

Calendar No. 536

108TH CONGRESS }
2d Session }

SENATE

{ REPORT
108-278 }

RAIL SECURITY ACT OF 2004

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

on

S. 2273



May 21, 2004.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

29-010

WASHINGTON : 2004

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

JOHN MCCAIN, Arizona, *Chairman*

TED STEVENS, Alaska	ERNEST F. HOLLINGS, South Carolina
CONRAD BURNS, Montana	DANIEL K. INOUE, Hawaii
TRENT LOTT, Mississippi	JOHN D. ROCKEFELLER IV, West Virginia
KAY BAILEY HUTCHISON, Texas	JOHN F. KERRY, Massachusetts
OLYMPIA J. SNOWE, Maine	JOHN B. BREAUX, Louisiana
SAM BROWNBACK, Kansas	BYRON L. DORGAN, North Dakota
GORDON SMITH, Oregon	RON WYDEN, Oregon
PETER G. FITZGERALD, Illinois	BARBARA BOXER, California
JOHN ENSIGN, Nevada	BILL NELSON, Florida
GEORGE ALLEN, Virginia	MARIA CANTWELL, Washington
JOHN E. SUNUNU, New Hampshire	FRANK LAUTENBERG, New Jersey

JEANNE BUMPUS, *Staff Director and General Counsel*

ROB FREEMAN, *Deputy Staff Director*

ROBERT W. CHAMBERLIN, *Chief Counsel*

KEVIN D. KAYES, *Democratic Staff Director and Chief Counsel*

GREGG ELIAS, *Democratic General Counsel*

Calendar No. 536

108TH CONGRESS }
2d Session }

SENATE

{ REPORT
108-278

RAIL SECURITY ACT OF 2004

MAY 21, 2004.—Ordered to be printed

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

R E P O R T

[To accompany S. 2273]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2273) to provide increased rail transportation security, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

PURPOSE OF THE BILL

The purpose of S. 2273 is to improve rail security by requiring the completion of a vulnerability assessment and security plan for the rail system, and by authorizing funds to address immediate security needs.

BACKGROUND AND NEEDS

The terrorist bombing of 4 commuter trains in Madrid, Spain on March 11, 2004, that resulted in 191 fatalities and 1,400 injuries, has heightened concerns about the vulnerability of the rail system in the United States to terrorist attack. Less than 2 weeks after the Madrid attack, an explosive device was found buried in the bed of a passenger rail line in France, and on April 2, a partially assembled bomb was discovered under a high-speed rail line south of Madrid. Also on April 2, the Department of Homeland Security (DHS) announced that it had received uncorroborated intelligence information on possible attacks this summer on United States cities involving trains and buses.

Securing the United States rail system is a daunting challenge. In 2002, rail transit ridership totaled 3.4 billion trips.¹ The transit system is intentionally barrier-free to handle large numbers of passengers efficiently and conveniently, but this characteristic makes transit more vulnerable to terrorist acts. Another 23 million passengers rode Amtrak, the nation's intercity passenger rail service provider. The nation's freight rail network consists of more than 140,000 miles of track, over which nearly 28 million carloads move annually, including over 9 million trailers and containers and 1.7 million carloads of hazardous materials and hazardous waste.² Such far-flung operations preclude around-the-clock monitoring of all track, trains, and facilities.

Primary regulatory jurisdiction over rail security rests with DHS, while jurisdiction over rail safety rests with the Federal Railroad Administration (FRA) and the Research and Special Programs Administration (RSPA) within the Department of Transportation (DOT). FRA has jurisdiction over the safety of freight railroads, Amtrak, the Alaska Railroad, and 18 commuter rail authorities, including New Jersey Transit, Metro-North, and the Long Island Railroad in the New Jersey/New York City area; Metrolink in Los Angeles; and Caltrain in San Francisco. RSPA is responsible for the regulation of hazardous materials transportation by all modes, including the development of container and packaging standards and testing procedures.

Because safety and security matters often overlap and because of DOT's longstanding expertise with respect to rail safety, the Homeland Security Act of 2002 (P.L. 107-296) which created DHS, preserved a role for DOT in certain security matters. The law requires that DHS consult with DOT on security regulations or orders that may affect rail safety or the safety of hazardous materials transportation. Further, the Act extended to security matters the same level of Federal preemption that applies to rail safety and hazardous materials transportation safety.³

The Senate Committee on Commerce, Science, and Transportation (Committee or Commerce Committee) has jurisdiction over the rail safety program administered by FRA and rail security matters administered by DHS. The Senate Committee on Banking, Housing, and Urban Affairs (Banking Committee) has jurisdiction over public transportation matters, including rail, bus, and para-transit services. Transit safety however, other than for commuter authorities subject to FRA safety regulations, has not been widely regulated by the Federal government. On May 6, the Banking Committee reported legislation to address transit security. Its proposal may be joined with the Rail Security Act of 2004 on the Senate floor to form a comprehensive rail and transit security improvement package.

¹Federal Transit Administration, National Transit Database, 2002.

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

³Federal law (49 USC 20106) states that a State may only enforce more stringent or additional requirements than Federal laws or regulations if such: (1) is necessary to eliminate or reduce an essentially local safety or security hazard; (2) is not incompatible with a Federal law or regulation; and (3) does not unreasonably burden interstate commerce. With respect to hazardous materials, Federal law (49 USC 5125) stipulates that State law is preempted if (1) complying with both the State law and the Federal requirement is not possible, or (2) the State requirement is an obstacle to carrying out Federal law and regulations. Further, State laws with respect to the classification of hazardous materials; packing, labeling, and placarding; and execution of shipping documents are preempted unless they are "substantively the same" as Federal regulations.

Major Security Issues

The Commerce Committee's March 23 hearing on the state of rail security revealed a number of important security issues, including the need for a coordinated rail security initiative and the need to protect critical railroad infrastructure and the surrounding public areas.

(1) *Need for a coordinated rail security initiative.*—Only modest resources have been dedicated to maritime and surface transportation security over the past 2½ years compared to the investments made to secure the airways. While the Federal Transit Administration (FTA), individual commuter agencies, Amtrak, and the freight railroads have, on their own initiative, taken steps to safeguard passengers, facilities, and cargo, rail security efforts remain fragmented. DHS has still not signed memorandums of agreement (MOAs) with DOT as recommended by the General Accounting Office (GAO) to make clear each department's roles and responsibilities with respect to rail security. Further, the Transportation Security Administration's (TSA's) Maritime and Land Security Division has yet to complete a threat and vulnerability assessment for the rail system and prepare an integrated security plan that reflects the unique characteristics of passenger and freight rail operations. The Maritime and Land Division is pursuing a number of individual projects, but does not appear to have an overall strategy or comprehensive national plan for improving rail security. Additionally, DHS does not appear to be effectively coordinating ongoing rail security initiatives undertaken by the railroads, State, and local authorities, and others in order to assist with the promulgation of best practices in security. This has led to a patchwork of different approaches to improving security.

(2) *Need to protect critical infrastructure.*—A terrorist attack on the nation's rail system could cripple freight and commuter transportation. On a ton-mile basis, the nation's freight railroads carry nearly 42 percent of all intercity freight, including 65 percent of all coal shipments, 70 percent of all automobiles, and 30 percent of all grain shipments. Even the brief service disruptions following the 2001 terrorist attacks caused emergencies for several cities awaiting rail deliveries of chlorine used to purify their water.

Shortly after the 2001 terrorist attacks, the freight rail industry, with the participation of a number of shipper organizations, conducted a nationwide vulnerability assessment that resulted in the identification of more than 1,300 facilities considered critical infrastructure requiring heightened security protection. A number of these facilities are included on the Information Analysis and Infrastructure Protection (IAIP) Directorate's broader list of critical infrastructure that includes nuclear facilities, chemical plants, and other high-risk targets.

In general, the freight railroads are not seeking Federal security funding. However, the Association of American Railroads has indicated that at heightened states of alert, the freight rail industry will need assistance from the National Guard to secure critical assets. In addition, the freight railroads support Federal aid for research regarding protective measures and emergency response protocols, and Federal reimbursement for extraordinary measures already taken, or which may be required by future Federal mandates.

Amtrak serves over 500 train stations, the majority of which are owned by cities, States, and freight railroads. However, about 135 stations are owned by Amtrak, including Penn Station in New York, which is used by 400,000 commuters and intercity rail customers daily. Amtrak also owns and operates the Northeast Corridor, the most heavily traveled passenger rail corridor in the country, with over 1,200 trains per day, including over 1,000 trains operated by commuter authorities.

In the days immediately following the September 11, 2001, terrorist attacks, Amtrak requested \$3.15 billion in emergency funding “safety, security and capacity” improvements. Amtrak subsequently submitted a modified request without the capacity expansion elements for \$515 million for system-wide security upgrades, \$1 billion to complete life-safety work in tunnels along the Northeast corridor, and \$254 million to renovate the Thames and Niantic bridges in Connecticut and implement several other capital improvements.

The details of this modified plan, when they later became available, revealed that Amtrak planned, among other things, to “expand” its aviation unit by purchasing a helicopter, and to install 6 cameras on every interlocking on the Northeast Corridor. Due to continuing concerns about Amtrak’s security investment plan, Senator McCain, on January 13, 2003, asked FRA and TSA to assist Amtrak in developing both a security plan and a revised security investment plan. On April 10, 2003, Amtrak submitted a revised investment plan recommending funding for \$110 million for a number of specific security improvements. That request was updated by Amtrak on March 19 in preparation for the Committee’s March 23 hearing on railroad security.

Amtrak Security Investment Plan (dated March 19, 2004)

Amtrak Security Investment Plan (dated March 19, 2004)	millions of \$
Repair doors (New York tunnels)	\$4.0
Secure major tunnel access points	\$28.8
Secure Amtrak trains	\$0.6
Back-up dispatch & control centers	\$46.2
Secure stations	\$8.0
Watch list capability	\$0.1
Train tracking, communications, and critical incident response	\$15.3
Additional police officers	\$5.1
Emergency Preparedness Expansion	\$0.5
TOTAL	\$109.7

Source: Amtrak.

In addition to these items is the well-documented need to make fire and life-safety improvements in the New York Penn Station tunnels. Narrow, spiral staircases and crumbling walls in the existing tunnels are inadequate to support the evacuation of passengers and ingress by emergency responders in the event of a train accident or tunnel fire. Existing ventilation systems in the tunnels cannot remove smoke or heat effectively. The total cost of this project is estimated at \$898 million. Amtrak received an appropriation of \$100 million for the tunnel work in the Department of Defense and Emergency Supplemental Appropriations for Recovery from and

Response to Terrorist Attacks on the United States Act 2002 (P.L. 107–117). Over the past 2 years, about \$75 million of this funding has been obligated. According to the Department of Transportation Inspector General (DOT IG), New Jersey Transit has contributed \$25 million and the Long Island Railroad (LIRR) has agreed to contribute \$183 million to phase I of the 2-phase project. Funding needed to complete the project on schedule by 2013 is \$570 million. The Long Island Railroad is expected to contribute additional funding, perhaps as much as 50 percent of remaining project costs, through bonds issued by New York State. In addition to the Penn Station tunnels, \$100 million is needed to address life-safety work in Amtrak's tunnels in Baltimore, MD, and Washington, D.C.

(3) *Need to enhance the security of hazardous materials transportation.*—The September 11 attacks resulted in a heightened interest in the safe transportation of hazardous materials. According to the Association of American Railroads (AAR), railroads move approximately 1.7 million carloads of hazardous materials and hazardous waste each year. Railroads and trucks carry approximately the same number of ton-miles of hazardous materials, but railroads account for only 5 percent of all hazardous materials incidents. The rail industry's safety record in this area is very good, with 99.996 percent of hazardous material moved to destination without incident. Over the past 10 years, hazardous materials releases have declined 35 percent.

Despite a commendable safety record, government and industry officials recognize that hazardous materials shipments could be an attractive target for terrorism. FRA, working with DHS, has initiated two research projects aimed specifically at increasing the safety of rail tank cars carrying toxic-inhalation chemicals such as anhydrous ammonia, used extensively in farming, and chlorine. One of the projects investigates ways to improve the integrity of the tank cars used in the transportation of such products. The other is an investigation of methods to detect potential tank car breaches and transmit such information to the train crew and other responsible parties.

Concerns about toxic-inhalation chemicals have also increased as a result of a serious accident in Minot, North Dakota on January 18, 2002. In that accident, 31 cars of a 112-car train, including 15 cars carrying anhydrous ammonia, derailed and 8 of the cars ruptured. One person died and 11 others sustained serious injuries. The National Transportation Safety Board (NTSB) concluded that the type of steel used for the tank shells of the Minot cars contributed to the ruptures. Nearly 60 percent of the pressurized tank cars in service today were built using the same type of non-normalized steel as the cars that ruptured in Minot, raising concern about the safety and security of those cars. The NTSB indicated that the cars, based on their average useful life, could remain in service until 2039.

Actions to address hazardous materials transportation security have also been recommended by GAO. In April 2003, GAO issued a report entitled *Rail Safety and Security: Some Actions Already Taken to Enhance Rail Security, but Risk-Based Plan Needed*, recommending that DHS and RSPA work together to develop a risk-based security plan to protect hazardous shipments.

(4) *Research and development needs.*—Witnesses at the Committee’s March 23 hearing cited the need for additional research and development to test technologies and techniques tailored to the unique characteristics of passenger and freight rail transportation. These include technologies for sealing rail cars, communication-based train controls (including positive train control technology), explosive detection technologies, and new emergency response techniques.

SUMMARY OF PROVISIONS

Sections 2 and 8 of the Rail Security Act of 2004 addresses the current lack of a coordinated rail security effort. Section 2 would direct the Under Secretary for Border and Transportation Security (BTS) to conduct a vulnerability assessment for rail transportation and make recommendations for improving rail security within 180 days of enactment. All carriers subject to FRA safety regulations, including commuter railroads, would be included in the assessment. DHS would be required to submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the assessment and recommendations for improving rail security, including recommendations for improving the security of rail infrastructure; deploying equipment to detect explosives and chemical or biological weapons; training employees in terrorism prevention, passenger evacuation, and response activities; and deploying surveillance equipment. The report also would identify the immediate and long-term costs of such measures.

The Committee encourages BTS to use the expertise of IAIP and other entities at DHS in preparing the rail vulnerability assessment and, to the extent practicable, to ensure that the rail assessment can be integrated into the overarching critical infrastructure assessments IAIP is designing and conducting. Further, the Committee intends that the cost estimates in the report should include recommendations about how the costs should be allocated between the public and private sectors.

It is also the Committee’s intent that the Under Secretary, whether through TSA or another office in BTS, be responsible for coordinating rail security, including initiatives of other directorates within DHS; of FRA and other DOT agencies; of State and local authorities; and of the rail carriers themselves. DHS has testified that it is addressing homeland security based on risk, looking across industries and modes of transportation. However, each directorate at DHS is focused on particular aspects of security: critical infrastructure, cyber security, emergency preparedness, and border security, among others, and the Committee remains concerned about accountability. To that end, it is important that all of these efforts with respect to rail security be coordinated through BTS to ensure the overall program is effective and that gaps or weaknesses in security are being properly addressed.

Section 5 of the legislation would require the completion of an analysis of the feasibility of passenger, baggage, and cargo screening on passenger trains, as well as a pilot program of random screening, at 5 Amtrak stations. The Under Secretary would be required to attempt to give preference to locations at the highest risk of terrorist attack in selecting stations for the pilot, and to achieve

a distribution of stations in terms of geographic location, size, passenger volume, and whether the station is used by commuter rail passengers as well as intercity passengers. The Committee expects DHS to undertake the pilot program in a way that minimizes inconvenience and delays for passengers.

Section 8 of the legislation would require that DOT and DHS sign MOAs to clarify each department's roles and responsibilities with respect to rail safety and security within 60 days following enactment. MOAs have been signed between DOT and the Coast Guard; TSA and the Federal Aviation Administration; DHS and the Department of Agriculture; DHS and the Department of Energy; DHS and the Department of Health and Human Services; DHS and the Department of Justice and FBI; DHS and the Department of Defense; and DHS and the CIA. It is unclear why MOAs have not been signed between DHS and DOT, other than ongoing jurisdictional concerns between the two agencies. Congress explicitly preserved a role for DOT in rail security when DHS was created, and the Commerce Committee believes MOAs are needed to make certain that the departments are coordinating their respective efforts and are not at cross-purposes. This provision was also included in legislation approved by the full Senate last November to reauthorize the rail safety program.⁴

Section 8 would define DOT's authority to issue regulations and orders governing "every area of railroad safety" to include "security". Clarification of FRA's jurisdiction is necessary to ensure that any regulations and orders which may have some carryover into the security arena will withstand legal challenge and protracted litigation by outside parties. This change is consistent with the Homeland Security Act of 2002, which set forth Congress's intention that the definition of "safety" include "security".

Sections 5, 10, and 11 of the Rail Security Act of 2004 would authorize security funding for Amtrak. Section 5 would authorize funds for the fire and life-safety work in the Northeast Corridor tunnels (\$670 million) between fiscal years (FYs) 2005 and 2009, and encourages DOT to seek financial contributions from other users. For example, the Long Island Railroad has indicated it will contribute to phase II of the Penn Station tunnel work, and the Committee fully expects DOT to seek such contributions.

Section 10 of the bill would authorize \$63.5 million of the \$110 million requested by Amtrak in its latest security investment plan for immediate system-wide security upgrades. The legislation does not authorize funding of \$46.2 million requested by Amtrak to consolidate its train dispatching centers at Wilmington, DE, where Amtrak's Consolidated National Operations Center (CNOC) is located, and to construct a new facility to house a back-up for both the dispatching centers and CNOC. The project is included in Amtrak's 5 year capital plan but is not scheduled for completion until fiscal year 2008. The Committee believes Amtrak needs to implement back-up for its train dispatching centers more quickly. Further, while Amtrak has indicated that these operations need to be consolidated for security reasons, the dispatching center in New York City would not be consolidated under Amtrak's plan, and it is unclear how the Boston dispatching center would be consolidated

⁴ Section 205 of S. 1402, the Federal Railroad Safety Improvement Act.

since that facility is owned by the Massachusetts Bay Transportation Authority.

Chairman McCain and Ranking Member Hollings have written FRA to ask that the RAND Corporation, which is currently providing consulting services on Amtrak's security plan, investigate options for creating back-up facilities for Amtrak's dispatching centers in the short-term, perhaps by utilizing Amtrak's existing towers or modifying the existing dispatching centers to back up each other. Further, FRA has been asked to have RAND comment on Amtrak's proposed longer-term solution and whether this is the most cost-effective and appropriate plan. Based on RAND's recommendations and the rail security plan to be developed by DHS, Amtrak could seek a grant under section 11 of the legislation, which authorizes up to \$65 million in additional funds for Amtrak for additional security enhancements, to implement a project to create redundancy for its dispatching centers.

All funds made available to Amtrak would flow through DOT, and Amtrak would be required to submit a project management plan for each grant received, addressing project budget, construction schedule, staff organization, document control, change order procedure, and other matters DOT deems appropriate. These conditions are similar to those put in place for the last 2 years with respect to Amtrak's annual appropriation and have proved effective in avoiding further financial crises at Amtrak and ensuring taxpayer dollars are spent as intended. The conditions also respond to criticisms leveled at DOT by GAO in a recent report on the Northeast Corridor Improvement Project. The report, entitled *Intercity Passenger Rail: Amtrak's Management of Northeast Corridor Improvements Demonstrates Need for Applying Best Practices*, issued in February 2004, criticized FRA for not seeking authority to properly oversee the Northeast Corridor Improvement Project or other Amtrak capital projects.

The Committee has included provisions in this legislation to ensure that funding for Amtrak is distributed equitably. Most Amtrak-owned property is located on the Northeast Corridor, yet there are many Amtrak-owned stations and facilities in other areas of the country that face the same security threats and should receive a portion of the funding authorized by the bill.

Section 11 of the Rail Security Act of 2004 would authorize a total of \$250 million for FY 2005 for rail security enhancement grants to freight railroads, Amtrak, the Alaska Railroad, hazardous materials shippers, and owners of rail cars used in the transportation of hazardous materials. The grants are intended to be used for a wide variety of potential projects, a number of which are described in the bill. However, it is the Committee's intention that the highest priority be given to projects that fund security improvements which address vulnerabilities identified by DHS's vulnerability assessment under section 2. It is also the Committee's intention that grants be available to provide reimbursement for expenses already incurred, to the extent considered appropriate by DHS. To ensure that the bill's grant programs are implemented expeditiously and that grant applications are reviewed in a timely manner, section 12 would direct DHS to issue procedures for the grant programs within 90 days following enactment.

Section 13 of the legislation would establish a research and development (R&D) program funded at \$50 million in each of FYs 2005 and 2006. The Committee is aware of numerous potential R&D projects related to rail security, a number of which are described in the bill. The Committee intends that the highest priority be given to projects that fund security improvements which address vulnerabilities identified by DHS's vulnerability assessment under section 2.

One of the specific purposes of the grant programs under sections 11 and 13 of the legislation is to improve the security of hazardous materials transportation. In addition, section 14 would incorporate, in modified form, the NTSB's recommendations resulting from the Minot, ND accident. The section would require each railroad using continuous welded rail to include procedures in its safety program to improve the identification of cracks in rail joint bars and direct FRA to, among other requirements, initiate a rulemaking to develop appropriate design standards for pressurized tank cars and complete an assessment of the impact resistance of the steel used in pressurized tank cars built before 1989.

LEGISLATIVE HISTORY

The bill was introduced as S. 2273 by Senators McCain, Hollings, Hutchison, Snowe, Fitzgerald, Inouye, Rockefeller, Breaux, Dorgan, Lautenberg, Kennedy, Clinton, Schumer, Biden, and Carper on April 1, 2004. The bill was referred to the Committee on Commerce, Science, and Transportation.

On April 8, 2004, the Committee ordered S. 2273 to be favorably reported to the Senate with 1 amendment. By voice vote, the Committee adopted an amendment offered by Senators McCain and Hollings making a number of technical changes and corrections to the underlying legislation. The amendment also makes several modifications to the bill based on discussions with members of the Committee and their staffs.

Several members expressed concern about security at the approximately 400 train stations not owned by Amtrak. To address this concern, the amendment offered by Senators McCain and Hollings would make State and local governments eligible for grants under section 11, and would enlarge the size of the grant program from \$250 million to \$350 million. The amendment also would make colleges, universities, and research centers eligible for grants.

Also at the request of several members, including Senators Hutchison, Cantwell, and Boxer, the amendment would modify the grant program to ensure that funds would be distributed equitably, taking into account geographic location, passenger volume, and whether a station is used by commuter passengers as well as by Amtrak. Further, the amendment would require the Under Secretary for Border and Transportation Security to encourage non-Federal financial participation in awarding grants.

The amendment also adopts a study requested by Senator Boxer on the impact of blocked railroad grade crossings on security. A similar amendment was added at Senator Boxer's request last year to rail safety legislation reported by the Committee in July 2002 and passed by the full Senate last November.

Further, to prevent the oversight requirements applicable to Amtrak from holding up the distribution of funds for the tunnel fire

and life-safety work indefinitely, the amendment would establish deadlines for Amtrak and DOT to complete work on developing and reviewing project plans.

Finally, the amendment would prohibit a railroad from discharging or discriminating against an employee for bringing to the railroad's attention a perceived threat to security, or for testifying before Congress or at any Federal or State proceeding on a perceived threat to security.

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:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 18, 2004.

Hon. JOHN MCCAIN,
*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. 2273, the Rail Security Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Rachel Milberg.

Sincerely,

ELIZABETH M. ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

S. 2273—Rail Security Act of 2004

Summary: S. 2273 would authorize the Under Secretary of Homeland Security for Border and Transportation Security to provide grants to Amtrak for systemwide security upgrades, provide grants to the freight rail industry for security improvements, research ways to improve rail transportation, assess the security of rail transportation in the United States, and conduct a pilot program for screening passengers and baggage at five Amtrak stations. The bill also would authorize the Secretary of Transportation to provide grants to Amtrak for improving tunnels in New York, Baltimore, and Washington, D.C., and direct Amtrak to develop a plan for addressing the needs of families of Amtrak passengers involved in an accident that results in the loss of life.

For all of those activities, the bill would authorize the appropriation of almost \$1.2 billion over the 2005–2009 period. Assuming appropriation of the authorized amounts, CBO estimates that implementing these provisions would cost almost \$1.2 billion over the 2004–2009 period. In addition, the bill would require the completion of several studies related to rail security and safety. Assuming appropriation of the necessary amounts, CBO estimates that completing these studies would cost \$3 million over the 2005–2006 period.

CBO estimates that enacting the legislation would not affect direct spending or revenues.

S. 2273 would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the cost of those mandates would not exceed the annual thresholds established by UMRA (\$60 million for intergovernmental mandates and \$120 million for private-sector mandates in 2004, adjusted annually for inflation). Other provisions of the bill would benefit state and local governments and the private sector by providing grants for security and safety improvements to rails, locomotives, and passenger facilities. Any costs to state and local governments associated with those grants would result from complying with conditions of aid or would result from negotiated agreements with Amtrak.

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

	By fiscal year, in millions of dollars—				
	2005	2006	2007	2008	2009
CHANGES TO SPENDING SUBJECT TO APPROPRIATION ¹					
Grants for security improvements:					
Authorization level	535	118	118	118	195
Estimated outlays	285	268	218	118	195
Research to improve security:					
Authorization level	50	50	0	0	0
Estimated outlays	5	27	38	21	9
Screening pilot program:					
Authorization level	5	0	0	0	0
Estimated outlays	3	2	0	0	0
Family assistance plan:					
Authorization level	1	0	0	0	0
Estimated outlays	1	0	0	0	0
Risk assessment and studies:					
Authorization level	7	1	0	0	0
Estimated outlays	7	1	0	0	0
Total charges:					
Estimated Authorization level	598	169	118	118	195
Estimated outlays	301	297	256	139	204

¹ In 2002, the Congress provided \$100 million to Amtrak for security improvements.

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted in fiscal year 2004 and that the authorized amounts will be appropriated near the start of each fiscal year. Estimates of spending are based on information from Amtrak, the Department of Transportation, and historical spending patterns of similar programs.

S. 2273 would authorize grants to Amtrak and the freight rail industry floor security improvements, authorize the Under Secretary of Homeland Security for Border and Transportation Security to research ways to improve rail transportation, authorize the Under Secretary to conduct a pilot program for screening rail passengers and their baggage, direct Amtrak to develop a plan for assisting families of Amtrak passengers involved in an accident, authorize a risk assessment of rail transportation, and require several other studies related to rail safety and security.

Grants for Security Improvements. S. 2273 would authorize the appropriation of \$670 million over the 2005–2009 period for secu-

security improvements to Amtrak tunnels in New York, Baltimore, and Washington, D.C. The bill also would authorize the appropriation of \$63.5 million in 2005 for systemwide improvements to Amtrak security. Finally, the bill would authorize the appropriation of \$350 million in 2005 for the Under Secretary of Homeland Security for Border and Transportation Security to provide grants to Amtrak, the Alaska Railroad, and the freight rail industry for security improvements. Assuming appropriation of the authorized amounts, CBO estimates that implementing these provisions would cost \$1.1 billion over the 2005–2009 period.

Research to Improve Security. S. 2273 would authorize the appropriation of \$100 million over the 2005–2006 period for the Under Secretary of Homeland Security for Border and Transportation Security to research ways to improve rail transportation security. Assuming appropriation of the authorized amounts, CBO estimates that implementing this provision would cost \$100 million over the 2005–2009 period.

Screening Pilot Program. S. 2273 would authorize the appropriation of \$5 million in 2005 for the Under Secretary of Homeland Security for Border and Transportation Security to study the cost and feasibility of screening Amtrak passengers, baggage, and cargo. As part of this study, the Under Secretary would conduct a pilot program for screening passengers and baggage at five Amtrak stations. Assuming appropriation of the authorized amounts, CBO estimates that implementing this program would cost \$5 million over the 2005–2006 period.

Family Assistance Plan. S. 2273 would require Amtrak to develop a plan for addressing the needs of families of Amtrak passengers involved in an accident that results in the loss of life. The bill would authorize the appropriation of \$500,000 in 2005 for Amtrak to develop this plan, and assuming appropriation of the authorized amount, CBO estimates that implementing this provision would cost \$500,000 in 2005.

Risk Assessment and Studies. S. 2273 would direct the Under Secretary of Homeland Security for Border and Transportation Security to assess the vulnerability of rail transportation in the United States. For this risk assessment, the bill would authorize the appropriation of \$5 million in 2005. S. 2273 also would require a review of how well current rail regulations address security needs; a study of rail security in Japan, the European Union, and other countries; an examination of the current system for screening rail passengers and baggage that travel across the United States' border with Canada; a study of the impact of highway-rail crossings on emergency responders; and an analysis of the impact resistance of the steel shells of pressurized tank cars constructed before 1989. Assuming appropriation of amounts authorized for the risk assessment as well as additional amounts necessary to complete the other studies, CBO estimates that implementing these provisions would cost about \$8 million over the 2005–2006 period.

Intergovernmental and private-sector impact: S. 2273 would impose intergovernmental and private-sector mandates as defined in UMRA, but CBO estimates that the cost of those mandates would not exceed the annual thresholds established by UMRA (\$60 million for intergovernmental mandates and \$120 million for private-sector mandates in 2004, adjusted annually for inflation). Other

provisions of the bill would benefit state and local governments and the private sector by providing grants for security and safety improvements to rails, locomotives, and passenger facilities. Any costs to state and local governments associated with those grants would result from complying with conditions of aid or would result from negotiated agreements with Amtrak.

Planning for Amtrak accidents

Section 9 would impose a private-sector mandate on Amtrak, the national passenger rail carrier, by requiring Amtrak to submit a plan addressing the needs of the families of passengers involved in fatal accidents. Amtrak would have to submit the plan to the National Transportation Safety Board (NTSB) and the Secretary of Transportation no later than six months after the bill's enactment. As a part of the plan, and in the event of a fatal accident, Amtrak would be required, among other things, to provide a passenger list to federal authorities and a toll-free hotline for use by families of passengers.

The bill would authorize an appropriation of \$500,000 to the Department of Transportation for fiscal year 2005 to assist Amtrak in carrying out this mandate. Based on information from an Amtrak representative, CBO estimates that the additional costs of the mandate would not exceed this amount. The bill also would exempt Amtrak from certain liability in federal or state court for damages due to its release of a passenger list or passenger information pursuant to the plan submitted to the NTSB. Because of this exemption, Amtrak may experience some savings.

This liability provision is a preemption of state law, and thus an intergovernmental mandate as defined in UMRA. CBO estimates that this preemption would not affect the budgets of state or local governments because, while it would limit the application of state liability law, it would require no additional spending.

Passenger screening pilot

Section 5 would require the Under Secretary of Homeland Security for Border and Transportation Security, in cooperation with the Secretary of Transportation, to conduct a pilot program to test random security screening of passengers and baggage at five passenger rail stations that Amtrak serves. As part of this program, the Under Secretary would require that intercity rail passengers produce a government-issued photographic identification. Those passengers that use the designated stations that do not have such an identification would be required to obtain one. CBO estimates that the cost to comply with this private-sector mandate would be small.

Whistle blower protection

The bill also would prohibit rail carriers, whether public or privately owned, from discharging or discriminating against any employee who reports a perceived threat to security or testifies before the Congress or at any federal or state proceeding regarding such a threat. Such a prohibition would constitute both an intergovernmental and private-sector mandate under UMRA. Under current law, employees are protected if they report any safety issues. Because compliance with these broader whistle-blower protections

would involve only a small adjustment in administrative procedures, CBO estimates that public and private rail carriers would incur only minimal additional costs.

Estimate prepared by: Federal Costs: Rachel Milberg. Impact on State, Local and Tribal Governments: Gregory Waring. Impact on the Private Sector: Jean Talarico.

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

The whistleblower protections in the legislation could affect the approximately 235,000 employees of the rail industry, including the 185,000 employees of the freight rail industry and the 55,000 employees of Amtrak, the Alaska Railroad, and commuter authorities subject to FRA safety regulations.⁵ In addition, the grants under section 11 of the bill would be available to cities and States, colleges and universities, shippers of hazardous materials, and owners of rail cars used to transport hazardous materials.

ECONOMIC IMPACT

S. 2273 would authorize appropriations of \$595 million for FY 2005, \$168 million for FY 2006, \$118 million for each of FYs 2007 and 2008, and \$195 million for FY 2009. These funding levels are not expected to have an inflationary impact on the nation's economy.

PRIVACY

Section 9 of the legislation would require Amtrak to maintain a list of the names of passengers aboard its trains and provide the list to the NTSB and the Secretary of Transportation, at their request, in the event of an accident that results in a loss of life. The provision would prohibit Amtrak, the NTSB, and the Secretary of Transportation from releasing information on the list, but would allow them to provide information about a passenger on the list to the passenger's family.

Section 17 of S. 2273 would establish certain whistleblower protections for railroad employees with respect to security matters. The provision would specifically prohibit the Secretary of Transportation from disclosing the name of an employee who has provided information about a violation of the protections unless the employee consents. If the matter has been referred to the Attorney General for enforcement, the Secretary would be required to disclose the name of the employee.

PAPERWORK

Section 10, 11, and 12 of the legislation create grant programs which may create additional paperwork for applicants and for DOT

⁵ Employment estimates are for 2002.

in administering the program. In addition, the oversight provisions applicable to Amtrak may create additional paperwork for Amtrak and DOT.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; table of contents

This section provides that the title of the Act is the “Rail Security Act of 2004” and lists the table of contents for the bill.

Sec. 2. Rail transportation security risk assessment

Section 2 would require the Under Secretary for Border and Transportation at DHS, in consultation with the Secretary of Transportation, to complete a vulnerability assessment for rail transportation. The assessment would encompass all railroads subject to FRA safety regulations. The assessment would include identification of critical infrastructure, threats to those assets, identification of vulnerabilities that are specific to the rail transportation of hazardous materials, and identification of security weaknesses.

Within 180 days following enactment, the Under Secretary would be required to submit a report on the assessment and recommendations for improving rail security to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure, including recommendations for improving the security of rail infrastructure, deploying equipment to detect explosives and chemical or biological weapons, training employees in terrorism prevention, passenger evacuation, and response activities, and deploying surveillance equipment. The report also would identify the immediate and long-term costs of such measures. The report would be required to include a plan for the government to provide increased security support for freight and intercity passenger railroads at high or severe threat alert levels. Additionally, the report would be required to include a plan for coordinating rail security initiatives undertaken by the public and private sectors. The report could be submitted in both classified and redacted formats. The rail security assessment would have to be updated every 2 years. An appropriation of \$5 million is authorized for FY 2005 to carry out the section.

Sec. 3. Rail security

Under the current statute, railroad police officers are authorized to operate only on the property of the railroad that has hired them. This section would allow them to exercise jurisdiction on the property of another railroad, enabling officers in pursuit near a railroad interchange point to continue their pursuit on another railroad.

Sec. 4. Study of foreign rail transport security programs

The section would direct GAO to complete a study of rail passenger transportation security programs in other countries within 1 year following enactment of this Act to identify effective security initiatives, including passenger screening procedures, and to submit a report to the Commerce Committee and the House of Representatives Committee on Transportation and Infrastructure. The report would include an assessment of whether it is feasible to implement such measures in the United States.

Sec. 5. Passenger, baggage, and cargo screening

Section 5 would direct the Undersecretary for Border and Transportation Security, in cooperation with the Secretary of Transportation, to analyze the cost and feasibility of requiring security screening for passengers, baggage and cargo on passenger trains and submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within one year following enactment of this Act. As part of the study, a pilot program of random screening of passengers and baggage would be completed at 5 Amtrak stations for the purpose of testing a range of explosives detection technologies and requiring passengers to produce valid identification prior to boarding trains. The Under Secretary would be required to attempt to give preference to locations at the highest risk of terrorist attack in selecting stations for the pilot, and to achieve a distribution in terms of geographic location, size, passenger volume, and whether the station is used by commuter rail passengers as well as intercity passengers. The section authorizes an appropriation of \$5 million for FY 2005 for this purpose.

Sec. 6. Certain personnel limitations not to apply

Section 6 would make clear that any statutory limitation on the number of employees at TSA would not apply to the extent that such employees would be responsible for implementing the provisions of this Act.

Sec. 7. Fire and life-safety improvements

Section 7 would authorize the Secretary of Transportation to make grants to Amtrak to address longstanding fire and life-safety work in tunnels along the Northeast Corridor, specifically:

- \$570 million for the New York Penn Station tunnels;
- \$57 million for the Union tunnel and the Baltimore & Potomac tunnel in Baltimore; and
- \$40 million for the Washington, D.C. Union Station tunnels.

Funds for the projects would be authorized for each of FYs 2005 through 2009, but would remain available until expended. The Secretary would be required to seek financial contributions or commitments from other users of the tunnels, if feasible. Additionally, the bill would authorize \$3 million to the Secretary of Transportation in FY 2005 for the preliminary design for a new tunnel in Baltimore.

Funds would be made available to Amtrak through a grant agreement. Funding would be contingent on the Secretary approving Amtrak's engineering and financial plan for the tunnel projects and Amtrak would be required, for each project funded, to have in place a project management plan addressing the budget, construction schedule, change order procedures, and other matters the Secretary deems appropriate. The Secretary of Transportation would be required to complete the review of such plans within 45 days. If the Secretary finds the plan to be deficient or incomplete, Amtrak would then have 30 days to submit a modified plan. The Secretary would then have 15 days to review additional information on items previously submitted, and 45 days to review items newly in-

cluded in a modified plan. If the Secretary still finds the plan to be incomplete or deficient, the Secretary would be required, within those time frames, to notify the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure, and also to approve the portions of the plan that are complete, obligate funds associated with the completed portions of the plan, and execute an agreement with Amtrak within 15 days on a process for resolving issues in dispute.

Sec. 8. Memorandum of agreement

The section would require that DOT and DHS execute an MOA regarding railroad transportation security matters within 60 days of enactment. The section also would provide that the DOT's authority to issue regulations and orders governing "every area of railroad safety" includes "security".

Sec. 9. Amtrak plan to assist families of passengers involved in rail passenger accidents

The section would require Amtrak to submit a plan to NTSB and the Secretary of Transportation within 6 months following enactment of this Act for addressing the needs of the families of passengers involved in a rail passenger accident that results in a loss of life. The plan would be required to include a process by which Amtrak would maintain and provide to NTSB and DOT, at their request, a list of the names of the passengers aboard the train, and a plan for creating and publicizing a toll free number, within 4 hours of the accident, to handle calls from the families of passengers. Further, the plan would have to include a process for notifying the families of passengers involved in an accident, and an assurance that Amtrak will properly train its employees and agents. Amtrak, the NTSB, and the Secretary of Transportation would be prohibited from releasing information on the list, but would be allowed to provide information about a passenger on the list to the passenger's family.

The section authorizes an appropriation of \$500,000 for FY 2005 to carry out the section. The funds would remain available until expended.

Sec. 10. Systemwide Amtrak security upgrades

The section would authorize DHS to make grants through the Secretary of Transportation to Amtrak for a number of specific purposes, including securing Amtrak trains, stations, and tunnels; hiring additional police and security officers, including canine units; obtaining train tracking and interoperable communications systems; and expanding emergency preparedness efforts. All funds would be made available to Amtrak through grant agreements. Funding would be contingent upon Amtrak having a systemwide security plan approved by DHS, and Amtrak would be required, for each project funded, to have in place a project management plan addressing the budget, construction schedule, change order procedures, and other matters the Secretary of Transportation deems appropriate. The plan also would have to include appropriate measures to address security awareness, emergency response, and passenger evacuation training.

The Secretary of Homeland Security would be required to ensure that, subject to meeting the highest security needs on Amtrak's entire system, stations and facilities located outside the Northeast Corridor receive an equitable share of these funds. The section authorizes \$63.5 million for FY 2005 to carry out the section. The funds would remain available until expended.

Sec. 11. Freight and passenger rail security upgrades

The section would authorize the Under Secretary for Border and Transportation Security to make grants for full or partial reimbursement for costs incurred to prevent or respond to acts of terrorism. Freight railroads, the Alaska Railroad, shippers of hazardous materials, owners of rail cars used to transport hazardous materials, colleges and universities, State and local governments (for passenger facilities and infrastructure not owned by Amtrak), and Amtrak would be eligible for grants under this section. Grants could be made for such projects as security for train dispatching centers and stations; accommodating screening equipment for passengers and cargo; employee security awareness, preparedness, and emergency response training; public outreach campaigns; structural modification or replacement of rail cars used to transport high hazard materials (poison inhalation hazardous materials, class 2.3 gases, class 6.1 materials, and anhydrous ammonia); sharing of intelligence and information; train tracking and interoperable communications systems; hiring additional police and security officers, including canine units; and other security-related improvements identified in the vulnerability assessment required by section 2. Grants would have to be equitably distributed, taking into account geographic location, and would encourage non-Federal financial participation. With respect to grants for passenger rail security, the Under Secretary would be required, in making grants, to also take into account passenger volume and whether a station is used by commuter rail passengers as well as intercity rail passengers.

Grants to Amtrak would be made through DOT and would be contingent upon Amtrak having a systemwide security plan approved by DHS. Amtrak would be required, for each project funded, to have in place a project management plan addressing the budget, construction schedule, change order procedures, and other matters the Secretary of Transportation deems appropriate.

The section would authorize \$350 million for the grant program for FY 2005, of which a maximum of \$65 million would be available for Amtrak, and a maximum of \$100 million would be available for grants related to the transportation of hazardous materials by rail. The funds would remain available until expended.

Sec. 12. Oversight and grant procedures

The section would allow the Secretary of Transportation to use up to 0.5 percent of amounts made available to Amtrak under the Act for capital projects to enter into contracts for the review of the projects and to oversee project construction. The Secretary could also use these funds to make contracts for safety, procurement, management, and financial compliance reviews and audits.

The Under Secretary for Border and Transportation Security would be directed to establish procedures and schedules for the

awarding of grants under the Act. The procedures would include the execution of a grant agreement with the recipient and require that applicants have a security plan in place. A final rule establishing procedures would have to be issued within 90 days following enactment.

Sec. 13. Rail security research and development

This section would direct the Under Secretary for Border and Transportation Security, in conjunction with the Secretary of Transportation, to carry out a research and development program for the purpose of improving freight and intercity passenger rail security. The legislation would authorize appropriations of \$50 million in each of FYs 2005 and 2006, such sums to remain available until expended. The program could include projects to reduce the vulnerability of passenger trains, stations, and equipment to explosives and biological and chemical substances; to test new freight technologies for sealing rail cars, automatically inspecting cars, and communications-based train controls; to support enhanced security for the transportation of hazardous materials by rail; to test new emergency response techniques; and other projects recommended in the report required by section 2.

The section also would require that the Under Secretary coordinate this program with other R&D programs at DHS and DOT, and carry out any research through a reimbursable agreement with DOT if DOT is already sponsoring an R&D project in a similar area, or has a unique facility or capability that would be useful in carrying out the project. The section also would direct the Under Secretary to adopt procedures, including audits, to ensure that grants are expended in accordance with the purposes of the Act and the priorities established by the Under Secretary.

Sec. 14. Welded rail and tank car safety improvement

Within 90 days following enactment, FRA would have to require each railroad using continuous welded rail (CWR) to include in its safety program procedures to improve the identification of cracks in rail joint bars. Further, FRA track inspectors would be required to obtain copies of the most recent CWR programs of each railroad, and FRA would be required to periodically review CWR joint bar inspection data from the railroads. FRA track inspectors, when appropriate, could require railroads to increase the frequency or improve the methods of inspecting rail joint bars.

The section also would require FRA, within 1 year following enactment, to validate its predictive model for quantifying the relevant dynamic forces acting on railroad tank cars under accident conditions and, within 18 months following enactment of this Act, to initiate a rulemaking to develop appropriate standards for pressurized tank cars. Finally, within 2 years following enactment of this Act, FRA would be required to complete an analysis to determine the impact resistance of steel used in pressurized tank cars built before 1989 and submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

Sec. 15. Northern border rail passenger report

The section would require the Under Secretary for Border and Transportation Security, within 180 days following enactment, to review the current programs for preclearing airline passengers and freight rail cargo between the United States and Canada, the status of progress in finalizing a bilateral protocol with Canada to provide for preclearance of passengers traveling between the United States and Canada, and the legislative or other barriers within the United States to providing pre-screened passenger lists for rail passengers traveling between the 2 countries. The Under Secretary would be required to submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure, with a draft of any changes in existing Federal law necessary to provide for pre-screening of passengers.

Sec. 16. Report regarding impact on security of train travel in communities without grade separation

The section would require the Secretary of DHS, in consultation with State and local officials, to conduct a study of the impact of blocked highway-railroad grade crossings on the ability of emergency responders to perform safety and security duties in the event of a terrorist attack. A report and recommendations would be due to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 1 year following enactment.

Sec. 17. Whistleblower protection program

Section 17 would establish a new section in title 49 to prohibit railroads from discharging or otherwise discriminating against an employee for bringing to the railroad's attention a perceived threat to security, or for testifying before Congress or at any Federal or State proceeding on a perceived threat to security. A dispute, grievance, or claim arising under the section would be subject to resolution under section 3 of the Railway Labor Act. A proceeding by the National Railroad Adjustment Board, a division of the Board, or another board of adjustment established under section 3 to resolve a dispute, grievance, or claim would have to be resolved within 180 days after the dispute is filed. If the violation does not involve an action involving pay, and no other remedy is available, damages of not more than \$20,000 could be awarded.

The section also provides that the burdens of proof applicable to such violations would be those set forth in section 42121(b)(2)(B) of title 49. A railroad employee could not seek protection under this section and any other provision of law for the same alleged unlawful act.

The provision would prohibit the Secretary of Transportation from disclosing the name of an employee who has provided information about a violation of the protections unless the employee consents. If the matter has been referred to the Attorney General for enforcement, the Secretary would be required to disclose the name of the employee.

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 V. RAIL PROGRAMS

PART A. SAFETY

CHAPTER 201. GENERAL

SUBCHAPTER I. GENERAL

* * * * *

§20116. Whistleblower protection for rail security matters

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

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

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

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

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

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

(e) *DISCLOSURE OF IDENTITY.*—

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

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

* * * * *

PART C. PASSENGER TRANSPORTATION

CHAPTER 243. AMTRAK

* * * * *

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

(a) *SUBMISSION OF PLAN.*—Not later than 6 months after the date of the enactment of the Rail Security Act of 2004, Amtrak shall submit to the Chairman of the National Transportation Safety Board and the Secretary of Transportation a plan for addressing the needs of the families of passengers involved in any rail passenger accident involving an Amtrak intercity train and resulting in a loss of life.

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

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

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

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

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

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

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

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

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

(f) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak \$500,000 for fiscal year 2005 to carry out this section. Amounts appropriated pursuant to this subsection shall remain available until expended.”.

SUBTITLE V-RAIL PROGRAMS

PART E. MISCELLANEOUS

CHAPTER 281. LAW ENFORCEMENT

§ 28101. Rail police officers

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

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

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

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

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