

**(2) Privacy impact assessments**

In accordance with sections 142 and 345 of this title, the Chief Privacy Officer shall conduct 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 that the Secretary determines could have an impact on privacy, civil rights, or civil liberties.

**(e) Authorization of appropriations****(1) In general**

Out of funds appropriated pursuant to section 114(w)<sup>1</sup> of title 49, there shall be made available to the Secretary to carry out this section—

- (A) \$33,000,000 for fiscal year 2008;
- (B) \$33,000,000 for fiscal year 2009;
- (C) \$33,000,000 for fiscal year 2010; and
- (D) \$33,000,000 for fiscal year 2011.

**(2) Period of availability**

Such sums shall remain available until expended.

(Pub. L. 110–53, title XV, § 1518, Aug. 3, 2007, 121 Stat. 441.)

**Editorial Notes****REFERENCES IN TEXT**

This Act, referred to in subsec. (c)(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.

Section 114(w) of title 49, referred to in subsec. (e)(1), was redesignated section 114(v) of title 49 by Pub. L. 115–254, div. K, § 1904(b)(1)(I), Oct. 5, 2018, 132 Stat. 3545.

**§ 1169. Railroad tank car security testing****(a) Railroad tank car vulnerability assessment****(1) Assessment**

The Secretary shall assess the likely methods of a deliberate terrorist attack against a railroad tank car used to transport toxic-inhalation-hazard materials, and for each method assessed, the degree to which it may be successful in causing death, injury, or serious adverse effects to human health, the environment, critical infrastructure, national security, the national economy, or public welfare.

**(2) Threats**

In carrying out paragraph (1), the Secretary shall consider the most current threat information as to likely methods of a successful terrorist attack on a railroad tank car transporting toxic-inhalation-hazard materials, and may consider the following:

- (A) Explosive devices placed along the tracks or attached to a railroad tank car.
- (B) The use of missiles, grenades, rockets, mortars, or other high-caliber weapons against a railroad tank car.

**(3) Physical testing**

In developing the assessment required under paragraph (1), the Secretary shall conduct

physical testing of the vulnerability of railroad tank cars used to transport toxic-inhalation-hazard materials to different methods of a deliberate attack, using technical information and criteria to evaluate the structural integrity of railroad tank cars.

**(4) Report**

Not later than 30 days after the completion of the assessment under paragraph (1), the Secretary shall provide to the appropriate congressional committees a report, in the appropriate format, on such assessment.

**(b) Railroad tank car dispersion modeling****(1) In general**

The Secretary, acting through the National Infrastructure Simulation and Analysis Center, shall conduct an air dispersion modeling analysis of release scenarios of toxic-inhalation-hazard materials resulting from a terrorist attack on a loaded railroad tank car carrying such materials in urban and rural environments.

**(2) Considerations**

The analysis under this subsection shall take into account the following considerations:

(A) The most likely means of attack and the resulting dispersal rate.

(B) Different times of day, to account for differences in cloud coverage and other atmospheric conditions in the environment being modeled.

(C) Differences in population size and density.

(D) Historically accurate wind speeds, temperatures, and wind directions.

(E) Differences in dispersal rates or other relevant factors related to whether a railroad tank car is in motion or stationary.

(F) Emergency response procedures by local officials.

(G) Any other considerations the Secretary believes would develop an accurate, plausible dispersion model for toxic-inhalation-hazard materials released from a railroad tank car as a result of a terrorist act.

**(3) Consultation**

In conducting the dispersion modeling under paragraph (1), the Secretary shall consult with the Secretary of Transportation, hazardous materials experts, railroad carriers, nonprofit employee labor organizations representing railroad employees, appropriate State, local, and tribal officials, and other Federal agencies, as appropriate.

**(4) Information sharing**

Upon completion of the analysis required under paragraph (1), the Secretary shall share the information developed with the appropriate stakeholders, given appropriate information protection provisions as may be required by the Secretary.

**(5) Report**

Not later than 30 days after completion of all dispersion analyses under paragraph (1), the Secretary shall submit to the appropriate congressional committees a report detailing

<sup>1</sup> See References in Text note below.

the Secretary's conclusions and findings in an appropriate format.

(Pub. L. 110-53, title XV, § 1519, Aug. 3, 2007, 121 Stat. 443.)

### **§ 1170. Security background checks of covered individuals**

#### **(a) Definitions**

In this section, the following definitions apply:

##### **(1) Security background check**

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

(A) relevant criminal history databases;

(B) in the case of an alien (as defined in the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)),<sup>1</sup> the relevant databases to determine the status of the alien under the immigration laws of the United States; and

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

##### **(2) Covered individual**

The term “covered individual” means an employee of a railroad carrier or a contractor or subcontractor of a railroad carrier.

#### **(b) Guidance**

(1) Any guidance, recommendations, suggested action items, or any other widely disseminated voluntary action items issued by the Secretary to a railroad carrier or a contractor or subcontractor of a railroad carrier 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) Within 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 railroad carrier or a contractor or subcontractor of a railroad carrier relating to performing a security background check of a covered individual shall be updated in compliance with paragraph (1).

(3) If a railroad carrier or a contractor or subcontractor of a railroad carrier 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 railroad carrier or contractor or subcontractor of a railroad carrier to perform a security background check of a cov-

ered individual, then the Secretary shall prohibit the railroad carrier or contractor or subcontractor of a railroad carrier from making an adverse employment decision, including removal or suspension of the covered individual, due to such rule, regulation, or directive with respect to a covered individual unless the railroad carrier or contractor or subcontractor of a railroad carrier determines that the covered individual—

(1) has been convicted of, has been found not guilty by reason of insanity, or is under want, warrant, or 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 railroad carrier or contractor or subcontractor of a railroad carrier 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 railroad carrier or contractor or subcontractor of a railroad carrier performs the security background check.

#### **(d) Redress process**

If the Secretary issues a rule, regulation, or directive requiring a railroad carrier or contractor or subcontractor of a railroad carrier 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 employees at ports, as required by section 70105(c) of title 46; and

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

#### **(e) False statements**

A railroad carrier or a contractor or subcontractor of a railroad carrier 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 railroad carrier or a contractor or subcontractor of a railroad carrier 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, di-

<sup>1</sup> So in original. Another closing parenthesis probably should precede the comma.