

SECURING AMERICA'S PORTS ACT

FEBRUARY 6, 2020.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 5273]

The Committee on Homeland Security, to whom was referred the bill (H.R. 5273) to require the Secretary of Homeland Security to develop a plan to increase to 100 percent the rates of scanning of commercial and passenger vehicles entering the United States at land ports of entry along the border using large-scale non-intrusive inspection systems to enhance border security, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Securing America’s Ports Act”.

SEC. 2. LARGE-SCALE NON-INTRUSIVE INSPECTION SCANNING PLAN.

(a) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a plan to increase to 100 percent the rates of expeditious scanning of commercial and passenger vehicles entering the United States at land ports of entry along the border using large-scale non-intrusive inspection systems or similar technology to enhance border security.

(b) **BASELINE INFORMATION.**—At a minimum, the plan required under subsection (a) shall include the following information regarding large-scale non-intrusive inspection systems or similar technology operated by U.S. Customs and Border Protection at land ports of entry as of the date of the enactment of this Act:

(1) An inventory of large-scale non-intrusive inspection systems or similar technology in use at each land port of entry.

(2) For each system or technology identified in the inventory required under paragraph (1), the following information:

(A) The scanning method of such system or technology.

(B) The location of such system or technology at each land port of entry that specifies whether in use in pre-primary, primary, or secondary inspection area, or some combination thereof.

(C) The percentage of commercial and passenger vehicles scanned by such system or technology.

(D) Seizure data directly attributed to scanned commercial and passenger vehicles.

(c) **ELEMENTS.**—The plan required under subsection (a) shall include the following information:

(1) Benchmarks for achieving incremental progress towards 100 percent expeditious scanning of commercial and passenger vehicles entering the United States at land ports of entry along the border with corresponding projected incremental improvements in scanning rates by fiscal year and rationales for the specified timeframes for each land port of entry.

(2) Estimated costs, together with an acquisition plan, for achieving the 100 expeditious percent scanning rate within the timeframes specified in paragraph (1), including acquisition, operations, and maintenance costs for large-scale non-intrusive inspection systems or similar technology, as well as associated costs for any necessary infrastructure enhancements or configuration changes at each port of entry. To the extent practicable, such acquisition plan shall promote opportunities for entities that qualify as small business concerns (as such term is described under section 3 of the Small Business Act (15 U.S.C. 632)).

(3) Any projected impacts, as identified by the Commissioner of U.S. Customs and Border Protection, on the total number of commercial and passenger vehicles entering at land ports of entry where such systems are in use, and average wait times at peak and non-peak travel times, by lane type if applicable, as scanning rates are increased.

(4) Any projected impacts, as identified by the Commissioner of U.S. Customs and Border Protection, on land ports of entry border security operations as a result of implementation actions, including any changes to the number of U.S. Customs and Border Protection officers or their duties and assignments.

(d) **RESEARCH AND DEVELOPMENT.**—In furtherance of the plan required under subsection (a), the Secretary of Homeland Security, acting through the Under Secretary for Science and Technology, shall conduct research and development, in coordination with the Commissioner of U.S. Customs and Border Protection, to enhance large-scale non-intrusive inspections systems or similar technology and refine the operational use or configuration of such systems or technology in pre-primary, primary, and secondary inspection areas of land ports of entry. Such research and development shall include consideration of emerging large-scale non-intrusive inspection systems or similar technology and modeling the use of such systems or technology that takes into account the variations in infrastructure, configurations, and sizes of land ports of entry.

(e) **ANNUAL REPORT.**—Not later than one year after the submission of the plan required under subsection (a) and annually thereafter until such time as U.S. Customs and Border Protection has achieved 100 percent expeditious scanning of commercial and passenger vehicles entering the United States at land ports of entry along the border using large-scale non-intrusive inspection systems or similar technology in accordance with such plan, the Secretary of Homeland Security shall report to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate on progress implementing the plan. Each such report at a minimum shall include the following information:

(1) An inventory of large-scale non-intrusive inspection systems or similar technology operated by U.S. Customs and Border Protection at each land port of entry.

(2) For each system or technology identified in the inventory required under paragraph (1), the following information:

(A) The scanning method of such system or technology.

(B) The location of such system or technology at each land port of entry that specifies whether in use in pre-primary, primary, or secondary inspection area, or some combination thereof.

(C) The percentage of commercial and passenger vehicles scanned by such system or technology.

(D) Seizure data directly attributed to scanned commercial and passenger vehicles.

(3) The total number of commercial and passenger vehicles entering at each land port of entry where each system or technology is in use, and information on average wait times at peak and non-peak travel times, by lane type if applicable.

(4) Progress with respect to the benchmarks specified in subsection (c)(1), and an explanation if any of such benchmarks are not achieved as planned.

(5) A comparison of actual costs (including information on any awards of associated contracts) to estimated costs set forth in subsection (c)(2).

(6) Any realized impacts, as identified by the Commissioner of U.S. Customs and Border Protection, on land ports of entry operations as a result of implementation actions, including any changes to the number of U.S. Customs and Border Protection officers or their duties and assignments.

(7) Any proposed changes to the plan and an explanation for such changes, including changes made in response to any Department of Homeland Security research and development findings, including findings resulting from the research and development conducted pursuant to subsection (d), or changes in terrorist or transnational criminal organizations tactics, techniques, or procedures.

(8) Any challenges to implementing the plan or meeting the benchmarks, and plans to mitigate any such challenges.

(f) DEFINITIONS.—In this section:

(1) LARGE-SCALE NON-INTRUSIVE INSPECTION SYSTEM.—The term “large-scale non-intrusive inspection system” means a technology, including x-ray and gamma-ray imaging systems, capable of producing an image of the contents of a commercial or passenger vehicle in one pass of such vehicle.

(2) SCANNING.—The term “scanning” means utilizing technology to produce an image of the contents of a commercial or passenger vehicle without engaging in a physical inspection of such vehicle.

PURPOSE AND SUMMARY

H.R. 5273, the “Securing America’s Ports Act” was introduced to improve border security at land ports of entry by increasing the inspection rate of commercial and passenger vehicles entering the U.S. with non-intrusive inspection (NII) systems or similar technology. The bill requires the Secretary of Homeland Security (the Secretary) to develop a plan with incremental timeframes, cost estimates, and projected impacts of increasing expeditious scanning rates of vehicles to 100 percent at each land port of entry. The measure also directs the Department of Homeland Security (the Department or DHS) to conduct research and development of NII systems and refine their operational use in furtherance of the plan. The Secretary must also report annually to Congress on the Department’s progress implementing its plan until it has achieved 100 percent scanning of commercial and passenger vehicles.

BACKGROUND AND NEED FOR LEGISLATION

U.S. Customs and Border Protection (CBP) uses NII systems to detect contraband while facilitating legal trade and travel. These systems allow CBP officers to inspect the contents of commercial trucks, passenger vehicles, and other cargo for contraband, such as guns and drugs, without physically opening or unloading them. Be-

tween October 1, 2003 and April 30, 2018, CBP reported conducting more than 87 million NII examinations that resulted in more than 20,000 narcotics seizures and more than \$79.2 million in currency seizures.¹

Today, CBP scans only 15 percent of commercial trucks and one percent of passenger vehicles entering the U.S.² This is concerning to the Committee since the majority of drugs seized by CBP have been at the ports of entry.³ This includes illegal fentanyl, which in 2016, surpassed prescription opioids as the most common drug involved in overdose deaths in the U.S.⁴

Congress appropriated \$570 million in fiscal year 2019 for CBP to deploy additional NII systems along the southwest border.⁵ CBP officials conveyed to the Committee that the additional funding will be used to procure technology to increase the scanning rate of commercial trucks to 72 percent and passenger vehicles to 40 percent by fiscal year 2024. Though CBP has not identified where and when the additional systems will be deployed. H.R. 5273 requires DHS to outline its plans for deploying the additional systems and further increasing the NII scanning rate to 100 percent. By scanning all commercial and passenger vehicles that enter the U.S., CBP can better guard against transnational criminal organizations shifting their smuggling operations from one port of entry with deployed NII technology to another one without it. Additionally, leveraging NII technology to examine all vehicles would help CBP officers to better detect contraband while facilitating the flow of legitimate trade and travel.

HEARINGS

For the purposes of section 103(i) of H. Res 6. of the 116th Congress, the following hearings were used to develop H.R. 5273:

- On December 2, 2019, the Committee held a field hearing entitled “Promoting Safe and Efficient Travel and Trade at America’s Land Ports of Entry,” at the New Mexico Border Authority in Santa Teresa, New Mexico. The Committee received testimony from Hector A. Mancha Jr., El Paso Director of Field Operations, U.S. Customs and Border Protection; Marco Grajeda, Director, New Mexico Border Authority, State of New Mexico; Jerry Pacheco, President, Border Industrial Association; and Felipe Otero, Logistics Manager, TPI Composites.
- On May 9, 2019, the Committee held a hearing entitled “A Review of the FY 2020 Budget Request for U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and U.S. Citizenship and Immigration Services.” The Committee received testimony from Robert E. Perez, Deputy Commissioner, U.S. Customs and Border Protection; Matthew

¹ Kevin K. McAleenan, Commissioner, CBP, *Testimony for a hearing entitled “Trade and Commerce at U.S. Ports of Entry,”* SUBCOMMITTEE ON INTERNATIONAL TRADE, CUSTOMS, AND GLOBAL COMPETITIVENESS, COMMITTEE ON FINANCE, U.S. SENATE, July 18, 2019, <https://www.finance.senate.gov/imo/media/doc/18JUL2018McAleenanSTMNT.pdf>.

² *CBP Fiscal Year 2020 Congressional Budget Justification*, DEPT. OF HOMELAND SECURITY, https://www.dhs.gov/sites/default/files/publications/19_0318_MGMT_CBJ-Customs-Border-Protection_0.pdf (accessed Jan. 27, 2020).

³ Kristin Finklea, *Illicit Drug Flows and Seizures in the United States: What Do We [Not] Know?* CONGRESSIONAL RESEARCH SERVICE, July 3, 2019, <https://fas.org/sgp/crs/misc/R45812.pdf>.

⁴ NATIONAL INSTITUTE ON DRUG ABUSE, <https://www.drugabuse.gov/related-topics/trends-statistics/infographics/fentanyl-other-synthetic-opioids-drug-overdose-deaths> (accessed Jan. 27, 2020).

⁵ Consolidated Appropriations Act, 2019 (Public Law 116–6).

T. Albence, Acting Director, U.S. Immigration and Customs Enforcement; and Tracy Renaud, Acting Deputy Director, U.S. Citizenship and Immigration Services.

- On March 6, 2019, the Committee held a hearing entitled “The Way Forward on Border Security.” The Committee received testimony from Kirstjen Nielsen, Secretary of Homeland Security about border security inspections operations.

COMMITTEE CONSIDERATION

The Committee met on January 29, 2020, with a quorum being present, to consider H.R. 5273 and ordered the measure to be reported to the House with a favorable recommendation, as amended, by unanimous consent.

The following amendment was offered and agreed to by unanimous consent:

An amendment offered by Ms. Torres Small.

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Securing America’s Ports Act”.

SEC. 2. LARGE-SCALE NON-INTRUSIVE INSPECTION SCANNING PLAN.

(a) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a plan to increase to 100 percent the rates of expeditious scanning of commercial and passenger vehicles entering the United States at land ports of entry along the border using large-scale non-intrusive inspection systems or similar technology to enhance border security.

(b) **BASELINE INFORMATION.**—At a minimum, the plan required under subsection (a) shall include the following information regarding large-scale non-intrusive inspection systems or similar technology operated by U.S. Customs and Border Protection at land ports of entry as of the date of the enactment of this Act:

(1) An inventory of large-scale non-intrusive inspection systems or similar technology in use at each land port of entry.

(2) For each system or technology identified in the inventory required under paragraph (1), the following information:

(A) The scanning method of such system or technology.

(B) The location of such system or technology at each land port of entry that specifies whether in use in pre-primary, primary, or secondary inspection area, or some combination thereof.

(C) The percentage of commercial and passenger vehicles scanned by such system or technology.

(D) Seizure data directly attributed to scanned commercial and passenger vehicles.

(c) ELEMENTS.—The plan required under subsection (a) shall include the following information:

(1) Benchmarks for achieving incremental progress towards 100 percent expeditious scanning of commercial and passenger vehicles entering the United States at land ports of entry along the border with corresponding projected incremental improvements in scanning rates by fiscal year and rationales for the specified timeframes for each land port of entry.

(2) Estimated costs, together with an acquisition plan, for achieving the 100 percent scanning rate within the timeframes specified in paragraph (1), including acquisition, operations, and maintenance costs for large-scale non-intrusive inspection systems or similar technology, as well as associated costs for any necessary infrastructure enhancements or configuration changes at each port of entry. To the extent practicable, such acquisition plan shall promote opportunities for entities that qualify as small business concerns (as such term is described under section 3 of the Small Business Act (15 U.S.C. 632)).

(3) Any projected impacts, as identified by the Commissioner of U.S. Customs and Border Protection, on the total number of commercial and passenger vehicles entering at land ports of entry where such systems are in use, and average wait times at peak and non-peak travel times, by lane type if applicable, as scanning rates are increased.

(4) Any projected impacts, as identified by the Commissioner of U.S. Customs and Border Protection, on land ports of entry border security operations as a result of implementation actions, including any changes to the number of U.S. Customs and Border Protection officers or their duties and assignments.

(d) RESEARCH AND DEVELOPMENT.—In furtherance of the plan required under subsection (a), the Secretary of Homeland Security, acting through the Under Secretary for Science and Technology, shall conduct research and development, in coordination with the Commissioner of U.S. Customs and Border Protection, to enhance large-scale non-intrusive inspections systems or similar technology and refine the operational use or configuration of such systems or technology in pre-primary, primary, and secondary inspection areas of land ports of entry. Such research and development shall include consideration of emerging large-scale non-intrusive inspection systems or similar technology and modeling the use of such systems or technology that takes into account the variations in infrastructure, configurations, and sizes of land ports of entry.

(e) ANNUAL REPORT.—Not later than one year after the submission of the plan required under subsection (a) and annually thereafter until such time as U.S. Customs and Border Protection has achieved 100 percent expeditious scanning of commercial and passenger vehicles entering the United States at land ports of entry along the border

using large-scale non-intrusive inspection systems or similar technology in accordance with such plan, the Secretary of Homeland Security shall report to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate on progress implementing the plan. Each such report at a minimum shall include the following information:

- (1) An inventory of large-scale non-intrusive inspection systems or similar technology operated by U.S. Customs and Border Protection at each land port of entry.
 - (2) For each system or technology identified in the inventory required under paragraph (1), the following information:
 - (A) The scanning method of such system or technology.
 - (B) The location of such system or technology at each land port of entry that specifies whether in use in pre-primary, primary, or secondary inspection area, or some combination thereof.
 - (C) The percentage of commercial and passenger vehicles scanned by such system or technology.
 - (D) Seizure data directly attributed to scanned commercial and passenger vehicles.
 - (3) The total number of commercial and passenger vehicles entering at each land port of entry where each system or technology is in use, and information on average wait times at peak and non-peak travel times, by lane type if applicable.
 - (4) Progress with respect to the benchmarks specified in subsection (c)(1), and an explanation if any of such benchmarks are not achieved as planned.
 - (5) A comparison of actual costs (including information on any awards of associated contracts) to estimated costs set forth in subsection (c)(2).
 - (6) Any realized impacts, as identified by the Commissioner of U.S. Customs and Border Protection, on land ports of entry operations as a result of implementation actions, including any changes to the number of U.S. Customs and Border Protection officers or their duties and assignments.
 - (7) Any proposed changes to the plan and an explanation for such changes, including changes made in response to any Department of Homeland Security research and development findings, including findings resulting from the research and development conducted pursuant to subsection (d), or changes in terrorist or transnational criminal organizations tactics, techniques, or procedures.
 - (8) Any challenges to implementing the plan or meeting the benchmarks, and plans to mitigate any such challenges.
- (f) DEFINITIONS.—In this section:

(1) **LARGE-SCALE NON-INTRUSIVE INSPECTION SYSTEM.**—The term “large-scale non-intrusive inspection system” means a technology, including x-ray and gamma-ray imaging systems, capable of producing an image of the contents of a commercial or passenger vehicle in one pass of such vehicle.

(2) **SCANNING.**—The term “scanning” means utilizing technology to produce an image of the contents of a commercial or passenger vehicle without engaging in a physical inspection of such vehicle.

COMMITTEE VOTES

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

No recorded votes were requested during consideration of H.R. 5273.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

CONGRESSIONAL BUDGET OFFICE ESTIMATE, NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office.

FEDERAL MANDATES STATEMENT

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 5273 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the objective of H.R. 5273, as amended, is to improve border security by requiring the Secretary of Homeland

Security to develop a plan to increase to 100 percent the rate of expeditiously scanning commercial and passenger vehicles entering the U.S. at land ports of entry with NII systems or similar technology, and to report annually to Congress on the Department's progress implementing the plan until the 100 percent scanning rate is achieved.

ADVISORY ON EARMARKS

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

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section states that the Act may be cited as the "Securing America's Ports Act."

Sec 2. Large-scale non-intrusive inspection scanning plan

Subsection 2(a) requires the Secretary of Homeland Security to submit to Congress a plan to increase to 100 percent the rates of expeditious scanning of commercial and passenger vehicles entering the U.S. at land ports of entry using large-scale NII systems or similar technology.

Subsection 2(b) identifies the baseline information to be included in the plan on large-scale NII systems or similar technology in use by CBP as of the date of enactment of the Act. At a minimum, the baseline shall include an inventory of NII systems or similar technology currently operated at each port of entry, including how each system or technology is used and where in the port it is located; the percentage of commercial and passenger vehicles scanned; and associated data on seizures.

Subsection 2(c) identifies the elements of the plan for increasing the scanning rates of commercial and passenger vehicles to 100 percent as required under subsection 2(a). Specifically, the plan is to include the following:

- (1) Benchmarks for achieving incremental progress toward 100 percent scanning at each land port of entry, including projected scanning rates by fiscal year and rationales for the specified benchmarks.
- (2) Estimated costs, together with an acquisition plan, for achieving the benchmarks within the specified timeframes for each port of entry. The estimated costs are to include the acquisition, operations, and maintenance costs for NII systems or similar technology, as well as associated costs for any infrastructure enhancements or configuration changes required at each port of entry for the installation or operation of acquired systems. To the extent practicable, the acquisition plan shall promote opportunities for small businesses.
- (3) Any projected impacts, as identified by the CBP Commissioner, on the total number of commercial and passenger vehicles entering land ports of entry and average wait times at peak and non-peak travel times as scanning rates are increased.

(4) Any projected impacts, as identified by the CBP Commissioner, on land ports of entry operations, including any changes to the number of CBP officers or their duties and assignments, as a result of implementing the plan.

In preparing the elements of the plan, the Committee expects the Department to consider any differences in the requirements for scanning commercial vehicles compared to passenger vehicles and to prioritize deployments in response to current and projected border security threats. The Committee also expects the Department to select large-scale NII systems or similar technology that maximizes the throughput of all vehicular traffic entering each port of entry, with a preference for conducting scanning as early in the inspection process as practicable given port size, space, or configuration limitations. To minimize the impact on port operations as scanning rates are increased, the Committee expects the Department to amend each port of entry's standard operating procedures, as necessary, to reflect the benchmarks established in the plan.

Subsection 2(d) requires the Secretary, acting through the Under Secretary for Science and Technology, to conduct research and development, in coordination with the CBP Commissioner, to enhance and refine the operational use of large-scale NII systems or similar technology in furtherance of the plan required under subsection 2(a). Such research and development shall include consideration of emerging large-scale NII systems or similar technology and modeling the use of such systems that accounts for the variations in infrastructure, configurations, and sizes of land ports of entry. The Committee is aware of the pilot programs CBP currently has underway to test new large-scale NII systems at select ports of entry along the southwest border and encourages the Department to undertake similar efforts to ensure new or enhanced large-scale NII systems or similar technologies are adequately proven before being deployed. The Committee also expects the Under Secretary for Science and Technology to leverage any related research and development conducted with other components of the Department, such as the Transportation Security Administration, as appropriate.

Subsection 2(e) requires the Secretary to report to Congress no later than one year after submission of the plan required under subsection 2(a), and annually thereafter until CBP has achieved the 100 percent scanning rate for commercial and passenger vehicles, on the Department's progress implementing the plan. At a minimum, the annual report shall include the following:

(1) An updated inventory of large-scale NII systems or similar technology currently operated by CBP at each port of entry, including how each system or technology is used and where in the port it is located; the percentage of commercial and passenger vehicles scanned; and associated data on seizures.

(2) The total number of commercial and passenger vehicles entering land ports of entry and average wait times at peak and non-peak travel times.

(3) Progress with respect to the benchmarks for achieving incremental progress toward 100 percent scanning at each land port of entry identified in the plan, and an explanation if any benchmarks are not achieved.

(4) A comparison of actual costs (including information on any awards associated with contracts) to the estimated costs identified in the plan.

(5) Any realized impacts, as identified by the CBP Commissioner, on land ports of entry operations, including any changes to the number of CBP officers or their duties and assignments, as a result of implementing the plan.

(6) Any proposed changes to the plan and an explanation for such changes, including changes made in response to research and development findings (such as required under subsection 2(d)) or changes in terrorist or transnational criminal organization tactics, techniques, or procedures.

(7) Any challenges implementing the plan or meeting the benchmarks and plans to mitigate such challenges.

