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Transportation Security: Issues for the 114th Congress

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Summary

The nation's air, land, and marine transportation systems are designed for accessibility and efficiency, two characteristics that make them highly vulnerable to terrorist attack. While hardening the transportation sector from terrorist attack is difficult, measures can be taken to deter terrorists. The dilemma facing Congress is how best to construct and finance a system of deterrence, protection, and response that effectively reduces the possibility and consequences of another terrorist attack without unduly interfering with travel, commerce, and civil liberties.

Aviation security has been a major focus of transportation security policy since the terrorist attacks of September 11, 2001. In the aftermath of these attacks, the 107th Congress moved quickly to pass the Aviation and Transportation Security Act (ATSA; P.L. 107-71) creating the Transportation Security Administration (TSA) and mandating a federalized workforce of security screeners to inspect airline passengers and their baggage. Recent events, such as the destruction of a Russian passenger jet above the Sinai Peninsula on October 31, 2015, apparently by a bomb aboard the aircraft, have renewed concerns about the adequacy of passenger and cargo screening.

Until recently, TSA applied relatively uniform methods to screen airline passengers, focusing primarily on advances in screening technology to improve security and efficiency. TSA has recently shifted away from this approach, which assumes a uniform level of risk among all airline travelers, to risk-based screening approaches that focus more intensely on passengers thought to pose elevated security risks. Despite the extensive focus on aviation security over the past decade, a number of challenges remain, including

- effectively screening passengers, baggage, and cargo for explosives threats;
- developing effective risk-based methods for screening passengers and airport workers with access to aircraft and sensitive areas;
- exploiting available intelligence information and watchlists to identify individuals who pose potential threats to civil aviation;
- effectively responding to security threats at airports and screening checkpoints;
- developing effective strategies for addressing aircraft vulnerabilities to shoulder-fired missiles and other standoff weapons; and
- addressing the potential security implications of unmanned aircraft operations.

Bombings of passenger trains in Europe and Asia in the past few years illustrate the vulnerability of passenger rail systems to terrorist attacks. Passenger rail systems—primarily subway systems—in the United States carry about five times as many passengers each day as do airlines, over many thousands of miles of track, serving stations that are designed primarily for easy access. Transit security issues of recent interest to Congress include the quality of TSA's surface transportation inspector program and the slow rate at which transit and rail security grants have been expended.

Existing law mandates the scanning of all U.S.-bound maritime containers with non-intrusive inspection equipment at overseas ports of loading by July 2012. This deadline was not met, and DHS is opposed to that strategy in favor of a risk-based, layered approach to security screening. Implementation of the Transportation Worker Identification Credential (TWIC) for port and maritime workers also appears to be experiencing continuing difficulties.

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Introduction

The nation's air, land, and marine transportation systems are designed for accessibility and efficiency, two characteristics that make them vulnerable to attack. The difficulty and cost of protecting the transportation sector from attack raises a core question for policymakers: how much effort and resources to put toward protecting potential targets versus pursuing and fighting terrorists. While hardening the transportation sector from terrorist attack is difficult, measures can be taken to deter terrorists. The focus of debate is how best to construct and finance a system of deterrence, protection, and response that effectively reduces the possibility and consequences of another terrorist attack without unduly interfering with travel, commerce, and civil liberties.

For all modes of transportation, one can identify four principal policy objectives that would support a system of deterrence and protection: (1) ensuring the trustworthiness of the passengers and the cargo flowing through the system, (2) ensuring the trustworthiness of the transportation workers who operate and service the vehicles, assist the passengers, or handle the cargo, (3) ensuring the trustworthiness of the private companies that operate in the system, such as the carriers, shippers, agents, and brokers, and (4) establishing a perimeter of security around transportation facilities and vehicles in operation. The first three policy objectives are concerned with preventing an attack from within a transportation system, such as occurred on September 11, 2001. The concern is that attackers could once again disguise themselves as legitimate passengers (or shippers or workers) to get in position to launch an attack.

The fourth policy objective is concerned with preventing an attack from outside a transportation system. For instance, terrorists could ram a bomb-laden speedboat into an oil tanker, as was done in October 2002 to the French oil tanker *Limberg*, or they could fire a shoulder-fired missile at an airplane taking off or landing, as was attempted in November 2002 against an Israeli charter jet in Mombasa, Kenya. Achieving all four of these objectives is difficult, at best, and in some modes, is practically impossible. Where limited options exist for preventing an attack, policymakers are left with evaluating options for minimizing the consequences from an attack, without imposing unduly burdensome requirements.

Aviation Security[1]

Following the 9/11 terrorist attacks, Congress took swift action to create the Transportation Security Administration (TSA), federalizing all airline passenger and baggage screening functions and deploying significantly increased numbers of armed air marshals on commercial passenger flights. To this day, the federalization of airport screening remains controversial. For example, Representative Bill Shuster, chairman of the House Transportation and Infrastructure Committee, contended that, in hindsight, the decision to create TSA as a federal agency functionally responsible for passenger and baggage screening was a "big mistake," and that frontline screening responsibilities should have been left in the hands of private security companies.[2] While airports have the option of opting out of federal screening, alternative private screening under TSA contracts has been limited to 21 airports out of approximately 450 commercial passenger airports where passenger screening is required.[3] While Congress has sought to ensure that optional private

[1] This section was prepared by Bart Elias, Specialist in Aviation Policy.

[2] Keith Laing, "GOP Chairman: TSA was a 'big mistake,'" *The Hill*, March 18, 2015, http://thehill.com/policy/transportation/236130-gop-rep-creating-tsa-was-a-mistake.

[3] Transportation Security Administration, *Screening Partnership Program*, http://www.tsa.gov/stakeholders/screening-partnership-program.

screening remains available for those airports that want to pursue this option, proposals seeking more extensive reforms of passenger screening have not been extensively debated. Rather, aviation security legislation in the aftermath of the 9/11 attacks has largely focused on specific mandates to comprehensively screen for explosives and carry out background checks and threat assessments.

Despite the extensive focus on aviation security for more than a decade, a number of challenges remain, including

- effectively screening passengers, baggage, and cargo for explosives threats;
- developing effective risk-based methods for screening passengers and others with access to aircraft and sensitive areas;
- exploiting available intelligence information and watchlists to identify individuals who pose potential threats to civil aviation;
- effectively responding to security threats at airports and screening checkpoints;
- developing effective strategies for addressing aircraft vulnerabilities to shoulder-fired missiles and other standoff weapons; and
- addressing the potential security implications of unmanned aircraft operations in domestic airspace.

Explosives Screening Strategy for the Aviation Domain

Prior to the 9/11 attacks, explosives screening in the aviation domain was limited in scope and focused on selective screening of checked baggage placed on international passenger flights. Immediately following the 9/11 attacks, the Aviation and Transportation Security Act (ATSA; P.L. 107-71) mandated 100% screening of all checked baggage placed on domestic passenger flights and on international passenger flights to and from the United States.

In addition, the Implementing the 9/11 Commission Recommendations Act of 2007 (P.L. 110-53) mandated the physical screening of all cargo placed on passenger flights. Unlike passenger and checked baggage screening, TSA does not routinely perform physical inspections of air cargo. Rather, TSA satisfies this mandate through the Certified Cargo Screening Program. Under the program, manufacturers, warehouses, distributors, freight forwarders, and shippers carry out screening inspections using TSA-approved technologies and procedures both at airports and at off-airport facilities in concert with certified supply-chain security measures and chain of custody standards. Internationally, TSA works with other governments, international trade organizations, and industry to assure that all U.S.-bound and domestic cargo carried aboard passenger aircraft meets the requirements of the mandate.

Additionally, TSA works closely with Customs and Border Protection (CBP) to carry out risk-based targeting of cargo shipments, including use of the CBP Advance Targeting System-Cargo (ATS-C), which assigns risk-based scores to inbound air cargo shipments to identify shipments of elevated risk. Originally designed to combat drug smuggling, ATS-C has evolved and adapted over the years, particularly in response to the October 2010 cargo aircraft bomb plot that originated in Yemen, to assess shipments for explosives threats or other terrorism-related activities.

Given the focus on the threats to aviation posed by explosives, a significant focus of TSA acquisition efforts has been on explosives screening technologies. However, in 2014, Congress found that TSA has continued to face numerous challenges in meeting key performance requirements set for explosives detection, has only recently developed a technology investment

plan, and has not consistently implemented Department of Homeland Security (DHS) policy and best practices for procurement.[4] The Transportation Security Acquisition Reform Act (P.L. 113-245) seeks to address these concerns by requiring a five-year technology investment plan, and to increase accountability for acquisitions through formal justifications and certifications that technology investments are cost-beneficial. The act also requires tighter inventory controls and processes to ensure efficient utilization of procured technologies, as well as improvements in setting and attaining goals for small-business contracting opportunities.

A major thrust of TSA's acquisition and technology deployment strategy is improving the capability to detect concealed explosives and bomb-making components carried by airline passengers. On December 25, 2009, a passenger attempted to detonate an explosive device concealed in his underwear aboard Northwest Airlines flight 253 during its approach to Detroit, MI. Al Qaeda in the Arabian Peninsula claimed responsibility. Al Qaeda and its various factions have maintained a particular interest in attacking U.S.-bound airliners. Since 9/11, Al Qaeda has also been linked to the Richard Reid shoe bombing incident aboard American Airlines flight 63 en route from Paris to Miami on December 22, 2001, a plot to bomb several trans-Atlantic flights departing the United Kingdom for North America in 2006, and the October 2010 plot to detonate explosives concealed in air cargo shipments bound for the United States. The October 31, 2015, downing of a Russian passenger airliner departing Sharm el-Sheikh, Egypt, reportedly following the explosion of a bomb aboard the aircraft,[5] has renewed concerns over capabilities to detect explosives in baggage and cargo and monitoring of airport workers with access to aircraft, particularly overseas.

In response to the Northwest Airlines flight 253 incident, the Obama Administration accelerated deployment of Advanced Imaging Technology (AIT) whole body imaging (WBI) screening devices and other technologies at passenger screening checkpoints. This deployment responds to the 9/11 commission recommendation to improve the detection of explosives on passengers.[6] In addition to AIT, next generation screening technologies for airport screening checkpoints include advanced technology X-ray systems for screening carry-on baggage, bottled liquids scanners, cast and prosthesis imagers, shoe scanning devices, and portable explosives trace detection equipment.

The use of AIT has raised a number of policy questions. Privacy advocates have objected to the intrusiveness of AIT, particularly if used for primary screening.[7] To allay privacy concerns, TSA eliminated the use of human analysis of AIT images, and does not store imagery. In place of human image analysts, TSA has deployed automated threat detection capabilities using automated targeting recognition (ATR) software. Another concern raised about AIT centered on the potential medical risks posed by backscatter X-ray systems, but those systems are no longer in use for airport screening, and current millimeter wave systems emit nonionizing millimeter waves not considered harmful. More recently, the effectiveness of AIT and ATR has been brought into question. In 2015, the DHS Office of Inspector General (OIG) completed convert testing of passenger screening checkpoint technologies and processes to evaluate the effectiveness of AIT and ATR.[8] In testimony, DHS Inspector General John Roth revealed that the covert testing

[4] See P.L. 113-245.

[5] Andrew Roth, "Russia: Terrorist Attack Brought Down Jetliner over Sinai," *Washington Post*, November 18, 2015, p. A8.

[6] National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report*, New York, NY: W. W. Norton & Co., 2004.

[7] See, e.g., American Civil Liberties Union. ACLU Backgrounder on Body Scanners and "Virtual Strip Searches," New York, NY, January 8, 2010.

[8] Department of Homeland Security, Office of Inspector General, *DHS OIG Highlights: Covert Testing of the* (continued...)

consistently found failures in technology and procedures coupled with human error that allowed prohibited items to pass into secure areas.[9]

Even prior to the revelations of weaknesses in passenger checkpoint screening technologies and procedures, the use of AIT was controversial. Past legislative proposals specifically sought to prohibit the use of WBI technology for primary screening (see, for example, H.R. 2200, 111th Congress). Primary screening using AIT is now commonplace at larger airports, but checkpoints at many smaller airports have not been furnished with AIT equipment and other advanced checkpoint detection technologies. This raises questions about TSA's long-range plans to expand AIT to ensure more uniform approaches to explosives screening across all categories of airports.

Through FY2014, TSA had deployed about 750 AIT units, roughly 86% of its projected full operating capability of 870 units. Full operating capability, once achieved, will still leave many smaller airports without this capability. TSA plans to manage this risk to a large extent through risk-based passenger screening measures, primarily through increased use of voluntary passenger background checks under the PreCheck trusted traveler program. However, this program, likewise, has not been rolled out at many smaller airports: currently, the program's incentive of expedited screening is offered at less than one-third of all commercial passenger airports.

Risk-Based Passenger Screening

TSA has initiated a number of risk-based screening initiatives to focus its resources and apply directed measures based on intelligence-driven assessments of security risk. These include PreCheck; modified screening procedures for children 12 and under; and a program for expedited screening of known flight crew and cabin crew members. Programs have also been developed for modified screening of elderly passengers similar to those procedures put in place for children.

A cornerstone of TSA's risk-based initiatives is the PreCheck program. PreCheck is TSA's latest version of a trusted traveler program that has been modeled after CBP programs such as Global Entry, SENTRI, and NEXUS. Under the PreCheck program, participants vetted through a background check process are processed through expedited screening lanes where they can keep shoes on and keep liquids and laptops inside carry-on bags. As of March 2015, PreCheck expedited screening lanes were available at more than 130 airports. The cost of background checks under the PreCheck program is recovered through application fees of $85 per passenger for a five-year membership. TSA's goal is to process 50% of passengers through PreCheck expedited screening lanes, thus reducing the need for standard security screening lanes.

A predecessor test program, called the Registered Traveler program, which involved private vendors that issued and scanned participants' biometric credentials, was scrapped by TSA in 2009 because it failed to show a demonstrable security benefit. Although initial evaluations and consumer response have suggested that PreCheck offers an effective, streamlined screening process, some questions remain regarding whether PreCheck is fully effective in directing security resources to unknown or elevated-risk travelers. While questions remain regarding the security effectiveness of risk-based screening measures like PreCheck, these approaches have demonstrated improved screening efficiency, resulting in cost savings for TSA. TSA estimates

(...continued)

Transportation Security Administration's Passenger Screening Technologies and Processes at Airport Security Checkpoints, OIG-15-150, September 22, 2015.

[9] Statement of John Roth, Inspector General, Department of Homeland Security, Before the Committee on Oversight and Government Reform, U.S. House of Representatives, Concerning TSA: Security Gaps, November 3, 2015.

annual savings in screener workforce costs totaling $110 million as a result of risk-based screening efficiencies.[10]

One concern raised over PreCheck, and the passenger screening process in general, is the public dissemination of instructions, posted on Internet sites, detailing how to decipher boarding passes to determine whether a passenger has been selected for expedited screening, standard screening, or more thorough secondary screening. The lack of encryption and the limited capability TSA has to authenticate boarding passes and travel documents could be exploited to attempt to avoid detection of threat items by more extensive security measures. Other concerns raised over the PreCheck program include the lack of biometric identity authentication and the extensive use of a program called "managed inclusion" to route selected travelers not enrolled in the PreCheck program through designated PreCheck expedited screening lanes. The Government Accountability Office (GAO) found that TSA had not fully tested its managed inclusion practices, and recommended that TSA take steps to ensure and document that testing of the program adheres to established evaluation design practices.[11]

TSA began phasing out the managed inclusion program in the fall of 2015. Since September 2015, TSA behavior detection officers (BDOs) and explosives trace detection personnel no longer direct passengers not enrolled in PreCheck to expedited screening lanes. Selections based on evaluations by canine explosives detection teams continue, but TSA is moving toward only offering expedited screening to PreCheck program enrollees.[12]

In addition to passenger screening, TSA, in coordination with participating airlines and labor organizations representing airline pilots, has developed a known crewmember program to expedite security screening of airline flight crews.[13] In July 2012, TSA expanded the program to include flight attendants.[14]

TSA has also developed a passenger behavior detection program to identify potential threats based on observed behavioral characteristics. TSA initiated early tests of its Screening Passengers by Observational Techniques (SPOT) program in 2003. By FY2012, the program deployed almost 3,000 BDOs at 176 airports, at an annual cost of about $200 million. Despite its significant expansion, questions remain regarding the effectiveness of the behavioral detection program, and privacy advocates have cautioned that it could devolve into racial or ethnic profiling of passengers despite concerted efforts to focus solely on behaviors rather than individual passenger traits or characteristics. While some Members of Congress have sought to shutter the program, Congress has not moved to do so. For example, H.Amdt. 127 (113th Congress), an amendment to the FY2014 DHS appropriations measure that sought to eliminate funding for the program, failed to pass a floor vote.[36] Congress also has not taken specific action

[10] Department of Homeland Security, Transportation Security Administration, Fiscal Year 2016 Congressional Justification, Aviation Security.

[11] U.S. Government Accountability Office, *Aviation Security: Rapid Growth in Expedited Passenger Screening Highlights Need to Plan Effective Security Assessments*, GAO-15-150, December 2014.

[12] "TSA Explains Confusion over PreCheck Policies," *TravelSkills*, September 23, 2015, http://travelskills.com/2015/09/23/tsa-explains-confusion-over-precheck-policies/.

[13] See http://www.knowncrewmember.org/Pages/Home.aspx.

[14] Transportation Security Administration, *Press Release: U.S. Airline Flight Attendants to Get Expedited Airport Screening in Second Stage of Known Crewmember Program*, Friday, July 27, 2012, http://www.tsa.gov/press/releases/2012/07/27/us-airline-flight-attendants-get-expedited-airport-screening-second-stage.

to revamp the program, despite the concerns raised by GAO and the DHS Office of Inspector General.[15]

In the broad context of risk-based passenger screening, TSA policies and procedures regarding prohibited items, including current limitations on the carriage of carry-on liquids, may also be issues of particular interest for congressional oversight for the 114th Congress. In November 2014, former TSA Administrator John Pistole suggested that restrictions on liquids and gels should be relaxed for PreCheck participants.[16] On November 17, 2015, the House passed the Partners for Aviation Security Act (H.R. 3144). The bill would require TSA to consult with the Aviation Security Advisory Committee, comprising aviation industry representatives, regarding any contemplated modifications to the prohibited items list. The bill would also require the Transportation Security Oversight Board within DHS to provide certain congressional oversight committees with details on its composition, meetings held, and activities undertaken.

The Use of Terrorist Watchlists in the Aviation Domain

The failed bombing attempt of Northwest Airlines flight 253 on December 25, 2009, raised policy questions regarding the effective use of terrorist watchlists and intelligence information to identify individuals who may pose a threat to aviation. Specific failings to include the bomber on either the no-fly or selectee list, despite intelligence information suggesting that he posed a security threat, prompted reviews of the intelligence analysis and terrorist watchlisting processes. Adding to these concerns, on the evening of May 3, 2010, Faisal Shazad, a suspect in an attempted car bombing in New York's Times Square, was permitted to board an Emirates Airline flight to Dubai at the John F. Kennedy International airport, even though his name had been added to the no-fly list earlier in the day. He was subsequently identified, removed from the aircraft, and arrested after the airline forwarded the final passenger manifest to CBP's National Targeting Center just prior to departure.[17] Subsequently, TSA modified security directives to require airlines to check passenger names against the no-fly list within two hours of being electronically notified of an urgent update, instead of allowing 24 hours to recheck the list. The event also accelerated the transfer of watchlist checks from the airlines to TSA under the Secure Flight program.

In November 2010, DHS announced that 100% of passengers flying to or from U.S. airports are being vetted using the Secure Flight system.[18] Secure Flight continues the no-fly and selectee list practices of vetting passenger name records against a subset of the Terrorist Screening Database (TSDB). On international flights, Secure Flight operates in coordination with the use of watchlists by CBP's National Targeting Center - Passenger, which relies on the Advance Passenger Information System (APIS) and other tools to vet both inbound and outbound passenger manifests. In addition to these systems, TSA conducts risk-based analysis of passenger data

[15] U.S. Government Accountability Office, *Aviation Security: TSA Should Limit Future Funding for Behavior Detection Activities*, GAO-14-159, November 2013; Department of Homeland Security, Office of Inspector General, *Transportation Security Administration's Screening of Passengers by Observation Techniques (Redacted)*, OIG-13-91, Washington, DC, May 29, 2013; Department of Homeland Security, Statement of Charles K. Edwards, Deputy Inspector General, Before the United States House of Representatives, Committee on Homeland Security, Subcommittee on Transportation Security, November 13, 2013.

[16] Mary Forgione, "Existing TSA Director Wants to Ease Liquids Ban for Some Passengers," *Los Angeles Times*, November 17, 2014, http://www.latimes.com/travel/deals/la-trb-tsa-airport-screening-20141114-story.html.

[17] Scott Shane, "Lapses Allowed Suspect to Board Plane," *New York Times*, May 4, 2010.

[18] Department of Homeland Security, "DHS Now Vetting 100 Percent of Passengers On Flights Within Or Bound For U.S. Against Watchlists," Press Release, November 30, 2010.

carried out by the airlines through use of the Computer-Assisted Passenger Prescreening System (CAPPS). In January 2015, TSA gave notification that it would start incorporating the results of CAPPS assessments, but not the underlying data used to make such assessments, into Secure Flight, along with each passenger's full name, date of birth and PreCheck traveler number (if applicable). These data are used within the Secure Flight system to perform risk-based analyses to determine whether passengers receive expedited, standard, or enhanced screening at airport checkpoints.[19]

Central issues surrounding the use of terrorist watchlists in the aviation domain that may be considered during the 114th Congress include the speed with which watchlists are updated as new intelligence information becomes available; the extent to which all information available to the federal government is exploited to assess possible threats among passengers and airline and airport workers; the ability to detect identity fraud or other attempts to circumvent terrorist watchlist checks; the adequacy of established protocols for providing redress to individuals improperly identified as potential threats; and the adequacy of coordination with international partners.[20] In addition, there has been a growing interest in finding better ways to utilize watchlists to prevent terrorist travel, particularly travel of radicalized individuals seeking to join forces with foreign terrorist organizations such as the Islamic State of Iraq and Syria (ISIS). H.R. 48, for example, would require a review of the TSDB and TSA watchlists to determine whether known or suspected members of foreign terrorist organizations that pose a threat to aviation or national security are included and can be identified if they seek to board a U.S.-bound or domestic flight.

Security Response to Incidents at Screening Checkpoints

On November 1, 2013, a lone gunman targeting TSA employees fired several shots at a screening checkpoint at Los Angeles International Airport (LAX), killing one TSA screener and injuring two other screeners and one airline passenger. The incident raised concerns about the ability of TSA and airport security officials to mitigate and respond to such threats. In a detailed post-incident action report, TSA identified several proposed actions to improve checkpoint security, including enhanced active shooter incident training for screeners; better coordination and dissemination of information regarding incidents; expansion and routine testing of alert notification capabilities; and expanded law enforcement presence at checkpoints during peak times. TSA did not recommend mandatory law enforcement presence at checkpoints, and did not support proposals to arm certain TSA employees or provide screeners with bulletproof vests.

The Gerardo Hernandez Airport Security Act of 2015 (P.L. 114-50), named in honor of the TSA screener killed in the LAX incident and enacted in September 2015, addresses security incident response at airports. It requires airports to put in place working plans for responding to security incidents including terrorist attacks, active shooters, and incidents targeting passenger checkpoints. Such plans must include details on evacuation, unified incident command, testing and evaluation of communications, time frames for law enforcement response, and joint exercises and training at airports. Additionally, the act requires TSA to create a mechanism for sharing information among airports regarding best practices for airport security incident planning,

[19] Department of Homeland Security, Transportation Security Administration, "Privacy Act of 1974; Department of Homeland Security Transportation Security Administration-DHS/TSA-019 Secure Flight Records System of Records," 80 *Federal Register* 233-239, January 5, 2015.

[20] For additional information see CRS Report RL33645, *Terrorist Watchlist Checks and Air Passenger Prescreening*, by William J. Krouse and Bart Elias, available upon request.

management, and training. It also requires TSA to identify ways to expand the availability of funding for checkpoint screening law enforcement support through cost savings from improved efficiencies.

Mitigating the Threat of Shoulder-Fired Missiles to Civilian Aircraft

The threat to civilian aircraft posed by shoulder-fired missiles or other standoff weapons capable of downing an airliner remains a vexing concern for aviation security specialists and policymakers. The State Department has estimated that, since the 1970s, over 40 civilian aircraft have been hit by shoulder-fired missiles, causing 25 crashes and more than 600 deaths. Most of these incidents involved small aircraft operated at low altitudes in areas of ongoing armed conflicts, although some larger jets have also been destroyed. Notably, on April 6, 1994, an executive jet carrying the presidents of Rwanda and Burundi was shot down while on approach to Kigali, Rwanda, and on October 10, 1998, a Boeing 727 was destroyed by rebels in the Democratic Republic of Congo. The dangers of operating civil aircraft in and near regions of armed conflict has recently been a topic of particular concern following the July 17, 2014, downing of Malaysia Airlines Flight 17, a Boeing 777, over eastern Ukraine after being struck by a much larger surface-to-air missile.

The terrorist threat posed by small man-portable shoulder-fired missiles was brought into the spotlight soon after the 9/11 terrorist attacks by the November 2002 attempted downing of a chartered Israeli airliner in Mombasa, Kenya, the first such event outside of a conflict zone. In 2003, then Secretary of State Colin Powell remarked that there was "no threat more serious to aviation."[21] Since then, Department of State and military initiatives seeking bilateral cooperation and voluntary reductions of man-portable air defense systems (MANPADS) stockpiles had reduced worldwide inventories by at least 32,500 missiles.[22] Despite this progress, such weapons may still be in the hands of terrorist organizations. Conflicts in Libya and Syria have renewed concerns that large military stockpiles of these weapons may be proliferated to radical insurgent groups like Ansar al-Sharia in Libya, Al Qaeda in the Islamic Maghreb (AQIM), and the Islamic State in Iraq and Syria (ISIS).[23] This threat, combined with the limited capability to improve security beyond airport perimeters and to modify flight paths, leaves civil aircraft vulnerable to missile attacks, particularly in and near conflict zones.

The most visible DHS initiative to address the threat was the multiyear Counter-MANPADS program carried out by the DHS Science & Technology Directorate. The program concluded in 2009 with extensive operational and live-fire testing along with Federal Aviation Administration (FAA) certification of two systems capable of protecting airliners against heat-seeking missiles. The systems have not been operationally deployed on commercial airliners, however, due largely to high acquisition and life-cycle costs. Some critics have also pointed out that the units do not

[21] Katie Drummond, "Where Have All the MANPADS Gone?," *Wired*, February 22, 2010.

[22] Ibid.; U.S. Department of State, Bureau of Political-Military Affairs, *MANPADS: Combating the Threat to Global Aviation from Man-Portable Air Defense System*, July 27, 2011, http://www.state.gov/t/pm/rls/fs/169139.htm.

[23] See Andrew J. Shapiro, Assistant Secretary, Bureau of Political-Military Affairs, U.S. Department of State, *Addressing the Challenge of MANPADS Proliferation*, Remarks, Stimson Center, Washington, DC, February 2, 2012, http://www.state.gov/t/pm/rls/rm/183097.htm; Thomas Gibbons-Neff, "Islamic State Might Have Taken Advanced MANPADS from Syrian Airfield," *Washington Post*, August 24, 2014; Sharyl Attkisson, "Thousands of Libyan Missiles from Qaddafi Era Missing in Action," *CBS News*, March 25, 2013, http://www.cbsnews.com/news/thousands-of-libyan-missiles-from-qaddafi-era-missing-in-action/.

protect against the full range of potential weapons that pose a potential threat to civil airliners. Proponents, however, argue that the systems do appear to provide effective protection against what is likely the most menacing standoff threat to civil airliners: heat-seeking MANPADS. Nonetheless, the airlines have not voluntarily invested in these systems for operational use, and argue that the costs for such systems should be borne, at least in part, by the federal government. Policy discussions have focused mostly on whether to fund the acquisition of limited numbers of the units for use by the Civil Reserve Aviation Fleet, civilian airliners that can be called up to transport troops and supplies for the military. Other approaches to protecting aircraft, including ground-based missile countermeasures and escort planes or drones equipped with antimissile technology, have been considered on a more limited basis, but these options face operational challenges that may limit their effectiveness.

While MANPADS are mainly seen as a security threat to civil aviation overseas, a MANPADS attack in the United States could have a considerable impact on the airline industry. At the airport level, reducing the vulnerability of flight paths to potential MANPADS attacks continues to pose unique challenges. While major U.S. airports have conducted vulnerability studies, and many have partnered with federal, state, and local law enforcement agencies to reduce vulnerabilities to some degree, these efforts face significant challenges because of limited resources and large geographic areas where aircraft are vulnerable to attack. While considerable attention has been given to this issue in years past, considerable vulnerabilities remain, and any terrorist attempts to exploit those vulnerabilities could quickly escalate the threat of shoulder-fired missiles to a major national security priority.

Security Issues Regarding the Operation of Unmanned Aircraft[24]

Provisions in the FAA Modernization and Reform Act of 2012 (P.L. 112-95) require that FAA take steps by the end of FY2015 to accommodate routine operation of unmanned aircraft systems (UASs, widely referred to as "drones") in domestic airspace. The operation of civilian UASs in domestic airspace raises potential security risks, including the possibility that terrorists could use a drone to carry out an attack against a ground target. It is also possible that drones themselves could be targeted by terrorists or cybercriminals seeking to tap into sensor data transmissions or to cause mayhem by hacking or jamming command and control signals.

Terrorists could potentially use drones to carry out small-scale attacks using explosives, or as platforms for chemical, biological, or radiological attacks. In September 2011, the Federal Bureau of Investigation disrupted a homegrown terrorist plot to attack the Pentagon and the Capitol with large model aircraft packed with high explosives. The incident heightened concern about potential terrorist attacks using unmanned aircraft. Widely publicized drone incidents, including an unauthorized flight at a political rally in Dresden, Germany, in September 2013 that came in close proximity to German Chancellor Angela Merkel; a January 2015 crash of a small hobby drone on the White House lawn in Washington, DC; and a series of unidentified drone flights over landmarks and sensitive locations in Paris, France, in 2015, have raised additional concerns about security threats posed by small unmanned aircraft. Domestically, there have been numerous reports of drones flying in close proximity to airports and manned aircraft, in restricted airspace, and over stadiums and outdoor events. The payload capacities of small unmanned aircraft would

[24] Prepared by Bart Elias, Specialist in Aviation Policy, belias@crs.loc.gov, 7-7771; Jeremiah Gertler, Specialist in Military Aviation, jgertler@crs.loc.gov, 7-5107; and Richard M. Thompson II, Legislative Attorney, rthompson@crs.loc.gov, 7-8449.

limit the damage a terrorist attack using conventional explosives could inflict, but drone attacks using chemical, biological, or radiological weapons could be more serious.

An FAA proposal for regulating small unmanned aircraft used for commercial purposes would require TSA to carry out threat assessments of certificated operators as it does for civilian pilots.[25] However, this requirement would not apply to recreational users, who are already permitted to operate small drones at low altitudes. Moreover, while FAA has issued general guidance to law enforcement regarding unlawful UAS operations,[26] it is not clear that law enforcement agencies have sufficient training to respond to this emerging threat.[27]

Technology may help manage security threats posed by unmanned aircraft. Integrating tracking mechanisms as well as incorporating "geo-fencing" capabilities, designed to prevent flights over sensitive locations or in excess of certain altitude limits, into unmanned aircraft systems may help curtail unauthorized flights.[28]

Routine operations of unmanned aircraft by homeland security and law enforcement agencies and others may be vulnerable to jamming or hacking that could result in a crash or hostile takeover, as command and control systems typically use unsecured radio frequencies. Some have recommended that that unmanned aircraft systems be required to have spoof-resistant navigation systems and not be solely reliant on signals from global positioning systems, which can be easily jammed.[29] While TSA has broad statutory authority to address a number of aviation security issues, it has not formally addressed the potential security concerns arising from unmanned aircraft operations in domestic airspace.

While unmanned aircraft may pose security risks, they are also a potential asset for homeland security operations, particularly for CBP border surveillance. CBP currently employs a fleet of 10 modified Predator UASs, and has plans to acquire another 14, to augment its border-patrol capabilities. Operating within specially designated airspace, these unarmed UASs patrol the northern and southern land borders and the Gulf of Mexico to detect potential border violations and monitor suspected drug trafficking, with UAS operators cuing manned responses when appropriate. State and local governments have expressed interest in operating UASs for missions as diverse as traffic patrol, surveillance, and event security. A small but growing number of state and local agencies have acquired drones, some through federal grant programs, and have been issued special authorizations by FAA to fly them. However, many federal, state, and local agencies involved in law enforcement and homeland security appear to be awaiting more specific

[25] Federal Aviation Administration, "Operation and Certification of Small Unmanned Aircraft Systems; Proposed Rule," 80 *Federal Register* 9544-9590, February 23, 2015.

[26] Federal Aviation Administration, *Law Enforcement Guidance for Suspected Unauthorized UAS Operations*, http://www.faa.gov/uas/regulations_policies/media/FAA_UAS-PO_LEA_Guidance.pdf.

[27] Statement of Chief Richard Beary, President of the International Association of Chiefs of Police, Subcommittee on Oversight and Management Efficiency, Committee on Homeland Security, United States House of Representatives, March 18, 2015.

[28] See, e.g., Todd Humphreys, "Statement on the Security Threat Posed by Unmanned Aerial Systems and Possible Countermeasures," Submitted to the Subcommittee on Oversight and Management Efficiency, House Committee on Homeland Security, March 16, 2015.

[29] Todd Humphreys, "Statement on the Vulnerability of Civil Unmanned Aerial Vehicles and Other Systems to Civil GPS Spoofing," Submitted to the Subcommittee on Oversight, Investigations, and Management of the House Committee on Homeland Security, July 19, 2012; U.S. Government Accountability Office, "Unmanned Aircraft Systems: Use in the National Airspace System and the Role of the Department of Homeland Security," Statement of Gerald L. Dillingham, Ph.D., Director, Physical Infrastructure Issues, Before the Subcommittee on Oversight, Investigations, and Management, Committee on Homeland Security, House of Representatives, July 19, 2012, GAO-12-889T.

guidance from FAA regarding the routine operation of public-use unmanned aircraft in domestic airspace.

The introduction of drones into domestic surveillance operations presents a host of novel legal issues related to an individual's fundamental privacy interest protected under the Fourth Amendment.[30] To determine if certain government conduct constitutes a search or seizure under that amendment, courts apply an array of tests (depending on the nature of the government action), including the widely used reasonable expectation of privacy test. When applying these tests to drone surveillance, a reviewing court will likely examine the location of the search, the sophistication of the technology used, and society's conception of privacy. For instance, while individuals are accorded substantial protections against warrantless government intrusions into their homes,[31] the Fourth Amendment offers fewer restrictions upon government surveillance occurring in public places,[32] and even fewer at national borders.[33] Likewise, drone surveillance conducted with relatively unsophisticated technology might be subjected to a lower level of judicial scrutiny than investigations conducted with advanced technologies such as thermal imaging or facial recognition. Several measures introduced in Congress would require government agents to obtain warrants before using drones for domestic surveillance, but would create exceptions for patrols of the national borders used to prevent or deter illegal entry and for investigations of credible terrorist threats.[34]

Aviation Cybersecurity

There is growing concern over cybersecurity threats to aircraft, air traffic control systems, and airports. Executive Order 13636 provides broad guidance for DHS to work with the Federal Aviation Administration (FAA) to identify cybersecurity risks, establish voluntary cybersecurity measures, and share information on cybersecurity threats within the broader cybersecurity framework. Additionally, 49 U.S.C. §44912 specifically directs TSA to periodically review threats to civil aviation with a particular focus on specified threats including the potential disruption of civil aviation service resulting from a cyberattack.

TSA has indicated that its approach to cybersecurity thus far has not been through regulation, but rather through voluntary collaboration with industry. Under this framework, TSA formed the Transportation Systems Sector Cybersecurity Working Group, which created a cybersecurity strategy for the transportation sector in 2012.[35] Also, in coordination with the Federal Bureau of Investigation (FBI) and industry partners, TSA launched the Air Domain Intelligence Integration Center and an accompanying analysis center in 2014 to share information and conduct analysis of cyberthreats to civil aviation.[36]

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[30] See CRS Report R42701, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses*, by Richard M. Thompson II.

[31] See the U.S. Supreme Court decision in *Kyllo v. United States*, 533 U.S. 27 (2001).

[32] See *California v. Ciraolo*, 476 U.S. 207, 213 ("[W]hat a person knowingly exposes to the public ... is not a subject of Fourth Amendment protection") (quoting Katz v. United States, 389 U.S. 347, 351 (1967)).

[33] See, e.g., *United States v. Flores-Montano*, 541 U.S. 149, 152 (2004) ("The Government's interest in preventing the entry of unwanted persons and effects is at its zenith at the international border").

[34] See, e.g., H.R. 1229, H.R. 1385, S. 635.

[35] Department of Homeland Security, "Executive Order 13636—Improving Critical Infrastructure Cyberecurity, Section 10(b) Report: TSA's Approach to Voluntary Industry Adoption of the NIST Cybersecurity Framework," http://www.dhs.gov/sites/default/files/publications/ExecutiveOrder_13636Sec10%28b%29Reportv5.pdf.

[36] Rachael King, "Aviation Industry and Government to Share Cyber Threats in New Intelligence Center," *Wall Street* (continued...)

In recognition of those threats, FAA has developed a software assurance policy for all FAA-owned and FAA-controlled information systems.[37] However, according to an April 2015 GAO report, while FAA has taken steps to protect air traffic control systems from cyberthreats, it lacks a formal cybersecurity threat model. Moreover, GAO found that FAA faces continuing challenges in mitigating cyberthreats, particularly as it transforms air traffic control systems under its NextGen modernization initiative.[38]

For systems onboard aircraft, FAA requires security and integrity to be addressed in the airworthiness certification process. In other words, under the existing regulatory framework for aircraft certification, cybersecurity risks must be satisfactorily mitigated. Large commercial aircraft and aviation systems manufacturers now typically collaborate with software security companies in order to attain high levels of assurance for software embedded in avionics equipment, but these approaches are still evolving. Despite efforts to design aircraft systems to be resilient to cyberthreats, in April 2015, TSA and the FBI issued warnings that the increasing interconnectedness of these systems makes them vulnerable to unauthorized access and advised airlines to lookout for individuals trying to tap into aircraft electronics and for any evidence of tampering or network intrusions.[39]

While FAA separately addresses cybersecurity of government-owned air traffic control systems and certified aircraft systems, GAO has cautioned that FAA's current approach to cybersecurity does not adequately address the interdependencies between aircraft and air traffic systems, and consequently may hinder efforts to develop a comprehensive and coordinated strategy.[40] While it identified no easy fix, GAO recommended that FAA develop a comprehensive cybersecurity threat model, better clarify cybersecurity roles and responsibilities, improve management security controls and contractor oversight, and fully incorporate National Institute of Standards and Technology information security guidance throughout the system life cycle.

Transit and Passenger Rail Security[41]

Bombings of and shootings on passenger trains in Europe and Asia have illustrated the vulnerability of passenger rail systems to terrorist attacks. Passenger rail systems—primarily subway systems—in the United States carry about five times as many passengers each day as do airlines, over many thousands of miles of track, serving stations that are designed primarily for easy access. The increased security efforts around air travel have led to concerns that terrorists may turn their attention to "softer" targets, such as transit or passenger rail. A key challenge Congress faces is balancing the desire for increased rail passenger security with the efficient

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Journal CIO Journal, April 15, 2014, http://blogs.wsj.com/cio/2014/04/15/aviation-industry-and-government-to-share-cyberthreats-in-new-intelligence-center/.

[37] Federal Aviation Administration, "Order 1370.109: National Policy, Software Assurance Policy," effective October 23, 2009.

[38] Government Accountability Office, *Air Traffic Control: FAA Needs a More Comprehensive Approach to Address Cybersecurity As Agency Transitions to NextGen*, GAO-15-370, April 2015.

[39] Kim Zetter, "Feds Warn Airlines to Look Out for Passengers Hacking Jets," *Wired*, April 21, 2015, http://www.wired.com/2015/04/fbi-tsa-warn-airlines-tampering-onboard-wifi/.

[40] Government Accountability Office, *Air Traffic Control: FAA Needs a More Comprehensive Approach to Address Cybersecurity As Agency Transitions to NextGen*, GAO-15-370, April 2015.

[41] This section was prepared by David Randall Peterman, Analyst in Transportation Policy.

functioning of transit systems, with the potential costs and damages of an attack, and with other federal priorities.

The volume of ridership and number of access points make it impractical to subject all rail passengers to the type of screening all airline passengers undergo. Consequently, transit security measures tend to emphasize managing the consequences of an attack. Nevertheless, steps have been taken to try to reduce the risks, as well as the consequences, of an attack. These include vulnerability assessments; emergency planning; emergency response training and drilling of transit personnel (ideally in coordination with police, fire, and emergency medical personnel); increasing the number of transit security personnel; installing video surveillance equipment in vehicles and stations; and conducting random inspections of bags, platforms, and trains.

The challenges of securing rail passengers are dwarfed by the challenge of securing bus passengers. There are some 76,000 buses carrying 19 million passengers each weekday in the United States. Some transit systems have installed video cameras on their buses, but the number and operating characteristics of transit buses make them all but impossible to secure.

In contrast with the aviation sector, where TSA provides security directly, security in surface transportation is provided primarily by the transit and rail operators and local law enforcement agencies. TSA's role is one of oversight, coordination, intelligence sharing, training, and assistance, though it does provide some operational support through its Visible Intermodal Prevention and Response (VIPR) teams, which conduct operations with local law enforcement officials, including periodic patrols of transit and passenger rail systems to create "unpredictable visual deterrents."

The Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53), passed by Congress on July 27, 2007, included provisions on passenger rail and transit security and authorized $3.5 billion for FY2008-FY2011 for grants for public transportation security. The act required public transportation agencies and railroads considered to be high-risk targets by DHS to have security plans approved by DHS (§1405 and §1512). Other provisions required DHS to conduct a name-based security background check and an immigration status check on all public transportation and railroad frontline employees (§1414 and §1522), and gave DHS the authority to regulate rail and transit employee security training standards (§1408 and §1517).

In 2010 TSA completed a national threat assessment for transit and passenger rail, and in 2011 completed an updated transportation systems sector-specific plan, which established goals and objectives for a secure transportation system. The three primary objectives for reducing risk in transit are

- increase system resilience by protecting high-risk/high-consequence assets (i.e., critical tunnels, stations, and bridges);
- expand visible deterrence activities (i.e., canine teams, passenger screening teams, and antiterrorism teams); and
- engage the public and transit operators in the counterterrorism mission.[42]

TSA surface transportation security inspectors conduct assessments of transit systems (and other surface modes) through the agency's Baseline Assessment for Security Enhancement (BASE) program. The agency has also developed a security training and security exercise program for transit (I-STEP).

[42] Department of Homeland Security, Transportation Security Administration, *Surface Transportation Security FY2016 Congressional [Budget] Justification*, p. 11.

The House Committee on Homeland Security's Subcommittee on Transportation Security held a hearing in May 2012 to examine the surface transportation security inspector program. The number of inspectors had increased from 175 in FY2008 to 404 in FY2011 (full-time equivalents). Issues considered at the hearing included the lack of surface transportation expertise among the inspectors, many of whom were promoted from screening passengers at airports; the administrative challenge of having the surface inspectors managed by federal security directors who are located at airports, and who themselves typically have no surface transportation experience; and the security value of the tasks performed by surface inspectors.[43] The number of surface inspectors decreased to 272 (full-time equivalent positions) in FY2015, in part reflecting a reduction in the number of VIPR surface inspectors and in part reflecting efficiencies achieved through focusing efforts on the basis of risk.[44]

GAO reported in 2014 that lack of guidance to TSA's surface inspectors resulted in inconsistent reporting of rail security incidents and that TSA had not consistently enforced the requirement that rail agencies report security incidents, resulting in poor data on the number and types of incidents.[45] GAO also found that TSA did not have a systematic process for collecting and addressing feedback from surface transportation stakeholders regarding the effectiveness of its information-sharing effort.[46] In a 2015 hearing, GAO testified that TSA has put processes in place to address these issues.[47]

DHS provides grants for security improvements for public transit, passenger rail, and occasionally other surface transportation modes under the Transit Security Grant Program. The vast majority of the funding goes to public transit providers. CRS estimates that, on an inflation-adjusted basis, funding for this program has declined 84% since 2009, when Congress allocated $150 million in the American Recovery and Reinvestment Act, in addition to routine appropriations (see **Table 1**).

[43] United States House of Representatives, Committee on Homeland Security, Subcommittee on Transportation Security, Hearing on *TSA's Surface Inspection Program: Strengthening Security or Squandering Resources?*, May 31, 2012, http://homeland.house.gov/hearing/subcommittee-hearing-tsa%E2%80%99s-surface-inspection-program-strengthening-security-or-squandering.

[44] Department of Homeland Security, Transportation Security Administration, *Surface Transportation Security FY2014 Congressional [Budget] Justification*, p. 18; *FY2016 Congressional [Budget] Justification*, p. 14.

[45] Government Accountability Office, *Passenger Rail Security: Consistent Incident Reporting and Analysis Needed to Achieve Program Objectives*, GAO-13-20, December 19, 2012.

[46] Government Accountability Office, *Transportation Security Information Sharing: Stakeholder Satisfaction Varies; TSA Could Take Additional Actions to Strengthen Efforts*, GAO-14-506, June 24, 2014.

[47] Government Accountability Office, *Surface Transportation Security: TSA Has Taken Steps Designed to Develop Process for Sharing and Analyzing Information and to Improve Rail Security Incident Reporting*, GAO-15-205T, given before the U.S. House of Representatives, Committee on Homeland Security, Subcommittees on Transportation Security and Counterterrorism & Intelligence, September 17, 2015.

Table 1. Congressional Funding for Transit Security Grants, FY2002-FY2015

Fiscal Year	Appropriation (millions of nominal dollars)	Appropriation (millions of 2015 dollars)
2002	$63[a]	82
2003	65	83
2004	50	62
2005	108	131
2006	131	154
2007	251	287
2008	356	394
2009	498[b]	549
2010	253	275
2011	200	213
2012	88[c]	92
2013	84	86
2014	90	91
2015	87[d]	87

Source: FY2002: Department of Defense FY2002 Appropriations Act, P.L. 107-117; FY2003: FY2003 Emergency Wartime Supplemental Appropriations Act, P.L. 108-11; FY2004: Department of Homeland Security FY2004 Appropriations Act, P.L. 108-90; FY2005-FY2011: U.S. Government Accountability Office, *Homeland Security: DHS Needs Better Project Information and Coordination among Four Overlapping Grant Programs*, GAO-12-303, February 2012, Table 1; FY2012-2014: DHS, Transit Security Grant Program annual funding opportunity announcements; FY2015: P.L. 114-4.

Notes: The Transit Security Grant Program was formally established in FY2005; in FY2003-FY2004, grants were made through the Urban Areas Security Initiative. Does not include funding provided for security grants for intercity passenger rail (Amtrak), intercity bus service, and commercial trucking. Nominal dollar amounts adjusted to constant 2015 dollars using the Total Non-defense column from Table 10: Gross Domestic Product and Deflators Used in the Historical Tables: 1940-2020, published in the Historical Tables volume of the Budget of the United States Government, Fiscal Year 2016 (http://www.whitehouse.gov/omb/budget/Historicals).

a. Appropriated to Washington Metropolitan Area Transit Authority and the Federal Transit Administration.

b. Includes $150 million provided in the American Recovery and Reinvestment Act.

c. Congress did not specify an amount for transit security grants, but provided a lump sum for state and local grant programs, leaving funding allocations to the discretion of DHS.

d. Estimated by CRS; Congress provided $100 million for Public Transportation, Amtrak, and Over-the-Road Bus Security grants, and specified that no less than $10 million was for Amtrak and no less than $3 million was for bus grants (P.L. 114-4).

In a February 2012 report, GAO found potential for duplication among four DHS state and local security grant programs with similar goals, one of which was the public transportation security grant program.[48] The Obama Administration has repeatedly proposed consolidating several of these programs in annual budget requests. This proposal has not been supported by Congress in the appropriations process to date, though appropriators have expressed concerns that grant

[48] United States Governmental Accountability Office, *Homeland Security: DHS Needs Better Project Information and Coordination among Four Overlapping Grant Programs*, GAO-12-303, February 2012.

programs have not focused on areas of highest risk and that significant amounts of previously appropriated funds have not yet been awarded to recipients.

In P.L. 114-47, Congress directed TSA to ensure that all passenger transportation providers it considers as having high-risk facilities have in place plans to respond to active shooters, acts of terrorism, or other security-related incidents that target passengers.

Port and Maritime Security Issues[49]

The bulk of U.S. overseas trade is carried by ships and thus the economic consequences of a maritime terrorist attack could be significant. A key challenge for U.S. policymakers is prioritizing maritime security activities among a virtually unlimited number of potential attack scenarios. One priority is preventing the smuggling of a weapon of mass destruction in a shipping container. A less complicated attack scenario is ramming a passenger vessel with a bomb-laden speedboat. There are far more potential attack scenarios than likely ones, and far more than could be meaningfully addressed with limited counter-terrorism resources. Not all terrorist groups have familiarity with the maritime environment. Two port security initiatives the 114th Congress continues to examine are the 100% container scanning requirement and the effectiveness of a port worker security card system. Cybersecurity is an emerging concern.

Container Scanning Requirement

Section 1701 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) requires that all imported marine containers be scanned by nonintrusive imaging equipment and radiation detection equipment at a foreign loading port by July 1, 2012, unless DHS can demonstrate it is not feasible, in which case the deadline can be extended by two years on a port-by-port basis. DHS has sought a blanket extension for all ports, citing numerous challenges to implementing the 100% scanning requirement at overseas ports.[50] In a letter requesting renewal of the two-year extension, DHS Secretary Jeh Johnson stated,[51]

> I have personally reviewed our current port security and DHS's short term and long term ability to comply with 100% scanning requirement. Following this review, I must report, in all candor, that DHS's ability to fully comply with this unfunded mandate of 100% scanning, even in the long term, is highly improbable, hugely expensive, and in our judgment, not the best use of taxpayer resources to meet this country's port security and homeland security needs.

In an October 2015 hearing, DHS officials reiterated their opposition to a 100% scanning strategy in favor of a risk-based and layered security strategy.[52] Major U.S. trading partners also oppose 100% scanning. The European Commission has determined that 100% scanning is the wrong approach, favoring a multilayered risk management approach to inspecting cargo.[53] CBP has

[49] This section was prepared by John Frittelli, Specialist in Transportation Policy.

[50] Testimony of Janet Napolitano, Secretary of DHS, before the Committee on Commerce, Science, and Transportation, U.S. Senate, hearing "Transportation Security Challenges Post 9-11," December 2, 2009.

[51] Letter from DHS Secretary Jeh Johnson to Senator Carper, Chairman of the Senate Committee on Homeland Security and Governmental Affairs, May 5, 2014.

[52] House Committee on Transportation and Infrastructure, Subcommittee on Coast Guard and Maritime Transportation, Hearing—*The Prevention of and Response to the Arrival of a Dirty Bomb at a U.S. Port*, October 27, 2015. In particular, see the oral and written testimonies of officials from CBP and the Domestic Nuclear Detection Office.

[53] European Commission Staff Working Paper, *Secure Trade and 100% Scanning of Containers*, February 2010, http://ec.europa.eu/taxation_customs/resources/documents/common/whats_new/sec_2010_131_en.pdf.

tested the feasibility of scanning all U.S.-bound containers at several overseas ports[54] and identified numerous operational, technical, logistical, financial, and diplomatic obstacles,[55] including opposition from host government officials.[56] One-hundred percent scanning conflicts with DHS's general approach to risk management, which seeks to focus scarce inspection resources on the highest-risk containers. By scanning a smaller number of containers, DHS may be able to devote additional resources to each individual scan. This consideration is important because reviewing the scans is labor-intensive, and scanning fewer containers may allow DHS to subject individual scans to greater scrutiny, and to maintain a lower threshold for opening containers with questionable scanning images.

If illicit cargo is estimated to be limited to less than 1% of incoming containers, as CBP believes to be the case, focusing enforcement on the likeliest containers may be the most effective enforcement strategy. This approach would emphasize risk-based scanning along with investment in CBP intelligence to improve targeting, and/or increase CBP personnel, which would allow ports to conduct a larger number of targeted special enforcement operations.

Transportation Worker Identification Credential (TWIC)

In January 2007, TSA and the Coast Guard issued a final rule implementing the Transportation Worker Identification Credential (TWIC) at U.S. ports.[57] Longshoremen, port truck drivers, railroad workers, merchant mariners, and other workers at a port must apply for a TWIC card to obtain unescorted access to secure areas of port facilities or vessels. The card was authorized under the Maritime Transportation Security Act of 2002 (MTSA; §102 of P.L. 107-295). Since October 2007, when TSA began issuing TWICs, about 2.9 million maritime workers have obtained a card. The card must be renewed every five years.

TSA conducts a security threat assessment of each worker before issuing a card. The security threat assessment uses the same procedures and standards established by TSA for truck drivers carrying hazardous materials, including examination of the applicant's criminal history, immigration status, and possible links to terrorist activity to determine whether a worker poses a security threat. A worker pays a fee of about $130 that is intended to cover the cost of administering the cards. The card uses biometric technology for positive identification. Terminal operators were to deploy card readers at the gates to their facilities, so that a worker's fingerprint template would be scanned each time he or she enters the port area and matched to the data on the card.

Finding a card reader that worked reliably in a harsh marine environment proved difficult. In March 2013, the Coast Guard issued a notice of proposed rulemaking (NPRM)[58] in which it proposed requiring card readers only for facilities or vessels handling dangerous bulk commodities (including barge fleeting areas) or facilities handling more than 1,000 passengers at a time, as these are the areas the Coast Guard considers to be of higher risk. The Coast Guard estimated that 38 U.S.-flag vessels and 352 facilities would be required to have card readers, which equates to about 0.3% of the vessels and 16% of the facilities it regulates under MTSA.

[54] This test was conducted as per Section 231 of the SAFE Port Act (P.L. 109-347).

[55] CBP, "Report to Congress on Integrated Scanning System Pilots (Security and Accountability for Every Port Act of 2006, §231)," http://www.apl.com/security/documents/sfi_finalreport.pdf.

[56] Ibid., Appendix A.

[57] 72 *Federal Register*, 3492-3604, January 25, 2007. Codified at 49 C.F.R. §1572.

[58] 78 *Federal Register* 17782, March 22, 2013.

Other vessels and facilities, including those handling containerized cargo, would continue to use the TWIC as a "flash pass," but the biometric data on the card would not be used to positively identify the worker. The comment period for the NPRM closed on June 20, 2013. A final rule has not yet been issued.[59] Currently, the Coast Guard performs spot checks with hand-held biometric readers while conducting port security inspections.

GAO audits have been highly critical of how the TWIC has been implemented. A 2013 audit found that the results of a pilot test of card readers should not be relied upon for developing regulations on card reader requirements because they were incomplete, inaccurate, and unreliable.[60] This audit was discussed at a hearing by the House Subcommittee on Government Operations on May 9, 2013,[61] and by the House Subcommittee on Border and Maritime Security on June 18, 2013.[62] Another 2013 GAO audit examined TSA's Adjudication Center (which performs security threat assessments on TWIC applicants and other transportation workers), and recommended steps the agency could take to better measure the center's performance.[63] A 2011 audit found internal control weaknesses in the enrollment, background checking, and use of the TWIC card at ports, which were said to undermine the effectiveness of the credential in screening out unqualified individuals from obtaining access to port facilities.[64]

H.R. 710, which passed the House on February 10, 2015, requires DHS to conduct a comprehensive assessment of the benefits and costs of the TWIC card. H.R. 3586, introduced by the chair of the House Subcommittee on Border and Maritime Security, would create an Office of Biometric Identity Management within DHS to support the department's capabilities in this area.

Maritime Cybersecurity

In June 2015, the Coast Guard released a cyberstrategy document that identifies the agency's plans for addressing cybersecurity in the maritime environment. Vessel and facility operators use cyberdependent technologies for navigation, communication, cargo handling, and other purposes. The strategy document states the Coast Guard will be developing guidance for vessels and ports to address cybervulnerabilities, and will incorporate cybersecurity into existing enforcement and compliance programs.[65] The strategy also states the Coast Guard will incorporate cybersecurity training in the requirements for mariner licensing and for port security officer qualifications. According to this document, the Coast Guard will modify an existing port risk assessment tool (MSRAM-Maritime Security Risk Assessment Model) to incorporate cyberrisks. MSRAM is the primary tool used to assess risk to national infrastructure in the maritime domain, and is used extensively at the local, regional, and national levels, according to the Coast Guard.

[59] Comments filed can be viewed at http://www.regulations.gov under docket # USCG-2007-28915.

[60] U.S. Government Accountability Office, *Transportation Worker Identification Credential—Card Reader Pilot Results Are Unreliable; Security Benefits Need to Be Reassessed*, GAO-13-198, May 8, 2013.

[61] U.S. Congress, House Committee on Oversight and Government Reform, Subcommittee on Government Operations, *Federal Government Approaches to Issuing Biometric IDs*, 113th Cong., 1st sess., May 9, 2013.

[62] U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *Threat, Risk and Vulnerability: the TWIC Program*, 113th Cong., 1st sess., June 18, 2013.

[63] U.S. Government Accountability Office, *Transportation Security: Action Needed to Strengthen TSA's Security Threat Assessment Process*, GAO-13-629, July 19, 2013.

[64] U.S. Government Accountability Office, *Transportation Worker Identification Credential—Internal Control Weaknesses Need to Be Corrected to Help Achieve Security Objectives*, May 2011, GAO-11-657.

[65] U.S. Coast Guard, "Cyber Strategy," June 2015, pp. 32-33; https://www.uscg.mil/seniorleadership/DOCS/cyber.pdf.

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