

REVISION OF PORT SECURITY PLANNING GUIDE

Pub. L. 107-295, title I, §113, Nov. 25, 2002, 116 Stat. 2093, provided that: “The Secretary of Transportation, acting through the Maritime Administration and after consultation with the National Maritime Security Advisory Committee and the Coast Guard, shall publish a revised version of the document entitled ‘Port Security: A National Planning Guide’, incorporating the requirements prescribed under chapter 701 of title 46, United States Code, as amended by this Act, within 3 years after the date of enactment of this Act [Nov. 25, 2002], and make that revised document available on the Internet.”

§ 70104. Transportation security incident response

(a) FACILITY AND VESSEL RESPONSE PLANS.—The Secretary shall—

(1) establish security incident response plans for vessels and facilities that may be involved in a transportation security incident; and

(2) make those plans available to the Administrator of the Federal Emergency Management Agency for inclusion in the Administrator’s response plan for United States ports and waterways.

(b) CONTENTS.—Response plans developed under subsection (a) shall provide a comprehensive response to an emergency, including notifying and coordinating with local, State, and Federal authorities, including the Administrator of the Federal Emergency Management Agency, securing the facility or vessel, and evacuating facility and vessel personnel.

(c) INCLUSION IN SECURITY PLAN.—A response plan required under this subsection for a vessel or facility may be included in the security plan prepared under section 70103(c).

(Added Pub. L. 107-295, title I, §102(a), Nov. 25, 2002, 116 Stat. 2072; amended Pub. L. 109-295, title VI, §612(c), Oct. 4, 2006, 120 Stat. 1410.)

CHANGE OF NAME

“Administrator of the Federal Emergency Management Agency” and “Administrator’s” substituted for “Director of the Federal Emergency Management Agency” and “Director’s”, respectively, on authority of section 612(c) of Pub. L. 109-295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109-295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109-295, set out as a note under section 313 of Title 6.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

DEADLINE

Pub. L. 107-295, title I, §102(c), Nov. 25, 2002, 116 Stat. 2084, provided that: “The Secretary shall establish the plans required under section 70104(a)(1) of title 46, United States Code, as enacted by this Act, before April 1, 2003.”

§ 70105. Transportation security cards

(a) PROHIBITION.—(1) The Secretary shall prescribe regulations to prevent an individual from entering an area of a vessel or facility that is designated as a secure area by the Secretary for purposes of a security plan for the vessel or facility that is approved by the Secretary under section 70103 of this title unless the individual—

(A) holds a transportation security card issued under this section and is authorized to be in the area in accordance with the plan; or

(B) is accompanied by another individual who holds a transportation security card issued under this section and is authorized to be in the area in accordance with the plan.

(2) A person shall not admit an individual into such a secure area unless the entry of the individual into the area is in compliance with paragraph (1).

(b) ISSUANCE OF CARDS.—(1) The Secretary shall issue a biometric transportation security card to an individual specified in paragraph (2), unless the Secretary determines under subsection (c) that the individual poses a security risk warranting denial of the card.

(2) This subsection applies to—

(A) an individual allowed unescorted access to a secure area designated in a vessel or facility security plan approved under section 70103 of this title;

(B) an individual issued a license, certificate of registry, or merchant mariners document under part E of subtitle II of this title allowed unescorted access to a secure area designated in a vessel security plan approved under section 70103 of this title;

(C) a vessel pilot;

(D) an individual engaged on a towing vessel that pushes, pulls, or hauls alongside a tank vessel allowed unescorted access to a secure area designated in a vessel security plan approved under section 70103 of this title;

(E) an individual with access to security sensitive information as determined by the Secretary;

(F) other individuals engaged in port security activities as determined by the Secretary;

(G) a member of the Armed Forces who—

(i) is undergoing separation, discharge, or release from the Armed Forces under honorable conditions;

(ii) applies for a transportation security card; and

(iii) is otherwise eligible for such a card; and

(H) other individuals as determined appropriate by the Secretary including individuals employed at a port not otherwise covered by this subsection.

(3) The Secretary may extend for up to one year the expiration of a biometric transportation security card required by this section to align the expiration with the expiration of a li-

cense, certificate of registry, or merchant mariner document required under chapter 71 or 73.

(c) DETERMINATION OF TERRORISM SECURITY RISK.—

(1) DISQUALIFICATIONS.—

(A) PERMANENT DISQUALIFYING CRIMINAL OFFENSES.—Except as provided under paragraph (2), an individual is permanently disqualified from being issued a biometric transportation security card under subsection (b) if the individual has been convicted, or found not guilty by reason of insanity, in a civilian or military jurisdiction of any of the following felonies:

(i) Espionage or conspiracy to commit espionage.

(ii) Sedition or conspiracy to commit sedition.

(iii) Treason or conspiracy to commit treason.

(iv) A Federal crime of terrorism (as defined in section 2332b(g) of title 18), a crime under a comparable State law, or conspiracy to commit such crime.

(v) A crime involving a transportation security incident.

(vi) Improper transportation of a hazardous material in violation of section 5104(b) of title 49, or a comparable State law.

(vii) Unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipment, transportation, delivery, import, export, or storage of, or dealing in, an explosive or explosive device. In this clause, an explosive or explosive device includes—

(I) an explosive (as defined in sections 232(5) and 844(j) of title 18);

(II) explosive materials (as defined in subsections (c) through (f) of section 841 of title 18); and

(III) a destructive device (as defined in 921(a)(4) of title 18 or section 5845(f) of the Internal Revenue Code of 1986).

(viii) Murder.

(ix) Making any threat, or maliciously conveying false information knowing the same to be false, concerning the deliverance, placement, or detonation of an explosive or other lethal device in or against a place of public use, a State or other government facility, a public transportation system, or an infrastructure facility.

(x) A violation of chapter 96 of title 18, popularly known as the Racketeer Influenced and Corrupt Organizations Act, or a comparable State law, if one of the predicate acts found by a jury or admitted by the defendant consists of one of the crimes listed in this subparagraph.

(xi) Attempt to commit any of the crimes listed in clauses (i) through (iv).

(xii) Conspiracy or attempt to commit any of the crimes described in clauses (v) through (x).

(B) INTERIM DISQUALIFYING CRIMINAL OFFENSES.—Except as provided under paragraph (2), an individual is disqualified from being issued a biometric transportation security card under subsection (b) if the indi-

vidual has been convicted, or found not guilty by reason of insanity, during the 7-year period ending on the date on which the individual applies for such card, or was released from incarceration during the 5-year period ending on the date on which the individual applies for such card, of any of the following felonies:

(i) Unlawful possession, use, sale, manufacture, purchase, distribution, receipt, transfer, shipment, transportation, delivery, import, export, or storage of, or dealing in, a firearm or other weapon. In this clause, a firearm or other weapon includes—

(I) firearms (as defined in section 921(a)(3) of title 18 or section 5845(a) of the Internal Revenue Code of 1986); and

(II) items contained on the U.S. Munitions Import List under section 447.21 of title 27, Code of Federal Regulations.

(ii) Extortion.

(iii) Dishonesty, fraud, or misrepresentation, including identity fraud and money laundering if the money laundering is related to a crime described in this subparagraph or subparagraph (A). In this clause, welfare fraud and passing bad checks do not constitute dishonesty, fraud, or misrepresentation.

(iv) Bribery.

(v) Smuggling.

(vi) Immigration violations.

(vii) Distribution of, possession with intent to distribute, or importation of a controlled substance.

(viii) Arson.

(ix) Kidnaping or hostage taking.

(x) Rape or aggravated sexual abuse.

(xi) Assault with intent to kill.

(xii) Robbery.

(xiii) Conspiracy or attempt to commit any of the crimes listed in this subparagraph.

(xiv) Fraudulent entry into a seaport in violation of section 1036 of title 18, or a comparable State law.

(xv) A violation of the chapter 96 of title 18 (popularly known as the Racketeer Influenced and Corrupt Organizations Act) or a comparable State law, other than any of the violations listed in subparagraph (A)(x).

(C) UNDER WANT, WARRANT, OR INDICTMENT.—An applicant who is wanted, or under indictment, in any civilian or military jurisdiction for a felony listed in paragraph (1)(A), is disqualified from being issued a biometric transportation security card under subsection (b) until the want or warrant is released or the indictment is dismissed.

(D) OTHER POTENTIAL DISQUALIFICATIONS.—Except as provided under subparagraphs (A) through (C), an individual may not be denied a transportation security card under subsection (b) unless the Secretary determines that individual—

(i) has been convicted within the preceding 7-year period of a felony or found not guilty by reason of insanity of a felony—

(I) that the Secretary believes could cause the individual to be a terrorism security risk to the United States; or

(II) for causing a severe transportation security incident;

(ii) has been released from incarceration within the preceding 5-year period for committing a felony described in clause (i);

(iii) may be denied admission to the United States or removed from the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

(iv) otherwise poses a terrorism security risk to the United States.

(E) MODIFICATION OF LISTED OFFENSES.—The Secretary may, by rulemaking, add to or modify the list of disqualifying crimes described in paragraph (1)(B).

(2) The Secretary shall prescribe regulations that establish a waiver process for issuing a transportation security card to an individual found to be otherwise ineligible for such a card under subparagraph (A), (B), or (D) of paragraph (1). In deciding to issue a card to such an individual, the Secretary shall—

(A) give consideration to the circumstances of any disqualifying act or offense, restitution made by the individual, Federal and State mitigation remedies, and other factors from which it may be concluded that the individual does not pose a terrorism risk warranting denial of the card; and

(B) issue a waiver to an individual without regard to whether that individual would otherwise be disqualified if the individual's employer establishes alternate security arrangements acceptable to the Secretary.

(3) DENIAL OF WAIVER REVIEW.—

(A) IN GENERAL.—The Secretary shall establish a review process before an administrative law judge for individuals denied a waiver under paragraph (2).

(B) SCOPE OF REVIEW.—In conducting a review under the process established pursuant to subparagraph (A), the administrative law judge shall be governed by the standards of section 706 of title 5. The substantial evidence standard in section 706(2)(E) of title 5 shall apply whether or not there has been an agency hearing. The judge shall review all facts on the record of the agency.

(C) CLASSIFIED EVIDENCE.—The Secretary, in consultation with the Director of National Intelligence, shall issue regulations to establish procedures by which the Secretary, as part of a review conducted under this paragraph, may provide to the individual adversely affected by the determination an unclassified summary of classified evidence upon which the denial of a waiver by the Secretary was based.

(D) REVIEW OF CLASSIFIED EVIDENCE BY ADMINISTRATIVE LAW JUDGE.—

(i) REVIEW.—As part of a review conducted under this section, if the decision of the Secretary was based on classified information (as defined in section 1(a) of the Classified Information Procedures Act (18

U.S.C. App.)), such information may be submitted by the Secretary to the reviewing administrative law judge, pursuant to appropriate security procedures, and shall be reviewed by the administrative law judge *ex parte* and *in camera*.

(ii) SECURITY CLEARANCES.—Pursuant to existing procedures and requirements, the Secretary, in coordination (as necessary) with the heads of other affected departments or agencies, shall ensure that administrative law judges reviewing negative waiver decisions of the Secretary under this paragraph possess security clearances appropriate for such review.

(iii) UNCLASSIFIED SUMMARIES OF CLASSIFIED EVIDENCE.—As part of a review conducted under this paragraph and upon the request of the individual adversely affected by the decision of the Secretary not to grant a waiver, the Secretary shall provide to the individual and reviewing administrative law judge, consistent with the procedures established under clause (i), an unclassified summary of any classified information upon which the decision of the Secretary was based.

(E) NEW EVIDENCE.—The Secretary shall establish a process under which an individual may submit a new request for a waiver, notwithstanding confirmation by the administrative law judge of the Secretary's initial denial of the waiver, if the request is supported by substantial evidence that was not available to the Secretary at the time the initial waiver request was denied.

(4) The Secretary shall establish an appeals process under this section for individuals found to be ineligible for a transportation security card that includes notice and an opportunity for a hearing.

(5) Upon application, the Secretary may issue a transportation security card to an individual if the Secretary has previously determined, under section 5103a of title 49, that the individual does not pose a security risk.

(d) BACKGROUND RECORDS CHECK.—(1) On request of the Secretary, the Attorney General shall—

(A) conduct a background records check regarding the individual; and

(B) upon completing the background records check, notify the Secretary of the completion and results of the background records check.

(2) A background records check regarding an individual under this subsection shall consist of the following:

(A) A check of the relevant criminal history databases.

(B) In the case of an alien, a check of the relevant databases to determine the status of the alien under the immigration laws of the United States.

(C) As appropriate, a check of the relevant international databases or other appropriate means.

(D) Review of any other national security-related information or database identified by the Attorney General for purposes of such a background records check.

(e) RESTRICTIONS ON USE AND MAINTENANCE OF INFORMATION.—(1) Information obtained by the Attorney General or the Secretary under this section may not be made available to the public, including the individual's employer.

(2) Any information constituting grounds for denial of a transportation security card under this section shall be maintained confidentially by the Secretary and may be used only for making determinations under this section. The Secretary may share any such information with other Federal law enforcement agencies. An individual's employer may only be informed of whether or not the individual has been issued the card under this section.

(f) DEFINITION.—In this section, the term "alien" has the meaning given the term in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)).

(g) APPLICATIONS FOR MERCHANT MARINERS' DOCUMENTS.—The Assistant Secretary of Homeland Security for the Transportation Security Administration and the Commandant of the Coast Guard shall concurrently process an application from an individual for merchant mariner's documents under chapter 73 of title 46, United States Code, and an application from that individual for a transportation security card under this section.

(h) FEES.—The Secretary shall ensure that the fees charged each individual applying for a transportation security card under this section who has passed a background check under section 5103a(d) of title 49, United States Code, and who has a current hazardous materials endorsement in accordance with section 1572 of title 49, Code of Federal Regulations, and each individual with a current merchant mariners' document who has passed a criminal background check under section 7302(d)—

(1) are for costs associated with the issuance, production, and management of the transportation security card, as determined by the Secretary; and

(2) do not include costs associated with performing a background check for that individual, except for any incremental costs in the event that the scope of such background checks diverge.

(i) IMPLEMENTATION SCHEDULE.—In implementing the transportation security card program under this section, the Secretary shall—

(1) establish a priority for each United States port based on risk, including vulnerabilities assessed under section 70102; and

(2) implement the program, based upon such risk and other factors as determined by the Secretary, at all facilities regulated under this chapter at—

(A) the 10 United States ports that the Secretary designates top priority not later than July 1, 2007;

(B) the 40 United States ports that are next in order of priority to the ports described in subparagraph (A) not later than January 1, 2008; and

(C) all other United States ports not later than January 1, 2009.

(j) PRIORITY PROCESSING FOR SEPARATING SERVICE MEMBERS.—(1) The Secretary and the

Secretary of Defense shall enter into a memorandum of understanding regarding the submission and processing of applications for transportation security cards under subsection (b)(2)(G).

(2) Not later than 30 days after the submission of such an application by an individual who is eligible to submit such an application, the Secretary shall process and approve or deny the application unless an appeal or waiver applies or further application documentation is necessary.

(k) DEPLOYMENT OF TRANSPORTATION SECURITY CARD READERS.—

(1) PILOT PROGRAM.—

(A) IN GENERAL.—The Secretary shall conduct a pilot program to test the business processes, technology, and operational impacts required to deploy transportation security card readers at secure areas of the marine transportation system.

(B) GEOGRAPHIC LOCATIONS.—The pilot program shall take place at not fewer than 5 distinct geographic locations, to include vessels and facilities in a variety of environmental settings.

(C) COMMENCEMENT.—The pilot program shall commence not later than 180 days after the date of the enactment of the SAFE Port Act.

(2) CORRELATION WITH TRANSPORTATION SECURITY CARDS.—

(A) IN GENERAL.—The pilot program described in paragraph (1) shall be conducted concurrently with the issuance of the transportation security cards described in subsection (b) to ensure card and card reader interoperability.

(B) FEE.—An individual charged a fee for a transportation security card issued under this section may not be charged an additional fee if the Secretary determines different transportation security cards are needed based on the results of the pilot program described in paragraph (1) or for other reasons related to the technology requirements for the transportation security card program.

(3) REGULATIONS.—Not later than 2 years after the commencement of the pilot program under paragraph (1)(C), the Secretary, after a notice and comment period that includes at least 1 public hearing, shall promulgate final regulations that require the deployment of transportation security card readers that are consistent with the findings of the pilot program and build upon the regulations prescribed under subsection (a).

(4) REPORT.—Not later than 120 days before the promulgation of regulations under paragraph (3), the Secretary shall submit a comprehensive report to the appropriate congressional committees (as defined in section 2(1) of SAFE Port Act) that includes—

(A) the findings of the pilot program with respect to technical and operational impacts of implementing a transportation security card reader system;

(B) any actions that may be necessary to ensure that all vessels and facilities to which this section applies are able to comply with such regulations; and

(C) an analysis of the viability of equipment under the extreme weather conditions of the marine environment.

(l) PROGRESS REPORTS.—Not later than 6 months after the date of the enactment of the SAFE Port Act, and every 6 months thereafter until the requirements under this section are fully implemented, the Secretary shall submit a report on progress being made in implementing such requirements to the appropriate congressional committees (as defined in section 2(1) of the SAFE Port Act).

(m) LIMITATION.—The Secretary may not require the placement of an electronic reader for transportation security cards on a vessel unless—

(1) the vessel has more individuals on the crew that are required to have a transportation security card than the number the Secretary determines, by regulation issued under subsection (k)(3), warrants such a reader; or

(2) the Secretary determines that the vessel is at risk of a severe transportation security incident.

(n) The Secretary may use a secondary authentication system to verify the identification of individuals using transportation security cards when the individual's fingerprints are not able to be taken or read.

(o) ESCORTING.—The Secretary shall coordinate with owners and operators subject to this section to allow any individual who has a pending application for a transportation security card under this section or is waiting for reissuance of such card, including any individual whose card has been lost or stolen, and who needs to perform work in a secure or restricted area to have access to such area for that purpose through escorting of such individual in accordance with subsection (a)(1)(B) by another individual who holds a transportation security card. Nothing in this subsection shall be construed as requiring or compelling an owner or operator to provide escorted access.

(p) PROCESSING TIME.—The Secretary shall review an initial transportation security card application and respond to the applicant, as appropriate, including the mailing of an Initial Determination of Threat Assessment letter, within 30 days after receipt of the initial application. The Secretary shall, to the greatest extent practicable, review appeal and waiver requests submitted by a transportation security card applicant, and send a written decision or request for additional information required for the appeal or waiver determination, within 30 days after receipt of the applicant's appeal or waiver written request. For an applicant that is required to submit additional information for an appeal or waiver determination, the Secretary shall send a written decision, to the greatest extent practicable, within 30 days after receipt of all requested information.

(q) RECEIPT AND ACTIVATION OF TRANSPORTATION SECURITY CARD.—

(1) IN GENERAL.—Not later than one year after the date of publication of final regulations required by subsection (k)(3) of this section the Secretary shall develop a plan to permit the receipt and activation of transpor-

tation security cards at any vessel or facility described in subsection (a) of this section that desires to implement this capability. This plan shall comply, to the extent possible, with all appropriate requirements of Federal standards for personal identity verification and credential.

(2) LIMITATION.—The Secretary may not require any such vessel or facility to provide on-site activation capability.

(Added Pub. L. 107-295, title I, §102(a), Nov. 25, 2002, 116 Stat. 2073; amended Pub. L. 109-241, title III, §309, July 11, 2006, 120 Stat. 528; Pub. L. 109-347, title I, §104(a), (b), Oct. 13, 2006, 120 Stat. 1888, 1890; Pub. L. 110-53, title XIII, §1309(a), Aug. 3, 2007, 121 Stat. 397; Pub. L. 111-281, title VIII, §§809, 814, 818(a), 819, 823, title IX, §903(c)(2), Oct. 15, 2010, 124 Stat. 2995, 2999-3001, 3003, 3011; Pub. L. 111-330, §1(13), Dec. 22, 2010, 124 Stat. 3570; Pub. L. 114-120, title III, §306(a)(9), Feb. 8, 2016, 130 Stat. 54; Pub. L. 114-328, div. C, title XXXV, §3509(a), Dec. 23, 2016, 130 Stat. 2780.)

REFERENCES IN TEXT

Section 5845 of the Internal Revenue Code of 1986, referred to in subsec. (c)(1)(A)(vii)(III), (B)(i)(I), is classified to section 5845 of Title 26, Internal Revenue Code.

The Immigration and Nationality Act, referred to in subsec. (c)(1)(D)(iii), 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. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

The Classified Information Procedures Act, referred to in subsec. (c)(3)(D)(i), is Pub. L. 96-456, Oct. 15, 1980, 94 Stat. 2025, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

The date of the enactment of the SAFE Port Act, referred to in subsecs. (k)(1)(C) and (l), is the date of enactment of Pub. L. 109-347, which was approved Oct. 13, 2006.

Section 2(1) of the SAFE Port Act, referred to in subsecs. (k)(4) and (l), is classified to section 901(1) of Title 6, Domestic Security.

AMENDMENTS

2016—Subsec. (b)(2)(G), (H). Pub. L. 114-328, §3509(a)(1), added subpar. (G) and redesignated former subpar. (G) as (H).

Subsec. (c)(1)(B)(xv). Pub. L. 114-120, §306(a)(9)(A), substituted “18 (popularly)” for “18, popularly” and “Act” for “Act”.

Subsec. (c)(2). Pub. L. 114-120, §306(a)(9)(B), substituted “(D) of paragraph” for “(D) paragraph” in introductory provisions.

Subsec. (j). Pub. L. 114-328, §3509(a)(2), amended subsec. (j) generally. Prior to amendment, text read as follows: “Not later than January 1, 2009, the Secretary shall process and issue or deny each application for a transportation security card under this section for individuals with current and valid merchant mariners' documents on the date of the enactment of the SAFE Port Act.”

2010—Subsec. (b)(2)(B). Pub. L. 111-281, §809(1), inserted “allowed unescorted access to a secure area designated in a vessel security plan approved under section 70103 of this title” after “subtitle II of this title”.

Subsec. (b)(2)(D). Pub. L. 111-281, §809(2), inserted “allowed unescorted access to a secure area designated in a vessel security plan approved under section 70103 of this title” after “tank vessel”.

Subsec. (b)(3). Pub. L. 111-281, §819, as amended by Pub. L. 111-330, added par. (3).

Subsec. (c)(3)(C). Pub. L. 111-281, §903(c)(2), substituted “Director of National Intelligence” for “National Intelligence Director”.

Subsec. (n). Pub. L. 111-281, § 814, added subsec. (n).
Subsecs. (o), (p). Pub. L. 111-281, § 818(a), added subsecs. (o) and (p).

Subsec. (q). Pub. L. 111-281, § 823, added subsec. (q).
2007—Subsec. (b)(1). Pub. L. 110-53, § 1309(a)(1), substituted “determines under subsection (c) that the individual poses a security risk” for “decides that the individual poses a security risk under subsection (c)”.

Subsec. (c)(1). Pub. L. 110-53, § 1309(a)(2), inserted heading and amended text of par. (1) generally, substituting provisions relating to disqualifications, consisting of subpars. (A) to (E), for former provisions relating to when individuals may be denied transportation security cards, consisting of subpars. (A) to (D).

2006—Subsec. (b)(2)(G). Pub. L. 109-347, § 104(b)(1), added subpar. (G).

Subsec. (c)(2). Pub. L. 109-347, § 104(b)(2), inserted “subparagraph (A), (B), or (D)” before “paragraph (1)”.

Subsec. (c)(3) to (5). Pub. L. 109-241 added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Subsecs. (g) to (m). Pub. L. 109-347, § 104(a), added subsecs. (g) to (m).

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114-328, div. C, title XXXV, § 3509(c), Dec. 23, 2016, 130 Stat. 2781, provided that: “Section 70105(j)(2) of title 46, United States Code, as amended by this section, shall apply to applications for transportation security cards submitted after the expiration of the 180-day period beginning on the date of the enactment of this Act [Dec. 23, 2016].”

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-330, § 1, Dec. 22, 2010, 124 Stat. 3569, provided that the amendment made by section 1(13) is effective with the enactment of Pub. L. 111-281.

DEADLINE FOR MEMORANDUM

Pub. L. 114-328, div. C, title XXXV, § 3509(b), Dec. 23, 2016, 130 Stat. 2781, provided that: “The Secretary of the department in which the Coast Guard is operating and the Secretary of Defense shall enter into the memorandum of understanding required by the amendment made by subsection (a)(2) by not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016].”

DEADLINE FOR SECTION 70105 REGULATIONS

Pub. L. 109-347, title I, § 104(c), Oct. 13, 2006, 120 Stat. 1891, provided that: “Not later than January 1, 2007, the Secretary [of Homeland Security] shall promulgate final regulations implementing the requirements for issuing transportation security cards under section 70105 of title 46, United States Code. The regulations shall include a background check process to enable newly hired workers to begin working unless the Secretary makes an initial determination that the worker poses a security risk. Such process shall include a check against the consolidated and integrated terrorist watch list maintained by the Federal Government.”

TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL SECURITY CARD PROGRAM IMPROVEMENTS AND ASSESSMENT

Pub. L. 114-278, § 1, Dec. 16, 2016, 130 Stat. 1410, provided that:

“(a) CREDENTIAL IMPROVEMENTS.—

“(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act [Dec. 16, 2016], the Administrator of the Transportation Security Administration shall commence actions, consistent with section 70105 of title 46, United States Code, to improve the Transportation Security Administration’s process for vetting individuals with access to secure areas of vessels and maritime facilities.

“(2) REQUIRED ACTIONS.—The actions described under paragraph (1) shall include—

“(A) conducting a comprehensive risk analysis of security threat assessment procedures, including—

“(i) identifying those procedures that need additional internal controls; and

“(ii) identifying best practices for quality assurance at every stage of the security threat assessment;

“(B) implementing the additional internal controls and best practices identified under subparagraph (A);

“(C) improving fraud detection techniques, such as—

“(i) by establishing benchmarks and a process for electronic document validation;

“(ii) by requiring annual training for Trusted Agents; and

“(iii) by reviewing any security threat assessment-related information provided by Trusted Agents and incorporating any new threat information into updated guidance under subparagraph (D);

“(D) updating the guidance provided to Trusted Agents regarding the vetting process and related regulations;

“(E) finalizing a manual for Trusted Agents and adjudicators on the vetting process; and

“(F) establishing quality controls to ensure consistent procedures to review adjudication decisions and terrorism vetting decisions.

“(3) REPORT.—Not later than 2 years after the date of enactment of this Act, the Inspector General of the Department of Homeland Security shall submit a report to Congress that evaluates the implementation of the actions described in paragraph (1).

“(b) COMPREHENSIVE SECURITY ASSESSMENT OF THE TRANSPORTATION SECURITY CARD PROGRAM.—

“(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act [Dec. 16, 2016], the Secretary of Homeland Security shall commission an assessment of the effectiveness of the transportation security card program (referred to in this section as ‘Program’) required under section 70105 of title 46, United States Code, at enhancing security and reducing security risks for facilities and vessels regulated under chapter 701 of that title.

“(2) LOCATION.—The assessment commissioned under paragraph (1) shall be conducted by a research organization with significant experience in port or maritime security, such as—

“(A) a national laboratory;

“(B) a university-based center within the Science and Technology Directorate’s centers of excellence network; or

“(C) a qualified Federally-funded research and development center.

“(3) CONTENTS.—The assessment commissioned under paragraph (1) shall—

“(A) review the credentialing process by determining—

“(i) the appropriateness of vetting standards;

“(ii) whether the fee structure adequately reflects the current costs of vetting;

“(iii) whether there is unnecessary redundancy or duplication with other Federal- or State-issued transportation security credentials; and

“(iv) the appropriateness of having varied Federal and State threat assessments and access controls;

“(B) review the process for renewing applications for Transportation Worker Identification Credentials, including the number of days it takes to review application, appeal, and waiver requests for additional information; and

“(C) review the security value of the Program by—

“(i) evaluating the extent to which the Program, as implemented, addresses known or likely security risks in the maritime and port environments;

“(ii) evaluating the potential for a non-biometric credential alternative;

“(iii) identifying the technology, business process, and operational impacts of the use of the

transportation security card and transportation security card readers in the maritime and port environments;

“(iv) assessing the costs and benefits of the Program, as implemented; and

“(v) evaluating the extent to which the Secretary of Homeland Security has addressed the deficiencies in the Program identified by the Government Accountability Office and the Inspector General of the Department of Homeland Security before the date of enactment of this Act.

“(4) DEADLINES.—The assessment commissioned under paragraph (1) shall be completed not later than 1 year after the date on which the assessment is commissioned.

“(5) SUBMISSION TO CONGRESS.—Not later than 60 days after the date that the assessment is completed, the Secretary of Homeland Security shall submit to 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 the results of the assessment commissioned under this subsection.

“(c) CORRECTIVE ACTION PLAN; PROGRAM REFORMS.—If the assessment commissioned under subsection (b) identifies a deficiency in the effectiveness of the Program, the Secretary of Homeland Security, not later than 60 days after the date on which the assessment is completed, shall submit a corrective action plan to the Committee on Commerce, Science, and Transportation and the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Homeland Security and the Committee on Transportation and Infrastructure of the House of Representatives that—

“(1) responds to findings of the assessment;

“(2) includes an implementation plan with benchmarks;

“(3) may include programmatic reforms, revisions to regulations, or proposals for legislation; and

“(4) shall be considered in any rulemaking by the Department of Homeland Security relating to the Program.

“(d) INSPECTOR GENERAL REVIEW.—If a corrective action plan is submitted under subsection (c), the Inspector General of the Department of Homeland Security shall—

“(1) not later than 120 days after the date of such submission, review the extent to which such plan implements the requirements under subsection (c); and

“(2) not later than 18 months after the date of such submission, and annually thereafter for 3 years, submit a report to the congressional committees set forth in subsection (c) that describes the progress of the implementation of such plan.”

TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL PROCESS REFORM

Pub. L. 112–213, title VII, §709, Dec. 20, 2012, 126 Stat. 1581, provided that: “Not later than 270 days after the date of enactment of this Act [Dec. 20, 2012], the Secretary of Homeland Security shall reform the process for Transportation Worker Identification Credential enrollment, activation, issuance, and renewal to require, in total, not more than one in-person visit to a designated enrollment center except in cases in which there are extenuating circumstances, as determined by the Secretary, requiring more than one such in-person visit.”

PILOT PROGRAM FOR FINGERPRINTING OF MARITIME WORKERS

Pub. L. 111–281, title VIII, §808, Oct. 15, 2010, 124 Stat. 2994, provided that:

“(a) IN GENERAL.—Within 180 days after the date of enactment of this Act [Oct. 15, 2010], the Secretary of Homeland Security shall establish procedures provid-

ing for an individual who is required to be fingerprinted for purposes of obtaining a transportation security card under section 70105 of title 46, United States Code, the ability to be fingerprinted at any of not less than 20 facilities operated by or under contract with an agency of the Department of Homeland Security that fingerprints the public for the Department. These facilities shall be in addition to facilities established under section 70105 of title 46, United States Code.

“(b) EXPIRATION.—The requirement made by subsection (a) expires 1 year after the date the Secretary establishes the facilities required under that subsection.”

ASSESSMENT OF TRANSPORTATION SECURITY CARD ENROLLMENT SITES

Pub. L. 111–281, title VIII, §815, Oct. 15, 2010, 124 Stat. 2999, provided that:

“(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Oct. 15, 2010], the Secretary of the department in which the Coast Guard is operating shall prepare an assessment of the enrollment sites for transportation security cards issued under section 70105 of title 46, United States Code, including—

“(1) the feasibility of keeping those enrollment sites open after the date of enactment of this Act; and

“(2) the quality of customer service, including the periods of time individuals are kept on hold on the telephone, whether appointments are kept, and processing times for applications.

“(b) TIMELINES AND BENCHMARKS.—The Secretary shall develop timelines and benchmarks for implementing the findings of the assessment as the Secretary deems necessary.”

RECEIPT OF CARDS

Pub. L. 111–281, title VIII, §818(b), Oct. 15, 2010, 124 Stat. 3000, provided that:

“(1) REPORT BY COMPTROLLER GENERAL.—Within 180 days after the date of enactment of this Act [Oct. 15, 2010], the Comptroller General of the United States shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report assessing the costs, technical feasibility, and security measures associated with implementing procedures to deliver a transportation security card to an approved applicant’s place of residence in a secure manner or to allow an approved applicant to receive the card at an enrollment center of the individual’s choosing.

“(2) PROCESS FOR ALTERNATIVE MEANS OF RECEIPT.—If the Comptroller General finds in the final report under paragraph (1) that it is feasible for a transportation security card to be sent to an approved applicant’s place of residence in a secure manner, the Secretary shall, within 1 year after the date of issuance of the final report by the Comptroller General, implement a secure process to permit an individual approved for a transportation security card to receive the card at the applicant’s place of residence or at the enrollment center of the individual’s choosing. The individual shall be responsible for any additional cost associated with the secure delivery of a transportation security card.”

PROHIBITION OF ISSUANCE OF TRANSPORTATION SECURITY CARDS TO PERSONS CONVICTED OF CERTAIN FELONIES

Pub. L. 109–347, title I, §106, Oct. 13, 2006, 120 Stat. 1891, provided that: “The Secretary [of Homeland Security], in issuing a final rule pursuant to section 70105 of title 46, United States Code, shall provide for the disqualification of individuals who have been found guilty or have been found not guilty by reason of insanity of a felony, involving—

“(1) treason, or conspiracy to commit treason;

“(2) espionage, or conspiracy to commit espionage;

“(3) sedition, or conspiracy to commit sedition; or
“(4) a crime listed in chapter 113B of title 18, United States Code, a comparable State law, or conspiracy to commit such crime.”

§ 70106. Deployable, specialized forces

(a) ESTABLISHMENT.—

(1) IN GENERAL.—To enhance the domestic maritime security capability of the United States, the Secretary shall establish deployable specialized forces of varying capabilities as are needed to safeguard the public and protect vessels, harbors, ports, facilities, and cargo in waters subject to the jurisdiction of the United States from destruction, loss or injury from crime, or sabotage due to terrorist activity, and to respond to such activity in accordance with the transportation security plans developed under section 70103.

(2) ENHANCED TEAMS.—Such specialized forces shall include no less than two enhanced teams to serve as deployable forces capable of combating terrorism, engaging in interdiction, law enforcement, and advanced tactical maritime security operations to address known or potentially armed security threats (including non-compliant actors at sea), and participating in homeland security, homeland defense, and counterterrorism exercises in the maritime environment.

(b) MISSION.—The combined force of the specialized forces established under subsection (a) shall be trained, equipped, and capable of being deployed to—

- (1) deter, protect against, and rapidly respond to threats of maritime terrorism;
- (2) conduct maritime operations to protect against and disrupt illegal use, access to, or proliferation of weapons of mass destruction;
- (3) enforce moving or fixed safety or security zones established pursuant to law;
- (4) conduct high speed intercepts;
- (5) board, search, and seize any article or thing on or at, respectively, a vessel or facility found to present a risk to the vessel or facility, or to a port;
- (6) rapidly deploy to supplement United States armed forces domestically or overseas;
- (7) respond to criminal or terrorist acts so as to minimize, insofar as possible, the disruption caused by such acts;
- (8) assist with facility vulnerability assessments required under this chapter; and
- (9) carry out any other missions of the Coast Guard as are assigned to it by the Secretary.

(c) MINIMIZATION OF RESPONSE TIMES.—The enhanced teams established under subsection (a)(2) shall, to the extent practicable, be stationed in such a way so as to minimize the response time to maritime terrorist threats and potential or actual transportation security incidents.

(d) COORDINATION WITH OTHER AGENCIES.—To the maximum extent feasible, the combined force of the specialized forces established under subsection (a) shall coordinate their activities with other Federal, State, and local law enforcement and emergency response agencies.

(Added Pub. L. 107-295, title I, §102(a), Nov. 25, 2002, 116 Stat. 2074; amended Pub. L. 109-241, title III, §305, July 11, 2006, 120 Stat. 528; Pub. L.

111-281, title VIII, §804(a), Oct. 15, 2010, 124 Stat. 2990.)

AMENDMENTS

2010—Pub. L. 111-281 amended section generally. Prior to amendment, section related to maritime safety and security teams.

2006—Subsec. (b)(8). Pub. L. 109-241 substituted “any other missions of the Coast Guard” for “other security missions”.

COAST GUARD DETECTION CANINE TEAM PROGRAM EXPANSION

Pub. L. 111-281, title VIII, §805, Oct. 15, 2010, 124 Stat. 2991, provided that:

“(a) DEFINITIONS.—For purposes of this section:

“(1) CANINE DETECTION TEAM.—The term ‘detection canine team’ means a canine and a canine handler that are trained to detect narcotics or explosives, or other threats as defined by the Secretary.

“(2) SECRETARY.—The term ‘Secretary’ means the Secretary of Homeland Security.

“(b) DETECTION CANINE TEAMS.—

“(1) INCREASED CAPACITY.—Not later than 1 year after the date of enactment of this Act [Oct. 15, 2010], and subject to the availability of appropriations, the Secretary shall—

“(A) begin to increase the number of detection canine teams certified by the Coast Guard for the purposes of maritime-related security by no fewer than 10 canine teams annually through fiscal year 2012; and

“(B) encourage owners and operators of port facilities, passenger cruise liners, oceangoing cargo vessels, and other vessels identified by the Secretary to strengthen security through the use of highly trained detection canine teams.

“(2) CANINE PROCUREMENT.—The Secretary, acting through the Commandant of the Coast Guard, shall procure detection canine teams as efficiently as possible, including, to the greatest extent possible, through increased domestic breeding, while meeting the performance needs and criteria established by the Commandant.

“(c) DEPLOYMENT.—The Secretary shall prioritize deployment of the additional canine teams to ports based on risk, consistent with the Security and Accountability For Every Port Act of 2006 (Public Law 109-347) [see Tables for classification].”

§ 70107. Grants

(a) IN GENERAL.—The Secretary shall establish a grant program for the allocation of funds based on risk to implement Area Maritime Transportation Security Plans and facility security plans among port authorities, facility operators, and State and local government agencies required to provide port security services and to train law enforcement personnel under section 70132 of this title. Before awarding a grant under the program, the Secretary shall provide for review and comment by the appropriate Federal Maritime Security Coordinators and the Maritime Administrator. In administering the grant program, the Secretary shall take into account national economic, energy, and strategic defense concerns based upon the most current risk assessments available.

(b) ELIGIBLE COSTS.—The following costs of funding the correction of Coast Guard identified vulnerabilities in port security and ensuring compliance with Area Maritime Transportation Security Plans and facility security plans are eligible to be funded:

- (1) Salary, benefits, overtime compensation, retirement contributions, and other costs of