

Calendar No. 26

110TH CONGRESS }
1st Session }

SENATE

{ REPORT
110-29

SURFACE TRANSPORTATION AND RAIL
SECURITY ACT OF 2007

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 184



MARCH 1, 2007.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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SURFACE TRANSPORTATION AND RAIL SECURITY ACT OF 2007

MARCH 1, 2007.—Ordered to be printed

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

R E P O R T

[To accompany S. 184]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 184) to provide improved rail and surface transportation security, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

S. 184 would authorize new security assessments, grant programs, and security measures for the Nation's major surface transportation modes, including passenger and freight railroads, trucks, intercity buses, and pipelines. The bill proposes new programs to address known risks and would authorize ongoing efforts already underway at the Transportation Security Administration (TSA). The bill would provide a statutory framework for TSA's surface transportation and rail security efforts, with Congress, for the first time, setting specific goals, tasks, and timelines for security improvements in these critical areas. The legislation also would require greater cooperation and coordination between the Departments of Homeland Security (DHS) and Transportation (DOT) to further clarify the Federal roles and responsibilities for surface transportation safety and security. The bill would authorize \$1.1 billion for DHS, TSA, and DOT over fiscal years (FY) 2008 through FY 2011.

BACKGROUND AND NEEDS

The events of September 11, 2001, brought new attention to terrorism risks facing America's transportation systems. As both potential delivery methods for terrorist weapons and as targets of terrorist attacks themselves, the Nation's intercity passenger and freight transportation systems have been the focus of significant Federal homeland security interest. Congress's principal action to address the security risks posed to U.S. transportation assets by international and domestic terrorism was the passage of the Aviation and Transportation Security Act (ATSA) (P.L. 107-71), which was signed into law on November 19, 2001. ATSA mandated a new regime for aviation security and created TSA, within DOT, to oversee security for all modes of transportation. The subsequent passage of the Maritime Transportation Security Act of 2002 (P.L. 107-295), the Homeland Security Act of 2002 (P.L. 107-296), which, among other things, transferred TSA from DOT to DHS, the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458), and the SAFE Port Act (P.L. 109-347) further committed Federal resources and regulatory effort to strengthening the security of our transportation system.

While these laws have done much to address the security needs of the aviation and the maritime sectors, comparably little Federal attention or resources have been devoted toward addressing the security vulnerabilities of the Nation's rail, motor carrier, intercity bus, and pipeline industries. A cursory examination of Federal homeland security spending reflects this reality, revealing minimal investments for security in modes of transportation other than aviation. While the FY 2007 DOT Appropriations Act provided TSA with \$4.7 billion for aviation security, only \$37 million was specifically devoted to surface transportation security. Additionally, DHS grant funding for surface transportation security in FY 2007 only totals approximately \$200 million. Of this amount, \$175 million is available for rail and public transit security, of which only \$8.3 million is available for intercity passenger rail (Amtrak) and no funding is available for freight railroads. Out of this FY 2007 funding, DHS grant funding for truck and bus security efforts would total only \$24 million.

The President's FY 2008 budget request looks to continue this funding trend, proposing just \$41 million for TSA surface transportation security initiatives and no increases for surface transportation security grants. This limited funding request comes despite the President's December 5, 2006, issuance of Executive Order 13416, entitled "Strengthening Surface Transportation Security," which covers the security of domestic mass transit, intercity passenger and freight rail, commercial vehicles, intercity buses, pipelines, and related infrastructure.

The order set forth the following policy:

"The security of our Nation's surface transportation systems is a national priority, vital to our economy, and essential to the security of our Nation. Federal, State, local, and tribal governments, the private sector, and the public share responsibility for the security of surface transportation. It is the policy of the United States to protect the people, property, and territory of the United States by facilitating the implementation of a com-

prehensive, coordinated, and efficient security program to protect surface transportation systems within and adjacent to the United States against terrorist attacks.”

Accompanying this policy statement are directives to the DHS Secretary, in coordination with the DOT Secretary, to implement the general policy of the Executive Order and to undertake and complete a number of specific reporting, planning, and analysis initiatives.

It is against this backdrop of need and priority that the Committee drafted S. 184. While the Committee supports the important policy set forth by the Executive Order, there is concern that the broad mission outlined by the Order cannot be achieved with the limited funding and the proposed static staffing levels of 288 full-time equivalent employees dedicated to surface transportation security within TSA in the President’s FY 2008 budget request. In addition to more resources, the Committee believes that comprehensive risk assessments must be completed for surface transportation and that new surface transportation security initiatives must be developed to address the risks identified by the assessments.

I. RAILROAD SECURITY

The terrorist attacks of September 11, 2001, the March 2004 bombings of commuter trains in Madrid, Spain, the July 2004 transit bombings in London, England, and the July 2006 rail bombings in Mumbai, India, heightened concerns regarding the susceptibility of the passenger and freight rail system in the United States to terrorist attack. While no similar attack has occurred to date against the rail system in the United States, the openness and vast size of the Nation’s rail transportation network and the public reports that terrorists might be targeting U.S. rail assets has raised significant concerns regarding the various security efforts in place to prepare and defend the Nation’s railroads against a terrorist attack.¹

Often as a result of incidents overseas, domestic industries increase security on their own. Or, when cued by intelligence, DHS may raise the threat level, triggering more stringent security requirements under homeland security directives aimed at a particular sector, such as the transportation network, sometimes also putting into action individual security plans voluntarily adopted by many in industry.

The Nation’s freight railroads operate more than 164,000 miles of track over which 31 million carloads are transported annually and provide the primary transportation of essential commodities vital to the U.S. economy, including the majority of coal used in electricity generation, over nine million trailers and containers, and two million carloads of chemicals.² There are seven Class I railroads and more than 560 total freight railroads operating in the United States.³ This network transports an estimated 42 percent

¹ In 2002, and on several occasions since, the FBI has warned that al-Qaeda may directly target U.S. trains, key rail bridges, and sections of track to cause train accidents and derailments.

² Association of American Railroads, *Railroad Facts*, 2006 Edition.

³ U.S. Class I Railroads are line-haul freight railroads with operating revenue in excess of \$277.7 million. In 2005, the U.S. Class I railroads were: BNSF Railway, CSX Transportation, Canadian National’s Grand Trunk Corporation, Kansas City Southern Railway, Norfolk South-

of all domestic intercity freight. Intermodal freight rail traffic has more than tripled since 1980 from 3.1 million trailers and containers to over 11 million in 2005 and DOT projects that freight traffic via rail will increase nearly 70 percent by 2020.

The magnitude of freight rail operations precludes constant monitoring or hardening of all track and facilities, and the problems of securing such a vast system are compounded by the variety of freight hauled—with commodity types as diverse as grain and chlorine regularly transported together on the same trains—and the variety of locations served, from the largest metropolitan areas of the Nation to the smallest towns. The vulnerability stemming from the freight rail system's openness, combined with the critical nature of the transportation service provided and the commodities transported, elevates the risks facing the freight rail system, particularly in urban areas in which there is significant demand for commodities like the chlorine used to ensure the potability of water.

Similarly, the size and scope of the U.S. passenger rail network presents security challenges. In 2006, nearly 25 million passengers rode intercity passenger trains and approximately 3.5 billion passengers rode public transit and commuter rail services, such as Washington D.C.'s Metrorail system, Chicago's Metra commuter system and Maryland's MARC service. Along with critical rail infrastructure and equipment, passenger rail facilities and stations, which often serve as central hubs for multiple public transportation services, may represent tempting targets for terrorist attacks. The RAND Corporation estimated that there were a total of 181 terrorist attacks on trains and rail-related targets worldwide between 1998 and 2003, an average of 30 per year. RAND noted that, "for terrorists determined to kill in quantity and willing to kill indiscriminately, public transportation is an ideal target. It offers terrorists ease of access and escape. Crowds of strangers guarantee anonymity. Contained environments enhance the effect of explosives. Attacks on public transport also cause disruption and alarm—traditional terrorist goals."

The TSA has primary responsibility for the security of the Nation's railroads. Additionally, the Federal Railroad Administration (FRA) and the Pipeline and Hazardous Materials Safety Administration (PHMSA), within DOT, support TSA's efforts with personnel and supplemental regulation as part of their safety authority over railroads and hazardous materials transportation. The relationship among these three agencies is governed by annexes signed in 2006 to the DHS-DOT Memorandum of Understanding covering respective duties and responsibilities for the two Departments. In December 2006, TSA and PHMSA proposed their first significant rulemaking for rail security. The notice of proposed rulemaking (NPRM) issued by TSA proposes new security requirements for freight railroad carriers, intercity passenger rail and transit service providers, and rail shipment facilities that ship or receive toxic inhalation hazard (TIH) hazardous materials, such as chlorine. These proposed rules stem, in part, from the March 2006

ern Combined Railroad Subsidiaries, Canadian Pacific's Soo Line Railroad, and Union Pacific Railroad.

TSA and FRA issuance of rail security guidelines and action items for the rail transportation of TIH materials.

Given the limited funding available to TSA and other agencies within DHS and DOT for rail security, only a modest number of other rail security efforts have been completed or are underway. Most of these efforts to date have consisted of pilot programs, limited threat assessments, and other ad-hoc efforts. Examples of these include the High Threat Urban Area (HTUA) Rail Corridor Assessments; the Washington, D.C. Rail Security Corridor Project; the Surface Transportation Security Inspection Program; Visible Intermodal Protection and Response (VIPR) Teams; and the TIH Rail Tank Car Vulnerability and Consequence Analysis Project. During Committee hearings on the subject of rail security, the Government Accountability Office (GAO) noted that these security initiatives are being undertaken in the absence of a comprehensive risk assessment or completion of required sector-specific transportation security plans and modal annexes. Until TSA completes this work, the agency is limited in its ability to prioritize the risks within the rail mode to help guide security investments and resource allocation. The GAO also noted that similar DHS and TSA efforts to develop a consistent approach for analyzing and comparing risks among and across different transportation sectors remain unfinished, hampering the ability to compare and prioritize risks across different sectors—such as the aviation and rail sectors—and allocate resources accordingly.

While these efforts represent a modest step forward, much remains to be done to address the security of the rail sector. Recognizing the security challenges facing the rail sector, the Committee has held numerous hearings and favorably reported several rail security enhancement proposals since 2001. The rail security provisions of S.184, contained in title I, represent the latest iteration of this effort and incorporate updated versions of provisions contained within the Rail Security Act of 2004, the Rail Security Improvement Act of 2005, and the Transportation Security Improvement Act of 2005. The rail security legislation passed the Senate by unanimous consent in the 108th and 109th Congress, after being favorably reported by the Committee.⁴

II. MOTOR CARRIER, PIPELINE, HAZARDOUS MATERIALS, AND BUS SECURITY

While less conspicuous to the general public than other modes of transportation, the freight and passenger transportation provided by the trucking, pipeline and intercity bus industries is critical to the Nation's economy, defense and mobility. Collectively, these industries provide most of the goods and energy commodities upon which industrial economies rely for their daily needs. As such, these transportation systems have been the target of terrorist attacks world-wide and significant risks to these systems exist in the United States.

⁴Versions of the rail and surface transportation security titles of S. 1052, The Transportation Security Improvement Act of 2005, were added to the Senate's version of H.R. 4954, the SAFE Port Act, through amendments offered by Senators McCain and Lautenberg, which passed the Senate on September 14, 2006. During negotiations with the Senate, the House of Representatives objected to the inclusion of these provisions in the Conference Report for H.R. 4954. S. 2273, The Rail Security Act of 2004, was passed by the Senate on October 1, 2004. The House of Representatives failed to consider the bill.

Motor Carrier Security

Truck security, in particular, has become an important issue due to the size and critical role of the industry, which carries 85 percent of domestic cargo by value and 70 percent by weight. In 2002, U.S. trucking hauled 11 billion tons of freight and directly employed 1.3 million people in 2005.⁵ Trucking is also an essential part of North American international trade, hauling two-thirds of all U.S.- Canadian trade and more than four-fifths of all U.S.-Mexican trade.

While the September 11, 2001, terrorist attacks defined our recent transportation security efforts, prior to this incident, most serious contemporary domestic terrorist attacks in times involved trucks. The 1993 and 1995 truck bomb attacks at the World Trade Center and Oklahoma City Federal Building killed a total of 174 people and injured another 1,292 people. Similarly, trucks have been the delivery method of choice for several terrorist attacks against U.S. assets overseas. Despite this evidence that terrorists will and do use trucks and commercial vehicles against U.S. targets, Federal involvement in truck security has been limited, with the bulk of the responsibility for truck security efforts left to individual companies or groups representing sectors of the motor carrier industry.

At present, there are few Federal truck security programs specifically mandated by statute. The most significant statute, enacted in 2002 out of concern for the security of the transportation of hazardous materials (HAZMAT) by truck, required DHS to implement a program to ensure that commercial drivers who transport HAZMAT do not pose a security threat to the Nation. Under regulations stemming from a provision in the USA PATRIOT Act (P.L. 107-56), a driver must undergo a fee-based security background check as a prerequisite for a HAZMAT endorsement (HME) on a commercial driver's license. The initial implementation of this requirement required that all HME holders receive name-based background checks. Presently, all new HME applicants and HME renewals must undergo fingerprint-based background checks.

Additionally, two other general transportation security regulations apply to certain motor carriers and their drivers. Under DOT regulations, hazardous material motor carriers must comply with DOT security regulations requiring carriers of HAZMAT to develop and implement security plans. Under new rules issued by TSA in January 2007, all truck drivers, and other surface transportation employees, such as rail workers who need unescorted access to restricted areas of a port facility, must undergo a fee-based background check and receive a Transportation Worker Identification Credential (TWIC) by January 1, 2009. The TWIC concept is to provide positive identification to all eligible transportation-related workers, ensuring that only authorized personnel gain unescorted access to secure areas of the country's transportation network. TWIC was originally authorized under ATSA, then supplemented by language in MTSA. This program, once fully implemented in the maritime sector, is expected to be expanded to other modes of transportation, possibly including all motor carriers. As an interim step to the TWIC requirements for port truck drivers, the SAFE

⁵U.S. Department of Transportation, Bureau of Transportation Statistics, *Pocket Guide to Transportation 2006*. 2006.

Port Act, which was enacted in December 2006, required that drivers who access secure areas of a seaport but have not undergone a HME background check must receive threat assessment screenings, including name-based checks against terrorist watch lists and immigration status check.

The TSA, the Federal Motor Carrier Safety Administration (FMCSA), and DHS have a limited number of truck security initiatives currently underway. The most significant of these include the Highway Watch program and the Customs-Trade Partnership Against Terrorism (C-TPAT) program. Highway Watch is a joint truck security program developed by TSA and the trucking industry, which trains drivers to recognize and report potential safety and security threats and is administered by the American Trucking Association (ATA). Federal funding in FY 2007 for this program is \$12 million. Motor carriers that voluntarily participate in the C-TPAT program agree to follow a set of security guidelines which, in turn, reduce delays at border crossings relating to Customs and other security inspections. To gain additional expedited treatment at U.S. borders, motor carriers may choose to participate in the Free and Secure Trade (FAST) program, which utilizes electronic transmission of shipping data and use of transponder and barcode technologies for verification. Other ongoing efforts that impact truck security include the Highway and Motor Carrier (HMC) Program; TSA's HAZMAT Truck Security Pilot; FMCSA's Corporate Security Reviews (CSR); and the Hazmat Motor Carrier Security Self-Assessment Training Project.

These security programs begin to address the security concerns of the 85 percent of domestic cargo that moves by trucks. However, these modest steps highlight the need for more robust action. The truck security provisions contained in title II of S.184 include the latest Committee-developed measures adopted by the Senate in the SAFE Port Act in the 109th Congress. S. 184 would authorize many of the ongoing TSA and DOT truck security efforts and provide additional goals focusing on the key issues related to the secure transportation of HAZMAT, such as routing, tracking, training, and enforcement.

Intercity Bus Security

Along with automobile, air, and rail services, intercity bus service has long been one of the primary modes of transportation within the United States. The "over-the-road" (OTR) bus industry, made up of fixed-route, intercity, community services, charter/tour, and airport shuttle bus operators, serves more than 5,000 destinations nationwide. The industry comprises mostly small businesses, with 65 percent of known carriers operating fewer than 10 buses. According to the American Bus Association (ABA), OTR buses transport approximately 660 million passengers annually, serving thousands of communities that have no other form of intercity public transportation and providing an affordable and convenient means of transportation for millions in urban areas.

After September 11, 2001, Congress noted the prevalence of terrorist attacks against buses in other nations⁶ and began providing

⁶Since 1980, there have been several hundred terrorist attacks against transit and OTR buses. A chronology of terrorist attacks against public transit is contained with the Federal

grant funding to the OTR bus industry, totaling nearly \$50 million since FY 2002. The TSA's Intercity Bus Security Grant Program (IBSGP) has been used for security technology upgrades, facility security enhancements, driver security, and security training, but this grant program has never been authorized by the Congress, despite such an authorization twice passing the Senate.⁷ Congress appropriated \$12 million in funding for the IBSGP in FY 2007. In addition to this grant program, other Federal bus security efforts include TSA's CSR program, through which TSA reviews the security of motor carrier and OTR bus physical assets and operations, and TSA's Passenger Security Division's limited bus and school bus reviews.

Pipeline and HAZMAT Security

The U.S. pipeline industry is a large, diverse and vital part of the Nation's economy. Comprised of approximately 1.5 million miles of lines in all 50 States, liquid and natural gas transmission and distribution pipelines carry the energy commodities that fuel our Nation. Similarly, the transportation of hazardous material is essential to U.S. manufacturing industries and public health and agriculture sectors, which rely on hazardous chemicals to purify water and fertilize crops. The majority of the over 2 billion tons of HAZMAT that move annually are transported by trucks, pipelines, and railroads, and such shipments present one of the most serious security concerns for the Nation. As evidenced by the 2005 rail accident (not terrorism-related) in Granitville, South Carolina, where a tank car containing chlorine derailed, breached, and killed 9 people, a security incident with HAZMAT could pose significant danger to major population centers. While the pipeline industry transports HAZMAT, few of these commodities could themselves be used as a terrorist weapon. Instead, the main security vulnerability comes from acts which could cause the loss of transportation capacity for essential energy commodities.

The TSA has lead jurisdiction for the security of pipelines and HAZMAT transportation, but much of the regulatory foundation and daily work of overseeing the security of these sectors is done in partnership with PHMSA, which regulates the safety of the pipeline and HAZMAT industries, and other DOT modal agencies, such as FRA and FMCSA, that regulate the safety of individual transportation modes. A PHMSA predecessor agency within DOT issued the primary security regulation regarding the secure shipment of HAZMAT, HM 232, which requires shippers and carriers of certain highly HAZMAT to develop and implement security plans and to train workers accordingly. Other TSA and PHMSA pipeline and HAZMAT security initiatives include Pipeline Corporate Security Reviews (CSR); Cross-Border Pipeline Security Assessments; and Pipeline Security Forums; and pipeline security training.

Transit Administration's (FTA) report entitled "*Transit Security Design Considerations*". <http://transitsafety.volpe.dot.gov/security/SecurityInitiatives/DesignConsiderations/CD/appa.htm>.

⁷ A version of the bus security provisions of S. 1052, The Transportation Security Improvement Act of 2005, were added to the Senate's version of H.R. 4954, the SAFE Port Act, through an amendment offered by Senator Lautenberg, which passed the Senate on September 14, 2006. During negotiations with the Senate, the House of Representatives objected to the inclusion of these provisions in the Conference Report for H.R. 4954. S. 929, The Max Cleland Over-the-Road Bus Security and Safety Act of 2003 was passed by the Senate on July 30, 2003. The House of Representatives failed to consider the bill.

SUMMARY OF PROVISIONS

The major provisions of the rail security title of S. 184 would: create a new grant program within DHS and TSA to assist Amtrak, freight railroads, and other stakeholders in upgrading security across the railroad system; provide funding through DOT for security and safety enhancements to Amtrak railroad tunnels in New York, New Jersey, Washington, D.C., and Maryland; create a rail security research and development program; encourage the deployment of rail car tracking equipment for high-hazard materials rail shipments; require railroads shipping high hazard materials to create threat mitigation plans; issue guidance for a rail worker security training program; and provide for a whistleblower protection program for rail workers who report security concerns.

The major provisions of the motor carriers, bus, pipeline, and HAZMAT security title would: require FMCSA to provide guidance to motor carriers and States regarding HAZMAT routing and to assess the addition of certain high-HAZMAT to the list of existing HAZMAT required to be transported by motor carriers with highway routing plans; require DHS to develop a program to encourage the equipping of trucks carrying certain HAZMAT with communications and tracking technology; establish a program for reviewing and enforcing HAZMAT security plans; require DHS to design a pipeline security and incident recovery plan and create a program for pipeline security inspections and enforcement; and authorize the existing grant program for intercity bus and bus terminal security.

LEGISLATIVE HISTORY

Chairman Inouye and Vice-Chairman Stevens introduced S. 184, "The Surface Transportation and Rail Security Act of 2007," known as the "STARS Act", on January 4, 2007. Senators Lautenberg, Snowe, Boxer, Rockefeller, Kerry, Carper, Pryor, Baucus, Lieberman, Biden, Clinton, Schumer, Dorgan, Durbin, Mikulski, Menendez, Hutchison, Specter, Klobuchar, Collins, and Cantwell cosponsored the bill. The Committee held a hearing on S. 184 and the current Federal efforts to secure the Nation's railroad and surface transportation system on January 18, 2007. The Committee received testimony from TSA, FRA, FMCSA, PHMSA, GAO, and the State of New Jersey.

The Committee also held several hearings related to surface transportation and rail security in the 109th Congress. On February 15, 2005, and April 22, 2005, the Committee held hearings to examine the President's FY 2006 budget request for TSA. Those testifying before the Committee were representatives of TSA, GAO, and various trade and industry associations. On October 17, 2005, the Committee held a hearing on the state of passenger and freight rail security and relevant provisions of S.1052, the Transportation Security Improvement Act of 2005. Those testifying before the Committee were representatives of TSA, FRA, GAO, Amtrak, and various industry and labor representatives.

On February 13, 2007, the Committee met in Executive Session during which S. 184 was considered. A substitute amendment that made technical and perfecting changes to the provisions of S. 184 was offered by Chairman Inouye and Vice-Chairman Stevens. The

substitute amendment also added several new provisions to S. 184 at the request of TSA, DOT, and others. These provisions: clarify the DHS Secretary's legal authority to initiate administrative enforcement proceeding, for violations to non-aviation transportation security regulations and requirements; expand the authority of private railroad police to allow police officers who works for one railroad to help other railroads in carrying out enforcement duties; require DOT to transmit model legislation to the States to prevent the bestowing of railroad police authority to "scam railroads"; require DHS and DOT to develop a truck security memorandum of agreement (MOA) annex between the two Departments to clarify their respective roles for truck security; and require the DHS Secretary to study the need and feasibility of establishing a system of maritime and surface transportation-related user fees to provide funding for improvements to maritime and surface transportation security.

No additional amendments were filed. The substitute and underlying bill were adopted unanimously by the Committee and amended to the bill; the Committee ordered the bill reported.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

FEBRUARY 28, 2007.

Hon. DANIEL K. INOUE,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 184, the Surface Transportation and Rail Security Act of 2007.

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

Sincerely,

PETER R. ORSZAG.

Enclosure.

S. 184—Surface Transportation and Rail Security Act of 2007

Summary: S. 184 would authorize the appropriation of \$1.1 billion over the 2008–2012 period for security-related programs carried out by the Department of Homeland Security (DHS) and the Department of Transportation (DOT) involving railroads, buses, trucks, and pipelines. Assuming appropriation of the amounts specified in the legislation, CBO estimates that providing the grants would cost about \$280 million in 2008 and nearly \$1.1 billion over the 2008–2012 period. Enacting the bill would not affect direct spending. CBO estimates that the civil monetary penalties authorized by the bill would have a negligible effect on revenues.

In addition to authorizing appropriations for security-related grants, the bill would require DHS to assess the security of the transportation of certain hazardous materials by rail and motor carriers, to create a public awareness campaign for rail security issues, and to issue security training guidance for certain rail personnel. Finally, the bill would require DHS to report to the Congress on the security of rail, pipeline, and bus transportation. Assuming appropriation of the necessary amounts, CBO estimates that implementing those provisions would cost about \$22 million over the 2008–2012 period.

S. 184 contains several intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would require rail and motor carriers to comply with reporting requirements and certain security procedures. The bill also would preempt certain state laws. The aggregate cost to public entities and the private-sector for complying with those mandates is uncertain and would depend on future regulations. Because of the small number of entities involved, however, CBO estimates that the aggregate costs for public entities to comply with those mandates would not exceed the annual threshold established by UMRA for intergovernmental mandates (\$66 million in 2007, adjusted annually for inflation). In contrast, CBO cannot determine whether the aggregate costs to the private sector would exceed the annual threshold for private-sector mandates (\$131 million in 2007, adjusted annually for inflation). Other provisions of the bill would authorize about \$1 billion in grants for which state, local, tribal and private-sector entities would be eligible. Any costs those entities would incur to comply with conditions of federal assistance would be incurred voluntarily.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 184 is shown in the following table. The costs of this legislation fall within budget functions 400 (transportation).

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Grants to Amtrak:					
Authorization Level	185	148	148	118	0
Estimated Outlays	185	148	148	118	0
Grants for Rail Security:					
Authorization Level	133	133	133	0	0
Estimated Outlays	83	118	133	50	15
Grants for Over-the-Road Bus Security:					
Authorization Level	12	25	25	0	0
Estimated Outlays	2	9	17	17	11
Other Authorized Programs:					
Authorization Level	11	11	9	0	0
Estimated Outlays	10	11	9	1	0
Reports, Assessments, and Guidance:					
Estimated Authorization Level	10	4	4	4	4
Estimated Outlays	3	7	4	4	4
Total Proposed Changes:					
Estimated Authorization Level	351	321	319	122	4
Estimated Outlays	283	293	311	190	30

Basis of estimate: For this estimate, CBO assumes that S. 184 will be enacted in fiscal year 2007 and that the authorized amounts will be appropriated each year. Estimates of spending are based on historical spending patterns of similar programs.

S. 184 would authorize the appropriation of \$1.1 billion over the 2008–2012 period for federal programs related to transportation security. That amount includes funds to support programs aimed at improving the security of rail and surface transportation through programs administered by DOT and DHS. In addition, CBO estimates that complying with the bill’s reporting and other administrative requirements would add \$22 million in discretionary costs over the next five years.

Spending subject to appropriation

Grants to Amtrak. S. 184 would authorize the appropriation of \$599 million over the 2008–2011 period for grants to Amtrak to improve the security of the Amtrak rail system. That amount includes \$472 million to support projects to improve the safety of tunnels in New York, Maryland, and the District of Columbia and \$3 million for the preliminary design of a new tunnel in Baltimore, Maryland. It also includes \$124 million to implement physical changes to stations and trains so that they are more secure from attack, obtain additional communications equipment, and provide security training to Amtrak employees. CBO estimates that implementing these provisions would cost \$185 million in 2008 and \$599 million over the 2008–2011 period.

Grants for Rail Security. The bill would authorize the appropriation of \$399 million over the 2008–2010 period for grants to improve rail security. That amount includes \$300 million to upgrade the security of the national freight and passenger rail system by improving emergency communications, securing capital assets, and training employees. The bill also would authorize the appropriation of \$99 million over the 2008–2010 period for grants to research and develop methods to improve the security of freight and intercity rail transportation. CBO estimates implementing those provisions would cost \$83 million in 2008 and \$399 million over the 2008–2012 period.

Grants for Bus Security. S. 184 would authorize the appropriation of \$62 million over the 2008–2010 period for grants to operators of over-the-road buses and bus terminals to improve the security of this transportation system. (Over-the-road buses are characterized by an elevated passenger deck above a baggage compartment.) These amounts include funds for security training, emergency drills, and upgrading certain capital assets. Assuming appropriation of the specified amounts, CBO estimates implementing those provisions would cost \$2 million in 2008 and \$56 million over the 2008–2012 period.

Other Authorized Programs. Other provisions of the bill would authorize the appropriation of \$31 million over the 2008–2012 period, including:

- \$9 million for DHS to develop a program to encourage the use of wireless tracking systems for rail cars that are transporting certain hazardous material;
- \$9 million for DHS to develop a program to encourage the tracking of certain hazardous materials transported by motor carrier;
- \$6 million for DHS to review motor carriers’ security plans for the transportation of hazardous materials;

- \$3 million for DHS to consider developing a system to monitor security and emergency alerts about the transportation of certain hazardous materials and to disseminate that information to the public; and
- \$4 million for DHS to develop and implement a plan to review the security plans for certain pipeline systems.

Assuming appropriation of the specified amounts, CBO estimates implementing those provisions would cost \$10 million in 2008 and \$31 million over the 2008–2012 period.

Reports, Assessments, and Guidance. S. 184 would require DHS to assess the security of rail and pipeline transportation and to prepare several reports to the Congress on that issue. The bill would authorize the appropriation of \$5 million in 2008 to complete a risk assessment of freight and passenger rail transportation. DHS would prepare subsequent annual updates to that assessment.

The bill would require DHS to develop, issue, and update, as necessary, detailed guidance for a program to train certain rail workers in security procedures and to review the security plans of rail carriers.

The bill also would require DHS to complete a report on the status of rail security at the Canadian border, review the hazardous materials security plans for operators of rail transportation, and develop and implement a plan to make the public aware of rail security issues. Further, the bill would require DHS to assess and report on the existing and proposed routes for the transportation—by motor carrier—of certain hazardous material, and to study the security of the trucking industry and establishing security fees for use of the maritime and surface transportation system.

Based on information from DHS, CBO estimates that implementing those provisions would cost \$3 million in 2008 and \$22 million over the 2008–2012 period.

Revenues

S. 184 would establish new civil penalties for violating certain regulations established by DHS and for failing to comply with the requirement to supply DHS with certain security plans. Thus, the federal government might collect additional fines if the bill is enacted. Collections of civil fines are recorded as revenues and deposited in the Treasury; however, CBO expects that any increase in revenues related to those penalties would not be significant.

Intergovernmental and private-sector impact: S. 184 contains several intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act because it would require rail and motor carriers to comply with reporting requirements and certain security procedures. The bill also would preempt certain state laws. The aggregate cost to public entities and the private sector for complying with those mandates is uncertain and would depend on future regulations. Because of the small number of entities involved, however, CBO estimates that the aggregate costs for public entities to comply with those mandates would not exceed the annual threshold established by UMRA for intergovernmental mandates (\$66 million in 2007, adjusted annually for inflation). In contrast, CBO cannot determine whether the aggregate costs to the private sector would exceed the annual threshold for private-sector mandates (\$131 million in 2007, adjusted annually for inflation).

Other provisions of the bill would authorize about \$1 billion in grants for which state, local, tribal, and private-sector entities would be eligible. Any costs those entities would incur to comply with conditions of federal assistance would be incurred voluntarily.

Mandates that affect both the public and private sectors

S. 184 would require rail carriers to train certain workers in security procedures and would grant whistle-blower protections to their employees.

Rail Worker Security Training. Through regulations to be established by the Department of Homeland Security, section 109 would require rail carriers to create and submit plans for security training and then complete the training for all front-line workers. Front-line workers are defined in the bill as security personnel, dispatchers, train operators, other onboard employees, maintenance and maintenance support personnel, bridge tenders as well as other appropriate employees of rail carriers as defined by the Secretary. CBO estimates that approximately 190,000 public and private-sector employees—about 85 percent of which are private-sector employees—would fit that definition.

According to experts from the rail industry, the amount of training required varies depending on the industry sector (passenger vs. freight). It is likely that in either sector, the regulations issued by the Department of Homeland Security would require additional training over and above current practice. Further, it is likely that many employees would need to be trained more than once over a five-year period. Therefore, it is likely that under new regulations, costs to train workers would exceed the current costs for security training. Because this mandate depends upon the future actions of DHS, for which information is not available, CBO cannot provide an estimate for the total cost of this mandate. CBO expects, however, that the incremental cost would be small for public entities, while the additional cost for the private sector could be substantial, depending on the guidelines set forth by DHS.

Whistle Blower Protection. Section 110 would prohibit rail carriers from discharging or discriminating against any employee who reports a perceived threat to security.

Under current law, employees are protected if they report any safety issues. The granting of additional whistle-blower protections would impose both an intergovernmental and a private-sector mandate on rail carriers, as defined in UMRA. Because compliance with those broader whistle-blower protections likely would involve only a small adjustment in administrative procedures, however, CBO estimates that the provision would impose only minimal additional costs on rail carriers.

Mandates that affect only the private sector

S. 184 contains several private-sector mandates, as defined in UMRA, on motor carriers, rail carriers, and pipeline operators. The bill would require that rail carriers and motor carriers develop various security plans, as well as authorize new requirements to be imposed on operators of transmission pipelines in the future.

Requirements on Motor Carriers. Section 201 would expand the number of hazardous materials for which transporters must prepare and maintain a written route plan. Under current law, trans-

porters of certain hazardous materials must prepare a written route plan and supply a copy to both the motor vehicle driver and the shipper. The bill would expand that requirement to include transporters of the remaining hazardous materials for which DOT requires motor carriers to hold a safety permit to transport. According to industry sources, the cost to comply with this requirement would be significant, resulting from the time-intensive nature of preparing a route plan for each shipment of the covered hazardous materials. Industry sources estimate the cost to develop each route plan could average about \$50. CBO has been unable to obtain data on the annual number of shipments of the hazardous materials referred to in section 201. Consequently, CBO has no basis for estimating the cost of complying with this mandate.

Amtrak. S. 184 would require Amtrak to submit a plan to the Chairman of the National Transportation Safety Board that would be invoked in case of a railway accident involving loss of life. According to industry sources, Amtrak has a contingency plan in place for responding to the needs of families of rail accident passengers that is similar to the provisions contained in the bill. The bill would authorize \$500,000 to be appropriated in fiscal year 2007 to complete the required plan. The bill also would require that Amtrak participate in a working group that would be required to submit a report on securing the northern border. CBO estimates that the cost of providing that report would be nominal.

Requirements on Hazmat Carriers. Section 111 would require rail carriers who transport high hazard materials, as defined in the bill, to develop a security threat mitigation plan for high hazard material. Currently, the Department of Transportation requires rail carriers who transport those hazardous materials to submit a security plan. However, the bill would expand current requirements on rail carriers to include submitting a list of routes used to transport high hazard materials, addressing temporary shipment suspension options, and assessing risks to high-consequence targets. According to railroad industry sources, rail carriers are complying with current DOT regulations. Because rail carriers are already complying with many of the provisions in the legislation, CBO estimates that the additional cost to comply with the mandate would be minimal.

Requirements on Operators of Transmission Pipelines. Section 209 would authorize the Secretary of Homeland Security to establish and enforce new security regulations on operators of transmission pipelines. According to industry sources in both the natural gas and oil pipeline industries, all pipeline operators are abiding by current guidelines as set forth in the DOT September 5, 2002, Pipeline Security Information Circular. If the Secretary were to impose more stringent security regulations on pipeline operators, those entities could face increased costs; however, without information about such requirements CBO cannot determine the cost of compliance.

Other impacts: security grants

The bill would authorize about \$1 billion over four years for grants to improve the security of both passenger and freight rail as well as over-the-road buses and over-the-road bus terminals, establish a rail security and research program, and upgrade Amtrak

tunnels in New York, Baltimore, and Washington, D.C. To the extent that state, local, or tribal governments, or private-sector entities apply for and receive such grants, those provisions would provide benefits to those entities. Any costs resulting from complying with the conditions of the grants would be incurred voluntarily.

Previous CBO estimate: On February 22, 2007, CBO transmitted a cost estimate for the Public Transportation Terrorism Prevention Act of 2007 as ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on February 8, 2007. That bill would authorize DHS to provide \$3.5 billion in grants over the 2008–2010 period to public transportation agencies to improve the security of transit systems and grants and contracts to public and private entities to study methods of deterring terrorist attacks against transit systems and mitigating damages from such attacks. That bill would require DHS to cover the costs of an Information Sharing and Analysis Center and would not authorize grants to Amtrak. The differences between the bills are reflected in CBO's cost estimates.

Estimate prepared by: Federal Costs: Matthew Pickford and Sarah Puro. Impact on State, Local, and Tribal Governments: Sarah Puro. Impact on the Private Sector: Fatimot Ladipo.

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

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 184 is intended to improve rail and surface transportation security by establishing new Federal programs and modifying existing law. The bill affects TSA, DOT, and other entities already subject to TSA and DOT rules and regulations, and therefore the number of persons covered should be consistent with the current levels of individuals impacted under existing TSA and DOT regulations.

ECONOMIC IMPACT

S. 184 is not expected to have an adverse impact on the U.S. economy. It is anticipated that titles I and II would have positive economic impacts to their respective areas and should provide significant support to the corresponding transportation sector modes. The bill would authorize the necessary funding to establish a more secure system by requiring DHS, and in some cases DOT, as well as the corresponding industries to take steps to protect the system.

PRIVACY

S. 184 would have minimal effect on the privacy rights of individuals.

PAPERWORK

The Committee anticipates a slight increase in paperwork burdens on requirements for private individuals or businesses. In those areas where the bill does require additional paperwork, it is

aimed at improving the security of transportation infrastructure, assets, and operations. S. 184 would require a range of plans, communications, budget analyses, agreements, and rulemakings. In certain sections, such as section 101, the DHS Secretary would be required to issue a report containing recommendations and plans to Congress, or in the case of sections 109 and 111, the DHS and DOT Secretaries would be required to develop and issue detailed guidance to the pertinent industry stakeholders. Section 114 would require the DHS and DOT Secretaries to develop a national plan for improved public outreach, which would entail communication with citizens, although not necessarily in print format. Section 201 would require a report and possible revisions to existing rules. Section 203 would require that the Secretaries of DHS and DOT enter into an annex of a previously established Memorandum of Agreement to delineate roles and responsibilities. Sections 205, 208 and 212 would require new reports, studies, and plans.

The paperwork burden on industry or private individuals stems from plans that would be developed and/or submitted for review to DHS and DOT: these plans would be used for strategic security purposes or would be a pre-requisite for distributing grants. For example, in section 111, rail carriers would be required to develop and submit security threat mitigation plans which would be updated and resubmitted for review, while section 201 could require certain motor carriers to develop and maintain written route plans. Illustrations of grant requirements are found in sections 103, where the DOT Secretary would have to approve plans submitted by Amtrak before distributing grants for fire and life-safety improvements; in section 106, which requires the DHS Secretary to establish procedures applicants or grant awards; and in section 207, where the DHS Secretary would not be required to award grants until private bus operators submitted a plan for making security improvements.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

Section 1 would provide that this Act may be cited as the “Surface Transportation and Rail Security Act of 2007”.

Section 2. Table of contents.

This section provides a table of contents for this Act.

Section 3. Definitions.

This section defines the terms “High Hazard Materials” and “Secretary” for the purposes of this Act.

TITLE I—IMPROVED RAIL SECURITY

Section 101. Rail transportation security and risk assessment

This section would require the DHS Secretary to establish a task force to complete a risk assessment of freight and passenger rail transportation. The Secretary would be required to take into account actions taken or planned by both public and private entities. Based on the findings of the task force, within 1 year after the date of enactment of this Act, the Secretary would be required to develop and report to Congress prioritized recommendations for im-

proving rail security, including recommendations related to: tunnels, bridges, and other rail infrastructure security; explosive, chemical, biological, and radiological detection technologies; surveillance equipment; railroad or railroad shipper employee training; public outreach and security awareness; immediate and long-term costs associated with addressing risks; and public and private sector rail security funding efforts.

The Secretary would be required to include in the recommendations a plan for the Federal government to provide security support at high threat levels of alert; a plan for coordinating existing and planned rail security initiatives undertaken by the public and private sectors; and a contingency plan developed in conjunction with the intercity and commuter passenger railroads to ensure the continued movement of freight and passengers in the event of a terrorist attack. The Secretary would be required to provide Congress with annual assessments and recommendations concerning the security of the domestic rail system.

In developing the risk assessment, recommendations, and plans required under this section, the Secretary shall consult with industry stakeholders and other relevant entities and shall utilize existing risk assessments completed by DHS or other Federal entities, and, as appropriate, assessments completed by other stakeholders. This section would authorize \$5,000,000 for FY 2008 to carry out this section.

The Committee notes its frustration with the inability of TSA to complete a comprehensive risk assessment of the railroad sector. The Committee believes fulfillment of this section is an absolute priority, so that the results of the assessment may be used to guide the ongoing rail security efforts and the new programs called for in this bill. In completing the assessment required by this section, it is not the Committee's intention that TSA unnecessarily redo existing assessment work, of sufficient quality and relevance, already completed by the agency or other Federal, private or public stakeholders. However, the Committee expects any existing assessments used to be synthesized into a comprehensive and coherent total assessment, not simply compiled into a single document.

Section 102. System-wide Amtrak security upgrades

This section would authorize the Secretary of DHS to make security grants to Amtrak for the general purposes of: protecting underwater/underground assets and systems; protecting high risk/high consequence assets identified through system-wide risk assessments; counter-terrorism training for front line staff; use of visible/unpredictable deterrence; emergency preparedness drills and exercises; and public awareness and preparedness campaigns. Specific grant eligibilities include: securing major tunnel access points in New York, New Jersey, Maryland, and Washington, D.C.; securing Amtrak trains and stations; obtaining a watch list identification system and interoperable communication system; and hiring additional police and security officers.

The DHS Secretary would authorize grants to Amtrak for projects contained in a system-wide security plan approved by the DHS Secretary and the DOT Secretary would disburse the grant funds to Amtrak through DOT's existing Amtrak grant process. The DHS Secretary would be required to ensure that grants are ap-

propriately distributed to areas outside of the Northeast Corridor, consistent with the highest security needs of the Amtrak system. This section would authorize \$63,500,000 for FY 2008 and \$30,000,000 for FYs 2009 and 2010 to carry out this section.

The Committee expects the DOT Secretary to function as a pass-through for grants awarded under this section to Amtrak, using the quarterly grant process currently used by DOT to provide Federal funds to Amtrak. The Committee does not expect DOT to establish any additional grant requirements, and this section does not provide DOT any additional authority by which to deal or withhold grants made to Amtrak.

Section 103. Fire and life-safety improvements

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

This section would authorize \$100,000,000 in funding for DOT for each of FYs 2008 through 2011 to make fire and life-safety improvements to the New York/New Jersey tunnels; \$10,000,000 for each of FYs 2008 through 2011 for improvements of the Baltimore & Potomac and Union tunnels in Baltimore, Maryland; and \$8,000,000 for each of FYs 2008 through 2011 for improvements of the Washington, D.C., Union Station tunnels. The DOT Secretary would be required to approve plans submitted by Amtrak before distributing grants. In addition, the Secretary would be authorized to consider the feasibility of seeking a financial contribution from other rail carriers towards the cost of the project. This section also authorizes \$3,000,000 in FY 2008 for preliminary design of a new railroad tunnel in Baltimore, Maryland.

Section 104. Freight and passenger rail security upgrades

This section would authorize the DHS Secretary to make grants to freight railroads, the Alaska Railroad, HAZMAT shippers, owners of rail cars used to transport HAZMAT, institutions of higher education, State and local governments, and Amtrak, for full or partial reimbursement of costs incurred to prevent or respond to acts of terrorism, sabotage, or other risks. The DHS Secretary would be required to adopt necessary procedures to ensure that grants made under this section are expended in accordance with the purposes of this Act. This section would authorize \$100,000,000 for DHS for each of FYs 2008 through 2010 for the DHS Secretary to carry out this section. Grants to Amtrak are limited to \$45,000,000 over the authorization period and grants for HAZMAT rail security are limited to \$80,000,000 in total over the authorization period.

The Committee believes the authorization of the program is particularly important because very little of the existing DHS rail security grant funds have been available to intercity passenger rail security and no funds have been made available for freight railroad security.

Section 105. Rail security research and development

This section would require the DHS Secretary, in conjunction with the DHS Undersecretary for Science and Technology and the Assistant Secretary for TSA, and in consultation with the DOT Sec-

retary, to carry out a research and development program for the purpose of improving freight and intercity passenger rail security. In carrying out this section, the DHS Secretary would be required to coordinate with other research and development initiatives at DOT. The DHS Secretary would also be allowed to award research and development grants to certain entities described in this section. This section would authorize \$33,000,000 for DHS for each of FYs 2008 through 2011 for the DHS Secretary to carry out this section.

Section 106. Oversight and grant procedures

This section would authorize the DHS Secretary to enter into contracts to audit and review grants awarded under this Act. The DHS Secretary would be required to prescribe procedures and schedules for the awarding of grants under this Act, including application and qualification procedures. In awarding grants, the DHS Secretary may issue letters of intent (LOI) to recipients of grant awarded under this bill, as the Secretary may do now for aviation security funding through TSA. The Committee included this LOI authority because of the multi-year nature of some of the capital projects that may be funded through grants under this bill. In such instances, it is important that public and private sector partners in security improvements receive indications from TSA that the agency believes multi-year funding is appropriate. The Committee acknowledges an LOI is not a commitment of future funds by an agency.

Section 107. Amtrak plan to assist families of passengers involved in rail accidents

This section would require Amtrak, not later than 6 months after the date of enactment of this Act, to submit to the Chairman of the National Transportation Safety Board, the DOT Secretary and the DHS Secretary, a plan for addressing the needs of families of passengers involved in any rail passenger accident involving an Amtrak intercity train and resulting in loss of life. This section authorizes \$500,000 for FY 2008 for the DOT Secretary to carry out this new section.

Section 108. Northern border rail passenger report

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

for pre-screening; and a feasibility analysis of reinstating in-transit inspections onboard international Amtrak trains.

Section 109. Rail worker security training program

This section would require the DHS and DOT Secretaries, not later than 1 year after the date of enactment of this Act, to work with law enforcement officials, as well as terrorism and rail experts, to develop and issue detailed guidance for a railroad worker security training program to prepare front-line workers for potential threat conditions. This section also would require railroad carriers to adopt a worker security training program in accordance with the guidance and submit it to the DHS Secretary for approval. Within one year after the DHS Secretary reviews rail carriers' training programs, railroad carriers would be required to complete the training of all front-line workers consistent with the approved program.

Section 110. Whistleblower protection program

This section would preclude rail carriers from discharging, or otherwise discriminating against, a railroad employee because the employee, or the employee's representative: provided, caused to be provided, or is about to provide, to the employer or the Federal government information relating to a reasonably perceived threat to security; provided, caused to be provided, or is about to provide testimony before a Federal or State proceeding; or refused to violate or assist in violation of any law or regulation related to rail security.

Section 111. High hazard material security threat mitigation plans

This section would direct the DHS and DOT Secretaries to require rail carriers transporting a high hazard material to develop security threat mitigation plans, including alternative routing and temporary shipments suspension options, and to address assessed risks to high consequence targets. These threat mitigation plans would be implemented when the threat levels of the Homeland Security Advisory System are raised to high or severe or specific intelligence of probable or imminent threat exists toward high-consequence rail targets or infrastructure. Within 60 days of enactment of this Act, a list of routes used to transport high hazard materials would be required to be submitted to the DHS Secretary. Within 180 days after receiving the notice of high consequence targets on such routes by the DHS Secretary, each rail carrier would be required to develop and submit a high hazard material security threat mitigation plan to the DHS Secretary. Any revisions must be submitted to the DHS Secretary within 30 days of the revisions being made. The DHS Secretary, with the assistance of the DOT Secretary would be directed to review and transmit comments on the plans to the railroad carrier. A railroad carrier would be required to respond to those comments within 30 days. The plans would be required to be updated by the railroad carrier every two years. This section also defines the following terms: "high-consequence target," "catastrophic impact zone," and "rail carrier."

Section 112. Enforcement authority

This section would amend current law to clarify the DHS Secretary's legal authority for initiating an administrative enforcement proceeding for violations of transportation security regulations and requirements relating to modes of transportation other than aviation. Presently, TSA can enforce aviation security-related regulations and requirements administratively, but ambiguity exists regarding such administrative enforcement authority for non-aviation related enforcement actions. This provision would extend the existing aviation enforcement authority to the DHS Secretary for non-aviation transportation modes.

Section 113. Rail security enhancements

This section would allow police officers employed by a railroad to be deputized to help a second railroad in carrying out enforcement duties on the second railroad. In addition, the provision would require the DOT Secretary to write and distribute to States model railroad police commissioning laws to help prevent the problems posed by "scam railroads." "Scam railroads" are companies that are organized as railroads in order to obtain police powers but are not actually engaged in the railroad business.

Section 114. Public awareness

This section would require the DHS Secretary, in consultation with the DOT Secretary, within 90 days after the date of enactment of this Act, to develop a national plan for improved public outreach and awareness of measures that the general public, railroad passengers, and railroad employees can take to increase railroad system security. Not later than 9 months after the date of enactment of this Act, the DHS Secretary would be directed to implement this plan.

Section 115. Railroad high hazard material tracking

This section would require the DHS Secretary, within 6 months after the date of enactment of this Act, to develop a program to encourage the equipping of rail cars transporting high hazard materials with communications technology that provides information concerning car position, depressurization, and the release of HAZMAT. This section would authorize \$3,000,000 in funding for FYs 2008 through 2010 for the DHS Secretary to carry out this section.

Section 116. Authorization of appropriations

This section would authorize \$205,000,000 in funding for FY 2008 and \$166,000,000 for FYs 2009 to 2010 for the DHS Secretary for this title. This section also would authorize \$121,000,000 for FY 2008 and \$118,000,000 for FYs 2009 to 2011 for the DOT Secretary to carry out DOT's responsibilities under this Act.

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

Section 201. HAZMAT highway routing

This section would require the DOT Secretary, within one year of enactment of this Act, in consultation with the DHS Secretary,

to: document existing and proposed routes for the transportation of radioactive and non-radioactive HAZMAT by motor carrier and develop a framework by using a Geographic Information System-based approach to characterize routes in the National HAZMAT Route Registry; assess and characterize existing and proposed routes for the transportation of radioactive and non-radioactive HAZMAT by motor carrier for the purpose of identifying measurable criteria for selecting routes based on safety and security concerns; analyze current route-related HAZMAT regulations in the United States, Canada, and Mexico to identify cross-border differences and conflicting regulations; document the concerns of the public, motor carriers, and State, local, territorial, and tribal governments about the highway routing of HAZMAT for the purpose of identifying and mitigating security risks associated with hazardous material routes; prepare guidance materials for State officials to assist them in identifying and reducing both safety concerns and security risks when designating highway routes for HAZMAT; develop a tool that will enable State officials to examine potential routes for the highway transportation of HAZMAT; transmit to the Senate Committee on Commerce, Science and Transportation, and the House of Representatives Committee on Transportation and Infrastructure a report on the actions taken to fulfill all the requirements of this section and any recommended changes to the routing requirements for the highway transportation of HAZMAT.

Within 1 year, the DOT Secretary would be required to complete an assessment of the safety and national security benefits achieved under existing requirements for route plans for explosives and radioactive materials and shall submit a report to the Senate Commerce Committee and the House Infrastructure and Transportation Committee with the findings and conclusions of the assessment. The DHS Secretary also would be directed to assess, and potentially require, the addition of certain high-HAZMAT to the list of existing HAZMAT that are required to be transported by motor carriers who use highway routing plans.

Section 202. Motor carrier high hazard material tracking

This section would require the DHS Secretary, through TSA, and in consultation with the DOT Secretary, to develop a program to encourage the equipping of motor carriers transporting high hazard materials in with communications technology that provides frequent or continuous communications, vehicle position and location and tracking capabilities, and an emergency broadcast capability. This section would authorize \$3,000,000 to carry out this Act for each of FYs 2008 through 2010.

Section 203. Memorandum of agreement

This provision would require DHS and DOT to develop a truck security memorandum of agreement (MOA) annex between the two Departments within 1 year after the date of enactment. The Departments currently have security MOA annexes in place for rail, transit, and HAZMAT security. The annex would delineate the roles, resources, and commitments of DHS and DOT in addressing truck security matters, including the processes the Departments

will follow to promote communication, efficiency, and non-duplication of effort.

Section 204. HAZMAT security inspections and enforcement

This section would require the DHS Secretary to establish a program within TSA, in consultation with the DOT Secretary, for reviewing HAZMAT security plans, within 1 year after the enactment of this Act. Failure by any covered person to comply within 180 days after being notified by the DHS Secretary would be punishable by a civil penalty. In reviewing compliance with part 172, the DHS Secretary would be required to utilize risk assessment methodologies to prioritize review and enforcement actions to the highest risk HAZMAT transportation operations.

This section also would require within one year, the DOT Secretary, in coordination with the DHS Secretary, to study to what extent the insurance, security, and safety costs borne by carriers of HAZMAT are reflected in the rates paid by shippers of such commodities, as compared to those for the transportation of non-HAZMAT. This section would authorize \$2,000,000 to carry out this Act for each of FYs 2008 through 2010.

Section 205. Truck security assessment

The DHS Secretary would be required to submit a report on security issues related to the trucking industry that includes an assessment of actions already taken by both public and private entities; an assessment of the economic impact that security upgrades on trucks, truck equipment, or truck facilities may have on the trucking industry and its employees; an assessment of ongoing research and need for additional research on truck security; an assessment of industry best practices to enhance security; and an assessment of the current status of secure parking facilities for trucks.

Section 206. National public sector response system

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

This section would also require the DHS Secretary within 180 days of enactment of this Act to transmit to Congress a report on the estimated public and private costs to establish and annually operate the system. This section would authorize \$1,000,000 to carry out this Act for each of FYs 2008 through 2010.

Section 207. Over-the-road bus security assistance

This section would authorize the DHS Secretary to establish within TSA a program for making grants to private operators of over-the-road buses (characterized by an elevated passenger deck located over a baggage compartment) or over-the-road bus terminals for system-wide security improvements to their operations.

General purposes for the grants would include: protecting underwater/underground assets and systems; protecting high risk/high consequence assets identified through system-wide risk assessments; counter-terrorism training for front line staff; use of visible/unpredictable deterrence; emergency preparedness drills and exercises; and public awareness and preparedness campaigns. Grants made under this section would be subject to certain terms and conditions. No grant would be made under this section to a private bus operator until the operator has first submitted a plan for making security improvements to the DHS Secretary, along with any other information the DHS Secretary may require.

This section would require that, within one year of enactment of this Act, the DHS Secretary to submit to Congress a report containing an assessment of bus security actions already taken by public and private entities, whether additional legislation is necessary, the economic impact of security upgrades on the bus industry, ongoing research on bus security, best practices to enhance bus security, and school bus security, if appropriate. This section would authorize \$12,000,000 to carry out this Act for FY 2008 and \$25,000,000 for FY 2009 to 2010.

Section 208. Pipeline security and incident recovery plan

This section would require the DHS Secretary, in consultation with the DOT Secretary and the PHMSA, and in accordance with the MOU Annex executed on August 9, 2006, to develop a Pipeline Security and Incident Recovery Protocols Plan. The Plan would be required to include a plan for the Federal Government to provide increased security support to the most critical natural gas and hazardous liquid transmission pipeline infrastructures and operations during periods of elevated threat levels and when specific threat information relating to such pipeline infrastructure or operations exists. The Plan also would be required to include an incident recovery protocol plan.

This section also would require that the DHS Secretary transmit to Congress a report containing the plan required in this section, along with an estimate of the private and public sector costs to implement any recommendations.

Section 209. Pipeline security inspections and enforcement

This section would require the DHS Secretary, in consultation with the DOT Secretary, to establish a program to review pipeline operator adoption of recommendations in the September 5, 2002, DOT Research and Special Programs Administration Pipeline Security Information Circular. The DHS Secretary would be required to complete within nine months of enactment of this Act a review of pipeline security plan and inspection of the 100 most critical pipeline operators covered by the Circular. In reviewing operator compliance, the DHS Secretary would be required to utilize risk assessment methodologies.

This section also would require the DHS Secretary and the DOT Secretary to jointly develop recommendations for pipeline operators for securing natural gas and hazardous liquid pipelines and pipeline facilities. If the DOT or DHS Secretary deem security regulations appropriate, either Secretary would be authorized to promulgate such regulations and carry out necessary inspection and en-

forcement actions, in accordance with the MOU Annex executed on August 9, 2006 between the two agencies. This section would authorize \$2,000,000 to carry out this Act for each of FYs 2008 and 2009.

Section 210. Technical corrections

This section makes technical corrections to title 49, United States Code, and title 46, United States Code.

Section 211. Certain personnel limitations not to apply

This section makes clear that any statutory limitation on the number of TSA employees does not apply to employees implementing provisions of this Act.

Section 212. Maritime and surface transportation security fee study

This section would require the DHS Secretary to study the need for, and feasibility of, establishing a system of maritime and surface transportation-related user fees that may be imposed and collected to fund maritime and surface transportation security improvements. In developing the study, the DHS Secretary would be directed to consult with maritime and surface transportation carriers, shippers, passengers, facility owners and operators, and other persons as determined by the DHS Secretary. The study would include an assessment of current security-related fees in the United States, Canada, and Mexico; an analysis of the impact of fees on transportation carriers and shippers; and an evaluation of current private and public sector expenditures on maritime and surface transportation security. Within 1 year after the date of enactment, the DHS Secretary would be required to transmit a report to Congress on the results of the study.

CHANGES IN EXISTING LAW

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

TITLE 49, UNITED STATES CODE

SUBTITLE I—DEPARTMENT OF TRANSPORTATION

CHAPTER 1. ORGANIZATION

§ 114. Transportation Security Administration

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

(b) UNDER SECRETARY.—

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

(2) QUALIFICATIONS.—The Under Secretary must—

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

- (B) have experience in a field directly related to transportation or security.
- (3) TERM.—The term of office of an individual appointed as the Under Secretary shall be 5 years.
- (c) LIMITATION ON OWNERSHIP OF STOCKS AND BONDS.—The Under Secretary may not own stock in or bonds of a transportation or security enterprise or an enterprise that makes equipment that could be used for security purposes.
- (d) FUNCTIONS.—The Under Secretary shall be responsible for security in all modes of transportation, including—
- (1) carrying out chapter 449, relating to civil aviation security, and related research and development activities; and
 - (2) security responsibilities over other modes of transportation that are exercised by the Department of Transportation.
- (e) SCREENING OPERATIONS.—The Under Secretary shall—
- (1) be responsible for day-to-day Federal security screening operations for passenger air transportation and intrastate air transportation under sections 44901 and 44935;
 - (2) develop standards for the hiring and retention of security screening personnel;
 - (3) train and test security screening personnel; and
 - (4) be responsible for hiring and training personnel to provide security screening at all airports in the United States where screening is required under section 44901, in consultation with the Secretary of Transportation and the heads of other appropriate Federal agencies and departments.
- (f) ADDITIONAL DUTIES AND POWERS.—In addition to carrying out the functions specified in subsections (d) and (e), the Under Secretary shall—
- (1) receive, assess, and distribute intelligence information related to transportation security;
 - (2) assess threats to transportation;
 - (3) develop policies, strategies, and plans for dealing with threats to transportation security;
 - (4) make other plans related to transportation security, including coordinating countermeasures with appropriate departments, agencies, and instrumentalities of the United States Government;
 - (5) serve as the primary liaison for transportation security to the intelligence and law enforcement communities;
 - (6) on a day-to-day basis, manage and provide operational guidance to the field security resources of the Administration, including Federal Security Managers as provided by section 44933;
 - (7) enforce security-related regulations and requirements;
 - (8) identify and undertake research and development activities necessary to enhance transportation security;
 - (9) inspect, maintain, and test security facilities, equipment, and systems;
 - (10) ensure the adequacy of security measures for the transportation of cargo;
 - (11) oversee the implementation, and ensure the adequacy, of security measures at airports and other transportation facilities;

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

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

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

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

(g) NATIONAL EMERGENCY RESPONSIBILITIES.—

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

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

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

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

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

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

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

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

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

(2) establish procedures for notifying the Administrator of the Federal Aviation Administration, appropriate State and local law enforcement officials, and airport or airline security officers of the identity of individuals known to pose, or sus-

pected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety;

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

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

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

(4) consider requiring passenger air carriers to share passenger lists with appropriate Federal agencies for the purpose of identifying individuals who may pose a threat to aviation safety or national security.

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

(j) ACQUISITIONS.—

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

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

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

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

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

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

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

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

(l) REGULATIONS.—

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

(2) EMERGENCY PROCEDURES.—

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

(B) REVIEW BY TRANSPORTATION SECURITY OVERSIGHT BOARD.—Any regulation or security directive issued under this paragraph shall be subject to review by the Transportation Security Oversight Board established under section 115. Any regulation or security directive issued under this paragraph shall remain effective for a period not to exceed 90 days unless ratified or disapproved by the Board or rescinded by the Under Secretary.

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

(4) AIRWORTHINESS OBJECTIONS BY FAA.—

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

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

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

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

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

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

(o) ACQUISITION MANAGEMENT SYSTEM.—The acquisition management system established by the Administrator of the Federal Aviation Administration under section 40110 shall apply to acquisitions of equipment, supplies, and materials by the Transportation Security Administration, or, subject to the requirements of such section, the Under Secretary may make such modifications to the acquisition management system with respect to such acquisitions of equipment, supplies, and materials as the Under Secretary considers appropriate, such as adopting aspects of other acquisition management systems of the Department of Transportation.

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

(q) LAW ENFORCEMENT POWERS.—

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

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

(A) carry a firearm;

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

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

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

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

(r) AUTHORITY TO EXEMPT.—The Under Secretary may grant an exemption from a regulation prescribed in carrying out this section

if the Under Secretary determines that the exemption is in the public interest.

(s) NONDISCLOSURE OF SECURITY ACTIVITIES.—

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

(A) be an unwarranted invasion of personal privacy;

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

(C) be detrimental to the security of transportation.

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

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

(t) TRANSPORTATION SECURITY STRATEGIC PLANNING.—

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

(A) a National Strategy for Transportation Security; and

(B) transportation modal security plans.

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

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

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

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

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

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

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

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

(4) SUBMISSIONS OF PLANS TO CONGRESS.—

(A) INITIAL STRATEGY.—The Secretary of Homeland Security shall submit the National Strategy for Transportation Security, including the transportation modal security plans, developed under this subsection to the appropriate congressional committees not later than April 1, 2005.

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

(C) PERIODIC PROGRESS REPORT.—

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

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

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

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

(5) PRIORITY STATUS.—

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

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

- (i) the current National Maritime Transportation Security Plan under section 70103 of title 46;
- (ii) the report required by section 44938 of this title;
- (iii) transportation modal security plans required under this section; and
- (iv) any other transportation security plan or report that the Secretary of Homeland Security determines appropriate for inclusion.

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

- (1) \$205,000,000 for fiscal year 2008;
- (2) \$166,000,000 for fiscal year 2009; and
- (3) \$166,000,000 for fiscal year 2010.

(v) ENFORCEMENT OF REGULATIONS AND ORDERS OF THE SECRETARY OF HOMELAND SECURITY ISSUED UNDER THIS TITLE.—

(1) APPLICATION OF SUBSECTION.—

(A) IN GENERAL.—*This subsection applies to the enforcement of regulations prescribed, and orders issued, by the Secretary of Homeland Security under a provision of this title other than a provision of chapter 449.*

(B) VIOLATIONS OF CHAPTER 449.—*The penalties for violations of regulations prescribed, and orders issued, by the Secretary of Homeland Security under chapter 449 of this title are provided under chapter 463 of this title.*

(C) NONAPPLICATION TO CERTAIN VIOLATIONS.—

(i) Paragraphs (2) through (5) of this subsection do not apply to violations of regulations prescribed, and orders issued, by the Secretary of Homeland Security under a provision of this title—

(I) involving the transportation of personnel or shipments of materials by contractors where the Department of Defense has assumed control and responsibility;

(II) by a member of the armed forces of the United States when performing official duties; or

(III) by a civilian employee of the Department of Defense when performing official duties.

(ii) Violations described in subclause (I), (II), or (III) of clause (i) shall be subject to penalties as determined by the Secretary of Defense or the Secretary's designee.

(2) CIVIL PENALTY.—

(A) IN GENERAL.—*A person is liable to the United States Government for a civil penalty of not more than \$10,000 for a violation of a regulation prescribed, or order issued, by the Secretary of Homeland Security under this title.*

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

(3) ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES.—

(A) IN GENERAL.—*The Secretary of Homeland Security may impose a civil penalty for a violation of a regulation prescribed, or order issued, under this title. The Secretary*

shall give written notice of the finding of a violation and the penalty.

(B) *SCOPE OF CIVIL ACTION.*—In a civil action to collect a civil penalty imposed by the Secretary under this subsection, the court may not re-examine issues of liability or the amount of the penalty.

(C) *JURISDICTION.*—The district courts of the United States have exclusive jurisdiction of civil actions to collect a civil penalty imposed by the Secretary under this subsection if—

(i) the amount in controversy is more than—

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

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

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

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

(D) *MAXIMUM PENALTY.*—The maximum penalty the Secretary may impose under this paragraph is—

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

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

(4) *COMPROMISE AND SETOFF.*—

(A) The Secretary may compromise the amount of a civil penalty imposed under this subsection. If the Secretary compromises the amount of a civil penalty under this subparagraph, the Secretary shall—

(i) notify the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Homeland Security of the compromised penalty and explain the rationale therefor; and

(ii) make the explanation available to the public to the extent feasible without compromising security.

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

(5) *INVESTIGATIONS AND PROCEEDINGS.*—Chapter 461 of this title shall apply to investigations and proceedings brought under this subsection to the same extent that it applies to investigations and proceedings brought with respect to aviation security duties designated to be carried out by the Secretary.

(6) *DEFINITIONS.*—In this subsection:

(A) *PERSON.*—The term “person” does not include—

(i) the United States Postal Service; or

(ii) the Department of Defense.

(B) *SMALL BUSINESS CONCERN.*—The term “small business concern” has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632).

TITLE 49. TRANSPORTATION

SUBTITLE III. GENERAL AND INTERMODAL PROGRAMS

CHAPTER 51. TRANSPORTATION OF HAZARDOUS MATERIAL

§ 5103a. Limitation on issuance of hazmat licenses

(a) LIMITATION.—

(1) ISSUANCE OF LICENSES.—A State may not issue to any individual a license to operate a motor vehicle transporting in commerce a hazardous material unless the Secretary of *Homeland Security* has first determined, upon receipt of a notification under subsection (d)(1)(B), that the individual does not pose a security risk warranting denial of the license.

(2) RENEWALS INCLUDED.—For the purposes of this section, the term “issue”, with respect to a license, includes renewal of the license.

(b) HAZARDOUS MATERIALS DESCRIBED.—The limitation in subsection (a) shall apply with respect to any material defined as hazardous material by the Secretary for which the Secretary requires placarding of a commercial motor vehicle transporting that material in commerce.

(c) RECOMMENDATIONS ON CHEMICAL AND BIOLOGICAL MATERIALS.—The Secretary of Health and Human Services shall recommend to the Secretary of Transportation any chemical or biological material or agent for regulation as a hazardous material under section 5103(a) if the Secretary of Health and Human Services determines that such material or agent poses a significant risk to the health of individuals.

(d) BACKGROUND RECORDS CHECK—

(1) IN GENERAL.—Upon the request of a State regarding issuance of a license described in subsection (a)(1) to an individual, the Attorney General—

(A) shall carry out a background records check regarding the individual; and

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

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

(A) A check of the relevant criminal history data bases.

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

(C) As appropriate, a check of the relevant international data bases through Interpol-U.S. National Central Bureau or other appropriate means.

(e) REPORTING REQUIREMENT.—Each State shall submit to the Secretary of *Homeland Security*, at such time and in such manner as the Secretary of *Homeland Security* may prescribe, the name, address, and such other information as the Secretary of *Homeland Security* may require, concerning—

(1) each alien to whom the State issues a license described in subsection (a); and

(2) each other individual to whom such a license is issued, as the Secretary of *Homeland Security* may require.

(f) ALIEN DEFINED.—In this section, the term “alien” has the meaning given the term in section 101(a)(3) of the Immigration and Nationality Act.

(g) BACKGROUND CHECKS FOR DRIVERS HAULING HAZARDOUS MATERIALS.—

(1) IN GENERAL.—

(A) EMPLOYER NOTIFICATION.—Not later than 90 days after the date of enactment of this subsection, the Director of the Transportation Security Administration, after receiving comments from interested parties, shall develop and implement a process for notifying hazmat employers designated by an applicant of the results of the applicant’s background record check, if—

(i) such notification is appropriate considering the potential security implications; and

(ii) the Director, in a final notification of threat assessment, served on the applicant determines that the applicant does not meet the standards set forth in regulations issued to carry out this section.

(B) RELATIONSHIP TO OTHER BACKGROUND RECORDS CHECKS.—

(i) ELIMINATION OF REDUNDANT CHECKS.—An individual with respect to whom the Transportation Security Administration—

(I) has performed a security threat assessment under this section; and

(II) has issued a final notification of no security threat,

is deemed to have met the requirements of any other background check that is required for purposes of any Federal law applicable to transportation workers if that background check is equivalent to, or less stringent than, the background check required under this section.

(ii) DETERMINATION BY DIRECTOR.—Not later than 60 days after the date of issuance of the report under paragraph (5), but no later than 120 days after the date of enactment of this Act, the Director shall initiate a rulemaking proceeding, including notice and opportunity for comment, to determine which background checks required for purposes of Federal laws applicable to transportation workers are equivalent to, or less stringent than, those required under this section.

(iii) FUTURE RULEMAKINGS.—The Director shall make a determination under the criteria established under clause (ii) with respect to any rulemaking proceeding to establish or modify required background checks for transportation workers initiated after the date of enactment of this subsection.

(2) APPEALS PROCESS FOR MORE STRINGENT STATE PROCEDURES.—If a State establishes its own standards for applicants for a hazardous materials endorsement to a commercial driver’s license, the State shall also provide—

(A) an appeals process similar to and to the same extent as the process provided under part 1572 of title 49, Code of Federal Regulations, by which an applicant denied a hazardous materials endorsement to a commercial driver's license by that State may appeal that denial; and

(B) a waiver process similar to and to the same extent as the process provided under part 1572 of title 49, Code of Federal Regulations, by which an applicant denied a hazardous materials endorsement to a commercial driver's license by that State may apply for a waiver.

(3) CLARIFICATION OF TERM DEFINED IN REGULATIONS.—The term “transportation security incident”, as defined in part 1572 of title 49, Code of Federal Regulations, does not include a work stoppage or other nonviolent employee-related action resulting from an employer-employee dispute. Not later than 30 days after the date of enactment of this subsection, the Director shall modify the definition of that term to reflect the preceding sentence.

(4) BACKGROUND CHECK CAPACITY.—Not later than October 1, 2005, the Director shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committees on Transportation and Infrastructure and Homeland Security of the House of Representatives a report on the implementation of fingerprint-based security threat assessments and the adequacy of fingerprinting locations, personnel, and resources to accomplish the timely processing of fingerprint-based security threat assessments for individuals holding commercial driver's licenses who are applying to renew hazardous materials endorsements.

(5) REPORT.—

(A) IN GENERAL.—Not later than 60 days after the date of enactment of this subsection, the Director shall transmit to the committees referred to in paragraph (4) a report on the Director's plans to reduce or eliminate redundant background checks for holders of hazardous materials endorsements performed under this section.

(B) CONTENTS.—The report shall—

(i) include a list of background checks and other security or threat assessment requirements applicable to transportation workers under Federal laws for which the Department of Homeland Security is responsible and the process by which the Secretary of Homeland Security will determine whether such checks or assessments are equivalent to, or less stringent than, the background check performed under this section; and

(ii) provide an analysis of how the Director plans to reduce or eliminate redundant background checks in a manner that will continue to ensure the highest level of safety and security.

(h) RELATIONSHIP TO TRANSPORTATION SECURITY CARDS.—*Upon application, a State shall issue to an individual a license to operate a motor vehicle transporting in commerce a hazardous material without the security assessment required by this section, provided the individual meets all other applicable requirements for such a li-*

cense, if the Secretary of Homeland Security has previously determined, under section 70105 of title 46, United States Code, that the individual does not pose a security risk.

[(h)] (i) **COMMERCIAL MOTOR VEHICLE OPERATORS REGISTERED TO OPERATE IN MEXICO OR CANADA.**—

(1) **IN GENERAL.**—Beginning on the date that is 6 months after the date of enactment of this subsection, a commercial motor vehicle operator registered to operate in Mexico or Canada shall not operate a commercial motor vehicle transporting a hazardous material in commerce in the United States until the operator has undergone a background records check similar to the background records check required for commercial motor vehicle operators licensed in the United States to transport hazardous materials in commerce.

(2) **EXTENSION.**—The Director of the Transportation Security Administration may extend the deadline established by paragraph (1) for a period not to exceed 6 months if the Director determines that such an extension is necessary.

(3) **COMMERCIAL MOTOR VEHICLE DEFINED.**—In this subsection, the term “commercial motor vehicle” has the meaning given that term by section 31101.

SUBTITLE V—RAIL PROGRAMS

PART A—SAFETY

CHAPTER 201. GENERAL

SUBCHAPTER I. GENERAL

§ 20103. General authority

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

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

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

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

(e) **HEARINGS.**—The Secretary shall conduct a hearing as provided by section 553 of title 5 when prescribing a regulation or issuing an order under this chapter, including a regulation or order

establishing, amending, or waiving compliance with a railroad safety regulation prescribed or order issued under this chapter. An opportunity for an oral presentation shall be provided.

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

“§ 20118. Whistleblower protection for rail security matters

(a) **DISCRIMINATION AGAINST EMPLOYEE.**—*A railroad carrier engaged in interstate or foreign commerce may not discharge or in any way discriminate against an employee because the employee, whether acting for the employee or as a representative, has—*

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

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

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

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

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

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

(e) **DISCLOSURE OF IDENTITY.**—

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

(2) *The Secretary shall disclose to the Attorney General the name of an employee described in paragraph (1) of this sub-*

section if the matter is referred to the Attorney General for enforcement.

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

(a) *SUBMISSION OF PLAN.*—Not later than 6 months after the date of the enactment of the Surface Transportation and Rail Security Act of 2007, Amtrak shall submit to the Chairman of the National Transportation Safety Board, the Secretary of Transportation, and the Secretary of Homeland Security a plan for addressing the needs of the families of passengers involved in any rail passenger accident involving an Amtrak intercity train and resulting in a loss of life.

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

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

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

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

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

(5) A process by which the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger within Amtrak’s control; that any possession of the passenger within Amtrak’s control will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation; and that any unclaimed possession of a passenger within Amtrak’s control will be retained by the rail passenger carrier for at least 18 months.

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

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

(c) *USE OF INFORMATION.*—Neither National Transportation Safety Board, the Secretary of Transportation, the Secretary of Homeland Security, nor Amtrak may release any personal information on a list obtained under subsection (b)(1) but may provide information

on the list about a passenger to the family of the passenger to the extent that the Board or Amtrak considers appropriate.

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

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

(f) *FUNDING.*—Out of funds appropriated pursuant to section 116(b) of the Surface Transportation and Rail Security Act of 2007, there shall be made available to the Secretary of Transportation for the use of Amtrak \$500,000 for fiscal year 2008 to carry out this section. Amounts made available pursuant to this subsection shall remain available until expended.

SUBTITLE V—RAIL PROGRAMS

PART E—MISCELLANEOUS

CHAPTER 281. LAW ENFORCEMENT

§ 28101. Rail police officers

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

- (1) employees, passengers, or patrons of the rail carrier;
- (2) property, equipment, and facilities owned, leased, operated, or maintained by the rail carrier;
- (3) property moving in interstate or foreign commerce in the possession of the rail carrier; and
- (4) personnel, equipment, and material moving by rail that are vital to the national defense.

(b) *ASSIGNMENT.*—A rail police officer employed by a rail carrier and certified or commissioned as a police officer under the laws of a State may be temporarily assigned to assist a second rail carrier in carrying out law enforcement duties upon the request of the second rail carrier, at which time the police officer shall be considered to be an employee of the second rail carrier and shall have authority to enforce the laws of any jurisdiction in which the second rail carrier owns property to the same extent as provided in subsection (a).

SUBTITLE VII—AVIATION PROGRAMS

PART A—AIR COMMERCE AND SAFETY

SUBPART IV—ENFORCEMENT AND PENALTIES

§ 46301. Civil penalties

(a) GENERAL PENALTY.—

(1) A person is liable to the United States Government for a civil penalty of not more than \$25,000 (or \$1,100 if the person is an individual or small business concern) for violating—

(A) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 411, chapter 413 (except sections 41307 and 41310(b)-(f)), chapter 415 (except sections 41502, 41505, and 41507-41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II or III of chapter 421, chapter 441 (except section 44109), 44502(b) or (c), chapter 447 (except sections 44717 and 44719-44723), chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)-(d)(1)(A) and (d)(1)(C)-(f), and 44908), section 47107(b) (including any assurance made under such section), or section 47133 of this title;

(B) a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies;

(C) any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title; or

(D) a regulation of the United States Postal Service under this part.

(2) A separate violation occurs under this subsection for each day the violation (other than a violation of section 41719) continues or, if applicable, for each flight involving the violation (other than a violation of section 41719).

(3) PENALTY FOR DIVERSION OF AVIATION REVENUES.—The amount of a civil penalty assessed under this section for a violation of section 47107(b) of this title (or any assurance made under such section) or section 47133 of this title may be increased above the otherwise applicable maximum amount under this section to an amount not to exceed 3 times the amount of revenues that are used in violation of such section.

(4) AVIATION SECURITY VIOLATIONS.—Notwithstanding paragraph (1) of this subsection, the maximum civil penalty for violating chapter 449 [or another requirement under this title administered by the Under Secretary of Transportation for Security] shall be \$10,000; except that the maximum civil penalty shall be \$25,000 in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an individual serving as an airman).

(5) PENALTIES APPLICABLE TO INDIVIDUALS AND SMALL BUSINESS CONCERNS.—

(A) An individual (except an airman serving as an airman) or small business concern is liable to the Government for a civil penalty of not more than \$10,000 for violating—

(i) chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), section 44502 (b)

or (c), chapter 447 (except sections 44717-44723), or chapter 449 (except sections 44902, 44903(d), 44904, and 44907-44909) of this title; or

(ii) a regulation prescribed or order issued under any provision to which clause (i) applies.

(B) A civil penalty of not more than \$10,000 may be imposed for each violation under paragraph (1) committed by an individual or small business concern related to—

(i) the transportation of hazardous material;

(ii) the registration or recordation under chapter 441 of an aircraft not used to provide air transportation;

(iii) a violation of section 44718(d), relating to the limitation on construction or establishment of landfills;

(iv) a violation of section 44725, relating to the safe disposal of life-limited aircraft parts; or

(v) a violation of section 40127 or section 41705, relating to discrimination.

(C) Notwithstanding paragraph (1), the maximum civil penalty for a violation of section 41719 committed by an individual or small business concern shall be \$5,000 instead of \$1,000.

(D) Notwithstanding paragraph (1), the maximum civil penalty for a violation of section 41712 (including a regulation prescribed or order issued under such section) or any other regulation prescribed by the Secretary by an individual or small business concern that is intended to afford consumer protection to commercial air transportation passengers shall be \$2,500 for each violation.

(b) SMOKE ALARM DEVICE PENALTY.—

(1) A passenger may not tamper with, disable, or destroy a smoke alarm device located in a lavatory on an aircraft providing air transportation or intrastate air transportation.

(2) An individual violating this subsection is liable to the Government for a civil penalty of not more than \$2,000.

(c) PROCEDURAL REQUIREMENTS.—

(1) The Secretary of Transportation may impose a civil penalty for the following violations only after notice and an opportunity for a hearing:

(A) a violation of subsection (b) of this section or chapter 411, chapter 413 (except sections 41307 and 41310(b)-(f)), chapter 415 (except sections 41502, 41505, and 41507-41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II of chapter 421, or section 44909 of this title.

(B) a violation of a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies.

(C) a violation of any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title.

(D) a violation under subsection (a)(1) of this section related to the transportation of hazardous material.

(2) The Secretary shall give written notice of the finding of a violation and the civil penalty under paragraph (1) of this subsection.

(d) ADMINISTRATIVE IMPOSITION OF PENALTIES.—

(1) In this subsection—

(A) “flight engineer” means an individual who holds a flight engineer certificate issued under part 63 of title 14, Code of Federal Regulations.

(B) “mechanic” means an individual who holds a mechanic certificate issued under part 65 of title 14, Code of Federal Regulations.

(C) “pilot” means an individual who holds a pilot certificate issued under part 61 of title 14, Code of Federal Regulations.

(D) “repairman” means an individual who holds a repairman certificate issued under part 65 of title 14, Code of Federal Regulations.

(2) The Administrator of the Federal Aviation Administration may impose a civil penalty for a violation of chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except sections 44717 and 44719-44723) or section 46301(b), 46302 (for a violation relating to section 46504), 46318, or 47107(b) (as further defined by the Secretary under section 47107(l) and including any assurance made under section 47107(b)) of this title or a regulation prescribed or order issued under any of those provisions. The Secretary of Homeland Security may impose a civil penalty for a violation of chapter 449 (except sections 44902, 44903(d), 44907(a)-(d)(1)(A), 44907(d)(1)(C)-(f), 44908, and 44909 [49 USCS §§ 44902, 44903(d), 44907(a)-(d)(1)(A), 44907(d)(1)(C)-(f), 44908, and 44909]), 46302 (except for a violation relating to section 46504), 46303, or a regulation prescribed or order issued under such chapter 449. The Secretary of Homeland Security or Administrator shall give written notice of the finding of a violation and the penalty.

(3) In a civil action to collect a civil penalty imposed by the Secretary of Homeland Security or Administrator under this subsection, the issues of liability and the amount of the penalty may not be reexamined.

(4) Notwithstanding paragraph (2) of this subsection, the district courts of the United States have exclusive jurisdiction of a civil action involving a penalty the Secretary of Homeland Security or Administrator initiates if—

(A) the amount in controversy is more than—

(i) \$50,000 if the violation was committed by any person before the date of enactment of the Vision 100—Century of Aviation Reauthorization Act;

(ii) \$400,000 if the violation was committed by a person other than an individual or small business concern on or after that date; or

(iii) \$50,000 if the violation was committed by an individual or small business concern on or after that date;

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

(C) the action involves an aircraft subject to a lien that has been seized by the Government; or

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

(5)(A) The Administrator may issue an order imposing a penalty under this subsection against an individual acting as a pilot, flight engineer, mechanic, or repairman only after advising the individual of the charges or any reason the Administrator relied on for the proposed penalty and providing the individual an opportunity to answer the charges and be heard about why the order shall not be issued.

(B) An individual acting as a pilot, flight engineer, mechanic, or repairman may appeal an order imposing a penalty under this subsection to the National Transportation Safety Board. After notice and an opportunity for a hearing on the record, the Board shall affirm, modify, or reverse the order. The Board may modify a civil penalty imposed to a suspension or revocation of a certificate.

(C) When conducting a hearing under this paragraph, the Board is not bound by findings of fact of the Administrator but is bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

(D) When an individual files an appeal with the Board under this paragraph, the order of the Administrator is stayed.

(6) An individual substantially affected by an order of the Board under paragraph (5) of this subsection, or the Administrator when the Administrator decides that an order of the Board under paragraph (5) will have a significant adverse impact on carrying out this part, may obtain judicial review of the order under section 46110 of this title. The Administrator shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence.

(7)(A) The Administrator may impose a penalty on a person (except an individual acting as a pilot, flight engineer, mechanic, or repairman) only after notice and an opportunity for a hearing on the record.

(B) In an appeal from a decision of an administrative law judge as the result of a hearing under subparagraph (A) of this paragraph, the Administrator shall consider only whether—

(i) each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence;

(ii) each conclusion of law is made according to applicable law, precedent, and public policy; and

(iii) the judge committed a prejudicial error that supports the appeal.

(C) Except for good cause, a civil action involving a penalty under this paragraph may not be initiated later than 2 years after the violation occurs.

(D) In the case of a violation of section 47107(b) of this title or any assurance made under such section—

(i) a civil penalty shall not be assessed against an individual;

- (ii) a civil penalty may be compromised as provided under subsection (f); and
 - (iii) judicial review of any order assessing a civil penalty may be obtained only pursuant to section 46110 of this title.
- (8) The maximum civil penalty the Under Secretary, Administrator, or Board may impose under this subsection is—
- (A) \$50,000 if the violation was committed by any person before the date of enactment of the Vision 100—Century of Aviation Reauthorization Act;
 - (B) \$400,000 if the violation was committed by a person other than an individual or small business concern on or after that date; or
 - (C) \$50,000 if the violation was committed by an individual or small business concern on or after that date.
- (9) This subsection applies only to a violation occurring after August 25, 1992.
- (e) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty under subsection (a)(3) of this section related to transportation of hazardous material, the Secretary shall consider—
- (1) the nature, circumstances, extent, and gravity of the violation;
 - (2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and
 - (3) other matters that justice requires.
- (f) COMPROMISE AND SETOFF.—
- (1)(A) The Secretary may compromise the amount of a civil penalty imposed for violating—
 - (i) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except 44717 and 44719-44723), or chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)-(d)(1)(A) and (d)(1)(C)-(f), 44908, and 44909) of this title; or
 - (ii) a regulation prescribed or order issued under any provision to which clause (i) of this subparagraph applies.
 - (B) The Postal Service may compromise the amount of a civil penalty imposed under subsection (a)(1)(D) of this section.
 - (2) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.
- (g) JUDICIAL REVIEW.—An order of the Secretary or the Administrator imposing a civil penalty may be reviewed judicially only under section 46110 of this title.
- (h) NONAPPLICATION.—
- (1) This section does not apply to the following when performing official duties:
 - (A) a member of the armed forces of the United States.
 - (B) a civilian employee of the Department of Defense subject to the Uniform Code of Military Justice.
 - (2) The appropriate military authority is responsible for taking necessary disciplinary action and submitting to the Secretary (or the Under Secretary of Transportation for Security with respect to security duties and powers designated to be

carried out by the Under Secretary or the Administrator with respect to aviation safety duties and powers designated to be carried out by the Administrator) a timely report on action taken.

(i) **SMALL BUSINESS CONCERN DEFINED.**—In this section, the term “small business concern” has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632).

