

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.

§ 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 at-

mospheric 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 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)),¹ 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.

¹ So in original. Another closing parenthesis probably should precede the comma.

(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 covered 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 warrant, 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, 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 railroad carrier's or a contractor or subcontractor of a railroad carrier's rights or responsibilities to make adverse employment decisions permitted by other Federal, State, or local laws. Nothing in the section shall be construed to abridge rights and responsibilities of covered individuals, a railroad carrier, or a contractor or subcontractor of a railroad carrier, under any other Federal, State, or local laws or under any 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 XV, §1522, Aug. 3, 2007, 121 Stat. 448.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (a)(1)(B), is act June 27, 1952, ch. 477, 66 Stat.

163, which is classified principally to chapter 12 (§1101 et seq.) of Title 8, Aliens and Nationality. The term “alien” is defined in section 101(a)(3) of the Act which is classified to section 1101(a)(3) of Title 8. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

§ 1171. International railroad security program

(a) In general

(1) The Secretary shall develop a system to detect both undeclared passengers and contraband, with a primary focus on the detection of nuclear and radiological materials entering the United States by railroad.

(2) SYSTEM REQUIREMENTS.—In developing the system under paragraph (1), the Secretary may, in consultation with the Domestic Nuclear Detection Office, Customs and Border Protection, and the Transportation Security Administration—

(A) deploy radiation detection equipment and nonintrusive imaging equipment at locations where railroad shipments cross an international border to enter the United States;

(B) consider the integration of radiation detection technologies with other nonintrusive inspection technologies where feasible;

(C) ensure appropriate training, operations, and response protocols are established for Federal, State, and local personnel;

(D) implement alternative procedures to check railroad shipments at locations where the deployment of nonintrusive inspection imaging equipment is determined to not be practicable;

(E) ensure, to the extent practicable, that such technologies deployed can detect terrorists or weapons, including weapons of mass destruction; and

(F) take other actions, as appropriate, to develop the system.

(b) Additional information

The Secretary shall—

(1) identify and seek the submission of additional data elements for improved high-risk targeting related to the movement of cargo through the international supply chain utilizing a railroad prior to importation into the United States;

(2) utilize data collected and maintained by the Secretary of Transportation in the targeting of high-risk cargo identified under paragraph (1); and

(3) analyze the data provided in this subsection to identify high-risk cargo for inspection.

(c) Report to Congress

Not later than September 30, 2008, the Secretary shall transmit to the appropriate congressional committees a report that describes the progress of the system being developed under subsection (a).

(d) Definitions

In this section:

(1) International supply chain

The term “international supply chain” means the end-to-end process for shipping

goods to or from the United States, beginning at the point of origin (including manufacturer, supplier, or vendor) through a point of distribution to the destination.

(2) Radiation detection equipment

The term “radiation detection equipment” means any technology that is capable of detecting or identifying nuclear and radiological material or nuclear and radiological explosive devices.

(3) Inspection

The term “inspection” means the comprehensive process used by Customs and Border Protection to assess goods entering the United States to appraise them for duty purposes, to detect the presence of restricted or prohibited items, and to ensure compliance with all applicable laws.

(Pub. L. 110–53, title XV, §1524, Aug. 3, 2007, 121 Stat. 451.)

§ 1172. Railroad security enhancements; Model State legislation

Not later than November 2, 2007, the Secretary of Transportation shall develop and make available to States model legislation to address the problem of entities that claim to be railroad carriers in order to establish and run a police force when the entities do not in fact provide railroad transportation. In developing the model State legislation the Secretary shall solicit the input of the States, railroad carriers, and railroad carrier employees. The Secretary shall review and, if necessary, revise such model State legislation periodically.

(Pub. L. 110–53, title XV, §1526(b), Aug. 3, 2007, 121 Stat. 452.)

PART C—OVER-THE-ROAD BUS AND TRUCKING SECURITY

§ 1181. Over-the-road bus security assessments and plans

(a) In general

Not later than 18 months after August 3, 2007, the Secretary shall issue regulations that—

(1) require each over-the-road bus operator assigned to a high-risk tier under this section—

(A) to conduct a vulnerability assessment in accordance with subsections (c) and (d); and

(B) to prepare, submit to the Secretary for approval, and implement a security plan in accordance with subsection (e); and

(2) establish standards and guidelines for developing and implementing the vulnerability assessments and security plans for carriers assigned to high-risk tiers consistent with this section.

(b) Non high-risk programs

The Secretary may establish a security program for over-the-road bus operators not assigned to a high-risk tier, including—

(1) guidance for such operators in conducting vulnerability assessments and preparing and implementing security plans, as determined appropriate by the Secretary; and