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Washington BTS Update

A WEEKLY REPORT ON BORDER AND TRANSPORTATION SECURITY
LEGISLATIVE & REGULATORY ISSUES

December 6, 2004

This Week's BTS Agenda in Congress

HOUSE

Floor

Dec. 6-7: Possible consideration of intelligence reform legislation.

SENATE

The Senate's schedule is uncertain.

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Ridge Departs, Kerik Named New Secretary of DHS

The first, and only, Secretary of Homeland Security, former Pennsylvania Governor and Member of Congress Tom Ridge, announced last week (November 30) that he will be departing as Secretary, in February or sooner if his successor is confirmed before then. Three days later (December 3), President Bush named former New York Police Commissioner Barnard Kerik to succeed Ridge as DHS Secretary.

In nominating Kerik, the President said: "Bernie Kerik is one of the most accomplished and effective leaders of law enforcement in America. In every position he has demonstrated a deep commitment to justice, a heart for the innocent and a record of great success. I'm grateful he's agreed to bring his lifetime of security experience and skill to one of the most important positions in the federal government."

Kerik said: "On September 11, 2001, I witnessed the very worst of humanity, and its very best...Both the memory of those courageous souls and the horrors I saw inflicted upon our proud nation will serve as permanent reminders of the awesome responsibility you place in my charge."

Kerik is close to former New York Mayor Rudy Giuliani. He was named Police Commissioner by Giuliani in 2000, and in that position headed a 40,000 member force. He was continually at Giuliani's side during the hectic hours following September 11, 2001, and currently works with the former Mayor in a crisis-management consulting firm. Kerik was also a strong supporter of President Bush during the presidential campaign and spoke on his behalf at the Republican National Convention in August.

Kerik's nomination will be handled by the Senate Governmental Affairs Committee.

Ridge, in his letter of resignation to President Bush, said: "There will always be more to do, but today, America is significantly stronger and

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safer than ever before.”

House Select Homeland Security Committee Chairman Christopher Cox (R-CA) said of Ridge: “Under his stewardship, we have made our homeland more secure on virtually every front. While more remains to be done, the job of securing the American homeland is certainly well begun. These achievements are all the more remarkable given the enormous internal management challenges Secretary Ridge faced upon taking over a new Department made up of 22 previously independent legacy agencies.”

Kerik’s Nomination Receives Substantial Support

Bernard Kerik’s nomination to be Secretary of Homeland Security stirred little in the way of opposition and received considerable support, particularly on Capital Hill. New York Sen. Charles Schumer (D-NY) said: “Coming from New York, Bernie Kerik knows the great needs and challenges this country faces in homeland security. He has a strong law enforcement background and I believe will do an excellent job in fighting for the resources and focus that homeland security needs and deserves in our post-9/11 world.”

With regard to focus and resources, Jay Grant, Director of the Port Security Council, welcomed the nomination, stating that Kerik has displayed an active interest in port security and in conversations has shown a strong recognition of steps that need to be taken to insure the security of our nation’s ports. “We welcome his nomination and

look forward to working with him on the nation’s security needs,” said Grant.

Rep. Christopher Shays (R-CT) stated: “Bernie Kerik brings a first responder’s perspective to the job as Homeland Security secretary. His front-lines experience will be an invaluable asset as he takes the helm of the Department of Homeland Security.” New York Rep. Peter King (R-NY) added: “I’ve been in meetings with him and President Bush, and I can see how the two of them get along very well. He’s a German tank. He just comes right at you. He was a street cop, a narcotics detective, a warden in one of the toughest jails in New Jersey, and then he became the corrections commissioner. This guy is a very tough, rough guy and he’s very direct. There is no BS with Bernie.”

Kerik has run into some indirect criticism, most notably from the 9/11 Commission which has criticized the city’s preparedness for a terror attack and the inability of its firefighters and police officers to communicate by radio during the disaster.

Bush Urges Congress to Pass Intelligence Reform

President Bush used his weekly Saturday morning radio address December 4 to urge Congress to pass the intelligence reform legislation. He said: “I will continue to work with the Congress to reach an agreement on this intelligence bill. I urge members of Congress to act next week so I can sign these needed reforms

into law.”

He added: “The legislation I support preserves the existing chain of command and leaves America’s 15 intelligence agencies, organizations and offices in their current departments. Yet the director of national intelligence will oversee all of America’s intelligence efforts to help ensure that our government can find and stop terrorists before they strike.”

The House will be returning to session today (December 6), at which time the Republican leadership will determine whether the House should vote on a House-Senate compromise on the legislation. It appears that the concerns of Reps. Duncan Hunter (R-CA) concerning the military’s chain-of-command authority over its intelligence assets and James Sensenbrenner regarding immigration still have not been fully resolved.

TSA Purchases OSI’s New Air Cargo Screening Technology

The Transportation Security Administration has agreed to pay OSI Systems \$8 million to test a new air cargo screening technology. The tests will be run by TSA and will take place at the Bush International Airport in Houston. The new technology developed by OSI, a security systems manufacturer, is called the Pulsed Fast Neutron Analysis system. It can identify substances inside a container and generate a 3D map of their location. It also sets off alerts when it detects explosives or other weapons.

Conducting the tests is Ancore, a division of OSI. It plans to finish testing the technology and deploy it permanently in Houston in mid-2006.

Continental Airlines has as part of the test agreed to have the system inspect its air cargo.

OSI is currently installing its first "material-specific" neutron-based detector in El Paso, Texas along the U.S. – Mexico border. Inspectors will use it to scan fully loaded truck containers. The new technology permits them to see the contents inside a container, thus speeding the inspection process and reduce the risk to inspectors.

DHS Announces \$2.5 Billion in Urban Grants

Homeland Security Secretary Tom Ridge last week (December 3) announced the awarding of \$2.5 billion in F.Y. 2005 grants to states and urban areas to fund various programs designed to address and respond to terrorism and natural disasters.

Ridge made the announcement in Chicago, where he announced Chicago Urban Area Security Initiative grants of \$48 million and toured a new homeland security operations center. He called the center a means to strengthen "information sharing, incident coordination, decision making and technology integration throughout the city." He added: "Chicago's new camera system, technology to identify cell phone call locations for 911 calls, and plans for new HazMat robots,

respirators and filters for fire fighters, as well as radio interoperability initiatives, will help Chicago protect the community and the first responders who serve it."

Coast Guard Proposes Rule Pertaining to Inauguration

The United States Coast Guard published a proposed rule in the Federal Register December 3 restricting ship transportation in the Potomac and Anacostia Rivers during the time period of the 2005 Presidential Inauguration in order to prevent terrorist attacks or incidents.

The temporary security zone would be established from January 14 through January 25, 2005 (the Inauguration takes place January 20) in order to "safeguard a large number of high-ranking officials and spectators from terrorist act and incidents.... This rule would prohibit vessels and persons from entering the security zone and require vessels and persons in the security zone to depart the security zone, unless specifically exempt under the provisions in this rule or granted specific permission from the Coast Guard Captain of the Port of Baltimore." The Baltimore Captain is responsible for the Washington, D.C. area.

Under the rule, the security zone would apply to all waters of the Potomac River from shoreline to shoreline bounded by the Woodrow Wilson Memorial Bridge upstream to the Key Bridge, and the waters of the Anacostia River downstream from the Highway 50 Bridge to the

confluence with the Potomac River, including the waters of the Georgetown Channel Tidal Basin.

The Coast Guard said that the security zone "will not have a significant economic impact on a substantial number of small entities because vessels with compelling interests that outweigh the port's security needs may be granted waivers from the requirements of the security zone."

Interested parties must submit comments to the Coast Guard by January 3, 2005.

TSA Seeks Modernized Explosive Detection Machines

The Transportation Security Administration last week (December 1) published a presolicitation notice in which it is seeking firms qualified to compete for a contract to modernize the explosive trace detection (ETD) machines currently in use. This is in essence a reopening of an existing list of approved vendors of technology-upgraded machines, of which only three have been approved.

ETDs are used by TSA screeners to scan, through hand-held wands, carry-on luggage at checkpoints and checked luggage at some small airports. They are distinct from explosive detection systems (EDS) which are minivan-size portals used to monitor high volumes of luggage.

Potential bidders must submit by December 10 a production

sample machine for certification by the Transportation Security Lab. Five production machines must be submitted for an "operational utility evaluation" by December 31. Following the initial submissions, TSA will establish another qualified vendor list, with only those firms on that list being eligible to receive a request for proposal to compete for the procurement.

Bush Commends Canadian Border Security Efforts

President Bush met with Canadian Prime Minister Paul Martin in Nova Scotia last week (December 1) and commended Canadian efforts to improve port security as well as the joint border security of Canada and the United States. He particularly pointed to Canadian support of the Smart Border Accord and the Container Security Initiative, and Canadian participation in the joint command of the North American Aerospace Defense Command.

Bush said: "Our two countries are working together every day to keep our people safe. That is the most solemn duty that I have and the most solemn duty the Prime Minister has."

He also said that Canada and the U.S. must apply pressure on nations that encourage terrorist activities, stating: "If 20 years from now, the Middle East is dominated by dictators and mullahs who build weapons of mass destruction and harbor terrorists, our children and our grandchildren will live in a nightmare world of danger. That must not happen."

Coast Guard Explores Joining With CBP on Boat Maintenance

The U.S. Coast Guard is looking into the possibility of joining with the Bureau of Customs and Border Protection (CBP) on a contract for maintenance of its boats rather than using a separate contractual arrangement. The Coast Guard is in the process of putting together an agreement under which it would participate in CBP's boat maintenance contract currently being handled by the Office of Air and Marine Operations (AMO) at CBP. A pilot program would be established with AMO's contractor to repair and maintain several of the Coast Guard's SAFE boats.

The expectation is that a joint effort could be more efficient and less expensive. The concept is the product of the Department of Homeland Security's boat commodity council, which is a group of experts from various DHS agencies that develops ways to obtain optimal prices and terms and conditions on its boat-related purchases. The council met last week in New Orleans to work on the joint maintenance arrangement.

Speaking of port security ...Customs brokers and forwarders' Peter H. Powell, Sr. says a post-incident game plan sorely needed for U.S. seaports "certainly has not been defined"

By Martin Edwin Andersen
Managing Editor, Port Security News

Peter H. Powell, Sr., 69, the chief executive officer of CH Powell, Inc., has been intimately involved with maritime and port security issues even before September 11, 2001.

CH Powell, a family business founded in 1919, is a full-fledged participant in the Department of Homeland Security's Operation Safe Commerce, the public-private partnership to improve the security of containerized shipments entering the U.S. from overseas.

Powell is also the chairman of the board of the National Customs Brokers and Forwarders Association of America, an organization he also served as president for two terms. The NCBFAA comprises about 800 member firms across the country--all of them involved in international transportation and related services. Powell has also been directly involved with Customs and Border Protection (CBP) efforts to automate the reporting of commodity and transport data.

On Friday, Powell took time from his own busy end of the year budget planning to talk with Port Security News by

telephone about homeland security, commerce, and what he says Congress still needs to know about how the specific interrelation of those relate to the national wellbeing. Here is what he said:

PSN: In your view, has the post-9/11 security regime contributed to a deterioration of service reliability and a loss of velocity throughout the global transportation chain?

Powell: The security imperatives currently in place do affect the supply chain. Whether that is viewed as a negative or a positive all depends on the reader. To be sure, we had to raise the bar on the comfort level of secure shippers coming into the United States. The method to do that which was employed was for the data to be provided earlier.

PSN: The 24-hour rule ...

Powell: Correct ... through the Automated Manifest System. That allowed the targeting or evaluation of the data as reported. However, it does not necessarily answer the question of the reliability of the data itself. Data is created by humans, and who is to say that somebody in a targeting system, evaluating the data that is presented to them, is aware enough of the supplier, the country, etc.? But at least the data has been presented much earlier in the supply to allow risk assessment which probably would identify anomalies. ... There is an understanding that the data must not only be presented on time, but it's got to be pretty reliable and is something that if it is at all questioned, is going to require further evaluation.

When they do the data, and the ship has arrived, then

obviously there is some sort of an examination for the cargo selected based on the data presented. Depending up the pier or terminal that it comes into, they either have the ability to do set examinations on-site using VACIS equipment or (the screening) might have to be sent offsite to be done, which definitely has a much longer lifeline than if it is done right at the terminal.

PSN: There are new technologies that don't use the gamma ray-reliant Vehicle and Cargo Inspection System, or VACIS, but rather operates using X-rays, which not only allows for greater penetration of containers, but the equipment is also more mobile ...

Powell: That is correct. I understand that in Hong Kong they have started with new equipment recently (in which the container is driven through at 10 miles an hour. The security comfort levels that come from some kind of X-ray technique are improving, but up to this point, (the screening process) has absolutely had an effect on the overall supply chain lifeline.

PSN: You've pointed out that, after the 24-hour rule went into effect, a survey showed that out of some seven million bills of lading that were examined, 660 ended up with "hold" messages, and only 60 shipments were ultimately prevented from entering into the United States. ...

Powell: That is correct.

PSN: Do you know for what reason those 60 were refused entry?

Powell: I do not know; generally Customs keeps that secret.

"The security comfort levels that come from some kind of X-ray technique are improving, but up to this point, (the screening process) has absolutely had an effect on the overall supply chain lifeline."

PSN: You've said that you have been frustrated by the "myth" propagated during the 2004 political campaign that only five percent of maritime cargo entering the United States is actually inspected. How do you evaluate how port security played out during the campaign season?

Powell: The non-winner was using that as an example of a lack of administrative expertise in protecting our country ... that 95 percent of containers are not touched and hence provide a 95 percent opportunity for weapons of mass destruction to be introduced (into the United States). My point was the five percent number is the number of containers that are physically looked at through an X-ray or an intensive exam--after a risk assessment (is conducted). Everything has a risk assessment attached to it; but those that raise some sort of a flag, then (are subject to) further examination. That examination amounts to the five percent—which I believe is actually closer to seven percent today—of those containers. So to say that you are just doing (inspections on) five percent doesn't tell the whole story.

PSN: Is there a sufficient level of sophistication in Congress' thinking about this issue, or is there a disconnect between the kind of informed decision-making needed and what exists today?

Powell: In my opinion, Congress is addressing the issue purely from a terrorist perspective—that this could happen. No one is denying that. The problem is, I think, that Congress needs to be aware that any legislation that they pass that in any way affects the supply chain also affects the whole U.S. economy. Without question, almost 100 percent of their focus is on preventing an incident, which is fair and logical—but at what cost? If the economy is severely impacted, or portions are destroyed, then in fact it didn't take a weapon to hurt us.

Congress needs a little more understanding about the effects of what they do; not just the preventative effects, but what is the overall effect before they pass legislation.

PSN: Do the implementation of the Maritime Transportation Security Act of 2002 and the International Ship and Port Facility Security Code (ISPS) actually lessen the need for measures such as Customs-Trade Partnership Against Terrorism (C-TPAT) requirements on terminal and vessel operators?

Powell: The government feels that it is necessary is that there is a secure supply chain, from the factory forward. It also believes that at some moment in time everyone in the supply chain should be C-TPAT certified, whereby they have signed onto a program of not only security for themselves and their premises, but also for their vendors and the carriers that they use. I believe this is a good program, not only just for government, but also for companies because it does force them to review the safety and security of their own operation—

and that includes their own employees.

My only frustration with C-TPAT is that there are 7,300 people in the pipeline in various stages, of which there are only 409 companies that are certified and validated as C-TPAT participants, and there are—or will be—in 2004, 700,000 importers. Many of these importers are one-timers, but the number of importers that will be dealing with Customs during the government calendar year will be 700,000. So, if you say 7,300, and then you say 409 having completed the whole process, then we really haven't really impacted the marketplace. ...

While they have been able to get 80 percent of the value and 40 percent of the tonnage to become C-TPAT, it still can be a one-time importer that has the heinous cargo contained therein. The private sector can be more involved in soliciting C-TPAT participation, particularly folks in our industry. (They are the ones) who can go to our clients, explain the benefits, indicate that not only is it for America, but that it would also have a positive impact on their supply chain and therefore is why they should consider doing this.

“The problem is, I think, that Congress needs to be aware that any legislation that they pass that in any way affects the supply chain also affects the whole economy of the United States. Without question, almost 100 percent of their focus is on preventing an incident, which is fair and logical—but at what cost? If the economy is severely impacted, or portions destroyed, then in

fact it didn't take a weapon to hurt us.”

PSN: So, practically speaking, where is it now?

Powell: They've gotten the big guys, but it's the smaller guys now that they have to access and I think that they need a lot of help from the private sector to do that.

PSN: Customs and Border Protection is circulating a second draft of revised standards for importers participating in C-TPAT ...

Powell: That is correct.

PSN: Have you seen those and what do you think of them?

Powell: I think that they are very demanding ... they specifically ask for the importers to insist that their vendors meet certain security standards. Again, I see the large importers as having the ability to do that. The smaller, and even some medium-sized, will not have that ability to guarantee acceptance by the vendor.

PSN: CBP Commissioner Bonner announced last month that the European Union and the United States have adopted measures to strengthen maritime container security, saying that a pilot project for the Container Security Initiative (CSI) has been designed to focus on exchanging cargo information on transshipments and freight remaining on board, in order to enable Customs authorities to better monitor and assay the risk associated with them. What do you think about the pilot?

Powell: Under the 24-hour rule freight remaining on board (FROT) cargo is reportable by the vessel carrier as part of the automated manifest system. The problem the government

has is they are interested in whether the export data being presented to foreign governments is the same data as being presented to our government in the importing process. Primarily through the World Customs Organization there is going to be a standard element data set of either 27 or 40 data items that seems to be going to most European Union countries. So there will be a synergy here, but also they would like to make sure that what is reported for export complies or is exactly the same for what is reported for import. The only way they can do that is through some sort of government agreements.

PSN: Among the NCBFAA membership, is there concern that proprietary data given to the security agencies will end up being shared outside those agencies?

Powell: Manifest information is basically shared with the media under the Freedom of Information Act. However there are some restrictions put there on that the media, while they may examine manifests, may not copy any of them down. As Congress decides it would like more proprietary information then (the question becomes) how this will be provided, and will it be available for public scrutiny? That is a definite concern for the international trade community.

PSN: There are several types of tracking technologies—the Radio Frequency Identification (RFID) tags; electronic seals, global positioning systems. What's your view of them as possible solutions?

Powell: The technology improvements are going to be very important, because I do think that ultimately they will come up

with the electronic means to be able to accomplish—what is in the container, where is the container, in whose possession is it? Plus, verifying seals and non-interdiction. But I think it is a few years away (even though) there are improvements every day.

PSN: What do you think about Department of Homeland Security efforts to have the maritime industry and its customers pay for security improvements?

Powell: I strongly feel that terrorism incidents are an issue that affects the entire population. Therefore, if we have to take all of these protective measures, and these are protecting all of the United States—the citizenry as well as their assets—that that is a national problem and should be funded nationally, not just by the international trade community.

PSN: There is also now an issue arising with maritime traffic coming through Canadian ports ...

Powell: Canada has the same 24-hour rule as does the United States, and that gets reported to Canadian customs. There are NVOCC containers that arrive in Canada by vessels and then are railed into the United States. As part of the 24-hour rule, and as part of U.S. Customs requirements, they want down to the house bill-of-lading detail—the bill of lading that the NVOCC issues to the actual exporter, that is on his paper. What the NVOCC does is he gives what is called a master bill of lading to the steamship company that shows him—the NVO—as both the shipper and the consignee. But

the house bill is the contract of carriage issued by the NVO to the actual exporter.

U.S. Customs is saying that as those containers transit into the U.S. via rail, they want that house bill-of-lading detail; they just don't want the master bill-of-lading detail. Now the rail manifest system has no position (where) to report house bill-of-lading detail. Nor is it reported to them, and they basically work on the master bill of lading as part of the contract of carriage. CBP has indicated that they will not accept that house bill-of-lading detail from the Canadian Customs system. They wanted it provided to them by those parties in the transaction.

PSN: So how is that a problem?

Powell: The problem with that is the rail system has no provision for it and that it is not dealing with the NVO as a customer—they're dealing oftentimes with the steamship line, or whomever. So it is currently under discussion as to how that (house bill of lading) level of detail can be provided to CBP if not from Canadian customs.

"We absolutely have to be sure that there is not a problem shipment prior to it getting on board the vessel overseas. To focus on inspections upon arrival, does not answer the need—because if it blows up in the terminal, what have we done? Anything coming into this country we have to have an assurance that it is clean and not a problem."

PSN: That raises the possibility of all these trains being stopped on the border...

Powell: Yes. The NVOCC traffic only represents about one

percent of the total containers being moved by rail. But if they have a train with 30 cars, and there are two NVOCC boxes there, the whole train might be stopped at the border.

PSN: If you had one message for the new Congress what would it be?

Powell: I'd probably have two. With the cooperation of foreign governments and with our CSI program, I'd reemphasize that we absolutely have to be sure that there is not a problem shipment prior to it getting on board the vessel overseas. To focus on inspections upon arrival, does not answer the need—because if it blows up in the terminal, what have we done? Anything coming into this country we have to have an assurance that it is clean and not a problem. The second thing is, we have not got, nor heard of, any proposed plans of what happens if there is an incident. In other words, if the ports are closed down, who has the responsibility for the closing of ports, and, if there is an incident, for how long will the ports be closed? What cargoes will they let in, (and) will the local ports that are not affected allow anybody to come into their facilities? That game plan or process certainly has not been defined.

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