

SECURING AMERICA'S PORTS ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

H.R. 5273

TO REQUIRE THE SECRETARY OF HOMELAND SECURITY TO
DEVELOP A PLAN TO INCREASE TO 100 PERCENT THE RATES
OF SCANNING OF COMMERCIAL AND PASSENGER VEHICLES
ENTERING THE UNITED STATES AT LAND PORTS OF ENTRY
ALONG THE BORDER USING LARGE-SCALE
NON-INTRUSIVE INSPECTION SYSTEMS TO ENHANCE BORDER
SECURITY, AND FOR OTHER PURPOSES



SEPTEMBER 9, 2020.—Ordered to be printed

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SECURING AMERICA’S PORTS ACT

SEPTEMBER 9, 2020.—Ordered to be printed

Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany H.R. 5273]

[Including cost estimate of the Congressional Budget Office]

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

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I. PURPOSE AND SUMMARY

The purpose of H.R. 5273, the Securing America’s Ports Act, is to enhance border security by increasing the rate of high throughput scanning for commercial and passenger vehicles and freight rail traffic entering the United States. Specifically, the Act requires the Department of Homeland Security (DHS or the Department) to, within 180 days of enactment, submit to Congress a plan for

achieving 100 percent scanning rates. The Act requires the Department to utilize large-scale non-intrusive inspection (NII) technology such as X-ray, gamma-ray, or passive systems.

The Department’s plan is to include the baseline information on the large-scale NII systems or similar technologies operated by U.S. Customs and Border Protection (CBP) at ports of entry and rail crossings, including but not limited to, an inventory of large-scale NII, the location of each system, and percentage of commercial and passenger vehicles and freight rail traffic scanned by each system. The plan is also to include benchmarks for achieving progress toward 100 percent scanning using NII over the six years following the Act’s enactment, the estimated costs, and projected impacts on the volume of traffic and personnel needs. Within one year of the enactment of this Act, and biennially thereafter for six years, DHS is to submit a report to Congress on the progress made in implementing the plan to achieve 100 percent scanning.

II. BACKGROUND AND THE NEED FOR LEGISLATION

CBP uses large-scale NII systems to scan for contraband and illicit materials without having to physically inspect a rail car or vehicle.¹ During fiscal year 2019, with the use of 320 large-scale NII systems, CBP made over 3,000 seizures, an increase of 21 percent from fiscal year 2018.² According to CBP, this was a result of scanning approximately 15 percent of commercial cargo and only one percent of vehicles arriving at land ports of entry.³ CBP enforcement data shows that larger quantities of illicit drugs seized by CBP are encountered at ports of entry.⁴ Therefore, increasing the percentage of CBP inspections using large-scale NII systems, rather than manual screening processes, will result in a larger amount of illicit materials seized at ports of entry.

In 2018, the then-Commissioner of CBP Kevin McAleenan testified that CBP “will continue to adapt our deployment of NII systems so that we can work smarter and faster in detecting contraband, while expediting legitimate trade and travel”.⁵ DHS has repeatedly touted the success of NII systems and recently prioritized increasing NII scanning rates.⁶ In March 2020, DHS Acting Secretary Chad Wolf pointed to NII as the path forward for DHS to increase inspection rates, saying that the funding Congress has appropriated thus far for NII will help DHS increase their rates of inspection to 40 percent for passenger vehicles and 72 percent for commercial vehicles by 2023.⁷ Furthermore, in the Department’s fiscal year 2021 budget request, DHS stated that they plan to con-

¹ U.S. Dep’t of Homeland Sec., U.S. Customs and Border Protection Budget Trade and Travel Report: Fiscal year 2019 (Jan. 2020), <https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/CBP%20FY2019%20Trade%20and%20Travel%20Report.pdf>.

² *Id.*

³ *Id.*

⁴ U.S. Dep’t of Homeland Sec., U.S. Customs and Border Protection, *CBP Enforcement Statistics Fiscal Year 2020*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>.

⁵ *Trade and Commerce at U.S. Ports of Entry: Hearing Before the S. Comm. on Finance* (2018) (testimony of Kevin McAleenan, Commissioner, U.S. Customs and Border Protection, U.S. Dep’t of Homeland Sec.), available at <https://www.finance.senate.gov/imo/media/doc/18JUL2018McAleenanSTMNT.pdf>.

⁶ *Id.* at 1.

⁷ *Resources and Authorities Needed to Protect and Secure the Homeland: Hearing Before the S. Comm. on Homeland Sec. and Governmental Affairs*, 116th Cong. (2020), available at <https://www.hsgac.senate.gov/resources-and-authorities-needed-to-protect-and-secure-the-homeland>.

tinue using prior year funding during fiscal year 2021 to deploy procured large-scale NII systems.⁸

The SAFE Ports Act of 2006 required DHS to ensure that 100 percent of cargo containers arriving at U.S. seaports undergo screening for risk and further, that those which are identified as high risk undergo 100 percent scanning.⁹ In this same spirit, this Act encourages DHS to increase the rate of scanning for commercial and passenger vehicles and freight rail cargo entering the United States.

In an August 2019 report, the Government Accountability Office found that CBP could improve its performance by “establishing an ambitious and realistic target for its major violations interception rate.”¹⁰ By requiring DHS to formulate a plan for achieving 100 percent scanning rates and periodically reporting to Congress on their progress, H.R. 5273 will effectively mandate that the agency evaluates its scanning capabilities and identify current deficiencies in its screening processes.

H.R. 5273 requires DHS to evaluate the large-scale NII systems they deploy on how they interact with current methods of scanning, such as canines and human intelligence. Additionally, the Act requires DHS to understand the costs associated with each system, including how the deployment of this technology impacts staffing, traffic flow, and infrastructure needs.

III. LEGISLATIVE HISTORY

Representative Xochitl Torres Small (D–NM) introduced H.R. 5273 on November 26, 2019. The House of Representatives passed the Act under suspension of the rules by voice vote on February 10, 2020. The Act was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered H.R. 5273 at a business meeting on March 11, 2020. Chairman Ron Johnson (R–WI) and Senator Kyrsten Sinema (D–AZ) offered a modified substitute amendment that included freight rail cargo in CBP’s plan for achieving 100 percent scanning rates and removed the research and development mandate. The amendment also reduced the required number of reports and re-defined large-scale non-intrusive inspection to include passive technology. Chairman Johnson offered Johnson amendment 2 to change the long title of the bill to include freight rail.

Both amendments were adopted en bloc by voice vote and the Act, as amended, was reported favorably en bloc. Senators Johnson, Portman, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Harris, Sinema, and Rosen were present for the votes.

⁸U.S. Dept of Homeland Sec., *U.S. Customs and Border Protection Budget Overview: FiscalYear2021*, https://www.dhs.gov/sites/default/files/publications/u.s._customs_and_border_protection.pdf.

⁹Security and Accountability for Every Port Act of 2006, Pub. L. No. 109–347, 120 Stat. 1884 (2006), available at <https://www.congress.gov/109/plaws/publ347/PLAW-109publ347.pdf>.

¹⁰U.S. Gov’t Accountability Off., GAO–19–658, *Land Ports of Entry: CBP Should Update Policies and Enhance Analysis of Inspections* (Aug. 2019), available at <https://www.gao.gov/assets/710/700758.pdf>.

IV. SECTION-BY-SECTION ANALYSIS OF THE ACT, AS REPORTED

Section 1. Short title

This section establishes the short title of the Act as the “Securing America’s Ports Act.”

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

Subsection (a) defines “large-scale, non-intrusive inspection systems,” to include x-ray, gamma-ray, and passive imaging systems that are able to produce images of the contents in a vehicle or rail car in one pass. The term “scanning” is defined as the utilization of nonintrusive imaging equipment, radiation detection equipment, or both, to capture data and images of vehicles and rail cars.

Subsection (b) requires the Secretary of Homeland Security to submit to Congress, within 180 days of enactment of this Act, a plan for increasing to 100 percent the rate of scanning for commercial and passenger vehicles and freight rail cargo entering the United States. This scanning is to utilize large-scale non-intrusive inspection systems.

Subsection (c) describes the baseline information to be included in the plan, including but not limited to, an inventory of large-scale NII system or similar technology in use and the continued use of other means of scanning. Additionally, for each large-scale NII system identified in the inventory, the plan must include the scanning method of the system, the location where the technology is in use at ports of entry, percentages of traffic scanned, seizure data, and the number of personnel required to operate the technology.

Subsection (d) specifies which elements must be included in the plan submitted to Congress, including the benchmarks for achieving within the next six years 100 percent high-throughput scanning of commercial and passenger vehicles and freight rail traffic, the estimated costs, and projected impacts on the volume of traffic and personnel needs.

Subsection (e) requires the Secretary of Homeland Security to submit a report to Congress on the progress made in implementing the plan to achieve 100 percent scanning. The first report is to be submitted within a year of enactment with bi-annual reports for the following six years. These reports must include the inventory of large-scale, nonintrusive inspection systems, details on each system, volume of traffic being scanned, progress towards meeting the benchmarks, updates on costs and any realized impacts or challenges in implementing the plan.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this Act and determined that the Act will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s statement that the Act contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 18, 2020.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5273, the Securing America's Ports Act.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 5273, Securing America's Ports Act			
As passed by the House of Representatives on February 10, 2020			
By Fiscal Year, Millions of Dollars	2020	2020-2025	2020-2030
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	7	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

At land ports of entry to the United States, Customs and Border Protection (CBP) uses scanning technology capable of producing an image of the contents of commercial and passenger vehicles as they pass through inspection areas. Those systems, known as large-scale nonintrusive inspection (LS NII) systems, allow for scanning of higher volumes of vehicles and cargo compared to physical inspection. In 2020, the Congress appropriated \$59 million for CBP to procure and deploy such systems.

H.R. 5273 would require CBP to produce a plan to increase the use of LS NII systems to 100 percent at land ports of entry.¹ The plan would include benchmarks for measuring scanning rates and estimates of costs to acquire, operate, and maintain those systems. The act would require CBP to report annually to the Congress on its progress in implementing the plan.

¹At land ports of entry to the United States, CBP currently scans approximately 1 percent to 2 percent of passenger vehicles and 15 percent to 17 percent of commercial trucks with non-intrusive inspection systems. The bulk of scanning efforts are focused at ports of entry along the southern border where the volume of vehicle traffic is considerably higher than along the northern border.

Using information provided by CBP, CBO estimates that the agency would spend about \$300,000 on staffing and contract costs in 2021 to produce the required plan and an additional \$100,000 a year after 2021 to conduct analyses of system deployment and to report annually to the Congress. The costs of the legislation fall under budget function 750 (administration of justice).

Although H.R. 5273 would require CBP to produce a plan to scan 100 percent of vehicles crossing U.S. borders, the act would not require the agency to meet that standard. Accordingly, this estimate does not include the costs to procure and deploy the necessary scanning systems.

Using information provided by the agency, CBO expects that under current law scanning rates for vehicles crossing the southern border will reach 100 percent for both passenger and commercial vehicles near the end of the decade if the Congress continues to provide appropriations at the current level. However, CBO expects that appropriations at that annual level would not be sufficient to achieve full scanning at the northern border until sometime after 2030.

On August 18, 2020, CBO transmitted a cost estimate for H.R. 5273, the Securing America's Ports Act, as passed by the House of Representatives on February 10, 2020. The two versions of the legislation are similar but the House version would require CBP to conduct research and development on LS NII systems. CBO's cost estimates for the two versions reflect that difference—about \$6 million in discretionary costs over the 2021–2025 period.

The CBO staff contact for this estimate is Jon Sperl. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE ACT, AS REPORTED

Because this legislation would not repeal or amend any provision of current law, it would not make changes in existing law within the meaning of clauses (a) and (b) of paragraph 12 of rule XXVI of the Standing Rules of the Senate.