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Border and Transportation Security: Appropriations for FY2005

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Appropriations are one part of a complex federal budget process that includes budget resolutions, appropriations (regular, supplemental, and continuing) bills, rescissions, and budget reconciliation bills. The process begins with the President's budget request and is bounded by the rules of the House and Senate, the Congressional Budget and Impoundment Control Act of 1974 (as amended), and current program authorizations.

This report is a guide to a subset of one of the 13 regular appropriation bills that Congress passes each year. It is designed to supplement the information provided by the House and Senate Appropriations Subcommittees on Homeland Security; and to supplement the information provided in the CRS Department of Homeland Security Appropriations report [<http://www.congress.gov/erp/ra/html/RL32302.html>]. This report summarizes the current legislative status of the bill, major issues, funding levels, and legislative activity related to border and transportation security and will be updated as events warrant.

Border and Transportation Security: Appropriations for FY2005

Summary

A well-managed border is central to maintaining and improving the security of the homeland against terrorist threats. Border security entails regulating the flow of goods and people across the nation's borders so that dangerous and unwanted goods or people are denied entry. Transportation security entails inspecting and securing people and goods as they move among different locations within the country to reduce the possibility of terrorist attacks or the incursion of unwanted people or goods. The Department of Homeland Security (DHS) has been given primary responsibility for securing the nation's borders and for increasing the security of transportation, among other responsibilities.

The locus of border and transportation security activity within DHS is in the Directorate of Border and Transportation Security (BTS) which houses the Bureau of Customs and Border Protection (CBP), the Bureau of Immigration and Customs Enforcement (ICE), and the Transportation Security Administration (TSA). The U.S. Coast Guard is a standalone agency within DHS but plays an important role in border and transportation security, as does the Federal Law Enforcement Training Center (FLETC). This report includes appropriations for the functions and agencies of BTS, the U.S. Coast Guard and FLETC.

On October 18, 2004, P.L. 108-334 was signed into law, making appropriations for DHS for FY2005. P.L. 108-334 provides \$33.1 billion in new obligational budget authority for the activities of DHS. Of this amount, \$19.6 billion or 59% is for border and transportation activities as identified in this report. P.L. 108-334 includes \$340 million for the U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) program; \$5.3 billion for CBP; \$3.2 billion for ICE; \$3.3 billion for TSA; \$7.4 billion for the U.S. Coast Guard; and \$200 million for FLETC.

Significant issues in border and transportation security include cargo and container security; implementation of the US-VISIT program; organization of air and marine assets; aviation security; and security of other transportation modes.

This report will not be updated.

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Border and Transportation Security: Appropriations for FY2005

Most Recent Developments

P.L. 108-334 Signed by the President. On October 18, 2004, the President signed into law P.L. 108-334 making appropriations for DHS for FY2005. P.L. 108-334 provides \$33.1 billion in new obligational budget authority for DHS, of which \$19.6 billion or 59% is for the border and transportation security-related activities identified in this report. The conference report to H.R. 4567 (H.Rept. 108-774) was agreed to by the House on October 9, 2004; and by the Senate on October 11, 2004.

H.R. 4567 Passed in the Senate. On September 14, 2004, the Senate passed H.R. 4567 after striking the House-passed language and inserting the language of S. 2537. During floor debate, over 40 amendments were added to the bill including 8 that directly impact funding. The Senate-passed version of H.R. 4567 recommended a total appropriation of \$33.8 billion for the Department of Homeland Security (DHS); an increase of \$1.3 billion over the Administration's request, and an 11.5% increase over the enacted FY2004 level of \$30.3 billion.

H.R. 4567 Passed in the House. On June 18, 2004, H.R. 4567 was passed in the House by a vote of 400-5. The bill would have provided a total appropriation of \$33.1 billion for the DHS; an increase of \$500 million over the Administration's request, and a 9.2% increase over the enacted FY2004 level of \$30.3 billion.

S. 2537 Reported. On June 17, 2004, S. 2537 was introduced in the Senate. The bill would have provided a total appropriation of \$33.1 billion for DHS; an increase of \$500 million over the Administration's request, and a 9.2% increase over the enacted FY2004 level. S. 2537 was accompanied by S.Rept. 108-280, which was reported by the Senate Appropriations Committee on June 17, 2004, by a vote of 29-0.

President's FY2005 Budget Submitted. On February 2, 2004, the President submitted the FY2005 budget request to Congress, proposing \$32.6 billion in appropriations for the DHS. This represents a 7.7% increase over net enacted FY2004 funding of \$30.3 billion.¹ Of the \$32.6 billion requested by the Administration for DHS in FY2005, \$19 billion or 58% is for Border and Transportation Security agencies as identified in this report.

¹ The FY2004 amount does not include \$4.8 billion in scorekeeping adjustments, rescissions, and advance appropriations.

Table 1 summarizes the legislative status of DHS appropriations for FY2005.²

Table 1. Legislative Status of Homeland Security Appropriations

Subcommittee markup		House Report 108-541	House passage	Senate Report 108-280	Senate passage	Confer. report H.Rept. 108-774	Conference report approval		Public Law 108-334
House	Senate						House	Senate	
06/03 ^a (vv)	06/16 ^b (vv)	06/09 ^c (vv) H.Rept. 108-541	06/18 ^d (400-5)	06/17 ^e (29-0) S.Rept. 108-280	09/14 (93-0)	10/09 H.Rept. 108-774	10/09 (368-0)	10/09 (vv)	10/18 108-334

Note: vv = voice vote

- a. House Appropriations Subcommittee for Homeland Security held a markup on June 3, 2004.
- b. Senate Appropriations Subcommittee for Homeland Security held a markup on June 16, 2004.
- c. House Appropriations Committee reported by voice vote the report (H.Rept. 108-541) to the FY2005 DHS Appropriations bill (H.R. 4567).
- d. The House passed H.R. 4567 June 18, 2004 by a vote of 400-5.
- e. Senate Appropriations Committee reported by a vote of 29-0, the report (S.Rept. 108-280) to the FY2005 DHS Appropriations bill (S. 2537).

Introduction

Increasing border and transportation security are essential strategies for improving and maintaining homeland security. Border security entails regulating the flow of goods and people across the nation's borders so that dangerous and unwanted goods or people are detected and denied entry. Transportation security entails inspecting people and goods as they move among different locations within the country to reduce the possibility of terrorist attacks or the incursion of unwanted people or goods.

Determining which goods and people are permitted and which are denied entry into the U.S. involves a system of sophisticated border management. This system must balance the need for securing the nation's borders while facilitating the essential commerce and legitimate free flow of citizens and authorized visitors. The system must be capable of examining minute details of goods and people seeking entry, but still fit within budgetary constraints and be administratively feasible.

Improving transportation security has meant an expanded federal role in screening passengers and baggage traveling through airports and also increasing the presence of federal officers aboard domestic and international flights. Plans exist to extend the presence of federal officers to other modes of transportation more intensively in the future. Finally, these management systems must accomplish their functions with a minimum of disruption of legitimate activities, and without unnecessary intrusion into the civil liberties of persons affected by them.

² For more information on DHS Appropriations, see CRS Report RL32302, *Appropriations for FY2005: Department of Homeland Security*, by Jennifer Lake and Blas Nuñez-Neto.

Background

The Homeland Security Act of 2002 (P.L. 107-296) transferred the functions, relevant funding, and most of the personnel of 22 agencies and offices to the newly created Department of Homeland Security (DHS). DHS was organized in four major directorates: Border and Transportation Security; Emergency Preparedness and Response; Science and Technology; and Information Analysis and Infrastructure Protection.

The Border and Transportation Security Directorate (BTS), along with its close functional sibling, the U.S. Coast Guard, are responsible for the first line of defense against terrorism and for securing and managing the nation's borders. Included in these responsibilities are the inspection, investigative and enforcement operations of the former Immigration and Naturalization Service (INS), which had been responsible for managing and coordinating entry into the United States, and for enforcing immigration laws. DHS border and transportation security objectives also include fulfilling the newly expanded federal role of the TSA in protecting the nation's transportation systems, initially involving airline passengers, baggage, and freight.

The Customs function, previously the responsibility of the Department of the Treasury's U.S. Customs Service, now also forms part of BTS. The Customs functions administered by DHS, in conjunction with the U.S. Coast Guard, are expected to effectively secure all commercial traffic entering the nation's ports. The Directorate also assumes responsibility for inspecting and monitoring plants and animals entering the United States to minimize the risk that noxious pests and diseases will be introduced into the country.

The activities for which BTS has assumed responsibility are organized into three bureaus: the Bureau of Customs and Border Protection (CBP); the Bureau of Immigration and Customs Enforcement (ICE); and the Transportation Security Agency (TSA). The inspection and border patrol functions of legacy Customs, INS, and Animal and Plant Health Inspection Service (APHIS), were merged into CBP. The investigative and interior enforcement functions of legacy Customs and INS were merged within ICE. The Federal Protective Service (FPS), the Federal Law Enforcement Training Center (FLETC), and the Office of Domestic Preparedness (ODP) were also included under BTS by the Homeland Security Act. Subsequently, the Federal Air Marshals have been transferred from TSA to ICE; the US-VISIT program has been transferred from ICE to be managed at the BTS directorate level; and ODP has been reconfigured and renamed the Office of State and Local Government Coordination and Preparedness (OSLGCP) and is managed at the DHS level. The Coast Guard remains a direct report, or free standing agency, within DHS but outside the BTS directorate.

Appropriations for Border and Transportation Security

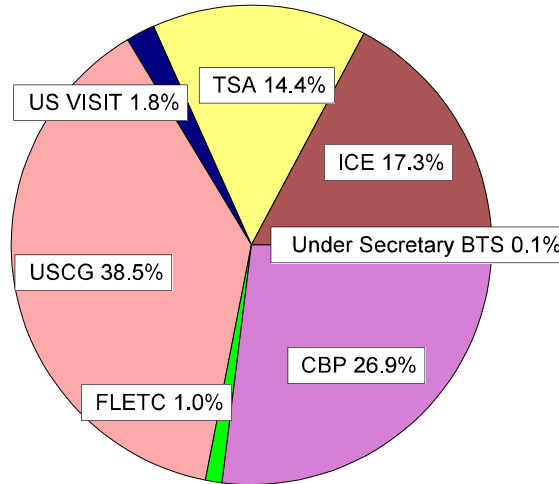
March 1, 2003, was the effective date for shifting most of the responsibilities from former departments and agencies to the new DHS. While the transfer of functional lines of authority and the personnel to carry out those functions was relatively straightforward, problems arose with initial attempts to ascertain the exact amount of appropriated funds actually transferred. Comparisons of responsibilities and analyses of requests for increased budget authority proved difficult to develop. This was due to the fact that functions now performed by DHS were previously performed by predecessor agencies which often had somewhat different purposes than homeland security. The funding lines between FY2003 and FY2004 were not identical to lines of functional responsibility before and after transfer, a problem made more difficult because the basic documentation of appropriations in the President's FY2004 Budget was prepared after the formation of DHS but before final enactment of appropriations for the remainder of FY2003. However, with the completion of appropriations for FY2004, a baseline has been established, making future appropriations decisions more easily compared to the previous year's levels.

The distinction between border and transportation security functions and other functions funded through the same account lines is somewhat arbitrary. In this sense, our analysis uses something akin to a functional classification for "border and transportation security." Consequently, it does not include activities in the Directorate for Border and Transportation Security that have no direct bearing on that function (such as the Federal Protective Service). On the other hand, this functional grouping does include the activities of the Coast Guard, a separate agency in DHS which is not part of the Directorate for Border and Transportation Security, but which has an essential role in providing "border and transportation security" as those words are commonly understood. Some functions contained in other accounts that are related to border and transportation security, such as those aspects of the Science and Technology account which are used to improve security, are excluded from this table. Tables in this report show an approximation of costs for border and transportation security, based on identifying the accounts for which such security functions are the primary function involved, and do not necessarily reflect DHS breakdowns as to estimated amounts specifically associated with the Directorate for Border and Transportation Security.

For FY2005, the Administration presented its request for DHS in an organization roughly akin to the Conference Committee in presenting the appropriated amounts for FY2004. The conference report to H.R. 2555 (H.Rept. 108-280) presented appropriations in four titles, the second of which, *Security, Enforcement, and Investigations*, contains most of the functions identified in this report as related to border and transportation security. The Administration's FY2005 request follows this structure and has grouped the requests for the Undersecretary for Border and Transportation; US-VISIT; CBP; ICE; the TSA; the U.S. Coast Guard; and the U.S. Secret Service in Title II *Security, Enforcement, and Investigations*. For the purposes of this report, we exclude appropriations for the U.S. Secret Service; but include appropriations for FLETC, which is located in Title IV.

The Administration requested \$32.6 billion for DHS in FY2005, of this amount \$19 billion or 58% is for Border and Transportation Security functions as identified in the report. **Figure 1** illustrates the relative size of the request for each of the border and transportation security agencies. Of the \$19 billion requested in FY2005, the Coast Guard (USCG) accounts for 38%; CBP for 26.9%; ICE for 17.3%; TSA for 14.4%; US VISIT for 1.8% and FLETC for 1%.

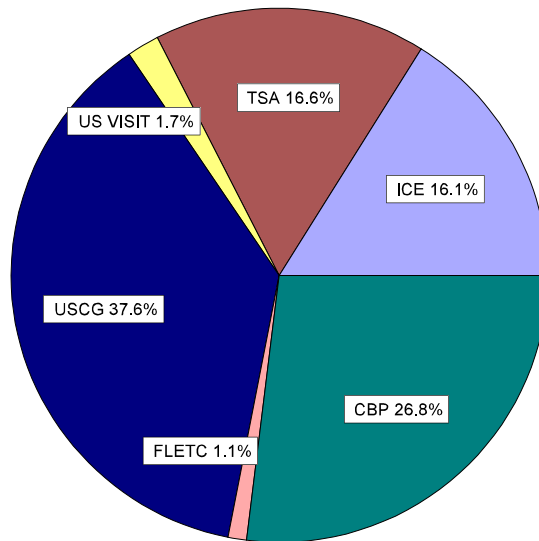
Figure 1. FY2005 Request for Border and Transportation Security Appropriation



Source: CRS Analysis of H.Rept. 108-541.

Figure 2 illustrates the relative size of the appropriation for each of the border and transportation security agencies. Of the \$19.6 billion appropriated by P.L. 108-344, the Coast Guard (USCG) accounts for 37.6%; CBP for 26.8%; ICE for 16.1%; TSA for 16.6%; US VISIT for 1.7% and FLETC for 1.1%. **Table 2** provides summary detail on appropriations for border and transportation security functions for FY2004-FY2005.

Figure 2. FY2005 Appropriation for Border and Transportation Security, P.L. 108-344.



Source: CRS Analysis of P.L. 108-344.

Table 2. Summary of Border and Transportation Security Appropriations, Functional Presentation
(\$ in millions)

	FY2004 Enacted	FY2005 Request	FY2005 House	FY2005 Senate	FY2005 Conf.
Bureau of Customs and Border Protection (CBP)	5,943	6,223	6,254	6,232	6,349
CBP Fee Accounts ^a	-1,044	-1,101	-1,101	-1,074	-1,079
CBP Direct Appropriation	4,899	5,122	5,154	5,158	5,270 ^b
Bureau of Immigration and Customs Enforcement (ICE)	3,680	3,533	3,589	3,760	3,367
Rescission	-54	—	—	—	—
ICE Fee Accounts	-273	-225	-225	-250	-200
ICE Direct Appropriation	3,407	3,307	3,363	3,760	3,167
Transportation Security Administration (TSA)	4,578	5,042	5,048	5,302	5,151
TSA Offsetting Fees ^c	-2,070	-2,290	-1,890	-1,890	-1,890
TSA Direct Appropriation	2,508	2,752	3,225	3,412	3,260
Federal Law Enforcement Training Center	192	196	221	224	222
U.S. Coast Guard	6,764	7,335	7,307	7,469	7,373
Under Secretary of Border and Transportation Security	8	10	10	9	10
U.S. VISIT	328	340	340	340	340
Functional Total: Border and Transportation Security	18,106	19,062	19,620	20,372	19,642

Source: P.L. 108-334, H.Rept. 108-541 to H.R. 4567 passed by the House June 18, 2004; S.Rept. 108-280 to S. 2537 reported by the Senate June 17, 2004.

Note: FY2004 amounts reflect the 0.59% across-the-board rescission enacted by P.L. 108-199. Rounding may affect totals. Amounts in parentheses are not added to the total.

- a. There is a discrepancy between the House and Senate reports regarding the amount of offsetting fee collections for CBP for FY2004 enacted and FY2005 request. The way the offsetting fees are applied for CBP, the difference in fee collections changes the total amount available for obligation by CBP, but does not change the total amount directly appropriated by Congress for CBP. Therefore, for the purposes of this paper, we use the amounts listed in the House report tables for CBP offsetting fee collections for FY2004 enacted and the FY2005 request.
- b. This amount includes a \$63 million rescission of FY2004 funds previously appropriated by P.L. 108-11.
- c. There is \$400 million difference in TSA offsetting fee collections reported by the Administration, and the House and Senate. The Administration included in its request a proposal to increase the aviation security fee. Both the House and Senate denied this request and thus reflect \$400 million less than the request in offsetting fee collections for TSA.

Operational Components of Border and Transportation Security

While most observers indicate the need for additional funding in the area of border and transportation security, the issue for Congress is to determine the appropriate funding level in the context of the current budget situation and competing claims for resources. The following sections of the report provide detail concerning the operational components of border and transportation security. These include selected: appropriations data; issues of potential interest to the conferees; and a discussion of some of the challenges facing the different components of border and transportation security.

Securing the nation's borders and transportation systems includes the regulation of imports and exports; enforcement of laws pertaining to immigration and visitation; border-related inspection of agriculture and livestock; oversight of the security of ports; federal inspection of airline passengers and baggage; and comprehensive approaches to improving overall transportation security. Some observers might question the exclusion of the Bureau of Citizenship and Immigration Services (BCIS) from the discussion of border and transportation security. There is no question that homeland security is enhanced by the well managed administration of routine immigration services. However, such services would remain even in absence of any threats to the homeland. Immigration activities would continue in any event, and including the cost of these activities would distort the true summary costs of border and transportation security.

Table 3 provides account level details for the various component border and transportation agencies as identified in this report.

Table 3. BTS Appropriations: Select Detail, FY2004-2005
(\$ in millions)

Operational Component	FY2004 enacted	FY2005 request	FY2005 House	FY2005 Senate	FY2005 Conf.
Office of the Under Secretary for Border and & Transportation Security	8	10	10	9	10
Visitor & Immigrant Status Indicator Project (US-VISIT)	328	340	340	340	340
Customs & Border Protection (net)	4,899	5,122	5,154	5,158	5,270
— Salaries and expenses; construction	4,460	4,672	4,704	4,708	4,626
— — rescission from S&E	—	—	—	—	-63
— Air and Marine Operations ^a	—	—	—	—	258
— Automation modernization	439	450	450	450	450
— Fee accounts (offsetting collections)	(1,126)	(1,074)	(1,074)	(1,074)	(1,079)
Immigration & Customs Enforcement (net) ^b	3,407	3,307	3,363	3,760	3,167
— Salaries and expenses; construction	2,165	2,397	2,403	2,539	2,464
— — rescission from S&E	-54	—	—	—	—
— Federal Air Marshals	623	613	663	713	663
— Federal Protective Services	424	478	478	478	478
— — offsetting FPS fees ^c	—	-478	-478	-478	-478
— Automation & infrastructure modernization	40	40	40	40	40
— Air and marine interdiction	209	258	258	468	— ^a
— Fee accounts (offsetting collections)	(273)	(225)	(225)	(250)	(200)
Transportation Security Administration (net)	2,508	2,752	3,225	3,412	3,260
— Aviation security (total funding)	3,724	4,238	4,271	4,461	4,324
— Maritime and land security ^d	261	29	65	44	48
— Credentialing Activities	—	67	67	67	67
— Intelligence	14	14	14	14	14
— Research and Development	154	154	174	181	178
— Administration	425	540	525	535	520
— Aviation Security Capital Funds	—	(250)	(250)	(250)	(250)
— Offsetting fee collections: Aviation Security fees, Credentialing fees	-2,070	-2,290	-1,890	-1,890	-1,890
U.S. Coast Guard	6,764	7,335	7,307	7,469	7,373
— Operating expenses	4,637	5,173	5,171	5,153	5,157
— Environmental compliance & restoration	17	17	17	17	17
— Reserve training	94	117	113	117	113
— Acquisition, construction, & improvements	961	943	937	1,063	982
— Rescission	—	—	-33	—	-16
— Alteration of bridges	19	—	16	15	16
— Research, development, tests, & evaluation	15	—	—	18 ^d	19
— Retired pay (mandatory, entitlement)	1,020	1,085	1,085	1,085	1,085
Federal Law Enforcement Training Center	192	196	221	224	222
Subtotal: BTS	18,106	19,062	19,620	20,372	19,642

Source: P.L. 108-334, H.Rept. 108-541 to H.R. 4567 passed by the House June 18, 2004; S.Rept. 108-280 to S. 2537 reported by the Senate June 17, 2004.

Note: FY2004 amounts reflect the 0.59% across-the-board rescission enacted by P.L. 108-199. Rounding may affect totals. Amounts in parentheses are not added to the total.

- a. The Office of Air and Marine Operations was transferred from ICE to CBP by DHS, and P.L. 108-334 reflects this transfer.
- b. Though this table indicates that the FY2005 request for ICE represents a 2.9% decrease from FY2004, this is due to a change in accounting for the fee receipts used to offset the expenses of Federal Protective Service (FPS). If the FY2005 offsets are applied in the same way to the FY2004 enacted level for ICE, (zeroing out FPS funding in FY2004) the agency actually receives an increase of nearly 11% from the FY2004 level.
- c. The direct offsetting of FPS funding with FPS fee collections in FY2005 is a change in the accounting for the fees, and *does not* represent a new fee.
- d. The decrease in Maritime and Land Security reflects a reorganization of grants (primarily port security grants) that, pursuant to the Secretary's Jan. 26, 2004 reorganization proposal, were moved from TSA to the Office of Domestic Preparedness.

Customs and Border Protection

Border security functional responsibilities are at their most vivid at the point at which goods or people are expected to cross borders. CBP has responsibility for security at and between ports-of-entry along the border. These responsibilities include inspecting people and goods to determine that they are authorized entry, and maintaining border crossing stations to process persons seeking entry to the U.S. The inspection and border-related functions of the Customs Service; the border security functions of the former Immigration and Naturalization Service; the Border Patrol; and the inspection functions of the APHIS program are consolidated under the CBP.

FY2005 CBP Request. The President's budget requested a total of \$5,122 million in direct appropriations for CBP, representing a 4.6% increase over the enacted FY2004 level. CBP also receives funding from a set of user fees (transferred from legacy Customs and INS agencies), as well as funding from APHIS user fees, which are transferred from USDA to DHS. **Table 6** provides account-level detail for CBP. H.Rept. 108-541 would have provided a direct appropriation of \$5,154 million, and Senate-passed H.R. 4567 would have provided \$5,158 million. P.L. 108-334 provides a net appropriation of \$5,270 million for CBP, including a rescission of \$63 million in funding previously appropriated by P.L. 108-11. This amount also includes nearly \$390 million in funding for the Office of Air and Marine Interdiction which was transferred by DHS to CBP from ICE.

Table 4. CBP Account Detail
(\$ millions)

CBP Account	FY2004 enacted	FY2005 request	FY2005 House	FY2005 Senate	FY2005 Conf.
Salaries and Expenses	4,370	4,580	4,612	4,616	4,534
— rescission from S&E	—	—	—	—	-63
Air and Marine Operations ^a	—	—	—	—	258
Automation Modernization	439	450	450	450	450
Construction	90	92	92	92	92
Total Direct Appropriations	4,899	5,122	5,154	5,158 ^b	5,270
Offsetting Fee Receipts	1,044	1,101	1,101	1,074	1,079
Total Budget Authority	5,943	6,222	6,254	6,232	6,349

Source: P.L. 108-334, H.Rept. 108-541 to H.R. 4567 passed by the House June 18, 2004; S.Rept. 108-280 to S. 2537 reported by the Senate June 17, 2004.

Note: FY2004 amounts reflect the 0.59% across-the-board rescission enacted by P.L. 108-199. Rounding may affect totals. Amounts in parentheses are not added to the total.

- a. The Office of Air and Marine Operations was transferred from ICE to CBP by DHS; the conference report totals reflect this transfer.
- b. Includes \$50 for radiation detection technology adopted in S. AMDT. 3618 during Senate floor debate on H.R. 4567.

As with the FY2004 appropriation, the CBP funding is provided through three accounts: Salaries and Expenses; Automation Modernization; and Construction. The bulk of CBP's funding is provided through the Salaries and Expenses account. The President's budget request includes the following initiatives (increases over base resources) for FY2005 which are fully funded by P.L. 108-334:

- \$25 million (49 Full-Time Equivalents³ or FTE) to expand the Container Security Initiative (CSI), deploy additional CSI teams at Phase I and II ports, and further implement CSI at Phase III ports;
- \$15 million (60 FTE) to expand the Customs-Trade Partnership Against Terrorism (C-TPAT) program, and hire additional C-TPAT supply chain security officers specialists to conduct enrollment and validations;
- \$50 million for radiation detection and non-intrusive inspection technology, including the purchase of 165 radiation portal monitors, 206 radiation isotope identifier devices, and 1,016 personal radiation detectors (PRDs)(H.R. 4567 provides an additional \$50 million above the request);
- \$21 (18 FTE) million to enhance targeting systems used to identify high risk people and goods entering the country for inspection;

³ Civilian employment in the executive branch is measured in terms of full-time equivalents (FTE). One FTE is equal to one work year or 2,080 non-overtime hours. For example, one full-time employee equals one FTE, and two half-time employees equal one FTE.

- \$64 million to expand the Integrated Surveillance and Information System (ISIS), a networked system of remote video cameras and sensors used to patrol the northern and southern borders.
- \$10 million for the purchase of Unmanned Aerial Vehicles (funded by S.Rept. 108-280 under ICE).

Table 5 provides selected sub-account level detail for CBP activities in the Salaries and Expenses account. P.L. 108-334 provides an additional \$30 million above the request for radiation detection equipment, (H.Rept. 108-541, and the Senate-passed H.R. 4567 had recommended an additional \$50 million above the request for radiation detection equipment), an additional \$2 million for the Immigration Security Initiative (H.Rept 108-541 had recommended an additional \$3 million), and an additional \$1 million to monitor ‘in-bond’⁴ cargo containers (recommended by H.Rept. 108-541). The conference also transfers \$23 million in training funds to reflect the transfer of the Charleston Training Center to FLETC (recommended by both the House and Senate). Both the House and Senate Committees indicate that they fully fund the request for C-TPAT and Free and Secure Trade (FAST) programs. As **Table 5** illustrates however, there is a \$4 million difference between the amounts provided by the House and the Senate. This is apparently a discrepancy in the amounts reported as requested by each.

⁴ The term ‘in-bond’ is used to describe cargo shipments that are either destined for deposit in a bonded warehouse, or that are transiting the U.S. en route to another country, and which are provisionally entered into the U.S. under a customs bond. Duties and tariffs are not due on in-bond shipments until the time the merchandise leaves the bonded warehouse and enters the commerce of the U.S. Brokers or importers take out customs bonds to cover the potential duties and taxes on the shipments while the shipment is warehoused.

Table 5. CBP Selected Sub-Account Level Detail
(\$ millions)

Activity	FY2004 enacted	FY2005 request	FY2005 House	FY2005 Senate	FY2005 Conf.
Headquarters Management and Administration	1,365	1,347	1,366	1,262	1,173
At Ports of Entry:					
— Inspection, trade and travel facilitation	1,240	1,256	1,243	1,306	1,243
— Harbor Maintenance Fee	3	3	3	3	3
— Container Security Initiative	61	126	126	126	126
— Other International Programs	56	58	58	58	57
— C-TPAT, FAST	18	42	38	42	38
— Inspection and detection technology investments	140	115	165	165	145
— Systems for Targeting	12	30	30	30	30
— National Targeting Center ^a	16	19	16	19	16
— Other technology investment	—	—	1	—	1
— Training	18	18	19	23	23
Subtotal At Ports of Entry	1,565	1,667	1,699	1,772	1,683
Between Ports of Entry:					
— Border security and control	1,339	1,414	1,414	1,464	1,414
— Air program operations and maintenance	37	37	37	37	37
— Unmanned Aerial Vehicles	—	10	10	— ^b	10
— Integrated surveillance and intelligence system	24	64	64	64	64
— Training	41	41	22	18	22
Subtotal Between Ports of Entry	1,441	1,566	1,547	1,583	1,547
Air and Marine Operations S&E	—	—	—	—	131
Total CBP Salaries and Expenses	4,370	4,580	4,612	4,616^c	4,534

Source: P.L. 108-334, H.Rept. 108-541 to H.R. 4567 passed by the House June 18, 2004; S.Rept. 108-280 to S. 2537 reported by the Senate June 17, 2004 and H.R. 4567 passed by the Senate on September 14, 2004.

Note: FY2004 amounts reflect the 0.59% across-the-board rescission enacted by P.L. 108-199. Rounding may affect totals. Amounts in parentheses are not added to the total.

- Both the House and Senate reports indicated that each house has fully funded the Administration's request for the National Targeting Center and the various targeting modules of the Automated Targeting System. The discrepancy evidenced in the table appears to be a discrepancy between the amounts indicated as requested — the House indicates that the request was for \$16 million; while the Senate indicates the request was for \$19 million.
- The Senate placed funding for the UAV program within the amount recommended in the "Air and Marine Interdiction, Operation, Maintenance, and Procurement" account within ICE (funded under CBP by Conference as the Office of Air and Marine Interdiction has been transferred to CBP from ICE).
- The Senate adopted S.Amdt. 3611 during floor debate on H.R. 4567 which reduced total CBP Salaries and Expenses by \$1 million; however the amendment does not specify a sub-account.

CBP Issues for Congress. Both the House and Senate reports indicate several areas of congressional concern. These issues have been generally grouped according to whether or not the issue occurs at ports of entry; or between ports of entry.

Staffing. Staffing of the primary border agency continues to be of concern to Congress. The House report while indicating its support for the unified approach to staffing, the ‘one face at the border initiative,’ directs CBP to submit a detailed staffing plan no later than 90 days after enactment. The plan should include actual on-board personnel for FY2004; projected staffing for FY2005; positions funded through direct appropriations; positions funded through fee collections; and staffing by position at each port of entry, Border Patrol station, or other border area location. In the conference report to H.R. 4567 (H.Rept. 108-774), the conferees note that CBP has not submitted the staffing report due December 1, 2003. The conferees require CBP to submit that plan immediately, and to submit an updated plan no later than 90 days after enactment. H.Rept. 108-774 essentially adopts the language used in H.Rept. 108-541 (noted above) regarding the required details of the updated report.

Biometric Screening Database Integration. Both the House and Senate Committee reports highlight and offer support for the current project underway to integrate CBP’s Automated Biometric Identification System (IDENT) and the Federal Bureau of Investigation’s (FBI) Integrated Automated Fingerprint Identification System (IAFIS). The USBP uses IDENT to identify and track illegal aliens. IDENT combines a digital photograph, two flat fingerprints, and biographical data into two databases which can be used to track repeat entrants and better identify criminal aliens. The FBI’s IAFIS is an automated 10 rolled fingerprint matching system linked to a database that holds over 40 million records, including wanted persons, stolen vehicles, deported felons, gang members, and terrorists.⁵ Integration of the two systems is widely regarded as a vital component of tightening border security, as it would allow CBP inspectors and USBP agents to access the FBI’s criminal database in order to establish whether apprehended aliens have outstanding warrants or criminal histories. However, integration has proved difficult for various technical and organizational reasons. The House Committee notes that DHS had testified that the integrated systems would be deployed by the end of calendar year 2004, but that the Committee understands that this deployment will only apply to air and sea ports and the largest USBP stations and points of entry. The House report expresses concern about the slow pace of the integration project, noting this delay leaves a security gap along the border which allows individuals with criminal records to pass through undetected. The House Committee directs DHS to fully fund its cost for the integration project, and directs the Undersecretary for Border and Transportation Security to submit a report by January 1, 2005 on the status of the integration project. The report should include the extent of data sharing between IDENT and IAFIS, the combined data’s real-time accessibility, and what technical and policy issues are involved with allowing State and local law enforcement officials to access the IDENT system. The Senate Committee report notes that it is

⁵ U.S. Department of Justice, Office of the Inspector General, *The Rafael Resendez-Ramirez Case: A Review of the INS’s Actions and the Operation of Its IDENT Automated Fingerprint Identification System*, USDOJ/OIG Special Report, Mar. 2000, Appendix B.

essential that the FBI, State and local law enforcement officers have the ability to retrieve information from the IDENT/US-VISIT⁶ database. The Senate Committee directs DHS to submit a plan by February 8, 2005 that details the specific steps that are needed to fully integrate the US-VISIT program and the IAFIS database, including sources and funds needed and a timetable for full integration.

The conference report, H.Rept. 108-774, generally echoes the concerns expressed in both the House and Senate Committee reports. The conferees adopt reporting requirements from both committee reports: requiring DHS to fund the full cost of achieving real time interoperability between the two systems using the US-VISIT appropriation; directing the Under Secretary of BTS to report within 90 days of enactment on the status of the integration effort including steps that will be taken to integrate IAFIS into IDENT, needed funding, and a timetable for full integration.

CBP Issues for Congress — At Ports of Entry. CBP activities at ports of entry include all screening and processing activities involved in entering people and goods into the country.

Cargo and Container Security. Cargo and container security remains an issue of concern. Both the House and Senate indicate their support for C-TPAT, and the Container Security Initiative (CSI). C-TPAT is a public-private partnership aimed at securing the supply chain from point of origin through entry into the U.S. CSI is a CBP program stationing CBP officers in foreign sea ports to target and inspect marine containers before they are loaded onto U.S.-bound vessels. The House requests a report from CBP detailing the implementation plan for CSI, and encourages CBP to develop an integrated network including “all relevant route, inspection, shipment, and intrusion data.” The Government Accountability Office (GAO) recently published a report concerning both the CSI and C-TPAT programs. GAO credited CBP for quickly rolling out the two programs but noted that CBP needs to develop: systematic human capital plans; performance measures for accountability and program achievement; and a long-term strategic plan to successfully manage the two programs.⁷

The Senate report notes that Congress has provided more than \$200 million for a variety of programs designed to enhance the security of shipments of containerized goods from point of lading to point of destination in the United States. S.Rept. 108-280 directs the Under Secretary of BTS to submit a report by February 8, 2005 detailing: the steps DHS has taken to enhance container security; the resources DHS has expended in prior fiscal years and necessary future resources to maintain this security; results of ongoing container security projects such as Operation Safe Commerce, CSI, and C-TPAT; and which BTS entity has primary responsibility for implementing cargo container security measures, and what steps this entity will take to implement future cargo security standards, policies, procedures, or regulations. The conferees adopted this Senate report language in H.Rept. 108-774, and indicate

⁶ The US-VISIT system is based on the IDENT system.

⁷ U.S. Government Accountability Office (GAO), *Container Security: Expansion of Two Key Programs will Require Greater Attention to Critical Success Factors*, GAO-03-770, July 2003, pp. 2-4.

that the report should also address the security of ‘in-bond’ shipments (which were of concern for the House Committee, as noted below).

The House report indicated concern with the potential risks associated with ‘in-bond’ shipments. The term “in-bond” is used to describe shipments which are being provisionally admitted into the United States under CBP supervision without having to immediately pay the duties associated with the shipment (the shipments are not entered into the commerce of the United States). The shipment must be destined for storage in a bonded warehouse or for transshipment. Duties on in-bond shipments are collected when the merchandise is withdrawn from the bonded warehouse (entered into the commerce of the United States). The importer or the broker must put up a customs bond to cover the amount of duty that will eventually be due on the shipment. The House report included \$1 million to support the acquisition, development, and testing of sensor and tracking technology to allow CBP to track in-transit shipments from their port of entry in the United States to their final destination.

Targeting and Risk Assessment. CBP uses a risk assessment tool, the Automated Targeting System(ATS) to focus inspections on high-risk shipments. ATS automatically sorts shipments according to risk based on specific weighted rule sets, and assigns each shipment a risk score. The higher the score, the more attention a shipment requires, and the greater the chance it will be targeted for inspection. As noted above in note (a) to **Table 5**, both the House and Senate indicated full funding for the National Targeting Center and the ATS; though there is an apparent discrepancy as to how that requested amount is scored. While many observers note the importance of developing sophisticated targeting mechanisms others have raised concerns, including GAO which recently noted that while CBP’s targeting strategy incorporated some elements of risk management, it lacked a comprehensive set of criticality, vulnerability and risk assessments, and does not follow certain recognized modeling practices.⁸ The House report notes these findings and directs CBP to report to Congress no later than November 1, 2005, regarding its plan to respond to the criticisms contained in the GAO report.

Inspections and Inspection Technology (NII). CBP uses a variety of inspection technologies to assist inspectors in detecting and identifying suspicious cargo. These technologies are referred to generally as non-intrusive inspection (NII) technology, and include both gamma-ray (such as the Vehicle and Cargo Inspection System), (VACIS) and x-ray systems, among others. CBP also uses radiation detection devices both personal (PRDs) and large-scale radiation portal monitors (RPMs). The conference report, H.Rept. 108-774, provides \$145 million for inspection and detection technology investments, of which \$50 million is for radiation detection technology, and up to an additional \$30 million shall be available for either radiation detection technology or NII. The House report had recommended an additional \$50 million above the request (\$100 million total increase) for additional detection and inspection equipment, noting the need for an additional

⁸ U.S. Government Accountability Office, *Homeland Security: Preliminary Observations on Efforts to Target Security Inspections of Cargo Containers*, GAO-04-325T, Dec. 17, 2003.

1,000 RPMs, and that the request included funding for existing systems, but not for replacement or acquisition of additional systems. The Senate initially provided \$50 million for the “purchase and deployment of radiation detection equipment”⁹, but during floor debate on H.R. 4567, adopted an amendment providing an additional \$50 million for radiation detection technology.

The House report also indicated its support for the Immigration Security Initiative (ISI) and provided an additional \$3 million above the request for the program. The conferees provide an additional \$2 million for ISI. The ISI is, according to comments by CBP Commissioner Bonner, intended to be a CSI for people. The program builds off the legacy Immigration and Naturalization Service program which stationed immigration control officers abroad, and will station small teams of CBP officers at the world’s largest airports to target and intercept high-risk and inadmissible travelers from continuing on to the United States. Like the CSI program, ISI officers will have no legal authority in host countries, but will work in an advisory capacity with host country authorities.

Finally, the conferees note that DHS should work with the Department of Defense to allow the New Mexico National Guard to continue performing vehicle and cargo inspections in support of CBP and ICE missions, and that CBP should submit a report no later than March 1, 2005 on what actions are planned.

Commercial Entry and Trade Enforcement. Both the House and Senate reports continue to express concern regarding CBP’s development and deployment of the Automated Commercial Environment (ACE). Legacy Customs and now CBP have been engaged in a long-term effort to develop a trade processing system to replace the current Automated Commercial System (ACS) which GAO testimony has characterized as “paper-intensive, error-prone, and transaction based, and out of step with just-in-time inventory practices of the trade community.”¹⁰ The House report directs CBP to address the integration of CBP and ACE modernization with DHS information systems; border security technologies; CSI; and the ATS; in the quarterly reports sent to Congress. This House report language is adopted by the conferees in H.Rept. 108-774. The Senate report also notes that funding for ACE is only available upon the submission of a comprehensive expenditure plan that complies with various capital planning and investment control requirements established by OMB; complies with various acquisitions rules and requirements; is reviewed by GAO; and approved by the Appropriations Committees of the Senate and the House.

CBP Issues — Between Points of Entry. Within CBP, the United States Border Patrol (USBP) is the agency responsible for the enforcement of federal immigration laws between points of entry. As currently comprised, the USBP’s primary mission is to detect and prevent the entry of unauthorized aliens into the

⁹ U.S. Congress, Senate Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2005*, report to accompany S. 2537, 108th Cong., 2nd sess., S.Rept. 108-280, p. 18.

¹⁰ U.S. General Accounting Office, *U.S. Customs Service: Observations on Selected Operations and Program Issues*, T-GGD/AIMD-00-150 (Washington, Apr. 20,2000), p. 6.

country, assist in the detection of possible terrorists, and interdict drug smugglers and other criminals.

Integrated Surveillance Information Systems. Both reports also express support for the expansion of the Integrated Surveillance Information System (ISIS), a networked system of cameras and sensors used to patrol the borders. The House report notes that it is aware that significant gaps exist in the integration of the remote video surveillance systems and integrated computer assisted detection systems that form ISIS' base. The House report fully funds the request but believes that more investment is necessary. The House Committee requests that CBP include a five-year capital acquisition plan for ISIS in its FY2006 budget request, and to submit a report on ISIS integration with other DHS and CBP enterprise architecture and technology standards within 90 days of the enactment of the Appropriations Act. The Senate report requested that CBP submit a master plan for nationwide deployment of the system by December 15, 2004. The master plan should include a breakout by sector and installation type, plans for redundancies and digital records, an analysis of the proper number of staff needed to operate the system, and a total cost estimate. The conferees direct CBP to submit the five-year capital acquisition report and the master plan for nationwide deployment with the FY2006 budget submission. The conferees also direct the Under Secretary for BTS to report no later than February 8, 2005 on the status of the effort to integrate sub-systems that encompass ISIS. Further, the conferees direct the GAO to undertake a study of ISIS project management and spending plans for ISIS investment and operations for FY2006-FY2010.

Fleet Management. Both reports address USBP vehicle acquisition policy, with the Senate report noting it is aware that CBP is conducting a comprehensive review of its vehicle management plan. Nevertheless, the Senate Committee voices concern that the USBP may be facing a vehicle procurement and management crisis in the long term and strongly supports efforts to incorporate the U.S. Border Patrol (USBP) fleet into the CBP fleet management plan. The Senate directs CBP to submit a detailed vehicle management plan by February 8, 2005. The House report notes it is aware that the USBP needs Severe Off-Road Vehicles, among other types of vehicles, and requests a detailed report on the USBP vehicle acquisition and fleet management plan so they can better understand the agency's needs. The report must be submitted within 90 days of enactment and should include the USBP 2004 fleet baseline and planned investments, by vehicle type, for FY2005- FY2009. The conferees in H.Rept. 108-774, direct CBP to submit a detailed report no later than February 8, 2005 as specified by the House and Senate reports.

Arizona Border. The House report voices concern over the continued high level of illegal immigration within the USBP's Tucson sector and strongly supports the Arizona Border Control (ABC) initiative, an administrative initiative aimed at concentrating more USBP resources along the Arizona border. However, the committee expresses disappointment at the apparent lack of progress in ABC's implementation. The committee believes ABC will reduce the Arizona border's vulnerability, stop the violence associated with human traffickers, limit the cost and danger to area residents, and ameliorate the risk of serious injury or loss of life faced by aliens due the inhospitable terrain. In addition, the House Committee report requires CBP to conduct a study of locations for permanent checkpoints within the

Tucson sector. Additionally, the committee includes restrictions that tactical checkpoints must be relocated at least an average of once every 14 days, and that funds may not be used for the construction of permanent checkpoints in the Tucson Sector. Lastly, the House Committee directs CBP to submit a detailed staffing plan that includes staffing by position at each port of entry, USBP station, or other border location. The committee has also funded additional Northern Border staff, bringing USBP staff levels there to those authorized in the USA PATRIOT Act.

Immigration and Customs Enforcement

ICE focuses on enforcement of immigration and customs laws within the U.S., as well as investigations into such activities as fraud, forced labor, trade agreement noncompliance, smuggling and illegal transshipment of people and goods, and vehicle and cargo theft. In addition, this bureau oversees the building security activities of the Federal Protective Service, formerly of the General Services Administration; the operations of the Air and Marine Operations unit; and the Federal Air Marshals Service (FAMS) transferred to ICE from TSA in August of 2003. The Office of Air and Marine Interdiction was transferred to CBP, and therefore the totals for ICE do not include Air and Marine Interdiction funding, which is included under CBP.

The bureau combined the investigations and intelligence functions of the U.S. Customs Service and the former INS, the air and marine interdiction functions of those agencies, and the immigration detention and removal programs, as well as the operations of the Federal Protective Service. ICE conducts investigations to develop intelligence to reduce illegal entry into the United States, and is responsible for locating and removing illegal aliens by inspecting places of employment for undocumented workers. ICE is responsible for identifying and finding persons who have overstayed their visas, and the Bureau also develops intelligence to combat terrorist financing and money laundering, and to enforce export laws against smuggling and fraud.

FY2005 Request. The President's budget requested \$3,499 million in direct appropriations for ICE. The ICE budget is composed of several activities broken out into several accounts. ICE budget accounts include Salaries and Expenses; Federal Air Marshal Service (FAMS); Federal Protective Service (FPS); Air and Marine Operations (AMO); Automation Modernization; and Construction. The Salaries and Expenses includes funding for the following activities: Investigations/Intelligence; Detention and Removal; and AMO. **Table 6** presents the ICE request by account. In addition to discretionary funding, ICE also receives funding from the following offsetting fee receipt accounts: Breached Bond Detention Fund; User Fee account; and the Student Exchange and Visitor Program (SEVIS).¹¹ The President's budget requests funding increases for several program initiatives. The Administration requested a total of \$3,307 million for ICE in FY2005, representing a nearly 11% increase over the FY2004 enacted level. H.Rept. 108-541 recommended \$3,363 million, while the Senate passed H.R. 4567 recommended \$3,760 million for ICE. During floor debate, the Senate adopted amendments 3616, 3618, and 3578 which

¹¹ The funding from these accounts is not included in **Table 7**.

would have increased ICE appropriations by \$350 million over S.Rept. 108-280, including \$200 million for Air and Marine Operations, \$50 million for additional ICE investigators, \$50 million for Detention and Removal, and \$50 million for the Federal Air Marshals. P.L. 108-334 provides \$3,167 million for ICE, however, this amount does not include amounts provided for AMO which, as noted earlier, has been transferred to CBP.

Table 6. ICE Account Detail
(\$ millions)

ICE Account	FY2004 enacted	FY2005 request	FY2005 House	FY2005 Senate	FY2005 Conf.
Salaries and Expenses	2,138	2,371	2,377	2,513	2,438
Rescission ^a	(-54)	—	—	—	—
Federal Protective Service ^b	424	478	478	478	478
offsetting fee receipts	—	(-478)	(-478)	(-478)	(-478)
Federal Air Marshals ^c	623	613	663	713	663
Automation Modernization	40	40	40	40	40
Air and Marine Operations	209	258	258	468	— ^d
Construction	27	26	26	26	26
Total Direct Appropriations	3,407	3,307	3,363	3,760	3,167
Total Direct Appropriations not Including FPS	2,983	3,307	3,363	3,760	3,167

Source: P.L. 108-334, H.Rept. 108-541 to H.R. 4567 passed by the House June 18, 2004; S.Rept. 108-280 to S. 2537 reported by the Senate June 17, 2004.

Note: FY2004 amounts reflect the 0.59% across-the-board rescission enacted by P.L. 108-199. Rounding may affect totals. Amounts in parentheses are not added to the total.

- a. Rescission of funds appropriated for Operation Liberty Shield activities which are no longer required.
- b. Though this table indicates that the FY2005 request represents a 2.9% decrease from FY2004, this is due to a change in accounting for the fee receipts used to offset the expenses of FPS. If the FY2005 offsets are applied consistent with FY2004, ICE actually receives an increase of nearly 11% from the FY2004 level as seen in the last line of the table.
- c. The Federal Air Marshals were transferred to ICE from TSA in September of 2003.
- d. The Office of Air and Marine Interdiction (AMO) was transferred from ICE to CBP, P.L. 108-334 and the conference report (H.Rept. 108-774) reflect this transfer.

The Administration requested \$78 million (355 FTE) over base resources for the following Investigations program initiatives:

- \$16 million (65 FTE) for compliance teams to analyze data generated from the Student Exchange and Visitor Information System (SEVIS) and US-VISIT (fully funded by P.L. 108-334, and the House and Senate reports);
- \$14 million (90 FTE) for International Affairs of which \$10 million is to support the new Visa Security Unit, and the remaining \$4 million is requested to replace funding previously provided through the Examination Fee Account (fully funded by P.L. 108-334, and the House and Senate reports);

- \$25 million to support benefit fraud operations, requested to replace funding previously provided by the Examination Fee Account (fully funded by P.L. 108-334, but not funded by the Senate); and
- \$23 million for worksite enforcement (funded at \$5 million by P.L. 108-334, funded by the House at \$15.6 million, and not funded by the Senate report).

The Administration requested, and P.L. 108-334 fully funds, \$108.2 million (342 FTE) over base resources for the following Detention and Removal program initiatives:

- \$30 million (140 FTE) to expand the Institutional Removal Program nationally to all Federal, State, and local institutions housing criminal aliens;
- \$50 million (118 FTE) to continue implementation of the National Fugitive Operations Program (NFOP) which seeks to reduce the fugitive alien population over the next six years;
- \$11 million (30 FTE) to establish alternatives to detention that include additional non-traditional family and female-friendly detention settings and establish community supervision operations (the House report provides an additional \$5 million above the request which was not funded by P.L. 108-334);
- \$6 million (40 FTE) for the Legal Program to eliminate the backlog of matters pending in the Immigration Court;
- \$6.2 million to fund DHS's efforts to interdict illegal alien migrants in the Caribbean region; and
- \$5 million (14FTE) for additional detention bed space (P.L. 108-334 provides an additional \$16.5 million above the House and Senate recommendations for a total of \$20.5 million above the request)(the House and Senate reports both recommended an additional \$5 million above the request).

The Administration requested, and P.L. 108-334 fully funds, \$40.5 million for the following AMO program initiatives that have been transferred to CBP:

- \$28 million to increase the number of P-3 flight hours from 200 to 600 hours per month, (the P-3 aircraft are used in interdiction operations to provide radar coverage in areas where ground-based radar have limited effectiveness);
- \$12.5 million for long range radar to support drug interdiction efforts along the southern border.

Table 7 provides a breakout of the activities in ICE.

Table 7. ICE Selected Sub-Account Level Detail
(\$ millions)

Activity	FY2004 enacted	FY2005 request	FY2005 House	FY2005 Senate	FY2005 Conf.
Salaries and Expenses					
HQ Management and Administration	150	166	166	176	216
Investigations	861	963	942	1,030	1,071
Intelligence	55	56	56	60	60
Detention and Removal Operations	959	1,070	1,080	1,125	1,091
Air and Marine Operations, Personnel Compensation, and Benefits	114	116	133	123	— ^a
Total ICE Salaries and Expenses	2,138	2,371	2,377	2,513	2,438

Source: P.L. 108-334, H.Rept. 108-541 to H.R. 4567 passed by the House June 18, 2004; S.Rept. 108-280 to S. 2537 reported by the Senate June 17, 2004.

Note: FY2004 amounts reflect the 0.59% across-the-board rescission enacted by P.L. 108-199. Rounding may affect totals. Amounts in parentheses are not added to the total.

a. The Office of Air and Marine Interdiction (AMO) was transferred from ICE to CBP, P.L. 108-334 and the conference report (H.Rept. 108-774) reflect this transfer.

ICE Issues for Congress.

Air and Marine Operations (AMO). There are several AMO issues discussed in the House and Senate reports including the appropriate location of AMO within BTS; possible mission overlap; resource allocation and utilization; and radar coverage. Prior to the establishment of DHS, AMO was a part of the legacy Customs Service and was called Air and Marine Interdiction. With the creation of CBP and ICE, AMO became a stand alone unit within ICE. Both H.Rept. 108-541 and S.Rept. 108-280 express concern about the appropriate location for AMO within BTS. AMO's current mission includes "interdiction of smugglers and potential terrorists crossing our borders, traffickers operating the source, transit and arrival zones of the Western Hemisphere, providing airspace security for the nation's capital and for National Special Security Events (NSSEs), and providing support for investigative and law enforcement operations."¹² The House report discusses several options: leaving AMO in ICE; "bringing AMO under the umbrella of the BTS Directorate and aligning its operations with the border security and interdiction missions of CBP"¹³; and moving AMO to become a standalone agency reporting directly to the Under Secretary of BTS. Both the House and Senate committees indicate a desire to identify potential areas of overlap between the air and marine operations of AMO in ICE, the Border Patrol in CBP, and the Coast Guard. DHS and BTS are currently

¹² U.S. Congress, House Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2005*, report to accompany H.R. 4567, 108th Cong., 2nd sess., H.Rept. 108-541, p. 17.

¹³ U.S. Congress, House Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2005*, report to accompany H.R. 4567, 108th Cong., 2nd sess., H.Rept. 108-541, p. 18.

undertaking a review of air and marine assets and operations in the department. Both committees express keen interest in the findings of this review, and the Senate report directs DHS to submit a report no later than February 15, 2005 detailing the findings of the pending review.

AMO has been transferred from ICE to CBP. In H.Rept. 108-774, the conferees strongly support the effort to rationalize air and marine assets and organization within DHS. The conferees also reiterate concerns that BTS submit the AMO modernization and capitalization plan, and direct AMO to include detailed multi-year staffing plans in this report. Further, the conferees direct the Under Secretary of BTS in coordination with the U.S. Interdiction Coordinator to submit a report no later than February 15, 2004 on: (1) specific actions planned or taken to rationalize air and marine efforts; (2) plans for modernizing air and marine assets including staffing plans in the level of detail required in H.Rept. 108-541; (3) cost/benefit analysis of retrofitting the existing P-3 fleet; and (4) the multiple air and marine missions of CBP and their relation to the Coast Guard.

One of the radar systems utilized by AMO is the Tethered Aerostat Radar System (TARS); a balloon-borne low altitude radar system that provides surveillance coverage for homeland security, drug interdiction, and air defense missions. TARS is currently managed by the Department of Defense. The House Committee notes no realistic alternative to TARS will be available for the next decade. According to AMO officials, at the height of the program, 14 TARS sites were operational. H.Rept. 108-541 indicates that there are currently eight sites in operation. The report also notes a discrepancy concerning the optimum number and location of TARS sites. The committee directs the Under Secretary of BTS in coordination with DHS' U.S. Interdiction Coordinator to submit a joint report no later than 90 days after enactment, detailing a threat analysis of the U.S. border including analyses of attempted intrusions and similar threatening air and marine activity and relating this activity to the current and proposed locations of TARS sites. Further, the report should also outline the costs and benefits of maintaining current sites, re-opening or commissioning new sites, and upgrading all sites with the most current surveillance and monitoring equipment. Conferees in H.Rept. 108-774 echo the concern and reporting detailed in H.Rept. 108-541.

Lastly, the Senate passed version of H.R. 4567 added \$200 million for the creation and maintenance of air bases in Michigan, Montana, New York, North Dakota, and Washington, and would have authorized \$5 million to fund a pilot project to test interoperable communications between the first Northern Border Air Wing and local law enforcement personnel.

Detention Issues. Many contend that DHS does not have enough detention space to house all those who should be detained.¹⁴ There are reportedly 300,000 noncitizens in the United States who have been ordered deported who have not left the country. Some argue that these 300,000 people would have been forced to leave

¹⁴ For more information on the issues surrounding the detention of noncitizens in the United States, see CRS Report RL32369, *Immigration-Related Detention: Current Legislative Issues*, by Alison Siskin.

the country if they had been detained once they were ordered deported. A study done by DOJ's Inspector General found that almost 94% of those detained with final orders of removal were deported while only 11% of those not detained who were issued final orders of removals left the country.¹⁵ Concerns have been raised that decisions on which aliens to release and when to release the aliens may be based on the amount of detention space, not on the merits of individual cases, and that the amount of space may vary by area of the country leading to the disparate application of policies in different geographic areas.¹⁶

Likewise, the overall increase in the number of noncitizens in DHS detention has raised questions about the cost of detaining noncitizens, and whether ICE is using their resources in the most efficient manner. For FY2004, DHS budgeted \$80 a day for each detainee held in detention.¹⁷ This cost does not include transportation or the cost of deporting the alien. Due to the cost of detaining aliens, and the fact that many non-detained aliens with final orders of removal do not leave the country, there has been interest in developing alternatives to detention for certain types of aliens who do not require a secure detention setting.¹⁸

Examinations Fee and Staffing. There are still some issues which remain due to the dismantling of the former INS into three bureaus within DHS. For example, previously certain immigration enforcement activities were partially funded by fees from the Examination Fee Account, which now goes to U.S. Citizenship and Immigration Services. Some have questioned whether appropriated funds will be enough to compensate for activities previously provided through this account. In addition, due to the increased responsibilities of DHS for visa security overseas, concerns have been raised over whether ICE's overseas attache offices are adequately staffed.¹⁹

¹⁵ Office of the Inspector General, Department of Justice. *The Immigration and Naturalization Service's Removal of Aliens Issued Final Orders*, Report I-2003-004, Feb. 2003.

¹⁶ The decision does not usually apply to aliens who are under mandatory detention. A high priority detainee may be released to make space for a mandatory detainee. Nonetheless, DHS does have explicit procedures for choosing between two mandatory detainees if there is not enough bed space. Pearson, *INS Detention Guidelines*, p. 1116.

¹⁷ Unpublished DHS data obtained from Betty Mills-Carilli, Bureau of Immigration and Customs Enforcement Office of Congressional Affairs, Department of Homeland Security, Apr. 8, 2004.

¹⁸ On June 21, 2004, ICE began a pilot program for low-risk, non-violent offenders in eight locations. The program, the Intensive Supervision Appearance Program (ISAP), provides less restrictive alternatives to detention, using such tools as electronic monitoring devices (e.g., ankle bracelets), home visits, work visits, and reporting by telephone, to monitor aliens who are out on bond while awaiting hearings during removal proceedings or the appeals process. Department of Homeland Security, U.S. Immigration and Customs Enforcement, "Public Security: ICE Unveils New Alternative to Detention," *Inside ICE*, vol. 1, no. 5, June 21, 2004. Available at [http://www.ice.gov/graphics/news/newsreleases/insideice/insideice_062104_web3.htm].

¹⁹ The attache offices are responsible for conducting and coordinating ICE investigations (continued...)

SEVIS. Student and Exchange Visitor Information System (SEVIS) is the foreign student monitoring system through which DHS collects information on foreign students. SEVIS provides the electronic means to monitor and verify information pertaining to the foreign student including the alien's identity and address; documentation of the student's acceptance by an approved school; issuance of the student's nonimmigrant visa; admission of the student to the U.S.; notice to the school that the foreign student has been admitted into the United States; and notice from the school that the alien has attended classes. In addition, schools have reported technical difficulties operating SEVIS, and reported discrepancies between information received from different bureaus in DHS regarding SEVIS operations and requirements. Moreover, prior to the implementation of SEVIS it was difficult to know when foreign students overstayed their visas. Through SEVIS, DHS should be able to identify students who have violated the terms of their visas; however, some question whether DHS has sufficient compliance teams to locate all student visa violators, and whether it is an effective use of DHS resources to do so.

Transportation Security Administration²⁰

The TSA,²¹ created by the Aviation and Transportation Security Act (ATSA; P.L. 107-71), was established to increase the protection of people and commerce as they traveled into and through the United States.

FY2005 TSA Request. The Administration's net FY2005 request for TSA of \$2,752 million represents a 9.7% increase over the enacted FY2004 level of \$2,508 million. According to TSA this increase does not include funding to expand current programs, nor does it fund any new program initiatives.²² Instead, this increase is comprised primarily of annualizations of prior year funding, and pay inflation.

H.Rept. 108-541 recommended a net appropriation of \$3,225 million for TSA. While this appears to be a \$473 million increase over the FY2005 request, and a 29% increase over the enacted FY2004 level, H.Rept. 108-541 in fact provides increases totaling \$73 million. According to S.Rept. 108-280, the Administration budget request included a \$400 million increase in aviation security fees. However, neither House nor Senate reports fund this request, instead they provide the \$400 million in appropriated funds. **Table 8** reflects the amounts contained in H.Rept. 108-541 and S.Rept. 108-280. S.Rept. 108-280 recommended a total appropriation of \$3,337 for TSA for FY2005. However, during floor debate for H.R. 4567, the Senate adopted

¹⁹ (...continued)

(including investigations of smuggling and trafficking) and supporting Detention and Removal Operations (DRO).

²⁰ This section was prepared with the assistance of Bartholomew Elias.

²¹ For more detailed information, see CRS Report RL31308, *Appropriations for FY2003: Transportation and Related Agencies*, coordinated by David Randall Petersen and John Frittelli.

²² Department of Homeland Security, "Transportation Security Administration," *Department of Homeland Security FY2005 Congressional Budget Justification*, p. TSA-15.

amendment 3598 which added \$75 million to TSA for baggage screening activities. P.L. 108-334 provides a net appropriation of \$3,260 million for TSA.

Table 8. TSA Account Detail
(\$ millions)

TSA Activity	FY2004 enacted	FY2005 request	FY2005 House	FY2005 Senate	FY2005 Conf.
Aviation Security	3,724	4,238	4,271	4,461	4,324
Maritime & Land Security ^a	261	29	65	44	48
Credentialing Activities	—	67	65	67	67
Intelligence	14	14	14	14	14
Research and Development	154	154	174	181	178
Administration	425	540	525	535	520
Aviation Security Capital Fund	—	(250)	(250)	(250)	(250)
Subtotal TSA	4,578	5,042	5,114	5,302	5,151
Offsetting Fee Collections					
— <i>Aviation Security Fees</i>	-2,070	-2,223	-1,823	-1,823	-1,823
— <i>Credentialing Fees</i>	—	-67	-67	-67	-67
Total TSA	2,508	2,752	3,225	3,412	3,260

Source: P.L. 108-334, H.Rept. 108-541 to H.R. 4567 passed by the House June 18, 2004; S.Rept. 108-280 to S. 2537 reported by the Senate June 17, 2004, and Senate passed H.R. 4567 on September 14, 2004.

Note: FY2004 amounts reflect the 0.59% across-the-board rescission enacted by P.L. 108-199. Rounding may affect totals. Amounts in parentheses are not added to the total.

- a. The apparent decrease in Maritime and Land Security reflects a reorganization of grants (primarily port security grants) that, pursuant to the Secretary of DHS' January 26, 2004 proposal, were moved from TSA to the OSLGCP.

Table 9 provides selected sub-account level detail to illustrate the difference in funding amounts recommended for passenger screening, baggage screening, and airport security.

Table 9. TSA Selected Sub-Account Level Detail
(\$ millions)

Activity	FY2004 enacted	FY2005 request	FY2005 House	FY2005 Senate	FY2005 Conf.
Aviation Security					
— Passenger Screening	1,802	2,027	2,017	2,077	2,049
— Baggage Screening	1,316	1,378	1,407	1,513	1,452
— Airport Security	702	834	847	872	822
— Use of Prior Year Balances	-95	—	—	—	—
Total TSA Aviation Security	3,724	4,238	4,720	4,461	4,324

Source: P.L. 108-334, H.Rept. 108-541 to H.R. 4567 passed by the House June 18, 2004; S.Rept. 108-280 to S. 2537 reported by the Senate June 17, 2004, and Senate passed H.R. 4567 on September 14, 2004.

Note: FY2004 amounts reflect the 0.59% across-the-board rescission enacted by P.L. 108-199. Rounding may affect totals. Amounts in parentheses are not added to the total.

As illustrated in **Table 9**, there are several differences in recommended appropriations for Aviation Security. P.L. 108-334 provides \$22 million over the request for Passenger Screening, while the House recommended \$10 million less than requested and the Senate report recommended \$50 million more than requested. For Baggage Screening, P.L. 108-334 provides \$75 million above the request; while the House recommended \$29 million above the Administration's request and the Senate in S.Rept. 108-280 recommended \$60 million above the request for the purchase and installation of EDS/ETD equipment. For Airport Security Direction and Enforcement P.L. 108-334 provides \$12 million less than requested, while the House recommended an additional \$3 million above the request for aviation regulation and other enforcement, and an additional \$10.4 million above the request for air cargo security; and the Senate recommended \$38 million above the administration's request, of which \$25 million is for airport information technology and support, and \$13 million is for air cargo security activities.

TSA Issues for Congress.

Privatized Airport Screening Program. Both the House and Senate Committee reports fully fund the budget request for the five pilot airports that have privatized their baggage and passenger screeners. Both reports note that there is no way for TSA or Congress to know how many airports will opt out of the federal screener program beginning November 18, 2004. The Senate Committee noted that if additional airports are awarded the ability to utilize private screeners TSA is expected to adhere to the reprogramming requirements stipulated in section 502 of Appropriations Act S. 2537. The House Committee declared that it has provided TSA with the flexibility to cover passenger screening activities for federal screeners as well as for any private contracts awarded under the opt out provision. The House Committee cautions that it expects TSA to live within the funding provided for personnel, compensation, and benefits, however, noting that screening costs for airports opting out should not exceed the costs of retaining federal screeners —

indeed, the committee believes that there may be some cost savings associated with privatization of screening.

Staffing Levels. The House Committee continues bill language limiting the number of screeners to no more than 45,000 FTE employees at the end of 2005 because it believes that this provision is reasonable and has forced TSA to be more disciplined in spending taxpayer dollars. The House Committee notes that when TSA was first formed it over-hired and mismanaged millions of dollars as it labored to federalize airport baggage screeners, resulting in staffing levels, especially at small and medium sized airports, that became outrageously high. While the Committee notes that TSA has made progress towards streamlining and reshaping its workforce so that high-traffic airports receive more screening personnel, it also believes that much more could be done regarding the development and installation of EDS that reduce the number of FTEs needed. Until these advancements are in place, the committee believes it would be too easy for TSA to revert back to hiring screeners above the 45,000 cap; for this reason it is continuing the limitation.

The conferees include bill language capping the TSA FTE screener workforce level at 45,000 by the end of FY2005. The conferees also note that TSA may need to realign its workforce between airports throughout the year to maintain security and customer service.

Computer Assisted Passenger Pre-screening System (CAPPS II) and "Secure Flight". Currently, air carriers are responsible for implementing the CAPPS system at airports. TSA had been developing a more advanced passenger pre-screening system called CAPPS-II; however, due to mounting privacy concerns and operational problems, TSA recently announced it is scrapping its plans to implement CAPPS-II this fall.²³ Instead, TSA Administrator David M. Stone recently testified that CAPPS-II is being "reshaped and repackaged" to address the privacy issues.²⁴ TSA recently announced the replacement program, entitled "Secure Flight" which will differ from CAPPS II because it focuses on identifying terrorists rather than on serving other law enforcement purposes.²⁵ One of the 9/11 Commission Report recommendations suggests that TSA take over administration of the existing CAPPS system from the airlines until whatever program replaces it becomes operational. This would probably add to TSA screener workload and thus result in an increased need for funds within TSA. Possible issues for Congress include whether current appropriations levels are adequate for the "reshaping" of CAPPS-II into the recently announced "Secure Flight" program, and whether more funds should be appropriated for TSA if in fact the agency takes over the implementation of the existing CAPPS system from air carriers.

²³ Chris Strohm, "DHS Scraps Computer Pre-Screening System, Starts Over," Government Executive Online, July 15, 2004, at [<http://www.govexec.com/dailyfed/0704/071504c1.htm>].

²⁴ U.S. Congress, Senate Committee on Commerce, Science, and Transportation, *Nominations*, 108th Cong., 2nd sess., July 13, 2004.

²⁵ U.S. Department of Homeland Security, Transportation Security Administration, "TSA to Test New Passenger Pre-Screening Program," press release, Aug. 26, 2004.

The conferees agree to provide \$35 million for Secure Flight and note that an additional \$10 million is provided under a separate TSA account for crew vetting. The conferees note their concern that 90 days may not be sufficient to plan, test, and analyze the system before its full implementation. Therefore, the conferees encourage the TSA to focus first on getting watchlists operational and expect TSA to cooperate with GAO in its review of Secure Flight. The conferees further note that DHS is proposing to check all watchlists through the new Secure Flight system as recommended by the 9/11 Commission.

Checkpoint Support. The Senate Committee recommends a \$75 million increase over the President's request for the reconfiguration, purchase, installation, and maintenance of airport checkpoint equipment and the electronic surveillance of checkpoints. The committee notes that it is aware of TSA efforts to screen passengers' baggage but that current deficiencies in the ability to detect explosives on passengers and their checked bags continue to warrant concerns. The Senate Committee directs TSA to submit a detailed report by July 1, 2005 on TSA's pilot program to screen passengers and carry-on baggage for explosives. The conferees adopted an increase of \$35 million for checkpoint security, and adopted the Senate reporting requirements.

Crew Vetting. The House Committee recommended \$10 million for the vetting of foreign air carrier crews that the TSA has been undertaking since December 2003. The Committee is deeply troubled that in FY2004 TSA spent \$20 million of funding provided for CAPPSSII for this activity without notifying Congress. The House Committee notes that it believes this activity is still necessary, and states that it expects TSA to make a clear distinction between CAPPSSII and any other vetting activities it undertakes. The conferees provide \$10 million for crew vetting.

Explosive Detection Systems and Explosive Trace Detection. The House and Senate Committees both recommended additional funding for purchase of EDS and ETD machines. The Senate Committee noted that its \$60 million increase over the President's request would have allowed TSA to procure next generation in-line EDS baggage screening machines. The House also directed that the \$20 million it would have provided over the President's request be used to purchase the next generation EDS machines, which it noted are far smaller and less expensive than the current generation of screening units. The conferees provide \$30 million over the request for EDS purchases. The House Committee also continues to encourage competition among vendors so that a wide array of EDS technologies can be made available to TSA (the conferees also adopt this language).

Both the House and Senate Committees support TSA efforts to design the next generation of EDS machines. The House Committee notes it expects \$10 million of the \$50 million it recommends to be spent initiating a "Manhattan Project II" program which will attempt to achieve a quantum leap in next generation EDS technology, as opposed to the incremental approach currently being taken. The conferees provide \$54 million for next generation EDS machines, and like the House, allocate \$10 million for a "Manhattan Project II" program. The Senate Committee recommended \$57 million for this research, and notes it is encouraged by the progress being made by the Transportation Security Laboratory.

Airport Security Installations. Both the House and Senate Committee reports support the Letter of Intent (LOI) program with airports for installing EDS machines. The House Committee recommended an additional \$19 million over the statutory allocation of \$250 million for the Aviation Security Capital Fund (ASCF) to fulfill the federal commitment to the eight airports that have entered into LOI with a 75% federal share. The conferees provide \$45 million in addition to the \$250 million statutory allocation of the ASCF. However, due to budgetary constraints the House Committee notes that the federal government cannot provide a 90% federal share to the eight LOI airports; as such the committee waives language in section 605 of the Vision 100 Act (P.L.108-176) that distributes the ASCF by formula. The conferees fund the LOI commitment at a 75% federal share.

Air Cargo Security. Both the House and Senate Committee reports recommended additional funding for air cargo security. The Senate Committee recommended \$13 million over the budget request, while the House Committee recommended \$10.4 million above the budget request. Both the House and Senate noted that \$10 million of their respective additional funding is provided for TSA to hire 100 additional air cargo inspectors. The Senate Committee recommended that the remaining \$3 million in additional funding to expand the number of explosives detection canine teams, while the House Committee's additional \$400,000 would have been spent on continuing TSA's participation in the C-TPAT program. The Senate Committee also recommended some additional funding for developing technologies to secure air cargo within the "Research and Development" account. The conferees provide a total of \$115 million for air cargo of which \$40 million is for 100 additional inspectors and enforcement activities, and \$75 million for research and development of technologies to more effectively detect air cargo threats.

The Senate Committee also recommended continued funding for maintaining the "known shipper" database, which centralizes data provided by known shippers and indirect air carriers in order to immediately verify the status of a specific shipper, and encourages TSA to continue coordinating this program with CBP's C-TPAT program to develop the ability to better target domestic air cargo for inspection. The House Committee notes that it is encouraged by TSA's work to develop ETD system protocols to inspect air cargo on passenger and cargo aircraft, and directs TSA to issue the protocols as soon as possible. The House Committee also would have continued and modified section 513 of P.L. 108-90, requiring the Secretary to research, develop, and procure certified systems to inspect and screen air cargo on passenger aircraft. Until these systems are developed, the House Committee directs TSA to enhance the known shipper program to prohibit high-risk cargo from being loaded on passenger planes. Additionally, the language added to section 513 requires the TSA to, at a minimum, double the percentage of air cargo currently being screened. The conferees direct TSA to work more aggressively to strengthen air cargo security by: strengthening the known shipper program to include regular checks; working with indirect carriers to ensure their compliance with security directives; and validating indirect carriers' security measures where the carriers consolidate freight and transport it to passenger and all cargo aircraft.

Transportation Worker Identification Card. The conferees decreased funding for this program because of delays in prototyping and evaluating credentials. TSA is directed to report back to the House and Senate Committees on

Appropriations about the results of the prototyping before moving into the next phase. The conferees provide \$15 million for the program (\$5 million in direct appropriations, and \$10 million offset through fees). Both the House and Senate Committees supported this program and recommended additional funding over the President's request. The House Committee recommended \$15 million above the President's request of \$50 million and would have directed \$15 million of the total to developing and installing necessary hardware and software at the sites that produce and personalize the ID cards. TSA is directed, as specified in FY2004, to develop a centralized personalization system that uses an existing government card production facility. The House committee expected the remaining \$50 million which is appropriated to be offset during the fiscal year through the fees people will pay for applying for an ID card. The Senate Committee recommended \$55 million for infrastructure investments and for implementation of this program for targeted high-risk populations of transportation workers.

Rail Security. The conferees provide \$12 million for rail security under TSA to support the deployment of 100 federal rail compliance inspectors and includes \$2 million for the deployment of explosive detection teams. The conferees also provide \$150 million through the Office of State and Local Government Preparedness' Urban Area Security Initiative for rail security grants; Science and Technology Directorate for research and design of rail security requirements; and Information Analysis and Infrastructure Protection to improve rail corridor security. The conferees also direct TSA to implement projects that demonstrate and advance new train control technology.

Both the Senate and House Committees recommended additional funding over the President's budget request for rail security. The Senate Committee recommended \$15 million, \$10 million of which is to be spent on deploying 100 Federal compliance inspectors for mass transit and passenger rail to conduct on-site inspections in order to ensure compliance with minimum standards and recently issued security directives. The remaining \$5 million is would have been provided for the deployment of canine explosives detection teams. The House Committee recommended \$11 million for rail security within TSA and would have added \$100 million through the Urban Area Security Initiatives grant program. The House report also recommended an additional \$12 million for rail security available through the Information Analysis and Infrastructure Protection Directorate. The House Committee voices concern about the vulnerability of the rail and transit systems and directs TSA to work with other agencies such as the Office for State and Local Government Coordination to develop a comprehensive rail and transit security program. The Committee requires TSA to submit a report by March 1, 2005 on this effort which will identify possible research and design requirements that could enhance nationwide rail security. The House Committee would have required TSA to spend \$1 million on a prototype program to perform risk assessments on domestic freight cargo; the remaining \$10 million will be spent to accelerate the testing and evaluation of technologies that will permit the TSA and transit operators to better screen rail passengers and baggage.

Other Reports/Directions. In addition to the above mentioned reports, the House and Senate Appropriations Committees request the following reports. The House Committee requests TSA to provide a report on the merits and results of

various pilot programs underway which are testing remote off-site baggage screening systems, noting that it is encouraged by TSA's interest in developing efficient baggage screening pilot programs. The House Committee also directs TSA to work with the Federal Aviation Administration to evaluate whether requiring passenger aircraft to incorporate deployable flight incident recorders would improve security analysis in aviation accidents. The House Committee requires TSA to submit a report by January 31, 2005 that contains plans for developing and implementing uniform screening standards for vetting airport workers with access to secure areas; presents an assessment of available technologies that may be applied to securing airport perimeters; and develops and implements a standardized approach to conducting airport vulnerability assessments and compliance inspections. The House Committee directs TSA to report on the status of grants awarded for the evaluation and procurement of portable nuclear radiation search tools by October 1, 2004.

The Senate passed version of H.R. 4567 includes amendment 3585, which requires the Secretary of Homeland Security, in consultation with the Secretary of Transportation, to develop and maintain an integrated strategic transportation security plan. This plan should identify and evaluate transportation assets that need to be protected, and set risk-based priorities and select the most cost-effective ways of defending them. The plan should be presented no later than February 1, 2005, and future budget requests should be based upon it. Additionally, Senate H.R. 4567 includes amendment 3642, requiring the secretary to present a comprehensive report concerning how to best protect commercial airliners from man-portable air defense systems (MANPADS). The MANPADS report should be submitted along with the FY2006 TSA budget request.

U.S. Coast Guard²⁶

The Coast Guard is the lead federal agency for the maritime component of homeland security. As such, it is lead agency responsible for border and transportation security as it applies to U.S. ports, coastal and inland waterways, and territorial waters. The Coast Guard also performs other missions, including some (such as fisheries enforcement and marine rescue operations) that are not related to homeland security.

The Coast Guard was transferred from the Department of Transportation (DOT) to the new DHS on March 1, 2003. The law that established DHS (P.L. 107-296) directed that the Coast Guard be maintained as a distinct entity within DHS and that the Commandant of the Coast Guard report directly to the Secretary of DHS. Accordingly, the Coast Guard exists as its own agency within DHS and is not part of DHS's border and transportation security directorate. The Coast Guard does, however, work closely with that directorate.²⁷

²⁶ This section was prepared with the assistance of Ronald O'Rourke.

²⁷ For more on the Coast Guard's role in homeland security, see CRS Report RS21125, *Homeland Security: Coast Guard Operations — Background and Issues for Congress*, by Ronald O'Rourke. Some of the discussion below is adapted from this report.

FY2005 Coast Guard Request. The total FY2005 request for the Coast Guard of \$7,335 million represented an 8.5% increase over the enacted FY2004 level of \$6,764 million. H.Rept. 108-541 recommended \$7,307 million for the Coast Guard for FY2005 and included a rescission of \$33 million in unexpended funds appropriated in FY2003 and FY2004 for Maritime Patrol Aircraft under the Deepwater Program. S.Rept. 108-280 recommended \$7,469 million for the Coast Guard in FY2005 (this amount does not include the \$33 million rescission contained in H.R. 4567). P.L. 108-334 provides \$7,373 million for the Coast Guard for FY2005. This amount includes a rescission of \$16 million of funds appropriated in FY2004 for Rescue 21 because of contract delays and high unobligated balances. **Table 10** provides account level detail for the Coast Guard's appropriation.

Table 10. Coast Guard Account Detail
(\$ millions)

Coast Guard Account	FY2004 enacted	FY2005 request	FY2005 House	FY2005 Senate	FY2005 Conf.
Operating Expenses	4,637	5,173	5,171	5,153	5,157
Rescission	—	—	(-33)	—	(-16)
Environmental Compliance and Restoration	17	17	17	17	17
Reserve Training	94	117	113	117	113
Acquisition, Construction, and Improvements	961	942	937	1,063	982
Alteration of Bridges	19	—	16	15	16
Research, Development, Test, and Evaluation	15	— ^a	— ^a	19	19
Retired Pay (Mandatory)	1,020	1,085	1,085	1,085	1,085
Total Coast Guard	6,764	7,335	7,307	7,469	7,373

Source: P.L. 108-334, H.Rept. 108-541 to H.R. 4567 passed by the House June 18, 2004; S.Rept. 108-280 to S. 2537 reported by the Senate June 17, 2004, and Senate passed H.R. 4567 on September 14, 2004.

Note: FY2004 amounts reflect the 0.59% across-the-board rescission enacted by P.L. 108-199. Rounding may affect totals. Amounts in parentheses are not added to the total.

a. Both the Administration's request and the House passed H.R. 4567 fund Research, Development, Test, and Evaluation under the Science and Technology Directorate of DHS.

The Administration requested increased funding for several FY2005 Coast Guard initiatives. The requested amounts and the funding levels provided by the conferees in P.L. 108-334, H.Rept. 108-541 and S.Rept. 108-280 include (but are not limited to) the following:

- \$102 million to facilitate the development, review, and approval of port and maritime security plans required by the Maritime

Transportation Security Act (MTSA) (P.L. 108-334, H.Rept. 108-541 and S.Rept. 108-280 fully fund this request);

- \$27 million for the Rescue 21 Project, which is recapitalizing the Coast Guard’s coastal zone communications network (not funded by P.L. 108-334 or H.Rept. 108-541, but fully funded by S.Rept. 108-280);
- \$10 million for the Integrated Deepwater Program (fully funded by P.L. 108-334, H.Rept. 108-541 and S.Rept. 108-280);²⁸
- \$6 million for the Great Lakes Icebreaker Project (fully funded by P.L. 108-334, H.Rept. 108-541 and S.Rept. 108-280); and
- \$2 million to arm existing helicopter assets at Air Station Cape Cod, as prototypes for arming all Coast Guard helicopters (fully funded by P.L. 108-334, H.Rept. 108-541, and S.Rept. 108-280).

Coast Guard Issues for Congress.

Deepwater Program. The Deepwater program is a planned 22-year, multibillion-dollar project to replace or modernize 93 aging Coast Guard ships and 207 aging Coast Guard aircraft. The Deepwater program presents several potential issues for Congress.

One potential issue concerns the mission requirements to be met by the program, which were established in the late 1990s and reflect a pre-9/11 understanding of the Coast Guard’s future mission requirements. A 2004 RAND Corporation report on the Deepwater program states that the baseline Deepwater program “will not provide the USCG with adequate assets and capabilities to fulfill demands for traditional missions and emerging responsibilities. To satisfy these demands, the USCG will need the capabilities of twice the number of cutters and 50% more air vehicles than it has been planning to acquire over the next two decades.” The Coast Guard is reassessing the program’s mission requirements to take post-9/11 mission demands into account. Coast Guard officials have stated that existing deepwater-capable assets are wearing out more quickly than anticipated, suggesting that new assets might need to be procured sooner than planned.

The Senate Committee report fully funds the Deepwater program. The House Committee is “deeply concerned” about the direction and focus of the Deepwater program, given the number of studies that have concluded that massive changes to the program are necessary and the fact that only a few aspects of the initial system concept are still intact. The House Committee has therefore included bill language requiring the Coast Guard to re-baseline the program and submit its findings as part of the President’s FY2006 budget. The FY2006 budget submission should include specific acquisition timetables for all previously identified assets the Coast Guard believes are still necessary and a time-line for all new assets needed to fulfill homeland security functions or multi-agency procurements. All funding levels in the submission must be identified by fiscal year. The conferees adopt this House report language. Additionally, the House Committee recommends less than the requested

²⁸ For more information, see CRS Report RS21019, *Coast Guard Deepwater Program: Background and Issues for Congress*, by Ronald O’Rourke.

sum for Maritime Patrol Aircraft due to questions about whether the aircraft meet the air intercept and rapid cargo lift and deployment capabilities required by the revised Deepwater proposal. Until the ongoing evaluations of these aircraft are completed and clearly identify which aircraft the Coast Guard will need in the future, the committee cannot fully support the budget request.

Legacy and Replacement Assets. Both the Senate and House Committee reports voice concern over the condition of Coast Guard legacy assets. The Senate cites a Governmental Accountability Office report which notes that Coast Guard assets are being used 40% more than originally anticipated when the Deepwater program was conceived, resulting in an accelerated deterioration. The Senate report notes that the Coast Guard is expending more Deepwater funding on maintaining legacy assets and less on acquiring replacement assets. The Senate Committee directs the Coast Guard to submit a report on its increased operational requirements post 9/11 and the impact that this is having on its legacy asset inventory by March 1, 2005. The report is expected to include the costs associated with sustaining each legacy asset and a timetable of all Deepwater replacement assets. The House Committee, conversely, is concerned that the Coast Guard is having problems maintaining its legacy assets due to a perceived need to expend all available funding on Deepwater procurement. The House Committee requires the Coast Guard to report, within 30 days of enactment of the Appropriations Act, its plans for maintenance of all legacy vessels and aircraft, including the entity responsible for the maintenance and the estimated costs. Further, the Coast Guard is directed to submit quarterly reports on its legacy maintenance plan beginning with the submission of the President's FY2006 budget. The conferees adopt this House Committee report language.

Automatic Identification System. A potential issue for Congress concerns the Automatic Identification System (AIS) — a vessel-tracking system that the Coast Guard wants to implement as a key part of its strategy for achieving maritime domain awareness (MDA). AIS is a system that will identify the ship, its size, and its cargo before it enters an American seaport. Questions include the availability of a radio frequency needed for AIS and whether the system as currently planned will adequately cover all categories of ships that might pose a threat to U.S. homeland security. Both the House and the Senate conference reports voice support for the AIS program. The House committee is concerned that by the end of FY2004 only nine seaports will be able to receive AIS signals from entering vessels and disappointed that only \$5 million was requested for this program even though a national plan to outfit the 55 largest seaports with this technology is scheduled to be completed by the end of the calendar year. The House Committee is therefore providing \$24 million to fund this effort in FY2005. The conference provides \$24 million for AIS.

Non-Homeland Security Missions. A key potential issue is whether the Coast Guard's resources are sufficient to adequately perform both its homeland and non-homeland security missions. The terrorist attacks of September 11, 2001, increased Coast Guard requirements for homeland-security missions without obviously reducing requirements for other missions. After September 11, 2001, the Coast Guard significantly increased homeland security operations while reducing operations in other missions. GAO, in reports and testimony on this topic, have noted reduced number of Coast Guard operating hours devoted to non-homeland

security missions, and have expressed concerns regarding the Coast Guard's ability to link application of resources to performance levels achieved for various missions.

The House and Senate reports support many non-homeland security Coast Guard initiatives. The House Committee has included an extra \$13 million for the Coast Guard to hire additional staff to ensure that it is in compliance with the U.S. Code [Title 14 sec. 676 (b)] watch standards at their Search and Rescue Command Centers. According to the code, individuals on duty are not allowed, except in emergencies, to work more than 12 hours in a 24-hour period, but staffing studies have shown the Coast Guard is unable to meet the standard at all facilities at all times. The Senate Committee encourages the Coast Guard to continue its cooperative programs in the Marine Vessel and Cold Water Safety Education area which provides education and outreach on maritime safety to fishermen and children. The Senate Committee also recognizes the importance of the Rescue Swimmer program to Coast Guard operations and supports the program.

Ballast Water Program. The Ballast Water Program aims to prevent the introduction of alien nuisance species into American waters from the ballast tanks of foreign ships. Both the House and Senate reports support this program. The Senate Committee fully funds the request in order to assist the Coast Guard in transitioning the program from a voluntary to a mandatory enforcement policy. The House Committee also fully funds the request and notes that because invasive species spread readily once they have entered U.S. water this program is of critical importance to all states with water resources regardless of their proximity to commercial ports.

The committee believes that there is a void in the CG's medium to short range aerial surveillance assets which limits the CG's ability to cost-effectively perform its homeland security related aerial surveillance missions. The committee directs the Coast Guard to procure, test, and evaluate aircraft that can perform MDA missions.

Icebreakers. The House Committee is very supportive of Coast Guard efforts to renegotiate the memorandum of understanding with the National Science Foundation (NSF) regarding the costs each agency shares for icebreaking, especially in the Antarctic region. The House Committee continues to believe that the NSF is not adequately reimbursing the Coast Guard for its icebreaking services in support of scientific research and notes that the current fleet of icebreakers is approaching the end of their service life. The House Committee directs the Coast Guard to evaluate and determine the present and future needs for polar icebreakers. The Coast Guard should consider all appropriate national defense, homeland security, scientific, economic, and environmental interests of the United States. The review should be completed and reported to the House Committee by March 1, 2005.

The Senate directs the Coast Guard to enter into an agreement with the national Academy of Sciences to conduct a comprehensive study of the role Coast Guard icebreakers play in supporting US operations in the Antarctic and Arctic. The study should include different scenarios for continuing operations including the replacement of current assets and alternative methods that do not involve the Coast Guard. The study should also address possible changes in icebreaking missions due to environmental change. The study should be submitted to the Senate Committee by September 30, 2005. The conferees adopt this report language.

Other Reports. In addition to the reports requested above the House and Senate Appropriations Committees request the Coast Guard to submit the following reports. The House Committee is concerned that the Coast Guard has not presented a report with the staffing and resource implications of the February, 2004 decision to move to a sector command structure. They direct the Commandant to submit such a report no less than 30 days prior to restructuring, including before and after staffing levels, sector organizational structures, sector chains of command, and sector infrastructure and other issues that may require additional resources to implement. The conferees adopt this House report language and requirements concerning the sector commands. The House Committee also directs the Coast Guard to submit a report on the feasibility, practicality, and cost-effectiveness of establishing a permanent West Coast helicopter squadron by October 1, 2004. Lastly, the House Committee fully funds the budget request to aggressively implement the Maritime Transportation Security Act of 2002. The committee is concerned, however, that the Coast Guard plans to rely on foreign governments to review foreign vessel security plans, especially in light of the fact that some of these plans may not even be translated into English. The committee directs the Coast Guard to review all vessel security plans and report their findings by October 15, 2004. The conferees express similar concerns, and direct the Coast Guard to use the Port State Control Programs to ensure that foreign vessel security plans are adhered to and in place. The conferees direct the Coast Guard to report no later than March 1, 2005, on the progress of the foreign vessel security oversight process including required resources.

The Senate Committee voiced concern that, based on quarterly reports, Coast Guard hours dedicated to non-homeland security missions remain significantly below pre 9/11 levels. The committee does note, however, that in most cases the Coast Guard continues to meet or exceed its performance goals in these operational areas. The committee directs the Coast Guard to submit a report on plans to develop a system that can provide accurate representations of the costs necessary to meet performance goals. Amendment 3633 to Senate passed H.R. 4567 requires DHS to submit a report, no later than 90 days after the enactment of the act, on opportunities to integrate the process by which the Coast Guard issues letters of recommendation for liquefied gas marine terminals. The conferees adopt the this reporting requirement.

Funding Implications of the 9/11 Commission Border and Transportation Recommendations

In its final report, the 9/11 Commission makes several recommendations relating to border and transportation security.²⁹ Many of these recommendations would have funding implications should they be adopted. However, it is important to note that in none of the recommendations does the commission suggest specific funding increases, decreases, or allocations. Instead, the commission points out the following broad areas that it believes need more attention and resources:

²⁹ For CRS reports related to 9/11 Commission and Transportation Security recommendations, go to CRS at [<http://www.congress.gov/erp/legissues/html/ister15.html>].

- Current transportation security efforts do not reflect a forward-looking comprehensive strategic plan that systematically evaluates all aspects of transportation security. A national plan for transportation security, as the commission conceives it, would identify the assets that need to be protected, create risk-based priorities for their defense, select the most efficient and cost-effective methods for securing them, and establish a budget and funding streams.
- The TSA is focused on aviation security at the expense of other transportation modes. The commission notes that while commercial aviation remains a potential target, “opportunities to do harm are as great, or greater, in maritime or surface transportation.” In the absence of the aforementioned national plan, the commission concludes that transportation security funding may be better allocated between all transportation modes.
- Investment should be made in technologies that have applications across transportation modes. These technologies include, but are not limited to: EDS and ETD systems currently used by TSA to screen passengers and their baggage for explosives; Non-Intrusive Inspection (NII) systems, which are large scale X-ray and Gamma-ray imaging systems used by CBP at points of entry to inspect incoming vehicles, trains, and seacraft; and Radiological Detection Equipment (RDE), used by CBP to detect traces of nuclear isotopes on vehicles, cargo, and people.
- The commission calls for an expansion of current screening programs. The U.S. border security system should be expanded and integrated into a larger network of screening points. This network should include the transportation system and access to vital facilities such as nuclear reactors. DHS should design this comprehensive screening system and set common standards that can be applied system wide. Additionally, DHS should complete its implementation of a biometric entry/exit screening system as quickly as possible and expand the screening of passengers and baggage for explosives.

These recommendations are broad in nature and as such difficult to quantify. Moreover, the 9/11 Commission makes no concrete estimates of the funding implications involved with implementing their recommendations.