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# SECURING MARITIME ACTIVITIES THROUGH RISK-BASED TARGETING FOR PORT SECURITY ACT

JUNE 12, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. KING of New York, from the Committee on Homeland Security, submitted the following

## R E P O R T

together with

## ADDITIONAL VIEWS

[To accompany H.R. 4251]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 4251) to authorize, enhance, and reform certain port security programs through increased efficiency and risk-based coordination within the Department of Homeland Security, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Securing Maritime Activities through Risk-based Targeting for Port Security Act" or the "SMART Port Security Act".

**SEC. 2. TABLE OF CONTENTS.**

The table of contents for this Act is the following:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Definitions.

TITLE I—DEPARTMENT OF HOMELAND SECURITY PORT SECURITY PROGRAMS

Sec. 101. Updates of maritime operations coordination plan.
Sec. 102. U.S. Customs and Border Protection Office of Air and Marine Asset Deployment.
Sec. 103. Cost-benefit analysis of co-locating operational entities.
Sec. 104. Study of maritime security redundancies.
Sec. 105. Acquisition and strategic sourcing of marine and aviation assets.
Sec. 106. Port security grant program management.
Sec. 107. Port security grant funding for mandated security personnel.
Sec. 108. Interagency operational centers for port security.
Sec. 109. Report on DHS aviation assets.
Sec. 110. Small vessel threat analysis.
Sec. 111. U.S. Customs and Border Protection workforce plan.
Sec. 112. Integrated cross-border maritime operations between the United States and Canada.
Sec. 113. Training and certification of training for port security.
Sec. 114. Northern border unmanned aerial vehicle pilot project.
Sec. 115. Recognition of port security assessments conducted by other entities.
Sec. 116. Use of port security grant funds for replacement of security equipment or facilities.

TITLE II—MARITIME SUPPLY CHAIN SECURITY

Sec. 201. Strategic plan to enhance the security of the international supply chain.
Sec. 202. Customs-Trade Partnership Against Terrorism.
Sec. 203. Recognition of other countries' trusted shipper programs.
Sec. 204. Pilot program for inclusion of non-asset based third party logistics providers in the Customs-Trade Partnership Against Terrorism.
Sec. 205. Transportation Worker Identification Credential process reform.
Sec. 206. Expiration of certain transportation worker identification credentials.
Sec. 207. Securing the Transportation Worker Identification Credential against use by unauthorized aliens.
Sec. 208. Report on Federal transportation security credentialing programs.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" has the meaning given such term in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101).

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

(3) FUNCTION.—The term "function" includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, and responsibilities.

(4) LOCAL GOVERNMENT.—The term "local government" means—

(A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(B) an Indian tribe or authorized tribal organization, or in Alaska a Native village or Alaska Regional Native Corporation; and

(C) a rural community, unincorporated town or village, or other public entity.

(5) PERSONNEL.—The term "personnel" means officers and employees.

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

(7) STATE.—The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any possession of the United States.

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

(9) UNITED STATES.—The term "United States", when used in a geographic sense, means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, any possession of the United States, and any waters within the jurisdiction of the United States.

# TITLE I—DEPARTMENT OF HOMELAND SECURITY PORT SECURITY PROGRAMS

**SEC. 101. UPDATES OF MARITIME OPERATIONS COORDINATION PLAN.**

(a) IN GENERAL.—Not later than July 1, 2014, the Secretary shall submit to the appropriate congressional committees a maritime operations coordination plan for the coordination and cooperation of maritime operations undertaken by the agencies within the Department. Such plan shall update the maritime operations coordination plan released by the Department in July 2011, and shall address the following:

(1) Coordination of planning, integration of maritime operations, and development of joint situational awareness of any office or agency of the Department with responsibility for maritime homeland security missions.

(2) Maintaining effective information sharing and, as appropriate, intelligence integration, with Federal, State, and local officials and the private sector, regarding threats to maritime security.

(3) Leveraging existing departmental coordination mechanisms, including the Interagency Operational Centers, as authorized under section 70107A of title 46, United States Code, the U.S. Customs and Border Protection Air and Marine Operations Center, the U.S. Customs and Border Protection Operational Integration Center, and other regional maritime operational command centers.

(4) Cooperation and coordination with other agencies of the Federal Government, and State and local agencies, in the maritime environment, in support of maritime homeland security missions.

(5) Work conducted within the context of other national and Department maritime security strategic guidance.

(b) ADDITIONAL UPDATES.—Not later than July 1, 2019, the Secretary, acting through the Department's Office of Operations Coordination and Planning, shall submit to the appropriate congressional committees an additional update to the maritime operations coordination plan.

**SEC. 102. U.S. CUSTOMS AND BORDER PROTECTION OFFICE OF AIR AND MARINE ASSET DEPLOYMENT.**

(a) IN GENERAL.—Any new asset deployment by the U.S. Customs and Border Protection's Office of Air and Marine, following the date of the enactment of this Act, shall, to the greatest extent practicable, occur in accordance with a risk-based assessment that considers mission needs, performance results, threats, costs, and any other relevant factors identified by the Secretary. Specific factors to be included in such assessment shall include, at a minimum, the following:

(1) Mission requirements that prioritize the operational needs of field commanders to secure the United States border and ports.

(2) Other Department assets available to help address any unmet border and port security mission needs.

(3) Risk analysis showing positioning of the asset at issue to respond to intelligence on emerging terrorist and other threats.

(4) Cost-benefit analysis showing the relative ability to use the asset at issue in the most cost-effective way to reduce risk and achieve mission success.

(b) CONSIDERATIONS.—An assessment required under subsection (a) shall consider applicable Federal guidance, standards, and agency strategic and performance plans, including the following:

(1) The most recent Departmental Quadrennial Homeland Security Review, and any follow-up guidance related to such Review.

(2) The Department's Annual Performance Plans.

(3) Department policy guiding use of integrated risk management in resource allocation decisions.

(4) Department and U.S. Customs and Border Protection Strategic Plans and Resource Deployment Plans.

(5) Applicable aviation guidance from the Department, including the DHS Aviation Concept of Operations.

(6) Other strategic and acquisition guidance promulgated by the Federal Government as the Secretary determines appropriate.

(c) AUDIT AND REPORT.—The Inspector General of the Department shall biennially audit the deployment of new assets within U.S. Customs and Border Protection's Office of Air and Marine and submit to the appropriate congressional committees a report on the compliance of the Department with the requirements of this section.

**SEC. 103. COST-BENEFIT ANALYSIS OF CO-LOCATING OPERATIONAL ENTITIES.**

(a) IN GENERAL.—For all locations in which U.S. Customs and Border Protection's Office of Air and Marine operates that are within 25 miles of locations where any other Department agency also operates air and marine assets, the Secretary shall

conduct a cost-benefit analysis to consider the potential cost of and savings derived from co-locating aviation and maritime operational assets of the different agencies of the Department. In analyzing the potential cost savings achieved by sharing aviation and maritime facilities, the study shall consider at a minimum the following factors:

(1) Potential enhanced cooperation derived from Department personnel being co-located.

(2) Potential cost of, and savings derived through, shared maintenance and logistics facilities and activities.

(3) Joint use of base and facility infrastructure, such as runways, hangars, control towers, operations centers, piers and docks, boathouses, and fuel depots.

(4) Short term moving costs required in order to co-locate facilities.

(5) Acquisition and infrastructure costs for enlarging current facilities as needed.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary shall submit to the appropriate congressional committees a report summarizing the results of the cost-benefit analysis required under subsection (a) and any planned actions based upon such results.

**SEC. 104. STUDY OF MARITIME SECURITY REDUNDANCIES.**

The Comptroller General of the United States shall by not later than 1 year after the date of enactment of this Act—

(1) conduct a review of port security and maritime law enforcement operations within the Department to identify initiatives and programs with duplicative, overlapping, or redundant goals and activities, including the cost of such duplication; and

(2) submit to the appropriate congressional committees a report on the findings of the study, including—

(A) recommendations for consolidation, elimination, or increased cooperation to reduce unnecessary duplication found in the study; and

(B) an analysis of personnel, maintenance, and operational costs related to unnecessarily duplicative, overlapping, or redundant goals and activities found in the study.

**SEC. 105. ACQUISITION AND STRATEGIC SOURCING OF MARINE AND AVIATION ASSETS.**

(a) IN GENERAL.—Before initiating the acquisition of any new boat or aviation asset, the Secretary shall coordinate across the agencies of the Department, as appropriate, to—

(1) identify common mission requirements before initiating a new acquisition program; and

(2) standardize, to the extent practicable, equipment purchases, streamline the acquisition process, and conduct best practices for strategic sourcing to improve control, reduce cost, and facilitate oversight of asset purchases prior to issuing a Request for Proposal.

(b) ESTABLISHMENT OF AVIATION AND MARITIME COORDINATION MECHANISM.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall establish a coordinating mechanism for aviation and maritime issues, including issues related to the acquisition, administration, operations, maintenance, and joint management across the Department, in order to decrease procurement and operational costs and increase efficiencies.

(c) SPECIAL RULE.—For the purposes of this section, a boat shall be considered any vessel less than 65 feet in length.

**SEC. 106. PORT SECURITY GRANT PROGRAM MANAGEMENT.**

(a) DETERMINATION OF APPLICATIONS.—Section 70107(g) of title 46, United States Code, is amended

(1) by striking "Any entity" and inserting the following:

"(1) IN GENERAL.—Any entity"; and

(2) by adding at the end the following:

"(2) DETERMINATION.—Notwithstanding any other provision of law, the Secretary shall, not later than 60 days after the date on which an applicant submits a complete application for a grant under this section, either approve or disapprove the application.".

(b) ADMINISTRATION OF COST SHARE DETERMINATIONS.—Section 70107(c)(2) of title 46, United States Code, is amended—

(1) by striking subparagraph (B) and inserting the following:

"(B) HIGHER LEVEL OF SUPPORT REQUIRED.—If the Secretary or the Secretary's designee determines that a proposed project merits support and cannot be undertaken without a higher rate of Federal support, then the Secretary or the Secretary's designee may approve grants under this section

for that project with a matching requirement other than that specified in paragraph (1).”; and

(2) by inserting after subparagraph (C) the following:

“(D) COST SHARE DETERMINATIONS.—Notwithstanding any other provision of law, not later than 60 days after the date on which an applicant submits a complete application for a matching requirement waiver under this paragraph the Secretary shall either approve or disapprove the application.”.

(c) ADMINISTRATION.—Section 70107(i) of title 46, United States Code, is amended by adding after paragraph (4) the following:

“(5) RELEASE OF FUNDS.—To the maximum extent practicable, the Secretary shall complete all necessary programmatic reviews and release grant funds awarded under this section to the appropriate entity not later than 180 days after the date on which an applicant submits a complete application.

“(6) PERFORMANCE PERIOD.—The Secretary shall utilize a period of performance of not less than 3 years for expenditure of grant funds awarded under this section.

“(7) EXTENSION DETERMINATIONS.—Notwithstanding any other provision of law, not later than 60 days after the date on which an applicant submits a complete application for an extension of the period of performance for a grant, the Secretary shall either approve or disapprove the application.”.

**SEC. 107. PORT SECURITY GRANT FUNDING FOR MANDATED SECURITY PERSONNEL.**

Section 70107(b)(1) of title 46, United States Code, is amended by striking the period and inserting the following: “, including overtime and backfill costs incurred in support of other expenditures authorized under this subsection, except that not more than 50 percent of amounts received by a grantee under this section for a fiscal year may be used under this paragraph.”.

**SEC. 108. INTERAGENCY OPERATIONAL CENTERS FOR PORT SECURITY.**

(a) PARTICIPATING PERSONNEL.—Section 70107A(b)(1)(B) of title 46, United States Code, is amended—

(1) by inserting “, not less than part-time representation from U. S. Customs and Border Protection and U.S. Immigration and Customs Enforcement,”after “the Coast Guard”; and

(2) by striking “the United States Customs and Border Protection, the United States Immigration and Customs Enforcement,”.

(b) ASSESSMENT.—Not later than one year after the date of enactment of this Act the Secretary (as that term is used in that section) shall transmit to the appropriate congressional committees an assessment of—

(1) interagency operational centers under such section and the implementation of the amendments made by this section;

(2) participation in such centers and by Federal agencies, State and local law enforcement agencies, port security agencies, and other public and private sector entities, including joint daily operational coordination, training and certifying of non-Federal law enforcement personnel, and joint training exercises;

(3) deployment of interoperable communications equipment under subsection (e) of such section, including—

(A) an assessment of the cost-effectiveness and utility of such equipment for Federal agencies, State and local law enforcement agencies, port security agencies, and other public and private sector entities;

(B) data showing which Federal agencies, State and local law enforcement agencies, port security agencies, and other public and private sector entities are utilizing such equipment;

(C) an explanation of the process in place to obtain and incorporate feedback from Federal agencies, State and local law enforcement agencies, port security agencies, and other public and private sector entities that are utilizing such equipment in order to better meet their needs; and

(D) an updated deployment schedule and life cycle cost estimate for the deployment of such equipment; and

(4) mission execution and mission support activities of such centers, including daily coordination activities, information sharing, intelligence integration, and operational planning.

**SEC. 109. REPORT ON DHS AVIATION ASSETS.**

(a) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the appropriate congressional committees a report that analyzes and compares the costs, capabilities, and missions of different aviation assets, including unmanned aerial vehicles, utilized by the Department to assess the relative costs of unmanned aerial vehicles

as compared to manned aerial vehicles, and any increased operational benefits offered by unmanned aerial vehicles as compared to manned aviation assets.

(b) REQUIRED DATA.—The report required under subsection (a) shall include a detailed assessment of costs for operating each type of asset described in such report, including—

(1) fuel costs;

(2) crew and staffing costs;

(3) maintenance costs;

(4) communication and satellite bandwidth costs;

(5) costs associated with the acquisition of each type of such asset; and

(6) any other relevant costs necessary to provide a holistic analysis and to identify potential cost savings.

**SEC. 110. SMALL VESSEL THREAT ANALYSIS.**

Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to the appropriate congressional committees a report analyzing the threat of, vulnerability to, and consequence of an act of terrorism using a small vessel to attack United States vessels, ports, or maritime interests.

**SEC. 111. U.S. CUSTOMS AND BORDER PROTECTION WORKFORCE PLAN.**

(a) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Secretary shall submit to the appropriate congressional committees a plan for optimizing staffing levels for U.S. Customs and Border Protection personnel to carry out the mission of the Department, including optimal levels of U.S. Customs and Border Protection staffing required to conduct all border security functions.

(b) CONSIDERATION OF PRIOR STAFFING RESOURCES.—The staffing plan required under subsection (a) shall consider previous staffing models prepared by the Department and assessments of threat and vulnerabilities.

**SEC. 112. INTEGRATED CROSS-BORDER MARITIME OPERATIONS BETWEEN THE UNITED STATES AND CANADA.**

(a) IN GENERAL.—Subtitle C of title IV of the Homeland Security Act of 2002 (6 U.S.C. 201 et seq.) is amended by adding at the end the following:

**"SEC. 432. INTEGRATED CROSS-BORDER MARITIME OPERATIONS BETWEEN THE UNITED STATES AND CANADA.**

"(a) AUTHORIZATION.—The Secretary is authorized to establish an Integrated Cross-Border Maritime Operations Program to coordinate maritime security operations between the United States and Canada (in this section referred to as the 'Program').

"(b) PURPOSE.—The Secretary, acting through the Commandant of the Coast Guard, shall administer the Program in a manner that results in a cooperative approach between the United States and Canada to strengthen border security and detect, prevent, suppress, investigate, and respond to terrorism and violations of law related to border security.

"(c) TRAINING.—The Secretary, acting through the Commandant of the Coast Guard, in consultation with the Secretary of State, may—

"(1) establish, as an element of the Program, a training program to create designated maritime law enforcement officers;

"(2) conduct training jointly with Canada, including training—

"(A) on the detection and apprehension of suspected terrorists and individuals attempting to unlawfully cross or unlawfully use the international maritime border between the United States and Canada, to enhance border security;

"(B) on the integration, analysis, and dissemination of port security information between the United States and Canada;

"(C) on the respective policy, regulatory, and legal considerations related to the Program;

"(D) on the use of force and maritime security;

"(E) in operational procedures and protection of information and other sensitive information; and

"(F) on preparedness and response to maritime terrorist incidents.

"(d) COORDINATION.—The Secretary, acting through the Commandant of the Coast Guard, shall coordinate the Program with other similar border security and antiterrorism programs within the Department.

"(e) MEMORANDA OF AGREEMENT.—The Secretary may enter into any memorandum of agreement necessary to carry out the Program.

"(f) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section there is authorized to be appropriated to the Secretary $2,000,000 for each of fiscal years 2013 and 2014.".

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act is amended by adding at the end of the items relating to such subtitle the following new item:

"Sec. 432. Integrated cross-border maritime operations between the United States and Canada.".

**SEC. 113. TRAINING AND CERTIFICATION OF TRAINING FOR PORT SECURITY.**

(a) USE OF PORT SECURITY GRANT FUNDS.—Section 70107(b)(8) of title 46, United States Code, is amended to read as follows:

"(8) The cost of training and certifying a law enforcement officer employed by a law enforcement agency under section 70132 of this title.".

(b) MATCHING REQUIREMENT.—Section 70107(c)(2)(C) of such title is amended to read as follows:

"(C) TRAINING AND CERTIFICATION.—There are no matching requirements for grants under subsection (a) to train and certify law enforcement personnel under section 70132 of this title.".

(c) CREDENTIALING STANDARDS, TRAINING, AND CERTIFICATION.—Section 70132 of such title is amended as follows:

(1) In the section heading, by striking "**for State and local support for the enforcement of security zones for the transportation of especially hazardous cargo**" and inserting "**of maritime law enforcement personnel**".

(2) By amending subsection (a) to read as follows:

"(a) STANDARDS.—The Commandant of the Coast Guard shall establish standards for training, qualification, and certification of a law enforcement officer employed by a law enforcement agency, to conduct or execute, pursuant to a cooperative enforcement agreement, maritime security, maritime law enforcement, and maritime surge capacity activities.".

(3) In subsection (b)(1), by amending subparagraphs (A) and (B) to read as follows:

"(A) after notice and opportunity for public comment, may develop and publish training curricula for the standards established under subsection (a); and

"(B) may—

"(i) test and deliver training for which the curriculum is developed under subparagraph (A);

"(ii) enter into an agreement under which any Federal, State, local, tribal, or private sector entity may test and deliver such training; and

"(iii) accept the results of training conducted by any Federal, State, local, tribal, or private sector entity under such an agreement.".

(4) By striking subsection (b)(2) and inserting the following:

"(2) Any training developed under paragraph (1) after the date of enactment of the SMART Port Security Act shall be developed in consultation with the Federal Law Enforcement Training Center.".

(5) In subsection (b)(4)—

(A) by inserting after "any moneys," the following: "other than an allocation made under the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777 et seq.),"; and

(B) by striking "training of personnel to assist in the enforcement of security zones and limited access areas" and inserting "training and certifying personnel under this section".

(6) By striking subsection (c) and inserting the following:

"(c) CERTIFICATION OF PERSONNEL.—The Commandant of the Coast Guard may issue a certificate to law enforcement officer employed by a law enforcement agency, who has successfully completed training that the Commandant has developed under this section.".

(7) By adding at the end the following:

"(d) TACTICAL TRAINING FOR LAW ENFORCEMENT PERSONNEL.—The Commandant of the Coast Guard may make such training developed under this section available to law enforcement officers employed by a law enforcement agency, on either a reimbursable or a non-reimbursable basis, if the Commandant determines that—

"(1) a member of the Coast Guard is unable or unavailable to undertake tactical training the authorization of which had been previously approved, and no other member of the Coast Guard is reasonably available to undertake such training;

"(2) the inability or unavailability of Coast Guard personnel to undertake such training creates training capacity within the training program; and

"(3) such training, if made available to such law enforcement officers, would contribute to achievement of the purposes of this section.".

(d) CONFORMING AMENDMENT.—Chapter 701 of such title is amended—

(1) by striking the heading for subchapter II and inserting the following:

**"Subchapter II—Port Security Training and Certification"**; and

(2) in the table of sections at the beginning of the chapter—

(A) by striking the item relating to the heading for subchapter II and inserting the following:

"SUBCHAPTER II—PORT SECURITY TRAINING AND CERTIFICATION"; and

(B) by striking the item relating to section 70132 and inserting the following:

"70132. Credentialing standards, training, and certification of maritime law enforcement personnel.".

(e) TECHNICAL CORRECTIONS.—Chapter 701 of such title is amended—

(1) by moving sections 70122, 70123, 70124, and 70125 so as to appear at the end of subchapter I of such chapter;

(2) in the table of sections at the beginning of the chapter, in the item relating to section 70107A, by adding at the end a period; and

(3) by striking the heading for section 70124 and inserting the following:

**"§ 70124. Regulations".**

**SEC. 114. NORTHERN BORDER UNMANNED AERIAL VEHICLE PILOT PROJECT.**

(a) RESEARCH AND DEVELOPMENT.—The Secretary shall research and develop technologies to allow routine operation of medium-sized unmanned aerial vehicles, including autonomously piloted drones, within the national airspace for border and maritime security missions without any degradation of existing levels of security-related surveillance or of safety for all national airspace system users.

(b) PILOT PROJECT.—No later than 180 days after the date of enactment of this Act, the Secretary shall commence a pilot project in segregated airspace along the northern border to conduct experiments and collect data in order to accelerate the safe integration of medium-sized unmanned aircraft systems into the national airspace system.

**SEC. 115. RECOGNITION OF PORT SECURITY ASSESSMENTS CONDUCTED BY OTHER ENTITIES.**

Section 70108 of title 46, United States Code, is amended by adding at the end the following new subsection:

"(f) RECOGNITION OF ASSESSMENT CONDUCTED BY OTHER ENTITIES.—

"(1) CERTIFICATION AND TREATMENT OF ASSESSMENTS.—For the purposes of this section and section 70109, the Secretary may treat an assessment conducted by a foreign government or international organization as an assessment by the Secretary required by subsection (a), if the Secretary certifies that the assessment was conducted in accordance with subsection (b).

"(2) AUTHORIZATION TO ENTER INTO AGREEMENTS OR ARRANGEMENTS.—The Secretary may enter into an agreement or arrangement with a foreign government or international organization, under which—

"(A) such government or organization may, on behalf of the Secretary, conduct an assessment required under subsection (a), or share with the Secretary information pertaining to such assessments; and

"(B) the Secretary may, on behalf of such foreign government or organization, conduct an assessment described in subsection (a), or share with such foreign government or organization information pertaining to such assessments.

"(3) LIMITATIONS.—Nothing in this subsection—

"(A) requires the Secretary to recognize an assessment that a foreign government or an international organization conducts pursuant to this subsection; or

"(B) limits the discretion or ability of the Secretary to conduct an assessment under this section.

"(4) NOTIFICATION.—Not later than 30 days before entering into an agreement or arrangement with a foreign government under paragraph (2), the Secretary shall notify the appropriate congressional committees of the proposed terms of such agreement or arrangement.".

**SEC. 116. USE OF PORT SECURITY GRANT FUNDS FOR REPLACEMENT OF SECURITY EQUIPMENT OR FACILITIES.**

Section 70107(b)(2) of title 46, United States Code, is amended by inserting "(including replacement)" after "acquisition".

# TITLE II—MARITIME SUPPLY CHAIN SECURITY

**SEC. 201. STRATEGIC PLAN TO ENHANCE THE SECURITY OF THE INTERNATIONAL SUPPLY CHAIN.**

Section 201 of the SAFE Port Act (6 U.S.C. 941) is amended—

(1) by amending subsection (b) to read as follows:

"(b) REQUIREMENTS.—The strategic plan required under subsection (a), and any updates to the strategic plan required under subsection (g), shall—

"(1) identify and address gaps and unnecessary redundancies or overlaps in the roles, responsibilities, or authorities of the agencies responsible for securing the supply chain, including—

"(A) any unnecessary redundancies or overlaps in Federal transportation security credentialing programs; and

"(B) any unnecessary redundancies or overlaps in Federal trusted shipper or trusted trader programs;

"(2) review ongoing efforts to align activities throughout the Federal Government to—

"(A) improve coordination among the agencies referred to in paragraph (1);

"(B) facilitate the efficient flow of legitimate commerce;

"(C) enhance the security of the international supply chain; or

"(D) address any gaps or overlaps described in paragraph (1);

"(3) identify further regulatory or organizational changes necessary to —

"(A) improve coordination among the agencies referred to in paragraph (1);

"(B) facilitate the efficient flow of legitimate commerce;

"(C) enhance the security of the international supply chain; or

"(D) address any gaps or overlaps described in paragraph (1);

"(4) provide measurable goals, including objectives, mechanisms, and a schedule, for furthering the security of commercial operations from point of origin to point of destination;

"(5) build on available resources and consider costs and benefits;

"(6) recommend additional incentives for voluntary measures taken by private sector entities to enhance supply chain security, including additional incentives for such entities participating in the Customs-Trade Partnership Against Terrorism in accordance with sections 214, 215, and 216;

"(7) consider the impact of supply chain security requirements on small- and medium- sized companies;

"(8) identify a framework for prudent and measured response in the event of a transportation security incident involving the international supply chain;

"(9) provide updated protocols for the expeditious resumption of the flow of trade in accordance with section 202;

"(10) review and address implementation of lessons learned from recent exercises conducted under sections 114 and 115, and other international supply chain security, response, or recovery exercises that the Department participates in, as appropriate;

"(11) consider the linkages between supply chain security and security programs within other systems of movement, including travel security and terrorism finance programs;

"(12) be informed by technologies undergoing research, development, testing, and evaluation by the Department; and

"(13) expand upon and relate to existing strategies and plans for securing supply chains, including the National Response Plan, the National Maritime Transportation Security Plan, the National Strategy for Maritime Security, and the eight supporting plans of such National Strategy for Maritime Security, as required by Homeland Security Presidential Directive 13.";

(2) in subsection (g)—

(A) in the heading for paragraph (2), by striking "FINAL" and inserting "UPDATED"; and

(B) by adding at the end the following new paragraphs:

"(3) FINAL REPORT.—Not later than two years after the date on which the update of the strategic plan is submitted under paragraph (2), the Secretary shall submit to the appropriate congressional committees a report that contains a further update of the strategic plan.

"(4) IMPLEMENTATION PLAN.—Not later than one year after the date on which the final update of the strategic plan is submitted under paragraph (3), the Secretary shall submit to the appropriate congressional committees an implementation plan for carrying out the strategic plan."; and

(3) by adding at the end the following new subsection:

"(h) THREAT ASSESSMENT.—In developing the reports and implementation plan required under subsection (g), the Secretary shall take into account an assessment of the current threats to the global supply chain.".

**SEC. 202. CUSTOMS-TRADE PARTNERSHIP AGAINST TERRORISM.**

(a) UNANNOUNCED INSPECTIONS.—Section 217(a) of the SAFE Port Act (6 U.S.C. 967(a)) is amended—

(1) by striking "If at any time" and inserting the following:

"(1) FAILURE TO MEET REQUIREMENTS.—If at any time"; and

(2) by inserting after paragraph (1), as redesignated, the following new paragraph:

"(2) UNANNOUNCED INSPECTIONS.—The Secretary, acting through the Commissioner, may conduct an unannounced inspection of a C-TPAT participant's security measures and supply chain security practices if the Commissioner determines, based on previously identified deficiencies in security measures and supply chain security practices of the C-TPAT participant, that there is a likelihood that such an inspection would assist in confirming the security measures in place and further the validation process.".

(b) PRIVATE SECTOR INFORMATION SHARING ON SECURITY AND TERRORISM THREATS.—Subsection (d) of section 216 of the SAFE Port Act (6 U.S.C. 966) is amended to read as follows:

"(d) PRIVATE SECTOR INFORMATION SHARING ON SECURITY AND TERRORISM THREATS.—

"(1) IN GENERAL.—The Secretary shall promote information sharing, as appropriate, between and among the Department and C-TPAT participants and other private entities regarding—

"(A) potential vulnerabilities, attacks, and exploitations of the international supply chain; and

"(B) means and methods of preventing, responding to, and mitigating consequences from the vulnerabilities, attacks, and exploitations described in subparagraph (A).

"(2) CONTENTS.—The information sharing required under paragraph (1) may include—

"(A) the creation of classified and unclassified means of accessing information that may be used by appropriately cleared personnel and that will provide, as appropriate, ongoing situational awareness of the security of the international supply chain; and

"(B) the creation of guidelines to establish a mechanism by which owners and operators of international supply chain infrastructure may report actual or potential security breaches.".

**SEC. 203. RECOGNITION OF OTHER COUNTRIES' TRUSTED SHIPPER PROGRAMS.**

Section 218 of the SAFE Port Act (6 U.S.C. 968) is amended by adding at the end the following new subsection:

"(j) RECOGNITION OF OTHER COUNTRIES' TRUSTED SHIPPER PROGRAMS.—Not later than 30 days before signing an arrangement between the United States and a foreign government providing for mutual recognition of supply chain security practices which might result in the utilization of benefits described in section 214, 215, or 216, the Secretary shall—

"(1) notify the appropriate congressional committees of the proposed terms of such arrangement; and

"(2) determine, in consultation with the Commissioner, that the foreign government's supply chain security program provides comparable security as that provided by C-TPAT.".

**SEC. 204. PILOT PROGRAM FOR INCLUSION OF NON-ASSET BASED THIRD PARTY LOGISTICS PROVIDERS IN THE CUSTOMS-TRADE PARTNERSHIP AGAINST TERRORISM.**

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall develop a pilot program to determine whether allowing non-asset based third party logistics providers that arrange international transportation of freight to participate in the Customs-Trade Partnership Against Terrorism program, as described in section 211 of the SAFE Port Act (6 U.S.C. 961), would enhance port security, combat terrorism, prevent supply chain security breaches, or meet the goals of the Customs-Trade Partnership Against Terrorism established pursuant to section 211 of the SAFE Port Act (6 U.S.C. 961).

(b) REQUIREMENTS.—

(1) VOLUNTARY PARTICIPATION.—Participation by non-asset based third party logistics providers that arrange international transportation of freight taking part in the pilot program shall be voluntary.

(2) MINIMUM NUMBER.—The Secretary shall ensure that not fewer than five non-asset based third party logistics providers that arrange international transportation of freight take part in the pilot program.

(3) DURATION.—The pilot program shall be conducted for a minimum duration of one year.

(c) REPORT.—Not later than 180 days after the conclusion of the pilot program, the Secretary shall submit to the appropriate congressional committees a report on the findings and any recommendations of the pilot program concerning the participation in the Customs-Trade Partnership Against Terrorism of non-asset based third party logistics providers that arrange international transportation of freight to combat terrorism and prevent supply chain security breaches.

**SEC. 205. TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL PROCESS REFORM.**

(a) SENSE OF CONGRESS.—To avoid further imposing unnecessary and costly regulatory burdens on United States workers and businesses, it is the sense of Congress that it is urgent that the Transportation Worker Identification Credential (in this section referred to as the "TWIC") application process be reformed by not later than the end of 2012, when hundreds of thousands of current TWIC holders will begin to face the requirement to renew their TWICs.

(b) TWIC APPLICATION REFORM.—Not later than 270 days after the date of the enactment of this Act, the Secretary shall reform the process for the enrollment, activation, issuance, and renewal of a TWIC to require, in total, not more than one in-person visit to a designated enrollment center except in cases in which there are extenuating circumstances, as determined by the Secretary, requiring more than one such in-person visit.

**SEC. 206. EXPIRATION OF CERTAIN TRANSPORTATION WORKER IDENTIFICATION CREDENTIALS.**

(a) IN GENERAL.—A valid Transportation Worker Identification Credential required under part 101.514 of title 33, Code of Federal Regulations, that was issued before the date of enactment of this Act shall not expire before the earlier of—

(1) the deadline for full implementation of a final rule issued by the Secretary for electronic readers designed to work with Transportation Worker Identification Credentials as an access control and security measure issued pursuant to the advanced notice of proposed rulemaking published March 27, 2009 (74 Fed. Reg. 58), as established by the final rule; or

(2) June 30, 2014.

(b) REVOCATION AUTHORITY NOT AFFECTED.—This section shall not be construed to affect the authority of the Secretary to revoke a Transportation Worker Identification Credential—

(1) based on information that the holder is not qualified to hold such credential; or

(2) if the credential is lost, damaged, or stolen.

**SEC. 207. SECURING THE TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL AGAINST USE BY UNAUTHORIZED ALIENS.**

(a) PROCESS.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall establish a process to ensure, to the maximum extent practicable, that an individual who is not lawfully present in the United States cannot obtain or continue to use a Transportation Worker Identification Credential (in this section referred to as the "TWIC").

(2) COMPONENTS.—In establishing the process under subsection (a), the Secretary shall—

(A) publish a list of documents that will identify non-United States citizen TWIC applicants and verify their immigration statuses by requiring each such applicants to produce a document or documents that demonstrate—

(i) identity; and

(ii) proof of lawful presence in the United States; and

(B) establish training requirements to ensure that trusted agents at TWIC enrollment centers receive training to identify fraudulent documents.

(b) EXPIRATION OF TWICS.—A TWIC expires on the date of its expiration, or in the date on which the individual to whom such a TWIC is issued is no longer lawfully present in the United States, whichever is earlier.

**SEC. 208. REPORT ON FEDERAL TRANSPORTATION SECURITY CREDENTIALING PROGRAMS.**

Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to the appropriate congressional committees a report that identifies unnecessary redundancies or overlaps in Federal transportation security credentialing

programs, including recommendations to reduce or eliminate such redundancies or overlaps.

## PURPOSE AND SUMMARY

The purpose of H.R. 4251 is to authorize, enhance, and reform certain port security programs through increased efficiency and risk-based coordination within the Department of Homeland Security, and for other purposes.

## BACKGROUND AND NEED FOR LEGISLATION

Securing our waterways is an essential component of a layered approach to security. A major disruption at one of the Nation's ports, especially a terrorist attack, is a high consequence event that has the potential to cripple the global supply chain and severely damage our economy and cost lives.

Smart, cost-effective security choices based on legitimate risk have to be made in order to secure the Nation's ports and costal waterways.

The SMART Port Security Act builds on the work of the Security and Accountability For Every Port Act of 2006 (the "SAFE Port Act", Pub. L. 109–347) to enhance risk-based security measures overseas before the threat reaches our shores, emphasizing a stronger collaborative environment between and among the components of the Department of Homeland Security in sharing port security duties.

Based on a series of oversight hearings, the Committee learned that cooperation and coordination between the U.S. Coast Guard and Customs and Border Protection, and other State and local partners, should be more fully developed. This will allow the Department to perform its maritime security mission, at a reduced cost.

The SMART Port Act encourages the Department to coordinate within the components to effectively secure the maritime environment, recognizes that maritime security is not the province of the Federal Government alone, and emphasizes the importance of partnerships with the private sector and international partners.

## HEARINGS

No hearings were held on H.R. 4251; however, the Committee conducted several oversight hearings on port and maritime security.

On June 14, 2011, the Subcommittee on Border and Maritime Security held a hearing on "Securing the Nation's Ports and Maritime Border—A Review of the Coast Guard's Post—9/11 Homeland Security Missions." The Subcommittee received testimony from Admiral Robert J. Papp, Jr., Commandant of the U.S. Coast Guard.

On July 12, 2011, the Subcommittee on Border and Maritime Security held a hearing entitled "Protecting the Maritime Borders—Leveraging Law Enforcement Cooperation to Enhance Security Along America's Coasts." The Subcommittee received testimony from Major General Michael C. Kostelnik (Ret.), Assistant Commissioner, Office of Customs and Border Protection Air and Marine, U.S. Customs and Border Protection, Department of Homeland Security; Rear Admiral Paul F. Zukunft, Assistant Commandant for Marine Safety, Security and Stewardship, United States Coast

Guard, Department of Homeland Security; Sheriff Tim Donnellon, St. Clair County Sheriff's Office, Michigan; and Sheriff Adrian Garcia, Harris County Sheriff's Office, Texas.

The Subcommittee on Border and Maritime Security held a hearing on February 7, 2012, entitled "Balancing Maritime Security and Trade Facilitation: Protecting our Ports, Increasing Commerce and Securing the Supply Chain—Part I." The Subcommittee received testimony from Hon. Jerrold Nadler, a Representative in Congress from the 8th District of New York; Mr. David Heyman, Assistant Secretary, Office of Policy, Department of Homeland Security; Mr. Kevin McAleenan, Acting Assistant Commissioner, Office of Field Operations, U.S. Customs and Border Protection, Department of Homeland Security; Rear Admiral Paul Zukunft, Assistant Commandant for Marine Safety, Security and Stewardship, U.S. Coast Guard, Department of Homeland Security; and Mr. Stephen Caldwell, Director, Maritime and Coast Guard Issues, Homeland Security and Justice Team, Government Accountability Office.

## COMMITTEE CONSIDERATION

The Subcommittee on Border and Maritime Security met on March 27, 2012, to consider H.R. 4251, and reported the measure to the Full Committee for consideration, amended, by voice vote.

The Subcommittee agreed to H.R. 4251, as amended, by voice vote.

The following amendments were offered:

An Amendment in the Nature of a Substitute to H.R. 4251 offered by MRS. MILLER (#1); was AGREED TO, as amended, by voice vote.

An amendment to the Amendment in the Nature of a Substitute to H.R. 4251 offered by MR. RIGELL (#1A); was AGREED TO by voice vote.

Add at the end a new title entitled "Title __—Miscellaneous Provisions. Sec. 01. Recognition of Port Security Assessments Conducted by Other Entities."

An amendment to the Amendment in the Nature of a Substitute to H.R. 4251 offered by MR. MCCAUL (#1B); was AGREED TO by voice vote.

Add at the end a new title entitled "Title __—Miscellaneous Provisions. Sec. 01. Limitation on Delegation of Inspection, Certification, and Related Services."

The Committee met on June 6, 2012, to consider H.R. 4251, and ordered the measure to be reported to the House with a favorable recommendation, amended, by voice vote. The Committee took the following actions:

The Committee adopted H.R. 4251, as amended, by voice vote.

The following amendments were offered:

An Amendment in the Nature of a Substitute offered by MRS. MILLER (#1); was AGREED TO by voice vote, as amended.

An amendment to the Amendment in the Nature of a Substitute offered by MS. RICHARDSON (#1A); was AGREED TO, by unanimous consent.

At the end of title I, add a new section entitled "Sec. 1__. Use of Port Security Grant Funds for Replacement of Security Equipment or Facilities."

An amendment to the Amendment in the Nature of a Substitute offered by MR. CRAVAACK (#1B); was AGREED TO, by unanimous consent.

At the end of title II, add a new section entitled "Sec. 2. Report on Federal Transportation Security Credentialing Programs."

## COMMITTEE VOTES

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

No recorded votes were requested during consideration of H.R. 4251.

## 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. 4251, the Securing Maritime Activities through Risk-based Targeting for Port Security Act, 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.

However, the Committee notes that the costs associated with H.R. 4251, the SMART Port Security Act, are consistent with Department of Homeland Security maritime security responsibilities and should be supported using existing funds.

The authorization of appropriations for Integrated Cross-Border Maritime Operations, commonly called Shiprider, is consistent with the U.S. Coast Guard's planned funding level once this program transitions from a pilot to a fully operational program. The committee's intent is to support the use of existing Coast Guard funds, at the level authorized by the bill.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, June 11, 2012.*

Hon. PETER T. KING,
*Chairman, Committee on Homeland Security,*
*U.S. House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4251, the SMART Port Security Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz and Sarah Puro.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*H.R. 4251—SMART Port Security Act*

Summary: H.R. 4251 would require the Department of Homeland Security (DHS) to carry out two pilot programs relating to border and port security and would direct DHS and the Government Accountability Office (GAO) to prepare several reports on improving port security. In addition, the legislation would authorize the appropriation of $4 million for a security program jointly operated by the United States Coast Guard (USCG) and the Canadian government. H.R. 4251 also would direct DHS to make changes to procedures for issuing Transportation Worker Identification Credentials (TWICs) to individuals who require unescorted access to secure areas of ports and certain other facilities.

CBO estimates that implementing this legislation would cost $9 million over the next five years, assuming appropriation of the necessary amounts. Changes to the TWIC program could affect offsetting receipts and subsequent direct spending; therefore, pay-as-you-go procedures apply. CBO estimates, however, that the net impact of any such effects would not be significant in any year. Enacting H.R. 4251 would not affect revenues.

H.R. 4251 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 4251 is shown in the following table. The cost of this legislation falls within budget functions 400 (transportation), 450 (community and regional development), 750 (administration of justice), and 800 (general government).

| | By fiscal year, in millions of dollars— | | | | | |
|---|---|---|---|---|---|---|
| | 2013 | 2014 | 2015 | 2016 | 2017 | 2013–2017 |
| CHANGES IN SPENDING SUBJECT TO APPROPRIATION | | | | | | |
| Pilot Programs and Reports: | | | | | | |
| Estimated Authorization Level | 5 | * | * | 0 | 0 | 5 |
| Estimated Outlays | 5 | * | * | 0 | 0 | 5 |
| Coast Guard Border Security Program: | | | | | | |
| Authorization Level | 2 | 2 | 0 | 0 | 0 | 4 |
| Estimated Outlays | 1 | 2 | 1 | 0 | 0 | 4 |
| Total Changes: | | | | | | |
| Estimated Authorization Level | 7 | 2 | * | 0 | 0 | 9 |
| Estimated Outlays | 6 | 2 | 1 | 0 | 0 | 9 |

Note: * = less than $500,000.

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted near the end of 2012 and that amounts specified and estimated to be necessary will be appropriated for each year.

*Spending subject to appropriation*

*Pilot Programs and Reports.* H.R. 4251 would direct DHS to carry out pilot programs relating to the use of unmanned aircraft to patrol the United States border with Canada and the expansion of a trade security program.

The legislation also would require DHS and GAO to prepare several reports, most within one year of the bill's enactment. Those reports would address issues that include the following: Updating the Maritime Operations Coordination Plan, identifying duplicative programs and goals, assessing the deployment of personnel and equipment within interagency operational centers, and analyzing the threats and consequences of attacks by small vessels on U.S. ports or maritime interests. Based on the costs of similar activities, CBO estimates that the pilot programs and reports required by H.R. 4251 would cost about $5 million over the 2013–2015 period.

*Coast Guard Border Security Program.* H.R. 4251 would authorize the appropriation of $4 million over the next two years for the USCG to continue working with the Canadian government to coordinate maritime security operations and to conduct joint training. CBO estimates that implementing this provision would cost $4 million over the 2013–2015 period, assuming appropriation of the specified amounts.

*Direct spending*

The Maritime Transportation Security Act (Public Law 107–295) directs the Secretary of Homeland Security to prohibit unauthorized individuals from accessing secure areas of ports, vessels, facilities on the outer continental shelf, and all credentialed merchant mariners. To meet that requirement, the Transportation Security Administration (TSA) issues credentials with biometric information, known as TWICs, to workers who require unescorted access to such areas. Under current administrative procedures, obtaining a TWIC requires at least two in-person visits to a TWIC enrollment center. H.R. 4251 would direct the Secretary of Homeland Security to reform those procedures to ensure that individuals seeking a TWIC would need to make one such in-person visit. The bill also would extend, through June 30, 2014, the expiration date of TWICs for individuals whose credentials would otherwise expire sooner.

The costs of implementing reformed TWIC procedures under H.R. 4251 are uncertain and would depend on specific changes that TSA would make. Current law directs TSA to collect and spend cost-based fees from TWIC applicants to administer the program. For this estimate, CBO assumes that TSA would revise fees to offset any change in TSA's costs to administer the TWIC program under H.R. 4251. Any such changes to offsetting receipts from such fees and subsequent spending would be considered direct spending; therefore, pay-as-you-go procedures apply. CBO estimates, however, that any resulting net changes in direct spending under H.R. 4251 would not be significant in any year.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. CBO estimates that the legislation would have an insignificant impact on direct spending.

Intergovernmental and private-sector impact: H.R. 4251 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Previous CBO estimate: On June 8, 2012, CBO transmitted a cost estimate for H.R. 3173, a bill to direct the Secretary of Homeland Security to reform the process for the enrollment, activation, issuance, and renewal of a Transportation Worker Identification Credential (TWIC) to require, in total, not more than one in-person visit to a designated enrollment center, as ordered reported by the House Committee on Homeland Security on May 9, 2012. Provisions of H.R. 3173 and H.R. 4251 that would require DHS to modify procedures related to the TWIC program are substantively similar, and our cost estimates are the same.

Estimate prepared by: Federal Costs: Mark Grabowicz (DHS), Sarah Puro (Coast Guard), Megan Carroll (TSA), Daniel Hoople (FEMA); Impact on state, local, and tribal governments: Melissa Merrell; Impact on the private sector: Paige Piper/Bach.

Estimate approved by: Theresa Gullo, 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, H.R. 4251 contains the following general performance goals, and objectives, including outcome related goals and objectives authorized.

The primary purpose of H.R. 4251 is to foster and promote greater coordination and cooperation among the components of the Department of Homeland Security in the execution of their maritime security mission. The Committee has identified several inefficiencies within the Department that are addressed in H.R. 4251. The bill realizes greater cost efficiencies through strategic sourcing and collocating assets, increases collaboration among the Department's components, expands partnerships with our international allies, promotes fairness in the Transportation Worker Identification Credential (TWIC) process, and requires a clear, robust Global Supply Chain Security Strategy. H.R. 4251 builds on the strong security provisions of the SAFE Port Act of 2006 by identifying and eliminating waste and redundancies that will enable the Department to more efficiently carry out its duty to protect our Nation.

## CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

## 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.

## PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or Tribal law, the Committee finds that H.R. 4251 does not preempt any State, local, or Tribal law.

## ADVISORY COMMITTEE STATEMENT

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

## 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.*

This Act may be cited as the "Securing Maritime Activities through Risk-based Targeting for Port Security Act" or the "SMART Port Security Act".

*Sec. 2. Table of Contents.*

This section details the contents of H.R. 4251.

*Sec. 3. Definitions.*

This section defines the terms used in H.R. 4251.

## TITLE I—DEPARTMENT OF HOMELAND SECURITY PORT SECURITY PROGRAMS.

*Sec. 101. Updates of Maritime Operations Coordination Plan.*

This section requires the Department of Homeland Security to update the Department's Maritime Operations Coordination Plan (MOC-P), which was first released in July 2011. Although long overdue, the Committee believes that this plan was an important first step towards establishing a National framework for interagency cooperation.

This section requires the updated versions of the MOC-P be provided to Congress by July 1, 2014, and again on July 1, 2019. However, the Committee intends the MOC-P to be updated on a periodic basis and expects that the next iteration of the MOC-P will include mechanisms to share best practices among and between the Regional Coordinating Mechanisms (ReCoMs); a process for feedback to filter up, down, and between the Department and the ReCoMs; a method to measure the effectiveness of ReCoMs; and a process for local and State law enforcement agencies and other port stakeholders to provide feedback to the ReCoMs and the Department.

*Sec. 102. U.S. Customs and Border Protection Office of Air and Marine Asset Deployment.*

This section requires the Department to ensure that any new asset deployments by the U.S. Customs and Border Protection (CBP) Office of Air and Marine (OAM) are determined using a risk-based analysis. The Committee is concerned that a recent report from the Government Accountability Office (GAO) titled "Opportunities Exist to Ensure More Effective Use of DHS's Air and Marine Assets," identified weaknesses in CBP's documentation to clearly link deployment decisions with its goals.

To ensure that future deployments are based on risk and the needs of mission commanders, the Committee's goal is to ensure implementation of the GAO's recommendation from the report, requiring CBP OAM to document decision making analysis on asset mix and placement. Moreover, the Committee strongly encourages CBP to use a documented, repeatable, and systematic method of asset deployment based on risk for any future asset deployment.

*Sec. 103. Cost-Benefit Analysis of Co–locating Operational Entities.*

This section requires the Department to examine locations where CBP OAM and the U.S. Coast Guard both have maritime or aviation assets deployed, and to determine the potential for cost savings through co-location. The Committee strongly believes that it is in the Nation's interest to reduce the footprint and associated logistics trail of components within the Department, to the degree practicable, in order to maximize limited resources and increase operational efficiencies.

*Sec. 104. Study of Maritime Security Redundancies.*

This section requires GAO to review the Department's port security and maritime law enforcement operations within one year of enactment to identify duplicative, overlapping, or redundant activities, including the cost of such duplication. The GAO would be required to submit a report to the appropriate congressional committees on its findings, and provide recommendations for consolidation, elimination, or increased cooperation to reduce unnecessary duplication.

While the Committee appreciates and supports the need for a layered security approach, given the budgetary climate it is important to ensure any unnecessary duplication, overlap, or redundant activity that exists be minimized to the degree practicable.

*Sec. 105. Acquisition and Strategic Sourcing of Marine and Aviation Assets.*

This section requires the Department to use best practices of strategic sourcing to streamline the acquisition process and reduce costs prior to acquiring new boats or aviation assets for the Department. Examples of best practices of strategic sourcing include identifying common mission requirements and standardizing equipment purchases to reduce cost. To achieve this, the Secretary is required to establish a coordinating mechanism for aviation and maritime issues.

The Committee is cognizant of the fact that the Department's components have different missions, but strongly believes compo-

nent coordination of large-scale purchases can lead to significant cost-savings.

*Sec. 106. Port Security Grant Program Management.*

This section sets timelines for the responses the Department and the Federal Emergency Management Agency (FEMA) must provide in regards to Port Security Grant applications. This provision is necessary, as numerous port authorities and State and local law enforcement agencies have voiced concern to the Committee about delays to grant applications responses. This section requires the Department and FEMA to respond to grant applicants no later than 180 days from the date their grant application was submitted.

*Sec. 107. Port Security Grant Funding for Mandated Security Personnel.*

This section allows the use of Port Security Grant Program funds to pay limited overtime and backfill costs. Other grant programs within the Department of Homeland Security allow for grant funds to be used to finance overtime and backfill costs and this provision will align the Port Security Grant Program with other departmental grants.

*Sec. 108. Interagency Operational Centers of Port Security.*

This section requires CBP and the U.S. Immigration and Customs Enforcement (ICE) to ensure they appoint at least one part-time liaison to each Interagency Operation Center (IOC). The Committee is concerned that IOCs are not being fully utilized because DHS components are not willing to fund the personnel needed to ensure effective cooperation.

To that end, the Committee expects the Secretary to report on participation in joint daily operations, training and certifying of non-Federal law enforcement personnel and joint training exercises; the deployment of interoperable communications equipment; and mission execution and support to inform the future of IOCs.

*Sec. 109. Report on DHS Aviation Assets.*

This section requires the GAO to submit a report to the Congress that analyzes the costs, capabilities, and missions associated with both unmanned aerial vehicles (UAVs) and manned aircraft used by the Department. The Department has maintained that UAVs are significantly less expensive than manned aircraft, but the Committee is concerned about the reliability of CBP's cost estimates, as they do not include the cost of pilots, maintenance, or satellite communications.

This provision is intended to provide the Committee with an accurate comparison of aviation asset costs.

*Sec. 110. Small Vessel Threat Analysis.*

This section requires the Department to conduct a risk assessment of a small vessel terrorist attack occurring in U.S. ports or against U.S. maritime interests. While DHS published the Small Vessel Security Strategy Implementation Plan in January 2011, in order to coordinate actions to mitigate the small boat threat, the Committee expects the Department to incorporate small vessel threat analysis into existing risk assessment requirements on an on-going basis.

*Sec. 111. U.S. Customs and Border Protection Workforce Plan.*

This section requires CBP to submit to Congress a plan for optimizing staffing levels for CBP to carry out the mission of the Department, including all border and port security functions. The staffing plan should consider previous staffing models by the Department and assessments of the threat and vulnerability.

The Committee is disappointed that in spite of numerous bipartisan requests, CBP is unwilling to provide the Committee with proper documentation explaining its staffing plan. The Committee expects that the manpower data requested under this provision be provided on a yearly basis.

*Sec. 112. Integrated Cross-Border Maritime Operations Between the United States and Canada.*

This section provides Congressional authorization for the U.S. Coast Guard and the Royal Canadian Mounted Police maritime Shiprider program. The authorization includes funding of $2 million per year, which is the current level of funding for the program.

Nothing in this section should be construed to undermine the existing Integrated Cross-Border Maritime Operations agreement. The Committee's intent is to affirm the importance of the program.

*Sec. 113. Training and Certification of Training for Port Security.*

This section expands upon a provision from the Coast Guard Authorization Act of 2010 (Pub. L. 111–281) that allowed grant funds provided under the Port Security Grant Program (PSGP) to be used to pay for training of State and local law enforcement officers in enforcing maritime security zones. This section allows PSGP grants to be used for other types of maritime security training and certification, and ensures that training programs will be developed in consultation with the Federal Law Enforcement Training Center (FLETC). The Committee believes State and local law enforcement are a key element of a layered approach to maritime security, and provide maritime law enforcement benefits beyond simply enforcement within a security zone, and thus should be eligible to receive port security grant funding for other maritime law enforcement training.

*Sec. 114. Northern Border Unmanned Aerial Vehicle Pilot Project.*

This section authorizes the Department to establish a pilot project to facilitate the safe integration of medium-sized UAVs into the National airspace in order to carry out border and maritime security missions. This pilot would specifically test UAVs along the Northern Border. CBP currently maintains a certificate of operation from the Federal Aviation Administration (FAA) to operate two unmanned aerial vehicles along the Northern Border. This provision would ensure that UAVs are properly tested for integration into the National Airspace as required by the FAA Authorization Act (Pub. L. 112–95), within the unique environment of the Northern Border.

*Sec. 115. Recognition of Port Security Assessments Conducted by Other Entities.*

This section would allow the U.S. Coast Guard (USCG) to recognize port security threat assessments conducted by a foreign nation or international organization, such as the European Union, pro-

vided that the assessment is equivalent to a USCG inspection. The Committee believes this section is necessary to avoid the duplicative efforts of our trusted allies.

*Sec. 116. Use of Port Security Grant Funds for Replacement of Security Equipment or Facilities.*

This section allows Port Security Grant Program funds to be used to purchase the replacement of old equipment or facilities. Under current law and regulations, port security grant recipients may only use grant funds for acquisition, operation, and maintenance of current port security equipment.

## TITLE II—MARITIME SUPPLY CHAIN SECURITY

*Sec. 201. Strategic Plan to Enhance the Security of the International Supply Chain.*

This section requires the Department to provide a detailed strategy focused on reducing unnecessary redundancies, building resiliency, and utilizing existing resources, technology, and concepts. The strategy should also consider providing incentives for the private sector to improve global supply chain security and should include measurable goals and metrics to measure success of the strategy.

The Committee is dismayed by the brief National Strategy for Global Supply Chain Security issued in January and is concerned that the document did not comply with the statutory requirements of the SAFE Port Act of 2006. The Committee believes that this provision will correct that deficiency by requiring the Department to publish an in-depth strategy that more fully comports with the original Congressional intent.

*Sec. 202. Customs–Trade Partnership Against Terrorism.*

This section authorizes CBP to conduct unannounced inspections for a Customs–Trade Partnership Against Terrorism (C–TPAT) member company, if the company has a history of violations. Additionally, this section allows CBP to share sensitive information regarding threats to the private sector between and among C-TPAT participants providing recognizable benefits for voluntary participation in the program.

*Sec. 203. Recognition of Other Countries' Trusted Shipper Programs.*

This section authorizes CBP to provide mutual recognition of another country's trusted shipper program, provided the country reciprocates to C–TPAT member companies, and the other country's program provides an equivalent level of security to C–TPAT. The Committee believes that by recognizing trusted shipper programs from other countries, the Department will save money and increase the efficiency of the international supply chain.

*Sec. 204. Pilot Program for Inclusion of Non-Asset Based Third-Party Logistics Providers in the Customs-Trade Partnership Against Terrorism.*

This section requires CBP to create a pilot program to test the security value and efficacy of allowing third-party logistics (3PL) companies into the C–TPAT program. 3PLs are non-asset based

companies, working with outside companies to arrange the international transportation of freight.

Despite clear statutory language in the "SAFE Port Act of 2006," CBP has not permitted the participation of 3PLs in the C–TPAT program. The Committee believes this pilot is an important first step to determine the security value of allowing 3PLs to participate in the C–TPAT program.

*Sec. 205. Transportation Worker Identification Credential Process Reform.*

This section directs the Secretary to reform the process for the enrollment, activation, issuance and renewal of the Transportation Worker Identification Credential (TWIC) program. Specifically, this section allows TWIC applicants to conduct only one in-person visit to a TWIC enrollment center to process their application. Under current law and regulations, TWIC applicants must visit TWIC enrollment centers at least twice to complete the process.

The Committee believes that the current requirement to visit a TWIC enrollment center multiple times is an onerous, unnecessary, burden for workers in the maritime industry, such as merchant vessel operators and truck drivers, who rely on obtaining the credential for employment.

*Sec. 206. Expiration of Certain Transportation Worker Identification Credentials.*

This section exempts current TWIC holders from the requirement to renew their credentials until the Department issues a final rule regarding electronic TWIC readers or June 30, 2014, whichever is earlier.

As a result of the Department's delay in issuing this rule and the lack of readers in our Nation's ports, the TWIC's security value as a biometric credential has not been realized. The Committee believes transportation workers who must obtain a TWIC should not have to bear the burden of renewing their TWICs until the Government fulfills its obligation to issue the rule.

This provision is intended to provide the Department motivation to issue the rule at the earliest possible date and ensure that the full security benefit of the TWIC program is realized.

*Sec. 207. Securing the Transportation Worker Identification Credential Against Use by Unauthorized Aliens.*

This section prevents unauthorized aliens from being able to acquire a TWIC by directing the Secretary to modify the enrollment and distribution process to require an applicant to present proof of U.S. citizenship or authorization to work in the United States when applying. Furthermore, the Secretary must modify the TWIC enrollment process so that a TWIC will expire upon the same date that a TWIC holder's work authorization or visa will expire; whichever comes sooner.

The Committee believes that this section is necessary to ensure all TWIC holders are authorized to work and are lawfully present in the U.S.

*Sec. 208. Report on Federal Transportation Security Credentialing Programs.*

This section requires the Secretary to submit a report to Congress within 180 days identifying unnecessary redundancies or overlaps in Federal transportation security credentialing programs, including recommendations to reduce or eliminate such redundancies or overlaps. Although the Committee understands the Department is planning to address redundancy and duplication in the transportation security credentialing process by harmonizing security threat assessments through the Transportation Security Administration's Universal Rule, the Committee notes that the publication of the Rule continues to be delayed. The Committee believes the Department should issue the Universal Rule as soon as possible, in order to reduce the unnecessary cost and duplicative regulatory burden on transportation workers.

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 46, UNITED STATES CODE

* * * * * * *

# Subtitle VII—Security and Drug Enforcement

* * * * * * *

## CHAPTER 701—PORT SECURITY

Sec.
Subchapter I—General
70101. Definitions.

* * * * * * *

70107A. Interagency operational centers for port security.

* * * * * * *

[SUBCHAPTER II—PORT SECURITY ZONES]

*SUBCHAPTER II—PORT SECURITY TRAINING AND CERTIFICATION*

* * * * * * *

[70132. Credentialing standards, training, and certification for State and local support for the enforcement of security zones for the transportation of especially hazardous cargo.]

*70132. Credentialing standards, training, and certification of maritime law enforcement personnel.*

* * * * * * *

SUBCHAPTER I—GENERAL

* * * * * * *

### § 70107. Grants

(a) * * *

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

(1) Salary, benefits, overtime compensation, retirement contributions, and other costs of additional Coast Guard mandated security personnel[.]*, including overtime and backfill costs incurred in support of other expenditures authorized under this subsection, except that not more than 50 percent of amounts received by a grantee under this section for a fiscal year may be used under this paragraph.*

(2) The cost of acquisition *(including replacement)*, operation, and maintenance of security equipment or facilities to be used for security monitoring and recording, security gates and fencing, marine barriers for designated security zones, security-related lighting systems, remote surveillance, concealed video systems, security vessels, and other security-related infrastructure or equipment that contributes to the overall security of passengers, cargo, or crewmembers. Grants awarded under this section may not be used to construct buildings or other physical facilities, except those which are constructed under terms and conditions consistent with the requirements under section 611(j)(8) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121(j)(8)), including those facilities in support of this paragraph, and specifically approved by the Secretary. Costs eligible for funding under this paragraph may not exceed the greater of—

(A) * * *

* * * * * * *

[(8) The cost of training law enforcement personnel—

[(A) to enforce a security zone under section 70132 of this title; or

[(B) assist in the enforcement of a security zone.]

*(8) The cost of training and certifying a law enforcement officer employed by a law enforcement agency under section 70132 of this title.*

(c) MATCHING REQUIREMENTS.—

(1) * * *

(2) EXCEPTIONS.—

(A) * * *

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

[(C) TRAINING.—There are no matching requirements for grants under subsection (a) to train law enforcement agency personnel in the enforcement of security zones under section 70132 of this title or in assisting in the enforcement of such security zones.]

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

*(C) TRAINING AND CERTIFICATION.—There are no matching requirements for grants under subsection (a) to train and certify law enforcement personnel under section 70132 of this title.*

*(D) COST SHARE DETERMINATIONS.—Notwithstanding any other provision of law, not later than 60 days after the date on which an applicant submits a complete application for a matching requirement waiver under this paragraph the Secretary shall either approve or disapprove the application.*

* * * * * * *

(g) APPLICATIONS.—[Any entity]

*(1) IN GENERAL.—Any entity* subject to an Area Maritime Transportation Security Plan may submit an application for a grant under this section, at such time, in such form, and containing such information and assurances as the Secretary may require.

*(2) DETERMINATION.—Notwithstanding any other provision of law, the Secretary shall, not later than 60 days after the date on which an applicant submits a complete application for a grant under this section, either approve or disapprove the application.*

* * * * * * *

(i) ADMINISTRATION.—

(1) * * *

* * * * * * *

*(5) RELEASE OF FUNDS.—To the maximum extent practicable, the Secretary shall complete all necessary programmatic reviews and release grant funds awarded under this section to the appropriate entity not later than 180 days after the date on which an applicant submits a complete application.*

*(6) PERFORMANCE PERIOD.—The Secretary shall utilize a period of performance of not less than 3 years for expenditure of grant funds awarded under this section.*

*(7) EXTENSION DETERMINATIONS.—Notwithstanding any other provision of law, not later than 60 days after the date on which an applicant submits a complete application for an extension of the period of performance for a grant, the Secretary shall either approve or disapprove the application.*

* * * * * * *

**§ 70107A. Interagency operational centers for port security**

(a) * * *

(b) CHARACTERISTICS.—The interagency operational centers established under this section shall—

(1)(A) * * *

(B) where practicable, provide for the physical co-location of the Coast Guard*, not less than part-time representation from U. S. Customs and Border Protection and U.S. Immigration and Customs Enforcement,* and, as the Secretary determines appropriate, representatives of [the United States Customs and Border Protection, the United States Immigration and Customs Enforcement,] the Transportation Security Administration, the Department of Justice, the Department of Defense, and other

Federal agencies, State and local law enforcement or port security personnel, members of the Area Maritime Security Committee, and other public and private sector stakeholders adversely affected by a transportation security incident or transportation disruption;

* * * * * * *

**§ 70108. Foreign port assessment**

(a) * * *

* * * * * * *

*(f) RECOGNITION OF ASSESSMENT CONDUCTED BY OTHER ENTITIES.—*

*(1) CERTIFICATION AND TREATMENT OF ASSESSMENTS.—For the purposes of this section and section 70109, the Secretary may treat an assessment conducted by a foreign government or international organization as an assessment by the Secretary required by subsection (a), if the Secretary certifies that the assessment was conducted in accordance with subsection (b).*

*(2) AUTHORIZATION TO ENTER INTO AGREEMENTS OR ARRANGEMENTS.—The Secretary may enter into an agreement or arrangement with a foreign government or international organization, under which—*

*(A) such government or organization may, on behalf of the Secretary, conduct an assessment required under subsection (a), or share with the Secretary information pertaining to such assessments; and*

*(B) the Secretary may, on behalf of such foreign government or organization, conduct an assessment described in subsection (a), or share with such foreign government or organization information pertaining to such assessments.*

*(3) LIMITATIONS.—Nothing in this subsection—*

*(A) requires the Secretary to recognize an assessment that a foreign government or an international organization conducts pursuant to this subsection; or*

*(B) limits the discretion or ability of the Secretary to conduct an assessment under this section.*

*(4) NOTIFICATION.—Not later than 30 days before entering into an agreement or arrangement with a foreign government under paragraph (2), the Secretary shall notify the appropriate congressional committees of the proposed terms of such agreement or arrangement.*

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**§ 70122. Waterway watch program**

(a) * * *

* * * * * * *

**§ 70123. Mobile biometric identification**

(a) * * *

* * * * * * *

**[SEC. 70124. REGULATIONS.]**

***§ 70124. Regulations***

Unless otherwise provided, the Secretary may issue regulations necessary to implement this chapter.

**§ 70125. Port security training for facility security officers**

(a) * * *

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[SUBCHAPTER II—PORT SECURITY ZONES]

***Subchapter II—Port Security Training and Certification***

* * * * * * *

**§ 70132. Credentialing standards, training, and certification [for State and local support for the enforcement of security zones for the transportation of especially hazardous cargo] *of maritime law enforcement personnel***

[(a) STANDARD.—The Commandant of the Coast Guard shall establish, by regulation, national standards for training and credentialing of law enforcement personnel—

[(1) to enforce a security zone; or

[(2) to assist in the enforcement of a security zone.]

*(a) STANDARDS.—The Commandant of the Coast Guard shall establish standards for training, qualification, and certification of a law enforcement officer employed by a law enforcement agency, to conduct or execute, pursuant to a cooperative enforcement agreement, maritime security, maritime law enforcement, and maritime surge capacity activities.*

(b) TRAINING.—

(1) The Commandant of the Coast Guard—

[(A) shall develop and publish a training curriculum for—

[(i) law enforcement personnel to enforce a security zone;

[(ii) law enforcement personnel to enforce or assist in the enforcement of a security zone; and

[(iii) personnel who are employed or retained by a facility or vessel owner to assist in the enforcement of a security zone; and

[(B) may—

[(i) test and deliver such training, the curriculum for which is developed pursuant to subparagraph (A);

[(ii) enter into an agreement under which a public entity (including a Federal agency) or private entity may test and deliver such training, the curriculum for which has been developed pursuant to subparagraph (A); and

[(iii) may accept a program, conducted by a public entity (including a Federal agency) or private entity, through which such training is delivered the curriculum for which is developed pursuant to subparagraph (A).]

*(A) after notice and opportunity for public comment, may develop and publish training curricula for the standards established under subsection (a); and*

*(B) may—*

*(i) test and deliver training for which the curriculum is developed under subparagraph (A);*

*(ii) enter into an agreement under which any Federal, State, local, tribal, or private sector entity may test and deliver such training; and*

*(iii) accept the results of training conducted by any Federal, State, local, tribal, or private sector entity under such an agreement.*

[(2) Any Federal agency that provides such training, and any public or private entity that receives moneys, pursuant to section 70107(b)(8) of this title, to provide such training, shall provide such training—

[(A) to law enforcement personnel who enforce or assist in the enforcement of a security zone; and

[(B) on an availability basis to—

[(i) law enforcement personnel who assist in the enforcement of a security zone; and

[(ii) personnel who are employed or retained by a facility or vessel owner or operator to assist in the enforcement of a security zone.]

*(2) Any training developed under paragraph (1) after the date of enactment of the SMART Port Security Act shall be developed in consultation with the Federal Law Enforcement Training Center.*

* * * * * * *

(4) Notwithstanding any other provision of law, any moneys, *other than an allocation made under the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777 et seq.),* awarded by the Department of Homeland Security in the form of awards or grants, may be used by the recipient to pay for [training of personnel to assist in the enforcement of security zones and limited access areas] *training and certifying personnel under this section*.

[(c) CERTIFICATION; TRAINING PARTNERS.—In developing and delivering training under the training program, the Secretary, in coordination with the Maritime Administrator of the Department of Transportation, and consistent with section 109 of the Maritime Transportation Security Act of 2002 (46 U.S.C. 70101 note), shall—

[(1) work with government training facilities, academic institutions, private organizations, employee organizations, and other entities that provide specialized, state-of-the-art training for governmental and nongovernmental emergency responder providers or commercial seaport personnel and management;

[(2) utilize, as appropriate, government training facilities, courses provided by community colleges, public safety academies, State and private universities, and other facilities; and

[(3) certify organizations that offer the curriculum for training and certification.]

*(c) CERTIFICATION OF PERSONNEL.—The Commandant of the Coast Guard may issue a certificate to law enforcement officer em-*

*ployed by a law enforcement agency, who has successfully completed training that the Commandant has developed under this section.*

*(d) TACTICAL TRAINING FOR LAW ENFORCEMENT PERSONNEL.—The Commandant of the Coast Guard may make such training developed under this section available to law enforcement officers employed by a law enforcement agency, on either a reimbursable or a non-reimbursable basis, if the Commandant determines that—*

*(1) a member of the Coast Guard is unable or unavailable to undertake tactical training the authorization of which had been previously approved, and no other member of the Coast Guard is reasonably available to undertake such training;*

*(2) the inability or unavailability of Coast Guard personnel to undertake such training creates training capacity within the training program; and*

*(3) such training, if made available to such law enforcement officers, would contribute to achievement of the purposes of this section.*

* * * * * * *

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## HOMELAND SECURITY ACT OF 2002

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) * * *

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

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TITLE IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

* * * * * * *

SUBTITLE C—MISCELLANEOUS PROVISIONS

* * * * * * *

*Sec. 432. Integrated cross-border maritime operations between the United States and Canada.*

* * * * * * *

# TITLE IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

* * * * * * *

# Subtitle C—Miscellaneous Provisions

* * * * * * *

***SEC. 432. INTEGRATED CROSS-BORDER MARITIME OPERATIONS BETWEEN THE UNITED STATES AND CANADA.***

*(a) AUTHORIZATION.—The Secretary is authorized to establish an Integrated Cross-Border Maritime Operations Program to coordinate maritime security operations between the United States and Canada (in this section referred to as the "Program").*

*(b) PURPOSE.—The Secretary, acting through the Commandant of the Coast Guard, shall administer the Program in a manner that results in a cooperative approach between the United States and Canada to strengthen border security and detect, prevent, suppress,*

*investigate, and respond to terrorism and violations of law related to border security.*

*(c) TRAINING.—The Secretary, acting through the Commandant of the Coast Guard, in consultation with the Secretary of State, may—*

*(1) establish, as an element of the Program, a training program to create designated maritime law enforcement officers;*

*(2) conduct training jointly with Canada, including training—*

*(A) on the detection and apprehension of suspected terrorists and individuals attempting to unlawfully cross or unlawfully use the international maritime border between the United States and Canada, to enhance border security;*

*(B) on the integration, analysis, and dissemination of port security information between the United States and Canada;*

*(C) on the respective policy, regulatory, and legal considerations related to the Program;*

*(D) on the use of force and maritime security;*

*(E) in operational procedures and protection of information and other sensitive information; and*

*(F) on preparedness and response to maritime terrorist incidents.*

*(d) COORDINATION.—The Secretary, acting through the Commandant of the Coast Guard, shall coordinate the Program with other similar border security and antiterrorism programs within the Department.*

*(e) MEMORANDA OF AGREEMENT.—The Secretary may enter into any memorandum of agreement necessary to carry out the Program.*

*(f) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section there is authorized to be appropriated to the Secretary $2,000,000 for each of fiscal years 2013 and 2014.*

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**SAFE PORT ACT**

* * * * * * *

# TITLE II—SECURITY OF THE INTERNATIONAL SUPPLY CHAIN

## Subtitle A—General Provisions

**SEC. 201. STRATEGIC PLAN TO ENHANCE THE SECURITY OF THE INTERNATIONAL SUPPLY CHAIN.**

(a) * * *

[(b) REQUIREMENTS.—The strategic plan required under subsection (a) shall—

[(1) describe the roles, responsibilities, and authorities of Federal, State, local, and tribal government agencies and private-sector stakeholders that relate to the security of the movement of containers through the international supply chain;

[(2) identify and address gaps and unnecessary overlaps in the roles, responsibilities, or authorities described in paragraph (1);

[(3) identify and make recommendations regarding legislative, regulatory, and organizational changes necessary to improve coordination among the entities or to enhance the security of the international supply chain;

[(4) provide measurable goals, including objectives, mechanisms, and a schedule, for furthering the security of commercial operations from point of origin to point of destination;

[(5) build on available resources and consider costs and benefits;

[(6) provide incentives for additional voluntary measures to enhance cargo security, as recommended by the Commissioner;

[(7) consider the impact of supply chain security requirements on small- and medium-sized companies;

[(8) include a process for sharing intelligence and information with private-sector stakeholders to assist in their security efforts;

[(9) identify a framework for prudent and measured response in the event of a transportation security incident involving the international supply chain;

[(10) provide protocols for the expeditious resumption of the flow of trade in accordance with section 202;

[(11) consider the linkages between supply chain security and security programs within other systems of movement, including travel security and terrorism finance programs; and

[(12) expand upon and relate to existing strategies and plans, including the National Response Plan, the National Maritime Transportation Security Plan, the National Strategy for Maritime Security, and the 8 supporting plans of the Strategy, as required by Homeland Security Presidential Directive 13.]

*(b) REQUIREMENTS.—The strategic plan required under subsection (a), and any updates to the strategic plan required under subsection (g), shall—*

*(1) identify and address gaps and unnecessary redundancies or overlaps in the roles, responsibilities, or authorities of the agencies responsible for securing the supply chain, including—*

*(A) any unnecessary redundancies or overlaps in Federal transportation security credentialing programs; and*

*(B) any unnecessary redundancies or overlaps in Federal trusted shipper or trusted trader programs;*

*(2) review ongoing efforts to align activities throughout the Federal Government to—*

*(A) improve coordination among the agencies referred to in paragraph (1);*

*(B) facilitate the efficient flow of legitimate commerce;*

*(C) enhance the security of the international supply chain; or*

*(D) address any gaps or overlaps described in paragraph (1);*

*(3) identify further regulatory or organizational changes necessary to —*

*(A) improve coordination among the agencies referred to in paragraph (1);*

*(B) facilitate the efficient flow of legitimate commerce;*

*(C) enhance the security of the international supply chain; or*

*(D) address any gaps or overlaps described in paragraph (1);*

*(4) provide measurable goals, including objectives, mechanisms, and a schedule, for furthering the security of commercial operations from point of origin to point of destination;*

*(5) build on available resources and consider costs and benefits;*

*(6) recommend additional incentives for voluntary measures taken by private sector entities to enhance supply chain security, including additional incentives for such entities participating in the Customs-Trade Partnership Against Terrorism in accordance with sections 214, 215, and 216;*

*(7) consider the impact of supply chain security requirements on small- and medium-sized companies;*

*(8) identify a framework for prudent and measured response in the event of a transportation security incident involving the international supply chain;*

*(9) provide updated protocols for the expeditious resumption of the flow of trade in accordance with section 202;*

*(10) review and address implementation of lessons learned from recent exercises conducted under sections 114 and 115, and other international supply chain security, response, or recovery exercises that the Department participates in, as appropriate;*

*(11) consider the linkages between supply chain security and security programs within other systems of movement, including travel security and terrorism finance programs;*

*(12) be informed by technologies undergoing research, development, testing, and evaluation by the Department; and*

*(13) expand upon and relate to existing strategies and plans for securing supply chains, including the National Response Plan, the National Maritime Transportation Security Plan, the National Strategy for Maritime Security, and the eight supporting plans of such National Strategy for Maritime Security, as required by Homeland Security Presidential Directive 13.*

* * * * * * *

(g) REPORT.—

(1) * * *

(2) [FINAL] *UPDATED* REPORT.—Not later than 3 years after the date on which the strategic plan is submitted under paragraph (1), the Secretary shall submit a report to the appropriate congressional committees that contains an update of the strategic plan.

*(3) FINAL REPORT.—Not later than two years after the date on which the update of the strategic plan is submitted under paragraph (2), the Secretary shall submit to the appropriate congressional committees a report that contains a further update of the strategic plan.*

*(4) IMPLEMENTATION PLAN.—Not later than one year after the date on which the final update of the strategic plan is sub-*

*mitted under paragraph (3), the Secretary shall submit to the appropriate congressional committees an implementation plan for carrying out the strategic plan.*

*(h) THREAT ASSESSMENT.—In developing the reports and implementation plan required under subsection (g), the Secretary shall take into account an assessment of the current threats to the global supply chain.*

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# Subtitle B—Customs-Trade Partnership Against Terrorism

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**SEC. 216. TIER 3 PARTICIPANTS IN C-TPAT.**

(a) * * *

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[(d) DEADLINE.—Not later than 2 years after the date of the enactment of this Act, the Secretary, acting through the Commissioner, shall designate appropriate criteria pursuant to subsection (b) and provide benefits to validated Tier 3 participants pursuant to subsection (c).]

*(d) PRIVATE SECTOR INFORMATION SHARING ON SECURITY AND TERRORISM THREATS.—*

*(1) IN GENERAL.—The Secretary shall promote information sharing, as appropriate, between and among the Department and C-TPAT participants and other private entities regarding—*

*(A) potential vulnerabilities, attacks, and exploitations of the international supply chain; and*

*(B) means and methods of preventing, responding to, and mitigating consequences from the vulnerabilities, attacks, and exploitations described in subparagraph (A).*

*(2) CONTENTS.—The information sharing required under paragraph (1) may include—*

*(A) the creation of classified and unclassified means of accessing information that may be used by appropriately cleared personnel and that will provide, as appropriate, ongoing situational awareness of the security of the international supply chain; and*

*(B) the creation of guidelines to establish a mechanism by which owners and operators of international supply chain infrastructure may report actual or potential security breaches.*

**SEC. 217. CONSEQUENCES FOR LACK OF COMPLIANCE.**

(a) IN GENERAL.—[If at any time]

*(1) FAILURE TO MEET REQUIREMENTS.—If at any time* a C-TPAT participant's security measures and supply chain security practices fail to meet any of the requirements under this subtitle, the Commissioner may deny the participant benefits otherwise available under this subtitle, in whole or in part. The Commissioner shall develop procedures that provide appropriate protections to C-TPAT participants before benefits are revoked. Such procedures may not limit the ability of the

Commissioner to take actions to protect the national security of the United States.

*(2) UNANNOUNCED INSPECTIONS.—The Secretary, acting through the Commissioner, may conduct an unannounced inspection of a C-TPAT participant's security measures and supply chain security practices if the Commissioner determines, based on previously identified deficiencies in security measures and supply chain security practices of the C-TPAT participant, that there is a likelihood that such an inspection would assist in confirming the security measures in place and further the validation process.*

* * * * * * *

**SEC. 218. THIRD PARTY VALIDATIONS.**

(a) * * *

* * * * * * *

*(j) RECOGNITION OF OTHER COUNTRIES' TRUSTED SHIPPER PROGRAMS.—Not later than 30 days before signing an arrangement between the United States and a foreign government providing for mutual recognition of supply chain security practices which might result in the utilization of benefits described in section 214, 215, or 216, the Secretary shall—*

*(1) notify the appropriate congressional committees of the proposed terms of such arrangement; and*

*(2) determine, in consultation with the Commissioner, that the foreign government's supply chain security program provides comparable security as that provided by C-TPAT.*

* * * * * * *

## ADDITIONAL VIEWS

Democratic Members of the Committee on Homeland Security remain committed to strengthening the security of America's ports and waterways and ensuring the Department of Homeland Security's maritime security efforts are as effective and efficient as practicable. To that end, Democratic Members were pleased to author several provisions included H.R. 4251, as reported by the Committee.

*Sec. 107.* Port Security Grant Funding for Mandated Security Personnel, is based on H.R. 5803, the Port Security Boots on the Ground Act, introduced by Representative Laura Richardson. This section provides for the use of Port Security Grant Program funds to pay certain overtime costs for mandated security personnel, as is permitted under other similar Department grant programs.

*Sec. 110.* Small Vessel Threat Analysis, is based on a legislative proposal authored by Representative Loretta Sanchez to require the Department to conduct a risk assessment of a small vessel terrorist attack occurring in U.S. ports or against U.S. maritime interests.

*Sec. 114.* Northern Border Unmanned Aerial Vehicle Pilot Project, is based on a legislative proposal authored by Representative Hansen Clarke to authorize the Department to establish a pilot project to facilitate the safe integration of medium-sized UAVs into the National airspace along the northern border.

*Sec. 116.* Use of Port Security Grant Funds for Replacement of Security Equipment or Facilities, is based on H.R. 5802, the Port Security Equipment Improvement Act of 2012, introduced by Representative Laura Richardson. This section provides for the use of Port Security Grant Program funds for the replacement of old equipment or facilities.

*Sec. 206.* Expiration of Certain Transportation Worker Identification Credentials, is based on H.R. 1105, the Transitioning With an Improved Credential (TWIC) Program Act, introduced by Ranking Member Bennie G. Thompson. This section exempts current TWIC holders from the requirement to renew their credentials until the Department issues a final rule regarding electronic TWIC readers or June 30, 2014, whichever is earlier.

*Sec. 207.* Securing the Transportation Worker Identification Credential Against Use by Unauthorized Aliens, is based on a legislative proposal authored by Representative Loretta Sanchez. A May 2011 Government Accountability Office report entitled "Transportation Worker Identification Credential: Internal Control Weaknesses Need to Be Corrected to Help Achieve Security Objectives (GA0–11–657)" identified weaknesses in the TWIC application process that could allow aliens not authorized to work in the U.S. to obtain a TWIC. This section addresses those deficiencies by directing the Secretary to modify the TWIC enrollment and distribution process to help ensure that only those authorized to work in the U.S. are able to obtain and use a TWIC.

BENNIE G. THOMPSON,
*Ranking Member.*

○