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Border Security: Inspections Practices, Policies, and Issues

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Border Security: Inspections Practices, Policies, and Issues

Summary

The United States now has a unified inspections operation at the borders; a single inspector is charged with examining people, animals, plants, goods, and cargo upon entry to the country. The transfer of these functions to the Department of Homeland Security (DHS) marks a significant policy shift for all of these functions, clarifying that — although there are important commercial, economic, health, humanitarian, and immigration responsibilities — ensuring the security of our borders is the top priority. The decision by DHS officials to further integrate the inspection duties so that there is “one face at the border” now means that Customs and Border Protection (CBP) inspectors are essentially interchangeable and responsible for all primary inspections. A range of legal, administrative, and policy issues have emerged with unified border inspections. The bills implementing the 9/11 Commission recommendations (S. 2845, H.R. 10, S. 2774/H.R. 5040 and H.R. 5024) have various provisions affecting border inspections.

CBP inspectors are charged with enforcing a host of laws. Immigration law requires the inspection of all aliens who seek entry into the United States, and every person is inspected to determine citizenship status and admissibility. All goods being imported into the United States are subject to a customs inspection, but an actual physical inspection of all goods is not required. There also are laws that subject animals and plants to border inspections. This report provides a discussion of these various laws and the procedural differences in what constitutes an “inspection.”

Border inspections conducted each year number in the hundreds of millions. Prior to the creation of CBP, the Department of Justice’s immigration inspectors did most passenger inspections — peaking at 534 million in FY2000 — since all foreign nationals seeking entry into the United States must be inspected. In terms of customs inspections, approximately 22.6% of rail containers; 5.2% of sea containers; and 15.1% of trucks entering the United States were physically inspected. Unlike customs and immigration inspections data, animal and plant health inspections data enumerate only those passengers referred to secondary inspections for the purpose of an agricultural inspection. There were 44 million animal and plant inspections in FY2002.

Border inspections are funded through a combination of federal discretionary appropriations and user fees. In FY2004, CBP was given budget authority of \$2,496 million for border security, inspections, and trade facilitation at ports of entry. Historic funding data for inspections are not comparable across the “legacy” agencies as the budget data often included activities in addition to the inspection functions.

Some argue that this reorganization of border inspections has been long needed and is resulting in a more streamlined and efficient set of procedures at the border with a clear, single, chain of command. Others warn that the different types of inspections are quite complex in their own right and that the reorganization is exacerbating the conflicting priorities at the border, ultimately resulting in many more people and goods being sent to secondary inspections.

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Border Security: Inspections Practices, Policies, and Issues

Overview on Inspections

The United States now has a unified inspections operation at the borders; one inspector is charged with examining people, animals, plants, goods, and cargo upon entry to the country. This report delves into border inspections from the perspectives of the three major types of inspections: immigration, customs, and animal and plant health. The transfer of these functions to the Department of Homeland Security (DHS) marks a significant policy shift concerning all of these functions, clarifying that — although there are important commercial, economic, health, humanitarian, and immigration responsibilities — ensuring the security of our borders is the top priority. The decision by DHS officials to further integrate the inspection duties so that there is “one face at the border” now means that Customs and Border Protection (CBP) inspectors are essentially interchangeable and responsible for all primary inspections.

Background

Laws pertaining to border inspections date back to the earliest days of the United States federal government, and border inspections historically were organized along functional responsibilities. The federal authority to assess and collect duties on goods, wares, and merchandise imported into the country was established by the second act that the 1st Congress enacted in 1789, and later that year the administrative apparatus of the U.S. Customs Service was authorized as well. Although Congress’ exclusive role over naturalization and immigration is found in Article 1 of the U.S. Constitution, the formal inspection of aliens entering the United States came later in our history. In 1882, Congress enacted a law providing for an examination of all aliens who arrive in the United States and in 1891 established the Bureau of Immigration, which later became the Immigration and Naturalization Service (INS). Laws regarding plant quarantine and inspection date back to 1912.

For many years, the INS and Customs Service inspectors were “cross designated” so that they could perform initial examinations in each other’s functional responsibilities. In practice this division of labor reportedly resulted in INS inspectors being the lead at land ports of entry and Customs Service inspectors being the lead at air and sea ports of entry. The U.S. Department of Agriculture (USDA) had always handled the inspection of plants and animals independently.

Today, the Department of Homeland Security (DHS) is charged with overseeing most of the border inspections functions. The Bureau of Customs and Border Protection (CBP) includes customs inspectors, immigration inspectors, agricultural

inspectors, and the border patrol. CBP is located in the Directorate of Border and Transportation Security in DHS.¹

Some argue that this reorganization of border inspections has been long needed and will result in a more streamlined and efficient set of procedures at the border with a clear, single, chain of command. Others warn that the different types of inspections are quite complex in their own right and that the reorganization will serve to exacerbate competing priorities, ultimately resulting in many more people and goods being sent to secondary inspections.

This report opens with an overview of the parameters of the border, both physical and legal. It then presents the statutory basis for border inspections in the three major areas. At the crux of the report is the third section that explains the policies and procedures for immigration, customs, and agricultural inspections. A section on trends by ports and modes of entry analyzes the volume and types of inspections in recent years leading up to the establishment of DHS. The fifth section of this report summarizes budget and staffing over the past five years for these three functions. The report concludes with a discussion of the issues and concerns that are emerging with the implementation of the unified border inspections policies and procedures.

Parameters of the Border

Ports of Entry. For the past several years, there have been 317 official ports of entry (POE) into the United States. At a given port, inspectors may be responsible for more than one mode of transportation, even processing all three conveyance types of air, land, and sea. Buffalo and Detroit, for example, have air, sea, and land POEs, but the likelihood of inspectors having multiple responsibilities are greater at the smaller POEs. CBP acknowledges that “the merging of agencies into one port of entry definition is currently a work in progress,” and the POE numbers do not neatly add up across categories. CBP currently reports that there 216 airports that are international POEs, 143 seaports, and 115 land POEs. Two locations are inland POEs.²

Physical Boundaries. The land border with Canada spans 5,525 miles and is the longest non-militarized border in the world. There are 84 land POEs along the northern border, which include but are not limited to three in Idaho, 13 in Maine, three in Michigan, five in Minnesota, 10 in Montana, 12 in New York, 18 in North Dakota, seven in Vermont, and 12 in Washington. On a daily basis, reportedly over

¹ The Homeland Security Act (P.L. 107-296) placed immigration inspections, investigations, detention, removal, and the border patrol functions into a Bureau of Border Security, kept the U.S. Customs Service intact, and placed both in the Directorate of Border and Transportation Security. As it established the Department of Homeland Security in 2003, the Bush Administration split up the U.S. Customs Service and the proposed Bureau of Border Security and reconfigured them into two bureaus: one that pertains to border activities known as Customs and Border Protection, and one that pertains to interior enforcement known as Immigration and Customs Enforcement.

² Data provided by CBP Office of Congressional Affairs, in e-mail dated Apr. 22, 2004.

250,000 people enter the United States from Canada. Canada is the single largest trading partner of the United States, with total merchandise trade (exports and imports) exceeding \$372 billion in 2003. Indeed, the largest trade link in the world is the Ambassador Bridge (connecting Detroit, Michigan and Windsor, Ontario) that has more than 7,000 trucks crossing daily transporting goods worth more than \$120 billion per year.³

The southern land border with Mexico is 1,933 miles across and has 25 land POEs, which include but are not limited to six in California, six in Arizona, two in New Mexico, and 11 in Texas. Over 800,000 people arrive from Mexico daily. Mexico is our second largest trading partner, with total merchandise trade at \$220.3 billion in 2003, down from \$247.2 billion in 2000. The POE at Laredo/Nuevo Laredo reportedly has the highest volume of trade on the southern border.

The coast line of the United States is 12,479 miles long, and there are 143 sea POEs. Some sea and river POEs are principally commercial ports while others receive passengers.

Legal Boundaries. From a legal perspective, the parameters of the border for inspection purposes are generally given a flexible reading by courts and often vary from the geographical confines mentioned above. “Border searches”⁴ may occur when entry is made by land from the neighboring countries of Mexico or Canada, at the place where a ship docks in the United States after having been to a foreign port, and at any airport in the country where international flights first land. Courts have given the “border” a more flexible reading because of the significant difficulties in detecting the increasingly mobile smuggler. Aside from searches at the actual physical border, the law recognizes two legal constructs that allow border searches to move beyond the geographical confines of the actual port of entry.

Functional Equivalent. Border searches may be conducted within the interior of the United States. The border search exception extends to those searches conducted at the “functional equivalent” of the border. The “functional equivalent” of a border is generally the first practical detention point after a border crossing or the final port of entry.⁵ It is justified because in essence, it is no different than a search conducted at the border and occurs only because of the impossibility of requiring the subject searched to stop at the physical border. A search occurs at the border’s functional equivalent when: (1) a reasonable certainty exists that the person or thing crossed the border; (2) a reasonable certainty exists that there was no change in the object of the search since it crossed the border; and (3) the search was

³ For more information see CRS Electronic Briefing Book, *Trade*, page on “Canada-U.S. Trade and Investment,” by Ian Fergusson, available at [<http://www.congress.gov/brbk/html/ebra52.html>].

⁴ The term “border search” is a term of art that describes a category of searches generally recognized as an exception to the Fourth Amendment’s warrant and probable cause requirements. They are not exempt, however, from the Fourth Amendment’s reasonableness standard. (See the section “Constitutional Considerations” later in this report).

⁵ *Thirty-First Annual Review of Criminal Procedure; Border Searches*, 90 Geo. L.J. 1087, 1190 (2002).

conducted as soon as practicable after the border crossing.⁶ Places such as international airports within the country and ports within the country's territorial waters or stations at the intersection of two or more roads extending from the border exemplify such functional equivalents.⁷

Extended Border Search. The border search exception may also be extended to allow warrantless searches beyond the border or its functional equivalent. Under the "extended border search" doctrine, government officials may conduct a warrantless search beyond the border or its functional equivalent if (1) the government officials have reasonable certainty or a "high degree of probability" that a border was crossed; (2) they also have reasonable certainty that no change in the object of the search has occurred between the time of the border crossing and the search; and (3) they have "reasonable suspicion" that criminal activity was occurring.⁸ This three-part test ensures that a suspect still has a significant nexus with a border crossing so that border officials can reasonably base their search on statutory and constitutional authority and to ensure that the search is reasonable.⁹

Authority for Border Inspections

While the Homeland Security Act (HSA, P.L. 107-296) transferred the inspection "functions" of INS and Customs Service to DHS, it did not revise the laws that authorize these inspections. HSA did specify which laws DHS agricultural inspectors may utilize to conduct inspections, but it did not alter these underlying statutes. Consequently, understanding the legal authorities that guided agricultural, customs and immigration inspections functions before and after their transfer to DHS becomes increasingly important. At this point, it is unclear whether the "one face at the border" initiative promoted by DHS will also result in, or perhaps some could argue even require, the future consolidation of the authorities each legacy agency individually possessed.

Immigration Inspections. The former INS, through the Attorney General (AG), was responsible for enforcing and administering the Immigration and Nationality Act of 1952 (INA) (codified as amended at 8 U.S.C. §§1101 *et seq.*). The HSA, as modified by the President, transferred administrative authority over immigration enforcement to the Directorate of Border and Transportation Security. The HSA effectuated the transfer of immigration authority in statutory language that

⁶ See *United States v. Hill*, 939 F.2d 934, 936 (11th Cir. 1991).

⁷ *Almeida-Sanchez v. United States*, 413 U.S. 266, 272-73 (1973).

⁸ "Reasonable certainty" in this context has been defined as a standard which requires more than probable cause, but less than proof beyond a reasonable doubt. *United States v. Cardenas*, 9 F.3d 1139, 1148 (5th Cir. 1993); see, e.g., *United States v. Delgado*, 810 F.2d 480, 482 (5th Cir. 1987). In *Delgado*, smugglers used a foot-bridge to transfer narcotics to delivery trucks on a farm near El Paso, Texas. The court upheld an extended border search conducted on a farm road near and leading from the border but otherwise away from the official border checkpoint.

⁹ *United States v. Teng Yang*, 286 F.3d. 940, 946 (7th Cir. 2002).

is separate and apart from the INA itself.¹⁰ According to DHS regulations, all authorities and functions of the DHS to administer and enforce the immigration laws are now vested in the Secretary of DHS or his delegate.¹¹ The Attorney General, however, retains concurrent authority in many key areas of immigration law.

Immigration officials possess a wide variety of enforcement mechanisms to carry out their mission of enforcing the INA. Immigration enforcement activities generally include providing border security and management; conducting inspections of persons at U.S. international ports; enforcing immigration law; detaining and removing aliens found in violation of immigration and related laws; and providing immigration intelligence. Under 8 U.S.C. §1225(a)(3), *all* aliens who are applicants for admission or are seeking entrance or readmittance to or transit through the United States shall be inspected by “immigration officers.” If the immigration officer is satisfied that the applicant is entitled to enter, the officer admits the applicant, though his decision may not be final and the applicant may be subject to other inspections. In the event an alien is “not clearly and beyond a doubt”¹² entitled to be admitted or further inquiry is required, the applicant may be detained pending a final determination of admissibility by an immigration judge. 8 U.S.C. §1225(d) allows immigration officers to board any vessel, aircraft, railway car, or other conveyance in which an immigration officer believes aliens are being brought into the United States.

The term “immigration officer” is statutorily defined in the INA to mean any employee or class of employees of the INS or of the United States designated by the Attorney General, individually or by regulation, to perform the functions of an immigration officer specified by the INA.¹³ DHS, however, has implemented regulations clarifying the meaning of “immigration officer” with respect to DHS personnel. The regulation (8 C.F.R. §103.1(b)) designates various categories of CBP and ICE officials as immigration officers authorized to exercise the powers and duties of such officers as specified by the INA and applicable regulations. The regulation also allows the Secretary of DHS to designate other employees of DHS or of the United States as immigration officers.

Section 1357 of Title 8 of the U.S. Code gives any officer or employee of the Service *authorized under regulation prescribed by the AG* the authority to, without a warrant, interrogate aliens, make arrests, conduct searches, board vessels, and

¹⁰ For example, §402 of the HSA makes the Under Secretary of the Directorate of Border and Transportation Security responsible for “carrying out the immigration enforcement functions vested by statute in, or performed by the Commissioner of Immigration and Naturalization” (or any officer, employee, or component of the INS).

¹¹ 8 C.F.R. §2.1 (“The Secretary, in his discretion, may delegate any such authority or function to any official, officer, or employee of the DHS or any employee of the United States to the extent authorized by law.”) This regulation was authorized, in part, by §103 of the INA, which was amended by the HSA to charge the Secretary of DHS with the administration and enforcement of the INA. There is still some question, however, as to the extent to which the Attorney General has concurrent authority.

¹² 8 U.S.C. §1225(b)(2)(A).

¹³ 8 U.S.C. §1101(a)(18).

administer oaths. For example, 8 U.S.C. §1357(a)(2) authorizes an officer or employee of the INS to arrest without a warrant any alien who in his presence is entering or attempting to enter the United States in violation of U.S. law regulating the admission, exclusion, expulsion, or removal of aliens. Section 1357(a)(3), among other things, authorizes an officer or employee of the INS, without warrant and within a reasonable distance from any external boundary of the United States,¹⁴ to board and search for aliens any vessel within the territorial waters of the United States and any railway car, aircraft, conveyance, or vehicle. Sections 1357(a)(4) and (5) authorize officers or employees of the INS to make certain felony arrests. Under 8 U.S.C. §1357(c), officers or employees of the INS are authorized to search without a warrant any person (and their effects) seeking entrance into the United States for evidence which may lead to the individual's exclusion from the country if the officer possesses reasonable cause to suspect that grounds exist to deny admission to the United States under the INA. 8 C.F.R. §287.5 designates the DHS officers or employees who are authorized to carry out the various law enforcement activities listed in §1357.

Customs Inspections. Formerly located in the Department of the Treasury, customs inspectors enforced a number of laws to: ensure all imports and exports comply with U.S. laws and regulations; collect and protect U.S. revenues; and guard against the smuggling of contraband.¹⁵ The HSA transferred generally all customs functions (except for certain revenue functions) to the DHS in §403. Customs border activities are now conducted through the CBP and interior enforcement activities are carried out by ICE officers.

Congress has provided customs with a significant amount of authority to inspect people and merchandise at ports of entry. Federal authority to assess and collect duties on goods, wares, and merchandise imported into the country was established in 1789. Additional authority for customs inspections was passed in 1866¹⁶ but generally derives from the Tariff Act of 1930.¹⁷ Courts have interpreted 19 U.S.C.

¹⁴ Under current regulations the authority to search any vehicle may be exercised within 100 air miles of the border (8 C.F.R. §287.1(a)). INS officers on roving patrol within this 100 mile radius may not stop a vehicle unless they have a "reasonable suspicion" that a particular vehicle contains aliens who may be illegally in the United States. See *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975).

¹⁵ The primary laws customs enforces are 18 U.S.C. §541 (entry of goods falsely classified); 18 U.S.C. §542 (entry of goods by means of false statements); 18 U.S.C. §545 (smuggling goods into the U.S.); 18 U.S.C. §§981-982 (property forfeiture); 18 U.S.C. §§1956-1957 (money laundering); 18 U.S.C. §§2319-2320 (intellectual property rights); 15 U.S.C. §§1121-1127 (trademarks); Title 17 of the U.S.C. (copyrights); Title 19 of the U.S.C. (customs laws); Title 35 of the U.S.C. (patents).

¹⁶ Act of July 18, 1866, ch. 201, §3, 14 Stat. 178 (codified as amended at 19 U.S.C. §482).

¹⁷ Act of June 17, 1930, ch. 497, 46 Stat. 590 (see §§461, 467, 496, 581, 582) (codified as amended at 19 U.S.C. §§1461, 1467, 1496, 1581 and 1582, respectively).

§1581(a) as granting customs inspectors broad authority to conduct border searches.¹⁸
Section 1581(a) states:

Any officer of the customs may at any time go on board of any vessel or vehicle at any place in the United States or within the customs waters or ... at any other authorized place ... and examine the manifest and other documents and papers and examine, inspect, and search the vessel or vehicle and every part thereof and any person, trunk, package, or cargo on board, and to this end may hail and stop such vessel or vehicle, and use all necessary force to compel compliance.

Under 19 U.S.C. §1461, customs officers may inspect all merchandise and baggage imported or brought in from any contiguous country at the first port of entry the merchandise or baggage arrives. 19 U.S.C. §1467 provides customs officers with authority to inspect and search persons, baggage, and merchandise discharged or unloaded from a vessel that arrives in the United States or Virgin Islands (whether directly or via another port or place in the United States or Virgin Islands) from a foreign port, place or Territory or possession of the United States. Congress has granted customs the authority, under 19 U.S.C. §1496, to search the baggage of persons arriving in the United States in order to ascertain what articles are contained therein and whether such articles are subject to duty or prohibited.

Pursuant to 19 U.S.C. §482, Congress has empowered customs to “stop, search, and examine” any “vehicle, beast, or person” upon which an officer suspects there is merchandise which is subject to duty or introduced to the United States contrary to law. Moreover, a customs officer may search any trunk or envelope wherever found, in which the officer has a reasonable belief to suspect there is merchandise imported contrary to law. Finally, under §482, a customs officer may seize and secure for trial any merchandise found on any inspected vehicle, beast, or person, or in any inspected trunk or envelope, which the officer has reasonable cause to believe is subject to duty or was introduced unlawfully.

Additionally, an officer of customs is authorized to search and conduct document and safety inspections of any vessel or vehicle inside the United States, within customs waters,¹⁹ or in any other authorized place. Customs officials generally may not search on the high seas;²⁰ however, officers of the Coast Guard,

¹⁸ See, e.g., *United States v. Sutter*, 2003 U.S. App. LEXIS 17660 at 5 (9th Cir. Aug. 25, 2003); *United States v. Molina-Tarazon*, 279 F.3d 709, 712 (9th Cir. 2002); *United States v. 1903 Obscene Magazines*, 907 F.2d 1338, 1341 (2d Cir. 1990); *United States v. Glasser*, 750 F.2d 1197, 1204 (3d Cir. 1984).

¹⁹ Customs waters are defined as “the waters within four leagues of the coast of the United States.” 19 U.S.C. §1401(j) (approximately 12 miles). Customs waters may also be expanded by treaty or “other arrangement.”; See, e.g., *United States v. Loalza-Vasquez*, 735 F.2d 153, 157 (5th Cir. 1984) (customs waters expanded by arrangement with Panamanian officials).

²⁰ See, e.g., *United States v. Gonzalez*, 875 F.2d 875, 879-80 (D.C. Cir. 1989) (19 U.S.C. §1581(a) does not *per se* authorize all high seas searches by Customs). Customs may pursue a fleeing vessel beyond customs waters if the vessel was originally stopped within customs waters. See, e.g., *United States v. Berriel-Ochoa*, 740 F.2d 883, 884 (11th Cir. 1984) (upheld
(continued...))

according to 19 U.S.C. §1401(i), are deemed to be customs officers²¹ and may conduct inspections on the high seas.²² In order to carry out the various inspection provisions, 19 U.S.C. §1582 allows the Secretary of the Treasury to prescribe regulations for the search of persons and baggage. Title 19, Part 162 of the Code of Federal Regulations describes the inspection, search, and seizure procedures for customs and makes all persons coming into the United States from foreign countries liable to detention and search by authorized officers of the government under such regulations.

The law, however, makes clear that a customs inspection is not required of every piece of merchandise, goods or cargo brought into the United States, though there are reporting requirements. In terms of the entry examination for imported merchandise, the statute states that the Customs Service “shall inspect a sufficient number of shipments, and shall examine a sufficient number of entries, to ensure compliance with the laws enforced by the Customs Service.”²³

Agriculture Inspections. Agriculture inspectors play an integral part in the Department of Agriculture’s role in supplying a safe and affordable food supply. In part, the Department of Agriculture’s Animal and Plant Health Inspection Service (APHIS) was responsible for enforcing the laws that protect and promote U.S. agricultural health from agricultural pests and diseases by conducting inspections at various ports of entry. Under the HSA, the Secretary of Agriculture’s import and entry inspection activities (which are conducted through APHIS) relating to the laws specified below have been transferred to the DHS.²⁴ The Under Secretary for Border and Transportation Security is responsible for conducting agricultural inspections at ports of entry in accordance with the regulations, policies, and procedures issued by the Secretary of Agriculture for the following Acts:²⁵

- The Virus-Serum-Toxin Act (21 U.S.C. §§151 *et seq.*);
- The Honeybee Act (7 U.S.C. §§281 *et seq.*);
- Title III of the Federal Seed Act (7 U.S.C. §§1581 *et seq.*);

²⁰ (...continued)

stop of vessel in customs waters and pursuit two miles beyond customs waters).

²¹ See 14 U.S.C. §143; 19 U.S.C. §1401(i) (“The term ‘officer of the customs’ and ‘customs officer’ mean any officer of the Bureau of Customs of the Treasury Department or any commission, warrant, or petty officer of the Coast Guard....”).

²² 14 U.S.C. §89(a) states:

The Coast Guard may make inquires, examinations, inspections, searches, seizures, and arrests upon the high seas and waters upon which the United States has jurisdiction.... For such purposes, commissioned, warrant, and petty officers may at any time go on board any vessel ... address inquiries to those on board, examine the ship’s documents and papers, and examine, inspect, and search the vessel and use all necessary force to compel compliance.

²³ 19 U.S.C. §1499(a)(1)(D).

²⁴ P.L. 107-296 §§402(7), 421.

²⁵ *Ibid.*, at §421(d)(2). Quarantine activities did not accompany the transferred statutes.

- The Plant Protection Act (7 U.S.C. §§7701 *et seq.*);
- The Animal Health Protection Act (7 U.S.C. §§8301 *et seq.*);
- The Lacey Act Amendments of 1981 (16 U.S.C. §§3371 *et seq.*);
- and
- Section 11 of the Endangered Species Act of 1973 (16 U.S.C. §§1540).

As the previous list demonstrates, agriculture inspectors are responsible for enforcing various animal and plant protection laws. In some cases, agriculture inspectors have the authority to conduct warrantless searches of any person or conveyance entering the country in furtherance of those laws. For instance, under the Plant Protection Act and the Animal Health Protection Act, agriculture inspectors have the authority to conduct warrantless searches of any person or vehicle entering the United States to determine whether the person is carrying any plant or animal in violation of the statute.²⁶ Agriculture inspectors also have the authority under the Lacey Act to detain for inspection any vessel, vehicle, aircraft, or any package, crate, or other container upon the arrival of such conveyance or container in the United States from any point outside the United States.²⁷ The Endangered Species Act also allows agriculture inspectors to detain for inspection any package, crate, or other container and all accompanying documents, upon importation.²⁸

Policies and Practices at the Border

Although the HSA reorganized the administration of border inspections, it did not make significant changes in the policies and practices at the border. Most of the statutory revisions of the inspection process that were aimed at antiterrorism and border security were in place prior to the establishment of CBP. In part a response to the 1993 World Trade Center bombing, Congress had already strengthened the anti-terrorism provisions in the INA and enacted provisions that shifted immigration inspectors from the “services” role to the “enforcement” role.²⁹ In 1996, Congress first required the entry-exit system that is now known as US-VISIT.³⁰ In 2000 and 2002, Congress revised the plant and animal health protection statutes into a more compact framework.³¹ After the September 11, 2001 terrorist attacks, Congress enacted further measures aimed at improving immigration inspectors’ terrorist

²⁶ See 7 U.S.C. §7731(b)(1) (plants); 7 U.S.C. §8307(b)(1) (animals).

²⁷ 16 U.S.C. §3375.

²⁸ *Ibid.*, at §1540.

²⁹ Previously immigration inspectors who identified an alien lacking proper documents would refer them to other INS officers who handled the enforcement of the INA and immigration judges in the Executive Office for Immigration Review. Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 (P.L. 104-208) and the Antiterrorism and Effective Death Penalty Act (P.L. 104-132).

³⁰ §110 of IIRIRA.

³¹ Plant Protection Act (P.L. 106-224, June 2000, 7 USC 7701 *et seq.*), and the Animal Health Protection Act (Title X of P.L. 107-171, May 2002, 7 USC 8301 *et seq.*).

detection capabilities.³² Congress also included antiterrorism provisions in legislation reauthorizing the U.S. Customs Service in 2002.³³ CBP inspectors now are tasked with more effectively accomplishing the laws and policies of the legacy agencies.

Immigration Inspections

Primary Purpose. Having a visa or other form of travel document does not guarantee admission into the United States. The INA requires the inspection of all aliens who seek entry into the United States;³⁴ and in some cases allows for preinspection when departing a foreign country on route to the United States.³⁵ The purpose of the inspection is to determine the admissibility of a traveler to the United States.³⁶ Section 287 of the INA enumerates the following authorities for immigration officers, including immigration inspectors:

- to question, under oath any person seeking to enter the United States in order to determine admissibility and,
- to search, without warrant, the person and belongings of any applicant seeking admission.³⁷

In addition to conducting inspections, immigration inspectors enforce various criminal and administrative statutes, apprehend violators, and adjudicate a variety of applications for various immigration benefits. Later in this report, **Appendix A** presents a sample of the immigration inspector's workload.

Primary Inspections. Primary inspection, the first level of inspection, consists of a brief interview with an immigration inspector, a cursory check of the traveler's documents and a query of the Interagency Border Inspection System (IBIS).³⁸ Primary inspections are quick (usually lasting no longer than a minute);

³² Enhanced Border Security and Visa Reform Act (P.L. 107-173).

³³ Title 3, Chapter 4, of the Trade Act of 2002 (P.L. 107-210).

³⁴ §235(3) of the INA.

³⁵ Section 123 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA; P.L. 104-208) amended §235 of the INA by requiring the Attorney General to establish preinspection stations in at least five foreign airports that are identified as being one of ten foreign airports that serve as the last point of departure for the greatest number of inadmissible aliens. There are currently 15 foreign airports that participate in the preinspection program.

³⁶ For a full discussion of alien screening and admissibility, see CRS Report RL31512, *Visa Issuances: Policy, Issues, and Legislation*, by Ruth Ellen Wasem, pp. 7-10. See also CRS Report RL32480, *Immigration Consequences of Criminal Activity*, by Michael John Garcia; and CRS Report RL32564, *Immigration: Terrorist Grounds for Exclusion of Aliens*, by Michael John Garcia and Ruth Ellen Wasem.

³⁷ §287(b)(c) of the INA.

³⁸ IBIS is a broad system that interfaces with the FBI's National Crime Information Center (continued...)

however, if the inspector is suspicious that the traveler may be inadmissible under the INA or in violation of other U.S. laws, the traveler is referred to a secondary inspection.³⁹ At 115 airports and 14 seaports, many nonimmigrants are entered into the new US-VISIT system that uses biometric identification (finger scans) to check identity and track presence in the United States.⁴⁰

Secondary Inspections. During secondary inspections, travelers are questioned extensively and travel documents are further examined. Several immigration databases are queried as well, including lookout databases.⁴¹ The majority of travelers, however, are not subject to a secondary inspection. As **Figure 2** later in this report depicts, on average less than one percent of all travelers were subjected to secondary inspections between FY1998 and FY2002.

In addition to an inspector denying entry, an alien can withdraw his application for admission in some cases.⁴² Immigration inspectors take the following factors into consideration when determining if an alien should be permitted to withdraw his admission application:

- “the seriousness of the immigration violation;
- previous findings of inadmissibility against the alien;

³⁸ (...continued)

(NCIC), the Treasury Department’s Enforcement and Communications System (TECS II), the former INS’s National Automated Immigration Lookout System (NAILS) and Non-immigrant Information System (NIIS) and the Department of State’s (DOS) Consular Consolidated Database (CCD), Consular Lookout And Support System (CLASS) and TIPOFF terrorist databases. Because of the numerous systems and databases that interface with IBIS, the system is able to obtain such information as whether an alien is admissible, an alien’s criminal information, and whether an alien is wanted by law enforcement.

³⁹ The grounds for inadmissibility are spelled out in §212(a) of INA. These grounds are: health-related grounds (e.g., contagious diseases); criminal history; security and terrorist concerns; public charge (e.g., indigence); seeking to work without proper labor certification; illegal entrants and immigration law violations; ineligible for citizenship; and aliens previously removed.

⁴⁰ The INA actually requires that all aliens be recorded into the entry-exit system, but US-VISIT currently includes only nonimmigrants. For a full discussion of US-VISIT, see CRS Report RL32234, *U.S. Visitor and Immigrant Status Indicator Technology Program (US-VISIT)*, by Lisa M. Seghetti and Stephen Viña.

⁴¹ The Terrorist Screening Center (TSC) is developing a consolidated lookout database that is not yet fully operational. For more on lookout and terrorist screening databases of the TSC, see CRS Report RL32366, *Terrorist Identification, Screening, and Tracking Under Homeland Security Presidential Directive 6*, by William J. Krouse. The National Security Entry-Exit Registry System (NSEERS) and the Student and Exchange Visitor Information System (SEVIS) are also used during secondary inspections. For more on NSEERS, see CRS Report RL31570, *Immigration: Alien Registration*, by Andorra Bruno. For more on SEVIS, see CRS Report RL32188, *Monitoring Foreign Students in the United States: The Student and Exchange Visitor Information System (SEVIS)*, by Alison Siskin.

⁴² §302(a) of IIRIRA amended §235 of the INA to allow the Attorney General to use his discretion in permitting an alien to “withdraw his application for admission and depart immediately from the United States.”

- intent on the part of the alien to violate the law;
- ability to easily overcome the ground of inadmissibility (i.e., lack of documents);
- age or poor health of the alien; and
- other humanitarian or public interest considerations.”⁴³

Although not as frequently used, allowing an alien to withdraw his application for admission permits the alien to apply for reentry at some later point without being penalized. Congressional Research Service’s (CRS) examination of INS’ Performance Analysis System (PAS) data reveals that prior to the terrorist attacks, immigration officials were allowing over 60% of inadmissible aliens to withdraw their application for admission. In the years following the terrorist attacks, however, that figure dropped to 37% in FY2001 and 34% in FY2002 (see **Appendix B**).

Expedited Removal. In 1996, Congress enacted the expedited removal policy.⁴⁴ The goal of these provisions was to target the perceived abuses of the asylum process by restricting the hearing, review, and appeal process for aliens at the port of entry. As a result, if an immigration inspector at the port of entry finds that an alien has arrived without proper documentation, the officer can deny admission and order the alien summarily removed from the United States. Those in expedited removal who claim a legal right to reside in the United States based on citizenship, legal permanent residence, asylee or refugee status are to be provided with additional procedural protections, rather than being immediately returned. Aliens whose visas have been revoked by Department of State are subject to expedited removal. The expedited removal provisions provide very limited circumstances for administrative and judicial review of those aliens who are summarily excluded or removed.⁴⁵

Deferred Inspections. In a small percentage of cases, usually occurring in connection with arrivals by aircraft, the inspection process can be deferred and the individual referred to an immigration office in the area in which the individual will be residing. Less than 20,000 travelers were referred to deferred inspections each year, from FY1998 through FY2002. Deferred inspections occur when an immediate decision regarding admissibility cannot be made at the port of entry and the alien does not appear to be in blatant violation of admissibility laws. Such cases may involve the review of incomplete documents.

Departure Control. Departure control is an inspection of travelers departing Guam, Puerto Rico and the U.S. Virgin Islands who are en route to the continental United States. It also applies to crew members en route to the United States.⁴⁶ Departure control provides an added level of security to the inspection process

⁴³ Charles Gordon, Stanley Mailman, and Stephen Yale-Loehr, “Immigration Law and Procedure,” *Admission, Parole, Removal: Authority of Immigration Officers*, vol. 5, pp. 61.7-61.02.

⁴⁴ The IIRIRA provisions amended §235 of the INA.

⁴⁵ For further discussions of expedited removal, see CRS Report RL32621, *U.S. Immigration Policy on Asylum Seekers*, by Ruth Ellen Wasem.

⁴⁶ §215, §231(b) and §251(c) of the INA.

because for those cases where the national interest may be at stake, immigration officials can prevent the departure of persons to the United States.

Electronic Passenger Manifest. Several provisions in law enacted after the September 11, 2001 terrorist attacks sought to provide a greater level of border security by requiring airline carriers to provide the Attorney General with electronic passenger manifests before arriving in or departing from the United States.⁴⁷ Passenger manifests are transmitted to immigration officials through the Advance Passenger Information System (APIS). APIS was created in 1988, cooperatively with the former U.S. Customs Service, the former INS, and the airline industry, and it is integrated with IBIS. The submission of the passenger manifests electronically prior to arrival allows immigration officials to perform inspections on travelers in advance of their arrival. Additionally, necessitated by concerns with respect to security, the Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107-173) repealed a provision that required airport inspections be completed within 45 minutes of arrival.⁴⁸

Automated Inspections. The former INS had a series of programs collectively referred to as Passenger Accelerated Service System (PortPASS) that were transferred to the CBP. PortPASS programs ease commuter traffic at land ports of entry by providing dedicated commuter lanes to facilitate the speedy passage of low-risk, frequent travelers. Although enrollees in PortPASS are precleared for inspection purposes (i.e., they do not need to interact with immigration or customs' inspectors at the border), they are subject to random cursory searches. Although more commonly seen at land ports of entry,⁴⁹ A PortPASS program, the INS Passenger Accelerated Service System (INSPASS), is also used at selected international airports. INSPASS applicants must enter the United States on certain nonimmigrant visas⁵⁰ or under the Visa Waiver Program.⁵¹ The number of travelers who took advantage of automated inspections has risen over recent years, peaking at 2.6 million in FY2002.

Differences Between the Northern and Southern Borders. The principal difference between the Northern and Southern borders from an immigration inspections perspective is the documentary requirements. Mexicans are required to have the proper immigration documents. A special Mexican "laser visa" (formerly known as the Mexican Border Crossing Card) is used by citizens of Mexico to gain short-term entry (up to six months) for business or tourism into the United States. It may be used for multiple entries and is good for at least 10 years. Mexican citizens

⁴⁷ §402 of P.L. 107-173 and §115 of P.L. 107-071.

⁴⁸ §403 of P.L. 107-173.

⁴⁹ For example, the Secure Electronic Network for Travelers' Rapid Inspection (SENTRI) at several southwest land ports of entry and NEXUS at several northern ports of entry.

⁵⁰ B-1 (visitor for business), E-1 (treaty trader), E-2 (treaty investor) or L-1 (intra-company transferee).

⁵¹ For a complete description of all PortPASS programs, see CRS Report RS21335, *The Immigration and Naturalization Service's Passenger Accelerated Service System*, by Lisa M. Seghetti.

can get a laser visa from the Department of State (DOS) Bureau of Consular Affairs if they are otherwise admissible as B-1 (business) or B-2 (tourism) nonimmigrants. Canadians, on the other hand, are waived from the documentary requirements.⁵² These waivers, including the passport requirement, may be made on the basis of unforeseen emergency in individual cases, on the basis of reciprocity with respect to nationals of foreign contiguous territory, and for other reasons specified in the law. Canadian citizens, except after a visit outside the Western Hemisphere, and American Indians born in Canada having at least 50% American Indian blood, are among those who currently are waived from the documentary requirements for admission.⁵³

In the past, the southwest border received more resources than its northern border counterpart as a result of a multi-year border patrol strategy that was implemented in 1994. The border patrol strategy was aimed at strengthening enforcement of United States immigration laws and placed an emphasis on decreasing the number of illegal immigrants coming into the United States by increasing controls at the nation's borders. Although the resources were primarily directed at strengthening the border patrol along the southwest border, southwest ports of entry also have received additional resources aimed at increasing the number of immigration inspectors. The terrorist attacks, however, brought attention to the northern border, which has historically been understaffed and lacked the necessary infrastructure to adequately screen individuals seeking entry into the United States. Several pieces of legislation passed in the 107th Congress authorized and appropriated funding for additional staffing and resources along the northern border.⁵⁴

Customs Inspections

Primary Purpose. Customs inspections aim at ensuring the efficient flow of legitimate cross-border traffic while simultaneously preventing the entry of illegitimate goods or people into the United States⁵⁵ They play a major role in federal

⁵² The Canadian exception to the documentary requirements is based upon provisions in INA [found in §212(d)(4)(A)] that permit the Attorney General, acting jointly with the Secretary of State, to waive either or both requirements of §212(a)(7)(B)(i). Since the Homeland Security Act (P.L. 107-296) transferred most immigration-related functions from Department of Justice (DOJ) to DHS, it is assumed that the Attorney General's authority for this provision now rests with the Secretary of DHS.

⁵³ On Jan. 31, 2003, the Administration issued interim regulations that require passports and visas for nationals of 54 countries living in Canada and Bermuda previously not required to present a passport or nonimmigrant visa. The affected aliens are nationals of British Commonwealth countries and Ireland who are permanent residents of Canada or Bermuda. *Federal Register*, vol. 68, no. 21, Jan. 31, 2003, pp. 5190-5194. See CRS Congressional Distribution Memorandum, *Waiving the Documentary Requirements for Visas and Passports to Enter the United States*, by Ruth Ellen Wasem and Andorra Bruno, Oct. 27, 2003.

⁵⁴ See CRS Report RS21258, *Border Security: U.S. — Canada Immigration Border Issues*, by Lisa M. Seghetti.

⁵⁵ Laws enforced by Customs associated with criminal violations include the following: 18 (continued...)

efforts to interdict terrorists and their weapons; illegal drugs; and other contraband being smuggled into the United States. Customs inspections monitor goods being imported into the United States, including collection of duties and tariffs. Customs inspections also involve U.S. export law, in part, by interdicting the export of unreported currency from narcotics trafficking and other illicit activities; preventing international terrorist groups and rogue nations from obtaining sensitive and controlled commodities; and interdicting stolen vehicles and other stolen property. The challenge faced by CBP is to achieve a sufficient level of security while not jeopardizing the efficient flow of commercial trade at the border. Given this framework it is important to understand that customs inspections serve two different, yet intertwined purposes: border security; and commercial entry.

Commercial Import Process. Generally, imported goods may not legally enter the commerce of the United States until CBP has authorized delivery of the goods. The commercial import process can be described as a series of steps: entry, inspection, appraisal, and classification and liquidation. For the purposes of this report only the entry and inspection steps will be discussed.

Importers or their agents are required to file entry documentation with CBP for each importation, regardless of whether duty must be paid on the merchandise. To expedite clearance of their goods, importers often file entry documents electronically and pay surety bonds before the merchandise arrives at the port of entry. Most importers choose to hire customs brokers to transact their customs-related business. Entry documents include proper bills of lading, entry forms, invoices, and evidence of the right to make entry. Importers or their agents must file entry documentation within five working days of the arrival of a shipment at the port of entry. Importers must then file an entry summary and deposit estimated duties within 10 working days of the time the goods are entered and released by CBP.

Upon arrival at a port of entry, the goods are considered ‘imported’ and are examined by CBP inspectors for admissibility before being released from CBP custody. CBP inspectors are required to examine a sufficient number of shipments and entries of merchandise to determine whether:

- the merchandise is properly marked to denote country of origin or other special designations required by law;
- the merchandise or shipment contains prohibited articles;
- the merchandise or goods in the shipment are properly described on the invoice;
- an excess or shortage of invoiced merchandise or goods exists; and
- duty is owed on the imported merchandise or goods.

⁵⁵ (...continued)

U.S.C. 541, entry of goods falsely classified; 18 U.S.C. 542, entry of goods by means of false statements; 18 U.S.C. 545, smuggling goods into the U.S.; 18 U.S.C. 981-982, forfeiture; 18 U.S.C. 1956-1957, money laundering; 18 U.S.C. 2319-2320, intellectual property rights; 15 U.S.C. 1121-1127, trademarks; 17 U.S.C., copyrights; 19 U.S.C., customs laws; 35 U.S.C., patents.

Following examination, CBP typically releases the goods to the importer, usually under bond to cover potentially unpaid duties, taxes and other charges. The amount of duty owed is determined by tariff classification and valuation of the goods. In a process known as liquidation, CBP inspectors make a final calculation of the importer's liability (duties and charges owed).

CBP inspectors rely on targeting mechanisms and random inspections to conduct their inspection operations. CBP uses preclearance,⁵⁶ primary inspections, and secondary inspections in order to help identify those passengers and cargo considered high-risk from a customs perspective.

Cargo Targeting and Inspection. Customs-related business is increasingly conducted electronically. Entry documents are often filed electronically through the Automated Broker Interface (ABI). ABI is a part of the Automated Commercial System (ACS) used by Customs to track, control, and process all commercial goods imported into the United States.⁵⁷ ABI is a voluntary program available to brokers, importers, carriers, port authorities, and independent service centers, that allows qualified participants to file import data electronically with CBP. According to CBP, over 96% of all entries are filed through ABI.⁵⁸ The carrier or the shipper (airline, vessel operating company, trucking company, etc.) must also file manifest information with the director of the port where the cargo is entering the United States. The importer or broker uses ABI to file the entry documents, and the carrier or shipper uses the Automated Manifest System (AMS) to file manifest information. There are several variations or components of AMS: Sea or Vessel AMS, Air AMS, and Rail AMS. There is a varying level of automation with each system. The most automated mode is the Vessel AMS, the least automated being the truck system, which does not have a separate AMS module in ACS.⁵⁹ Once the manifest and the entry documents are filed, they are matched up by ACS.⁶⁰

⁵⁶ Passenger pre-clearance is a process by which aircraft passengers and crew are sent through Customs inspection at the departure airport, rather than at the arrival airport in the United States. Customs conducts pre-clearance operations at Canadian airports in Calgary, Edmonton, Montreal, Ottawa, Toronto, Vancouver, and Winnipeg; in the Bahamas at airports in Freeport, and Nassau; in Bermuda; and Aruba. [http://www.cbp.gov/xp/cgov/toolbox/contacts/preclean_locations.xml].

⁵⁷ The Customs Service, and now CBP, has been engaged in a long-term effort to develop a new automated system to process all commercial goods imported into the United States. The new system, known as the Automated Commercial Environment (ACE), is being developed to replace ACS.

⁵⁸ Bureau of Customs and Border Protection, "Automated Broker Interface (ABI) and Contact Information," which is available at [http://www.cbp.gov/xp/cgov/import/operations_support/automated_systems/acs/acs_abi_contact_info.xml].

⁵⁹ There will be a Truck Manifest Module in the ACE system, and until its development carriers and importers will continue to use the Free and Secure Trade (FAST), Border Release Advanced Screening and Selectivity (BRASS) program, and the Pre-Arrivals Processing System (PAPS).

⁶⁰ U.S. Congress, House Committee on Government Reform, Subcommittee on Criminal Justice, Drug Policy, and Human Resources, *Federal Law Enforcement at the Borders and* (continued...)

A risk assessment system is employed to focus customs inspections on high risk shipments. The Automated Targeting System (ATS) automatically flags the shipments deemed to be the highest risks. ATS standardizes bill of lading and entry summary data received from ACS and creates integrated records called “shipments.” These shipments are then evaluated and scored by ATS using weighted rules derived from the targeting methods of experienced personnel. The higher the score, the more attention the shipment requires, and the greater the chance it will be targeted for secondary inspection. ATS sorts through records stored in a database containing detailed information on every shipment that has entered the United States in the past 10 years. According to CBP, all national security related targeting using ATS is done at CBP’s National Targeting Center (NTC). When a high risk shipment is flagged by the NTC, this information (flag) is sent out to the field terminals so that when an inspector at the border pulls up information on the shipment the flag is displayed and the inspector will target the shipment for further inspection or review.

Customs inspections are dependent on accurate manifest information arriving in a timely manner in order to execute the risk assessment and targeting procedures before shipments reach the border. To give inspectors adequate information and time to perform a risk assessment on cargo shipments, legacy Customs published a rule (known as the 24-hour rule)⁶¹ requiring the submission of certain manifest information to Customs 24-hours in advance of the vessel cargo being laden at the foreign port. The Trade Act of 2002 (P.L. 107-210), as amended by the Maritime Transportation Security Act of 2002 (P.L. 107-295), required CBP to develop rules requiring the electronic submission of cargo manifest data. These new rules were published in their final version December 5, 2003.⁶² The new advanced electronic manifest rules will require the electronic submission of cargo manifest data according to the following time frames:

- Vessel — 24 hours prior to lading in the foreign port;
- Air — ‘wheels up’ or four hours prior to departure for the United States (depending upon where the flight originated);
- Rail — two hours prior to arrival in the United States;
- Truck — one hour prior to arrival for shipments entered through PAPS or ABI, and 30 minutes prior to arrival for shipments entered through FAST.

While the enforcement of these regulations is currently rolling out in phases, the intent is that every advance manifest will be run through the ATS at the NTC before each shipment reaches a U.S. port of entry.

⁶⁰ (...continued)

Ports of Entry, (Washington, July 2002), p. 41.

⁶¹ U.S. Department of the Treasury, “Presentation of Vessel Cargo Declaration to Customs Before Cargo is Laden Aboard Vessel at Foreign Port for Transport to the United States,” *Federal Register*, vol. 67, no. 211, Oct. 31, 2002, pp. 66318-66333.

⁶² Department of Homeland Security, Bureau of Customs and Border Protection, “Required Advance Presentation of Cargo Information; Proposed Rule,” *Federal Register*, vol. 68, no. 234, Dec. 5, 2003, pp. 68140-68177.

Modal Differences. While the commercial import process is relatively uniform in terms of documentary requirements, differences in the level of automation in the AMS system lead to differences across the modes of transportation depending upon whether the shipment is arriving by truck, railcar or by vessel. As mentioned above, the air, sea, and rail AMS modules are well automated, and thus targeting and commercial processing has been conducted electronically through the process outlined above.

Truck cargo entry is the least automated of all the modes and many truck drivers must present CBP inspectors at the border with paper entry documents as they arrive at the inspection booths. The CBP inspector reviews these documents, questions the driver, and decides whether or not to direct the truck to secondary inspection. The CBP inspector will collect any owed duties and release the cargo into the United States if he is satisfied with the documentation.

ABI is functional at the land border for truck entry, and thus importers or customs brokers can electronically pre-file entry documentation for truck shipments. Because there is no truck AMS module, however, most truck carriers do not file manifest information electronically. Automated line release programs do exist at the northern and southern borders. For example, the Border Release Advanced Selectivity System (BRASS) allows drivers to present a pre-assigned bar code, along with the invoice and manifest. The CBP inspector scans the bar code, verifies that the information matches the invoice data, enters the quantity and releases the cargo. The release data is then submitted to ACS which establishes an entry and the entry summary requirements, and notifies the ABI participant of the release.

As part of the Customs-Trade Partnership Against Terrorism (C-TPAT, which is discussed later in this report) and Canada's Partners in Protection programs, the United States and Canada launched a bilateral initiative known as Free and Secure Trade (FAST) to establish complimentary import/export processes. Under FAST, both countries are working to harmonize their inspection and commercial operations at the border. Expanding upon earlier initiatives that allow for the electronic submission of entry documents and, thus, result in expedited cargo releases, the FAST program allows major importers and their carriers to use dedicated inspection lanes. The electronic cargo release system currently employed as part of FAST is the National Customs Automated Prototype (NCAP). As a module of the ACS, the Pre Arrival Processing System (PAPS) has been developed to replace NCAP and was brought online in FY2003. PAPS interacts with the Border Cargo Selectivity program and the ATS to randomly select cargoes for examination to check for compliance.

The security of cargo containers loaded onto U.S.-bound vessels has been of significant concern.⁶³ To begin addressing this concern, the Container Security Initiative (CSI) was initiated by the former U.S. Customs Service in January of 2002 to "prevent global containerized cargo from being exploited by terrorists." CSI is one of a series of initiatives aimed at securing the supply chain. The rationale behind CSI

⁶³ For more information see CRS Report RL31733, *Port and Maritime Security: Background and Issues for Congress*, by John F. Frittelli.

is that finding a nuclear weapon or a radiological “dirty bomb” at a U.S. port could be too late. CSI is based around four core elements: developing criteria to identify high-risk containers; pre-screening high-risk containers at the earliest possible point in the supply chain; using technology to pre-screen high risk containers quickly; and developing and using smart and secure containers. Under the CSI program, CBP officers are sent to participating ports where they collaborate with host country customs officers to identify and pre-screen high-risk containers using non-intrusive inspection technology before the containers are laden on U.S. bound ships. CBP has initially targeted CSI on the top 20 high-volume ports that account for nearly 70% of all containers shipped to U.S. seaports. As of September 2003, governments representing 19 of these 20 ports had signed agreements to implement CSI; and CSI had actually been implemented in 16.⁶⁴

Physical Inspection of Cargo. Cargo shipments may be targeted or randomly selected for a secondary inspection for both security and trade compliance purposes. This secondary inspection could involve: a more detailed document check; passing the container through a radiation portal monitor; taking an x-ray or gamma ray image of the contents of the container; and/or the physical unloading and examination of the cargo itself.⁶⁵

CBP has deployed a number of non-intrusive inspection (NII) technologies at ports of entry to assist customs inspectors with the inspection of cargos. Large scale NII technologies include a number of x-ray and gamma ray systems. The Vehicle and Cargo Inspection Systems (VACIS), which uses gamma rays to produce an image of the contents of a container for review by the CBP inspector, can be deployed in a mobile or stationary capacity depending upon the needs of the port. CBP has also deployed a rail VACIS system to screen railcars. Other large scale NII systems include truck x-ray systems, which like the VACIS can be deployed in either a stationary or mobile configuration; the Mobile Sea Container Examinations Systems; and the Pallet Gamma Ray System. CBP is also continuing to deploy nuclear and radiological detection equipment including personal radiation detectors, radiation portal monitors, and radiation isotope identifiers to ports of entry. According to recent CBP figures, in FY2003, NII technology was used at ports of entry to conduct more than 4.8 million examinations, which resulted in 2,190 seizures totaling more than 1.1 million pounds of narcotics.⁶⁶

Various canine teams are also deployed at ports of entry to assist in the inspection of cargo and passengers. CBP uses canine teams trained to detect several types of contraband including narcotics, explosives, chemicals, and currency.

⁶⁴ Remarks of Commissioner Robert C. Bonner, Customs and Border Protection, made at the Heritage Foundation, Sept. 9, 2003, [http://cbp.gov/xp/cgov/newsroom/commissioner/speeches_statements/sept092003.xml].

⁶⁵ Testimony of Stephen E. Flynn, Council on Foreign Relations, House Hearing on *A Review to Assess Progress with the Bureau of Customs and Border Protection's Targeting Program for Sea Cargo*, Subcommittee on Oversight, Investigations, Committee on Energy and Commerce, Mar. 31, 2004.

⁶⁶ Customs and Border Protection, *Performance and Annual Report Fiscal Year 2003* (Washington, 2003), p.20

Passenger Targeting and Inspection. Customs passenger inspection is concerned with collecting duties on imported items brought into the country along with preventing the entry of contraband. A typical Customs primary inspection consists of an interview in which individuals may be asked about their citizenship, their trip, and about any goods they may be bringing into the country that they did not have when they departed. Individuals entering the United States via land border crossing are required to make a verbal declaration. Individuals arriving in the United States by air or sea are required to fill out a Customs declaration form. These forms are usually provided by the airline or the cruise ship. The Customs declaration form requires individuals to provide certain personal information (e.g., name, date of birth, place and country of residence, passport information) and information about the nature of the trip (countries visited, airline or cruise ship information, nature of the trip: business or pleasure). The Customs declaration form also requires information concerning goods an individual is bringing into the country. Duty may be assessed on the value of goods exceeding personal exemption limits. The primary inspection for individuals arriving by air or sea will include a review of the Customs declaration as a part of the interview process. Based upon the results of the primary inspection, some individuals may be referred to secondary inspection.

Customs inspections are based upon a number of factors (e.g., behavioral analysis, observational techniques, inconsistencies, intelligence information, canine units, x-ray machines, and incidence of a seizure or arrest) to determine which individuals should be targeted for more intensive scrutiny.⁶⁷ The secondary inspection could involve a more thorough interview and review of identification and travel documents, baggage inspections, and under prescribed circumstances personal searches.

Customs inspection currently relies on the Advance Passenger Information System (APIS) to screen passenger and crewmember lists prior to their arrival in or departure from the U.S, if they are arriving by air or sea. At the land border, where Customs inspections do not have advance passenger information, CBP has deployed license plate readers to assist them in targeting vehicles and their passengers for additional inspection.⁶⁸ For example, when a passenger vehicle approaches a land border port of entry, license plate readers automatically locate, read and communicate vehicle license plate data to the Treasury Enforcement Communication System (TECS) and the National Crime Information Center (NCIC) for possible record matches.⁶⁹ The primary inspectors at the port of entry receive instantaneous responses from TECS. As of September 2003, CBP had installed 201 inbound and

⁶⁷ U.S. Treasury Department, Office of Inspector General, *Trade and Passenger Processing: Customs Personal Search Policies, Procedures, and Training Appear Reasonable*, OIG-CA-02-003, Apr. 12, 2002, pp. 7-8.

⁶⁸ Customs and Border Protection, *Performance and Annual Report Fiscal Year 2003* (Washington, 2003), p.32.

⁶⁹ *Ibid.*, p. 33.

50 outbound license plate readers on the southern border; and 104 inbound license plate readers on the northern border.⁷⁰

Smuggling. The primary mission of CBP is to prevent terrorists and terrorist weapons from entering the country. However, other components of CBP's mission include interdicting other prohibited items such as illegal drugs, ammunition, firearms, and counterfeit goods; and monitoring trade compliance. Theoretically, every person or conveyance crossing the border presents an opportunity for smuggling. The statistics in **Appendix C** illustrate the aggregate size of the so-called "smuggling window of opportunity." **Appendix D** provides data on Customs narcotics seizures from FY1997-FY2002. In addition, during FY2002 Customs officers made 12,570 arrests, and seized 6.4 million rounds of ammunition, nearly 40 thousand firearms, 7.5 million tablets of the drug "ecstasy," over \$1.3 million worth of merchandise, and more than \$60 million in counterfeit goods.

Differences Between the Northern and Southern Border. Operational differences between Customs inspections on the northern and southern borders arise due to several factors. One is simply the nature of the cross-border traffic that predominates at ports of entry along each border. The ports of entry on the southern border must deal with a significantly greater amount of pedestrian and personal vehicle traffic than the northern border; while the northern border contends with considerably more commercial traffic than does the southern border. **Appendices E and F** in this report illustrate these differences. For example, the total number of personally operated vehicles entering the United States crossing the southern and northern borders for Calendar Year (CY) 2002 was nearly 122.3 million. Of this total 89.8 million, or 73% entered across the southern border, while 32.5 million or 27% entered across the northern border. Of the 11.3 million freight truck crossings in CY2002, 6.9 million or 61% entered across the northern border, while 4.4 million, or 39% entered across the southern border. Of the 2.4 million rail freight crossings, 1.8 million or 75% entered across the northern border.

Operational differences at the northern and southern borders are also caused by different levels of progress that have been made on the bilateral agreements between the United States and Canada and the United States and Mexico. October 2, 2003, a progress report was issued on the United States-Canada Smart Border Declaration (signed December 12, 2001). FAST is a joint program for low-risk companies that allows for the expedited movement of shipments across the northern border in both directions. The United States-Canada Smart Border Declaration also includes other efforts to harmonize commercial processing, conduct clearance operations away from the border, develop joint facilities, share customs data, improve container targeting at seaports, address infrastructure improvements, and develop intelligent transportation systems, among others.

On March 22, 2002 President Bush and President Fox of Mexico met and endorsed the United States-Mexico Border Partnership accord that was signed by Santiago Creel, Secretary of Governance, and Colin Powell, Secretary of State. The accord was accompanied by a 22-point action plan that included several customs-

⁷⁰ Ibid.

related items similar to those contained in the United States-Canada Smart Border Declaration. On April 23, 2003, the Department of Homeland Security issued a joint statement on progress achieved on the United States-Mexico Border Partnership.⁷¹ Three working groups have been created to develop and implement initiatives identified in the 22-point plan: the Border Working Group, the Enforcement Working Group, and the Technology and Customs Procedures Working Group. Another indicator of progress in cooperation is that as of September 2003, FAST has become operational at one commercial crossing along the southern border (El Paso).

Animal and Plant Health Inspections

Primary Purpose. Animal and plant health inspection contributes to national security by preventing the entry of exotic plant and animal pests and diseases. Such pests and diseases pose a potential threat to domestic agricultural production, particularly in the fruit, vegetable and livestock sectors. Traditionally, these inspections have dealt with all possible threats, regardless of whether they are deliberately or accidentally introduced. Since September 11, 2001, and the anthrax incidents, more attention has been given to preventing entry of agricultural pests and diseases that might be used as bioterrorism or agroterrorism agents against U.S. agricultural and natural resources.

Agricultural inspection occurs at U.S. borders, ports of entry, inland sites, and off-shore locations. Inspections cover passengers arriving by vehicle, airplane, and ship, cargo and international mail, and commercial aircraft, vessels, trucks, and railcars. Inspection methods include human sensory examination, X-ray, and detector dog inspection, along with examination of documents accompanying incoming cargo to assure compliance with health and trade agreements. Some agricultural items may be allowed to enter from certain countries but not others. These determinations are based on scientific risk assessments which are updated regularly using currently available information.

Forbidden fruits and vegetables may harbor a range of invasive plant diseases and pests. For example, oranges from certain foreign locations can introduce diseases like citrus canker or pests like the Mediterranean fruit fly. Similarly, sausages and other meat products from many countries can contain animal disease organisms that can live for many months and even survive processing. Meat scraps from meals on foreign ships and airplanes could contaminate domestic livestock feed sources if not properly disposed of. Foot and mouth disease (FMD), a debilitating livestock disease, can be transmitted on footwear or clothing if passengers passed through FMD-affected areas. Outbreaks of plant and animal diseases can cost millions of dollars to eradicate, jeopardize U.S. agricultural exports, disrupt domestic food supplies and industries, and erode public confidence in both the safety of food and the government's ability to safeguard it.

The transfer of approximately 2,680 APHIS inspectors to CBP accounts for about two-thirds of the Agricultural Quarantine Inspection (AQI) program's

⁷¹ U.S. Department of Homeland Security, *U.S.-Mexico Border Partnership Joint Statement on Progress Achieved*, [<http://www.dhs.gov/dhspublic/display?content=570>].

personnel, and one-third of APHIS' total staffing. DHS personnel inspect international arrivals of passengers and their baggage, imported cargo and international package mail, and international conveyances. While combining agricultural inspections with other border security activities can increase the number of inspectors who can monitor the border for prohibited agricultural products, it requires diligence to maintain adequate agricultural inspections in light of more general customs and immigration concerns.

Inspection Procedures. As with other inspection functions by former Customs and INS personnel, animal and plant health inspectors use a “smart border” or risk assessment approach to identify which people or containers to inspect. Intelligence based on documents and advance notice frequently can add security away from the United States and make the actual border more fluid for legitimate trade and immigration.

Passenger Inspection. The passenger inspection program utilizes a uniform inspection process at land, sea, and air ports of entry. Passenger baggage is inspected on a random basis, and also from information that passengers provide on declaration forms. Inspectors also speak with travelers at primary inspection stations to ascertain where they have come from and what agricultural and food products they may be carrying. Based on the point of departure, inspectors judge whether passengers are more likely to be carrying, for example, prohibited fruit, spices, cheese, or meat. All agricultural products are subject to inspection and are confiscated if they are found to be infested or are prohibited entry due to known pest and disease risks.

To focus attention on the highest risk passengers, agricultural inspections are coordinated with other inspection functions, either physically or through intelligence sharing. Before DHS was created, APHIS cooperated with other inspectors through the Border Passenger Processing Initiative. The majority of passengers cleared through the system without delay. APHIS, Customs, INS, and the State Department examined passenger lists and checked them against past violators and other data to determine the most effective targets for inspection. Inspector dog teams (commonly known as the “beagle brigade”) roam the baggage arrival areas and can effectively determine the presence of agricultural products without opening individual bags. APHIS also uses x-ray technology to quickly screen certain targeted baggage.

Pre-clearance of passengers is sometimes more feasible than inspection at ports of entry. Passenger pre-clearance responsibilities were not transferred to DHS. Passengers departing Hawaii and Puerto Rico for the mainland pass through an APHIS pre-departure inspection. Even though part of the United States with respect to immigration and customs, these offshore locations could present agricultural threats to the mainland. APHIS also operates passenger pre-clearance programs in Bermuda, the Bahamas, Aruba, and at four cities in Canada (Montreal, Toronto, Vancouver, and Calgary). U.S. inspectors pre-clear passengers passing through Canada on their way to the United States, since Canadian passengers typically would not face the same level of agricultural inspection at U.S. ports of entry. A pre-clearance program for military passengers expedites the arrival of soldiers returning from countries that have pests that could harm domestic agriculture.

Cargo Inspection. Cargo shipments are targeted for efficient inspections based on manifest descriptions of the containers. This assessment occurs at ports of entry and, more commonly, at departure ports. Notification while in transit, especially for ships, allows inspectors to target certain shipments upon arrival at port.

Inspectors board ships, planes, rail cars, and trucks in order to thoroughly inspect shipments. In some cases, products are off-loaded at secure warehouses for a more thorough “strip-out” inspection. In addition to inspecting agricultural products, inspectors also examine shipments of auto parts or other products arriving in crates or pallets containing solid wood packing material that could contain harmful wood-boring pests. USDA personnel also typically oversee, and sometimes carry out, any necessary fumigation of agricultural cargo at ports of entry.

In addition to visual, x-ray, and detector dog inspection, APHIS is adapting new technologies for finding biological agents in cargo shipments. The Ruggedized Advanced Pathogen Identification Device (RAPID) is a handheld instrument that can identify pathogens in the field within 30 minutes instead of up to several days in the laboratory. RAPID is currently being tested for possible use at ports of entry.

Pre-clearance of cargo adds to the security of agricultural inspections and reduces the demand on inspectors at the borders. Commodity pre-clearance activities were not transferred to DHS. Often it is more practical and effective to check and monitor commodities for pests or diseases at the source. The goal is to intercept destructive pests in their native lands before being transported to the United States. APHIS has special arrangements with a number of countries and has a corps of experts stationed overseas to supplement domestic inspectors. APHIS conducts 35 commodity pre-clearance programs overseas including, for example, mangoes from Mexico, blueberries from Argentina, bulbs from the Netherlands, and grapes from Chile. Many of the programs are seasonal. Importers pay for pre-clearance through user fees.

Some agricultural commodities require inspection only prior to departure for the United States. Pre-cleared commodities are less likely to require intensive inspections at the port of entry, although they may be subject to random inspection and/or checks to ensure compliance with any other mitigating steps that were required to take place between the time of the pre-clearance inspection and arrival at the port of entry. Other commodities, however, require treatment before they can be cleared for entry. The most common types of pre-clearance treatments include hot water immersion, cold treatment, and fumigation.

In addition to traditional cargo, food and garbage from international flights and cruises can carry pests and diseases that could harm U.S. agriculture. All international trash must be handled and disposed of according to APHIS regulations. Inspectors regularly examine international modes of conveyance and consult with airlines, cruise lines, ship and rail companies to ensure that trash is being properly handled and discarded. Problems identified during these inspections can lead to citations for violations.

Smuggling and Trade Compliance. A Smuggling Interdiction and Trade Compliance staff (about 120 people) is part of APHIS’ port operations presence.

This team monitors pathways through which prohibited products can enter the United States and cooperates with law enforcement officials to conduct unannounced inspections “blitzes” at markets, warehouses, and ports of entry. They seize prohibited items and help prosecute smugglers. In FY2002, the staff seized 6,000 kilograms of prohibited plant products and 9,000 kilograms of prohibited animal products.

Difference Between Northern and Southern Borders. Agricultural inspections are generally uniform at the land border crossings with Canada and Mexico. Many of the pests and diseases of concern to agriculture have potential pathways into the United States through both the northern and southern borders. For example, while Canada cannot grow citrus in its colder climate, it does allow imports of tropical fruit from countries with known fruit fly populations, and thus is of concern to U.S. agriculture.

Other pests and diseases vary between Canada and Mexico and necessitate different procedures. For example, live cattle being imported from Mexico are dipped in an insecticide bath prior to entry into the United States to prevent entry of exotic ticks. At the northern border, imports of cattle and beef products currently are prohibited due to BSE (mad cow disease) restrictions. These differences, however, are based on risk assessments of pest and disease differentials rather than the inherent location of the border. Similar differences in inspections or prohibitions apply to cargo and passengers arriving from various international locations.

Related Policies and Procedures

While the focus of this report is border inspections, there are a few related policies and procedures that warrant discussion because they are integral to the CBP inspections process. The Transportation Security Administration (TSA) has responsibility for aviation security. The USDA retains a key policy role in plant and animal inspections. The Department of State’s (DOS) Bureau of Consular Affairs issues the visas that enable foreign nationals to enter the United States. The Department of Health and Human Services (HHS) sets the policies on screening travelers for communicable diseases. There are important Customs initiatives that aim to streamline inspections by securing the cargo and supply chain. These related policies and procedures are briefly discussed below.⁷²

Aviation Security. Among its many homeland security responsibilities, TSA is the lead agency for airport security, air cargo security, baggage screening and passenger pre-screening — duties that extend well beyond the international air ports of entry. Established by legislation passed two months after the September 11, 2001 terrorist attacks, TSA is now located in BTS alongside CBP. TSA officials state that their first priority is to protect air travelers, and to do so they have set into place a

⁷² The U.S. Coast Guard plays a major homeland security role as the lead agency for port, waterway and coastal security and for alien migrant interdiction on the high seas. See CRS Report RS21125, *Homeland Security: Coast Guard Operations — Background and Issues for Congress*, by Ronald O’Rourke; and CRS Report RL31733, *Port and Maritime Security: Background and Issues for Congress*, by John Frittelli.

system of reinforcing rings of security to mitigate the risk of future terrorist or criminal acts. These security measures cover air traffic from curbside to cockpit, supported overall by intelligence and threat analysis.⁷³

TSA relies on the Computer Aided Passenger Pre-Screening (CAPPS) system as a threat assessment tool for airline passengers. Since 1996, CAPPS analyzes data on ticket purchasing behavior to identify air travelers who may pose a threat. The implementation of the second generation, CAPPS II, is caught up in privacy protection and civil liberty concerns. In terms of air cargo, TSA reportedly is designing a random, threat-based, risk-managed freight screening process and continues to develop an automated and enhanced “known” shipper program. TSA estimates that 2.8 million tons of cargo transported per year is now secured on passenger planes and 9.7 million tons on cargo planes.⁷⁴

Agencies Conducting Agricultural Inspections. The Agricultural Quarantine Inspection (AQI) program of the USDA Animal and Plant Health Inspection Service (APHIS) is considered the most significant and prominent of agricultural and food inspections. Because of this prominence, AQI was one of the many programs selected for inclusion when the Department of Homeland Security was created. A legislative compromise during deliberations on the legislation creating the new department transferred only the border inspection function of APHIS, leaving other activities at USDA as described below.

Even though the border inspection function of APHIS has moved to DHS, USDA-APHIS retains a significant presence in border inspection activities. The nearly 1,300 AQI employees who were not transferred continue to conduct certain domestic inspection functions, such as monitoring entry to the mainland from Hawaii and Puerto Rico. They continue to set agricultural inspection policies to be carried out by DHS border inspectors, including determining what agricultural products are allowed to enter the United States and what items are to be denied entry. APHIS provides training to DHS inspectors regarding agricultural inspections, manages the data collected during the inspections process, and monitors smuggling and trade compliance. APHIS also continues to pre-clear certain commodities, inspect all imported propagative material, monitor animals in quarantine, and conduct certain other port activities such as fumigations. To assure that necessary agricultural inspections are conducted, APHIS negotiates memoranda of understanding (MOUs) with DHS.

Separating duties this way is intended to allow a consolidated border inspection function with customs and immigration personnel for intelligence and security goals, but preserves USDA’s expertise and historical mission to set agricultural import policies to protect American agriculture.

⁷³ For a complete discussion, see CRS Report RL31969, *Aviation Security: Issues Before Congress Since September 11, 2001*, by Bartholomew Elias.

⁷⁴ For background and analysis, see CRS Report RL32022, *Air Cargo Security*, by Bartholomew Elias.

While APHIS is responsible for protecting the health of U.S. agriculture, other agencies such as the USDA Food Safety and Inspection Service (FSIS) and HHS' Food and Drug Administration (FDA) focus on protecting public health. At ports of entry, FSIS and FDA personnel inspect shipments of food and food products imported into the United States from abroad to ensure that the food and related products meet U.S. standards and do not present any risk to public health. As an example, AQI personnel may inspect a shipment of sausage casings to ensure that the shipment does not pose any animal health risk, while FSIS personnel may inspect the same shipment to ensure that the product was prepared in an approved processing facility. The Department of Interior Fish and Wildlife Service (FWS) inspects international cargo, baggage, passengers, and mail to enforce U.S. and international laws regarding trade in endangered and protected species. This report is limited, however, to agricultural inspections conducted by DHS and the continuing role of USDA-APHIS.

Visa Procedures. Foreign nationals not already legally residing in the United States who wish to come to the United States generally must obtain a visa to be admitted.⁷⁵ There are two broad classes of aliens that are issued visas: immigrants and nonimmigrants.⁷⁶ The Department of State's Bureau of Consular Affairs (Consular Affairs) is the agency responsible for issuing visas. DHS is responsible for formulating regulations on visa issuances and may assign staff to consular posts abroad to advise, review, and conduct investigations.⁷⁷ DHS's United States Bureau of Citizenship and Immigration Services (USCIS) is charged with approving immigrant petitions, a prerequisite for obtaining a visa to become a legal permanent resident.⁷⁸ The documentary requirements for visas are stated in §222 of the INA, with some discretion for further specifications or exceptions by regulation, most notably the Visa Waiver Program.⁷⁹

All aliens seeking visas — prospective immigrants and nonimmigrants — must undergo admissibility reviews performed by DOS consular officers abroad.⁸⁰ These

⁷⁵ Authorities to except or to waive visa requirements are specified in law, such as the broad parole authority of the Attorney General under §212(d)(5) of the Immigration and Nationality Act (INA) and the specific authority of the Visa Waiver Program in §217 of INA, which are discussed later in this memorandum.

⁷⁶ For background and analysis of visa issuance policy and activities, see CRS Report RL31512, *Visa Issuances: Policy, Issues, and Legislation*, by Ruth Ellen Wasem.

⁷⁷ For more on the division of duties, see CRS Report RL32256, *Visa Policy: Roles of the Departments of State and Homeland Security*, by Ruth Ellen Wasem.

⁷⁸ The memorandum of understanding (MOU) that implements the working relationship between DOS and DHS's three immigration-related bureaus was signed Sept. 29, 2003.

⁷⁹ For a discussion of these waivers and the countries whose nationals do not need visas, see Congressional Distribution Memorandum, *Waiving the Documentary Requirements for Visas and Passports to Enter the United States*, by Ruth Ellen Wasem and Andorra Bruno, Oct. 27, 2003; and CRS Report RL32221, *Visa Waiver Program*, by Alison Siskin.

⁸⁰ These grounds for inadmissibility are spelled out in §212(a) of INA. Consular officers use the Consular Consolidated Database (CCD) to screen visa applicants. For some years, (continued...)

reviews are intended to ensure that they are not ineligible for visas or admission under the grounds for inadmissibility, which include criminal, national security, health, and indigence grounds as well as past violations of immigration law. As a result, all aliens arriving with visas have had background checks. For the past several years, moreover, Consular Affairs has been issuing machine-readable visas. By October 2004, all visas issued by the United States must use biometric identifiers (e.g., finger scans) in addition to the photograph that has been collected for some time.⁸¹

Protection Against Communicable Diseases. The Centers for Disease Control (CDC) in HHS take the lead in protection against communicable diseases at the border.⁸² A medical examination is required of all aliens seeking to come as legal permanent residents (LPRs) and refugees, and *may* be required of any alien seeking a nonimmigrant visa or admission at the port of entry. As noted earlier, an immigration inspection includes a determination of whether the alien is inadmissible due to a health-related condition. The diseases that trigger inadmissibility in the INA are acquired immune deficiency syndrome (AIDS) and those communicable diseases of public health significance as determined by the Secretary of HHS. Those diseases currently barred by regulation are: cholera, diphtheria, infectious tuberculosis, plague, smallpox, yellow fever, viral hemorrhagic fevers (Lassa, Marburg, Ebola, Crimean-congo, South American, and others not yet isolated or named), and severe acute respiratory syndrome (SARS). Aliens are also required to have vaccinations against vaccine-preventable diseases, including mumps, measles, rubella, polio, tetanus, diphtheria, pertussis, influenza type B and hepatitis B.⁸³

CDC officials are not present at the border on a day-to-day basis, but there are quarantine stations located in the international airports in New York, Chicago, Miami, Atlanta, Los Angeles, San Francisco, Seattle, and Honolulu. The CDC, through their Division of Global Migration and Quarantine, train CBP inspectors to watch for ill persons and items of public health concern, and they work with state and local health officials in jurisdictions that may be affected under particular circumstances. They have been available at the border during immigration emergencies and other periods when public health may be threatened.⁸⁴

⁸⁰ (...continued)

consular officers have been required to check the background of all aliens in the “lookout” databases, specifically the Consular Lookout and Support System (CLASS) and TIPOFF databases. Consular officers also send suspect names to the FBI for a name check program called Visa Condor.

⁸¹ PL. 107-56 and P.L. 107-173 require that visas and other travel documents contain a biometric identifier and are tamper-resistant.

⁸² Their statutory authorities can be found at 8 USC §1182; 8USC §1222; 42USC §264-§272; and 42USC §252.

⁸³ See CRS Report RL31719, *An Overview of the U.S. Public Health System in the Context of Bioterrorism*, by Holly Harvey and Sarah Lister.

⁸⁴ For more information on CDC and their the Division of Global Migration and Quarantine, see [<http://www.cdc.gov/ncidod/dq/mission.htm>].

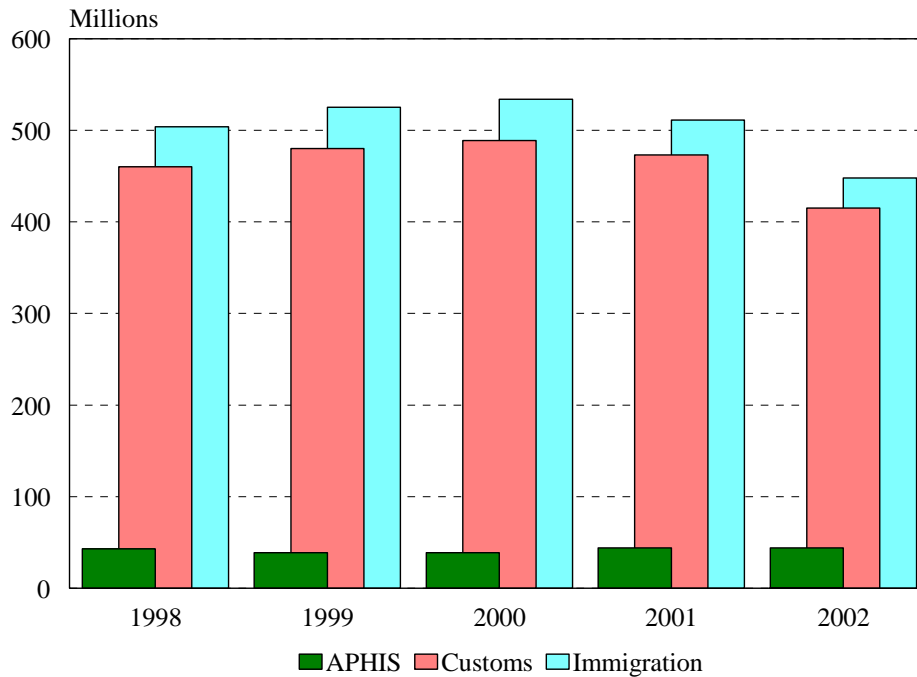
Cargo and Supply Chain Security. In order to maximize its inspection resources, CBP has launched several initiatives focusing on enhancing the targeting of high-risk shipments, and securing the entire supply chain from point of origin to final destination. One of these initiatives is the Customs-Trade Partnership Against Terrorism (C-TPAT).

Initiated in April 2002, C-TPAT offers importers expedited processing of cargo if they comply with CBP requirements for securing their entire supply chain. In order to participate in the C-TPAT, businesses must sign an agreement that commits them to the following actions: conduct a comprehensive self-assessment of supply chain security using the C-TPAT security guidelines jointly developed by CBP and the trade community; submit a supply chain security profile questionnaire to CBP; develop and implement a program to enhance security throughout the supply chain in accordance with C-TPAT guidelines; communicate C-TPAT guidelines to other companies in the supply chain; and work toward building the guidelines into relationships with these companies.

Border Inspection Trends by Ports and Modes of Entry

Border inspections conducted each year number in the hundreds of millions. As **Figure 1** depicts, the number of passenger inspections peaked in FY2000. Since immigration and customs inspectors were cross-designated, it appears that an unknown number of passengers were enumerated in the data of both INS and Customs. Prior to the establishment of CBP, immigration inspectors did most passenger inspections, followed by customs inspectors. Agricultural inspections were a distant third, but APHIS still completed 44 million animal and plant inspections of passengers in FY2002. Unlike customs and immigration inspections data, APHIS data enumerate only those passengers referred to secondary inspections for the purpose of an agricultural inspection. In FY2003, CBP reported that they inspected 412.8 million passengers.

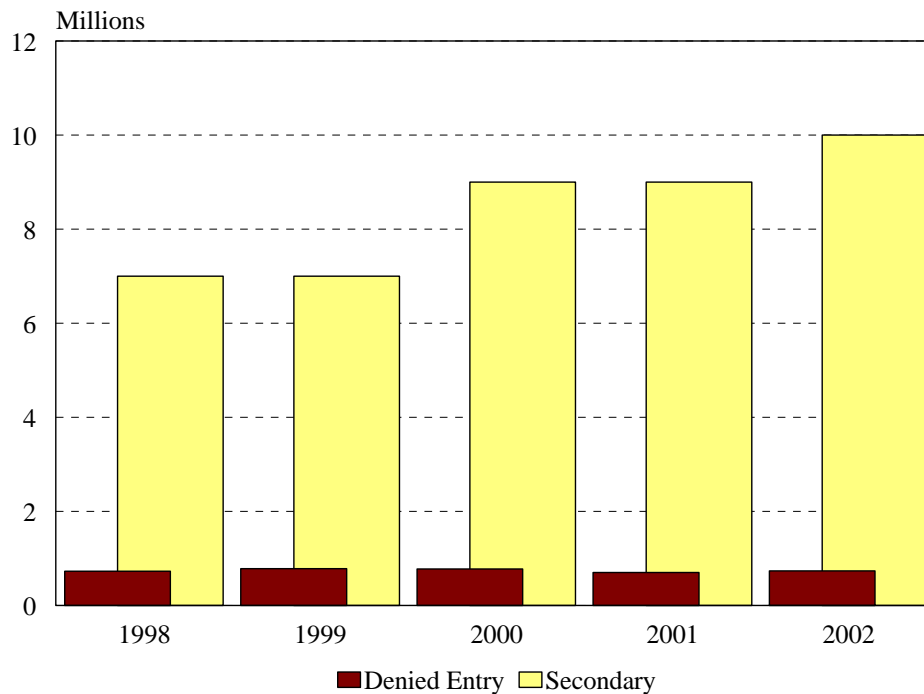
Analyses of workload trends prior to the establishment of DHS follow for each major type of inspection — immigration, customs, and agricultural inspections. Unless otherwise noted, the data analyses are based on data provided by the “legacy” agencies of the U.S. Immigration and Naturalization Service (INS), U.S. Customs Service and U.S. Department of Agriculture (USDA).

Figure 1. Passenger Inspections, FY1998-FY2002

Source: CRS analyses of DHS unpublished data from "legacy" agencies.

Immigration Inspections Data

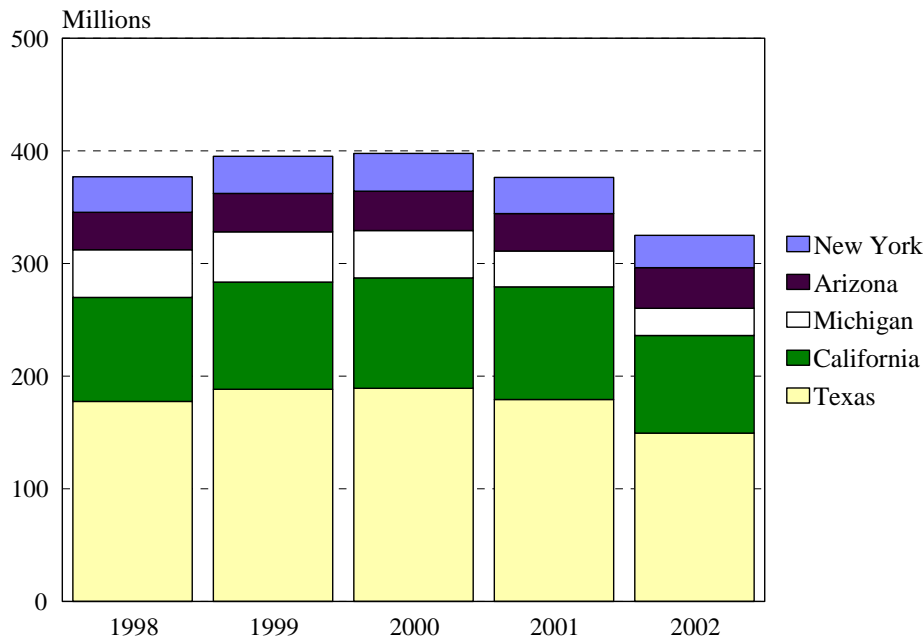
In FY2000, 534 million travelers were inspected at U.S. ports of entry, a peak year for immigration inspections. The number declined following the September 11, 2001 terrorist attacks, reducing the FY2001 total to 511 million and the FY2002 total to 448 million (**Figure 1**). The number of travelers referred to secondary inspections began to rise in FY2000, peaking at over 10 million in FY2002 (**Figure 2**). As **Figure 2** indicates, however, the number of persons denied entry has held steady from FY1998 to FY2002, during which an average of less than 1% of all travelers (and about 10% of all people referred to secondary) were denied entry.

Figure 2. Immigration Inspections: Secondary Referrals and Denials

Source: CRS analysis of INS workload data.

Although the primary mode of travel into the United States is through land ports of entry, air and sea ports of entry have their share of travelers seeking entry into the country. Collectively, land ports of entry in Texas and California led all other states with respect to the number of travelers inspected (**Figure 3**). With respect to air ports of entry, New York, Miami and Los Angeles International Airports accounted for 32% of all inspections in FY2002 (**Figure 4**). Sea ports of entry account for the smallest percentage of travelers seeking entry into the United States.

Land Ports of Entry. The majority of travelers (approximately 80%) enter the United States at a land port of entry. Land ports of entry are often referred to based on their geographic proximity to the northern or southwest border. Over the years, the southwest border has seen the highest volume of travelers seeking entry into the United States, as **Figure 3** illustrates. Three southwest ports of entry made up five of the busiest ports of entry between FY1998 and FY2002. Those southwest ports of entry — located in Texas, California and Arizona — accounted for over 70% of all inspections at the five busiest land ports of entry in FY2002.

Figure 3. Top Five Busiest Land Ports of Entry by State

Source: CRS analysis of INS workload data.

CBP inspectors at land ports of entry must be cognizant of individuals attempting to smuggle illegal aliens into the country.⁸⁵ In FY2002, a little over 68,000 illegal aliens were caught being smuggled into the United States at land ports of entry, primarily along the southwest border.⁸⁶

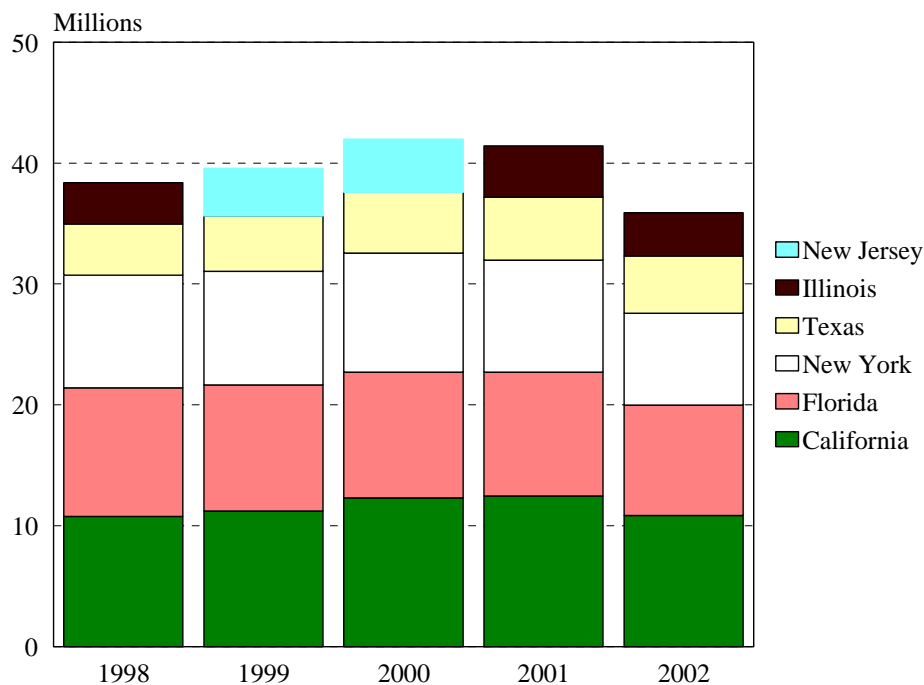
Air Ports of Entry. In FY2002 air ports of entry accounted for 15% of travelers who sought entry to the United States. Although the number of persons seeking entry at air ports of entry is relatively small in comparison to land ports of entry, the inspection process can be more complicated due to the diverse population seeking admission to the United States. As **Figure 4** illustrates, California's airports had the largest volume of immigration inspections, from FY1998 to FY2002, followed closely by Florida and New York. Texas held steady at fourth place with Illinois and New Jersey competing for fifth place.

⁸⁵ In addition to human trafficking, land borders and ports of entry are also the preferred venue for smuggling in drugs and contrabands into the United States.

⁸⁶ CRS examination of INS PAS data.

Prior to passage of IIRIRA, which mandated the DOJ to develop an automated entry and exit data system to replace the manual system,⁸⁷ immigration inspectors at air ports of entry have long collected the I-94 form from aliens. The I-94 form is usually given to aliens while in transit to the United States and contains information such as the alien's identification and an address where the alien will be staying while in the United States. After reviewing the alien's travel document and interviewing the alien, the immigration inspector determines how long the alien can stay in the United States. The length of stay and immigration classification, both determined by the immigration inspector, is evident on a completed I-94 form. The information on the I-94 form is later put into the Non-Immigrant Information System (NIIS).⁸⁸ Although the I-94 form is routinely collected at air ports of entry, reportedly it is rarely collected upon exit. At this point it is not clear how the implementation of US-VISIT will affect NIIS and the use of the I-94 forms.

Figure 4. Top Five Busiest Immigration Airports of Entry by State



Source: CRS analysis of INS workload data.

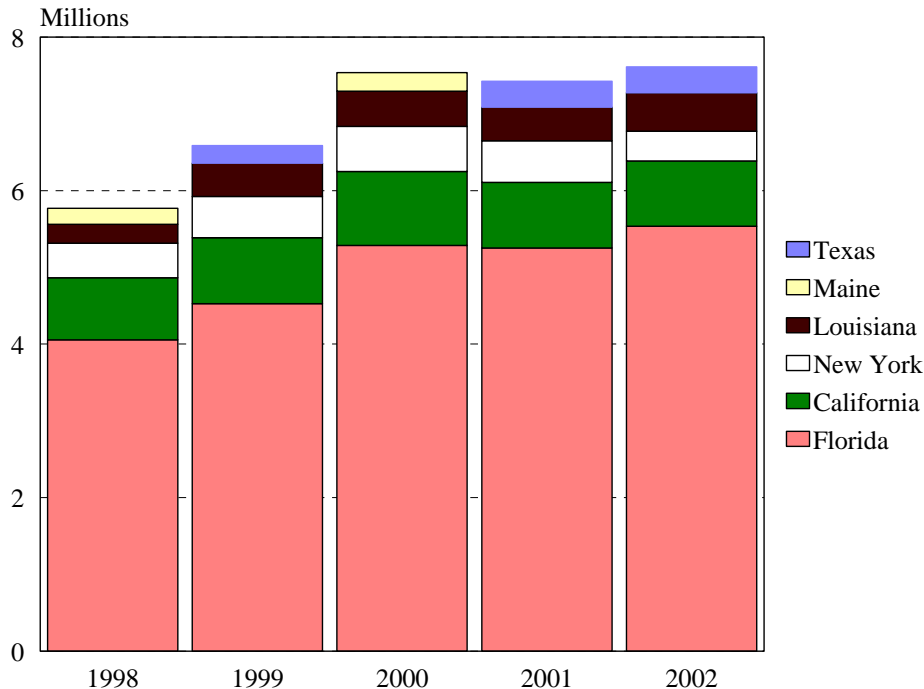
Sea Ports of Entry. Immigration statistics for sea ports of entry are separated into two categories: seaports and cruise ships. The two categories are further divided to reflect the number of U.S. citizens, aliens and crew personnel that were inspected. The majority of vessels are passenger cruise ships, mainly consisting of U.S. citizens. Similar to aliens entering the United States at an air port of entry, aliens who seek entry at a seaport must submit an I-94 form prior to arrival at a sea port of entry. In FY2002, inspections at seaports and on cruise ships accounted for less than 1% of all

⁸⁷ §110 of P.L. 104-208.

⁸⁸ NIIS is a mainframe system that stores arrival and departure information for non-immigrants that is captured on the I-94 form.

travelers seeking entry into the United States. Florida consistently ranks as the state with the largest volume of immigration inspections at seaports.

Figure 5. Top Five Busiest Sea Ports of Entry by State



Source: CRS analysis of INS workload data. Puerto Rico led the continental United States for number of persons inspected at sea ports of entry in FY1999, FY2001 and FY2002

Inspection of Alien Crew Members. Alien crew members are inspected at air ports of entry usually at a separate location from the general public. According to INS Inspector’s Field Manual, “at air ports of entry it is the general practice to expedite the admission of arriving crewmen.” With respect to sea ports of entry, alien crew members arriving on vessels, like alien passengers, must submit an I-94 form prior to arrival at a sea port of entry.

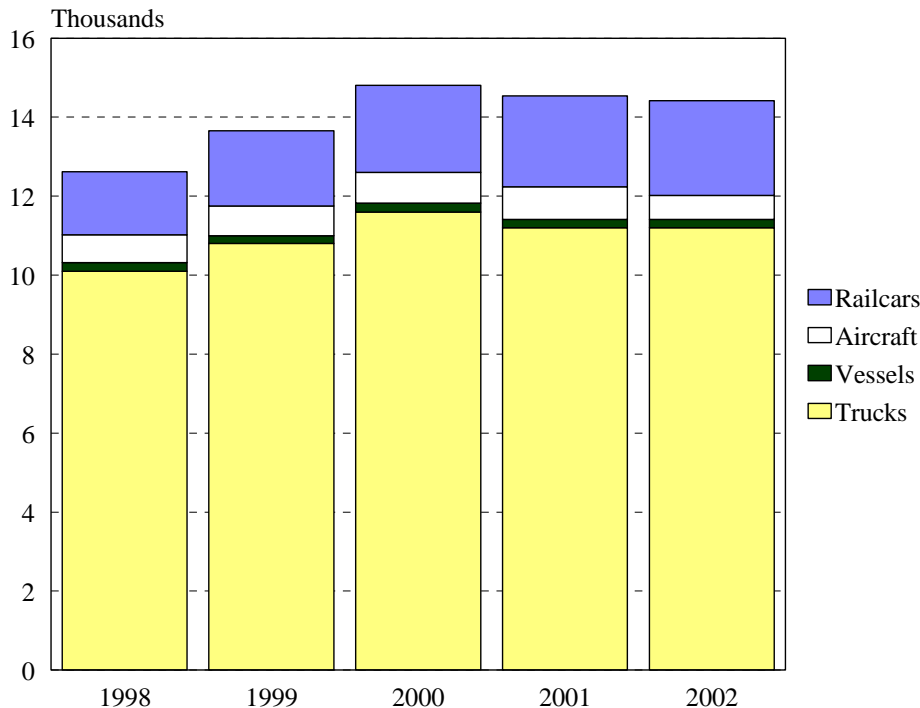
Cargo Inspections Data

In FY2002, customs inspectors processed the importation of cargo valued at \$1,183 billion, with most of the cargo (11.2 million conveyances) arriving by truck. Railcars (2.4 million conveyances in FY2002) were the second most used conveyance, followed by vessels (0.2 million conveyances in FY2002). Those vessels, however, include multiple cargo containers (7.3 million in FY2002). **Figure 6** illustrates the volume of cargo processed by the U.S. Customs Service for FY1998-FY2002. **Appendix D** provides more detail on the data presented in **Figure 6**.

Data on the number of cargo containers physically inspected by CBP were not available for inclusion in this report. The Commissioner of CBP, Robert Bonner, testified that two years ago that 9% of rail containers, 2% of sea containers, and 10.3% of trucks entering the United States were inspected either intrusively or non-intrusively. According to his testimony these numbers currently stand at 22.6% of

rail containers, 5.2% of sea containers, and 15.1% of trucks entering the United States. Commissioner Bonner testified that across all modes of transportation CBP is currently inspecting approximately 12.1% of all cargo containers entering the United States; up from approximately 7.6% two years ago.⁸⁹

Figure 6. Customs Cargo Processed by Type of Conveyance



Source: CRS analysis of data provided by CBP.

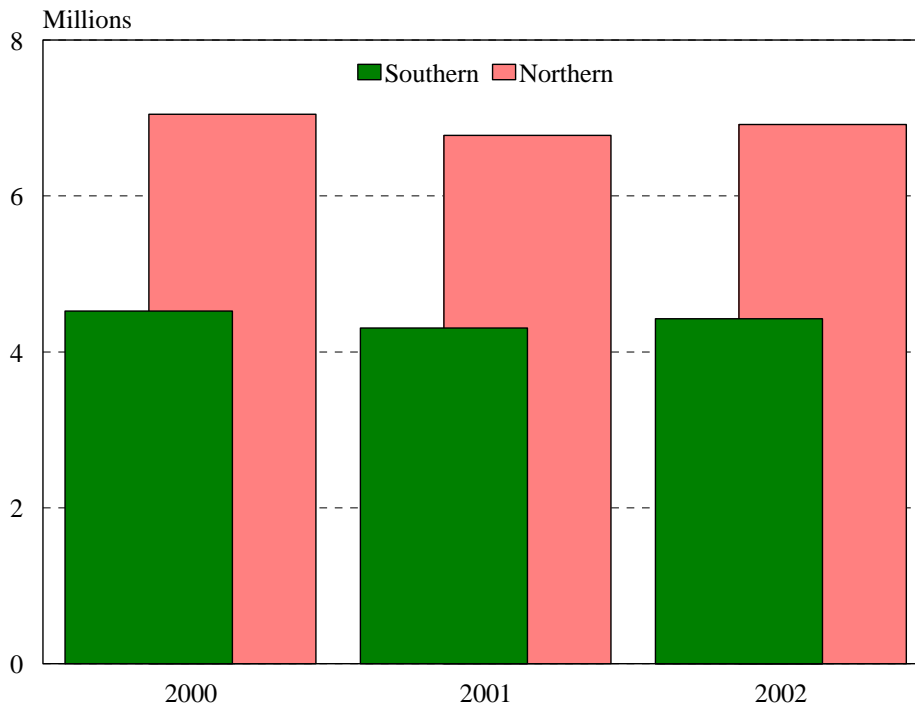
Cargo Inspections at Airports. Customs processed approximately 770,000 commercial aircraft, and approximately 210,000 private aircraft in FY2002, as noted in **Appendix D**. According to data from the Airports Council International, the top ten United State airports by volume of international cargo for FY2002 were: Memphis (MEM), Los Angeles (LAX), Anchorage (ANC), Miami (MIA), New York (JFK), Louisville (SDF), Chicago (ORD), Indianapolis (IND), Newark (EWR), and Atlanta (ATL).

Cargo Inspections at Seaports. In FY2002, Customs processed 7.3 million vessel cargo containers. **Appendix C** provides port level data for the top 10 U.S. Container Ports from 1995-2002. In FY2002, the top 10 U.S. Container Ports accounted for 84% of the total volume of 20-foot equivalent units (TEU's) moving through all U.S. seaports. Los Angeles handled the highest volume of TEU's, accounting for 21% of the total.

⁸⁹ Testimony of Commissioner, Customs and Border Protection Robert C. Bonner, in U.S. Congress, Senate Committee on Commerce, Science, and Transportation, *Oversight of Transportation Security*, 108th Cong., 1st sess., Sept. 9, 2003 (Washington: Federal Document Clearing House, Inc.), p.34.

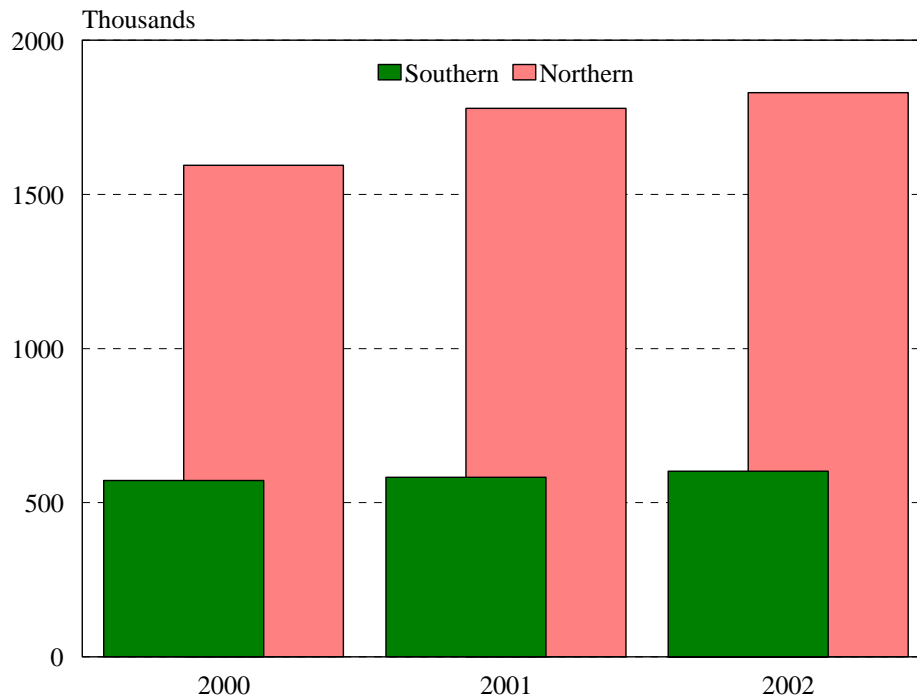
Cargo Inspections at Land Ports. As discussed earlier, over 11 million trucks carrying cargo were processed by customs inspectors. In FY2002, the busiest land port was Detroit, Michigan, with 1.7 million trucks crossing accounting for 24% of the truck crossings at the northern border. Laredo, Texas, was the busiest POE for truck crossing along the southern border, with 1.4 million truck crossings. Northern POEs overall handled more truck crossing than southern POEs, and **Figure 7** illustrates the number of truck crossings at the northern and southern border for FY2000-FY2002. **Appendices F and G** include data on the total number of trucks processed by Customs for FY1997-2002.

Figure 7. Trucks Conveying Cargo, 2000-2002



Source: CRS analysis of Bureau of Transportation Statistics data.

In FY2002 Customs processed 2.4 million railcars. As indicated by **Figure 8**, which depicts railcar crossings at the northern and southern border for FY2000-FY2002, most of the railcar crossing were with Canada. The data, tabulated by Bureau of Transportation Statistics, include both loaded and unloaded railcars. For FY2002 the top five ports accounted for 72% of total railcar crossings along the northern border. At the southern border, the top five ports accounted for 98% of the total crossings. **Appendices F and G** include data on the total number of railcars processed by Customs for FY1997-FY2002.

Figure 8. Railcars Conveying Cargo, 2000-2002

Source: CRS analysis of Bureau of Transportation Statistics data.

Animal and Plant Health Data

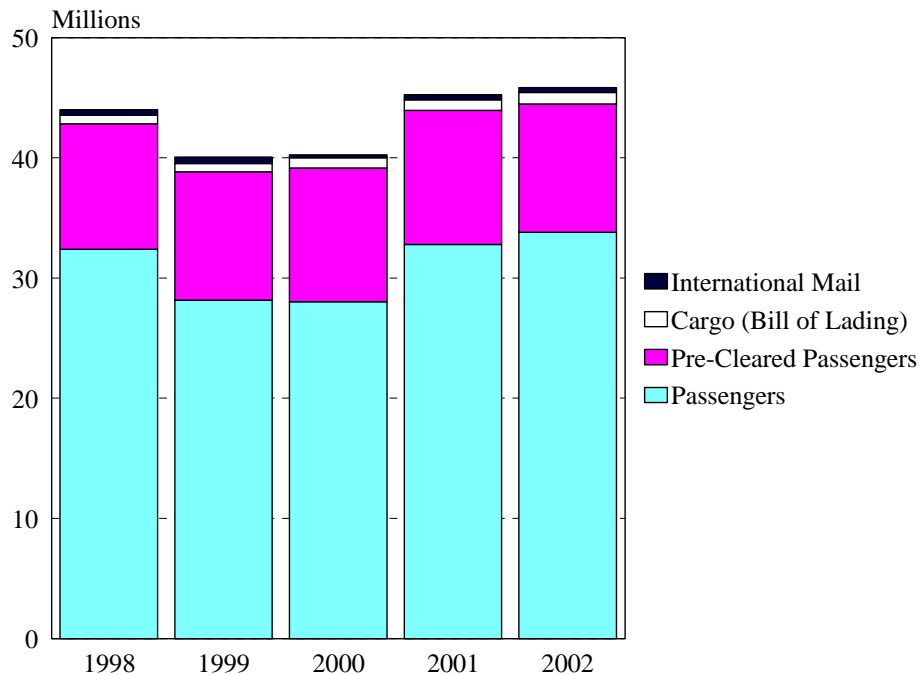
Inspection Statistics. APHIS collects data on the inspections process through its Work Accomplishment Data System (WADS). Three types of statistics are particularly important for assessing the inspections process. (1) An *inspection* is a secondary level interview of a person or examination of his/her baggage based on entrance documents, detector dog identification, or random selection at a primary inspection station. X-ray or visual examination of baggage contents may occur. For cargo and international mail, an inspection occurs when the shipment is opened or x-rayed. (2) An *interception* is the identification of items having quarantine significance that may be confiscated or transferred to another APHIS facility for subsequent evaluation or treatment, depending on the cargo. (3) A *violation* is counted when goods are found to be misrepresented on documents, import rules were violated, or items were otherwise attempted to be smuggled. Ships or aircraft can incur violations for not following certain arrival procedures or for improper handling of garbage.

Since APHIS uses a targeted inspection approach, it may be somewhat misleading to present a ratio of goods or people inspected from the entire pool of international arrivals. The actual percentage of all entries inspected would appear unusually small since only higher-risk entrants are inspected. By using intelligence and risk assessment models, the subset of passengers or goods targeted for inspection should have notably higher rates of interceptions and violations than the entire pool of arrivals. Also, preclearance of certain cargo shipments removes another subset of imports from the same need for inspection at ports of entry. Finally, because APHIS

tabulates cargo inspection statistics by bill of lading rather than by weight or value, an overall ratio of goods inspected is infeasible to compute and would lack meaning. Thus, the percentages presented below are interceptions or violations among the subset chosen for inspection.

In general, about 2%-3% of passengers who are targeted for inspection are found carrying items of quarantine significance (counted as interceptions). Only 1%-2% of inspected cargo shipments are found with such items, but the figure is higher for international mail (3%-8%). These results are in line with APHIS' goals for the inspection program. Interception figures are higher for certain modes of conveyance, especially for aircraft. Nearly half of inspected aircraft have intercepted items, while 15% of inspected ships and 12% of inspected vehicles contain intercepted items. **Appendices H and I** contain inspection statistics compiled by APHIS upon request for this report.

Figure 9. Agricultural Inspections, FY1998-FY2002



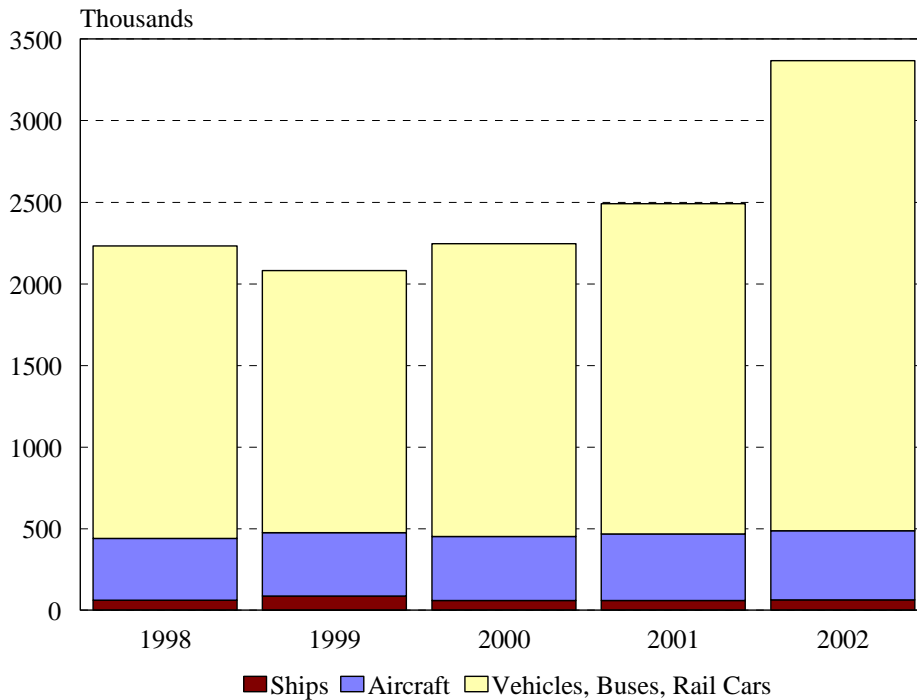
Source: CRS analysis of USDA-APHIS, special tabulations of work accomplishment data.

Passengers. In FY2002, APHIS reported that 69 million maritime, land border, and airline passengers entering the United States were subject to inspection. Of this number, APHIS actually inspected 33.8 million passengers and made 890,000 interceptions of quarantine significance. The interception rate of 2.6% is fairly low, because of the targeted nature of the inspections process. Nearly 13,000 inspections resulted in violations. Both the interception rate and the violation rate have been declining slightly since 1998.

Pre-clearance of passengers prior to departure supplements inspections at the border. In FY2002, APHIS conducted pre-clearance inspections of over 10.5 million passengers, including 1.5 million passengers departing Hawaii and Puerto Rico for the mainland. The rate of interceptions in the pre-clearance program (about 2%) is less than that for passenger inspections at ports of entry. This is likely due to the selected number of departure points having pre-departure programs and their below-average risk profile (such as Hawaii, Puerto Rico and Canada).

Cargo and International Mail. Working with Customs to target shipments for more efficient inspection, APHIS inspected 953,000 cargo shipments (bills of lading) in FY2002. The number of inspections has risen by nearly a third since 1998, although the ratio of interceptions has remained fairly constant and generally under 3%. Violations doubled between 1998 and 2002, although the ratio is very small at one-twentieth of 1% percent.

Figure 10. Agricultural Inspections by Type of Conveyance



Source: CRS analysis of USDA-APHIS, special tabulations of work accomplishment data.

Inspections of international mail for agricultural pests and diseases has remained nearly level since 1998, with about 420,000 inspections in FY2002. The interception and violation rates are higher than those for cargo, with 8.2% of inspected mail packages containing items of quarantine significance in 2002. This figure, however, is noticeably higher than in previous years and may not necessarily reflect a trend.

Ships, Aircraft, Vehicles, and Railcars. In addition to inspections of passengers and cargo, the mode of conveyance is also subject to agricultural inspection. In FY2002, APHIS inspected 64,000 ships, a similar number to previous

years. Fifteen percent resulted in interceptions, up from 9% in 1998, sometimes for improper handling of garbage and waste within U.S. boundaries.

The number of aircraft inspected in FY2002 was 423,000, up by 12% since 1998. The rate of agricultural pest interceptions for aircraft is very high compared to other types of agricultural inspection. In FY2002, nearly half of inspected aircraft were found with items of quarantine significance, although this incidence has fallen steadily from 91% in 1998. As with the statistics for ships, improper handling of garbage originating from a foreign source that could harbor forbidden agricultural products or pests frequently contributes to the high rate positive findings.

Inspections of vehicles, buses and rail cars entering the United States from Canada and Mexico increased 60% from 1998 to 2002. In FY2002, APHIS conducted 2.9 million such inspections and made 341,000 interceptions. The interception rate has fallen slightly from 15% in 1998 to 12% in 2002.

Budget and Staffing for Inspections

Border inspections are funded through a combination of federal discretionary appropriations and user fees. For FY2004, CBP was given budget authority of \$2,496 million for border security, inspections, and trade facilitation at POEs. CBP has requested \$2,724 million for FY2005. The House passed H.R. 4567, the FY2005 DHS Appropriations Act, would provide \$5.1 billion for CBP. The Senate bill, S. 2537 as reported, would provide \$5.0 billion for CBP.⁹⁰ This section of the report analyzes funding trends and staffing for the three functions prior to their merger into CBP. These historic funding data are not comparable across agencies and, as noted below, may include activities in addition to the inspection functions. As a result, the funding and staff data presented below cannot be summed into total spending for inspections.

Table 1. Inspections Staff for All Locations, FY2001-FY2004

Fiscal year	Immigration	Customs	Agriculture	CBP non-APHIS
2001	4,717	8,184	na	—
2002	5,422	9,008	na	—
2003	6,741	10,538	1,480	—
2004	—	—	1,446	17,784

Source: CRS presentation of CBP Field Operations data as of Jan. 10, 2004. Comparable data on agriculture inspections staff were not provided for FY2001 and FY2002.

⁹⁰ For tracking and analysis, see CRS Report RL32566, *Border and Transportation Security: Appropriations for FY2005*, coordinated by Jennifer Lake and Blas Nuñez-Neto.

CBP's Office of Field Operations, however, has provided data on inspections staff that are distinct from full-time equivalent (FTE) staffing used in budget and appropriations documents. As **Table 1** presents, the overall number of inspectors grew from FY2001 through FY2003. As **Table 1** and the subsequent analysis reveals, there have been more customs inspectors than immigration and agricultural inspectors combined over the period analyzed in this report.

Immigration Functions

Prior to the transfer of the former INS to DHS, Congress funded the agency from several sources. Funding for salaries and expenses was appropriated from general revenues, off-setting fee receipts, and the Violent Crime Trust Fund (VCTF).⁹¹ Specific funding for the agency's construction projects was appropriated from a construction account. The former INS' immigration appropriations account was divided between the agency's two main functions, *immigration adjudications and services* and *enforcement and border affairs*. The budget authority column in **Table 2** represents the inspection activity of the former INS, but comparisons over time are limited due to the inclusion of funding for the border patrol in the FY2001 and FY2002 budget figures. Nonetheless, funding for immigration inspections had risen in the late 1990s.

Table 2. Immigration Inspections Budget

Fiscal year	Immigration inspections activities (millions of dollars)	Staffing (FTES)
1998	168	Information not available
1999	481	5,199
2000	475	5,123
2001	1,494 ^a	5,472
2002	2,440 ^{a, b}	Information not available

Source: Table prepared by CRS based on data from INS FY1999-FY2002 Congressional Budgets and various Appropriations Acts (see below).

- a. The figure includes funding for the border patrol and inspections activities.
- b. The figure reflects what was enacted *and* the Counterterrorism Supplemental funding.

The user fee account, which provided most of the funding for immigration inspections, includes a levy on aliens seeking entry into the United States on an

⁹¹ The VCTF was established by the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322). Congress authorized funding for FY1995-FY2000 for purposes authorized by P.L. 103-322. Congress did not reauthorize the VCTF and it expired in FY2000.

international flight.⁹² The user fee account also includes the Land Border Inspection Fee, which levies a user fee for inspection services at land ports of entry and dedicated commuter lanes that are used by prescreened U.S. citizens and certain aliens (see discussion on Automated Inspections above). Fees are also generated through fines levied against airlines and other carriers for not complying with immigration regulations. Immigration inspections also drew on monies generated by the Examinations Fee Account, which is collected to cover the processing and adjudication of immigrant, nonimmigrant, refugee, asylum, and citizenship benefits.⁹³ The construction account included appropriations for construction projects for the entire agency.

Customs Functions

As with immigration inspections, Customs activities are funded by direct appropriations and by fee revenue. Prior to the transfer of the U.S. Customs Service to DHS, Congress funded Customs activities from several sources and into several different accounts. Most Customs funding was appropriated into the Salaries and Expenses account, which in turn was allocated into two budget activities: commercial activities, and drug and other enforcement activities. The Customs inspection function falls into commercial activities, and **Table 3** reports Customs budget and staffing resources devoted to the commercial activities from FY1998 to FY2002.

Table 3. Budget Authority for Customs Commercial Activities

Fiscal year	Commercial activities (millions of dollars)	Staffing (commercial activity FTES)
1998	853	9,295
1999	886	9,363
2000	922	9,070
2001	1,085	9,256
2002 ^a	1,173	9,728

Source: U.S. Customs Service, *Budget Justifications, FY1999-FY2003*.

- a. FY2002 Commercial Activity Appropriation and FTEs are estimates contained within the FY2003 justification material. Final published FY2002 numbers were not available due to the changes to the FY2004 budget justification materials reflecting the realignment of the legacy Customs, INS, and APHIS in CBP.

⁹² Congress first authorized the Attorney General to charge a user fee for immigration inspections in the Department of Justice Appropriations Act of 1987 (P.L. 99-500), which created §286(d) of the INA. The Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Act, FY2002 (P.L. 107-77) included provisions that increased the airport user fee from \$6 to \$7 and levied a cruise ship fee of \$3 for journeys that originate in Mexico, Canada and the United States.

⁹³ §286(m) of INA. 8 U.S.C. 1356.

The off-setting receipt revenue generated from user fees is an important source of funding for customs inspections.⁹⁴ The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA '85; P.L. 99-272) established fees for inspection-related service. The COBRA fees are comprised of eight separate user fees levied on passengers, conveyances, and brokers.⁹⁵ COBRA fee receipts are not appropriated for obligation by Congress, but they are available to CBP for expenditure each year. COBRA fee receipts amounted to \$271 million in FY2002, and are estimated to amount to \$288 million in FY2003.⁹⁶ The authorization to charge COBRA fees expires March 1, 2005.⁹⁷

CBP also collects merchandise processing fees (MPF) to offset the cost of processing formally entered imported merchandise. MPF collections were authorized by the Omnibus Budget Reconciliation Act of 1986 (COBRA '86; P.L. 99-509), and unlike COBRA fee receipts, MPF fees are appropriated for obligation by Congress. MPF receipts amounted to \$955 million in FY2002, and are estimated to amount to \$1,022 million in FY2003.⁹⁸ Authorization to charge MPF also expires March 1, 2005.

Animal and Plant Health Functions

Agricultural animal and plant health inspections are funded through a combination of federal appropriations and user fees. Primary funding comes from user fees levied on international air passengers and aircraft, as well as commercial aircraft, vessels, trucks and railcars. User fees have been authorized since 1990. These user fees support more than the border inspection functions transferred to DHS and continue to be collected by USDA to carry out inspection-related activities in general. USDA will transfer funds periodically from the user fee account to cover DHS-related costs.

User fees are not collected, however, for any passengers or cargo entering from Canada. Pedestrians and vehicles entering from Mexico are also exempt from paying the user fees. Appropriated funding supports these activities, due in part to the logistics of collecting user fees at these high-volume ports of entry. Appropriations also fund pre-departure inspections of passengers and cargo from Hawaii and Puerto Rico to the mainland.

Table 4 indicates that 80%-85% of the funding for AQI has come from user fees. Funding levels grew by nearly 90% in nominal dollars from FY1998 to FY2002, and staffing levels grew by nearly 43%. The number of canine inspection

⁹⁴ 19 U.S.C. §58(c).

⁹⁵ See 19 U.S.C. §58(c)(a)(1)-(8).

⁹⁶ *Budget of the United States Government Fiscal Year 2004*, p. 451.

⁹⁷ P.L. 108-121, *The Military Family Tax Relief Act of 2003*, was signed by the President Nov. 11, 2003, and extends the authorization to charge customs user fees to Mar. 1, 2005.

⁹⁸ *Budget of the United States Government Fiscal Year 2004*, p. 451.

teams more than doubled between 1998 and 2002, and has since increased to 110 in March 2003.

Table 4. APHIS Agricultural Quarantine Inspection: Budget and Staffing

Fiscal year	Funding (millions of dollars)			Staffing	
	Appropriation	User fees	Total	FTEs	Canine
1998	27.2	140.6	167.8	2,109	44
1999	31.2	152.2	183.4	2,219	50
2000	34.3	178.8	213.1	2,474	56
2001	48.1	222.7	270.8	2,781	84
2002	47.2	266.0	313.2	3,013	92

Source: USDA-APHIS.

The breadth of the AQI inspection and monitoring function is reflected by the dispersion of staff. In FY2002, 48 states had AQI personnel, although 19 states had fewer than 10 people assigned. The top five states in terms of the number of agricultural inspectors during FY2002 included Florida (658), California (430), Hawaii (411), Texas (340), and New York (196). These five states accounted for two-thirds of the AQI staffing total and have retained this ranking since at least 1998. These states also accounted for two-thirds of the number of canine inspection teams.

The top ten local offices of agricultural inspectors included Miami (325), Honolulu (230), Los Angeles (163), the Citrus Canker Project (150), New York City/JFK Airport (149), San Francisco (107), Chicago/O'Hare Airport (84), Elizabeth, NJ (80), Kahului-Maui (80), and Houston (70). These 10 offices accounted for nearly half of the FY2002 staffing level, and just over half of the canine inspection teams.

Issues and Concerns

As discussed above, CBP inspectors are charged with enforcing a host of laws and conducting hundreds of millions of inspections annually. When Congress enacted HSA, it kept the U.S. Customs Service intact and created the Bureau of Border Security to oversee immigration inspections, the border patrol, and interior immigration enforcement activities. As provided for in HSA, the Administration opted to reorganize the major border inspections functions into CBP. Over the past year since CBP was established, a variety of issues and concerns have emerged. This report concludes with discussions of selected policy, administrative, and constitutional considerations, and a few overarching questions.

Policy Considerations

Competing Mandates. Tension exists between the need to conduct thorough inspections searching for terrorists, weapons of mass destruction, illegal drugs and weapons, unauthorized aliens and improperly entered commercial goods, and the need to process passenger and cargo inspections efficiently so as not to impede the flow of travel, trade, and tourism. One dramatic illustration of the effect that increased inspections can have on the flow of trade at the border occurred in the immediate aftermath of the September 11, 2001 terrorist attacks. The wait time for trucks crossing the border was nearly 12 hours at some ports of entry. The land border between United States and Canada was nearly closed, and as a result, some U.S. auto plants began to shut down due to lack of parts.⁹⁹

While most observers acknowledge that inspectors should strike a balance of their competing goals, some warn that CBP inspectors are too concerned about facilitating trade and travel to scrutinize passengers and goods thoroughly. Critics cite the percentages of cargo inspected (22.6% of rail containers, 5.2% of sea containers, and 15.1% of trucks) and the brevity of the average primary immigration inspection (reportedly 45 seconds) as indications that the current inspections process is inadequate.

Others maintain that CBP inspections are now conducted with much more sophistication, drawing on the combined knowledge and experience of the agriculture, customs and immigration inspections processes. They assert that the development of analytical targeting units, which emphasize high-risk passengers, conveyances, and cargo, is protecting border security while enabling the smooth flow of goods and people.

Targeting High-Risk Shipments. CBP's ability to successfully target high-risk containers (a cornerstone of the CSI program) is dependent upon information regarding which containers are most likely to contain contraband. The rationale behind the advance cargo manifest rules is to provide CBP with the necessary information it needs to conduct its targeting operations. While many observers note the importance of the development of sophisticated targeting mechanisms and the significant progress CBP has made in collecting advance manifest information, others have raised concerns.

One issue is the use of the cargo manifest as the primary document by which CBP gathers information and conducts risk assessments on cargo shipments destined for the United States. The cargo manifest has traditionally been used for commercial compliance purposes and has been characterized by some as error prone. Some have expressed concern that it may not contain the necessary information (such as

⁹⁹ Remarks of Commissioner Robert C. Bonner, Customs and Border Protection, made at the Heritage Foundation, Sept. 9, 2003. See [http://cbp.gov/xp/cgov/newsroom/commissioner/speeches_statements/sept092003.xml].

transshipment information) to conduct the security screening currently being carried out by CBP.¹⁰⁰

Also, recent GAO testimony has raised concerns regarding CBP's targeting operations. GAO credits CBP with establishing the National Targeting Center, promulgating regulations to improve the quality and timeliness of cargo data, refining its targeting system, and instituting a national training program for personnel conducting targeting operations. However, GAO 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.¹⁰¹

Screening Aliens at the Border. Since the September 11, 2001 terrorist attacks, considerable concern has been raised because the 19 terrorists were aliens who apparently entered the United States legally on temporary visas. Although the INA bars terrorists, consular officers issuing the visas and immigration inspectors working at the borders did not have access to all the law enforcement and intelligence data that might identify potential terrorists. Congress has enacted major laws requiring information sharing and interoperable databases to screen potential terrorists and criminal aliens, the most recent being the Enhanced Border Security and Visa Reform Act of 2002. Whether these provisions are being successfully implemented remains an important policy question.¹⁰²

Last fall, the Administration announced the creation of the Terrorist Screening Center (TSC) to consolidate the various watchlists into a single terrorist screening database.¹⁰³ Recently, the director of TSC, Donna Bucella, testified about the progress made in developing an unclassified law enforcement sensitive database, containing identifying information of known or suspected terrorists. Some observers point out that no government-wide standards on how individuals get placed on or

¹⁰⁰ Testimony of Stephen E. Flynn, Council on Foreign Relations, U.S. Congress, House Committee on Energy and Commerce, Subcommittee on Oversight, Investigations, hearing, *A Review to Assess Progress with the Bureau of Customs and Border Protection's Targeting Program for Sea Cargo*, Mar. 31, 2004.

¹⁰¹ General Accounting Office, *Preliminary Observations on Efforts to Target Security Inspections of Cargo Containers*, GAO-04-325T, p. 1.

¹⁰² For evaluations, see U.S. General Accounting Office, *Information Technology: Terrorist Watch Lists Should Be Consolidated to Promote Better Integration and Sharing*, GAO-03-322, Apr. 15, 2003; and U.S. General Accounting Office, *Border Security: Challenges in Implementing Border Technology*, GAO-03-546T, Mar. 12, 2003.

¹⁰³ Homeland Security Presidential Directive 6 (HSPD-6) ordered the creation of the Terrorist Screening Center (TSC). It was issued on Sept. 16, 2003, and directed the operations to begin on Dec. 1, 2003. The TSC is multi-agency, including participants from the FBI, Department of State, CBP, ICE, Secret Service, Coast Guard, Transportation Security Administration, and the Office of Foreign Assets Control. Their stated goal is "to consolidate the Government's approach to terrorism screening and provide for the appropriate and lawful use of terrorist information in screening processes." For more on TSC, see CRS Report RL32366, *Terrorist Identification, Screening, and Tracking Under Homeland Security Presidential Directive 6*, by William J. Krouse.

removed from watchlists have been established, fueling civil liberty concerns. Some have also warned that the lack of clearly designated roles and responsibilities for TSC, Foreign Terrorist Tracking Task Force (FTTTF), the Terrorist Threat Integration Center (TTIC), the Counterterrorism Center and other antiterrorist-related entities continue to foster turf battles and plague efforts to have effective information sharing.¹⁰⁴

While US-VISIT, the automated entry and exit data system, has been much heralded as a tool to enhance border security, critics question how many terrorists it will identify and whether it will effectively track the entry-exit of suspicious foreign nationals.¹⁰⁵ Some have expressed concern that most Canadians, the 6.4 million Mexicans with border crossing cards, and the 13-18 million foreign nationals who enter through the Visa Waiver Program (VWP) have not been part of US-VISIT, thus establishing a variety of avenues for potential terrorists and criminals to elude detection through US-VISIT's biometric background checks. The recent announcement to add foreign nationals who enter through VWP to US-VISIT may assuage some of these concerns about the inclusiveness of US-VISIT, but does not resolve the issue that the nations participating in VWP are not expected to meet the program's October 1, 2004 deadline for biometric machine-readable passports.¹⁰⁶

While almost all observers agree that the implementation of US-VISIT has proven to be challenging, especially at land ports of entry, many express confidence that it will ultimately be successful. Administration officials cite the number of aliens apprehended or denied entry as the result of the National Security Entry Exit Registration System (NSEERS) and the Consolidated Consular Data systems (CCD),¹⁰⁷ two systems that US-VISIT builds on, as evidence that US-VISIT can achieve its objectives. Recently the Administration reported that 100 aliens had "hits" on the biometrics in US-VISIT.¹⁰⁸

9/11 Commission Recommendations. The National Commission on Terrorist Attacks Upon the United States (also known as the 9/11 Commission) recently issued several recommendations that directly pertain to inspection policies

¹⁰⁴ U.S. Congress, House Judiciary Committee, Subcommittee on Crime, Terrorism, and Homeland Security and the Select Homeland Security Subcommittee on Intelligence and Counterterrorism, joint hearing on *Progress in Consolidating Terrorist Watchlists — The Terrorist Screening Center (TSC)*, Mar. 25, 2004.

¹⁰⁵ For a full discussion of US-VISIT, see CRS Report RL32234, *U.S. Visitor and Immigrant Status Indicator Technology Program (US-VISIT)*, by Lisa M. Seghetti and Stephen R. Viña.

¹⁰⁶ See CRS Report RS21205, *Immigration: Visa Waiver Program*, by Alison Siskin.

¹⁰⁷ For a full discussion NSEERS, see CRS Report RL31570, *Immigration: Alien Registration*, by Andorra Bruno. For a discussion of CCD, see CRS Report RL31512, *Visa Issuances: Policy, Issues, and Legislation*, by Ruth Ellen Wasem.

¹⁰⁸ U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Border Security and Claims, oversight hearing on *Funding for Immigration in the President's 2005 Budget*, testimony of Seth Stodder, Feb. 25, 2004.

at the border.¹⁰⁹ These recommendations underscore the urgency of implementing legislative provisions Congress enacted several years ago, as well as suggest areas in which Congress may wish to take further action. The specific recommendations are:

- Targeting travel is at least as powerful a weapon against terrorists as targeting their money. The United States should combine terrorist travel intelligence, operations, and law enforcement in a strategy to intercept terrorists, find terrorist travel facilitators, and constrain terrorist mobility.
- The U.S. border security system should be integrated into a larger network of screening points that includes our transportation system and access to vital facilities, such as nuclear reactors.
- The Department of Homeland Security, properly supported by the Congress, should complete, as quickly as possible, a biometric entry-exit screening system, including a single system for speeding qualified travelers.¹¹⁰

Other 9/11 Commission recommendations, notably those related to intelligence policy and structures, have been the focus thus far of congressional consideration and media attention. The 9/11 Commission prepared a subsequent report that deals expressly with immigration issues.¹¹¹

Legislation implementing the 9/11 Commission recommendations (S. 2845, H.R. 10, S. 2774/H.R. 5040 and H.R. 5024) have various provisions affecting border inspections.¹¹² H.R. 10, the 9/11 Recommendations Implementation Act, as amended and passed by the House on October 8, 2004, and S. 2845, the National Intelligence Reform Act of 2004, as amended and passed by the Senate on October 8, 2004 are the competing bills as the 108th Congress draws to a close.

H.R. 10 as passed, S. 2845 as passed, S. 2774/H.R. 5040 and H.R. 5024 all would hasten the development and installation of a biometric entry and exit data system that is integrated with various databases and data systems that process or contain information on aliens, and would apply a system of biometric identifiers uniformly across agencies and governments. H.R. 10 as passed, S. 2845 as passed, S. 2774/H.R. 5040 and H.R. 5024 would require the Secretary of Homeland Security (Secretary) to develop and implement a plan to expedite the processing of registered travelers through a single program (current registered traveler programs include NEXUS and the Secure Electronic Network for Travelers' Rapid Inspection (SENTRI)). The bills would further require the Secretary to review and evaluate

¹⁰⁹ An electronic copy of the report is available at [<http://www.9-11commission.gov/>].

¹¹⁰ For a discussion of these recommendations, see *The 9/11 Commission Report*, Chapter 12.4, pp. 383-389, July 2004.

¹¹¹ U.S. National Commission on Terrorist Attacks upon the United States, *Monograph on 9/11 and Terrorist Travel*, Aug. 2004.

¹¹² For more background and analysis, see CRS Report RL32616, *9/11 Commission: Implications for U.S. Immigration Law and Policy*, by Michael John Garcia and Ruth Ellen Wasem.

existing programs that expedite travel and increase research and development efforts to accelerate the development and implementation of a single program. The bills would also require the registered travelers program to be integrated into the entry and exit data system and would authorize DHS to improve the security of passports and other travel documents, including through the strengthening of security requirements for documents that may be used to attain passports or other travel documents.

In addition, H.R. 10 as passed would expand pre-inspection programs in foreign countries and assistance to air carriers at selected foreign airports in the detection of fraudulent documents; would limit the President's ability to waive general statutory requirements for U.S. citizens traveling abroad or attempting to enter the United States to bear a valid U.S. passport, so that such a waiver can only be exercised with respect to U.S. citizens traveling to or from foreign contiguous territories who are bearing identification documents designated by DHS as (1) reliable proof of U.S. citizenship, and (2) of a type that may not be issued to an unlawfully present alien within the United States; and would amend the present waiver authority concerning document requirements for arriving nationals from foreign contiguous countries or adjacent islands, so that such waivers may only be granted (in non-emergency situations) through a joint determination by the Secretary of DHS and Secretary of State on the basis of reciprocity, and then only if the arriving foreign national is in possession of identification documents deemed secure by the Secretary of DHS.

Administrative Considerations

Adequacy of Infrastructure. The FY2000 Treasury-Postal Appropriations Act (P.L. 106-58) required Customs, in consultation with the General Service Administration (GSA) and the federal inspection service agencies, to assess infrastructure needs on the northern and southwestern borders of the United States. This study identified 822 projects at a projected cost of approximately \$784 million.¹¹³ Meanwhile, the Transportation Equity Act for the 21st Century (P.L. 105-178) established the Coordinated Border Infrastructure (CBI) program to “improve the safe movement of people and goods” across the borders with Canada and Mexico. Although CBI allows for funding of non-transportation projects, financing projects aimed at customs and immigration enforcement functions at the borders has proven controversial because many supporters of CBI assert it should be used for transportation projects.¹¹⁴

The current infrastructure at most U.S. ports of entry, many warn, is not sufficient to accommodate the demands of the automated entry and exit data system, US-VISIT. Those concerned about infrastructure point out that in order to record the departure of every alien leaving the United States through a land port, there need to be sufficient lanes, staff, and resources. According to some observers, additional lanes may be necessary at many land ports of entry to accommodate the large number of individuals seeking entry into the United States. Some also express concern that the current infrastructure at air ports of entry may not be sufficient to accommodate

¹¹³ U.S. Customs Service, *Port of Entry Infrastructure Assessment*, overview, p. 1.

¹¹⁴ See CRS Report RS20790, *The Coordinated Border Infrastructure Program: Issues for Congress*, by Robert S. Kirk.

US-VISIT when it is fully operational. Although federal immigration inspectors have a presence at selected airports, the space that is occupied by them is not federally owned. Airports have limited space and may not have additional resources to fund new construction. Some contend that this could lead to significant delays as travelers try to make their way through ports of entry. Others maintain that as the technologies used at the border become more sophisticated and efficient, concerns about long lines and delays will abate. Infrastructure limitations, they assert, will be resolved by the time US-VISIT is fully implemented.¹¹⁵

Inter-Agency and Inter-Department Coordination. Cooperation between CBP and other agencies is critical to the success of CBP's mission. This necessity is highlighted by the recent spate of new regulations that have been promulgated by several agencies charged with border security related activities. One example concerns advance notification requirements. While CBP is completing its rulemaking regarding electronic advanced manifest submissions, the FDA has promulgated advance notification regulations pertaining to certain food imports.¹¹⁶ The FDA advance notice rules have different time frames from those being considered by CBP. The FDA rules require electronically filed and complete notice before the shipment arrives at the first U.S. port:

- no more than five days, and no less than eight hours for food arriving by water;
- four hours for food arriving by air or by rail; and
- two hours for food arriving by truck.

At this time, it is unclear as to how the two sets (FDA and CBP) of advanced notice requirements will be integrated. The FDA rules indicate that importers or their agents must submit their advance notice using CBP's ABI or ACS systems. Those food importers without ABI or ACS access will use FDA's Prior Notice (PN) System Interface. According to the FDA rule, the Commissioners of FDA and CBP will publish a plan detailing the integration and partial harmonization of these rules.

Another example of the importance of inter-agency cooperation is evidenced in the various federal entities that have the responsibilities for aliens who seek asylum in the United States. Duties are spread across DHS's Coast Guard (interdiction), Customs and Border Protection (apprehensions and inspections), Immigration and Customs Enforcement (detention), Citizenship and Immigration Services (determination of credible fear) and DOJ's Executive Office for Immigration Review (asylum and removal hearings). While the lead agencies for setting asylum standards and policy are USCIS and EOIR, CBP inspectors are quite often the first point of contact with arriving asylum seekers.

¹¹⁵ See CRS Report RL32234, *U.S. Visitor and Immigrant Status Indicator Technology Program (US-VISIT)*, by Lisa M. Seghetti and Stephen R. Viña.

¹¹⁶ Department of Health and Human Services, Food and Drug Administration, *Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness Act of 2002*, 68 *Federal Register*, no. 197, Oct. 10, 2003, p. 58974.

Training of Personnel. As is evident from the discussions of the agricultural, customs, and immigration inspections, the CBP inspector must learn a set of complex laws and procedures as well as develop a keen eye for violators and violations of the law.

Some argue that it is too much to expect that those working in primary inspections are knowledgeable of the various types of travel documents,¹¹⁷ as well as when a foreign national is required to have a travel document.¹¹⁸ Some express concern that the ability to recognize these documents and differentiate fraudulent documents from legitimate ones is learned only from experience and training. The customs inspector is attuned to targeting travelers and goods from a cargo perspective, a skill some argue, that is quite distinct from an immigration inspection. That the inspector must also be facile in accessing numerous data systems and databases has raised further questions about the adequacy of training.¹¹⁹

Specific concerns are being raised that primary inspectors in CBP from customs and immigrations backgrounds may not have sufficient agricultural training. Some argue that current CBP training in agriculture for new inspectors may be inadequate. Former APHIS inspectors had required science and biology backgrounds, combined with extensive pest and disease training. Many stakeholders in the agricultural community are asking whether CBP administrators and front line inspectors will pay enough attention to agricultural inspections.

Others assert that these concerns about training needs are exaggerated and observe that CBP has a new 14-week training course for inspectors. They point out that the immigration and customs inspectors have been cross-designated for years and are already familiar with the laws, procedures, and databases. They also observe that agricultural inspections will remain specialized for the time being and will occur during secondary inspections.

Database Technology. Critics of the current technological infrastructure contend that it poses a security risk. The Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107-173) mandated the integration of immigration databases. In addition to integrating data systems that contain federal law enforcement and intelligence information relevant to making decisions on visa admissibility and the removal of aliens, P.L. 107-173 also mandated that immigration databases be integrated with other relevant data systems. The integration of law enforcement and intelligence data systems and databases with immigration data

¹¹⁷ For example, different countries have different passports and DOS issues several different types of visas.

¹¹⁸ For example, CBP inspectors must know that Canadian nationals are exempt from passport and visa requirements, Visa Waiver Program country participants do not need a visa and certain Mexican nationals may use a Border Crossing Card instead of a passport or a visa to enter the United States.

¹¹⁹ Data systems discussed previously in this report that inspectors use include APIS, IBIS, INPASS NAILS, NIIS, NSEERS, and SEVIS, (all immigration); and ABI, ATS, AMS, BRASS, CAFES, FAST, PAPS, and TECS (all customs); and WADS (agriculture).

systems and databases continues to be a concern and is considered critical for the CBP inspector to adequately screen individuals seeking entry to the United States.

Many assert that the need for all agencies involved in admitting aliens to share intelligence and coordinate activities is essential for U.S. immigration policy to be effective in guarding homeland security. Some maintain that the reforms Congress made in the mid-1990s requiring all visa applicants to be checked in the “look out” databases were inadequate because the databases across the relevant agencies were not interoperable and the various agencies were territorial with their data. They maintain that, in the long run, the most efficient and effective guard against the entry of aliens who would do us harm is an interagency and inter-departmental database that is accessible in “real time” to consular officers, CBP inspectors, and key law enforcement and intelligence officials.

Others point to the cost, time, and complexity of developing interoperable databases. They cite the difficulty thus far in determining what biometric identifiers are most appropriate for screening aliens.¹²⁰ They point out competing technologies of the existing databases in which various key agencies have already heavily invested. Some maintain that success of the interoperable database technology depends on 100% inclusion of aliens applying for visas and seeking admission, but that the sheer scope of such a system poses “real time” implementation issues. They also warn that if intelligence data become too accessible across agencies, national security may actually be breached because sensitive information may be more likely to fall into the wrong hands. Privacy concerns arise as well as the data sharing and interoperability broadens.

Meanwhile, CBP has been engaged in a long-term effort to acquire a new comprehensive database system that dates back to the U.S. Customs Service. The Automated Commercial Environment (ACE) will replace ACS which has been characterized as outmoded and inefficient.¹²¹ Difficulties with ACS are evident in the different levels of automation available for different modes of transportation. The most recent evidence of the difficulties raised by uneven automation can be seen in the different rollout deadlines for the new mandatory advance electronic manifest rule proposed by CBP. The lack of consistent automation, particularly for commercial trucks, means that several different programs will have to be utilized (FAST, PAPS, BRASS etc.) until ACE becomes functional. The ACE strategy is developing commercial automation protocols and procedures so that expeditious tracking and more effective screening and monitoring can develop over time.

CBP is also working with other government agencies on developing the Integrated Trade Data System (ITDS). ITDS will be an interconnected database of

¹²⁰ U.S. Congress, Senate Committee on the Judiciary Subcommittee on Technology, Terrorism and Government Information, *Border Technology: Keeping Terrorists Out of the United States — 2003*, hearing, Mar. 12, 2003.

¹²¹ U.S. General Accounting Office, Testimony before the House Committee on Government Reform Subcommittee on Government Management, Information and Technology, *U.S. Customs Service: Observations on Selected Operations and Program Issues*, T-GGD/AIMD-00-05 (Washington, Apr. 20, 2000), p.6.

all government agencies involved in the trade process, allowing users to submit data to one agency database available to other agencies. Questions remain however, because ACE and ITDS were envisioned prior to the merging of primary border agencies in DHS. Issues such as how ACE and ITDS will be incorporated into the larger DHS strategy, and how they will interact with other existing databases, remain a concern.

Constitutional Considerations

Fourth Amendment. Through the laws of the legacy agencies, inspectors have unique statutory authorizations to inspect and search individuals and merchandise at the border, as discussed above. Beyond these specific authorities, however, inspections at the border must still adhere to the protections afforded by the Constitution. The scope of these protections may be more limited at borders and ports of entry than in the interior of the United States. The scope of protections also might vary with the particular laws being enforced.

A related constitutional matter that arises in this realm is “racial profiling.” Racial profiling is the practice of targeting individuals for law enforcement purposes based on their race or ethnicity in the belief that specific minority groups are more likely to engage in certain unlawful behaviors. Several courts have considered constitutional ramifications of the practice, as an “unreasonable search and seizure,” and more recently, as a denial of equal protection of the laws.¹²² In the past, some have accused Customs inspectors of racial profiling.¹²³ Others maintain that it is difficult to discern where legitimate targeting based on risk management principles crosses the line into racial profiling. In the immigration context, the constitutionality of making distinctions on grounds of race or nationality is unsettled.¹²⁴ With respect to immigration inspections conducted near, but otherwise beyond the actual physical border, however, the case law seems to suggest that race alone cannot justify a stop

¹²² For more information on racial profiling, see CRS Report RL31130, *Racial Profiling: Legal and Constitutional Issues*, by Charles V. Dale. Congress has also statutorily prohibited certain discriminatory actions and has made available various remedies to victims of such discrimination. See Title VI of the Civil Rights Act of 1964; 42 U.S.C. §1983; 42 U.S.C. §14141.

¹²³ In 2000, GAO found that Customs agents were nine times as likely to x-ray Black female citizens after frisking them than White female citizens, but Black female citizens were less than half as likely to be carrying contraband as White female citizens. U.S. General Accounting Office, *U.S. Customs Service: Better Targeting of Airline Passengers for Personal Searches Could Produce Better Results*, GAO/GGD-00-38 (Washington, Mar. 2000), p. 2. For follow-up on procedural reforms, see U.S. Department of Treasury, Office of Inspector General, *Trade and Passenger Processing: Customs Personal Search Policies, Procedures, and Training Appear Reasonable*, OIG-CA-02-003 (Apr. 12, 2002).

¹²⁴ See also Immigration Law and Procedure §9.08 at 9-35 (1996).

by a roving patrol,¹²⁵ but can be more determinative when questioned at fixed immigration checkpoints.¹²⁶

Fifth Amendment. For purposes of procedural due process under the Fifth Amendment, immigration law has long made a distinction between those aliens who have come to our shores seeking admission and those who are within the United States after an entry, irrespective of its legality. In the latter instance, the Supreme Court has recognized additional rights and privileges not extended to those in the former category, who are merely “on the threshold of initial entry.”¹²⁷ Indeed, Supreme Court jurisprudence still questions whether the Constitution applies at all to aliens seeking entry at the border or a port of entry, particularly in determining an alien’s right to be here. With respect to due process in the immigration context, therefore, aliens seeking admission to the United States must generally accept whatever statutory rights and privileges they are granted by Congress.¹²⁸ In cases where the arriving alien is suspected of being a terrorist, the alien may be summarily excluded by the regional director with no further administrative right to appeal. This policy is especially controversial if a suspected terrorist is returned to a country in which the person is “more likely than not to be tortured.”¹²⁹

Overarching Questions

As Congress views border inspections through the lens of homeland security, a series of questions emerge. While not an exhaustive set, the selected questions below express a few of the cross-cutting concerns.

¹²⁵ *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975) (determining that race, by itself, could not support the reasonable suspicion necessary for a roving immigration stop). Roving patrols often take place at night on seldom-traveled roads and generally consist of responses to brief questions regarding citizenship and suspicious behavior and possibly the production of a document evidencing a right to be in the United States; see also *United States v. Montero-Camargo*, 208 F.3d, 1122, 1135 (9th Cir. 2000) (concluding that Hispanic appearance is of such little probative value that it may not be considered as a relevant factor where particularized suspicion is required for a border patrol stop).

¹²⁶ *United States v. Martin-Fuerte*, 428 U.S. 543 (1976) (upholding stops of persons at fixed border checkpoint near the Mexican border that were partially based on race). The Court concluded that the government may briefly detain motorists at a permanent border checkpoint to inquire into their residence status and ask them to explain suspicious circumstances without individualized suspicion because fixed checkpoints provide visible manifestations of the field officer’s authority and ensure that the appropriate constitutional safeguards are maintained. *Id.* at 566-67.

¹²⁷ *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (articulating the “entry fiction” doctrine).

¹²⁸ *Jean v. Nelson*, 727 F.2d 957, 968 (11th Cir. 1984). The INA contains a number of provisions that collectively guarantee limited due process protections for excludable aliens. Moreover, procedural safeguards in deportation proceedings are provided by DOJ regulations.

¹²⁹ For further discussion, see CRS Report RL32276, *The U.N. Convention Against Torture: Overview of U.S. Implementation Policy Concerning the Removal of Aliens*, by Michael John Garcia, pp. 10-11.

- Are the inspections reforms aimed at enhanced border security that Congress enacted being implemented with sufficient urgency?
- When the new technologies are fully implemented, such as US-VISIT at land ports of entry, will people and goods move expeditiously?
- If additional resources and infrastructure are needed to secure and facilitate border inspections, should fees be raised or funds appropriated, or should it be a combination of both?
- Is an inspections system geared up to protect against terrorism still versatile enough to also protect the nation against travelers with contagious diseases such as Severe Acute Respiratory Syndrome (SARS) or flexible enough to recognize bona fide asylum seekers?
- Should any of the underlying laws be amended to further tighten or expand the inspections process (e.g., mandating physical inspections of a greater percentage of cargo or requiring inspections of certain types of shipments)?
- Should the underlying laws be amended to reflect the reorganization of functions?

Striking the balance of facilitating legitimate travel and trade with protecting against foreign terrorism and other phenomena that would do us harm will remain a daunting challenge.

Appendix A: Immigration Inspection Workload, FY2002

Type of activity	Percentage of time spent on activity
Primary Inspections	56%
Secondary Inspections	17%
Intelligence-related	4%
Enforcement-related	9%
Expedited Removal	2%
Automated inspections-related	1%
Escorting Aliens	less than 1%
Administrative	7%
Clerical	4%

Source: CRS analysis of INS workload data.

Note: Detail may not add to 100% due to rounding.

Appendix B. Selected Immigration Inspections Data

Year	Number of automated inspections (in millions)	Number of inspections deferred (in thousands)	Number of expedited removals (in thousands)	Number of withdrawn applications (in thousands)
1998	1.5	15	67	501
1999	1.2	18	90	499
2000	1.5	16	87	452
2001	2.2	14	74	264
2002	2.6	13	37	256

Source: CRS analysis of INS workload data.

Appendix C. Top 10 U.S. Container Ports CY1998-CY2002
(thousands of TEUs)^a

Port	1998	1999	2000	2001	2002
Los Angeles	2,293	2,552	3,228	3,425	4,060
Long Beach	2,852	3,048	3,204	3,199	3,184
New York	1,884	2,027	2,200	2,332	2,627
Charleston	1,035	1,170	1,246	1,156	1,197
Oakland	902	915	989	960	979
Norfolk	793	829	850	885	982
Seattle	976	962	960	824	850
Savannah	558	624	720	813	1,014
Houston	657	714	733	778	851
Miami	602	618	684	717	752
All other ports	3,005	3,106	3,124	2,993	3,233
Total top 10	12,552	13,459	14,814	15,089	16,496
Top 10 % of total	81	81	83	83	84
Total all ports	15,557	16,565	17,938	18,082	19,729

Source: CY1995-CY2001 from Bureau of Transportation Statistics U.S. International Trade and Freight Transportation Trends, Table 11, p. 32 (Washington: Bureau of Transportation Statistics, 2003), CY2002 CRS analysis of Maritime Administration (MARAD) published data.

Note: Data includes imports, exports, and transshipments (transshipments do not originate and are not destined for the United States, but merely pass through it from one foreign country to another).

a. TEUs are 20-foot equivalent units, one 20-foot container equals one TEU, while one 40-foot container equals two TEUs.

Appendix D. Customs Workload Data FY1998-FY2002

	Fiscal year				
	1998	1999	2000	2001	2002
Type of conveyance (millions)					
Personally operated vehicles	121.30	123.20	127.10	129.60	118.10
Private aircraft	0.14	0.14	0.14	0.12	0.13
Vessels	0.20	0.22	0.21	0.22	0.21
Commercial aircraft	0.75	0.79	0.83	0.61	0.77
Trucks	10.10	10.80	11.60	11.20	11.20
Vessel cargo containers	5.10	5.30	5.80	5.70	7.30
Railcars	1.60	1.90	2.20	2.30	2.40
Passengers by type of port (millions)					
Land passengers	380.1	394.9	397.3	381.5	312.4
Air passengers	71.6	75.7	80.5	79.7	68.8
Sea passengers	8.1	9.2	11	11.3	12.2
Total passengers	459.8	479.8	488.8	472.5	414.9
Cargo					
Total entry summaries (millions)	19.7	21.7	23.6	23.7	24.9
Value of imports (billions)	\$955	\$1,179	\$1,162	\$1,175	\$1,183
Duties on imports (billions)	\$19.1	\$19.1	\$20.5	\$19.7	\$20.0

Source: U.S. Customs Service, *Congressional Budget Justifications*, FY2001-FY2003.

Appendix E. Customs Narcotics Seizures FY1998-FY2002

	1998	1999	2000	2001	2002
Cocaine					
Thousands of pounds	157.5	160.4	150	190.9	170.5
Number of seizures	2,364	2,509	2,489	2,698	2,536
Marijuana					
Thousands of pounds	956	1,148	1,292	1,504	1,374
Number of seizures	15,545	15,699	14,861	14,587	13,407
Heroin					
Thousands of pounds	3	1.9	2.6	3.6	4.1
Number of seizures	1,049	911	859	916	971

Source: U.S. Customs Service, *Congressional Budget Justifications*, FY2001-FY2004.

Appendix F. U.S.-Canada Land Border: Number of Truck or Railcar Crossings (CY2000-CY2002)

Truck	2000	Truck	2001	Truck	2002
Total U.S.-Canadian border	7,048,128	Total U.S.-Canadian border	6,776,909	Total U.S.-Canadian border	6,915,973
Total top five gateways	4,714,339	Total top five gateways	4,448,865	Total top five gateways	4,567,704
Detroit, MI	1,769,389	Detroit, MI	1,642,042	Detroit, MI	1,670,565
Buffalo-Niagara Falls, NY	1,198,085	Buffalo-Niagara Falls, NY	1,123,971	Buffalo-Niagara, NY	1,208,095
Port Huron, MI	839,200	Port Huron, MI	828,802	Port Huron, MI	907,729
Blaine, WA	516,829	Blaine, WA	471,731	Blaine, WA	410,256
Champlain-Rouses Point, NY	390,836	Champlain-Rouses Point, NY	382,319	Champlain-Rouse Pt., NY	371,059
Rail	2000	Rail	2001	Rail	2002
Total U.S.-Canadian border	1,594,837	Total U.S.-Canadian border	1,779,345	Total U.S.-Canadian border	1,830,259
Total top five gateways	1,169,034	Total top five gateways	1,277,982	Total top five gateways	1,310,729
Port Huron, MI	425,211	Port Huron, MI	449,299	Port Huron, MI	429,918
Detroit, MI	237,968	Detroit, MI	304,591	Detroit, MI	293,300
Buffalo-Niagara Falls, NY	181,462	International Falls, MN	205,430	International Falls, MN	238,515
International Falls, MN	171,551	Portal, ND	168,137	Portal, ND	199,637
Portal, ND	152,842	Buffalo-Niagara Falls, NY	150,525	Buffalo-Niagara, NY	149,359

Source: U.S. Department of Transportation, Bureau of Transportation Statistics, special tabulation, July 2003. Based on the following primary data source: U.S. Department of Treasury, U.S. Customs Service, Office of Field Operations, Operations Management Database (Washington, DC), 2002, published in U.S. Department of Transportation, Bureau of Transportation Statistics, National Transportation Statistics 2002, BTS02-08 (U.S. GPO: Washington, DC), Dec. 2002.

Note: Truck data represent the number of truck crossings, not the number of unique vehicles. Data are for both loaded and empty trucks. Rail data includes both loaded and unloaded railcars.

Appendix G. U.S.-Mexico Land Border: Number of Truck or Railcar Crossings CY2000-CY2002

Truck	2000	Truck	2001	Truck	2002
Total U.S.-Mexican border	4,525,579	Total U.S.-Mexican border	4,304,959	Total U.S.-Mexican border	4,426,593
Total top five gateways	3,575,207	Total top five gateways	3,398,053	Total top five gateways	3,544,815
Laredo, TX	1,493,073	Laredo, TX	1,403,914	Laredo, TX	1,441,653
El Paso, TX	720,406	Otay Mesa/San Ysidro, CA	708,446	Otay Mesa/San Ysidro, CA	731,291
Otay Mesa/San Ysidro, CA	688,340	El Paso, TX	660,583	El Paso, TX	705,199
Hidalgo, TX	374,150	Hidalgo, TX	368,395	Hidalgo, TX	390,282
Brownsville, TX	299,238	Calexico East, CA	256,715	Calexico East, CA	276,390
Rail	2000	Rail	2001	Rail	2002
Total U.S.-Mexican border	571,825	Total U.S.-Mexican border	582,652	Total U.S.-Mexican border	602,322
Total top five gateways	562,710	Total top five gateways	572,034	Total top five gateways	591,255
Laredo, TX	243,369	Laredo, TX	273,935	Laredo, TX	296,782
Brownsville, TX	139,803	Brownsville, TX	101,787	Eagle Pass, TX	98,236
Eagle Pass, TX	94,113	Eagle Pass, TX	93,108	Brownsville, TX	96,591
Nogales, AZ	50,602	Nogales, AZ	58,667	Nogales, AZ	52,236
El Paso, TX	34,823	El Paso, TX	44,537	El Paso, TX	47,410

Source: U.S. Department of Transportation, Bureau of Transportation Statistics, special tabulation, July 2003. Based on the following primary data source: U.S. Department of Treasury, U.S. Customs Service, Office of Field Operations, Operations Management Database (Washington, DC), 2002, published in U.S. Department of Transportation, Bureau of Transportation Statistics, National Transportation Statistics 2002, BTS02-08 (GPO: Washington, DC), Dec. 2002.

Note: Truck data represent the number of truck crossings, not the number of unique vehicles. Data are for both loaded and empty trucks. Rail data includes both loaded and unloaded railcars.

Appendix H. Agricultural Inspections of International Passengers, Cargo, and Mail

Fiscal year	Inspections	Interceptions		Violations	
	Number	Number	Percent	Number	Percent
<i>Passengers</i>					
1998	32,383,879	1,055,191	3.3	16,792	0.05
1999	28,169,544	947,618	3.4	13,769	0.05
2000	28,038,026	1,044,174	3.7	15,671	0.06
2001	32,807,117	1,039,265	3.2	14,961	0.05
2002	33,793,642	890,288	2.6	12,775	0.04
<i>Pre-clearance (of passengers)</i>					
1998	10,433,562	200,570	1.9	na	na
1999	10,681,208	608,848	5.7	na	na
2000	11,125,241	199,440	1.8	na	na
2001	11,144,465	204,430	1.8	na	na
2002	10,681,955	199,680	1.9	na	na
<i>Cargo (units: bill of lading)</i>					
1998	726,311	10,589	1.5	131	0.02
1999	691,685	20,899	3.0	164	0.02
2000	837,581	17,470	2.1	266	0.03
2001	878,138	15,479	1.8	312	0.04
2002	953,042	13,071	1.4	453	0.05
<i>International mail (number of pieces)</i>					
1998	447,739	14,955	3.3	7,410	1.7
1999	512,259	13,112	2.6	2,246	0.4
2000	238,321	12,513	5.3	3,545	1.5
2001	434,987	16,524	3.8	1,537	0.4
2002	417,118	34,079	8.2	1,317	0.3

Source: USDA-APHIS, special tabulations of work accomplishment data.

na = not applicable.

Appendix I. Agricultural Inspections of International Modes of Conveyance

Fiscal year	Inspections	Interceptions		Violations	
	Number	Number	Percent	Number	Percent
<i>Ships</i>					
1998	62,042	5,754	9	399	0.6
1999	87,194	5,272	6	2,796	3.2
2000	59,913	11,639	19	1,635	2.7
2001	59,879	8,545	14	276	0.5
2002	64,126	9,399	15	2,105	3.3
<i>Aircraft</i>					
1998	377,633	344,898	91	89	0.02
1999	387,513	275,209	71	101	0.03
2000	391,275	256,918	66	61	0.02
2001	407,979	241,786	59	111	0.03
2002	422,940	204,176	48	142	0.03
<i>Vehicles, buses, rail cars</i>					
1998	1,792,655	261,651	15	916	0.05
1999	1,607,208	256,578	16	1	0.00
2000	1,794,354	280,495	16	4	0.00
2001	2,022,970	280,261	14	9	0.00
2002	2,879,399	340,827	12	268	0.01

Source: USDA-APHIS, special tabulations of work accomplishment data.