVIDUAL.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any covered individual under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

(h) DEFINITIONS.—In this section, the following definitions apply:

(1) COVERED INDIVIDUAL.—The term "covered individual" means an employee of—

(A) the Department;

(B) the Department of Transportation;

(C) a contractor or subcontractor; and

(D) an employer within the meaning of section 701(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(b)) and who is a provider of covered transportation.

(2) LAWFUL.—The term "lawful" means not specifically prohibited by law, except that, in the case of any information the disclosure of which is specifically prohibited by law or specifically required by Executive order to be kept classified in the interest of national defense or the conduct of foreign affairs, any disclosure of such information to any Member of Congress, committee of Congress, or other recipient authorized to receive such information, shall be deemed lawful.

(3) CONTRACTOR.—The term "contractor" means a person who has entered into a contract with the Department, the Department of Transportation, or a provider of covered transportation.

(4) EMPLOYEE.—The term "employee" means—

(A) with respect to an employer referred to in paragraph (1)(A) or (1)(B), an employee as defined by section 2105 of title 5, United States Code; and

(B) with respect to an employer referred to in paragraph (1)(A), (1)(B), or (1)(C) any officer, partner, employee, or agent.

(5) SUBCONTRACTOR.—The term "subcontractor"—

(A) means any person, other than the contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a contract with the Department, the Department of Transportation, or a provider of covered transportation; and

(B) includes any person who offers to furnish or furnishes general supplies to the Federal contractor or a higher tier subcontractor.

(6) PERSON.—The term "person" means a corporation, partnership, State entity, business association of any kind, trust, joint-stock company, or individual.

SEC. 113. INCREASE IN SURFACE TRANSPORTATION SECURITY INSPECTORS.

(a) IN GENERAL.—The Secretary shall increase the total number of positions for full-time surface transportation security inspectors of the Department so that by December 31, 2010, the total number of such positions is at least 600.

(b) QUALIFICATIONS.—Surface transportation security inspectors hired by the Secretary shall have at least 1 year or equivalent experience in conducting inspections and investigations and engaging in testing security systems and any other qualifications that the Secretary determines appropriate.

(c) ROLES AND RESPONSIBILITIES.—The Secretary, in consultation with the Secretary of Transportation and appropriate State, local, and tribal officials, shall develop a standard operating procedure clearly defining the relationship between—

(1) surface transportation security inspectors of the Department and safety inspectors of the Department of Transportation; and

(2) State, local, and tribal law enforcement officers and other law enforcement personnel, including railroad and public transportation police.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out subsection (a) such sums as may be necessary. Such sums shall remain available until expended.

SEC. 114. NATIONAL DOMESTIC PREPAREDNESS CONSORTIUM.

(a) IN GENERAL.—There is in the Department of Homeland Security a National Domestic Preparedness Consortium.

(b) MEMBERS.—The National Domestic Preparedness Consortium that identifies, develops, tests, and delivers training to State, local, and tribal emergency response providers, provides onsite and mobile training at the performance and management and planning levels, and facilitates the delivery of awareness level training by the training partners of the Department shall consist of—

(1) the Center for Domestic Preparedness;

(2) the National Energetic Materials Research and Testing Center, New Mexico Institute of Mining and Technology;

(3) the National Center for Biomedical Research and Training, Louisiana State University;

(4) the National Emergency Response and Rescue Training Center, Texas A&M University;

(5) the National Exercise, Test, and Training Center, Nevada Test Site; and

(6) the Transportation Technology Center in Pueblo, Colorado.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary—

(1) to at least maintain the funding level of fiscal year 2007 for each member of the National Domestic Preparedness Consortium listed in subsection (b) in existence prior to the inclusion of the Transportation Technology Center in the Consortium; and

(2) in fiscal years 2008 through 2011, increase the funding level for each member of the National Domestic Preparedness Consortium to not less than 3 percent of the amount made available for the preceding fiscal year.

SEC. 115. AUTHORIZATION OF VISIBLE INTERMODAL PROTECTION RESPONSE TEAMS.

The Secretary, acting through the Administrator of the Transportation Security Administration, is authorized to develop Visible Intermodal Protection Response (referred to in this section as "VIPR") teams designed to augment security for any mode of transportation at any location within the United States. In forming a VIPR team, the Secretary—

(1) may use any asset of the Department, including Federal air marshals, surface transportation security inspectors, canine detection teams, and advanced screening technology;

(2) has the discretion to determine, consistent with ongoing security threats, when a VIPR should be deployed, as well as the duration of the deployment in coordination with local security and law enforcement officials; and

(3) prior to deployments, shall consult with local security and law enforcement officials in the jurisdiction where the VIPR Team is planned to deploy, to develop and agree upon the appropriate operating protocols and in order to educate those officials regarding the mission of the VIPR teams.

SEC. 116. NATIONAL TRANSPORTATION SECURITY CENTER OF EXCELLENCE.

(a) ESTABLISHMENT.—The Secretary shall establish a National Transportation Security Center of Excellence at an institution of higher education to conduct research and education activities, and to develop or provide professional security training, including the training of rail and public transportation employees and rail and public transportation-related professionals, with emphasis on utilization of intelligent transportation systems, technologies, and architectures.

(b) CRITERIA.—The Secretary shall designate the Center according to the following selection criteria:

(1) The demonstrated commitment of the institution to transportation security issues.

(2) The use of and experience with partnerships with other institutions of higher education, Federal laboratories, or other nonprofit laboratories.

(3) Capability to conduct both practical and theoretical research and technical systems analysis.

(4) Utilization of intelligent transportation system technologies and architectures.

(5) Ability to develop professional security training programs.

(6) Capability and willingness to conduct education of transportation security professionals.

(7) Such other criteria as the Secretary may designate.

(c) CONSORTIUM.—

(1) EXPERIENCE.—The Consortium shall include universities and institutions of higher education that have existing transportation programs.

(2) CERTAIN INCLUSIONS.—At least two of the consortium colleges and universities associated with the National Transportation Security Center of Excellence shall be an Historically Black College or University, an Hispanic Serving Institution, Tribal University, even if the primary institution is one of the aforementioned institutions of higher education.

(3) DEGREE PROGRAM.—Of the universities selected under paragraph (2), at least one shall have an established degree and an advanced degree program in transportation studies.

(d) TRAINING.—If the consortium does not include the National Transit Institute, the Consortium shall work with the National Transit Institute on training programs.

(e) FUNDING.—The Secretary shall provide such funding as is necessary to the National Transportation Security Center of Excellence established under subsection (a) to carry out this section.

SEC. 117. TSA PERSONNEL LIMITATIONS.

Any statutory limitation on the number of employees in the Transportation Security Administration does not apply to employees carrying out this Act.

SEC. 118. HOMELAND SECURITY GRANTS.

Notwithstanding any provision of this Act, all grants distributed for security-related purposes pursuant to this Act, shall be administered on the basis of risk by the Secretary as the lead Federal official on transportation security.

SEC. 119. THREAT ASSESSMENT SCREENING.

Not later than 180 days after the date of the enactment of this Act, the Secretary shall implement a threat assessment screening program, including name-based checks against terrorist watch lists and immigration status check, for all employees of covered transportation, that is the same as the threat assessment screening program required for facility employees and longshoremen by the Commandant of the Coast Guard under Coast Guard Notice USCG–2006–24189 (71 Fed. Reg. 25066 (Friday, April 28, 2006)).

SEC. 120. BACKGROUND CHECKS FOR COVERED INDIVIDUALS.

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) BACKGROUND CHECKS.—The term "background check" means a check of the following:

(A) Relevant criminal history databases.

(B) In the case of an alien (as defined in the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)), the relevant databases to determine the status of the alien under the immigration laws of the United States.

(2) COVERED INDIVIDUALS.—The term "covered individual" means an employee of—

(A) an employer, within the meaning of section 701(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(b)), who is a provider of covered transportation; or

(B) a contractor or subcontractor of such an employer.

(b) REDRESS PROCESS.—If a provider of covered transportation conducts background checks in order to satisfy any rules, regulations, directives, or other guidance issued by the Secretary to protect covered transportation from the threat of terrorism, the provider of covered transportation shall provide an adequate redress process.

(c) STANDARDS FOR REDRESS PROCESS.—

(1) IN GENERAL.—The Secretary shall ensure that each provider of covered transportation implements a redress process in accordance with subsection (b) for covered individuals adversely impacted by a background check described in subsection (b).

(2) STANDARDS.—The redress process shall be modeled after the appeals and waiver process established for hazmat drivers and transportation workers at ports, as required by section 1515 of title 49, Code of Federal Regulations.

(3) COMPONENTS.—The redress process shall include the following:

(A) A waiver process that will allow a covered individual to demonstrate, through rehabilitation, or facts surrounding the conviction or other mitigating factors, that the individual is not a security risk.

(B) An appeal process during which a covered individual will have an opportunity to demonstrate that the individual does not have a disqualifying conviction either by—

(i) correcting outdated underlying court records;

(ii) proving mistaken identity; or

(iii) establishing that the conviction cannot serve as the basis for an adverse employment decision in accordance with the limitations contained in subsection (d).

(C) A proceeding providing an independent review.

(D) A process to ensure compliance with the requirements of this section.

(4) PROCEEDINGS PROVIDING AN INDEPENDENT REVIEW.—A covered individual who requests a proceeding under paragraph (3)(C) shall have the right to have waiver and appeal decisions heard by an independent decisionmaker with the ability to order reinstatement expeditiously or provide other remedy.

(5) PREVIOUS BACKGROUND CHECKS.—A covered individual subjected to and adversely affected by a background check conducted by a provider of covered transportation (or a contractor or subcontractor of such a provider), in the period beginning on June 23, 2006, and ending on the date of enactment of this

Act, to satisfy any rules, regulations, directives, or other guidance issued by the Secretary to protect covered transportation from the threat of terrorism shall have an immediate right to a proceeding with an independent decisionmaker to determine if the adverse action was in compliance with this section and shall have a right to immediate reinstatement or other remedy if the background check fails to comply with this section.

(d) LIMITATIONS.—

(1) IN GENERAL.—Subject to paragraph (2), any rule, regulation, directive, or other guidance issued by the Secretary regarding background checks of covered individuals shall prohibit an employer from making an adverse employment decision, including removal or suspension, with respect to a covered individual based on—

(A) a felony conviction that occurred 7 or more years ago;

(B) a conviction of any offense for which the individual was released from incarceration 5 or more years ago; or

(C) any felony not listed in section 1572.103 of title 49, Code of Federal Regulations.

(2) EXCEPTIONS.—The limitations contained in paragraph (1) shall not apply to a covered individual who has been convicted of any of the following:

(A) Treason (or conspiracy to commit treason).

(B) Espionage (or conspiracy to commit espionage).

(C) Sedition (or conspiracy to commit sedition).

(D) Any crime listed in chapter 113B of title 18, United States Code (or conspiracy to commit such a crime).

(e) NO PREEMPTION OF FEDERAL OR STATE LAW.—Nothing in this section shall be construed as preempting a Federal, State, or local law that requires criminal history background checks of covered employees.

(f) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to affect the process for review established under section 70105(c) of title 46, United States Code, including regulations issued pursuant to such section.

SEC. 121. TASK FORCE ON DISQUALIFYING CRIMES.

(a) ESTABLISHMENT.—The Secretary shall establish a task force to review the lists of crimes that disqualify individuals from certain transportation-related employment under current regulations of the Transportation Security Administration and assess whether such lists of crimes are accurate indicators of a terrorism security risk.

(b) MEMBERSHIP.—The task force shall be composed of representatives of appropriate industries, including representatives of nonprofit employee labor organizations, and Federal agencies.

(c) REPORT.—Not later than 180 days after the date of enactment of this Act, the task force shall transmit to the Secretary and Congress a report containing the results of the review, including recommendations for a common list of disqualifying crimes and the rationale for the inclusion of each crime on the list.

SEC. 122. PENALTIES.

(a) REGULATIONS AND ORDERS OF THE SECRETARY.—Section 114 of title 49, United States Code, is amended by adding at the end the following:

"(u) GENERAL CIVIL PENALTIES AND ENFORCEMENT OF REGULATIONS AND ORDERS OF THE SECRETARY OF HOMELAND SECURITY.—

"(1) APPLICATION.—This subsection applies to the enforcement of regulations prescribed, and orders issued, by the Secretary of Homeland Security under a provision of chapter 701 of title 46 and this title (other than chapter 449) (in this subsection referred to as an 'applicable provision of this title'). Penalties for violation of regulations prescribed, and orders issued, by the Secretary of Homeland Security under a provision of chapter 449 are provided under chapter 463.

"(2) GENERAL CIVIL PENALTIES.—

"(A) MAXIMUM CIVIL PENALTIES.—A person is liable to the United States Government for a civil penalty of not more than $10,000 for a violation of a regulation prescribed, or order issued, by the Secretary of Homeland Security under an applicable provision of this title.

"(B) SEPARATE VIOLATIONS.—A separate violation occurs under this paragraph for each day the violation continues.

"(3) ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES.—

"(A) IN GENERAL.—The Secretary of Homeland Security may impose a civil penalty for a violation of a regulation prescribed, or order issued, under an applicable provision of this title. The Secretary of Homeland Security shall give written notice of the finding of a violation and the penalty.

"(B) CIVIL ACTIONS TO COLLECT PENALTIES.—In a civil action to collect a civil penalty imposed by the Secretary under this paragraph, the issues of liability and the amount of the penalty may not be reexamined.

"(C) EXCLUSIVE JURISDICTION OF DISTRICT COURTS.—Notwithstanding subparagraph (A) of this paragraph, the district courts of the United States have exclusive jurisdiction of a civil action involving a penalty that the Secretary initiates if—

"(i) the amount in controversy is more than—

"(I) $400,000 if the violation was committed by a person other than an individual or small business concern; or

"(II) $50,000 if the violation was committed by an individual or small business concern;

"(ii) the action is in rem or another action in rem based on the same violation has been brought; or

"(iii) another action has been brought for an injunction based on the same violation.

"(D) MAXIMUM CIVIL PENALTIES IMPOSED BY THE SECRETARY.—The maximum civil penalty the Secretary may impose under this paragraph is—

"(i) $400,000 if the violation was committed by a person other than an individual or small business concern; or

"(ii) $50,000 if the violation was committed by an individual or small business concern.

"(E) NOTICE AND OPPORTUNITY TO REQUEST HEARING.—Before imposing a penalty under this section the Secretary shall provide to the person against whom the penalty is to be imposed—

"(i) written notice of the proposed penalty; and

"(ii) the opportunity to request, not later than 30 days after the date on which the person receives the notice, a hearing on the proposed penalty.

"(4) COMPROMISE AND SETOFF.—

"(A) COMPROMISE.—The Secretary may compromise the amount of a civil penalty imposed under this subsection.

"(B) SETOFF.—The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

"(5) INVESTIGATIONS AND PROCEEDINGS.—The provisions set forth in chapter 461 shall be applicable to investigations and proceedings brought under this subsection to the same extent that they are applicable to investigations and proceedings brought with respect to aviation security duties designated to be carried out by the Secretary.

"(6) NONAPPLICATION.—

"(A) PERSONS SUBJECT TO PENALTIES DETERMINED BY THE SECRETARY OF DEFENSE.—Paragraphs (1) through (4) of this subsection do not apply to the following persons, who shall be subject to penalties as determined by the Secretary of Defense or the Secretary's designee:

"(i) The transportation of personnel or shipments of materials by contractors where the Department of Defense has assumed control and responsibility.

"(ii) A member of the Armed Forces of the United States when performing official duties.

"(iii) A civilian employee of the Department of Defense when performing official duties.

"(B) POSTAL SERVICE; DEPARTMENT OF DEFENSE.—In this subsection, the term 'person' does not include—

"(i) the United States Postal Service; or

"(ii) the Department of Defense.

"(7) SMALL BUSINESS CONCERN DEFINED.—The term 'small business concern' has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632).".

(b) CONFORMING AMENDMENT.—Section 46301(a)(4) of title 49, United States Code, is amended by striking "or another requirement under this title administered by the Under Secretary of Transportation for Security".

SEC. 123. SCHOOL BUS TRANSPORTATION SECURITY.

(a) SCHOOL BUS SECURITY THREAT ASSESSMENT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives, a report, including a classified report, as appropriate, containing a comprehensive threat assessment of the threat of a terrorist attack on the Nation's school bus transportation system in accordance with the requirements of this section.

(b) CONTENTS OF THREAT ASSESSMENT.—The assessment shall include—

(1) an assessment of the Nation's school bus transportation system, including publicly and privately operated systems;

(2) the security threats to the assets and systems;

(3) an assessment of actions already taken by operators to address identified security vulnerabilities by both private and publicly operated systems;

(4) an assessment of additional actions and investments necessary to improve the security of the Nation's school children traveling on school buses;

(5) an assessment of whether additional legislation or Federal programs are needed to provide for the security of children traveling on school buses; and

(6) an assessment of the psychological and economic impacts of an attack on school buses.

(c) CONSULTATION.—In conducting the threat assessment, the Secretary shall consult with administrators and officials of school systems, representatives of the school bus industry, including both public and privately operated systems, public safety and law enforcement officials, and nonprofit employee labor organizations representing school bus drivers.

SEC. 124. ENHANCED SECURITY MEASURES FOR SHIPMENTS OF SECURITY SENSITIVE MATERIALS.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Transportation, shall issue regulations to require enhanced security measures for shipments of security sensitive materials.

(b) DEFINITIONS.—

(1) SECURITY SENSITIVE MATERIAL.—The Secretary shall designate a material, or a group or class of material, in a particular amount and form as security sensitive when the Secretary determines that transporting the material in commerce poses a significant risk to national security due to the potential use of the material in an act of terrorism. In making such a designation, the Secretary shall consider the following:

(A) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in section 173.403 of title 49, Code of Federal Regulations, in a motor vehicle, railcar, or freight container.

(B) More than 25 kilograms (55 pounds) of a division 1.1, 1.2, or 1.3 of section 173.5 of title 49, Code of Federal Regulations (explosive) material in a motor vehicle, rail car, or freight container;

(C) More than one liter (1.06 quart) per package of a material poisonous by inhalation, as defined in section 171.8 of title 49, Code of Federal Regulations, that meets the criteria for hazard zone A, as specified in section 173.116(a) or section 173.133(a) of title 49, Code of Federal Regulations.

(D) A shipment of a quantity of hazardous materials in a bulk packaging having a capacity equal to or greater than 13,248 liters (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (68 cubic feet) for solids.

(E) A shipment in other than a bulk packaging of 2,268 kilograms (5,000 pounds) gross weight or more of one class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class under the provisions of section 172.521B of title 49, Code of Federal Regulations.

(F) A select agent or toxin regulated by the Centers for Disease Control and Prevention under part 73 of title 42, Code of Federal Regulations.

(G) A quantity of hazardous material that requires placarding under the provisions of subpart F of part 172 of title 49, Code of Federal Regulations.

(2) AREA OF CONCERN.—For purposes of this section, the term "area of concern" means a geographic region designated by the Secretary as commanding special consideration with respect to the security of the transportation of security sensitive materials, which shall include high threat urban areas as determined by the Secretary.

(3) STORAGE PATTERN.—The term "storage pattern" is defined as the conditions of storage, including—

(A) location of cars in railyards or on railroad-controlled leased tracks;

(B) type of storage (such as bulk transfer or not);

(C) typical types and numbers of security sensitive material cars stored in close proximity (in ranges);

(D) population density;

(E) average length of time cars are stored, attended or unattended; and

(F) security measures present, including physical security measures, secure handoffs and nearest available safe havens for storage in case of heightened threat conditions.

(4) MOST SECURE.—The term "most secure route or storage pattern" means the route or storage pattern that best reduces the risk, including consequences,

of a terrorist attack on a shipment of security sensitive material that is transported through or near an area of concern.

(c) COMPILATION OF ROUTE AND STORAGE PATTERN INFORMATION FOR RAIL CARRIERS TRANSPORTING SECURITY SENSITIVE MATERIALS.—Not later than 90 days after the end of each calendar year, a rail carrier shall compile commodity data by route and storage pattern, a line segment or series of line segments as aggregated by the rail carrier. Within the rail carrier selected route, the commodity data shall identify the geographic location of the route and storage pattern and the total number of shipments by United Nations identification number for security sensitive materials and storage patterns along the routes.

(d) RAIL TRANSPORTATION ROUTE AND STORAGE PATTERN ANALYSIS FOR SECURITY SENSITIVE MATERIALS.—For each calendar year, a rail carrier shall provide a written analysis of the security risks for the transportation routes and storage patterns, identified in the commodity data collected as required by subsection (c). The security risks present shall be analyzed for the route, railroad facilities, railroad storage facilities, private storage facilities, and areas of concern along or in proximity to the route.

(e) ALTERNATIVE ROUTE AND STORAGE PATTERN ANALYSIS FOR SECURITY SENSITIVE MATERIALS.—

(1) By the end of each calendar year, a rail carrier shall—

(A) identify to the Department practical alternative routes and storage patterns that will avoid areas of concern for each of the transportation routes or facilities it used to ship or store security sensitive materials through or near areas of concern in the last calendar year; and

(B) perform a security risk assessment of the alternative route or storage pattern for comparison to the route and storage pattern analysis specified in subsection (d).

(2) The analysis shall include the following:

(A) Identification of security risks for alternative route or storage pattern.

(B) Comparison of those risks identified in subparagraph (A) to the primary rail transportation route or storage pattern.

(3) Rail carriers transporting security sensitive materials must consider the availability of interchange agreements or systems of tracks and facilities owned by other operators when determining whether an alternate route for transporting the security sensitive materials to avoid areas of concern is practical.

(4) An alternate route or storage facility that will avoid an area of concern may be considered by the rail carrier to be impractical if the shipment originates in or is destined for the area of concern, or if there would be no harm beyond the property of the rail carrier transporting the shipment or storage facility storing the shipment in the event of a successful terrorist attack on the shipment.

(f) ALTERNATIVE ROUTE AND STORAGE PATTERN SELECTION FOR SECURITY SENSITIVE MATERIALS.—A carrier shall use the analysis required by subsections (d) and (e) to select the most secure route and storage pattern to be used in moving the materials specified in subsection (b).

(g) REVIEW.—Not less than once every 5 years, the analyses route and storage pattern selection determinations required under subsections (c), (d), (e), and (f) shall include a comprehensive, system-wide review of all operational changes, infrastructure modifications, traffic adjustments, changes in the nature of the areas of concern located along or in proximity to the route, or other changes affecting the security of the movements of the materials specified in subsection (b) of this section that were implemented during the 5-year period.

SEC. 125. TECHNOLOGY STANDARDS AND CLEARINGHOUSE TO IMPROVE SECURITY OF COVERED TRANSPORTATION.

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology and the Director of the Domestic Nuclear Detection Office (for radiological and nuclear detection technologies and training), in consultation with the Director of the National Institute of Standards and Technology and other appropriate Federal agencies, as appropriate, shall establish a standards program to support the development, promulgation, and updating as necessary of national voluntary consensus standards for performance, testing, use, and training with respect to technologies that will improve the security of covered transportation in order to meet the security plan requirements under section 103(d)(1) and the security performance requirements under section 103(f).

(b) EQUIPMENT STANDARDS.—

(1) REQUIREMENTS.—The standards for the performance, use, and validation of equipment developed under subsection (a) shall be designed to assist Federal, State, local, and tribal government and nongovernment emergency response providers, other components of the Department, providers of covered transpor-

tation, shippers of hazardous material, manufacturers of railroad and transit cars, transportation and public safety officials, and other relevant stakeholders in acquiring and implementing technologies to prevent, prepare for, mitigate against, and respond to acts of terrorism on covered transportation. Such standards—

(A) shall be, to the maximum extent practicable, consistent with any existing voluntary consensus standards;

(B) shall take into account, as appropriate, new types of terrorism threats which may target covered transportation and responsibilities of the Department that may not have been contemplated when such existing standards were developed;

(C) shall focus on maximizing interoperability, interchangeability, durability, flexibility, efficiency, efficacy, portability, sustainability, and safety;

(D) shall facilitate deployment of the systems to the field and include concept of operations;

(E) shall consider human factors science; and

(F) shall cover all appropriate uses of the equipment.

(2) CATEGORIES OF EQUIPMENT.—In carrying out paragraph (1), the Secretary shall specifically consider national voluntary consensus standards for the performance, use, and validation of the following categories of equipment:

(A) Physical security equipment, including surveillance cameras, alarm systems, access/intrusion control, motion detection, barriers such as fences, impact resistant doors, bomb-resistant trash receptacles, and personnel and vehicle identification systems.

(B) Interoperable communications equipment, including wireless and wireline voice, video, and data networks.

(C) Information technology, including position locating and tracking systems.

(D) Cybersecurity equipment, including biometric authentication systems, network and personal firewalls and other authentication technologies.

(E) Personal protective equipment, including garments, boots, gloves, and hoods and other protective clothing.

(F) Operational and search and rescue equipment, including canines and scene control and safety equipment such as first aid kits.

(G) Explosive mitigation devices and explosive detection and analysis equipment.

(H) Chemical, biological, radiological, and nuclear detection equipment.

(I) Decontamination equipment.

(J) Noninvasive inspection and screening systems.

(K) Medical and pharmaceutical supplies.

(L) Other terrorism incident prevention equipment.

(M) Such other equipment for which the Secretary determines that national voluntary consensus standards would be appropriate to improve the security of covered transportation.

(3) CERTIFICATION AND ACCREDITATION.—The Secretary, in carrying out this subsection, and in coordination with the Director of the National Institute of Standards and Technology, may support the certification of equipment and the accreditation of laboratories to conduct testing and evaluation.

(c) TRAINING STANDARDS.—

(1) REQUIREMENTS.—The standards for the training developed under subsection (a) shall be designed to enable Federal, State, local, and tribal government and nongovernment emergency response providers, other Department personnel, providers of covered transportation, shippers of hazardous material, manufacturers of railroad and transit cars, transportation and public safety officials, and other relevant stakeholders to use equipment effectively and appropriately in carrying out their responsibilities to secure covered transportation. Such standards shall prioritize—

(A) enabling appropriate stakeholders to prevent, prepare for, respond to, mitigate against, and recover from terrorist threats on covered transportation, including threats from chemical, biological, radiological, and nuclear weapons and explosive devices capable of inflicting significant human casualties, and other potentially catastrophic emergencies; and

(B) familiarizing appropriate stakeholders with the proper use of equipment, including the capabilities and limitations of equipment and conditions in which the equipment is expected to operate.

(2) CATEGORIES OF ACTIVITIES.—In carrying out paragraph (1), the Secretary specifically shall include the following categories of activities:

(A) Regional planning.

(B) Joint exercises.

(C) Information analysis and sharing.

(D) Decision making protocols for incident response and alarms.

(E) Emergency notification of affected populations.

(F) Detection of biological, nuclear, radiological, and chemical weapons of mass destruction.

(G) Screening and patrolling procedures.

(H) Such other activities for which the Secretary determines that national voluntary consensus training standards would be appropriate.

(3) CONSISTENCY.—In carrying out this subsection, the Secretary shall ensure that training standards are consistent with the principles of all hazards emergency preparedness.

(d) CONSULTATION WITH STANDARDS ORGANIZATIONS.—In establishing national voluntary consensus standards for equipment and training under this section, the Secretary shall consult with relevant public and private sector groups, including—

(1) the National Institute of Standards and Technology;

(2) the American Public Transportation Association;

(3) the National Fire Protection Association;

(4) the National Association of County and City Health Officials;

(5) the Association of American Railroads;

(6) the American Bus Association;

(7) the Association of State and Territorial Health Officials;

(8) the American National Standards Institute;

(9) the National Institute of Justice;

(10) the Inter-Agency Board for Equipment Standardization and Interoperability;

(11) the National Public Health Performance Standards Program;

(12) the National Institute for Occupational Safety and Health;

(13) ASTM International;

(14) the International Safety Equipment Association;

(15) the Emergency Management Accreditation Program; and

(16) to the extent the Secretary considers appropriate, other national voluntary consensus standards development organizations, other interested Federal, State, and local agencies, and other interested persons.

(e) TECHNOLOGY CLEARINGHOUSE TO ENHANCE THE SECURITY OF COVERED TRANSPORTATION.—

(1) IN GENERAL.—The Secretary shall utilize the Technology Clearinghouse established under section 313 of the Homeland Security Act of 2002 (6 U.S.C. 193) to facilitate the identification, acquisition, and deployment of technology, equipment, and training for use by Federal, State, local, and tribal agencies, emergency response providers, other components of the Department, providers of covered transportation, shippers of hazardous material, manufacturers of railroad and transit cars, transportation and public safety officials, and other relevant stakeholders to prevent, prepare for, mitigate against, respond to, or recover from acts of terrorism on covered transportation.

(2) ELEMENTS OF THE TECHNOLOGY CLEARINGHOUSE.—Activities in carrying out paragraph (1) shall include—

(A) identifying available technologies that have been, or are in the process of being, developed, tested, evaluated, or demonstrated by the Department, other Federal agencies, the private sector, or foreign governments and international organizations, and reviewing whether such technologies may be useful in assisting appropriate stakeholders to prevent, prepare for, mitigate against, respond to, or recover from acts of terrorism on covered transportation; and

(B) communicating to Federal, State, local, and tribal agencies, emergency response providers, other components of the Department, providers of covered transportation, shippers of hazardous material, manufacturers of railroad and transit cars, transportation and public safety officials, and other relevant stakeholders the availability of such technologies, as well as—

(i) the technology's specifications and concept of operations;

(ii) satisfaction of appropriate equipment and training standards developed under subsections (a) and (b);

(iii) relevant grants available from the Department to purchase or train with such technologies; and

(iv) whether the Secretary has designated a product, equipment, service, device, or technology under subparagraph (A) as a qualified antiterrorism technology pursuant to the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (6 U.S.C. 441 et seq.).

(3) COORDINATION.—The Secretary shall ensure that the technology clearinghouse activities conducted through the Under Secretary for Science and Technology are coordinated with appropriate components of the Department including the Domestic Nuclear Detection Office, the Transportation Security Administration, the Office of Infrastructure Protection, the Office of Grants and Training, and the Federal Emergency Management Agency.

(4) AGREEMENTS.—The Secretary may enter into memoranda of understandings or agreements with other Federal agencies, foreign governments, and national and international organizations as appropriate, in order to maximize the availability of such technologies and information through the Technology Clearinghouse.

SEC. 126. RAIL TANK CAR SECURITY TESTING.

(a) RAIL TANK CAR VULNERABILITY ASSESSMENT.—

(1) ASSESSMENT.—The Secretary shall assess the likely methods of a deliberate attack against a rail tank car used to transport toxic-inhalation-hazard materials, and for each method assessed, the degree to which it may be successful in causing death, injury, or serious adverse effects to human health, the environment, critical infrastructure, national security, the national economy, or public welfare.

(2) THREATS.—In carrying out paragraph (1), the Secretary shall consider the most current threat information as to likely methods of a successful attack on a rail tank car transporting toxic-inhalation-hazard materials, and may consider the following:

(A) An improvised explosive device placed along the tracks.

(B) An improvised explosive device attached to the rail car.

(C) The use of shoulder-fired missiles.

(D) The use of rocket propelled grenades.

(E) The use of mortars or high-caliber weapons.

(3) PHYSICAL TESTING.—In developing the assessment required under paragraph (1), the Secretary shall conduct physical testing of the vulnerability of rail tank cars used to transport toxic-inhalation-hazard materials to different methods of a deliberate attack, using technical information and criteria to evaluate the structural integrity of railroad tank cars.

(4) REPORT.—Not later than 30 days after the completion of the assessment under paragraph (1), the Secretary shall provide to the appropriate congressional committees a report, in the appropriate format, on such assessment.

(b) RAIL TANK CAR DISPERSION MODELING.—

(1) IN GENERAL.—The Secretary, acting through the National Infrastructure Simulation and Analysis Center, shall conduct air dispersion modeling analysis of a release of the contents of a single rail tank car of toxic-inhalation-hazard materials in at least three high-threat urban areas in the United States.

(2) CONSIDERATIONS.—The analysis under this subsection shall take into account the following considerations:

(A) A deliberate attack on a rail tank car transporting toxic-inhalation-hazard materials, including the most likely means of attack and the resulting dispersal rate.

(B) Different times of day, to account for differences in population size and density in the urban area, as well as differences in cloud coverage over the affected regions.

(C) Historically accurate wind speeds, temperatures and directions.

(D) The difference between a rail tank car in motion and a stationary rail tank car.

(E) Emergency response procedures by local officials, including the availability of medical countermeasures to treat exposures to toxic-inhalation-hazard materials.

(F) Any other considerations the Secretary believes would develop an accurate, plausible dispersion model for toxic-inhalation-hazard materials released from a rail tank car as a result of a terrorist act.

(3) CONSULTATION.—In conducting the dispersion modeling under paragraph (1), the Secretary shall consult with the appropriate State, local, and tribal officials of the high-threat urban area selected, and with other Federal agencies as appropriate.

(4) INFORMATION SHARING.—Upon completion of the analysis required under paragraph (1), the Secretary shall share the information developed with the appropriate stakeholders within each high-threat urban area selected, given appropriate information protection provisions as may be required by the Secretary.

(5) REPORT.—Not later than 30 days after completion of all dispersion analyses under paragraph (1), the Secretary shall submit to the appropriate congres-

sional committees a report detailing the Secretary's conclusions and findings in an appropriate format.

SEC. 127. RAIL RADIOLOGICAL AND NUCLEAR DETECTION.

(a) PROTOTYPE.—Not later than one year after the date of enactment of this Act, the Domestic Nuclear Detection Office shall begin testing and evaluation of prototype systems to detect nuclear or radiological materials in rail security venues, including spectroscopic technologies.

(b) STRATEGY.—Upon successful developmental testing and evaluation of such radiation detection technologies at Domestic Nuclear Detection Office test facilities, as well as extensive testing and evaluation in operational environments, the Domestic Nuclear Detection Office shall, in coordination with Customs and Border Protection and the Transportation Security Administration, ensure appropriate training, operations, and response protocols are established and, shall develop a deployment strategy to detect nuclear or radiological materials arriving in or transporting through the United States by rail. Such strategy shall consider the integration of radiation detection technologies with other nonintrusive inspection technologies, including imagery and density scanning, in order to utilize existing rail examination facilities and further strengthen border security.

(c) REPORT TO CONGRESS.—Not later than September 30, 2008, the Domestic Nuclear Detection Office shall transmit to Congress a report. Such report shall—

(1) describe the progress of testing and evaluation under subsection (a); and

(2) in coordination with U.S. Customs and Border Protection and the Transportation Security Administration, describe the development of a strategy under subsection (b).

(d) IMPLEMENTATION.—The Domestic Nuclear Detection Office, U.S. Customs and Border Protection, and the Transportation Security Administration shall begin implementation of the strategy developed under subsection (b) after verification of systems performance.

SEC. 128. REQUIREMENT TO PROVIDE PREFERENCE TO QUALIFIED ANTI-TERRORISM TECHNOLOGIES.

In using grant funds provided under this Act to purchase products, equipment, services, devices, or technologies to be employed in the implementation of any security plan required under this Act, a grant recipient shall, to the extent practicable, give preference to products, equipment, services, devices, and technologies that the Secretary has designated as qualified anti-terrorism technologies under the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (subtitle G of title VIII of the Homeland Security Act of 2002; 6 U.S.C. 441 et seq.), if the grant recipient determines that such a product, equipment, service, device, or technology meets or exceeds the requirements of the security plan.

SEC. 129. PROMOTING LIABILITY PROTECTIONS FOR PROVIDERS OF COVERED TRANSPORTATION AND RELATED TECHNOLOGIES.

The Secretary shall work with providers of covered transportation to identify for procurement products, equipment, services, devices, and technologies to be employed in the implementation of security plans required under this Act, that are designated by the Secretary as qualified anti-terrorism technologies under the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (subtitle G of title VIII of the Homeland Security Act of 2002; 6 U.S.C. 441 et seq.) or may otherwise be eligible for liability protections.

SEC. 130. INTERNATIONAL RAIL SECURITY PROGRAM.

(a) NON-INTRUSIVE INSPECTION EQUIPMENT.—For the purpose of checking inbound rail shipments to the United States for undeclared passengers or contraband, including terrorists or weapons, including weapons of mass destruction, the Secretary shall—

(1) deploy, where practicable, non-intrusive inspection imaging equipment at locations where rail shipments cross an international border to enter the United States; or

(2) implement alternative procedures to check such rail shipments at locations where the deployment of non-intrusive inspection imaging equipment is determined to not be practicable.

(b) ADVANCED FILING OF SECURITY DATA.—

(1) IN GENERAL.—The Secretary shall—

(A) identify and seek the submission of additional data elements for improved high-risk targeting related to the movement of cargo through the international supply chain utilizing a railroad prior to importation into the United States; and

(B) analyze the data provided pursuant to in paragraph (1) to identify high-risk cargo for inspection.

(2) INTERNATIONAL SUPPLY CHAIN DEFINED.—For purposes of this subsection, the term "international supply chain" means the end-to-end process for shipping goods to or from the United States beginning at the point of origin (including manufacturer, supplier, or vendor) through a point of distribution to the destination.

SEC. 131. TERRORIST WATCHLIST AND IMMIGRATION STATUS REVIEW AT HIGH-RISK TRANSPORTATION SITES.

The Secretary shall require each provider of covered transportation, including contractors and subcontractors, assigned to a high-risk tier under section 102 to conduct checks of their employees against available terrorist watchlists and immigration status databases.

TITLE II—SECURE TRANSPORTATION THROUGH INCREASED USE OF CANINE DETECTION TEAMS

SEC. 201. INCREASING THE NUMBER OF CANINE DETECTION TEAMS FOR TRANSPORTATION SECURITY.

(a) MINIMUM REQUIREMENT.—The Secretary shall coordinate with owners and providers of covered transportation systems to ensure that canine detection teams are deployed at each high-risk transportation system to provide continuous coverage if the Secretary considers it necessary. Each canine detection team—

(1) shall be trained to detect explosives, and, to the greatest extent possible, chemical and biological weapons; and

(2) may be deployed to alternate sites to provide additional coverage during times of increased risk or due to specific threat information, as determined by the Secretary.

(b) INCREASE.—The Secretary shall coordinate with owners and providers of covered transportation systems to increase the number of trained canine detection teams deployed at the Nation's high-risk rail and mass transit systems by not less than 10 percent each fiscal year for fiscal years 2008 through 2012. Each canine detection team shall be trained to detect explosives, and, to the greatest extent possible, chemical and biological weapons.

SEC. 202. NATIONAL EXPLOSIVES DETECTION CANINE TEAM PROGRAM INCREASE.

(a) INCREASE IN TEAMS.—The National Explosives Detection Canine Team Program of the Transportation Security Administration may train up to an additional 100 canine detection teams per year but shall train at least the following numbers of additional teams:

(1) 50 in fiscal year 2008.
(2) 55 in fiscal year 2009.
(3) 60 in fiscal year 2010.
(4) 66 in fiscal year 2011.
(5) 73 in fiscal year 2012.

(b) DEPLOYED THROUGHOUT COUNTRY.—The canine detection teams authorized under this section shall be deployed across the country to strengthen the security of covered transportation systems, including buses, subway systems, ferries, and passenger rail carriers.

(c) REPORT.—Not later than 90 days after the date of the enactment of this section, the Administrator of the Transportation Security Administration shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the personnel and resource needs to fulfill the requirements of this section.

(d) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 203. TRANSPORTATION SECURITY ADMINISTRATION BREEDING PROGRAM INCREASE.

(a) TSA PUPPY PROGRAM.—The Transportation Security Administration Puppy Program shall work to increase the number of domestically bred canines to help meet the increase in demand for canine detection teams authorized in section 202 while preserving the current quality of canines provided for training.

(b) REPORT REQUIRED.—Not later than 90 days after the date of the enactment of this section, the Administrator of the Transportation Security Administration shall submit to the Committee on Homeland Security of the House and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the personnel and resource needs to fulfill the requirements of this section.

(c) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

PURPOSE AND SUMMARY

The purpose of H.R. 1401 is to improve the security of railroads, public transportation, and over-the-road buses in the United States, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

Pursuant to the Aviation and Transportation Security Act of 2001 (ATSA), the Transportation Security Administration (TSA) is responsible for the security of all modes of transportation, including rail and mass transit. However, since ATSA was enacted, TSA, has focused the majority of its resources and assets on aviation security in the past 5 years.

Congress, recognizing TSA's lack of progress in developing a security strategy for all modes of transportation, mandated the development of a National Strategy for Transportation Security (Strategy) in the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108–458). The Strategy was due April 1, 2005. TSA did not finalize this document until September of 2005, and the document that the Department of Homeland Security (Department) provided did not meet the requirements that Congress set out, especially with regard to rail and mass transit security. Moreover, under the Intelligence Reform and Terrorism Prevention Act of 2004, the Department was supposed to provide updates to the Strategy by April 1, 2006. As in the past, TSA did not meet the congressionally-set deadline and the update was months overdue. The 9/11 Public Discourse Project, the non-profit organization made up of the former members of the National Commission on Terrorist Attacks Upon the United States (9/11 Commission), recognized the flaws in the National Strategy for Transportation Security and gave TSA a "C−" for its efforts.

On December 17, 2003, the President issued Homeland Security Presidential Directive 7, "Critical Infrastructure Identification, Prioritization, and Protection" (HSPD–7). The Directive required the Department of Homeland Security to develop a National Infrastructure Protection Plan (NIPP) covering seventeen critical infrastructures and key resources. This plan was supposed to be completed by December 2004, but it was not completed until Summer 2006. Similarly, the Department was supposed to complete a Transportation Sector Specific Plan as part of the NIPP. This plan was also due in December 2004; as of today it has not yet been completed.

On December 5, 2006, the President issued Executive Order (EO) 13416 on strengthening surface transportation security, recognizing that the security of the Nation's surface transportation systems is vital to the economy and security of the Nation. In the EO, the President stated that Federal, State, and local governments and the private sector share responsibility for surface transportation security. The EO calls for implementation of a comprehensive, coordinated and efficient security program. It also states that the Secretary of Homeland Security is the principal Federal official responsible for infrastructure protection with regard to surface transportation.

The Intelligence Reform and Terrorism Prevention Act of 2004, HSPD–7, and EO 13416 all request that the Department develop a comprehensive plan for surface transportation security. Those requests still have not been answered and it suggests strongly that TSA still does not recognize the importance of protecting the Nation's rail and mass transit systems.

The Government Accountability Office (GAO) has found that the United States is not implementing many of the security options in use overseas, such as covert testing, random screening of passengers and their packages, and centralized research and testing. According to GAO, these methods have not been properly vetted by TSA and should be considered. More generally, GAO determined that much more leadership and guidance needs to be provided by the Federal government to construct a comprehensive rail and transit security plan.

For example, TSA does not require rail carriers to provide security training to employees. Instead, TSA has developed "Voluntary Action Items" for rail carriers transporting hazardous materials. These Voluntary Action Items include a recommendation that rail carriers provide training. TSA has not developed any Voluntary Action Items for rail carriers transporting non-hazardous materials.

Similarly, TSA does not require mass transit systems to provide training for their employees. In the aftermath of the London bombings in 2005, the London Underground system required all employees to receive security training. The Federal Transit Administration (FTA) and TSA jointly developed a plan for establishing and maintaining a security and emergency training program for all employees, but little has been done to implement such a program and, industry employees are not being trained to deal with security matters. Currently, according to FTA statistics, less than 25 percent of industry employees have been trained through the leading industry training program offered by the National Transit Institute in partnership with FTA.

HEARINGS

On February 6, 2007, the Subcommittee on Transportation Security and Infrastructure Protection held a hearing entitled, "Update on Federal Rail and Public Transportation Security Efforts." The Subcommittee received testimony from the Hon. Kip Hawley, Assistant Secretary, Transportation Security Administration, Department of Homeland Security; Mr. Terry Rosapep, Deputy Associate Administrator, Program Management, Federal Transit Administration, Department of Transportation; Mr. Michael Haley, Deputy Chief Counsel, Federal Railroad Administration, Department of Transportation; and Ms. Cathleen A. Berrick, Director, Homeland Security and Justice Issues, Government Accountability Office.

On February 13, 2007, the Subcommittee on Transportation Security and Infrastructure Protection held a hearing entitled, "Rail and Mass Transit Security: Industry and Labor Perspectives." The Subcommittee received testimony from Mr. Fred Weiderhold, Inspector General, Amtrak; Ms. Nancy Wilson, Vice President for Security, Association of American Railroads; Mr. Lewis G. Schiliro, Director of Interagency Preparedness, Metropolitan Transportation Authority, State of New York; Mr. Gary Maslanka, International Vice President, Director of Railroad Division, Transport Workers

Union; and Mr. John Murphy, Director, Teamster Rail Conference, International Brotherhood of Teamsters.

On March 6, 2007, the Committee on Homeland Security held a hearing on a Committee Print entitled, "Rail and Public Transportation Security Act of 2007." The Committee received testimony from the Hon. Kip Hawley, Administrator, Transportation Security Agency, Department of Homeland Security; Mr. Terri Rosapep, Deputy Associate Administrator, Program Management, Department of Transportation; Mr. Richard Fairfax, Director of Enforcement Programs, Occupational Safety and Health Administration, Department of Labor; Mr. Richard Falkenrath, Deputy Commissioner for Counterterrorism, New York City Police Department, City of New York; Mr. William Millar, President, American Public Transportation Association; Mr. Edward Hamberger, President, American Association of Railroads; Mr. Ed Rodzwicz, President, Teamsters Rail Conference; Mr. Fred Weiderhold, Inspector General, National Railroad Passenger Corporation (Amtrak); and Mr. David Shuman, Private Citizen.

COMMITTEE CONSIDERATION

H.R. 1401 was introduced by Mr. Thompson, Mr. King, Ms. Jackson-Lee, Mr. Lungren, and fifteen original cosponsors on March 8, 2007 and referred to the Committee on Homeland Security, and in addition to the Committee on Transportation and Infrastructure. Within the Committee on Homeland Security, H.R. 1401 was retained at the Full Committee.

On March 13, 2007, the Full Committee met in open markup session and ordered H.R. 1401 favorably reported to the House of Representatives, as amended, by voice vote.

Prior to introduction, on March 1, 2007, the Subcommittee on Transportation Security and Infrastructure Protection considered a Subcommittee Print to improve the security of railroads, public transportation, and over-the-road buses in the United States, and for other purposes. The Subcommittee ordered the Subcommittee Print to be forwarded to the Full Committee for consideration, amended, by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto.

The Committee on Homeland Security met, pursuant to notice, in open markup session, a quorum being present, on Tuesday, March 13, 2007, in 311 Cannon House Office Building to consider H.R. 1401, to improve the security of railroads, public transportation, and over-the-road buses in the United States, and for other purposes. The Committee took the following actions:

H.R. 1401, to improve the security of railroads, public transportation, and over-the-road buses in the United States, and for other purposes; was ordered favorably reported to the House, amended, by voice vote.

The Committee adopted the bill, as amended, by a recorded vote of 30 yeas and 0 nays (Roll Call Vote No. 5).

COMMITTEE ON HOMELAND SECURITY
U.S. House of Representatives
110th Congress

Date: Tuesday. March 13, 2007 Convened: 10:10 a.m.
Adjourned: 3:22 p.m.

Meeting on : Markup of H.R. 1401, To improve the security of railroads, public transportation, and over-the-road buses in the United States, and for other purposes.
On adopting H.R. 1401, as amended.

☐ Attendance ☒ Recorded Vote Vote Number: 5 Total: Yeas 30 Nays 0

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Ms. Loretta Sanchez California	✓			*Mr. Peter T. King* *New York, Ranking Member*	✓		
Mr. Edward J. Markey Massachusetts				*Mr. Lamar Smith* *Texas*			
Mr. Norman D. Dicks Washington	✓			*Mr. Christopher Shays* *Connecticut*	✓		
Ms. Jane Harman California	✓			*Mr. Mark E. Souder* *Indiana*	✓		
Mr. Peter A. DeFazio Oregon	✓			*Mr. Tom Davis* *Virginia*	✓		
Mrs. Nita M. Lowey New York	✓			*Mr. Daniel E. Lungren* *California*	✓		
Ms. Eleanor Holmes Norton District of Columbia	✓			*Mr. Mike Rogers* *Alabama*	✓		
Ms. Zoe Lofgren California	✓			*Mr. Bobby Jindal* *Louisiana*	✓		
Ms. Sheila Jackson-Lee Texas	✓			*Mr. David G. Reichert* *Washington*	✓		
Mrs. Donna M. Christensen Virgin Islands	✓			*Mr. Michael T. McCaul* *Texas*	✓		
Mr. Bob Etheridge North Carolina	✓			*Mr. Charles W. Dent* *Pennsylvania*	✓		
Mr. James R. Langevin Rhode Island	✓			*Ms. Ginny Brown-Waite* *Florida*	✓		
Mr. Henry Cuellar Texas	✓			*Mr. Gus M. Bilirakis* *Florida*	✓		
Mr. Christopher P. Carney Pennsylvania	✓			*Mr. David Davis* *Tennessee*	✓		
Ms. Yvette D. Clarke New York	✓			*Mr. Kevin McCarthy* *California*			
Mr. Al Green Texas	✓						
Mr. Ed Perlmutter Colorado	✓						
Vacancy							
Mr. Bennie G. Thompson Mississippi, Chairman	✓			Total	**30**	**0**	

The following amendments were offered:

An Amendment in the Nature of a Substitute offered by Mr. Thompson (#1), as amended, was AGREED TO by voice vote. A unanimous consent request by Mr. Thompson to consider the Amendment in the Nature of a Substitute as base text for purposes of amendment; was not objected to.

An amendment offered by Mr. Markey (#1A) to the Amendment in the Nature of a Substitute offered by Mr. Thompson; in section 5(d)—redesignate subparagraphs (J) and (K) as subsections (K) and (L) respectively; and (2) after subparagraph (I) insert a new subsection "(J) a strategy for implementation enhanced security for shipments of security sensitive materials under section ____." add at the end the following: new section entitled, "Sec. ____. Enhanced Security Measures for Shipments of Security Sensitive Materials."; was AGREED TO by voice vote.

An amendment offered by Ms. Brown-Waite (#1B) to the Amendment in the Nature of a Substitute offered by Mr. Thompson; to strike section 5(I) of the bill. At the appropriate place in the bill, insert the following new section entitled, "Sec. ____. Protection of Information."; was NOT AGREED TO by a recorded vote of 12 yeas and 16 nays (Roll Call Vote No. 1).

COMMITTEE ON HOMELAND SECURITY
U.S. House of Representatives
110th Congress

Date: Tuesday. March 13, 2007 Convened: 10:10 a.m.

Adjourned: 3:22 p.m.

Meeting on : Markup of H.R. 1401, To improve the security of railroads, public transportation, and over-the-road buses in the United States, and for other purposes.

On Amendment #1B by Ms. Brown-Waite

☐ Attendance ☒ Recorded Vote Vote Number: 1 Total: Yeas 12 Nays 16

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Ms. Loretta Sanchez California		✓		*Mr. Peter T. King* *New York, Ranking Member*	✓		
Mr. Edward J. Markey Massachusetts				*Mr. Lamar Smith* *Texas*			
Mr. Norman D. Dicks Washington		✓		*Mr. Christopher Shays* *Connecticut*	✓		
Ms. Jane Harman California		✓		*Mr. Mark E. Souder* *Indiana*	✓		
Mr. Peter A. DeFazio Oregon		✓		*Mr. Tom Davis* *Virginia*			
Mrs. Nita M. Lowey New York		✓		*Mr. Daniel E. Lungren* *California*	✓		
Ms. Eleanor Holmes Norton District of Columbia		✓		*Mr. Mike Rogers* *Alabama*	✓		
Ms. Zoe Lofgren California		✓		*Mr. Bobby Jindal* *Louisiana*	✓		
Ms. Sheila Jackson-Lee Texas		✓		*Mr. David G. Reichert* *Washington*	✓		
Mrs. Donna M. Christensen Virgin Islands		✓		*Mr. Michael T. McCaul* *Texas*	✓		
Mr. Bob Etheridge North Carolina		✓		*Mr. Charles W. Dent* *Pennsylvania*	✓		
Mr. James R. Langevin Rhode Island		✓		*Ms. Ginny Brown-Waite* *Florida*	✓		
Mr. Henry Cuellar Texas		✓		*Mr. Gus M. Bilirakis* *Florida*	✓		
Mr. Christopher P. Carney Pennsylvania				*Mr. David Davis* *Tennessee*	✓		
Ms. Yvette D. Clarke New York		✓		*Mr. Kevin McCarthy* *California*			
Mr. Al Green Texas		✓					
Mr. Ed Perlmutter Colorado		✓					
Vacancy							
Mr. Bennie G. Thompson Mississippi, Chairman		✓		Total	**12**	**16**	

An amendment offered by Mr. Lungren (#1C) to the Amendment in the Nature of a Substitute offered by Mr. Thompson; in section 14, strike subsection (b), (c), and (d) and insert the following new subsections "(b) Enforcement Action."; "(c) Remedies"; (d) Use of State Secrets Privilege"; and Strike section 14(e).; was NOT AGREED TO by a recorded vote of 12 yeas and 16 nays (Roll Call Vote No. 2).

COMMITTEE ON HOMELAND SECURITY
U.S. House of Representatives
110th Congress

Date: Tuesday. March 13, 2007 Convened: 10:10 a.m.

Adjourned: 3:22 p.m.

Meeting on : Markup of H.R. 1401, To improve the security of railroads, public transportation, and over-the-road buses in the United States, and for other purposes.

On Amendment #1C by Mr. Lungren

☐ Attendance ☒ Recorded Vote Vote Number: 2 Total: Yeas 12 Nays 16

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Ms. Loretta Sanchez California		✓		*Mr. Peter T. King* *New York, Ranking Member*	✓		
Mr. Edward J. Markey Massachusetts				*Mr. Lamar Smith* *Texas*			
Mr. Norman D. Dicks Washington		✓		*Mr. Christopher Shays* *Connecticut*	✓		
Ms. Jane Harman California		✓		*Mr. Mark E. Souder* *Indiana*	✓		
Mr. Peter A. DeFazio Oregon		✓		*Mr. Tom Davis* *Virginia*			
Mrs. Nita M. Lowey New York		✓		*Mr. Daniel E. Lungren* *California*	✓		
Ms. Eleanor Holmes Norton District of Columbia		✓		*Mr. Mike Rogers* *Alabama*	✓		
Ms. Zoe Lofgren California		✓		*Mr. Bobby Jindal* *Louisiana*	✓		
Ms. Sheila Jackson-Lee Texas		✓		*Mr. David G. Reichert* *Washington*	✓		
Mrs. Donna M. Christensen Virgin Islands		✓		*Mr. Michael T. McCaul* *Texas*	✓		
Mr. Bob Etheridge North Carolina		✓		*Mr. Charles W. Dent* *Pennsylvania*	✓		
Mr. James R. Langevin Rhode Island		✓		*Ms. Ginny Brown-Waite* *Florida*	✓		
Mr. Henry Cuellar Texas		✓		*Mr. Gus M. Bilirakis* *Florida*	✓		
Mr. Christopher P. Carney Pennsylvania				*Mr. David Davis* *Tennessee*	✓		
Ms. Yvette D. Clarke New York		✓		*Mr. Kevin McCarthy* *California*			
Mr. Al Green Texas		✓					
Mr. Ed Perlmutter Colorado		✓					
Vacancy							
Mr. Bennie G. Thompson Mississippi, Chairman		✓		Total	**12**	**16**	

An amendment offered by Mr. Lungren (#1D) to the Amendment in the Nature of a Substitute offered by Mr. Thompson; to insert at the appropriate place in the bill, a new section entitled, "Sec. ____. No Third Party Right of Action."; was NOT AGREED TO by voice vote.

An amendment offered by Mr. McCaul (#1E) to the Amendment in the Nature of a Substitute offered by Mr. Thompson; at the appropriate place in the bill, insert the following new section: entitled, "Sec. ____. Technology Standards and Clearinghouse to Improve Security of Covered Transportation."; was AGREED TO by voice vote.

An amendment offered by Mr. Dent (#1F) to the Amendment in the Nature of a Substitute offered by Mr. Thompson; at the appropriate place in the bill, insert the following: new section entitled, "Sec. ____. Automated Targeting System for Persons Entering or Departing the United States."; was NOT AGREED TO by a recorded vote of 12 yeas and 17 nays (Roll Call Vote No. 3).

COMMITTEE ON HOMELAND SECURITY
U.S. House of Representatives
110th Congress

Date: Tuesday. March 13, 2007 Convened: 10:10 a.m.

Adjourned: 3:22 p.m.

Meeting on : Markup of H.R. 1401, To improve the security of railroads, public transportation, and over-the-road buses in the United States, and for other purposes.

On Amendment #1F by Mr. Dent

☐ Attendance ☒ Recorded Vote Vote Number: 3 Total: Yeas 12 Nays 17

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Ms. Loretta Sanchez California		✓		*Mr. Peter T. King* *New York, Ranking Member*	✓		
Mr. Edward J. Markey Massachusetts				*Mr. Lamar Smith* *Texas*			
Mr. Norman D. Dicks Washington		✓		*Mr. Christopher Shays* *Connecticut*	✓		
Ms. Jane Harman California		✓		*Mr. Mark E. Souder* *Indiana*	✓		
Mr. Peter A. DeFazio Oregon		✓		*Mr. Tom Davis* *Virginia*			
Mrs. Nita M. Lowey New York		✓		*Mr. Daniel E. Lungren* *California*	✓		
Ms. Eleanor Holmes Norton District of Columbia		✓		*Mr. Mike Rogers* *Alabama*	✓		
Ms. Zoe Lofgren California		✓		*Mr. Bobby Jindal* *Louisiana*	✓		
Ms. Sheila Jackson-Lee Texas		✓		*Mr. David G. Reichert* *Washington*	✓		
Mrs. Donna M. Christensen Virgin Islands		✓		*Mr. Michael T. McCaul* *Texas*	✓		
Mr. Bob Etheridge North Carolina		✓		*Mr. Charles W. Dent* *Pennsylvania*	✓		
Mr. James R. Langevin Rhode Island		✓		*Ms. Ginny Brown-Waite* *Florida*	✓		
Mr. Henry Cuellar Texas		✓		*Mr. Gus M. Bilirakis* *Florida*	✓		
Mr. Christopher P. Carney Pennsylvania		✓		*Mr. David Davis* *Tennessee*	✓		
Ms. Yvette D. Clarke New York		✓		*Mr. Kevin McCarthy* *California*			
Mr. Al Green Texas		✓					
Mr. Ed Perlmutter Colorado		✓					
Vacancy							
Mr. Bennie G. Thompson Mississippi, Chairman		✓		Total	**12**	**17**	

An amendment offered by Mr. Bilirakis (#1G) to the Amendment in the Nature of a Substitute offered by Mr. Thompson; at the appropriate place in the bill, insert the following new section entitled, "Sec.____. Rail Tank Car Security Testing."; was AGREED TO by voice vote.

An amendment offered by Mr. McCaul (#1H) to the Amendment in the Nature of a Substitute offered by Mr. Thompson; to insert the following new section at the appropriate place: "Sec. ____. Rail Radiological and Nuclear Detection."; was AGREED TO by voice vote.

An amendment offered by Mr. King (#1I) to the Amendment in the Nature of a Substitute offered by Mr. Thompson; at the end of the bill add the following new section entitled "Sec. ____. Terrorist Watchlist and Immigration Status Review at High-Risk Transportation Sites."; was AGREED TO by voice vote.

An amendment offered by Mr. Lungren (#1J) to the Amendment in the Nature of a Substitute offered by Mr. Thompson; in section 23, insert the following (and redesignate the subsequent section accordingly): "(e) No Preemption of State Law."; was WITHDRAWN by unanimous consent. A unanimous consent request by Mr. Lungren to modify the amendment so as to amend section 22; was not objected to.

An amendment offered by Mr. Rogers (#1K) to the Amendment in the Nature of a Substitute offered by Mr. Thompson; to add at the end of the bill the following (and redesignate the preceding sections as Title I—Rail and Public Transportation Security): a new title entitled "Title II—Secure Transportation Through Increased Use of Canine Detection Teams."; was AGREED TO by voice vote.

An en bloc amendment offered by Mr. Davis of Virginia (#1L) to the Amendment in the Nature of a Substitute offered by Mr. Thompson; in section 5, strike section 5(j).; in section 14(b)(1), strike subparagraph (B).; In section 14(h)(1), strike subparagraphs (3) and (5); and in section 14(h)(1), strike subparagraph (C).; in section 14(c)(2)(C), strike "and reasonable attorney fees; and" and insert "reasonable attorney fees, and compensatory damages awarded under this section". In section 14(c)(2), strike subparagraph (D).; in section 14(d)(3) after "relief to be granted" insert "Except as provided herein, the Court shall only find for the plaintiff if the Inspector General's investigation has determined that the assertion of the state secret is preventing the plaintiff from substantially establishing a prima facie case."; in section 14, strike subsection (e).; was NOT AGREED TO by voice vote. A unanimous consent request by Mr. Davis of Virginia to consider his amendments en bloc; was not objected to.

An en bloc amendment offered by Mr. McCaul (#1M) to the Amendment in the Nature of a Substitute offered by Mr. Thompson; to add at the end the following: new section entitled, "Sec. ____. Requirements to Provide Preference to Qualified Anti-Terrorism Technologies."; at the end of the subcommittee print add the following: new section entitled, "Sec. ____. Promoting Liability Protection for Providers of Covered Transportation and Related Technologies.; was AGREED TO by voice vote. A unanimous consent request by Mr. McCaul to consider his amendments en bloc; was not objected to.

An amendment offered by Mr. Dent (#1N) to the Amendment in the Nature of a Substitute offered by Mr. Thompson; at the end of the bill add the following: new section entitled, "Sec. ____ International Rail Security Program."; was AGREED TO, as amended, by voice vote. A unanimous consent request by Mr. Dent to strike subsection (c); was not objected to.

An amendment offered by Mr. Dent (#1O) to the Amendment in the Nature of a Substitute offered by Mr. Thompson; at the appropriate place in the bill, insert the following new section entitled "Sec. ____. Passenger and Crew Manifests for Vehicles Arriving in or Departing From the United States; was NOT AGREED TO by a recorded vote of 12 yeas and 17 nays (Roll Call Vote No. 4).

COMMITTEE ON HOMELAND SECURITY
U.S. House of Representatives
110th Congress

Date: Tuesday. March 13, 2007 Convened: 10:10 a.m.
Adjourned: 3:22 p.m.

Meeting on : Markup of H.R. 1401, To improve the security of railroads, public transportation, and over-the-road buses in the United States, and for other purposes.
On Amendment #1O by Mr. Dent

☐ Attendance ☒ Recorded Vote Vote Number: 4 Total: Yeas 12 Nays 17

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Ms. Loretta Sanchez California		✓		*Mr. Peter T. King* *New York, Ranking Member*	✓		
Mr. Edward J. Markey Massachusetts				*Mr. Lamar Smith* *Texas*			
Mr. Norman D. Dicks Washington		✓		*Mr. Christopher Shays* *Connecticut*	✓		
Ms. Jane Harman California		✓		*Mr. Mark E. Souder* *Indiana*	✓		
Mr. Peter A. DeFazio Oregon		✓		*Mr. Tom Davis* *Virginia*			
Mrs. Nita M. Lowey New York		✓		*Mr. Daniel E. Lungren* *California*	✓		
Ms. Eleanor Holmes Norton District of Columbia		✓		*Mr. Mike Rogers* *Alabama*	✓		
Ms. Zoe Lofgren California		✓		*Mr. Bobby Jindal* *Louisiana*	✓		
Ms. Sheila Jackson-Lee Texas		✓		*Mr. David G. Reichert* *Washington*	✓		
Mrs. Donna M. Christensen Virgin Islands		✓		*Mr. Michael T. McCaul* *Texas*	✓		
Mr. Bob Etheridge North Carolina		✓		*Mr. Charles W. Dent* *Pennsylvania*	✓		
Mr. James R. Langevin Rhode Island		✓		*Ms. Ginny Brown-Waite* *Florida*	✓		
Mr. Henry Cuellar Texas		✓		*Mr. Gus M. Bilirakis* *Florida*	✓		
Mr. Christopher P. Carney Pennsylvania		✓		*Mr. David Davis* *Tennessee*	✓		
Ms. Yvette D. Clarke New York		✓		*Mr. Kevin McCarthy* *California*			
Mr. Al Green Texas		✓					
Mr. Ed Perlmutter Colorado		✓					
Vacancy							
Mr. Bennie G. Thompson Mississippi, Chairman		✓		Total	**12**	**17**	

A modified amendment offered by Mr. Lungren (#1P) to the Amendment in the Nature of a Substitute offered by Mr. Thompson; in section 22, insert the following (and redesignate the subsequent section accordingly): "(e) No Preemption of State Law."; was AGREED TO by voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 1401, the Rail and Public Transportation Security Act of 2007, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

MARCH 21, 2007.

Hon. BENNIE G. THOMPSON,
Chairman, Committee on Homeland Security,
House of Representatives, Washington, DC

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1401, the Surface Transportation and Rail Security Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact are Megan Carroll (for federal costs) and Sarah Puro (for federal costs and the state and local impact), and Fatimot Ladipo (for the private-sector impact).

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 1401—Rail and Public Transportation Security Act of 2007

Summary: CBO estimates that H.R. 1401 would authorize the appropriation of $7.3 billion over the 2008–2012 period for security-related programs carried out by the Department of Homeland Security (DHS) and the Department of Transportation (DOT) involving railroads, public transportation entities, buses, and trucks. Those amounts include funds for security grants to transportation entities, research activities, increased numbers of inspectors for rail security, a program to screen certain transportation workers, and for other DHS activities related to transportation security. Assuming appropriation of the amounts authorized and estimated to be necessary, CBO estimates that implementing the bill would cost about $500 million in 2008 and about $6 billion over the 2008–2012 period.

Enacting H.R. 1401 could increase both direct spending and revenues, but CBO estimates that any such increases would be negligible.

H.R. 1401 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would require certain public transportation agencies and public rail carriers to conduct vulnerability assessments, to create and implement security plans, to train all employees in security, to complete background checks of employees, and to submit additional information to DHS. Transportation entities covered by the provisions in the bill also would be subject to new projections for "whistleblower" employees, and the bill would preempt state laws covering such employees. While CBO cannot precisely estimate the aggregate costs of those mandates, based on information from industry and government sources, we estimate that the costs to state, local, and tribal governments would substantially exceed the threshold established in UMRA ($66 million in 2007, adjusted annually for inflation) in one of the first five years after enactment. The bill would authorize appropriations of funds to cover most of those costs.

H.R. 1401 contains several private-sector mandates as defined in UMRA because it would require certain rail and bus carriers to implement security programs and procedures. Those carriers also would be subject to new whistleblower protections for their employees. In addition, the bill would require certain rail carriers to implement enhanced security measures for shipments of materials determined to pose a risk to national security. An estimate of the aggregate cost of those mandates cannot be determined because it depends on regulations to be developed by DHS under the bill. Based on information from industry and government sources, however, CBO expects that the cost of those mandates would be large and would likely exceed the annual threshold established by UMRA for private-sector mandates ($131 million in 2007, adjusted annually for inflation) in at least one of the first five years the mandates are in effect. The bill would authorize an appropriation of funds for grant assistance to cover some of the costs of complying with mandates in the bill.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1401 is shown in the following table. The costs of this legislation fall within budget functions 400 (transportation), 450 (community and regional development), and 750 (administration of justice).

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Grants for Public Transportation Security:					
Authorization Level	775	825	880	880	0
Estimated Outlays	116	356	535	677	657
Grants for Rail Security:					
Authorization Level	600	600	600	600	0
Estimated Outlays	150	420	600	600	450
Grants to Amtrak:					
Authorization Level	35	35	35	35	0
Estimated Outlays	35	35	35	35	0
Grants for Over-the-Road Bus Security:					
Authorization Level	12	25	25	25	0
Estimated Outlays	2	9	17	22	20

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
Research Activities:					
Estimated Authorization Level	200	205	209	214	0
Estimated Outlays	153	189	209	214	50
Rail Security Inspectors:					
Estimated Authorization Level	30	45	60	60	60
Estimated Outlays	10	30	45	60	60
Threat Assessment Screening:					
Estimated Authorization Level	25	25	15	10	1
Estimated Outlays	15	20	20	15	5
Other DHS Activities:					
Estimated Authorization Level	24	24	30	33	39
Estimated Outlays	15	26	29	34	39
Total Proposed Changes:					
Estimated Authorization Level	1,701	1,784	1,854	1,857	100
Estimated Outlays	497	1,086	1,489	1,657	1,281

Basis of estimate: CBO estimates that implementing H.R. 1401 would cost $6 billion over the 2008–2012 period, assuming appropriation of amounts authorized and estimated to be necessary. Enacting H.R. 1401 also could increase both direct spending and revenues, but we estimate that any such increases would be negligible.

Spending subject to appropriation

H.R. 1401 would specifically authorize the appropriation of nearly $6.2 billion over the 2008–2011 period, primarily for grants to support programs aimed at improving the security of rail and surface transportation through programs administered by DHS and DOT. In addition, CBO estimates that funding other activities authorized by the bill would require appropriations totaling $1.1 billion over the next five years. That amount would be used to conduct research related to transportation security, hire additional rail security inspectors, establish a program to screen certain transportation workers, and carry out other activities related to transportation security. In total, CBO estimates that implementing H.R. 1401 would cost $500 million in 2008 and $6 billion over the 2008–2012 period, assuming appropriation of amounts authorized and estimated to be necessary.

Grants. The bill would authorize the appropriation of about $6 billion in grants over the 2008–2011 period for security programs for public transit agencies, rail entities, certain buses, and Amtrak. In general, those amounts include funds for upgrading certain capital assets, security training, and new equipment for communications and for the detection of certain weapons. Grants to Amtrak would be to improve the security of certain tunnels in the Amtrak rail system. Specifically, the bill would authorize the appropriation of:

- Nearly $3.4 billion for public transportation security grants over the 2008–2011 period;
- $2.4 billion for grants to improve rail security over the next four years;
- $140 million for grants to Amtrak to improve the security of certain train tunnels in New York, Maryland, and Washington, D.C.; and
- $87 million for grants for over-the-road bus security. (Over-the-road buses are characterized by an elevated passenger deck above a baggage compartment.)

Assuming appropriation of those specified amounts, CBO estimates that implementing those grant programs would cost $303 million in 2008 and $4.8 billion over the next five years, with spending of roughly $1.2 billion occurring after 2012.

Research Activities. CBO estimates that implementing the research programs authorized in the bill would cost $153 million in 2008 and $815 million over the 2008–2012 period. Those amounts include $134 million in 2008 and $625 million over the 2008–2012 period to extend the authorization for the National Domestic Preparedness Consortium (NDPC). The NDPC identifies, develops, and tests security training methods and received appropriations totaling $145 million in 2007.

Further, the research cost totals include $18 million in 2008 and $185 million over the 2008–2012 period for DHS to establish a program to research and develop methods to enhance the security of rail and public transportation systems. The bill also would require DHS to establish a Center for Excellence for Transportation Security at an institution of higher education. CBO estimates that this provision would cost $5 million over the 2008–2012 period.

Rail Security Inspectors. H.R. 1401 would require DHS to increase the number of Surface Transportation Security Inspectors (STSIs) it employs from 100 to 600 inspectors by 2010. (STSIs perform inspections of certain facilities including stations and terminals for suspicious or unattended items, among other potential security threats.) Under the bill, the new inspectors would be responsible for assessing security plans submitted by certain transportation entities as required by the bill. Based on information from DHS, CBO estimates that hiring an additional 500 inspectors would cost $10 million in 2008 and $205 million over the 2008–2012 period.

Threat Assessment Screening. H.R. 1401 would require DHS to establish a program to screen individuals employed by railroad or over-the-road bus carriers or entities that provide public transportation. Under the bill, DHS would review the immigration status of such individuals and check their names against terrorist watch lists.

Based on information from DHS about the cost of establishing similar screening programs, CBO estimates that the program would initially cost $75 million over the next five years, assuming appropriation of the necessary amounts. That amount includes the agency's costs to establish the necessary infrastructure to collect and analyze information about workers to be screened. Once the system is in place, DHS would incur additional costs to screen transportation workers and adjudicate disputes. Under current law, DHS is authorized to charge fees to individuals to recover the costs of such activities. (Such fees are credited as discretionary offsetting collections.) For this estimate, CBO assumes that DHS would charge fees sufficient to cover spending for such costs, which would be subject to appropriation.

Other DHS Activities. Based on information from DHS, CBO estimates that implementing other programs authorized by the bill would require appropriations totaling $150 million over the next five years. That amount includes:

- $60 million to train and deploy additional canine detection teams, particularly to detect explosives at high-threat transportation systems;
- $50 million for security training programs for railroad and public transportation employees;
- $5 million for security training and exercises to test and evaluate the ability of transportation entities covered by the bill to prevent and respond to acts of terrorism;
- $25 million to develop and implement a plan to improve information sharing among appropriate stakeholders about security threats and vulnerabilities of transportation systems; and
- $7 million for various studies and reports.

Those estimates are based on information from DHS regarding costs of existing or similar programs. Based on historical spending patterns, CBO estimates that fully funding those activities would cost $15 million in 2008 and $143 million over the next five years, assuming appropriation of the necessary amounts.

Direct spending and revenues

H.R. 1401 would establish civil penalties for failing to comply with certain regulations established by DHS and criminal penalties for employers that violate whistle-blower protections established in the bill. Thus, the federal government might collect additional fines if the bill is enacted. Collections of civil fines are recorded as revenues and deposited in the Treasury; collections of criminal fines are deposited in the Crime Victims Fund and later spent. CBO expects that any additional receipts and direct spending from enacting those provisions would be negligible.

Estimated impact on state, local, and tribal governments: H.R. 1401 contains intergovernmental mandates as defined in UMRA because it would require certain public transportation agencies and public rail carriers to conduct vulnerability assessments, to create and implement security plans, to train all employees in security, to complete background checks of employees, and to submit additional information to DHS. Transportation entities covered by the provisions in the bill also would be subject to new projections for whistleblower employees, and the bill would preempt state laws covering such employees. While CBO cannot determine a precise estimate of the aggregate costs of those mandates, based on information from industry and government sources, we estimate that the costs to state, local, and tribal governments would substantially exceed the threshold established in UMRA ($66 million in 2007, adjusted annually for inflation) in one of the first five years after enactment. The bill would authorize appropriations of funds to cover most of those costs.

Requirements on public transit and rail carriers

The requirements in the bill would affect more than 300 public transit and rail entities. Under current law, about one-third of affected agencies have already conducted vulnerability assessments and implemented security plans. Those entities likely would not be required to repeat that part of the process. However, they would be required to train all employees in security and complete background checks of certain employees.

Further, more than 200 transit and rail systems would be required to complete vulnerability assessments, to create and implement security plans, train all employees in security, and complete background checks of employees. Although the costs to individual systems would vary, based on information from industry and government sources, CBO estimates that the aggregate costs to transit and rail systems would exceed the threshold established in UMRA in at least one of the first five years after enactment. The bill would authorize the appropriation of $3.4 billion over the 2008–2012 period to cover those costs.

Whistleblower protections

Section 112 would prohibit public transit and rail entities from discharging or discriminating against any employee who reports a perceived threat to security.

Under current law, employees are protected if they report any safety issues. Granting of additional whistleblower protections would impose an intergovernmental mandate, as defined in UMRA, on public transit and rail entities. Because compliance with those broader whistleblower protections likely would involve only a small adjustment in administrative procedures, however, CBO estimates that the provision would impose only minimal additional costs on those entities.

Estimated impact on the private sector: H.R. 1401 contains several private-sector mandates as defined in UMRA because it would require certain rail and bus carriers to implement security programs and procedures. Those carriers also would be subject to new whistleblower protections for their employees. In addition, the bill would require certain rail carriers to implement enhanced security measures for shipments of materials determined to pose a risk to national security. An estimate of the aggregate cost of those mandates cannot be determined because it depends on regulations to be developed by DHS under the bill. Based on information from industry and government sources, however, CBO expects that the cost of those mandates would be large and would likely exceed the annual threshold established by UMRA for private-sector mandates ($131 million in 2007, adjusted annually for inflation) in at least one of the first five years the mandates are in effect. The bill would authorize an appropriation of funds for grant assistance to cover some of the costs of complying with mandates in the bill.

Requirements on rail and bus carriers

The bill contains several mandates on providers of covered transportation which, under the bill, include private rail carriers and over-the-road bus carriers, including passenger motor coaches. The bill would impose mandates by requiring those transportation providers to:

- Conduct vulnerability assessments and implement security plans;
- Provide security training for their employees;
- Implement an appeal process related to background checks for their employees and conduct additional checks for employees of high-risk providers; and
- Provide whistleblower protections for their employees.

The bill would authorize an appropriation of $612 million for fiscal year 2008 and $625 million for each of fiscal years 2009 through 2011 to the Secretary of Homeland Security for grants to assist rail carriers and over-the-road buses with security programs.

Vulnerability Assessments and Security Plans. The bill would require the Secretary of Homeland Security to assign providers of covered transportation to one of three tiers based on risk. Providers of covered transportation would have to provide information necessary to determine their tier to the Secretary upon request. Section 103 would direct the Secretary, within one year of enactment, to issue regulations that require high- or medium-risk rail carriers and over-the-road bus providers to conduct vulnerability assessments and to prepare and implement security plans based on guidelines to be established by the Secretary. Additionally, this section would require those rail carriers and over-the-road bus providers to implement any necessary interim security measures to deter a transportation security incident. The Secretary also would establish a security program for lower-risk rail and bus carriers.

According to industry sources, some of the providers of covered transportation are currently engaged in activities similar to the assessment and planning that would be required under the bill. The direct cost of the mandates would depend on the regulations to be issued under the bill. The incremental costs for the industry to comply with the requirements of the bill could be substantial, depending on the guidelines established by DHS.

Security Training Program. Section 109 would impose a mandate by requiring providers of covered transportation to develop security training programs and submit them to the Secretary for approval. Once approved, providers would be required to complete training of all workers covered under the program within one year. Based on data from industry sources, roughly 300,000 rail and over-the-road bus employees may have to take the security training required by the bill. The direct cost of the mandate could be large relative to UMRA's threshold for private-sector mandates depending on the guidance provided by the Secretary for such training.

Appeal Process for Background Checks and Additional Background Checks for High-Risk Employers. Section 120 would require providers of covered transportation who conduct background checks on their employees to provide a procedure for persons adversely impacted by a background check to appeal the adverse information. Because compliance with this requirement would involve an adjustment in existing administrative procedures, CBO estimates that the incremental costs of this provision would be small.

Section 132 contains a mandate on rail carriers and over-the-road bus providers assigned to the high-risk tier by requiring them to conduct checks of their employees against available terrorist watch lists and immigration status databases. Without information about the number of carriers and employees in the high-risk tier or information about how such checks would be implemented, CBO cannot determine the cost of complying with this mandate.

Whistleblower Protections. Section 112 would prohibit providers of covered transportation from discharging or discriminating against any employee who reports a perceived threat to security.

Under current law, employees are protected if they report on issues related to safety. Requiring providers of covered transportation to provide additional whistleblower protections would impose a private-sector mandate on those employers. Because compliance with the broader whistleblower protections likely would involve only a small adjustment in administrative procedures, however, CBO estimates that this provision would impose only minimal additional costs on rail and over-the-road bus carriers.

Enhanced security measures for shipments of security sensitive materials

The bill would require DHS to issue regulations to require enhanced security measures for shipments of materials determined by the Secretary to pose a significant risk to national security. Section 124 would require rail carriers to compile commodity data by route and storage pattern, and to submit a written analysis annually of the security risks for each route and storage pattern. By the end of each year rail carriers would have to identify alternative routes and storage patterns that will avoid areas of concern identified by DHS for each of the transportation routes or facilities it used to ship or store materials determined to pose a significant risk through those areas of concern. Without information about the regulations to implement the program, CBO has no basis to determine the cost of complying with this mandate.

Previous CBO estimate: On February 22, 2007, CBO transmitted a cost estimate for S. 763, the Public Transportation Terrorism Prevention Act of 2007, as ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on February 8, 2007, and on February 28, 2007, CBO transmitted a cost estimate for S. 184, the Surface Transportation and Rail Security Act of 2007, as ordered reported by the Senate Committee Commerce, Science, and Transportation on February 15, 2007. Those two bills contain provisions similar to those in H.R. 1401, although S. 763 would authorize the appropriation of $3.5 billion for security-related programs, and S. 184 would authorize the appropriation of $1.1 billion for such programs. The differences among those bills are reflected in CBO's cost estimates.

S. 184 contains several private-sector mandates as defined in UMRA because it would require rail and motor carriers to comply with reporting requirements and certain security procedures. The bill would impose two mandates that are similar to mandates imposed in H.R. 1401. S. 184 contains a mandate on rail carriers by requiring them to provide security training for their front-line workers. That bill also would require rail carriers to provide whistleblower protections to their employees. The aggregate cost of all the mandates in S. 184 would depend on future regulations, and CBO could not determine if those costs would exceed UMRA's annual threshold for private-sector mandates.

Estimate prepared by: Federal costs: Megan Carroll, Sarah Puro, Dan Hoople, and Mark Grabowicz. Impact on state, local, and tribal governments: Sarah Puro. Impact on the private sector: Fatimot Ladipo.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

In addition, the Committee has included within H.R. 1401 provisions for assignment of all covered providers of transportation to one of several risk-based tiers, followed by notice to the providers of the assignment within 60 days; issuance of regulations within one year of enactment requiring high- and medium-risk covered transportation providers to complete vulnerability assessments and implement security plans and establish standards and protocols for such assessments and plans; submission of a report to the appropriate Congressional Committees, within 180 days of enactment, regarding the feasibility of name-based checks against terror watch lists for all Amtrak passengers; development of a plan to improve tactical and strategic information sharing with respect to threats and vulnerabilities to covered transportation for dissemination to Federal, State, and local agencies, tribal governments, and appropriate stakeholders within 90 days of enactment; development of security training programs for railroad and public transportation employees (including front-line employees) within 90 days of enactment; development of security exercise programs for railroad and public transportation employees (including front-line employees) increasing the current number of Surface Transportation Security Inspectors to 600 by 2010; implementation of a threat assessment screening program for all employees of covered transportation providers within 180 days of enactment, including a name-based check for all employees against terrorist watch lists and immigration status lists; submission of a report (including a classified report, as appropriate) containing a comprehensive threat assessment of the Nation's school bus transportation system within one year of enactment; issuance of regulations requiring enhanced security measures for shipments of security sensitive materials within 90 days of enactment; submission of a report within 30 days of completing a rail tank car security assessment to the appropriate congressional committees; testing and evaluation of prototype systems to detect nuclear or radiological materials in rail security venues within one year of enactment and submission of a report to Congress by September 30, 2008; submission of a report on the personnel and resource needs to fulfill the requirements of increasing the number of canine teams as prescribed in section 202 within 90 days of enactment; and submission of a report on the personnel and resource needs to fulfill the requirements of increasing the number of domestically bred canines to help meet the increase in demand for canine detection teams as prescribed in section 203 within 90 days of enactment.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(a) of rule XXI of the Rules of the House of Representatives, no congressional earmarks, limited tax benefits, or limited tariff benefits are included in H.R. 1401.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 1, which grants Congress the power to provide for the common Defense of the United States.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title and table of contents

This section establishes the short title of H.R. 1401 as the "Rail and Public Transportation Security Act of 2007" and lists a table of contents for the bill.

Section 2. Definitions

This section defines several terms, including "appropriate stakeholders" which are providers of covered transportation, organizations representing providers of covered transportation, labor organizations, shippers of hazardous material, manufacturers of rail and transit cars, State departments of transportation, public safety officials, police and fire officials, and other relevant persons.

The term "covered transportation" is defined as transportation provided by a railroad carrier, public transportation, or an over-the-road bus.

The term "over-the-road bus" is defined as a bus characterized by an elevated passenger deck over a baggage compartment.

The definitions of the terms "designated recipient," "public transportation," "railroad," and "railroad carrier" all reference Title 49 of the U.S. Code. "Terrorism" is defined as having the same meaning as it does under section 2 of the Homeland Security Act of 2002 (P.L. 107–296). The word "State" includes the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and other territories and possessions of the United States.

Section 101. National Strategy for Rail and Public Transportation Security

This section requires the Secretary of Homeland Security (Secretary), in consultation with the Secretary of Transportation, to de-

velop a comprehensive modal plan (the National Strategy for Rail and Public Transportation Security) for covered transportation.

The plan must describe roles and responsibilities of all relevant parties; identify and address gaps and unnecessary overlap in those roles and responsibilities; describe methods for working with all relevant parties and for utilizing expertise possessed by the Department of Homeland Security (DHS), the Department of Transportation (DOT), and other agencies; provide for expediting security clearance processes to facilitate intelligence and information sharing; describe past DHS and DOT reviews of terrorists attacks, including lessons and incorporation of those lessons learned into current and future security efforts; include a strategy and timeline for DHS, DOT, and other entities to research and develop new technology relevant to securing covered transportation; set measurable goals and schedules for realizing those goals; include a framework for resuming operations following an act of terrorism; describe current and future outreach and public education initiatives; and develop a process for coordinating security strategies and plans between agencies.

Section 102. Assignment of providers of covered transportation to risk-based tiers

This section requires the Secretary of Homeland Security (Secretary) to assign each provider of covered transportation to one of no fewer than three tiers based on risk. Within 60 days of assignment, the Secretary shall notify the provider of its assignment and the reasons for such assignment. At least two tiers established under this section shall be designated for high- and medium-risk providers.

Section 103. Rail and public transportation assessments and plans

This section requires the Secretary of Homeland Security (Secretary), in consultation with the Secretary of Transportation, to issue regulations within one year of enactment that require high- and medium-risk providers to complete vulnerability assessments and implement security plans; establish standards and protocols for such assessments and plans; and establish a security program for providers of covered transportation not assigned to a high- or medium-risk tier (and therefore not required to submit a vulnerability assessment or security plan to the Secretary for approval).

Within six months of issuance of the regulations, high- and medium-risk providers must complete and submit their vulnerability assessments and security plans to the Secretary for review and approval. Within twelve months of issuance of the regulations, the Secretary, in consultation with the Secretary of Transportation, must review and approve the vulnerability assessments and security plans, and periodically review security plans upon resubmission by providers (resubmission and review are mandatory after three years, and every five years thereafter). During the review period, providers must implement interim security measures.

Vulnerability assessments and security plans conducted pursuant to this section may be built upon prior assessments and plans. The Secretary may endorse existing vulnerability assessments and security plans if the Secretary determines that these assessments and plans meet the requirements of this section. The Secretary

may also allow coordinated assessments and plans where two or more providers have shared facilities (such as tunnels, bridges, or stations).

The vulnerability assessments for high- or medium-risk providers must identify and evaluate critical assets and infrastructure; identify threats to such assets and infrastructure; identify security weaknesses (including physical, passenger, cargo, electronic, communications, utilities, and others); identify redundant or back-up systems to ensure continued operation in the event of attack or other disruption; and incorporate threat information provided by the Department of Homeland Security and other sources.

Security plans for high- and medium-risk providers must identify a security coordinator with certain powers and duties; plan for periodic drills and exercises that include local law enforcement and emergency responders; list needed capital and operational improvements; describe evacuation and passenger communication plans; identify steps to be taken to coordinate response measures with State and local law enforcement and emergency responders; outline a strategy and timeline for conducting training of provider employees; describe enhanced security measures to be taken in periods of heightened security risk; outline plans for redundant and backup systems to ensure the continued operation of critical elements of the system in the event of an attack or other disruption; include plans for locating railroad cars transporting hazardous materials or nuclear waste; and include other actions or procedures deemed appropriate by the Department of Homeland Security

Moreover, this section requires the Secretary, in consultation with the Secretary of Transportation, to ensure that all security plans are consistent with the National Strategy for Rail and Public Transportation Security. The Department of Homeland Security, by regulation, will also establish security performance requirements for all security plans; these requirements must be flexible, but shall become stricter for providers placed in higher risk tiers.

This section also provides for administrative, civil, and criminal penalties for failure to comply with this section or regulations issued pursuant to this section. The Secretary may impose an administrative penalty of not more than $100,000 for failure to comply with this section, although there is opportunity for redress via a notice requirement and opportunity for a hearing. Civil penalties include injunctive relief and a fine of not more than $75,000 for each day on which a violation occurs or failure to comply continues. Intentional violation of this section may incur criminal penalties of not more than $50,000 for each day of violation and/or imprisonment for not more than two years.

This section requires the Secretary to submit a report to the appropriate Congressional Committees, within 180 days of enactment, regarding the feasibility of name-based checks against terror watch lists for all Amtrak passengers. In the view of the Committee, the purpose of the report on the feasibility of name-based checks for Amtrak passengers is to determine if such checks can authenticate a passenger's identity and help ensure they are not a threat to other passengers or the rail infrastructure. The study will be used to determine the efficacy of using terrorist watch lists or other databases available to establish a passenger's identity and threat risk, while simultaneously safeguarding the privacy rights of pas-

sengers. Any system used must have the capability to provide answers on a passenger's threat risk in near-real time.

Nothing in this section shall be construed to require the disclosure of a vulnerability assessment or security plan to the extent such information is protected by a disclosure exemption under 5 U.S.C. § 552 (commonly known as the Freedom of Information Act). Additionally, nothing in this section shall be construed to affect obligations of providers to disclose information to employees, labor organizations, or other government agencies; nor shall it be construed to authorize the withholding of information from Congress, or to affect any authority or obligation of a Federal agency to disclose independently furnished information.

This section does not apply to any ferry for which a vulnerability assessment and security plan is required by 46 U.S.C. § 701.

Section 104. Information sharing plan

This section requires the Secretary of Homeland Security (Secretary) to develop a plan to improve tactical and strategic information sharing with respect to threats and vulnerabilities to covered transportation for dissemination to Federal, State, and local agencies, tribal governments, and appropriate stakeholders within 90 days of enactment. The plan must describe how Transportation Security Administration (TSA) intelligence analysts coordinate with intelligence analysts at other agencies and it must include deadlines for any organizational changes within the Department and resource needs for executing the plan. Additionally, the Secretary is required to disseminate information at the unclassified level to the greatest extent possible. If information must be disseminated at the classified level, the Secretary is required to assist the appropriate stakeholders in attaining the proper security clearances. This section also requires the Secretary to conduct an annual survey measuring the level of satisfaction among recipients of disseminated information, and requires the Secretary to submit annual reports on the number, classification, recipient, and subject of all intelligence products issued under the plan.

Section 105. Rail security assistance

This section establishes a grant program for improving rail security, and specifies permissible uses for grant funding, including perimeter protection systems, tunnel protection systems, evacuation improvements, inspection technology, communications equipment, chemical/biological/radiological or explosive detection, canine patrols, surveillance equipment, cargo or passenger screening equipment, redundant operations control systems, security improvements for newly started rail construction projects, and training exercises, among others.

However, this section also orders the Secretary of Homeland Security (Secretary) to prioritize the permissible uses for grant recipients, and to issue guidelines to encourage grant recipients to use small, minority-owned, women-owned, and disadvantaged businesses as contractors to the extent practicable. This section allows the Secretary to issue multi-year grants for not longer than a 5–year period and permits the Secretary to issue a letter of intent to grantees committing appropriations under the program and outlining a reimbursement schedule for grantee project(s).

Entities eligible for grants under this section include State, local, and Tribal governments or agencies, as well as infrastructure owners like railroad carriers and private or public-private entities. Projects eligible for grants must use grant funds to further a rail security plan developed, submitted to, and approved by the Secretary under section 103.

This section provides for an 80 percent (Federal share) to 20 percent (grantee share) funding breakdown, except that the Federal share for projects with a net cost of $25,000 or less is 100 percent. There is a similar (up to) 100 percent funding exception for urgent threats to national security at the discretion of the Secretary. This section also requires grantees to submit annual reports to the Departments of Homeland Security and Transportation describing the use of grant funds, and authorizes $600 million to be appropriated for the grant program for Fiscal Years 2008 through 2011.

Section 106. Public transportation security assistance

This section establishes a grant program for improving the security of public transportation systems and specifies certain uses for the funding, including perimeter protection systems, tunnel protection systems, evacuation improvements, inspection technology, communications equipment, chemical/biological/radiological or explosive detection, canine patrols, surveillance equipment, cargo or passenger screening equipment, redundant operations control systems, public awareness campaigns, security improvements for newly started public transportation construction projects, and training exercises, among others. However, this section also orders the Secretary of Homeland Security (Secretary) to prioritize the permissible uses for grant recipients, and to issue guidelines to encourage grant recipients to use small, minority-owned, women-owned, and disadvantaged businesses as contractors to the extent practicable.

Entities eligible for grants under this section include public transportation agencies and State, local, and Tribal entities that provide security or counterterrorism-related services to public transportation. Projects eligible for grants must use grant funds to further a public transportation security plan developed, submitted to, and approved by the Secretary under section 103. This section authorizes appropriations for the grant program for Fiscal Years 2008 through 2011 in the following amounts: $775 million (2008), $825 million (2009), $880 million (2010), and $880 million (2011).

Section 107. Over-the-road bus security assistance

This section establishes a grant program for improving the security of over-the-road bus systems, and specifies certain uses for grant funding, including constructing and modifying terminals, buses, and garages to enhance security; protecting drivers; acquiring, upgrading, installing, or operating equipment, software, or other accessorial services for collection and exchange of passenger and driver information; video surveillance in buses and at terminals; emergency communications; passenger screening programs; public awareness campaigns; security training; and chemical/biological/radiological or explosive detection, among other things. However, this section also orders the Secretary to prioritize the permissible uses for grant recipients, and to issue guidelines to encourage grant recipients to use small, minority-owned, women-

owned, and disadvantaged businesses as contractors to the extent practicable.

Entities eligible for grants under this section include over-the-road bus providers and State, local, and Tribal entities that provide security or counterterrorism-related services to over-the-road bus providers. Projects eligible for grants must use grant funds to further an over-the-road bus security plan developed, submitted to, and approved by the Secretary of Homeland Security (Secretary) under section 103. This section authorizes appropriations for Fiscal Years 2008 through 2011 in the following amounts: $12 million (2008) and $25 million (each year from 2009 through 2011).

Section 108. Fire and life safety improvements

This section authorizes funds to be appropriated for the Secretary of Transportation to make grants to Amtrak for execution of projects to make fire and life safety improvements to Amtrak tunnels along the Northeast Corridor for Fiscal Years 2008 through 2011. The tunnels receiving grant funds include six tunnels in New York City (total of $25 million per year); the Baltimore & Potomac Tunnel and the Union Tunnel in Baltimore, Maryland (total of $5 million per year); and the Union Station tunnels in Washington, D.C. (total of $5 million per year). This section also directs the Secretary to issue guidelines to encourage grant recipients to use small, minority-owned, women-owned, and disadvantaged businesses as contractors to the extent practicable.

Section 109. Security training program

This section requires the Secretary of Homeland Security (Secretary), in consultation the Secretary of Transportation, to develop security training programs for railroad and public transportation employees (including front-line employees) within 90 days of enactment. In conjunction with creation of these training programs, the Secretary must also issue detailed guidance for such training, to be developed in consultation with law enforcement, fire service, and terrorism experts, as well as labor and industry representatives, and to be reviewed and updated periodically to reflect new or changing security threats. The guidance must address certain specified elements, including determining the seriousness of a threat, crew and passenger communication and coordination, evacuation procedures (including procedures for individuals with disabilities), training exercises, recognition and reporting of suspicious circumstances, and operation and maintenance of security equipment and systems, among other things.

Within 60 days of issuance of this guidance, providers of covered transportation must develop security training programs and submit them to the Secretary for approval. The Secretary must then approve the plans within 60 days of submission, or return the plans for resubmission with appropriate revisions. This section requires providers to complete training of all workers covered under the program within one year of the Secretary's approval.

This section does not apply to any ferry system governed by 45 U.S.C. § 70103.

The Committee defines "frontline employees" to include vehicle operators, maintenance and maintenance support personnel, customer service employees, security personnel, transit police, dis-

patchers, locomotive engineers, conductors, trainmen, bridge tendors, onboard employees and other appropriate employees of railroad carriers, public transportation providers, or over-the-road bus operators.

Section 110. Security exercises

This section creates an exercise program to test and evaluate the ability of certain entities to prevent, prepare for, mitigate against, respond to, and recover from acts of terrorism (these entities include Federal, State, local, and Tribal governments; employees and managers of providers; governmental and nongovernmental emergency responders; and law enforcement personnel, including rail and transit police, among others).

This section also requires the Secretary of Homeland Security (Secretary), in consultation with the Secretary of Transportation, to ensure that the program consolidates all existing security exercises for covered transportation that are administered by the Departments of Homeland Security and Transportation, and that the exercises conducted are tailored to the needs of particular facilities, including accommodations for individuals with disabilities; live (for the most at-risk facilities); coordinated with appropriate officials of the provider(s); consistent with current national emergency response and protection initiatives (including National Incident Management System (NIMS), the National Response Plan (NRP), the National Infrastructure Protection Plan (NIPP), the National Preparedness Goal (NPG)); and as realistic as possible.

This section provides minimum guidelines for evaluating and assessing such exercises, including remedial action in response to lessons learned, conducted through the remedial action management program of the Federal Emergency Management Agency (FEMA). The Department is required to assist State and local governments and providers in designing, implementing, and evaluating exercises that conform to this section. The program must also include exercises involving covered transportation at or near the international land borders of the United States, and in coordination with international stakeholders.

This section does not apply to any ferry system governed by 45 U.S.C. § 70103.

Section 111. Security research and development

This section establishes a research and development program for rail and public transportation security. The Secretary of Homeland Security (Secretary) is required to ensure that Departmental activities are coordinated with those undertaken by the National Academy of Sciences, the Department of Transportation, and Federal and private laboratories, including those with the capability to conduct both practical and theoretical research and technical system analysis on subjects that include bridge, tunnel, blast, and infrastructure protection, such as the blast testing facility at the U.S. Army Corps of Engineers Engineer Research and Development Center (ERDC). Research must be consistent with the National Strategy for Rail and Public Transportation outlined in section 103.

This section outlines eligible projects for the program, including endeavors to reduce vulnerability of passenger trains, stations, and equipment to explosives and hazardous chemical, biological, or ra-

dioactive substances; testing of new emergency response and recovery techniques; improving freight railroad technology, including sealing, modifying, or inspecting tank cars, switches, and communication-based controls; and mitigating damages in the event of a cyberattack, among other things.

The Secretary shall consult with the Department's Chief Privacy Officer and the Officer for Civil Rights and Civil Liberties in implementing this section. This section requires the Chief Privacy Officer to conduct privacy impact assessments and directs the Officer for Civil Rights and Civil Liberties to conduct reviews, as appropriate, for research and development initiatives developed under this section.

Finally, this section authorizes appropriations for Fiscal Years 2008 through 2011, at $50 million per year.

Section 112. Whistleblower protections

This section provides whistleblower protections for employees of the Department of Homeland Security and Department of Transportation, contractors or subcontractors of those two agencies, and employees of providers of covered transportation. Specifically, no individual covered by this provision may be discharged, demoted, suspended, threatened, harassed, reprimanded, investigated, or in any other manner discriminated against (including by a denial, suspension, or revocation of a security clearance or by any other security access determination—if such discrimination is due, in whole or in part, to any lawful act done, perceived to have been done, or intended to be done on the part of the whistleblower.

This section provides whistleblowers with administrative and civil remedies for enforcing this section, the latter of which expressly omits an amount-in-controversy requirement and grants the right of trial by jury at the request of either party. Procedure in remedial actions is governed by 49 U.S.C. § 42121(b). The statute of limitations for actions brought under this section is one year after the violation occurs.

This section grants covered individuals prevailing in any action under this section the right to all relief necessary to make them whole, including damages, reinstatement with prior seniority status, special damages, and attorneys fees, among other things. Punitive damages may not exceed the greater of treble damages or $5 million.

This section also addresses how a whistleblower will contend with or litigate a claim if the Government raises the state secrets privilege as a defense. According to this section, the parties will work expeditiously and genuinely to settle these claims, but when they cannot do so, the parties will proceed using the Classified Information and Procedures Act (18 U.S.C. App.; P.L. 96–456; 4 Stat. 2025). If the government raises the state secrets privilege but does so either without merit or with intent to delay or hinder the proceedings, then the court shall enter an appropriate verdict against the government and consider all possible remedies.

This section provides for criminal penalties in the event that any person employing a whistleblower willfully violates this section by terminating or retaliating against a claimant under this section. A violator can incur a fine under Title 18 of the U.S. Code, be imprisoned for not more than one year, or both.

Nothing in this section preempts or diminishes any similar safeguards under Federal or State law, nor does it diminish the rights, privileges, or remedies of any covered individual under Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

Section 113. Increase in surface transportation security inspectors

This section increases the current number of Surface Transportation Security Inspectors (STSIs) to 600 by 2010 and outlines certain qualifications for individuals hired as STSIs. This section also requires the Secretary, in consultation with the Secretary of Transportation, to develop a standard operating procedure clearly defining the relationship between the Department's STSIs and its safety and security inspectors; State, local, and Tribal law enforcement officials; and other law enforcement personnel, including railroad and transit police. Finally, this section authorizes for appropriation such sums as may be necessary to carry out its provisions.

Section 114. National domestic preparedness consortium

This section establishes the National Domestic Preparedness Consortium within the Department of Homeland Security to identify, develop, test, and deliver training to State and local emergency responders; provide onsite and mobile training at the performance, management, and planning levels; and facilitate the delivery of awareness level training. This section names the following institutions as original members of the Consortium: the Center for Domestic Preparedness in Anniston, Alabama; the Energetic Materials Research and Testing Center at the New Mexico Institute of Mining and Technology; the National Center for Biomedical Research and Training and the Academy of Counter-Terrorist Education at Louisiana State University; the National Center for Exercise Excellence at the Nevada Test Site; and the National Emergency Response and Rescue Training Center located in the Texas Engineering Extension Service.

This section also authorizes the inclusion of the Transportation Technology Center in Pueblo, Colorado as a member of the Consortium.

This section ensures that Fiscal Year 2007 funding levels for the original members of the Consortium are not reduced as a result of adding the Transportation Technology Center to the Consortium. In addition, this section authorizes funding levels for all members of the Consortium for Fiscal Years 2008 through 2011 to ensure yearly increases of not less than three percent of the amount for the preceding fiscal year.

Section 115. Authorization of visible intermodal protection response teams

This section authorizes the Transportation Security Administration (TSA) to develop Visible Intermodal Protection Response (VIPR) teams, designed to augment security for any mode of transportation at any location within the United States. The Secretary of Homeland Security has the discretion to determine, consistent with ongoing security threats, when a VIPR team should be deployed and for what duration (in coordination with local law en-

forcement) and may use any asset of the Department, including Federal Air Marshals, Surface Transportation Security Inspectors, canine detection teams, and advanced screening technology.

Section 116. National transportation security center of excellence

The section creates a National Transportation Security Center of Excellence at an institution of higher education to conduct research and to develop and provide professional security training. This section lists several criteria for designating the host institution for the Center and specifies certain qualifications for universities or institutions selected for the Consortium. Finally, this section instructs the Consortium to work with the National Transit Institute on training programs if the Institute is included in the Consortium.

The Committee notes that entities such as the National Transit Institute and the Mineta Transportation Institute have already established programs for transportation security. The Committee recommends that the Department of Homeland Security work with these entities to build upon existing work.

Section 117. TSA personnel limitations

This section provides that any statutory limitation on the number of Transportation Security Administration employees shall not apply to employees carrying out this measure.

Section 118. Homeland security grants

This section provides that all grants distributed for security-related purposes shall be administered on the basis of risk by the Secretary of Homeland Security as the lead Federal official on transportation security.

Section 119. Threat assessment screening

This section requires the Secretary of Homeland Security to implement a threat assessment screening program for all employees of covered transportation providers within 180 days of enactment, including a name-based check for all employees against terrorist watch lists and immigration status lists, similar to the threat assessment conducted by the U.S. Coast Guard with regard to maritime facility employees and longshoremen (see 71 Fed. Reg. 25066 (Friday, April 28, 2006)).

The Committee intends this section to close a gap identified during hearings on background checks for transportation workers. While a number of rail, public transportation and over-the-road bus providers conduct criminal history background checks on their employees, they have no means by which to screen the individuals against the terrorist watch lists maintained by the Federal Government.

Section 120. Background checks for covered individuals

This section creates a redress process for employees of covered transportation providers who experience adverse employment decisions as a result of a background check performed pursuant to any rules, regulations, directives, or other guidance issued by the Department of Homeland Security, to be modeled after the process established for hazmat drivers and transportation workers at ports under 49 CFR § 1515. This section also requires the redress process

to include a waiver process to allow the employee to demonstrate that he is not a security risk; an appeals process, during which the employee will have an opportunity to demonstrate that he does not have a disqualifying conviction; a proceeding that provides an independent review of waiver and appeal decisions, as well as determinations regarding certain previous background checks; and a process to ensure compliance with the requirements of this section.

This section also directs any rule, regulation, directive, or other guidance issued by the Secretary to prohibit an employer from making adverse employment decisions based on a felony conviction that occurred seven or more years ago; a conviction for any offense for which the individual was released from incarceration five or more years ago; or any felony not listed in 49 CFR § 1572.103. However, this section also specifies an exception to that prohibition in instances where the individual has been convicted of treason, espionage, sedition, any crime listed in chapter 113B of Title 18 of the U.S. Code, or conspiracy to commit any of those four kinds of offenses.

Nothing in this section shall be construed to affect the review process established under 46 U.S.C. § 70105(c), including regulations issued pursuant thereto. Similarly, nothing in this section shall be construed to preempt a Federal, State, or local law that requires criminal history background checks of covered employees.

The Committee is concerned with the current list of disqualifying crimes used by the Department for all transportation workers and expects that the recommendations of the task force authorized under section 121 will ultimately be reflected in the Department's regulations and guidance for disqualifying crimes as well as the other transportation modes. Moreover, the Committee intends that nothing in this section shall be construed as prohibiting an employer, including State and local government entities, from making employment decisions, including adverse decisions, otherwise permissible under any applicable Federal, State or local law.

Section 121. Task force on disqualifying crimes

This section establishes a task force to review the lists of crimes that disqualify individuals from certain transportation-related employment under the current Transportation Security Administration (TSA) regulations (including individuals applying for a Transportation Worker Identification Credential (TWIC) or Hazardous Materials Endorsement, and any individual for whom a background check is conducted pursuant to section 120) and to assess whether those lists are accurate indicators of terrorism security risk. The task force shall be comprised of representatives of appropriate industries, non-profit labor organizations, civil rights and civil liberties organizations, academia and Federal agencies.

This section also requires the task force to submit a report to the Secretary of Homeland Security and to the Congress within 180 days of enactment, outlining the results of its review and assessment, including recommendations for a common list of disqualifying crimes and the rationale for including each crime on the list.

The Committee believes that the current list of disqualifying crimes used for the programs mentioned above may be too broad and may not all be indications of a terrorism security risk. The Committee expects that the rationales for including particular

crimes on the list as stated in the final report will include an explanation of how each crime indicates an individual's terrorism security risk.

Section 122. Penalties

This section amends 49 U.S.C. § 114 to authorize general civil penalties and enforcement of regulations and orders of the Secretary, including a fine of not more than $10,000 for each day a violation of such a regulation continues. Under this section, the Secretary of Homeland Security must give written notice of the finding of a violation and the penalty, and the penalized person has the opportunity to request a hearing on the matter. This section also provides that, in a civil action to collect such a penalty, the issues of liability and the amount of the penalty may not be reexamined; it places exclusive jurisdiction for these actions in the federal district courts in certain instances; and it establishes ceilings for the penalty amounts the Secretary may impose.

Paragraphs (1) through (4) of this section do not apply to specified persons who are subject to penalties as determined by the Secretary of Defense. Moreover, the word "person" in this section does not apply to the United States Postal Service or the Department of Defense. 49 U.S.C. § 46301(a)(4) is amended by striking language regarding the authority of the Department of Transportation's Under Secretary of Transportation for Security. Lastly, this section defines certain terms of art as they are used within its provisions.

Section 123. School bus transportation security

This section requires the Secretary of Homeland Security to submit a report (including a classified report, as appropriate) containing a comprehensive threat assessment of the Nation's school bus transportation system within one year of enactment to the Committee on Homeland Security and Governmental Affairs of the Senate, and to the Committee on Homeland Security of the House of Representatives. In conducting the threat assessment, the Secretary is required to consult with administrators and officials of school systems, representatives of the school bus industry, public safety and law enforcement officials, and labor unions representing school bus drivers. The threat assessment must include an assessment of both publicly and privately operated systems; security threats to the assets and systems; an assessment of actions already taken by operators to address identified security vulnerabilities; an assessment of additional actions and investments necessary to improve the security of school children traveling on school buses; an assessment of whether additional legislation or Federal programs are needed to provide for the security of such children; and an assessment of the psychological and economic impacts of an attack on school buses.

Section 124. Enhanced security measures for shipments of security sensitive materials

This section requires the Secretary of Homeland Security, in consultation with the Secretary of Transportation, to issue regulations requiring enhanced security measures for shipments of security sensitive materials within 90 days of enactment. This section defines terms of art used within its provisions, including "security

sensitive material" and "area of concern," among others. Moreover, this section requires rail carriers, within 90 days of the end of each calendar year, to compile commodity data by route and storage pattern, in the manner specified. This section requires rail carriers to submit a written analysis of the security risks for each route and storage pattern, along with assessments and analysis of alternative routes and storage patterns for security sensitive materials, for each calendar year. This section also requires a comprehensive review of the yearly assessments and analysis at least every five years.

The Committee's intent is to ensure that measures to reduce the risk and consequences of a terrorist attack on a shipment of security sensitive material that is transported through or near an area of concern are not applied solely during times of elevated threat levels or at times when specific or credible threats to routes, storage facilities or areas of concern exist. Rather, the measures required are intended to be applied to the day-to-day operations of the rail carrier. The Committee further recognizes that during elevated threat levels or at times when specific or credible threats to routes, storage facilities or areas of concern exist the analysis of which route or storage facility is "most secure" may change and the routes or storage facilities to be used should be changed as appropriate.

When analyzing practical alternate routes and storage patterns, the rail carrier may take into account a number of factors, including the economic costs of such alternate routes and storage patterns and the economic consequences of a terrorist attack on the primary route and storage pattern, when determining if such an alternate route or storage pattern is practical. A rail carrier may determine that an alternate route or storage pattern is not practical if the alternate routes or storage facilities are abandoned or require extensive refurbishment, but other economic costs should not be the primary reason for rejecting an alternate route or storage pattern.

Section 125. Technology standards and clearinghouse to improve security of covered transportation

This section requires the Department of Homeland Security (acting through the Under Secretary for Science and Technology and the Director of the Domestic Nuclear Detection Office (DNDO), and in consultation with the Director of the National Institute of Standards and Technology and other appropriate Federal agencies) to establish a standards program to support development, promulgation, and updating of national voluntary consensus standards for performance, testing, use, and training with respect to technologies that will improve the security of covered transportation toward the goal of meeting the security plan and performance requirements under section 103. This section outlines requirements for equipment and training standards, including specific categories, certification and accreditation, and consistency with all-hazards emergency preparedness.

In establishing the consensus standards, this section requires the Secretary to consult with relevant public and private sector groups, and appropriate Federal, State, and local government agencies. This section also requires the Secretary to utilize the Technology

Clearinghouse established under section 313 of the Homeland Security Act of 2002 (P.L. 107–296) to aid in this endeavor in specified areas (such as identifying available technologies and communicating with relevant parties).

Section 126. Rail tank car security testing

This section requires the Secretary of Homeland Security to assess likely methods of a deliberate attack on a rail tank car transporting toxic-inhalation-hazard materials and the potential fallout (human, industrial, and economic) from such an attack, and requires the Secretary to consider the most current threat information in doing so, along with other specified considerations. This section also requires the Secretary to conduct certain physical tests as part of the assessment and to submit a report within 30 days of completing the assessment to the appropriate Congressional Committees.

This section also requires an air dispersion modeling analysis of a rail tank car carrying toxic-inhalation-hazard materials for at least three high-threat urban areas in the United States and specifies factors to be considered in that analysis, as well as parties to be consulted in conducting it. This section requires the Secretary to share the information developed through the analysis and submit a report to the appropriate Congressional Committees within 30 days of completion of all the modeling exercises.

Section 127. Rail radiological and nuclear detection

This section requires the Domestic Nuclear Detection Office (DNDO) to begin testing and evaluating prototype systems to detect nuclear or radiological materials in rail security venues, including spectroscopic technologies, within one year of enactment, and to establish appropriate training, operations, and response protocols commensurate with the systems developed. This section also requires DNDO to submit a report to the Congress by September 30, 2008, and begin implementing (in conjunction with Customs and Border Protection and the Transportation Security Administration) the strategy developed following verification of systems performance.

Section 128. Requirement to provide preference to qualified anti-terrorism technologies

This section requires recipients of grants to give preference, to the extent practicable, to products, equipment, services, devices, and technologies that the Secretary has designated as qualified anti-terrorism technologies under the SAFETY Act (6 U.S.C. 441, et seq.) if the grant recipient determines that such elements meet or exceed the requirements of the relevant security plan.

Section 129. Promoting liability protections for providers of covered transportation and related technologies

This section requires the Secretary of Homeland Security to work with providers of covered transportation to identify for procurement products, equipment, services, devices, and technologies that the Secretary has designated as qualified anti-terrorism technologies under the SAFETY Act (6 U.S.C. 441 et seq.), or that may otherwise be eligible for liability protections.

Section 130. International Rail Security Program

This section requires the Secretary of Homeland Security to deploy, where practicable, non-intrusive inspection imaging equipment at locations where rail shipments cross an international border to enter the United States, or to implement alternative procedures to check such rail shipments at locations where the deployment of non-intrusive equipment is not practicable. It also requires the Secretary to seek additional data elements for improved high-risk targeting related to the movement of cargo through the international supply chain involving use of a railroad prior to entering the United States and to analyze such data to identify high-risk cargo for inspection.

Section 131. Terrorist watch list and immigration status review at high-risk transportation sites

This section requires providers, including contractors and subcontractors, assigned to a high-risk tier under section 102 to conduct a check of their employees against available terrorist watch lists and immigration status databases.

Section 201. Increasing the number of canine detection teams for transportation security

This section sets a minimum requirement for the Secretary of Homeland Security to coordinate with owners and providers of covered transportation systems to ensure that canine detection teams are deployed at high-risk transportation systems to provide continuous coverage if deemed necessary by the Secretary.

This section also requires that each canine team be trained to detect explosives and, to the greatest extent possible, chemical and biological weapons. The Secretary, as necessary, may also deploy these canine teams to alternative sites to provide additional coverage during times of increased risk or because of specific threat information. This section also requires the Secretary to coordinate with owners and providers of covered transportation systems to increase the number of trained canine teams deployed at high-risk rail and mass transit systems by an amount no less than 10 percent for Fiscal Years 2008 through 2012. The canine teams used to meet this increase must be trained to detect explosives and, to the greatest extent possible, chemical and biological weapons.

The Committee notes that this section does not address the pressing national need for voluntary consensus standards for canine detection team training and certification purposes. While Federal canine training programs have their own certification standards for canine detection teams, no such similar and trustworthy process exists for State, local, and privately trained canine teams that are deployed across the country by State and local public safety agencies. The Committee observes that the Scientific Working Group on Dog and Orthogonal Detector Guidelines (SWGDOG), a Federally-funded forum to improve the performance and reliability of canine detection teams, is developing a variety of voluntary consensus standards for canine training. The Committee is addressing the need for a voluntary national certification process in separate legislation.

Section 202. National Explosives Detection Canine Team Program increase

This section allows the Transportation Security Administration (TSA) to train up to 100 additional canine teams per year for the National Explosives Detection Canine Team Program and at least the following number of additional teams for Fiscal Years 2008 through 2012: 50 for 2008, 55 for 2009, 60 for 2010, 66 for 2011, and 73 for 2012. It also authorizes these canine detection teams to be deployed across the country to strengthen the security of covered transportation systems, including buses, subway systems, ferries, and passenger rail carriers.

TSA is required to submit a report on the personnel and resource needs to fulfill the requirements of this section no later than 90 days after enactment, to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate.

Section 203. Transportation Security Administration Breeding Program increase

This section directs the Transportation Security Administration's (TSA) "Puppy Program" to increase the number of domestically bred canines to help meet the increase in demand for canine detection teams authorized in section 201, while at the same time preserving the current quality of canines provided training. This section also requires TSA to submit a report on the personnel and resource needs to fulfill the requirements of this section no later than 90 days after enactment, to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate. Lastly, this section authorizes for an appropriation of such sums as may be necessary to carry out its provisions.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, 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 matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

* * * * * * *

SUBTITLE I—DEPARTMENT OF TRANSPORTATION

* * * * * * *

CHAPTER 1—ORGANIZATION

* * * * * * *

§ 114. Transportation Security Administration

(a) * * *

* * * * * * *

(u) GENERAL CIVIL PENALTIES AND ENFORCEMENT OF REGULATIONS AND ORDERS OF THE SECRETARY OF HOMELAND SECURITY.—

(1) APPLICATION.—This subsection applies to the enforcement of regulations prescribed, and orders issued, by the Secretary of Homeland Security under a provision of chapter 701 of title 46 and this title (other than chapter 449) (in this subsection referred to as an "applicable provision of this title"). Penalties for violation of regulations prescribed, and orders issued, by the Secretary of Homeland Security under a provision of chapter 449 are provided under chapter 463.

(2) GENERAL CIVIL PENALTIES.—

(A) MAXIMUM CIVIL PENALTIES.—A person is liable to the United States Government for a civil penalty of not more than $10,000 for a violation of a regulation prescribed, or order issued, by the Secretary of Homeland Security under an applicable provision of this title.

(B) SEPARATE VIOLATIONS.—A separate violation occurs under this paragraph for each day the violation continues.

(3) ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES.—

(A) IN GENERAL.—The Secretary of Homeland Security may impose a civil penalty for a violation of a regulation prescribed, or order issued, under an applicable provision of this title. The Secretary of Homeland Security shall give written notice of the finding of a violation and the penalty.

(B) CIVIL ACTIONS TO COLLECT PENALTIES.—In a civil action to collect a civil penalty imposed by the Secretary under this paragraph, the issues of liability and the amount of the penalty may not be reexamined.

(C) EXCLUSIVE JURISDICTION OF DISTRICT COURTS.—Notwithstanding subparagraph (A) of this paragraph, the district courts of the United States have exclusive jurisdiction of a civil action involving a penalty that the Secretary initiates if—

(i) the amount in controversy is more than—

(I) $400,000 if the violation was committed by a person other than an individual or small business concern; or

(II) $50,000 if the violation was committed by an individual or small business concern;

(ii) the action is in rem or another action in rem based on the same violation has been brought; or

(iii) another action has been brought for an injunction based on the same violation.

(D) MAXIMUM CIVIL PENALTIES IMPOSED BY THE SECRETARY.—The maximum civil penalty the Secretary may impose under this paragraph is—

(i) $400,000 if the violation was committed by a person other than an individual or small business concern; or

(ii) $50,000 if the violation was committed by an individual or small business concern.

(E) NOTICE AND OPPORTUNITY TO REQUEST HEARING.—Before imposing a penalty under this section the Secretary shall provide to the person against whom the penalty is to be imposed—

(i) written notice of the proposed penalty; and

(ii) the opportunity to request, not later than 30 days after the date on which the person receives the notice, a hearing on the proposed penalty.

(4) COMPROMISE AND SETOFF.—

(A) COMPROMISE.—The Secretary may compromise the amount of a civil penalty imposed under this subsection.

(B) SETOFF.—The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(5) INVESTIGATIONS AND PROCEEDINGS.—The provisions set forth in chapter 461 shall be applicable to investigations and proceedings brought under this subsection to the same extent that they are applicable to investigations and proceedings brought with respect to aviation security duties designated to be carried out by the Secretary.

(6) NONAPPLICATION.—

(A) PERSONS SUBJECT TO PENALTIES DETERMINED BY THE SECRETARY OF DEFENSE.—Paragraphs (1) through (4) of this subsection do not apply to the following persons, who shall be subject to penalties as determined by the Secretary of Defense or the Secretary's designee:

(i) The transportation of personnel or shipments of materials by contractors where the Department of Defense has assumed control and responsibility.

(ii) A member of the Armed Forces of the United States when performing official duties.

(iii) A civilian employee of the Department of Defense when performing official duties.

(B) POSTAL SERVICE; DEPARTMENT OF DEFENSE.—In this subsection, the term "person" does not include—

(i) the United States Postal Service; or

(ii) the Department of Defense.

(7) SMALL BUSINESS CONCERN DEFINED.—The term "small business concern" has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632).

* * * * * * *

SUBTITLE VII—AVIATION PROGRAMS

* * * * * * *

PART A—AIR COMMERCE AND SAFETY

* * * * * * *

SUBPART IV—ENFORCEMENT AND PENALTIES

* * * * * * *

CHAPTER 463—PENALTIES

* * * * * * *

§ 46301. Civil penalties

(a) GENERAL PENALTY.—(1) * * *

* * * * * * *

(4) Aviation security violations-Notwithstanding paragraph (1) of this subsection, the maximum civil penalty for violating chapter 449 **[**or another requirement under this title administered by the Under Secretary of Transportation for Security**]** shall be $10,000; except that the maximum civil penalty shall be $25,000 in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an individual serving as an airman).

* * * * * * *

ADDITIONAL VIEWS

INTRODUCTION

Securing our Nation's rail and public transportation systems has long been a priority for the Committee on Homeland Security (Committee). During the 109th Congress, the Committee worked on a bipartisan basis to develop comprehensive rail and mass transit security legislation that was ultimately included in the reported bill, H.R. 5814, the Department of Homeland Security Authorization Act for Fiscal Year 2007. Unfortunately, the session of Congress ended before the bill could be enacted. We are pleased to see the Committee return to this important issue at the start of the 110th Congress with the development of a bipartisan bill, H.R. 1401, the "Rail and Public Transportation Security Act of 2007." This legislation builds upon the work of the Committee from last Congress and will ensure that rail, mass transit and over-the-road bus security is a priority of the Department of Homeland Security (the Department). H.R. 1401 lays a foundation for effective surface transportation security by ensuring that covered transportation entities conduct vulnerability assessments and implement security plans, requiring security training for front-line employees, and establishing security grant programs to provide a source of funding for efforts to strengthen and harden these systems. The bill appropriately requires the Department to administer all of these programs on the basis of risk, so that limited homeland security resources are directed to the most serious threats to people, critical infrastructure, and the economy.

We recognize that while the Federal government has given much-needed attention to aviation security since the terrorist attacks of September 11, 2001, rail and mass transit security has received far less attention. We also recognize, however, that much has been done by State and local governments, which have primary responsibility for the security of public transportation assets. As Congress considers legislation in this area, we must be mindful of the appropriate role of the Federal government. We believe the Federal government should provide support and leverage the knowledge and expertise of State and local agencies that have a far better understanding of their own transportation systems and communities.

It is important to note that while attention has been focused on aviation security, much has already been done, and continues to be done, to secure surface transportation systems. Since 2003, the Department has distributed more than $660 million in homeland security grants targeted specifically to transit and over-the-road bus systems, as well as billions in state and urban-area homeland security grants that may be used for transit security. Additionally, the Transportation Security Administration (TSA) has deployed 100

Surface Transportation Security Inspectors to increase the security of transportation systems. The Office of Infrastructure Protection, in coordination with TSA, has conducted dozens of site assistance visits and developed more than 130 Buffer Zone Protection Plans. The Department has also established information sharing mechanisms through Sector-Coordinating Councils and has provided or distributed guidance for training State and local law enforcement and front-line employees. H.R. 1401 is intended to build upon on these existing Federal programs and investments, while setting priorities for surface transportation security.

It is also important to recognize in this context that the nature of the aviation system is vastly different from public transportation, and we should not attempt to force a "one-size fits all" approach to transportation security. The nation's rail and mass transit systems are far more varied and, in many cases, present far different security risks than their aviation counterparts. When addressing surface transportation, we must balance the need for security and the need to provide a fast and convenient means of travel for millions of people every single day.

The need for action on surface transportation security is clear. In August 2004, two individuals were arrested by the New York City Police Department shortly before the Republican National Convention in New York City for plotting to detonate backpack bombs in the Herald Square subway station—a mere block from the site of the Convention. This incident, and numerous other events around the world, including the Madrid commuter rail bombings in March 2004, and the London subway bombings in July 2005, provides ample evidence of the need to secure our surface transportation systems against the threat of terrorism.

During consideration of H.R. 1401, we were pleased that a number of Republican amendments were adopted at Subcommittee and Full Committee Markups that strengthened the bill. Most notably, the Committee agreed to an amendment during the Subcommittee markup requiring the Department to administer existing and newly authorized transportation security grants on the basis of risk. The amendment was intended to resolve any debate in Congress as to whether the Department of Homeland Security should be the agency administering the Federal government's surface transportation security programs. The language included in the bill should be read as a strong statement of the Committee's support for continued management of risk-based surface transportation security grant programs by the Secretary of Homeland Security. This approach is supported by numerous outside experts. The Committee received testimony during a hearing on H.R. 1401 from the Transportation Security Administration, the Department of Transportation and the New York City Police Department, all of which strongly affirmed the need for grants to be distributed based on risk by the Secretary of Homeland Security. Risk-based distribution is the only appropriate way to apportion grants given the limited resources of Federal aid. By targeting our grants at those areas which need it most and are most likely to be the target of an attack, we can ensure that the money is spent effectively. Furthermore, there is a need for the Department, which already administers dozens of homeland security grant programs, including

grants for urban areas, ports and trucking security, to be able to oversee and coordinate the totality of homeland security grants. Stripping the Department of its existing authority to dispense transit security and over-the-road bus grants would undermine the reason the Department was created in the first place—to provide a central agency focused on threats to all sectors of our homeland. The report of the National Commission on Terrorist Attacks upon the United States (the 9/11 Commission) repeatedly criticized divided authority over homeland security matters, with no single point of oversight or coordination. The Republican Members of the Committee will continue to support keeping the grants created in this legislation risk-based and completely within the authority of the Secretary of Homeland Security.

In addition to the grant administration amendment, the Committee adopted an amendment offered by Committee Ranking Member Peter T. King requiring high risk providers of covered transportation screen their employees against terrorist watchlists and immigration status databases to ensure their employees are lawfully present in the United States. This amendment is intended to provide the Secretary with the authority to require high risk providers of covered transportation to enroll in the Basic Pilot Employment Verification Program, authorized by Section 403 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note). Other improvements to the bill include an amendment offered by Representative Dan Lungren authorizing the TSA's Visible Intermodal Protection Response Teams; an amendment offered by Representative Mike Rogers to increase the deployment of canine detection teams to surface transportation systems; amendments offered by Representative Michael McCaul requiring increased scrutiny of freight rail cargo crossing the border and expanding the use of "Qualified Anti-Terrorism Technologies" under the SAFETY Act; an amendment offered by Representative Ginny Brown-Waite to ensure that employees of covered transportation modes are screened against terrorist watch lists; an amendment offered by Representative Gus Bilirakis requiring the Department to analyze the security of rail tank cars with respect to potential terrorist attack; and an amendment offered by Representative Charlie Dent requiring enhanced international rail security programs.

While we are pleased with the adoption of these Republican amendments and the resulting bipartisan bill, we are disappointed by the missed opportunity to make a good bill even better. A number of Republican amendments were rejected by the Majority during the markup that would have strengthened the existing bill. In particular, the lack of adequate information protection provisions in the bill is troubling, given the wide array of sensitive information that will be developed and provided to the Secretary under the Act. Additionally, Republican amendments offered by Representatives Lungren and Tom Davis of Virginia, which sought to reconcile existing whistleblower statutes with the new whistleblower provisions in the bill, were not included. Equally troubling is the missed opportunity to implement a key recommendation of the 9/11 Commission by authorizing the Automated Targeting System for passengers entering the United States. An amendment offered by Rep-

resentative Dent would have fulfilled this recommendation. Another amendment offered by Representative Dent would have strengthened this targeting system by requiring a covered transportation carrier to forward advance passenger information to United States Customs and Border Protection prior to the passengers' arrival in the United States. Further discussion of these important security amendments not agreed to by the Majority is included below.

PROTECTION OF SECURITY INFORMATION

We regret that the amendment offered by Representative Brown-Waite to mandate the protection of information was not included in the legislation. This amendment would have provided clear protections for sensitive information provided to the Department pursuant to H.R. 1401. Under Ms. Brown-Waite's amendment, protected information would be exempt from the Freedom of Information Act (FOIA, 5 U.S.C. 552) and State and local disclosure laws. The amendment would have directed the Secretary to issue regulations to prohibit the unauthorized disclosure of protected information while ensuring the appropriate sharing of such information with Federal, State, and local law enforcement officials, first responders and covered transportation personnel.

The protection of sensitive information related to our Nation's critical infrastructure should be of the highest priority in the post-9/11 world, and we are troubled by the Majority's refusal to agree to strong protections for such information. While the United States is viewed as one of the most open societies in the world, we know firsthand how our openness can be used against us. Sensitive information—especially documents which detail the vulnerabilities of our public transportation systems—could serve as a roadmap for terrorists seeking to attack these systems.

The information protection provision in Section 5 of H.R. 1401 only covers vulnerability assessments and security plans, excluding associated documents prepared under the bill's requirements, and does nothing more than restate the exemptions already provided under existing law. This is simply insufficient. H.R. 1401 provides for a number of significant programs including the development of vulnerability assessments, security plans and training programs. Under H.R. 1401, if the information does not meet a FOIA exemption, it may be disclosed. In addition, H.R. 1401 does not address State and local laws in any way, leaving an additional loophole whereby sensitive information may be released to the public. Sensitive information produced pursuant to H.R. 1401 that is protected under Federal law should not at the same time be released to the public under State law. More stringent protections that clearly and unequivocally protect sensitive information are needed in this legislation. The Committee's attempt to secure the rail and public transportation sectors should not be undone by allowing sensitive information related to these programs to fall into the hands of those who intend to do Americans harm.

Express statutory exemptions from FOIA already exist in other homeland security-related legislation including the Maritime Transportation Security Act of 2002 (P.L. 107–295), the Aviation Transportation Security Act (P.L. 107–71), and the Homeland Secu-

rity Act of 2002 (P.L. 107–296). Further, Ms. Brown-Waite's amendment is substantively similar to language adopted on a bipartisan basis in H.R. 5695, the Chemical Facility Anti-Terrorism Act of 2006, which was reported by the Committee in the 109th Congress. It is disappointing the Majority would not agree to similar protections for the rail and public transportation sectors when they are already commonplace in the aviation and maritime sectors. As reported, the information protections in H.R. 1401 are illusory and inadequate.

PROTECTIONS FOR WHISTLEBLOWERS FROM RETALIATION

We regret that amendments offered by Representative Lungren and Representative Davis of Virginia to Section 14 were not agreed to. These amendments would have provided for greater protection of classified and sensitive materials, while at the same time protecting the rights of employees who have been retaliated against for making whistleblower claims.

The whistleblower protections provided for in Section 14 will only serve to weaken the protection of classified information and encourage frivolous lawsuits. Republican Members are disappointed that this section contains criminal penalties for managers as well as punitive damages. We are concerned that the criminal penalties provision will unfairly subject managers, including Federal, State, and local civil servants, to potential criminal prosecution for performing routine personnel actions. Additionally, we are gravely concerned that the state secrets provision—which mandates a verdict in favor of the plaintiff in any case where the state secrets privilege is asserted in court—will force the government to choose between disclosing sensitive information and reinstating an employee who was legitimately fired due to security risks. We also believe that imposing criminal and punitive damage liability for whistleblower retaliation claims will undermine the major goal of whistleblower protection statutes—to encourage timely investigation and settlement of whistleblower claims so as to avoid costly and time consuming litigation. Such onerous penalties as proposed by H.R. 1401 will only serve to discourage government managers from voluntarily coming forward with their justifications for adverse personnel decisions out of fear for criminal and civil liability. We note that this section authorizes the possibility of punitive damage liability against the Federal government—a disturbing proposal that would actually subject taxpayers to paying for whistleblower retaliation claims.

The amendments offered by Representative Tom Davis of Virginia and Representative Lungren would have addressed these concerns. These amendments are consistent with provisions in H.R. 985, the "Whistleblower Protection Enhancement Act of 2007" introduced by Representatives Waxman and Davis and approved by the House of Representatives on March 14, 2007. The amendment offered by Mr. Lungren would have placed DHS intelligence-related employees under the same enhanced national security whistleblower protection as that proposed by H.R. 985, and would require such employees to report their whistleblower claims to the Department's Inspector General where the claims would be considered in an appropriately secure manner. The Lungren and Davis amend-

ments would also have eliminated the punitive damages and criminal penalties in order to avoid the chilling effect on management those penalties will cause. Finally, these amendments would have eliminated the penalty in H.R. 1401 for an assertion by the Federal government of the state secrets privilege to protect national security information.

AUTOMATED TARGETING SYSTEM FOR PASSENGERS ENTERING THE UNITED STATES

The Majority refused to include an amendment offered by Representative Dent that would have authorized the United States Custom and Border Protection (CBP) Automated Targeting System for persons (ATS–P) traveling on the modes of transportation covered under H.R. 1401. ATS–P is an invaluable tool for screening persons coming into and departing from the United States, and is currently used by CBP to systematically review known information about foreign travelers before they arrive in the United States. The program also fulfills an integral recommendation of the 9/11 Commission. Notably, the ATS–P program has successfully assisted CBP officers in identifying individuals with ties to terrorism and interdicting those persons upon their attempted entry into the United States.

The ATS–P program utilizes data that is already available to CBP in order to perform a real-time risk assessment of a traveler in context with his or her previous behavior. CBP officers then use that assessment in determining whether the traveler should undergo secondary screening. The program does not make a determination of whether or not the individual should be allowed entry into the United States, rather ATS is a tool to help target CBP resources on those individuals who are most appropriate for additional screening.

The Dent amendment would have codified CBP's existing authority for conducting such risk assessment screening, and would have authorized the Secretary to utilize ATS–P for passengers on rail and other covered transportation. Moreover, the amendment would not have affected the program's existing privacy protections. We feel the Majority's opposition to this amendment was a missed opportunity to expand and support a program that has been successful in securing the country from individuals seeking to gain entry into the United States to do us harm.

ADVANCE PASSENGER INFORMATION SYSTEM

The Majority defeated another amendment offered by Representative Dent that would have provided the Customs and Border Protection (CBP) the authority to require providers of covered transportation to provide electronically the manifests containing information regarding passengers and crew members in advance of their arrival at United States ports of entry. The information transportation providers are required to collect and submit can be found on routine entry documents that passenger and crew members must currently provide when processed into or out of the United States, including the passenger's name, date of birth, citizenship, gender, passport number and country of issuance, and alien registration number, if applicable.

Importantly, this amendment would not have granted CBP the authority to demand any information that it does not already receive when a person arrives at a port of entry or border crossing. The amendment would have authorized CBP to require that transportation providers deliver the information electronically prior to the person's arrival at the port of entry or border crossing. Notably, this already occurs for travelers and crew members of commercial air and sea carriers, and has been utilized successfully in a number of pilot programs at land ports.

With the benefit of this amendment, the majority of the travelers would have been more efficiently processed, and admitted into the country, while individuals of interest would have been more readily identified. In addition, advance submission of passenger and crew information would have helped CBP allocate resources in the face of its ever increasing workload. Unfortunately, the rejection of this amendment represents another missed opportunity to leverage existing information resources to better protect the country.

PETER T. KING.
CHRISTOPHER SHAYS.
TOM DAVIS.
CHARLES W. DENT.
GUS M. BILIRAKIS.
DANIEL E. LUNGREN.
MICHAEL T. MCCAUL.
GINNY BROWN-WAITE.
DAVID DAVIS.

LETTERS AND CORRESPONDENCE

BART GORDON, TENNESSEE
CHAIRMAN

RALPH M. HALL, TEXAS
RANKING MEMBER

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON SCIENCE AND TECHNOLOGY

SUITE 2320 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6301
(202) 225-6375
TTY: (202) 226-4410
http://science.house.gov

March 20 2007

The Honorable Bennie G. Thompson
Chairman
Committee on Homeland Security
H2-176 Ford House Office Building
Washington, DC 20515

Dear Mr. Chairman,

I am writing to you concerning the jurisdictional interest of the Committee on Science and Technology in H.R. 1401, the Rail and Public Transportation Security Act of 2007. The Committee on Science and Technology has jurisdictional interest in this bill based on the Committee's jurisdiction over the Department of Homeland Security Science and Technology Directorate ("DHS S&T") and other DHS research and development. [See *Rule X(o)(14)* which grants the Committee on Science and Technology jurisdiction over "Scientific research, development, and demonstration, and projects therefor."]

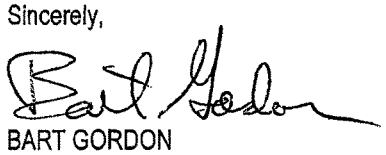
Specifically, the Committee on Science and Technology has jurisdictional claims to the following sections of the bill, as amended in the Homeland Security Committee mark up held on March 13, 2007: Sec. 111, Security research and development; Sec. 116, National Transportation Security Center of Excellence; Sec. 125, Technology standards and clearinghouse to improve security of covered transportation; Sec. 127, Rail tank car security testing; and, Sec. 128, Rail radiological and nuclear detection. These five sections all deal with Homeland Security research and development, which is clearly within the jurisdiction of the Committee on Science and Technology

The Committee on Science and Technology acknowledges the importance of H.R. 1401 and the need for the legislation to move expeditiously. Therefore, while we have a valid claim to jurisdiction over this bill, I agree not to request a sequential referral. This, of course, is conditional on our mutual understanding that nothing in this legislation or my decision to forgo a sequential referral waives, reduces, or otherwise affects the jurisdiction of the Committee on Science and Technology, and that a copy of this letter and of your response will be included in the *Congressional Record* when the bill is considered on the House Floor.

The Committee on Science and Technology also expects that you will support our request to be conferees during any House-Senate conference on this legislation.

Thank you for your attention to this matter.

Sincerely,



BART GORDON
Chairman

cc: The Honorable Ralph Hall

BENNIE G. THOMPSON, MISSISSIPPI
CHAIRMAN

PETER T. KING, NEW YORK
RANKING MEMBER

One Hundred Tenth Congress
U.S. House of Representatives
Committee on Homeland Security
Washington, DC 20515

March 20, 2007

Chairman Bart Gordon
Committee on Science and Technology
2320 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Gordon:

Thank you for your recent letter expressing the Committee on Science and Technology's jurisdictional interest in H.R. 1401, the "Rail and Public Transportation Security Act of 2007."

The Committee on Homeland Security appreciates your willingness to work cooperatively on this important legislation. The Committee on Homeland Security recognizes your jurisdictional interest over provisions contained in this bill, as amended, and appreciates your agreement not to request a sequential referral. The Committee on Homeland Security acknowledges that your decision to forgo a sequential referral on this legislation does not waive, reduce or otherwise affect the jurisdiction of the Committee on Science and Technology. Accordingly, the Committee on Homeland Security will support your efforts to participate as conferees in any House-Senate conference on this legislation or in any other legislation that includes this legislation.

A copy of this letter, together with the letter you sent on this matter, will be included in the Committee's report on the bill and the *Congressional Record* when the bill is considered on the House floor.

BGT/tg

Thank you for your continued cooperation, and I look forward to working with you as H.R. 1401 proceeds through the legislative process.

Sincerely,

Bennie G. Thompson
Chairman

cc: The Honorable Nancy Pelosi, Speaker
The Honorable Peter T. King, Ranking Member, Committee on Homeland Security
The Honorable Ralph Hall, Ranking Member, Committee on Science and Technology
Mr. John Sullivan, Parliamentarian

○

BGT/tg