

109TH CONGRESS
2D SESSION

H. R. 5714

To improve the security of rail and public transportation systems in the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 29, 2006

Mr. THOMPSON of Mississippi (for himself, Ms. CORRINE BROWN of Florida, Ms. JACKSON-LEE of Texas, Ms. NORTON, Mr. LANGEVIN, and Mrs. CHRISTENSEN) introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To improve the security of rail and public transportation systems in the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Rail and Public Transportation Security Act of 2006”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

Sec. 3. Security of United States rail and public transportation systems.

Sec. 4. Rail and public transportation security grant program.

- Sec. 5. Rail and public transportation security training program.
- Sec. 6. Rail and public transportation security exercise program.
- Sec. 7. Interagency cooperation.
- Sec. 8. Rail security research and development.
- Sec. 9. Whistleblower protections.
- Sec. 10. Increase in rail security inspectors.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) **APPROPRIATE CONGRESSIONAL COMMIT-**
4 **TEES.**—The term “appropriate congressional com-
5 mittees” has the meaning given that term in section
6 2(2) of the Homeland Security Act of 2002 (6
7 U.S.C. 101(2)).

8 (2) **DEPARTMENT.**—The term “Department”
9 means the Department of Homeland Security.

10 (3) **SECRETARY.**—The term “Secretary” means
11 the Secretary of Homeland Security.

12 (4) **TERRORISM.**—The term “terrorism” has
13 the meaning given that term in section 2(15) of the
14 Homeland Security Act of 2002 (6 U.S.C. 101(15)).

15 **SEC. 3. SECURITY OF UNITED STATES RAIL AND PUBLIC**
16 **TRANSPORTATION SYSTEMS.**

17 The Homeland Security Act of 2002 (6 U.S.C. 101
18 et seq.) is amended by adding at the end the following
19 new title:

1 **“TITLE XVIII—SECURITY OF**
2 **UNITED STATES RAIL AND**
3 **PUBLIC TRANSPORTATION**
4 **SYSTEMS**

5 **“SEC. 1801. NATIONAL RAIL AND PUBLIC TRANSPORTATION**
6 **SECURITY PLAN.**

7 “(a) IN GENERAL.—The Secretary shall develop and
8 implement, and update as appropriate, a supplement to
9 the National Strategy for Transportation Security re-
10 quired under section 114(t) of title 49, United States Code
11 to be entitled the ‘National Rail and Public Transpor-
12 tation Security Plan.’

13 “(b) INCLUDED ELEMENTS.—The supplement re-
14 quired under subsection (a) shall—

15 “(1) include a description of the roles, respon-
16 sibilities, and authorities of Federal, State, and local
17 agencies, designated Federal and government spon-
18 sored entities, tribal governments, and appropriate
19 rail and public transportation stakeholders, including
20 nonprofit employee organizations that represent rail
21 and public transportation system employees;

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

1 “(3) identify and make recommendations re-
2 garding legislative, regulatory, and organizational
3 changes necessary to improve coordination among
4 the entities described in paragraph (1) to enhance
5 the security of rail and public transportation sys-
6 tems;

7 “(4) designate—

8 “(A) areas for which Area Rail and Public
9 Transportation Security Plans are required to
10 be prepared under section 1802; and

11 “(B) who shall be members of the Area
12 Rail and Public Transportation Security Com-
13 mittee for each such area;

14 “(5) provide measurable goals, including objec-
15 tives, mechanisms and a schedule, for enhancing the
16 security of rail and public transportation systems;

17 “(6) include a process for sharing intelligence
18 and information with the entities described in para-
19 graph (1);

20 “(7) include a process for expediting security
21 clearances to facilitate intelligence and information
22 sharing with the entities described in paragraph (6);

23 “(8) describe current and future public out-
24 reach and educational initiatives designed to inform
25 the public how to prevent, prepare for and respond

1 to a terrorist attack on rail and public transpor-
2 tation systems;

3 “(9) include a framework for resuming the op-
4 eration of rail and public transportation systems as
5 soon as possible in the event of an act of terrorism;

6 “(10) include a strategy and timeline for the
7 Department and other appropriate Federal agencies
8 to research and develop new technologies, including
9 advanced technologies with long term research and
10 development timelines for securing rail and public
11 transportation systems;

12 “(11) build on available resources and consider
13 costs and benefits;

14 “(12) describe how the Department has re-
15 viewed the previous attacks on rail and public trans-
16 portation systems throughout the world in the last
17 10 years, the lessons learned from this review, and
18 how these lessons inform current and future efforts
19 to secure rail and public transportation systems; and

20 “(13) expand upon and relate to existing strate-
21 gies and plans, including the National Infrastructure
22 Protection Plan required by Homeland Security
23 Presidential Directive-7.

1 **“SEC. 1802. AREA RAIL AND PUBLIC TRANSPORTATION SE-**
2 **CURITY PLANS.**

3 “(a) **PLAN SUBMITTAL.**—The Area Rail and Public
4 Transportation Security Committee designated under sec-
5 tion 1801(b)(4)(B) shall submit to the Secretary an Area
6 Rail and Public Transportation Security Plan for the area.

7 “(b) **PLAN.**—The Area Rail and Public Transpor-
8 tation Security Plan for an area shall—

9 “(1) when implemented in conjunction with the
10 National Rail and Public Transportation Security
11 Plan, be adequate to deter a transportation security
12 incident in or near the area to the maximum extent
13 practicable;

14 “(2) describe in detail how the plan is inte-
15 grated with other Area Rail and Public Transpor-
16 tation Security Plans, with the rail and public trans-
17 portation security plans required under this title,
18 and with any Area Maritime Transportation Secu-
19 rity Plan required under section 70103(b) of title
20 46, United States Code, as appropriate;

21 “(3) include any other information the Sec-
22 retary requires; and

23 “(4) be updated at least every 5 years.

24 “(c) **REVIEW.**—The Secretary shall—

1 “(1) review and approve Area Rail and Public
2 Transportation Security Plans under this section;
3 and

4 “(2) periodically review previously approved
5 Area Rail and Public Transportation Security Plans.

6 “(d) COMPOSITION AND DUTIES OF THE AREA RAIL
7 AND PUBLIC TRANSPORTATION SECURITY COMMITTEE.—

8 “(1) IN GENERAL.—The Area Rail and Public
9 Transportation Security Committee designated
10 under section 1801(b)(4)(B) shall be composed of
11 representatives of the rail and public transportation
12 systems, including employee organizations, and other
13 appropriate rail and public transportation stake-
14 holders selected by the Secretary, in the areas for
15 which Area Rail and Public Transportation Security
16 Plans are required to be prepared under subsection
17 (a).

18 “(2) APPOINTEES.—The Secretary shall ap-
19 point individuals from entities described in para-
20 graph (1) to the Area Rail and Public Transpor-
21 tation Security Committee.

22 “(3) SOLICITAION OF NOMINATIONS.—Before
23 appointing an individual to a position on such a
24 committee, the Secretary shall publish a notice in

1 the Federal Register soliciting nominations for mem-
2 bership on the committee.

3 “(4) SECURITY.—The Secretary may require an
4 individual to have passed an appropriate security
5 background examination before appointment to the
6 Committee.

7 “(5) CHAIRPERSON AND VICE CHAIRPERSON.—
8 (A) Each committee established under section
9 1801(b)(4)(B) shall elect 1 of its members as the
10 Chairman and 1 of its members as the Vice Chair-
11 person.

12 “(B) The Vice Chairman shall act as Chairman
13 in the absence or incapacity of the Chairman, or in
14 the event of a vacancy in the office of the Chairman.

15 “(6) OBSERVERS.—(A) The Secretary shall,
16 and the head of any other interested Federal agency
17 may, designate a representative to participate as an
18 observer with the Committee.

19 “(B) The Secretary’s designated representative
20 shall act as the executive secretary of the Committee
21 and shall perform the duties set forth in section
22 10(c) of the Federal Advisory Committee Act (5
23 U.S.C. App.).

24 “(7) COMPENSATION AND EXPENSES.—(A) A
25 member of a committee established under this sec-

1 tion, when attending meetings of the committee or
 2 when otherwise engaged in the business of the com-
 3 mittee, is entitled to receive—

4 “(i) compensation at a rate fixed by the
 5 Secretary, not exceeding the daily equivalent of
 6 the current rate of basic pay in effect for GS-
 7 15 of the General Schedule under section 5332
 8 of title 5, United States Code, including travel
 9 time; and

10 “(ii) travel or transportation expenses
 11 under section 5703 of such title 5.

12 “(B) A member of such a committee shall not
 13 be considered to be an officer or employee of the
 14 United States for any purpose based on their receipt
 15 of any payment under this subsection.

16 “(8) FACA.—The Federal Advisory Committee
 17 Act (5 U.S.C. App.) does not apply to Area Rail and
 18 Public Transportation Security Committees estab-
 19 lished under this section.

20 **“SEC. 1803. RAIL AND PUBLIC TRANSPORTATION VULNER-**
 21 **ABILITY ASSESSMENTS AND SECURITY**
 22 **PLANS.**

23 “(a) IN GENERAL.—

24 “(1) REQUIREMENT.—Not later than 1 year
 25 after the date of enactment of this title, the Sec-

1 retary, acting through the Transportation Security
2 Administration, shall promulgate regulations that—

3 “(A) establish standards, protocols, and
4 procedures for vulnerability assessments and se-
5 curity plans for rail and public transportation
6 systems;

7 “(B) require the railroad carrier or public
8 transportation system owner or operator to—

9 “(i) conduct an assessment of the vul-
10 nerability of the rail or public transpor-
11 tation system to an act of terrorism; and

12 “(ii) prepare and implement a security
13 plan that addresses the vulnerabilities
14 identified in the vulnerability assessment;
15 and

16 “(C) set deadlines of no later than 1 year
17 after the promulgation of the regulations under
18 this paragraph for the completion and submis-
19 sion to the Secretary of vulnerability assess-
20 ments and security plans.

21 “(2) CONSULTATION.—In promulgating the
22 regulations under paragraph (1) the Secretary shall
23 consult with the Department of Transportation and
24 other appropriate Federal agencies.

25 “(b) VULNERABILITY ASSESSMENTS.—

1 “(1) REQUIREMENTS.—The Secretary shall
2 provide assistance and guidance to a rail or public
3 transportation system in conducting vulnerability as-
4 sessments and shall require that the vulnerability as-
5 sessments include at a minimum—

6 “(A) identification and evaluation of crit-
7 ical assets and infrastructures, including sub-
8 way platforms, rail, bus, and ferry terminals,
9 rail tunnels, rail bridges, rail switching and
10 storage areas, and information systems;

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

13 “(C) identification of vulnerabilities in—

14 “(i) physical security;

15 “(ii) passenger and commuter secu-
16 rity;

17 “(iii) programmable electronic devices,
18 computers, computer or communications
19 networks, or other automated systems
20 which are used by the rail or public trans-
21 portation system;

22 “(iv) alarms, cameras and other pro-
23 tection systems;

24 “(v) communications systems;

25 “(vi) utilities;

1 “(vii) contingency response; and
2 “(iix) other areas as determined by
3 the Secretary.

4 “(2) THREAT INFORMATION.—

5 “(A) The vulnerability assessments under
6 paragraph (1) shall incorporate any threat in-
7 formation as provided by the Secretary.

8 “(B) The Secretary shall provide in a time-
9 ly manner, to the maximum extent practicable
10 under applicable authority and in the interests
11 of national security, to the rail or public trans-
12 portation system subject to the requirements in
13 paragraph (1), threat information that is rel-
14 evant to that rail or public transportation sys-
15 tem, including an assessment of the most likely
16 method that could be used by terrorists to ex-
17 ploit vulnerabilities, and their likelihood of suc-
18 cess.

19 “(c) SECURITY PLANS.—

20 “(1) REQUIREMENTS.—The Secretary shall
21 provide assistance and guidance to rail and public
22 transportation systems in preparing and imple-
23 menting security plans and shall require that the se-
24 curity plan include at a minimum—

1 “(A) identification of the qualified indi-
2 vidual having full authority to implement secu-
3 rity actions, and require immediate communica-
4 tions between that individual and the appro-
5 priate Federal officials;

6 “(B) security measures to address the
7 vulnerabilities of the rail or public transpor-
8 tation system to a terrorist incident;

9 “(C) plans for periodic drills and exercises
10 that include participation by local law enforce-
11 ment agencies and first responders as appro-
12 priate;

13 “(D) equipment, plans, and procedures to
14 be implemented or used by the rail or public
15 transportation system in response to a terrorist
16 attack, including evacuation and passenger
17 communication plans;

18 “(E) identification of steps taken with
19 State and local law enforcement agencies, first
20 responders, and Federal officials to coordinate
21 security measures and plans for response to a
22 terrorist attack;

23 “(F) provide a strategy and timeline for
24 conducting training and periodic unannounced
25 drills for employees of a rail or public transit

1 system to be carried out under the plan to pre-
2 vent, prepare, or respond to a terrorist attack,
3 including through the training required under
4 section 802;

5 “(G) enhanced security measures to be
6 taken when the Secretary declares a period of
7 heightened security risk; and

8 “(H) other actions or procedures the Sec-
9 retary determines are appropriate to address
10 the vulnerability of a rail or public transpor-
11 tation system to a terrorist attack.

12 “(2) CONSISTENCY WITH OTHER PLANS.—Secu-
13 rity plans shall be consistent with the requirements
14 of the National Rail and Public Transportation Se-
15 curity Plan and Area Rail and Public Transpor-
16 tation Security Plans.

17 “(3) REVIEW OF SECURITY PLANS.—

18 “(A) IN GENERAL.—Not later than 6
19 months after the date on which the Secretary
20 receives and approves a vulnerability assess-
21 ment submitted by a rail or public transpor-
22 tation system, the Secretary shall review the se-
23 curity plan for the rail or public transportation
24 system and approve or disapprove the security
25 plan.

1 “(B) DISAPPROVAL.—In the event of dis-
2 approval, the Secretary shall provide to the rail
3 or public transportation system a clear expla-
4 nation of any deficiency in the security plan
5 submitted by the system and guidance to assist
6 the system in addressing such deficiency.

7 “(d) ENFORCEMENT.—

8 “(1) SUBMISSION OF INFORMATION.—The Sec-
9 retary shall specify in regulations promulgated under
10 subsection (a), specific deadlines for the submission
11 of vulnerability assessments and security plans to
12 the Secretary.

13 “(2) FAILURE TO COMPLY.—If a rail or public
14 transportation system fails to submit a vulnerability
15 assessment or security plan in accordance with this
16 title, the Secretary may issue an order requiring the
17 submission of a vulnerability assessment or security
18 plan in accordance with subsection (e).

19 “(3) REVIEW.—The Secretary, in accordance
20 with paragraph (4), may—

21 “(A) disapprove a vulnerability assessment
22 or security plan submitted under this title; and

23 “(B) order the railroad carrier or public
24 transportation owner or operator that sub-
25 mitted the vulnerability assessment or security

1 plan to revise, recertify, and submit the assess-
2 ment or plan to correct deficiencies specified in
3 the order.

4 “(4) DISAPPROVAL.—The Secretary shall dis-
5 approve under paragraph (3) a vulnerability assess-
6 ment or security plan if the Secretary determines
7 that—

8 “(A) the vulnerability assessment or secu-
9 rity plan does not comply with regulations pro-
10 mulgated under subsection (a); or

11 “(B) the security plan, or the implementa-
12 tion of the security plan, is insufficient to ad-
13 dress—

14 “(i) the results of a vulnerability as-
15 sessment of the rail or public transpor-
16 tation system or associated oversight ac-
17 tions taken under this section; or

18 “(ii) a threat of a terrorist incident
19 upon the rail or public transportation sys-
20 tem.

21 “(5) COMPLIANCE.—If the Secretary dis-
22 approves a vulnerability assessment or security plan,
23 or the implementation of a security plan, the Sec-
24 retary shall—

1 “(A) provide the railroad carrier or public
2 transportation system owner or operator a writ-
3 ten notification of the determination that in-
4 cludes a clear explanation of deficiencies in the
5 vulnerability assessment, security plan, or im-
6 plementation of the assessment or plan;

7 “(B) consult with the railroad carrier or
8 public transportation system owner or operator
9 to identify appropriate steps to achieve compli-
10 ance with the requirements of this title; and

11 “(C) if, following that consultation, the
12 railroad carrier or public transportation system
13 owner or operator does not achieve compliance
14 in accordance with the requirements of this title
15 by such date as the Secretary determines to be
16 appropriate under the circumstances, issue an
17 order requiring the railroad carrier or public
18 transportation system owner or operator to cor-
19 rect specified deficiencies by a specified date.

20 “(e) PENALTIES.—

21 “(1) ADMINISTRATIVE PENALTIES.—

22 “(A) The Secretary may issue an adminis-
23 trative penalty of not more than \$75,000 for
24 failure to comply with an order issued by the
25 Secretary under this title.

1 “(B) Before issuing an order described in
2 subparagraph (A), the Secretary shall provide
3 to the person against which the penalty is to be
4 assessed—

5 “(i) written notice of the proposed
6 order; and

7 “(ii) the opportunity to request, not
8 later than 30 days after the date on which
9 the person receives the notice, a hearing on
10 the proposed order.

11 “(C) The Secretary may promulgate regu-
12 lations outlining the procedures for administra-
13 tive hearings and appropriate review, including
14 necessary deadlines.

15 “(2) CIVIL PENALTIES.—

16 “(A) IN GENERAL.—The Secretary may
17 bring an action in a United States district court
18 against any railroad carrier or public transpor-
19 tation system owner or operator that violates or
20 fails to comply with any order or directive
21 issued by the Secretary under this title or a se-
22 curity plan approved by the Secretary under
23 this title.

24 “(B) RELIEF.—In any action under sub-
25 paragraph (A), a court may issue an order for

1 injunctive relief and may award a civil penalty
2 of not more than \$50,000 for each day on
3 which a violation occurs or a failure to comply
4 continues.

5 “(3) CRIMINAL PENALTIES.—A railroad carrier
6 or public transportation system owner or operator
7 who knowingly and intentionally violates any order
8 issued by the Secretary under this title shall be fined
9 not more than \$50,000 for each day of such viola-
10 tion, imprisoned for no more than 2 years, or both.

11 “(f) RED TEAM EXERCISES.—The Secretary, in co-
12 operation with the Department of Transportation, shall
13 conduct red team exercise at selected rail and public trans-
14 portation systems to identify vulnerabilities, possible
15 modes of attack, and security plan weaknesses.

16 “(g) EXISTING PROCEDURES, PROTOCOLS AND
17 STANDARDS.—

18 “(1) DETERMINATION.—In response to a peti-
19 tion by railroad carrier or public transportation sys-
20 tem owner or operator, or at the discretion of the
21 Secretary, the Secretary may endorse or recognize
22 existing procedures, protocols, and standards that
23 the Secretary determines to meet all or part of the
24 requirements of this title regarding vulnerability as-
25 sessments and security plans.

1 “(2) REQUIREMENTS.—Upon review and writ-
2 ten determination by the Secretary that existing pro-
3 cedures, protocols, or standards for a particular rail
4 or public transportation system satisfy some or all of
5 the requirements of this title, the rail or public
6 transportation system may elect to comply with
7 those procedures, protocols, or standards.

8 “(3) PARTIAL APPROVAL.—If the Secretary
9 finds that the existing procedures, protocols, and
10 standards satisfy only part of the requirements of
11 this title, he may accept those submissions, but shall
12 require submission of any additional information rel-
13 evant to vulnerability assessments and security plans
14 to ensure that the requirements of this title are ful-
15 filled.

16 “(4) NOTIFICATION.—If the Secretary does not
17 endorse or recognize particular procedures, proto-
18 cols, and standards, the Secretary shall provide to
19 each railroad carrier or public transportation system
20 owner or operator that submitted a petition under
21 paragraph (1) a written notification that includes an
22 explanation of the reasons why the endorsement or
23 recognition was not made.

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

1 “(A) to review the vulnerability assessment
2 and security plan submitted by each railroad
3 carrier or public transportation system owner or
4 operator under this section; and

5 “(B) to approve or disapprove each sub-
6 mission on an individual basis.

7 “(h) PERIODIC REVIEW.—

8 “(1) IN GENERAL.—Not later than 3 years
9 after the date of approval of a vulnerability assess-
10 ment and facility security plan under this section,
11 and not less often than every 5 years thereafter (or
12 on such a schedule as the Secretary may establish
13 by regulation) the railroad carrier or public trans-
14 portation system owner or operator covered by the
15 vulnerability assessment or security plan shall—

16 “(A) review the adequacy of the vulner-
17 ability assessment and security plan; and

18 “(B) as specified by the Secretary, submit
19 to the Secretary the review, including a descrip-
20 tion of any changes to the vulnerability assess-
21 ment or security plan.

22 “(2) SCHEDULE.—The Secretary shall ensure
23 that these reviews are submitted according to the
24 schedule set by the Secretary, and that they are re-

1 viewed and approved within 6 months of receipt by
2 the Secretary.

3 “(i) CO-LOCATED FACILITIES.—The Secretary shall
4 permit the development and implementation of coordi-
5 nated vulnerability assessments and security plans, at the
6 discretion of a rail or public transportation system, to the
7 extent two or more rail or public transportation systems
8 have shared facilities, such as tunnels, bridges, or stations,
9 or facilities that are geographically close or otherwise co-
10 located.

11 **“SEC. 1804. RAIL AND PUBLIC TRANSPORTATION STRA-**
12 **TEGIC INFORMATION SHARING PLAN.**

13 “(a) IN GENERAL.—The Secretary, in consultation
14 with the Secretary of Transportation, shall develop and
15 submit to the appropriate congressional committees no
16 later than 90 days after the enactment of this title a Rail
17 and Public Transportation Strategic Information Sharing
18 Plan to ensure the robust development of both tactical and
19 strategic intelligence products pertaining to the threats
20 and vulnerabilities to rail and public transportation sys-
21 tems for dissemination to Federal, State, and local agen-
22 cies; tribal governments; and appropriate rail and public
23 transportation stakeholders.

24 “(b) CONTENT OF PLAN.—The plan required under
25 subsection (a) shall include—

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

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

9 “(3) a description of resource needs for ful-
10 filling the plan.

11 “(c) UPDATES.—

12 “(1) After the plan is provided under subsection
13 (a), the Secretary shall certify to the appropriate
14 congressional committees when the plan has been
15 fully implemented.

16 “(2) Until the Secretary provides the certifi-
17 cation under paragraph (1), the Secretary shall pro-
18 vide an update to the appropriate congressional com-
19 mittees on the implementation of the plan every 90
20 days.

21 “(3) After the Secretary provides the certifi-
22 cation under paragraph (1), the Secretary shall pro-
23 vide a report to the appropriate congressional com-
24 mittees each year thereafter on the following:

1 “(A) The number and brief description of
2 each rail and public transportation intelligence
3 report created and disseminated under the plan.

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

6 “(C) The numbers of different government,
7 law enforcement, and private sector partners
8 who were provided with each intelligence prod-
9 uct.

10 “(d) SURVEY.—The Secretary shall conduct an an-
11 nual survey of the satisfaction of each of the recipients
12 of rail and public transportation intelligence reports cre-
13 ated and disseminated under the plan, and include the re-
14 sults of this survey as part of the report provided under
15 subsection (c)(3).

16 **“SEC. 1805. RULEMAKING REQUIREMENTS.**

17 “(a) INTERIM FINAL RULE AUTHORITY.—The Sec-
18 retary shall issue an interim final rule as a temporary reg-
19 ulation implementing this title as soon as practicable after
20 the date of enactment of this section, without regard to
21 the provisions of chapter 5 of title 5, United States Code.
22 All regulations prescribed under the authority of this sub-
23 section that are not earlier superseded by final regulations
24 shall expire not later than 1 year after the date of enact-
25 ment of this title.

1 “(b) INITIATION OF RULEMAKING.—The Secretary
2 may initiate a rulemaking to implement this title as soon
3 as practicable after the date of enactment of this section.
4 The final rule issued pursuant to that rulemaking may su-
5 perse the interim final rule promulgated under this sec-
6 tion.

7 **“SEC. 1806. DEFINITIONS.**

8 “In this title, the following definitions apply:

9 “(1) APPROPRIATE RAIL AND PUBLIC TRANS-
10 PORTATION STAKEHOLDERS.—The term ‘appropriate
11 rail and public transportation stakeholders’ means
12 freight and passenger railroad carriers, nonprofit
13 employee organizations representing rail and public
14 transportation workers, nonprofit employee organiza-
15 tions representing emergency responders, owners or
16 lessors of rail cars used to transport hazardous ma-
17 terials, shippers of hazardous materials, manufactur-
18 ers of rail tank cars, State Departments of Trans-
19 portation, public safety officials, and other relevant
20 parties.

21 “(2) RAILROAD AND RAILROAD CARRIER.—The
22 terms ‘railroad’ and ‘railroad carrier’ have the mean-
23 ing given those terms in section 20102 of title 49,
24 United States Code.

1 “(1) the most current risk assessment available
2 from the Department;

3 “(2) the national economic and strategic de-
4 fense considerations of individual rail and public
5 transportation systems; and

6 “(3) any other factors that the Secretary deter-
7 mines to be appropriate.

8 “(c) APPLICATION.—

9 “(1) IN GENERAL.—Any rail or public transpor-
10 tation security system subject to the requirements of
11 section 1803 may submit an application for a grant
12 under this section, at such time, in such form, and
13 containing such information and assurances as the
14 Secretary may require.

15 “(2) MINIMUM STANDARDS FOR PAYMENT OR
16 REIMBURSEMENT.—Each application submitted
17 under paragraph (1) shall include—

18 “(A) a comprehensive description of—

19 “(i) the purpose of the project for
20 which the applicant seeks a grant under
21 this section and why the applicant needs
22 the grant;

23 “(ii) the applicability of the project to
24 the Area Rail and Public Transportation

1 Security Plan and other homeland security
2 plans;

3 “(iii) the methodology for coordi-
4 nating the project into the security of the
5 greater area identified in the Area Rail
6 and Public Transportation Security Plan;

7 “(iv) any existing cooperation or mu-
8 tual aid agreements with other rail or pub-
9 lic transportation systems, organizations,
10 or State, territorial, and local governments
11 as such agreements relate to rail and pub-
12 lic transportation security; and

13 “(v) a capital budget showing how the
14 applicant intends to allocate and expend
15 the grant funds; and

16 “(B) a determination by the Transpor-
17 tation Security Administration that the
18 project—

19 “(i) addresses or corrects rail and
20 public transportation security
21 vulnerabilities; and

22 “(ii) helps to ensure compliance with
23 the Area Rail and Public Transportation
24 Security Plan.

1 “(3) PROCEDURAL SAFEGUARDS.—The Sec-
2 retary, in consultation with the Office of the Inspec-
3 tor General and the Office of Grants and Training,
4 shall issue guidelines to establish appropriate ac-
5 counting, reporting, and review procedures to ensure
6 that—

7 “(A) grant funds are used for the purposes
8 for which they were made available;

9 “(B) grantees have properly accounted for
10 all expenditures of grant funds; and

11 “(C) grant funds not used for such pur-
12 poses and amounts not obligated or expended
13 are returned.

14 “(d) USE OF FUNDS.—Grants awarded under this
15 section may be used—

16 “(1) to help implement Area Rail and Public
17 Transportation Security Plans required under sec-
18 tion 1803;

19 “(2) to remedy rail and public transportation
20 security vulnerabilities identified through vulner-
21 ability assessments approved by the Secretary;

22 “(3) for non-Federal projects contributing to
23 the overall security of a rail or public transportation
24 security system, as determined by the Secretary;

1 “(4) for the salaries, benefits, overtime com-
2 pensation, and other costs of additional security per-
3 sonnel for State and local agencies for activities re-
4 quired by the Area Rail and Public Transportation
5 Security Plan;

6 “(5) for the cost of acquisition, operation, and
7 maintenance of equipment that contributes to the
8 overall security of the rail and public transportation
9 security system, as identified in the Area Rail and
10 Public Transportation Security Plan, if the need is
11 based upon vulnerability assessments approved by
12 the Secretary or identified in the Area Rail and
13 Public Transportation Security Plan;

14 “(6) to conduct vulnerability assessments ap-
15 proved by the Secretary;

16 “(7) to purchase or upgrade equipment, includ-
17 ing communications equipment that is interoperable
18 with Federal, State, and local agencies and tribal
19 governments; and computer software, to enhance
20 terrorism preparedness;

21 “(8) to conduct exercises or training for preven-
22 tion and detection of, preparedness for, response to,
23 or recovery from terrorist attacks;

24 “(9) to establish or enhance mechanisms for
25 sharing terrorism threat information and to ensure

1 that the mechanisms are interoperable with Federal,
2 State, and local agencies and tribal governments;

3 “(10) for the cost of equipment (including soft-
4 ware) required to receive, transmit, handle, and
5 store classified information;

6 “(11) for the protection of critical infrastruc-
7 ture against potential attack by the addition of bar-
8 riers, fences, gates, and other such devices, except
9 that the cost of such measures may not exceed the
10 greater of—

11 “(A) \$5,000,000 per project; or

12 “(B) such greater amount as may be ap-
13 proved by the Secretary, which may not exceed
14 10 percent of the total amount of the grant;
15 and

16 “(12) to conduct exercises to strengthen emer-
17 gency preparedness of Federal, State, local and trib-
18 al officials responsible for rail and public transpor-
19 tation system security, including law enforcement
20 personnel and firefighters and other first responders,
21 in support of the Area Rail and Public Transpor-
22 tation Security Plan.

23 “(e) REIMBURSEMENT OF COSTS.—An applicant for
24 a grant under this section may petition the Secretary for
25 the reimbursement of the cost of any activity relating to

1 prevention (including detection) of, preparedness for, re-
2 sponse to, or recovery from acts of terrorism that is a Fed-
3 eral duty and usually performed by a Federal agency, and
4 that is being performed by a State or local government
5 (or both) under agreement with a Federal agency.

6 “(f) PROHIBITED USES.—Grants awarded under this
7 section may not be used to—

8 “(1) supplant State or local funds for activities
9 of the type described in subsection (d);

10 “(2) construct buildings or other physical facili-
11 ties, except buildings or other physical facilities oth-
12 erwise authorized under section 611 of the Robert T.
13 Stafford Disaster Relief and Emergency Assistance
14 Act (42 U.S.C. 5196), and specifically approved by
15 the Secretary;

16 “(3) acquire land; or

17 “(4) make any State or local government cost-
18 sharing contribution.

19 “(g) MATCHING REQUIREMENT.—

20 “(1) IN GENERAL.—Except as provided in sub-
21 paragraph (A) or (B) of paragraph (2), Federal
22 funds for any eligible project under this section shall
23 not exceed 75 percent of the total cost of such
24 project.

25 “(2) EXCEPTIONS.—

1 “(A) SMALL PROJECTS.—The requirement
2 of paragraph (1) shall not apply with respect to
3 a project with a total cost of not more than
4 \$25,000.

5 “(B) HIGHER LEVEL OF FEDERAL SUP-
6 PORT REQUIRED.—The requirement of para-
7 graph (1) shall not apply with respect to a
8 project if the Secretary determines that the
9 project merits support and cannot be under-
10 taken without a higher rate of Federal support
11 than the rate described in paragraph (1).

12 “(3) IN-KIND CONTRIBUTIONS.—Each recipient
13 of a grant under this section may meet the require-
14 ment of paragraph (1) by making in-kind contribu-
15 tions of goods or services that are directly linked
16 with the purpose for which the grant is made, as de-
17 termined by the Secretary, including any necessary
18 personnel expenses, contractor services, administra-
19 tive costs, equipment, fuel, or maintenance, and
20 rental space.

21 “(h) MULTIPLE PHASE PROJECTS.—

22 “(1) IN GENERAL.—The Secretary may award
23 grants under this section for projects that span mul-
24 tiple years.

1 “(2) FUNDING LIMITATION.—Not more than 20
2 percent of the total grant funds awarded under this
3 section in any fiscal year may be awarded for
4 projects that span multiple years.

5 “(i) CONSISTENCY WITH PLANS.—The Secretary
6 shall ensure that each grant awarded under this section—

7 “(1) is used to supplement and support, in a
8 consistent and coordinated manner, the applicable
9 Area Rail and Public Transportation Security Plan;
10 and

11 “(2) is coordinated with any applicable State or
12 Urban Area Homeland Security Plan.

13 “(j) COORDINATION AND COOPERATION.—The Sec-
14 retary shall ensure that all projects that receive grant
15 funding under this section within any area defined in an
16 Area Rail and Public Transportation Security Plan are co-
17 ordinated with other projects in such area.

18 “(k) REVIEW AND AUDITS.—The Secretary shall re-
19 quire all grantees under this section to maintain such
20 records as the Secretary may require and make such
21 records available for review and audit by the Secretary,
22 the Comptroller General of the United States, or the In-
23 spector General of the Department.

24 “(l) QUARTERLY REPORTS REQUIRED AS A CONDI-
25 TION OF HOMELAND SECURITY GRANTS.—

1 “(1) EXPENDITURE REPORTS REQUIRED.—As a
2 condition of receiving a grant under this section, the
3 Secretary shall require the grant recipient to submit
4 quarterly reports to the Secretary that describe each
5 expenditure made by the recipient using grant funds.

6 “(2) DEADLINE FOR REPORTS.—Each report
7 required under paragraph (1) shall be submitted not
8 later than 30 days after the last day of a fiscal quar-
9 ter and shall describe expenditures made during that
10 fiscal quarter.

11 “(3) PUBLICATION OF EXPENDITURES.—

12 “(A) IN GENERAL.—Not later than 1 week
13 after receiving a report under this subsection,
14 the Secretary shall publish and make publicly
15 available on the Internet website of the Depart-
16 ment a description of each expenditure de-
17 scribed in the report.

18 “(B) WAIVER.—The Secretary may waive
19 the requirement of subparagraph (A) if the Sec-
20 retary determines that it is in the national secu-
21 rity interests of the United States to do so.

22 “(m) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated \$400,000,000 for each
24 of fiscal years 2007 through 2012 to carry out this sec-
25 tion.”.

1 **SEC. 5. RAIL AND PUBLIC TRANSPORTATION SECURITY**
2 **TRAINING PROGRAM.**

3 Subtitle A of title VIII of the Homeland Security Act
4 of 2002 (6 U.S.C. 361) is amended by adding at the end
5 the following new section:

6 **“SEC. 802. RAIL AND PUBLIC TRANSPORTATION SECURITY**
7 **TRAINING PROGRAM.**

8 “(a) **IN GENERAL.**—Not later than 90 days after the
9 date of enactment of this section, the Secretary, in con-
10 sultation with appropriate law enforcement, security, and
11 terrorism experts, representatives of railroad carriers and
12 public transportation owners and operators, and nonprofit
13 employee organizations that represent rail and public
14 transportation workers, shall develop and issue detailed
15 guidance for a rail and public transportation worker secu-
16 rity training program to prepare rail and public transpor-
17 tation workers, including front-line transit employees such
18 as bus and rail operators, mechanics, customer service em-
19 ployees, maintenance employees, transit police, and secu-
20 rity personnel, for potential threat conditions.

21 “(b) **PROGRAM ELEMENTS.**—The guidance developed
22 under subsection (a) shall require such a program to in-
23 clude, at a minimum, elements that address the following:

24 “(1) Determination of the seriousness of any
25 occurrence.

1 “(2) Crew and passenger communication and
2 coordination.

3 “(3) Appropriate responses to defend oneself.

4 “(4) Use of protective devices.

5 “(5) Evacuation procedures (including pas-
6 sengers, workers, and those with disabilities).

7 “(6) Live situational training exercises regard-
8 ing various threat conditions, including tunnel evac-
9 uation procedures.

10 “(7) Any other subject the Secretary considers
11 appropriate.

12 “(c) REQUIRED PROGRAMS.—Not later than 60 days
13 after the Secretary issues guidance under subsection (a)
14 in final form, each rail and public transportation system
15 shall develop a rail and public transportation worker secu-
16 rity training program in accordance with that guidance
17 and submit it to the Secretary for approval. Not later than
18 60 days after receiving a rail or public transportation sys-
19 tem’s program under this subsection, the Secretary shall
20 review the program and approve it or require the rail or
21 public transportation system to make any revisions the
22 Secretary considers necessary for the program to meet the
23 guidance requirements.

24 “(d) TRAINING.—Not later than 1 year after the Sec-
25 retary approves the training program developed by a rail

1 or public transportation system under this section, the
2 railroad carrier or public transportation system owner or
3 operator shall complete the training of all rail and public
4 transportation workers in accordance with that program.

5 “(e) UPDATES.—The Secretary shall update the
6 training guidance issued under subsection (a) from time
7 to time to reflect new or different security threats, and
8 require rail and public transportation systems to revise
9 their programs accordingly and provide additional training
10 to their workers.”.

11 (b) CLERICAL AMENDMENT.—The table of contents
12 in section 1(b) of the Homeland Security Act of 2002 (116
13 Stat. 2135) is amended by inserting after the item relating
14 to section 801 the following:

“Sec. 802. Rail and public transportation security training program.”.

15 **SEC. 6. RAIL AND PUBLIC TRANSPORTATION SECURITY EX-**
16 **ERCISE PROGRAM.**

17 (a) Subtitle A of title VIII of the Homeland Security
18 Act of 2002 (6 U.S.C. 361) is amended by adding at the
19 end the following new section:

20 **“SEC. 803. RAIL AND PUBLIC TRANSPORTATION SECURITY**
21 **EXERCISE PROGRAM.**

22 “(a) IN GENERAL.—The Secretary, acting through
23 the Assistant Secretary for Grants and Training, shall es-
24 tablish a Rail and Public Transportation Security Exercise
25 Program (hereinafter in this section referred to as the

1 ‘Program’) for the purpose of testing and evaluating the
2 capabilities of Federal, State, and local agencies and tribal
3 governments, rail and public transportation system em-
4 ployees and management, governmental and nongovern-
5 mental emergency response providers, the private sector,
6 or any other organization or entity, as the Secretary deter-
7 mines to be appropriate, to prevent, prepare for, mitigate
8 against, respond to, and recover from acts of terrorism,
9 natural disasters, and other emergencies at rail and public
10 transportation systems.

11 “(b) REQUIREMENTS.—The Secretary, acting
12 through the Assistant Secretary for Grants and Training
13 and in coordination with the Assistant Secretary of Home-
14 land Security (Transportation Security Administration),
15 shall ensure that the Program—

16 “(1) consolidates all existing rail and public
17 transportation system security exercise programs ad-
18 ministered by the Department;

19 “(2) conducts, on a periodic basis, exercises at
20 rail and public transportation systems that are—

21 “(A) scaled and tailored to the needs of
22 each rail and public transportation system;

23 “(B) live in the case of the most at-risk
24 rail and public transportation systems;

1 “(C) as realistic as practicable and based
2 on current risk assessments, including credible
3 threats, vulnerabilities, and consequences;

4 “(D) consistent with the National Incident
5 Management System, the National Response
6 Plan, the National Infrastructure Protection
7 Plan, the National Preparedness Guidance, the
8 National Preparedness Goal, and other such na-
9 tional initiatives;

10 “(E) evaluated against clear and consistent
11 performance measures;

12 “(F) assessed to learn best practices,
13 which shall be shared with appropriate Federal,
14 State, local and tribal officials, rail and public
15 transportation system employees and manage-
16 ment; governmental and nongovernmental emer-
17 gency response providers, and the private sec-
18 tor; and

19 “(G) followed by remedial action in re-
20 sponse to lessons learned; and

21 “(3) assists State and local governments and
22 rail and public transportation systems in designing,
23 implementing, and evaluating exercises that—

24 “(A) conform to the requirements of para-
25 graph (2); and

1 “(B) are consistent with any applicable
2 Area Rail and Public Transportation Security
3 Plan and State or Urban Area Homeland Secu-
4 rity Plan.

5 “(c) REMEDIAL ACTION MANAGEMENT SYSTEM.—
6 The Secretary, acting through the Assistant Secretary for
7 Grants and Training, shall establish a Remedial Action
8 Management System to—

9 “(1) identify and analyze each rail and public
10 transportation system exercise for lessons learned
11 and best practices;

12 “(2) disseminate lessons learned and best prac-
13 tices to participants in the Program;

14 “(3) monitor the implementation of lessons
15 learned and best practices by participants in the
16 Program; and

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

19 “(d) GRANT PROGRAM FACTOR.—In evaluating and
20 prioritizing applications for Federal financial assistance
21 under section 512, the Secretary shall give additional con-
22 sideration to those applicants that have conducted rail and
23 public transportation security exercises under this section.

1 “(e) CONSULTATION.—The Secretary shall ensure
2 that, in carrying out the Program, the Office of Grants
3 and Training shall consult with—

4 “(1) a geographic and substantive cross section
5 of governmental and nongovernmental emergency re-
6 sponse providers; and

7 “(2) rail and public transportation system per-
8 sonnel and management.”.

9 (b) CLERICAL AMENDMENT.—The table of contents
10 in section 1(b) of the Homeland Security Act of 2002 (116
11 Stat. 2135) is amended by inserting after the item relating
12 to section 802 the following:

“Sec. 803. Rail and public transportation security exercise program.”.

13 **SEC. 7. INTERAGENCY COOPERATION.**

14 The Secretary shall consider whether in fulfilling the
15 requirements of this Act, in order to promote communica-
16 tions, efficiency, and nonduplication of effort, memoranda
17 of agreement should be updated or executed with other
18 Federal agencies, including the Department of Transpor-
19 tation, or between entities of the Department and other
20 Federal entities, including between the Transportation Se-
21 curity Administration and the Federal Transit Adminis-
22 tration, the Pipeline and Hazardous Materials Safety Ad-
23 ministration, and the Federal Railroad Administration.

1 **SEC. 8. RAIL SECURITY RESEARCH AND DEVELOPMENT.**

2 (a) ESTABLISHMENT OF RESEARCH AND DEVELOP-
3 MENT PROGRAM.—The Secretary, through the Under Sec-
4 retary for Science and Technology, in coordination with
5 the Assistant Secretary of Homeland Security (Transpor-
6 tation Security Administration) and the Departmental
7 Privacy Officer, and in consultation with the Secretary of
8 Transportation, shall carry out a research and develop-
9 ment program for the purpose of improving rail and mass
10 transit security that may include research and develop-
11 ment projects to—

12 (1) reduce the vulnerability of passenger trains,
13 stations, and equipment to explosives and hazardous
14 chemical, biological, and radioactive substances;

15 (2) test new emergency response and recovery
16 techniques and technologies;

17 (3) develop improved freight technologies, in-
18 cluding—

19 (A) technologies for sealing rail cars;

20 (B) automatic inspection of rail cars;

21 (C) communication-based train controls;

22 (D) signal system integrity at switches;

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

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

4 (G) technologies for securing bridges and
5 tunnels;

6 (4) test wayside detectors that can detect tam-
7 pering with railroad equipment;

8 (5) support enhanced security for the transpor-
9 tation of hazardous materials by rail;

10 (6) mitigate damages in the event of a cyber at-
11 tack; and

12 (7) address other vulnerabilities and risks iden-
13 tified by the Secretary.

14 (b) COORDINATION WITH OTHER RESEARCH INITIA-
15 TIVES.—The Secretary shall ensure that the research and
16 development program authorized by this section is con-
17 sistent with the National Strategy for Transportation Se-
18 curity and the Transportation Sector Specific Plan, and
19 shall to the greatest extent possible leverage other ongoing
20 research and development security related initiatives at
21 the National Academy of Sciences; the Department of
22 Homeland Security; the Department of Transportation,
23 including University Transportation Centers and other in-
24 stitutes, centers, and simulators funded by the Depart-
25 ment of Transportation; the Technical Support Working

1 Group; other Federal agencies; and other Federal and pri-
2 vate research laboratories and research entities with the
3 capability to conduct both practical and theoretical re-
4 search and technical systems analysis.

5 (c) PRIVACY AND CIVIL RIGHTS AND CIVIL LIB-
6 ERTIES ISSUES.—In carrying out research and develop-
7 ment projects under this section, the Under Secretary for
8 Science and Technology shall consult with the Chief Pri-
9 vacy Officer and the Officer for Civil Rights and Civil Lib-
10 erties as appropriate and in accordance with the plan re-
11 quired by section 319 of the Homeland Security Act of
12 2002. Pursuant to sections 222 and 705 of the Homeland
13 Security Act of 2002, the Chief Privacy Officer shall con-
14 duct privacy impact assessments and the Officer for Civil
15 Rights and Civil Liberties shall conduct reviews, as appro-
16 priate, for research and development initiatives developed
17 pursuant to this section.

18 (d) AUTHORIZATION OF APPROPRIATIONS.—There
19 are authorized to be appropriated to the Secretary to carry
20 out this section—

- 21 (1) \$50,000,000 for fiscal year 2007;
- 22 (2) \$50,000,000 for fiscal year 2008; and
- 23 (3) \$50,000,000 for fiscal year 2009.

24 Amounts made available pursuant to this subsection shall
25 remain available until expended.

1 **SEC. 9. WHISTLEBLOWER PROTECTIONS.**

2 (a) IN GENERAL.—No covered individual may be dis-
3 charged, demoted, suspended, threatened, harassed, rep-
4 rimanded, investigated, or in any other manner discrimi-
5 nated against (including by a denial, suspension, or rev-
6 ocation of a security clearance or by any other security
7 access determination) if such discrimination is due, in
8 whole or in part, to any lawful act done, perceived to have
9 been done, or intended to be done by the covered indi-
10 vidual—

11 (1) to provide information, cause information to
12 be provided, or otherwise assist in an investigation
13 regarding any conduct which the covered individual
14 reasonably believes constitutes a violation of any
15 law, rule or regulation relating to national or home-
16 land security, which the covered individual reason-
17 ably believes constitutes a threat to national or
18 homeland security, or which the covered individual
19 reasonably believes constitutes fraud, waste or mis-
20 management of Government funds intended to be
21 used for national or homeland security, when the in-
22 formation or assistance is provided to or the inves-
23 tigation is conducted by—

24 (A) a Federal, State, or local regulatory or
25 law enforcement agency (including an office of

1 Inspector General under the Inspector General
2 Act of 1978);

3 (B) any Member of Congress, any com-
4 mittee of Congress, or the Government Ac-
5 countability Office; or

6 (C) a person with supervisory authority
7 over the covered individual (or such other per-
8 son who has the authority to investigate, dis-
9 cover, or terminate misconduct);

10 (2) to file, cause to be filed, testify, participate
11 in, or otherwise assist in a proceeding or action filed
12 or about to be filed relating to an alleged violation
13 of any law, rule or regulation relating to national or
14 homeland security; or

15 (3) to refuse to violate or assist in the violation
16 of any law, rule, or regulation relating to national or
17 homeland security.

18 (b) ENFORCEMENT ACTION.—

19 (1) IN GENERAL.—A covered individual who al-
20 leges discharge or other discrimination by any per-
21 son in violation of subsection (a) may seek relief
22 under subsection (c) by—

23 (A) filing a complaint with the Secretary of
24 Labor; or

1 (B) if the Secretary has not issued a final
2 decision within 180 days after the filing of the
3 complaint and there is no showing that such
4 delay is due to the bad faith of the claimant,
5 bringing an action at law or equity for de novo
6 review in the appropriate district court of the
7 United States, which shall have jurisdiction
8 over such an action without regard to the
9 amount in controversy.

10 (2) PROCEDURE.—

11 (A) IN GENERAL.—An action under para-
12 graph (1)(A) shall be governed under the rules
13 and procedures set forth in section 42121(b) of
14 title 49, United States Code.

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

19 (C) BURDENS OF PROOF.—An action
20 brought under paragraph (1)(B) shall be gov-
21 erned by the legal burdens of proof set forth in
22 section 42121(b) of title 49, United States
23 Code.

24 (D) STATUTE OF LIMITATIONS.—An action
25 under paragraph (1) shall be commenced not

1 later than 1 year after the date on which the
2 violation occurs.

3 (c) REMEDIES.—

4 (1) IN GENERAL.—A covered individual pre-
5 vailing in any action under subsection (b)(1) shall be
6 entitled to all relief necessary to make the covered
7 individual whole.

8 (2) DAMAGES.—Relief for any action under
9 paragraph (1) shall include—

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

13 (B) the amount of any back pay, with in-
14 terest;

15 (C) compensation for any special damages
16 sustained as a result of the discrimination, in-
17 cluding litigation costs, expert witness fees, and
18 reasonable attorney fees; and

19 (D) punitive damages in an amount not to
20 exceed the greater of 3 times the amount of any
21 compensatory damages awarded under this sec-
22 tion or \$5,000,000.

23 (d) STATE SECRETS PRIVILEGE.—If, in any action
24 brought under subsection (b)(1)(B), the Government as-
25 serts as a defense the privilege commonly referred to as

1 the “state secrets privilege” and the assertion of such
2 privilege prevents the plaintiff from establishing a prima
3 facie case in support of the plaintiff’s claim, the court shall
4 enter judgment for the plaintiff and shall determine the
5 relief to be granted.

6 (e) CRIMINAL PENALTIES.—

7 (1) IN GENERAL.—It shall be unlawful for any
8 person employing a covered individual to commit an
9 act prohibited by subsection (a). Any person vio-
10 lating this paragraph shall be fined under title 18,
11 United States Code, imprisoned not more than 10
12 years, or both.

13 (2) REPORTING REQUIREMENT.—The Depart-
14 ment of Justice shall submit to Congress an annual
15 report on the enforcement of paragraph (1). Each
16 such report shall (A) identify each case in which for-
17 mal charges under paragraph (1) were brought, (B)
18 describe the status or disposition of each such case,
19 and (C) in any actions under subsection (b)(1)(B) in
20 which the covered individual was the prevailing party
21 or the substantially prevailing party, indicate wheth-
22 er or not any formal charges under paragraph (1)
23 have been brought and, if not, the reasons therefor.

24 (f) RIGHTS RETAINED BY COVERED INDIVIDUAL.—
25 Nothing in this section shall be deemed to diminish the

1 rights, privileges, or remedies of any covered individual
2 under any Federal or State law, or under any collective
3 bargaining agreement. The rights and remedies in this
4 section may not be waived by any agreement, policy, form,
5 or condition of employment.

6 (g) DEFINITIONS.—For purposes of this section—

7 (1) the term “covered individual” means an em-
8 ployee of—

9 (A) the Department of Homeland Security
10 (which, for purposes of this section, includes the
11 Transportation Security Administration);

12 (B) a Federal contractor or subcontractor;
13 and

14 (C) an employer within the meaning of sec-
15 tion 701(b) of the Civil Rights Act of 1964 (42
16 U.S.C. 2000e(b)) and who is a railroad carrier
17 or public transportation system owner or oper-
18 ator;

19 (2) the term “lawful” means not specifically
20 prohibited by law, except that, in the case of any in-
21 formation the disclosure of which is specifically pro-
22 hibited by law or specifically required by Executive
23 order to be kept secret in the interest of national de-
24 fense or the conduct of foreign affairs, any disclo-
25 sure of such information to any Member of Con-

1 gress, committee of Congress, or other recipient au-
2 thorized to receive such information, shall be deemed
3 lawful;

4 (3) the term “Federal contractor” means a per-
5 son who has entered into a contract with the De-
6 partment of Homeland Security;

7 (4) the term “employee” means—

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

11 (B) with respect to an employer referred to
12 in subparagraph (A) or (B) of paragraph (1),
13 any officer, partner, employee, or agent;

14 (5) the term “subcontractor”—

15 (A) means any person, other than the Fed-
16 eral contractor, who offers to furnish or fur-
17 nishes any supplies, materials, equipment, or
18 services of any kind under a contract with the
19 Department of Homeland Security or a sub-
20 contract entered into in connection with such a
21 contract; and

22 (B) includes any person who offers to fur-
23 nish or furnishes general supplies to the Fed-
24 eral contractor or a higher tier subcontractor;
25 and

1 (6) the term “person” means a corporation,
2 partnership, State entity, business association of any
3 kind, trust, joint-stock company, or individual.

4 (h) TERMS AND CONDITIONS.—A grant under this
5 title shall be subject to terms and conditions of section
6 5333 of title 49, United States Code.

7 **SEC. 10. INCREASE IN RAIL SECURITY INSPECTORS.**

8 (a) IN GENERAL.—The Secretary shall increase by
9 not less than 200 the number of positions for full-time
10 rail security inspectors of the Department for each of the
11 fiscal years 2007 through 2012.

12 (b) AUTHORIZATION OF APPROPRIATIONS.—There
13 are authorized to be appropriated to the Secretary to carry
14 out subsection (a) \$26,400,000 for each of the fiscal years
15 2007 through 2012.

○