

the No-Fly and Selectee lists, to get immediate notification of any criminal activity relating to any person with a valid transportation security card.

(d) Definitions

In this section:

(1) Applicable individual who is subject to credentialing or a background investigation

The term “applicable individual who is subject to credentialing or a background investigation” means only an individual who—

(A) because of employment is regulated by the Transportation Security Administration, Department of Transportation, or Coast Guard and is required to have a background records check to obtain a hazardous materials endorsement on a commercial driver's license issued by a State under section 5103a of title 49; or

(B) is required to have a credential and background records check under section 622(d)(2) of this title at a facility with activities that are regulated by the Transportation Security Administration, Department of Transportation, or Coast Guard.

(2) Valid transportation security card

The term “valid transportation security card” means a transportation security card that is—

(A) issued under section 70105 of title 46;

(B) not expired;

(C) shows¹ no signs of tampering; and

(D) bears¹ a photograph of the individual representing such card.

(Pub. L. 115-254, div. K, title I, §1977, Oct. 5, 2018, 132 Stat. 3617.)

Editorial Notes

CODIFICATION

Section was enacted as part of the TSA Modernization Act and also as part of the FAA Reauthorization Act of 2018, and not as part of the Implementing Recommendations of the 9/11 Commission Act of 2007 which comprises this chapter.

Statutory Notes and Related Subsidiaries

DEFINITION

For definition of “Administrator” as used in this section, see section 1902 of Pub. L. 115-254, set out as a note under section 101 of Title 49, Transportation.

**SUBCHAPTER III—PUBLIC
TRANSPORTATION SECURITY**

§ 1131. Definitions

For purposes of this subchapter, the following terms apply:

(1) Appropriate congressional committees

The term “appropriate congressional committees” means the Committee on Banking, Housing, and Urban Affairs, and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security and the Com-

mittee on Transportation and Infrastructure of the House of Representatives.

(2) Department

The term “Department” means the Department of Homeland Security.

(3) Disadvantaged businesses concerns

The term “disadvantaged business concerns” means small businesses that are owned and controlled by socially and economically disadvantaged individuals as defined in section¹ 124, title 13, Code of Federal Regulations.

(4) Frontline employee

The term “frontline employee” means an employee of a public transportation agency who is a transit vehicle driver or operator, dispatcher, maintenance and maintenance support employee, station attendant, customer service employee, security employee, or transit police, or any other employee who has direct contact with riders on a regular basis, and any other employee of a public transportation agency that the Secretary determines should receive security training under section 1137 of this title.

(5) Public transportation agency

The term “public transportation agency” means a publicly owned operator of public transportation eligible to receive Federal assistance under chapter 53 of title 49.

(6) Secretary

The term “Secretary” means the Secretary of Homeland Security.

(Pub. L. 110-53, title XIV, §1402, Aug. 3, 2007, 121 Stat. 400.)

Statutory Notes and Related Subsidiaries

SHORT TITLE

For short title of this subchapter as the “National Transit Systems Security Act of 2007”, see section 1401 of Pub. L. 110-53, set out as a note under section 1101 of this title.

§ 1132. Findings

Congress finds that—

(1) 182 public transportation systems throughout the world have been primary targets of terrorist attacks;

(2) more than 6,000 public transportation agencies operate in the United States;

(3) people use public transportation vehicles 33,000,000 times each day;

(4) the Federal Transit Administration has invested \$93,800,000,000 since 1992 for construction and improvements;

(5) the Federal investment in transit security has been insufficient; and

(6) greater Federal investment in transit security improvements per passenger boarding is necessary to better protect the American people, given transit's vital importance in creating mobility and promoting our Nation's economy.

(Pub. L. 110-53, title XIV, §1403, Aug. 3, 2007, 121 Stat. 401.)

¹ So in original.

¹ So in original. Probably should be “part”.

§ 1133. National Strategy for Public Transportation Security

(a) National Strategy

Not later than 9 months after August 3, 2007, and based upon the previous and ongoing security assessments conducted by the Department and the Department of Transportation, the Secretary, consistent with and as required by section 114(t)¹ of title 49, shall develop and implement the modal plan for public transportation, entitled the “National Strategy for Public Transportation Security”.

(b) Purpose

(1) Guidelines

In developing the National Strategy for Public Transportation Security, the Secretary shall establish guidelines for public transportation security that—

(A) minimize security threats to public transportation systems; and

(B) maximize the abilities of public transportation systems to mitigate damage resulting from terrorist attack or other major incident.

(2) Assessments and consultations

In developing the National Strategy for Public Transportation Security, the Secretary shall—

(A) use established and ongoing public transportation security assessments as the basis of the National Strategy for Public Transportation Security; and

(B) consult with all relevant stakeholders, including public transportation agencies, nonprofit labor organizations representing public transportation employees, emergency responders, public safety officials, and other relevant parties.

(c) Contents

In the National Strategy for Public Transportation Security, the Secretary shall describe prioritized goals, objectives, policies, actions, and schedules to improve the security of public transportation.

(d) Responsibilities

The Secretary shall include in the National Strategy for Public Transportation Security a description of the roles, responsibilities, and authorities of Federal, State, and local agencies, tribal governments, and appropriate stakeholders. The plan shall also include—

(1) the identification of, and a plan to address, gaps and unnecessary overlaps in the roles, responsibilities, and authorities of Federal agencies; and

(2) a process for coordinating existing or future security strategies and plans for public transportation, including the National Infrastructure Protection Plan required by Homeland Security Presidential Directive-7; Executive Order No. 13416: Strengthening Surface Transportation Security dated December 5, 2006; the Memorandum of Understanding between the Department and the Department of Transportation on Roles and Responsibilities

dated September 28, 2004; and subsequent annexes and agreements.

(e) Adequacy of existing plans and strategies

In developing the National Strategy for Public Transportation Security, the Secretary shall use relevant existing risk assessments and strategies developed by the Department or other Federal agencies, including those developed or implemented pursuant to section 114(t)¹ of title 49 or Homeland Security Presidential Directive-7.

(f) Funding

There is authorized to be appropriated to the Secretary to carry out this section \$2,000,000 for fiscal year 2008.

(Pub. L. 110-53, title XIV, § 1404, Aug. 3, 2007, 121 Stat. 401.)

Editorial Notes

REFERENCES IN TEXT

Section 114(t) of title 49, referred to in subsecs. (a) and (e), was redesignated section 114(s) of title 49 by Pub. L. 110-161, div. E, title V, § 568(a), Dec. 26, 2007, 121 Stat. 2092.

Executive Order No. 13416, referred to in subsec. (d)(2), is set out as a note under section 1101 of this title.

§ 1134. Security assessments and plans

(a) Public transportation security assessments

(1) Submission

Not later than 30 days after August 3, 2007, the Administrator of the Federal Transit Administration of the Department of Transportation shall submit all public transportation security assessments and all other relevant information to the Secretary.

(2) Secretarial review

Not later than 60 days after receiving the submission under paragraph (1), the Secretary shall review and augment the security assessments received, and conduct additional security assessments as necessary to ensure that at a minimum, all high risk public transportation agencies, as determined by the Secretary, will have a completed security assessment.

(3) Content

The Secretary shall ensure that each completed security assessment includes—

(A) identification of critical assets, infrastructure, and systems and their vulnerabilities; and

(B) identification of any other security weaknesses, including weaknesses in emergency response planning and employee training.

(b) Bus and rural public transportation systems

Not later than 180 days after August 3, 2007, the Secretary shall—

(1) conduct security assessments, based on a representative sample, to determine the specific needs of—

(A) local bus-only public transportation systems; and

(B) public transportation systems that receive funds under section 5311 of title 49; and

¹ See References in Text note below.

(2) make the representative assessments available for use by similarly situated systems.

(c) Security plans

(1) Requirement for plan

(A) High risk agencies

The Secretary shall require public transportation agencies determined by the Secretary to be at high risk for terrorism to develop a comprehensive security plan. The Secretary shall provide technical assistance and guidance to public transportation agencies in preparing and implementing security plans under this section.

(B) Other agencies

Provided that no public transportation agency that has not been designated high risk shall be required to develop a security plan, the Secretary may also establish a security program for public transportation agencies not designated high risk by the Secretary, to assist those public transportation agencies which request assistance, including—

- (i) guidance to assist such agencies in conducting security assessments and preparing and implementing security plans; and
- (ii) a process for the Secretary to review and approve such assessments and plans, as appropriate.

(2) Contents of plan

The Secretary shall ensure that security plans include, as appropriate—

- (A) a prioritized list of all items included in the public transportation agency's security assessment that have not yet been addressed;
- (B) a detailed list of any additional capital and operational improvements identified by the Department or the public transportation agency and a certification of the public transportation agency's technical capacity for operating and maintaining any security equipment that may be identified in such list;
- (C) specific procedures to be implemented or used by the public transportation agency in response to a terrorist attack, including evacuation and passenger communication plans and appropriate evacuation and communication measures for the elderly and individuals with disabilities;
- (D) a coordinated response plan that establishes procedures for appropriate interaction with State and local law enforcement agencies, emergency responders, and Federal officials in order to coordinate security measures and plans for response in the event of a terrorist attack or other major incident;
- (E) a strategy and timeline for conducting training under section 1137 of this title;
- (F) plans for providing redundant and other appropriate backup systems necessary to ensure the continued operation of critical elements of the public transportation system in the event of a terrorist attack or other major incident;

(G) plans for providing service capabilities throughout the system in the event of a terrorist attack or other major incident in the city or region which the public transportation system serves;

(H) methods to mitigate damage within a public transportation system in case of an attack on the system, including a plan for communication and coordination with emergency responders; and

(I) other actions or procedures as the Secretary determines are appropriate to address the security of the public transportation system.

(3) Review

Not later than 6 months after receiving the plans required under this section, the Secretary shall—

(A) review each security plan submitted;

(B) require the public transportation agency to make any amendments needed to ensure that the plan meets the requirements of this section; and

(C) approve any security plan that meets the requirements of this section.

(4) Exemption

The Secretary shall not require a public transportation agency to develop a security plan under paragraph (1) if the agency does not receive a grant under section 1135 of this title.

(5) Waiver

The Secretary may waive the exemption provided in paragraph (4) to require a public transportation agency to develop a security plan under paragraph (1) in the absence of grant funds under section 1135 of this title if not less than 3 days after making the determination the Secretary provides the appropriate congressional committees and the public transportation agency written notification detailing the need for the security plan, the reasons grant funding has not been made available, and the reason the agency has been designated high risk.

(d) Consistency with other plans

The Secretary shall ensure that the security plans developed by public transportation agencies under this section are consistent with the security assessments developed by the Department and the National Strategy for Public Transportation Security developed under section 1133 of this title.

(e) Updates

Not later than September 30, 2008, and annually thereafter, the Secretary shall—

- (1) update the security assessments referred to in subsection (a);
- (2) update the security improvement priorities required under subsection (f); and
- (3) require public transportation agencies to update the security plans required under subsection (c) as appropriate.

(f) Security improvement priorities

(1) In general

Beginning in fiscal year 2008 and each fiscal year thereafter, the Secretary, after consultation with management and nonprofit em-

ployee labor organizations representing public transportation employees as appropriate, and with appropriate State and local officials, shall utilize the information developed or received in this section to establish security improvement priorities unique to each individual public transportation agency that has been assessed.

(2) Allocations

The Secretary shall use the security improvement priorities established in paragraph (1) as the basis for allocating risk-based grant funds under section 1135 of this title, unless the Secretary notifies the appropriate congressional committees that the Secretary has determined an adjustment is necessary to respond to an urgent threat or other significant national security factors.

(g) Shared facilities

The Secretary shall encourage the development and implementation of coordinated assessments and security plans to the extent a public transportation agency shares facilities (such as tunnels, bridges, stations, or platforms) with another public transportation agency, a freight or passenger railroad carrier, or over-the-road bus operator that are geographically close or otherwise co-located.

(h) Nondisclosure of information

(1) Submission of information to Congress

Nothing in this section shall be construed as authorizing the withholding of any information from Congress.

(2) Disclosure of independently furnished information

Nothing in this section shall be construed as affecting any authority or obligation of a Federal agency to disclose any record or information that the Federal agency obtains from a public transportation agency under any other Federal law.

(i) Determination

In response to a petition by a public transportation agency or at the discretion of the Secretary, the Secretary may recognize existing procedures, protocols, and standards of a public transportation agency that the Secretary determines meet all or part of the requirements of this section regarding security assessments or security plans.

(Pub. L. 110-53, title XIV, §1405, Aug. 3, 2007, 121 Stat. 402.)

§ 1135. Public transportation security assistance

(a) Security assistance program

(1) In general

The Secretary shall establish a program for making grants to eligible public transportation agencies for security improvements described in subsection (b).

(2) Eligibility

A public transportation agency is eligible for a grant under this section if the Secretary has performed a security assessment or the agency has developed a security plan under

section 1134 of this title. Grant funds shall only be awarded for permissible uses under subsection (b) to—

- (A) address items included in a security assessment; or
- (B) further a security plan.

(b) Uses of funds

A recipient of a grant under subsection (a) shall use the grant funds for one or more of the following:

(1) Capital uses of funds, including—

- (A) tunnel protection systems;
- (B) perimeter protection systems, including access control, installation of improved lighting, fencing, and barricades;
- (C) redundant critical operations control systems;
- (D) chemical, biological, radiological, or explosive detection systems, including the acquisition of canines used for such detection;
- (E) surveillance equipment;
- (F) communications equipment, including mobile service equipment to provide access to wireless Enhanced 911 (E911) emergency services in an underground fixed guideway system;
- (G) emergency response equipment, including personal protective equipment;
- (H) fire suppression and decontamination equipment;
- (I) global positioning or tracking and recovery equipment, and other automated-vehicle-locator-type system equipment;
- (J) evacuation improvements;
- (K) purchase and placement of bomb-resistant trash cans throughout public transportation facilities, including subway exits, entrances, and tunnels;
- (L) capital costs associated with security awareness, security preparedness, and security response training, including training under section 1137 of this title and exercises under section 1136 of this title;
- (M) security improvements for public transportation systems, including extensions thereto, in final design or under construction;
- (N) security improvements for stations and other public transportation infrastructure, including stations and other public transportation infrastructure owned by State or local governments; and
- (O) other capital security improvements determined appropriate by the Secretary.

(2) Operating uses of funds, including—

- (A) security training and associated backfill, including training under section 1137 of this title and training developed by institutions of higher education and by nonprofit employee labor organizations, for public transportation employees, including front-line employees;
- (B) live or simulated exercises under section 1136 of this title;
- (C) public awareness campaigns for enhanced public transportation security;
- (D) canine patrols for chemical, radiological, biological, or explosives detection;
- (E) development of security plans under section 1134 of this title;

(F) overtime reimbursement including reimbursement of State, local, and tribal governments, for costs for enhanced security personnel during significant national and international public events;

(G) operational costs, including reimbursement of State, local, and tribal governments for costs for personnel assigned to full-time or part-time security or counterterrorism duties related to public transportation, provided that this expense totals no more than 10 percent of the total grant funds received by a public transportation agency in any 1 year; and

(H) other operational security costs determined appropriate by the Secretary, excluding routine, ongoing personnel costs, other than those set forth in this section.

(c) Department of Homeland Security responsibilities

In carrying out the responsibilities under subsection (a), the Secretary shall—

(1) determine the requirements for recipients of grants under this section, including application requirements;

(2) pursuant to subsection (a)(2), select the recipients of grants based solely on risk; and

(3) pursuant to subsection (b), establish the priorities for which grant funds may be used under this section.

(d) Distribution of grants

Not later than 90 days after August 3, 2007, the Secretary and the Secretary of Transportation shall determine the most effective and efficient way to distribute grant funds to the recipients of grants determined by the Secretary under subsection (a). Subject to the determination made by the Secretaries, the Secretary may transfer funds to the Secretary of Transportation for the purposes of disbursing funds to the grant recipient.

(e) Subject to certain terms and conditions

Except as otherwise specifically provided in this section, a grant provided under this section shall be subject to the terms and conditions applicable to a grant made under section 5307 of title 49, as in effect on January 1, 2007, and such other terms and conditions as are determined necessary by the Secretary.

(f) Limitation on uses of funds

Grants made under this section may not be used to make any State or local government cost-sharing contribution under any other Federal law.

(g) Annual reports

Each recipient of a grant under this section shall report annually to the Secretary on the use of the grant funds.

(h) Guidelines

Before distribution of funds to recipients of grants, the Secretary shall issue guidelines to ensure that, to the extent that recipients of grants under this section use contractors or subcontractors, such recipients shall use small, minority, women-owned, or disadvantaged business concerns as contractors or subcontractors to the extent practicable.

(i) Coordination with State homeland security plans

In establishing security improvement priorities under section 1134 of this title and in awarding grants for capital security improvements and operational security improvements under subsection (b), the Secretary shall act consistently with relevant State homeland security plans.

(j) Multistate transportation systems

In cases in which a public transportation system operates in more than one State, the Secretary shall give appropriate consideration to the risks of the entire system, including those portions of the States into which the system crosses, in establishing security improvement priorities under section 1134 of this title and in awarding grants for capital security improvements and operational security improvements under subsection (b).

(k) Congressional notification

Not later than 3 days before the award of any grant under this section, the Secretary shall notify simultaneously, the appropriate congressional committees of the intent to award such grant.

(l) Return of misspent grant funds

The Secretary shall establish a process to require the return of any misspent grant funds received under this section determined to have been spent for a purpose other than those specified in the grant award.

(m) Periods of performance

(1) In general

Except as provided in paragraph (2), funds provided pursuant to a grant awarded under this section for a use specified in subsection (b) shall remain available for use by a grant recipient for a period of not fewer than 36 months.

(2) Exception

Funds provided pursuant to a grant awarded under this section for a use specified in subparagraph (M) or (N) of subsection (b)(1) shall remain available for use by a grant recipient for a period of not fewer than 48 months.

(n) Authorization of appropriations

(1) There are authorized to be appropriated to the Secretary to make grants under this section—

(A) such sums as are necessary for fiscal year 2007;

(B) \$650,000,000 for fiscal year 2008, except that not more than 50 percent of such funds may be used for operational costs under subsection (b)(2);

(C) \$750,000,000 for fiscal year 2009, except that not more than 30 percent of such funds may be used for operational costs under subsection (b)(2);

(D) \$900,000,000 for fiscal year 2010, except that not more than 20 percent of such funds may be used for operational costs under subsection (b)(2); and

(E) \$1,100,000,000 for fiscal year 2011, except that not more than 10 percent of such funds

may be used for operational costs under subsection (b)(2).

(2) **PERIOD OF AVAILABILITY.**—Sums appropriated to carry out this section shall remain available until expended.

(3) **WAIVER.**—The Secretary may waive the limitation on operational costs specified in subparagraphs (B) through (E) of paragraph (1) if the Secretary determines that such a waiver is required in the interest of national security, and if the Secretary provides a written justification to the appropriate congressional committees prior to any such action.

(4) **EFFECTIVE DATE.**—Funds provided for fiscal year 2007 transit security grants under Public Law 110–28 shall be allocated based on security assessments that are in existence as of August 3, 2007.

(Pub. L. 110–53, title XIV, §1406, Aug. 3, 2007, 121 Stat. 405; Pub. L. 117–81, div. F, title LXIV, §§6420, 6421, Dec. 27, 2021, 135 Stat. 2418.)

Editorial Notes

REFERENCES IN TEXT

Public Law 110–28, referred to in subsec. (n)(4), is Pub. L. 110–28, May 25, 2007, 121 Stat. 112, known as the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2021—Subsec. (b)(2)(A). Pub. L. 117–81, §6420, inserted “and associated backfill” after “security training”.

Subsecs. (m), (n). Pub. L. 117–81, §6421, added subsec. (m) and redesignated former subsec. (m) as (n).

§ 1136. Security exercises

(a) In general

The Secretary shall establish a program for conducting security exercises for public transportation agencies for the purpose of assessing and improving the capabilities of entities described in subsection (b) to prevent, prepare for, mitigate against, respond to, and recover from acts of terrorism.

(b) Covered entities

Entities to be assessed under the program shall include—

- (1) Federal, State, and local agencies and tribal governments;
- (2) public transportation agencies;
- (3) governmental and nongovernmental emergency response providers and law enforcement personnel, including transit police; and
- (4) any other organization or entity that the Secretary determines appropriate.

(c) Requirements

The Secretary shall ensure that the program—

(1) requires, for public transportation agencies which the Secretary deems appropriate, exercises to be conducted that are—

- (A) scaled and tailored to the needs of specific public transportation systems, and include taking into account the needs of the elderly and individuals with disabilities;
- (B) live;
- (C) coordinated with appropriate officials;

(D) as realistic as practicable and based on current risk assessments, including credible threats, vulnerabilities, and consequences;

(E) inclusive, as appropriate, of frontline employees and managers; and

(F) consistent with the National Incident Management System, the National Response Plan, the National Infrastructure Protection Plan, the National Preparedness Guidance, the National Preparedness Goal, and other such national initiatives;

(2) provides that exercises described in paragraph (1) will be—

(A) evaluated by the Secretary against clear and consistent performance measures;

(B) assessed by the Secretary to learn best practices, which shall be shared with appropriate Federal, State, local, and tribal officials, governmental and nongovernmental emergency response providers, law enforcement personnel, including railroad and transit police, and appropriate stakeholders; and

(C) followed by remedial action by covered entities in response to lessons learned;

(3) involves individuals in neighborhoods around the infrastructure of a public transportation system; and

(4) assists State, local, and tribal governments and public transportation agencies in designing, implementing, and evaluating exercises that conform to the requirements of paragraph (2).

(d) National Exercise Program

The Secretary shall ensure that the exercise program developed under subsection (a) is a component of the National Exercise Program established under section 748 of this title.

(e) Ferry system exemption

This section does not apply to any ferry system for which drills are required to be conducted pursuant to section 70103 of title 46.

(Pub. L. 110–53, title XIV, §1407, Aug. 3, 2007, 121 Stat. 408.)

§ 1137. Public transportation security training program

(a) In general

Not later than 90 days after August 3, 2007, the Secretary shall develop and issue detailed interim final regulations, and not later than 1 year after August 3, 2007, the Secretary shall develop and issue detailed final regulations, for a public transportation security training program to prepare public transportation employees, including frontline employees, for potential security threats and conditions.

(b) Consultation

The Secretary shall develop the interim final and final regulations under subsection (a) in consultation with—

- (1) appropriate law enforcement, fire service, security, and terrorism experts;
- (2) representatives of public transportation agencies; and
- (3) nonprofit employee labor organizations representing public transportation employees or emergency response personnel.

(c) Program elements

The interim final and final regulations developed under subsection (a) shall require security training programs to include, at a minimum, elements to address the following:

- (1) Determination of the seriousness of any occurrence or threat.
- (2) Crew and passenger communication and coordination.
- (3) Appropriate responses to defend oneself, including using nonlethal defense devices.
- (4) Use of personal protective devices and other protective equipment.
- (5) Evacuation procedures for passengers and employees, including individuals with disabilities and the elderly.
- (6) Training related to behavioral and psychological understanding of, and responses to, terrorist incidents, including the ability to cope with hijacker behavior, and passenger responses.
- (7) Live situational training exercises regarding various threat conditions, including tunnel evacuation procedures.
- (8) Recognition and reporting of dangerous substances and suspicious packages, persons, and situations.
- (9) Understanding security incident procedures, including procedures for communicating with governmental and nongovernmental emergency response providers and for on scene interaction with such emergency response providers.
- (10) Operation and maintenance of security equipment and systems.
- (11) Other security training activities that the Secretary deems appropriate.

(d) Required programs**(1) Development and submission to Secretary**

Not later than 90 days after a public transportation agency meets the requirements under subsection (e), each such public transportation agency shall develop a security training program in accordance with the regulations developed under subsection (a) and submit the program to the Secretary for approval.

(2) Approval

Not later than 60 days after receiving a security training program proposal under this subsection, the Secretary shall approve the program or require the public transportation agency that developed the program to make any revisions to the program that the Secretary determines necessary for the program to meet the requirements of the regulations. A public transportation agency shall respond to the Secretary's comments within 30 days after receiving them.

(3) Training

Not later than 1 year after the Secretary approves a security training program proposal in accordance with this subsection, the public transportation agency that developed the program shall complete the training of all employees covered under the program.

(4) Updates of regulations and program revisions

The Secretary shall periodically review and update, as appropriate, the training regula-

tions issued under subsection (a) to reflect new or changing security threats. Each public transportation agency shall revise its training program accordingly and provide additional training as necessary to its workers within a reasonable time after the regulations are updated.

(e) Applicability

A public transportation agency that receives a grant award under this subchapter shall be required to develop and implement a security training program pursuant to this section.

(f) Long-term training requirement

Any public transportation agency required to develop a security training program pursuant to this section shall provide routine and ongoing training for employees covered under the program, regardless of whether the public transportation agency receives subsequent grant awards.

(g) National Training Program

The Secretary shall ensure that the training program developed under subsection (a) is a component of the National Training Program established under section 748 of this title.

(h) Ferry exemption

This section shall not apply to any ferry system for which training is required to be conducted pursuant to section 70103 of title 46.

(i) Report

Not later than 2 years after the date of issuance of the final regulation, the Comptroller General shall review implementation of the training program, including interviewing a representative sample of public transportation agencies and employees, and report to the appropriate congressional committees, on the number of reviews conducted and the results. The Comptroller General may submit the report in both classified and redacted formats as necessary.

(Pub. L. 110-53, title XIV, §1408, Aug. 3, 2007, 121 Stat. 409.)

§ 1137a. Local law enforcement security training**(a) In general**

The Secretary of Homeland Security, in consultation with public and private sector stakeholders, may in a manner consistent with the protection of privacy rights, civil rights, and civil liberties, develop, through the Federal Law Enforcement Training Centers, a training program to enhance the protection, preparedness, and response capabilities of law enforcement agencies with respect to threats of terrorism and other threats, including targeted violence, at a surface transportation asset.

(b) Requirements

If the Secretary of Homeland Security develops the training program described in subsection (a), such training program shall—

- (1) be informed by current information regarding tactics used by terrorists and others engaging in targeted violence;
- (2) include tactical instruction tailored to the diverse nature of the surface transportation asset operational environment; and

(3) prioritize training officers from law enforcement agencies that are eligible for or receive grants under sections¹ 2003 or¹ 2004 of the Homeland Security Act of 2002 (6 U.S.C. 604 and¹ 605) and officers employed by railroad carriers that operate passenger service, including interstate passenger service.

(c) Report

If the Secretary of Homeland Security develops the training program described in subsection (a), not later than one year after the date on which the Secretary first implements the program, and annually thereafter during each year the Secretary carries out the program, the Secretary shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the program. Each such report shall include, for the year covered by the report—

- (1) a description of the curriculum for the training and any changes to such curriculum;
- (2) an identification of any contracts entered into for the development or provision of training under the program;
- (3) information on the law enforcement agencies the personnel of which received the training, and for each such agency, the number of participants; and
- (4) a description of the measures used to ensure the program was carried out to provide for protections of privacy rights, civil rights, and civil liberties.

(d) Definitions

In this section:

(1) The term “public and private sector stakeholders” has the meaning given such term in section 114(t)(1)(c)² of title 49.

(2) The term “surface transportation asset” includes facilities, equipment, or systems used to provide transportation services by—

- (A) a public transportation agency (as such term is defined in section 1131(5) of this title);
- (B) a railroad carrier (as such term is defined in section 20102(3) of title 49);
- (C) an owner or operator of—
 - (i) an entity offering scheduled, fixed-route transportation services by over-the-road bus (as such term is defined in section 1151(4) of this title); or
 - (ii) a bus terminal; or

(D) other transportation facilities, equipment, or systems, as determined by the Secretary.

(3) The term “targeted violence” means an incident of violence in which an attacker selected a particular target in order to inflict mass injury or death with no discernable political or ideological motivation beyond mass injury or death.

(4) The term “terrorism” means the terms—

- (A) domestic terrorism (as such term is defined in section 2331(5) of title 18); and
- (B) international terrorism (as such term is defined in section 2331(1) of title 18).

(Pub. L. 117–81, div. F, title LXIV, § 6419, Dec. 27, 2021, 135 Stat. 2417.)

Editorial Notes

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2022, and not as part of the National Transit Systems Security Act of 2007 which comprises this subchapter.

§ 1138. Public transportation research and development

(a) Establishment of research and development program

The Secretary shall carry out a research and development program through the Homeland Security Advanced Research Projects Agency in the Science and Technology Directorate and in consultation with the Transportation Security Administration and with the Federal Transit Administration, for the purpose of improving the security of public transportation systems.

(b) Grants and contracts authorized

The Secretary shall award grants or contracts to public or private entities to conduct research and demonstrate technologies and methods to reduce and deter terrorist threats or mitigate damages resulting from terrorist attacks against public transportation systems.

(c) Use of funds

Grants or contracts awarded under subsection (a)—

(1) shall be coordinated with activities of the Homeland Security Advanced Research Projects Agency; and

(2) may be used to—

- (A) research chemical, biological, radiological, or explosive detection systems that do not significantly impede passenger access;
- (B) research imaging technologies;
- (C) conduct product evaluations and testing;
- (D) improve security and redundancy for critical communications, electrical power, and computer and train control systems;
- (E) develop technologies for securing tunnels, transit bridges and aerial structures;
- (F) research technologies that mitigate damages in the event of a cyber attack; and
- (G) research other technologies or methods for reducing or deterring terrorist attacks against public transportation systems, or mitigating damage from such attacks.

(d) Privacy and civil rights and civil liberties issues

(1) Consultation

In carrying out research and development projects under this section, the Secretary shall consult with the Chief Privacy Officer of the Department and the Officer for Civil Rights and Civil Liberties of the Department, as appropriate, and in accordance with section 142 of this title.

(2) Privacy impact assessments

In accordance with sections 142 and 345 of this title, the Chief Privacy Officer shall con-

¹ So in original.

² So in original. Probably should be “114(t)(1)(C)”.

duct privacy impact assessments and the Officer for Civil Rights and Civil Liberties shall conduct reviews, as appropriate, for research and development initiatives developed under this section.

(e) Reporting requirement

Each entity that is awarded a grant or contract under this section shall report annually to the Department on the use of grant or contract funds received under this section to ensure that the awards made are expended in accordance with the purposes of this subchapter and the priorities developed by the Secretary.

(f) Coordination

The Secretary shall ensure that the research is consistent with the priorities established in the National Strategy for Public Transportation Security and is coordinated, to the extent practicable, with other Federal, State, local, tribal, and private sector public transportation, railroad, commuter railroad, and over-the-road bus research initiatives to leverage resources and avoid unnecessary duplicative efforts.

(g) Return of misspent grant or contract funds

If the Secretary determines that a grantee or contractor used any portion of the grant or contract funds received under this section for a purpose other than the allowable uses specified under subsection (c), the grantee or contractor shall return any amount so used to the Treasury of the United States.

(h) Authorization of appropriations

There are authorized to be appropriated to the Secretary to make grants under this section—

- (1) such sums as necessary for fiscal year 2007;
- (2) \$25,000,000 for fiscal year 2008;
- (3) \$25,000,000 for fiscal year 2009;
- (4) \$25,000,000 for fiscal year 2010; and
- (5) \$25,000,000 for fiscal year 2011.

(Pub. L. 110-53, title XIV, §1409, Aug. 3, 2007, 121 Stat. 411.)

§ 1139. Information sharing

(a) Intelligence sharing

The Secretary shall ensure that the Department of Transportation receives appropriate and timely notification of all credible terrorist threats against public transportation assets in the United States.

(b) Information Sharing and Analysis Center

(1) Authorization

The Secretary shall provide for the reasonable costs of the Information Sharing and Analysis Center for Public Transportation (referred to in this subsection as the “ISAC”).

(2) Participation

The Secretary—

(A) shall require public transportation agencies that the Secretary determines to be at high risk of terrorist attack to participate in the ISAC;

(B) shall encourage all other public transportation agencies to participate in the ISAC;

(C) shall encourage the participation of nonprofit employee labor organizations rep-

resenting public transportation employees, as appropriate; and

(D) shall not charge a fee for participating in the ISAC.

(c) Report

The Comptroller General shall report, not less than 3 years after August 3, 2007, to the appropriate congressional committees, as to the value and efficacy of the ISAC along with any other public transportation information-sharing programs ongoing at the Department. The report shall include an analysis of the user satisfaction of public transportation agencies on the state of information-sharing and the value that each system provides the user, the costs and benefits of all centers and programs, the coordination among centers and programs, how each center or program contributes to implementing the information sharing plan under section 1203,¹ and analysis of the extent to which the ISAC is duplicative with the Department's information-sharing program.

(d) Authorization

(1) In general

There are authorized to be appropriated to the Secretary to carry out this section—

- (A) \$600,000 for fiscal year 2008;
- (B) \$600,000 for fiscal year 2009;
- (C) \$600,000 for fiscal year 2010; and
- (D) such sums as may be necessary for 2011, provided the report required in subsection (c) of this section has been submitted to Congress.

(2) Availability of funds

Such sums shall remain available until expended.

(Pub. L. 110-53, title XIV, §1410, Aug. 3, 2007, 121 Stat. 412.)

Editorial Notes

REFERENCES IN TEXT

Section 1203, referred to in subsec. (c), is section 1203 of title XII of Pub. L. 110-53, Aug. 3, 2007, 121 Stat. 383, which amended section 114 of Title 49, Transportation, and enacted provisions set out as a note under section 114 of Title 49.

§ 1140. Threat assessments

Not later than 1 year after August 3, 2007, the Secretary shall complete a name-based security background check against the consolidated terrorist watchlist and an immigration status check for all public transportation frontline employees, similar to the threat assessment screening program required for facility employees and longshoremen by the Commandant of the Coast Guard under Coast Guard Notice USCG-2006-24189 (71 Fed. Reg. 25066 (April 8, 2006)).

(Pub. L. 110-53, title XIV, §1411, Aug. 3, 2007, 121 Stat. 413.)

§ 1141. Reporting requirements

(a) Annual report to Congress

(1) In general

Not later than March 31 of each year, the Secretary shall submit a report, containing

¹ See References in Text note below.

the information described in paragraph (2), to the appropriate congressional committees.

(2) Contents

The report submitted under paragraph (1) shall include—

(A) a description of the implementation of the provisions of this subchapter;

(B) the amount of funds appropriated to carry out the provisions of this subchapter that have not been expended or obligated;

(C) the National Strategy for Public Transportation Security required under section 1133 of this title;

(D) an estimate of the cost to implement the National Strategy for Public Transportation Security which shall break out the aggregated total cost of needed capital and operational security improvements for fiscal years 2008–2018; and

(E) the state of public transportation security in the United States, which shall include detailing the status of security assessments, the progress being made around the country in developing prioritized lists of security improvements necessary to make public transportation facilities and passengers more secure, the progress being made by agencies in developing security plans and how those plans differ from the security assessments and a prioritized list of security improvements being compiled by other agencies, as well as a random sample of an equal number of large- and small-scale projects currently underway.

(3) Format

The Secretary may submit the report in both classified and redacted formats if the Secretary determines that such action is appropriate or necessary.

(b) Annual report to Governors

(1) In general

Not later than March 31 of each year, the Secretary shall submit a report to the Governor of each State with a public transportation agency that has received a grant under this Act.

(2) Contents

The report submitted under paragraph (1) shall specify—

(A) the amount of grant funds distributed to each such public transportation agency; and

(B) the use of such grant funds.

(Pub. L. 110–53, title XIV, § 1412, Aug. 3, 2007, 121 Stat. 413.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(1), is Pub. L. 110–53, Aug. 3, 2007, 121 Stat. 266, known as the Implementing Recommendations of the 9/11 Commission Act of 2007, which enacted this chapter and enacted and amended numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title of 2007 Amendment note set out under section 101 of this title and Tables.

§ 1142. Public transportation employee protections

(a) In general

A public transportation agency, a contractor or a subcontractor of such agency, or an officer or employee of such agency, shall not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee if such discrimination is due, in whole or in part, to the employee's lawful, good faith act done, or perceived by the employer to have been done or about to be done—

(1) to provide information, directly cause information to be provided, or otherwise directly assist in any investigation regarding any conduct which the employee reasonably believes constitutes a violation of any Federal law, rule, or regulation relating to public transportation safety or security, or fraud, waste, or abuse of Federal grants or other public funds intended to be used for public transportation safety or security, if the information or assistance is provided to or an investigation stemming from the provided information is conducted by—

(A) a Federal, State, or local regulatory or law enforcement agency (including an office of the Inspector General under chapter 4 of title 5;¹

(B) any Member of Congress, any Committee of Congress, or the Government Accountability Office; or

(C) a person with supervisory authority over the employee or such other person who has the authority to investigate, discover, or terminate the misconduct;

(2) to refuse to violate or assist in the violation of any Federal law, rule, or regulation relating to public transportation safety or security;

(3) to file a complaint or directly cause to be brought a proceeding related to the enforcement of this section or to testify in that proceeding;

(4) to cooperate with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board; or

(5) to furnish information to the Secretary of Transportation, the Secretary of Homeland Security, the National Transportation Safety Board, or any Federal, State, or local regulatory or law enforcement agency as to the facts relating to any accident or incident resulting in injury or death to an individual or damage to property occurring in connection with public transportation.

(b) Hazardous safety or security conditions

(1) A public transportation agency, or a contractor or a subcontractor of such agency, or an officer or employee of such agency, shall not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee for—

(A) reporting a hazardous safety or security condition;

¹ So in original. The semicolon probably should be preceded by a closing parenthesis.

(B) refusing to work when confronted by a hazardous safety or security condition related to the performance of the employee's duties, if the conditions described in paragraph (2) exist; or

(C) refusing to authorize the use of any safety- or security-related equipment, track, or structures, if the employee is responsible for the inspection or repair of the equipment, track, or structures, when the employee believes that the equipment, track, or structures are in a hazardous safety or security condition, if the conditions described in paragraph (2) of this subsection exist.

(2) A refusal is protected under paragraph (1)(B) and (C) if—

(A) the refusal is made in good faith and no reasonable alternative to the refusal is available to the employee;

(B) a reasonable individual in the circumstances then confronting the employee would conclude that—

(i) the hazardous condition presents an imminent danger of death or serious injury; and

(ii) the urgency of the situation does not allow sufficient time to eliminate the danger without such refusal; and

(C) the employee, where possible, has notified the public transportation agency of the existence of the hazardous condition and the intention not to perform further work, or not to authorize the use of the hazardous equipment, track, or structures, unless the condition is corrected immediately or the equipment, track, or structures are repaired properly or replaced.

(3) In this subsection, only subsection (b)(1)(A) shall apply to security personnel, including transit police, employed or utilized by a public transportation agency to protect riders, equipment, assets, or facilities.

(c) Enforcement action

(1) Filing and notification

A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) or (b) may, not later than 180 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination. Upon receipt of a complaint filed under this paragraph, the Secretary of Labor shall notify, in writing, the person named in the complaint and the person's employer of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

(2) Investigation; preliminary order

(A) In general

Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the person named in the complaint an opportunity to submit to the Secretary of Labor a written response to

the complaint and an opportunity to meet with a representative of the Secretary of Labor to present statements from witnesses, the Secretary of Labor shall conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) or (b) of the Secretary of Labor's findings. If the Secretary of Labor concludes that there is a reasonable cause to believe that a violation of subsection (a) or (b) has occurred, the Secretary of Labor shall accompany the Secretary of Labor's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Such hearings shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(B) Requirements

(i) Required showing by complainant

The Secretary of Labor shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in subsection (a) or (b) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(ii) Showing by employer

Notwithstanding a finding by the Secretary of Labor that the complainant has made the showing required under clause (i), no investigation otherwise required under paragraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(iii) Criteria for determination by Secretary of Labor

The Secretary of Labor may determine that a violation of subsection (a) or (b) has occurred only if the complainant demonstrates that any behavior described in subsection (a) or (b) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(iv) Prohibition

Relief may not be ordered under paragraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(3) Final order**(A) Deadline for issuance; settlement agreements**

Not later than 120 days after the date of conclusion of a hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

(B) Remedy

If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) or (b) has occurred, the Secretary of Labor shall order the person who committed such violation to—

- (i) take affirmative action to abate the violation; and
- (ii) provide the remedies described in subsection (d).

(C) Order

If an order is issued under subparagraph (B), the Secretary of Labor, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred, as determined by the Secretary of Labor, by the complainant for, or in connection with, bringing the complaint upon which the order was issued.

(D) Frivolous complaints

If the Secretary of Labor finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary of Labor may award to the prevailing employer reasonable attorney fees not exceeding \$1,000.

(4) Review**(A) Appeal to Court of Appeals**

Any person adversely affected or aggrieved by an order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary of Labor. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

(B) Limitation on collateral attack

An order of the Secretary of Labor with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(5) Enforcement of order by Secretary of Labor

Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary of Labor may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

(6) Enforcement of order by parties**(A) Commencement of action**

A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(B) Attorney fees

The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

(7) De novo review

With respect to a complaint under paragraph (1), if the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint and if the delay is not due to the bad faith of the employee, the employee may bring an original action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury. The action shall be governed by the same legal burdens of proof specified in paragraph (2)(B) for review by the Secretary of Labor.

(d) Remedies**(1) In general**

An employee prevailing in any action under subsection (c) shall be entitled to all relief necessary to make the employee whole.

(2) Damages

Relief in an action under subsection (c) (including an action described in (c)(7))² shall include—

- (A) reinstatement with the same seniority status that the employee would have had, but for the discrimination;
- (B) any backpay, with interest; and
- (C) compensatory damages, including compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

(3) Possible relief

Relief in any action under subsection (c) may include punitive damages in an amount not to exceed \$250,000.

² So in original. Probably should be “subsection (c)(7)”.

(e) Election of remedies

An employee may not seek protection under both this section and another provision of law for the same allegedly unlawful act of the public transportation agency.

(f) No preemption

Nothing in this section preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law.

(g) Rights retained by employee

Nothing in this section shall be construed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

(h) Disclosure of identity

(1) Except as provided in paragraph (2) of this subsection, or with the written consent of the employee, the Secretary of Transportation or the Secretary of Homeland Security may not disclose the name of an employee who has provided information described in subsection (a)(1).

(2) The Secretary of Transportation or the Secretary of Homeland Security shall disclose to the Attorney General the name of an employee described in paragraph (1) of this subsection if the matter is referred to the Attorney General for enforcement. The Secretary making such disclosure shall provide reasonable advance notice to the affected employee if disclosure of that person's identity or identifying information is to occur.

(i) Process for reporting security problems to the Department of Homeland Security**(1) Establishment of process**

The Secretary shall establish through regulations after an opportunity for notice and comment, and provide information to the public regarding, a process by which any person may submit a report to the Secretary regarding public transportation security problems, deficiencies, or vulnerabilities.

(2) Acknowledgment of receipt

If a report submitted under paragraph (1) identifies the person making the report, the Secretary shall respond promptly to such person and acknowledge receipt of the report.

(3) Steps to address problem

The Secretary shall review and consider the information provided in any report submitted under paragraph (1) and shall take appropriate steps to address any problems or deficiencies identified.

(Pub. L. 110-53, title XIV, § 1413, Aug. 3, 2007, 121 Stat. 414; Pub. L. 117-286, § 4(b)(22), Dec. 27, 2022, 136 Stat. 4345.)

Editorial Notes**AMENDMENTS**

2022—Subsec. (a)(1)(A). Pub. L. 117-286 substituted “chapter 4 of title 5;” for “the Inspector General Act of 1978 (5 U.S.C. App.; Public Law 95-452);”.

§ 1143. Security background checks of covered individuals for public transportation**(a) Definitions**

In this section, the following definitions apply:

(1) Security background check

The term “security background check” means reviewing the following for the purpose of identifying individuals who may pose a threat to transportation security, national security, or of terrorism:

(A) Relevant criminal history databases.

(B) In the case of an alien (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))), the relevant databases to determine the status of the alien under the immigration laws of the United States.

(C) Other relevant information or databases, as determined by the Secretary.

(2) Covered individual

The term “covered individual” means an employee of a public transportation agency or a contractor or subcontractor of a public transportation agency.

(b) Guidance

(1) Any guidance, recommendations, suggested action items, or any other widely disseminated voluntary action item issued by the Secretary to a public transportation agency or a contractor or subcontractor of a public transportation agency relating to performing a security background check of a covered individual shall contain recommendations on the appropriate scope and application of such a security background check, including the time period covered, the types of disqualifying offenses, and a redress process for adversely impacted covered individuals consistent with subsections (c) and (d) of this section.

(2) Not later than 60 days after August 3, 2007, any guidance, recommendations, suggested action items, or any other widely disseminated voluntary action item issued by the Secretary prior to August 3, 2007, to a public transportation agency or a contractor or subcontractor of a public transportation agency relating to performing a security background check of a covered individual shall be updated in compliance with paragraph (b)(1).

(3) If a public transportation agency or a contractor or subcontractor of a public transportation agency performs a security background check on a covered individual to fulfill guidance issued by the Secretary under paragraph (1) or (2), the Secretary shall not consider such guidance fulfilled unless an adequate redress process as described in subsection (d) is provided to covered individuals.

(c) Requirements

If the Secretary issues a rule, regulation or directive requiring a public transportation agency or contractor or subcontractor of a public transportation agency to perform a security background check of a covered individual, then the Secretary shall prohibit a public transportation agency or contractor or subcontractor of a pub-

lic transportation agency from making an adverse employment decision, including removal or suspension of the employee, due to such rule, regulation, or directive with respect to a covered individual unless the public transportation agency or contractor or subcontractor of a public transportation agency determines that the covered individual—

(1) has been convicted of, has been found not guilty of by reason of insanity, or is under warrant, indictment for a permanent disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations;

(2) was convicted of or found not guilty by reason of insanity of an interim disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations, within 7 years of the date that the public transportation agency or contractor or subcontractor of the public transportation agency performs the security background check; or

(3) was incarcerated for an interim disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations, and released from incarceration within 5 years of the date that the public transportation agency or contractor or subcontractor of a public transportation agency performs the security background check.

(d) Redress process

If the Secretary issues a rule, regulation, or directive requiring a public transportation agency or contractor or subcontractor of a public transportation agency to perform a security background check of a covered individual, the Secretary shall—

(1) provide an adequate redress process for a covered individual subjected to an adverse employment decision, including removal or suspension of the employee, due to such rule, regulation, or directive that is consistent with the appeals and waiver process established for applicants for commercial motor vehicle hazardous materials endorsements and transportation workers at ports, as required by section 70105(c) of title 49;¹ and

(2) have the authority to order an appropriate remedy, including reinstatement of the covered individual, should the Secretary determine that a public transportation agency or contractor or subcontractor of a public transportation agency wrongfully made an adverse employment decision regarding a covered individual pursuant to such rule, regulation, or directive.

(e) False statements

A public transportation agency or a contractor or subcontractor of a public transportation agency may not knowingly misrepresent to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary related to security background check requirements for covered individuals when conducting a security background check. Not later than 1 year after August 3, 2007, the Secretary shall issue a regulation that prohibits

a public transportation agency or a contractor or subcontractor of a public transportation agency from knowingly misrepresenting to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary related to security background check requirements for covered individuals when conducting a security background check.

(f) Rights and responsibilities

Nothing in this section shall be construed to abridge a public transportation agency's or a contractor or subcontractor of a public transportation agency's rights or responsibilities to make adverse employment decisions permitted by other Federal, State, or local laws. Nothing in the² section shall be construed to abridge rights and responsibilities of covered individuals, a public transportation agency, or a contractor or subcontractor of a public transportation agency under any other Federal, State, or local laws or collective bargaining agreement.

(g) No preemption of Federal or State law

Nothing in this section shall be construed to preempt a Federal, State, or local law that requires criminal history background checks, immigration status checks, or other background checks of covered individuals.

(h) Statutory construction

Nothing in this section shall be construed to affect the process for review established under section 70105(c) of title 46, including regulations issued pursuant to such section.

(Pub. L. 110–53, title XIV, § 1414, Aug. 3, 2007, 121 Stat. 419.)

§ 1144. Limitation on fines and civil penalties

(a) Inspectors

Surface transportation inspectors shall be prohibited from issuing fines to public transportation agencies for violations of the Department's regulations or orders except through the process described in subsection (b).

(b) Civil penalties

The Secretary shall be prohibited from assessing civil penalties against public transportation agencies for violations of the Department's regulations or orders, except in accordance with the following:

(1) In the case of a public transportation agency that is found to be in violation of a regulation or order issued by the Secretary, the Secretary shall seek correction of the violation through a written notice to the public transportation agency and shall give the public transportation agency reasonable opportunity to correct the violation or propose an alternative means of compliance acceptable to the Secretary.

(2) If the public transportation agency does not correct the violation or propose an alternative means of compliance acceptable to the Secretary within a reasonable time period that is specified in the written notice, the Sec-

¹ So in original. Probably should be title “46.”

² So in original. Probably should be “this”.

retary may take any action authorized in section 114 of title 49.

(c) Limitation on Secretary

The Secretary shall not initiate civil enforcement actions for violations of administrative and procedural requirements pertaining to the application for and expenditure of funds awarded under transportation security grant programs under this subchapter.

(Pub. L. 110-53, title XIV, § 1415, Aug. 3, 2007, 121 Stat. 422.)

SUBCHAPTER IV—SURFACE
TRANSPORTATION SECURITY

PART A—GENERAL PROVISIONS

§ 1151. Definitions

In this subchapter, the following definitions apply:

(1) Appropriate congressional committees

The term “appropriate congressional committees” means the Committee on Commerce, Science, and Transportation and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security and the Committee on Transportation and Infrastructure of the House of Representatives.

(2) Secretary

The term “Secretary” means the Secretary of Homeland Security.

(3) Department

The term “Department” means the Department of Homeland Security.

(4) Over-the-road bus

The term “over-the-road bus” means a bus characterized by an elevated passenger deck located over a baggage compartment.

(5) Over-the-road bus frontline employees

In this section,¹ the term “over-the-road bus frontline employees” means over-the-road bus drivers, security personnel, dispatchers, maintenance and maintenance support personnel, ticket agents, other terminal employees, and other employees of an over-the-road bus operator or terminal owner or operator that the Secretary determines should receive security training under this subchapter.

(6) Railroad frontline employees

In this section,¹ the term “railroad frontline employees” means security personnel, dispatchers, locomotive engineers, conductors, trainmen, other onboard employees, maintenance and maintenance support personnel, bridge tenders, and any other employees of railroad carriers that the Secretary determines should receive security training under this subchapter.

(7) Railroad

The term “railroad” has the meaning that term has in section 20102 of title 49.

(8) Railroad carrier

The term “railroad carrier” has the meaning that term has in section 20102 of title 49.

(9) State

The term “State” means any one of the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States.

(10) Terrorism

The term “terrorism” has the meaning that term has in section 101 of this title.

(11) Transportation

The term “transportation”, as used with respect to an over-the-road bus, means the movement of passengers or property by an over-the-road bus—

(A) in the jurisdiction of the United States between a place in a State and a place outside the State (including a place outside the United States); or

(B) in a State that affects trade, traffic, and transportation described in subparagraph (A).

(12) United States

The term “United States” means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States.

(13) Security-sensitive material

The term “security-sensitive material” means a material, or a group or class of material, in a particular amount and form that the Secretary, in consultation with the Secretary of Transportation, determines, through a rule-making with opportunity for public comment, poses a significant risk to national security while being transported in commerce due to the potential use of the material in an act of terrorism. In making such a designation, the Secretary shall, at a minimum, consider the following:

(A) Class 7 radioactive materials.

(B) Division 1.1, 1.2, or 1.3 explosives.

(C) Materials poisonous or toxic by inhalation, including Division 2.3 gases and Division 6.1 materials.

(D) A select agent or toxin regulated by the Centers for Disease Control and Prevention under part 73 of title 42, Code of Federal Regulations.

(14) Disadvantaged business concerns

The term “disadvantaged business concerns” means small businesses that are owned and controlled by socially and economically disadvantaged individuals as defined in section 124,² of title 13, Code of Federal Regulations.

(15) Amtrak

The term “Amtrak” means the National Railroad Passenger Corporation.

(Pub. L. 110-53, title XV, § 1501, Aug. 3, 2007, 121 Stat. 422.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this title”, meaning title XV of Pub. L. 110-53,

¹ So in original. “In this section,” probably should not appear.

² So in original. Probably should be “part 124.”.