

# **Section by Section Summary**

## **H.R. 1401, the Rail and Public Transportation Security Act of 2007**

### **Amendment in the Nature of a Substitute**

#### **Prior to Markup by the Committee on Homeland Security**

#### **March 13, 2007**

#### **Section 1 – Short Title and Table of Contents**

#### **Section 2 – Definitions**

This section defines “appropriate stakeholders” as providers of covered transportation, organizations representing providers of covered transportation, labor organizations, shippers of hazardous material, manufacturers of rail and transit cars, State departments of transportation, public safety officials, police and fire officials, and other relevant persons. The term “covered transportation” is defined as transportation provided by a railroad carrier, public transportation, or an over-the-road bus. The term “over-the-road bus” is defined as a bus characterized by an elevated passenger deck over a baggage compartment. The definitions of the terms “designated recipient,” “public transportation,” “railroad,” and “railroad carrier” all reference Title 49 of the U.S. Code. “Terrorism” is defined as having the same meaning as it does under §2 of the Homeland Security Act of 2002. The word “State” includes the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and other territories and possessions of the United States.

#### **Section 3 – National Strategy for Rail and Public Transportation Security**

This section requires the Secretary of Homeland Security (“the Secretary”), in consultation with the Secretary of Transportation, to develop a comprehensive modal plan (the National Strategy for Rail and Public Transportation Security) for covered transportation. The plan must:

- describe roles and responsibilities of all relevant parties
- identify and address gaps and unnecessary overlap in those roles and responsibilities
- describe methods for working with all relevant parties and for utilizing expertise possessed by the Department of Homeland Security (DHS), the Department of Transportation (DOT), and other agencies
- provide for expediting security clearance processes to facilitate intelligence and information sharing
- describe past DHS and DOT reviews of terrorists attacks, including lessons learned and incorporation of those lessons learned into current and future security efforts
- include a strategy and timeline for DHS, DOT, and other entities to research and develop new technology relevant to securing covered transportation

- set measurable goals and schedules for realizing those goals
- include a framework for resuming operations following an act of terrorism
- describe current and future outreach and public education initiatives
- develop a process for coordinating security strategies and plans between agencies

#### **Section 4 – Assignment of Providers of Covered Transportation to Risk-Based Tiers**

This section requires the Secretary to assign each provider of covered transportation to one of no fewer than three tiers based on risk. Within 60 days of assignment, the Secretary shall notify the provider of its assignment and the reasons for such assignment. At least two tiers established under this section shall be designated for high- and medium-risk providers.

#### **Section 5 – Rail and Public Transportation Assessments and Plans**

This section requires the Secretary, in consultation with the Secretary of Transportation, to issue regulations within one year of enactment that require high- and medium-risk providers to complete vulnerability assessments and implement security plans; establish standards and protocols for such assessments and plans; and establish a security program for providers of covered transportation not assigned to a high- or medium-risk tier. Within six months of issuance of the regulations, high- and medium-risk providers must complete and submit their vulnerability assessments and security plans to the Secretary for review and approval. Within twelve months of issuance of the regulations, the Secretary, in consultation with the Secretary of Transportation, must review and approve the vulnerability assessments and security plans, and periodically review security plans upon resubmission by providers (mandatory after three years, and every five years thereafter). During the review period, providers must implement interim security measures.

Vulnerability assessments and security plans conducted pursuant to this section may be built upon prior assessments and plans. The Secretary may endorse existing vulnerability assessments and security plans if the Secretary determines that these assessments and plans meet the requirements of this section. The Secretary may also allow coordinated assessments and plans where two or more providers have shared facilities (such as tunnels, bridges, stations).

Vulnerability assessments for high- or medium-risk providers must:

- identify and evaluate critical assets and infrastructure;
- identify threats to such assets and infrastructure;
- identify security weaknesses (including physical, passenger, cargo, electronic, communications, utilities, and others);
- identify redundant or back-up systems to ensure continued operation in the event of attack or other disruption; and
- incorporate threat information provided by DHS and other sources.

Security plans for high- and medium-risk providers must:

- identify a security coordinator with certain powers and duties;
- plan for periodic drills and exercises that include local law enforcement and emergency responders;
- list needed capital and operational improvements;
- describe evacuation and passenger communication plans;
- identify steps to be taken to coordinate response measures with state and local law enforcement and emergency responders;
- outline a strategy and timeline for conducting training of provider employees;
- describe enhanced security measures to be taken in periods of heightened security risk;
- outline plans for redundant and backup systems to ensure the continued operation of critical elements of the system in the event of an attack or other disruption;
- include plans for locating railroad cars transporting hazardous materials or nuclear waste; and
- include other actions or procedures deemed appropriate by DHS.

Moreover, this section requires the Secretary, in consultation with the Secretary of Transportation, to ensure that all security plans are consistent with the National Strategy for Rail and Public Transportation Security. DHS, by regulation, will also establish security performance requirements for all security plans; these requirements will be somewhat flexible, but get more strict for higher tier providers.

This section also provides for administrative, civil, and criminal penalties for failure to comply with this Act or its pursuant regulations. The Secretary may impose an administrative penalty of not more than \$100,000 for failure to comply with this section, although there is opportunity for redress via a notice requirement and opportunity for a hearing. Civil penalties include injunctive relief and a fine of not more than \$75,000 for each day on which a violation occurs or failure to comply continues. Intentional violation of this section may incur criminal penalties of not more than \$50,000 for each day of violation and/or imprisonment for not more than two years.

This section requires the Secretary to submit a report to the appropriate congressional committees, within 180 days of enactment, regarding the feasibility of name-based checks against terror watch lists for all Amtrak passengers.

Nothing in this section shall be construed to interfere with disclosure exemptions under 5 U.S.C. §525 or obligations of providers to disclose information to employees, labor organizations, or other government agencies; nor shall it be construed to authorize the withholding of information from Congress, or to affect any authority or obligation of a Federal agency to disclose independently furnished information. This section does not apply to any ferry governed by Title 46, chapter 701 of the U.S. Code.

### **Section 6 – Information Sharing Plan**

This section requires the Secretary to develop a plan to improve tactical and strategic information sharing with respect to threats and vulnerabilities to covered transportation for dissemination to

Federal, State, and local agencies, tribal governments, and appropriate stakeholders within 90 days of enactment. The plan must describe how TSA intelligence analysts coordinate with intelligence analysts at other agencies and it must include deadlines for any organizational changes within the Department and resource needs for executing the plan. Additionally, the Secretary is required to disseminate information at the unclassified level to the greatest extent possible. If information must be disseminated at the classified level, the Secretary is required to assist the appropriate stakeholders in attaining the proper security clearances. This section also requires the Secretary to conduct an annual survey measuring the level of satisfaction among recipients of disseminated information, and requires the Secretary to submit annual reports on the number, classification, recipient, and subject of all intelligence products issued under the plan.

### **Section 7 – Rail Security Assistance**

This section establishes a grant program for improving the rail security, and specifies permissible uses for grant funding, including perimeter protection systems, tunnel protection systems, evacuation improvements, inspection technology, communications equipment, chemical/biological/radiological or explosive detection, canine patrols, surveillance equipment, cargo or passenger screening equipment, redundant operations control systems, and training exercises, among others.

However, this section also orders the Secretary to prioritize the permissible uses for grant recipients, and to encourage grant recipients to use small, minority-owned, women-owned, and disadvantaged businesses as contractors to the extent practicable. This section allows the Secretary to issue multi-year grants for not longer than a 5-year period and requires the Secretary to issue a letter of intent to grantees committing appropriations under the program and outlining a reimbursement schedule for the grantee project(s).

Entities eligible for grants under this section include State, local, and tribal governments or agencies, as well as infrastructure owners like railroad carriers and private or public-private entities. Projects eligible for grants must use grant funds to further a rail security plan developed, submitted to, and approved by the Secretary under §5 of this Act.

This section provides for an 80% (Federal share) to 20% (grantee share) funding breakdown, except that the Federal share for projects with a net cost of \$25,000 or less is 100%. There is a similar (up to) 100% funding exception for urgent threats to national security at the discretion of the Secretary. This section also requires grantees to submit annual reports to DHS and DOT describing the use of grant funds, and authorizes \$600 million to be appropriated for the grant program for fiscal years 2008–2011.

### **Section 8 – Public Transportation Security Assistance**

This section establishes a grant program for improving the security of public transportation systems and specifies certain uses for the funding, including perimeter protection systems, tunnel protection systems, evacuation improvements, inspection technology, communications

equipment, chemical/biological/radiological or explosive detection, canine patrols, surveillance equipment, cargo or passenger screening equipment, redundant operations control systems, public awareness campaigns, and training exercises, among others. However, this section also orders the Secretary to prioritize the permissible uses for grant recipients, and to encourage grant recipients to use small, minority-owned, women-owned, and disadvantaged businesses as contractors to the extent practicable.

Entities eligible for grants under this section include public transportation agencies and State, local, and tribal entities that provide security or counterterrorism-related services to public transportation. Projects eligible for grants must use grant funds to further a public transportation security plan developed, submitted to, and approved by the Secretary under §5 of this Act. This section authorizes appropriations for the grant program for fiscal years 2008 (\$775 million), 2009 (\$825 million), 2010 (\$880 million), and 2011 (\$880 million).

### **Section 9 – Over-the-Road Bus Security Assistance**

This section establishes a grant program for improving the security of over-the-road bus systems, and specifies certain uses for grant funding, including constructing and modifying terminals, buses, and garages to enhance security; protecting drivers; acquiring, upgrading, installing, or operating equipment, software, or other accessorial services for collection and exchange of passenger and driver information; video surveillance in buses and at terminals; emergency communications; passenger screening programs; public awareness campaigns; security training; and chemical/biological/radiological or explosive detection, among other things. However, this section also orders the Secretary to prioritize the permissible uses for grant recipients, and to encourage grant recipients to use small, minority-owned, women-owned, and disadvantaged businesses as contractors to the extent practicable.

Entities eligible for grants under this section include over-the-road bus providers and State, local, and tribal entities that provide security or counterterrorism-related services to over-the-road bus providers. Projects eligible for grants must use grant funds to further an over-the-road bus security plan developed, submitted to, and approved by the Secretary under §5 of this Act. This section authorizes appropriations for fiscal years 2008 (\$12 million) and 2009–2011 (\$25 million each year).

### **Section 10 – Fire and Life Safety Improvements**

This section authorizes funds to be appropriated for the Secretary of Transportation to make grants to Amtrak, for execution of projects to make fire and life safety improvements to Amtrak tunnels along the Northeast Corridor for fiscal years 2008–2011. The tunnels receiving grant funds include six tunnels in New York City (total of \$25 million per year); the Baltimore & Potomac Tunnel and the Union Tunnel in Baltimore, Maryland (total of \$5 million per year); and the Union Station tunnels in Washington, D.C. (total of \$5 million per year). This section also directs the Secretary to encourage grant recipients to use small, minority-owned, women-owned, and disadvantaged businesses as contractors to the extent practicable.

## **Section 11 – Security Training Program**

This section requires the Secretary, in consultation the Secretary of Transportation, to develop security training programs for railroad and public transportation employees (including front-line employees) within 90 days of enactment. In conjunction with creation of these training programs, the Secretary must also issue detailed guidance for such training, to be developed in consultation with law enforcement, fire service, and terrorism experts, as well as labor and industry representatives, and to be reviewed and updated periodically to reflect new or changing security threats. The guidance must address certain specified elements, including determining the seriousness of a threat, crew and passenger communication and coordination, evacuation procedures (including procedures for individuals with disabilities), training exercises, recognition and reporting of suspicious circumstances, and operation and maintenance of security equipment and systems, among other things.

Within 60 days of issuance of this guidance, providers of covered transportation must develop security training programs and submit them to the Secretary for approval. The Secretary must then approve the plans within 60 days of submission, or return the plans for resubmission with appropriate revisions. This section requires providers to complete training of all workers covered under the program within one year of the Secretary’s approval.

This section does not apply to any ferry system governed by 45 U.S.C. §70103.

## **Section 12 – Security Exercises**

This section creates an exercise program to test and evaluate the ability of certain entities to prevent, prepare for, mitigate against, respond to, and recover from acts of terrorism (these entities include Federal, State, local, and tribal governments; employees and managers of providers; governmental and nongovernmental emergency responders; and law enforcement personnel, including rail and transit police, among others).

This section also requires the Secretary, in consultation with the Secretary of Transportation, to ensure that the program consolidates all existing security exercises for covered transportation that are administered by DHS and DOT, and that the exercises conducted are:

- tailored to the needs of particular facilities, including accommodations for individuals with disabilities;
- live (for the most at-risk facilities);
- coordinated with appropriate officials of the provider(s);
- consistent with current national emergency response and protection initiatives (NIMS, NRP, NIPP, NPG, etc.); and
- as realistic as possible.

This section provides minimum guidelines for evaluating and assessing such exercises, including remedial action in response to lessons learned, conducted through the remedial action management program of the Federal Emergency Management Agency (FEMA). The Department is required to assist State and local governments and providers in designing, implementing, and evaluating exercises that conform to this section. The program will also include exercises involving covered transportation at or near the international land borders of the United States, and in coordination with international stakeholders.

This section does not apply to any ferry system governed by 45 U.S.C. §70103.

### **Section 13 – Security Research and Development**

This section establishes a research and development program for rail and public transportation security. It requires the Secretary to ensure that DHS activities are coordinated with those undertaken by the National Academy of Sciences, the Department of Transportation, private laboratories, and other similar security-related entities and initiatives, and that it is consistent with the National Strategy for Rail and Public Transportation outlined in §3 of this Act.

This section outlines eligible projects for the program, including endeavors to reduce vulnerability of passenger trains, stations, and equipment to explosives and hazardous chemical, biological, or radioactive substances; testing of new emergency response and recovery techniques; improving freight railroad technology, including sealing, modifying, or inspecting tank cars, switches, and communication-based controls; and mitigating damages in the event of a cyberattack, among other things.

In implementing this program, the Secretary is required to consult with the Department's Chief Privacy Officer and the Officer for Civil Rights and Civil Liberties. This section requires the Chief Privacy Officer to conduct privacy impact assessments and directs the Officer for Civil Rights and Civil Liberties to conduct reviews, as appropriate, for research and development initiatives developed under this section.

Finally, this section authorizes appropriations for fiscal years 2008–2011, at \$50 million per year.

### **Section 14 – Whistleblower Protections**

This section provides whistleblower protections for employees of the Department of Homeland Security and Department of Transportation, contractors or subcontractors of those two agencies, and employees of providers of covered transportation. Specifically, no individual covered by this provision may be discharged, demoted, suspended, threatened, harassed, reprimanded, investigated, or in any other manner discriminated against—including by a denial, suspension, or revocation of a security clearance or by any other security access determination—if such discrimination is due, in whole or in part, to any lawful act done, perceived to have been done, or intended to be done on the part of the whistleblower.

This section provides whistleblowers with administrative and civil remedies for enforcing this section, the latter of which expressly omits an amount-in-controversy requirement and grants the right of trial by jury at the request of either party. Procedure in remedial actions is governed by 49 U.S.C. §42121(b). The statute of limitations for actions brought under this section is one year after the violation occurs. This section grants covered individuals prevailing in any action under this section the right to all relief necessary to make them whole, including damages, reinstatement with prior seniority status, special damages, and attorneys fees, among other things. Punitive damages may not exceed the greater of treble damages or \$5 million. This section also outlines procedure to be followed if the government asserts the “state secrets privilege” as a defense.

This section provides for criminal penalties in the event that any person employing a whistleblower commits an act prohibited by this section. Willful violation by terminating or retaliating against a claimant under this section will incur a fine under Title 18 of the U.S. Code, be imprisoned for not more than one year, or both.

Nothing in this section preempts or diminishes any similar safeguards under Federal or State law, nor does it diminish the rights, privileges, or remedies of any covered individual under 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. This section defines all terms of art as used in its provisions.

### **Section 15 – Increase in Surface Transportation Security Inspectors**

This section increases the current number of Surface Transportation Security Inspectors (STSIs) to 600 by 2010 and outlines certain qualifications for individuals hired as STSIs. This section also requires the Secretary, in coordination with the Secretary of Transportation, to develop a standard operating procedure clearly defining the relationship between the Department’s STSIs and DOT safety and security inspectors; State, local, and tribal law enforcement officials; and other law enforcement personnel, including railroad and transit police. Finally, this section authorizes for appropriation such sums as may be necessary to carry out its provisions.

### **Section 16 – National Domestic Preparedness Consortium**

This section establishes the National Domestic Preparedness Consortium within the Department of Homeland Security to identify, develop, test, and deliver training to State and local emergency responders; provide onsite and mobile training at the performance, management, and planning levels; and facilitate the delivery of awareness level training. This consortium will be comprised of the Center for Domestic Preparedness and several specified research and testing centers at universities and institutions contributing to different areas of domestic preparedness. Lastly, this section authorizes for appropriation such sums as may be necessary to carry out its provisions, with certain qualifications.

### **Section 17 – Authorization of Visible Intermodal Protection Response Teams**

This section authorizes TSA to develop Visible Intermodal Protection Response (VIPR) teams, designed to augment security for any mode of transportation at any location within the United States. The Secretary has the discretion to determine, consistent with ongoing security threats, when a VIPR team should be deployed and for what duration (in coordination with local law enforcement) and may use any asset of the Department, including Federal air marshals, STSIs, canine detection teams, and advanced screening technology.

### **Section 18 – National Transportation Security Center of Excellence**

The section creates a National Transportation Security Center of Excellence at an institution of higher education to conduct research and to develop and provide professional security training. This section lists several criteria for designating the host institution for the Center and specifies certain qualifications for universities or institutions selected for the Consortium. Finally, this section instructs the Consortium to work with the National Transit Institute on training programs if the Institute is included in the Consortium.

### **Section 19 – TSA Personnel Limitations**

This section provides that any statutory limitation on the number of Transportation Security Administration employees shall not apply to employees carrying out this Act.

### **Section 20 – Homeland Security Grants**

This section states that, notwithstanding any other provision of this Act, all grants distributed for security-related purposes pursuant to this Act shall be administered on the basis of risk by the Secretary as the lead Federal official on transportation security.

### **Section 21 – Threat Assessment Screening**

This section requires the Secretary to implement a threat assessment screening program within 180 days of enactment, including a name-based check for all employees of covered transportation providers against terrorist watch lists and immigration status lists, similar to the threat assessment conducted by the Coast Guard with regard to port workers in 2006 (71 Fed. Reg. 25066 (Friday, April 28, 2006)).

### **Section 22 – Background Checks for Covered Individuals**

This section creates a redress process for employees of covered transportation providers who are fired as a result of a background check performed in order to satisfy any rules, regulations, directives, or other guidance issued by the Department, to be modeled after the process established for hazmat drivers and transportation workers at ports under 49 C.F.R. §1515. This section also requires the redress process to include:

- a waiver process to allow the employee to demonstrate that he is not a security risk;
- an appeal process, during which the employee will have an opportunity to demonstrate that he does not have a disqualifying conviction;
- a proceeding that provides an independent review of waiver and appeal decisions, as well as determinations regarding certain previous background checks; and
- a process to ensure compliance with the requirements of this section.

This section also specifies offenses that may not be used to dismiss an employee as a security threat, with limited exceptions. Nothing in this section shall be construed to affect the review process established under 46 U.S.C. §70105(c), including regulations issued pursuant thereto.

### **Section 23 – Penalties**

This section amends 49 U.S.C. §114 to authorize general civil penalties and enforcement of regulations and orders of the Secretary, including a fine of not more than \$10,000 for each day a violation of such a regulation continues. Under this section, the Secretary must give written notice of the finding of a violation and the penalty, and the penalized person has the opportunity to request a hearing on the matter. This section also provides that, in a civil action to collect such a penalty, the issues of liability and the amount of the penalty may not be reexamined; it places exclusive jurisdiction for these actions in the federal district courts in certain instances; and it establishes ceilings for the penalty amounts the Secretary may impose.

Paragraphs (1) through (4) of this section do not apply to specified persons who are subject to penalties as determined by the Secretary of Defense. Moreover, the word “person” in this section does not apply to the United States Postal Service or the Department of Defense. 49 U.S.C. §46301(a)(4) is amended by striking language regarding the authority of the Under Secretary of Transportation for Security. Lastly, this section defines certain terms of art as they are used within its provisions.

### **Section 24 – School Bus Transportation Security**

This section requires the Secretary to submit a report—including a classified report, as appropriate—containing a comprehensive threat assessment of the Nation’s school bus transportation system within one year of enactment to the Committee on Homeland Security and Governmental Affairs of the Senate, and to the Committee on Homeland Security of the House of Representatives. In conducting the threat assessment, the Secretary is required to consult with administrators and officials of school systems, representatives of the school bus industry, public

safety and law enforcement officials, and labor unions representing school bus drivers. The threat assessment must include:

- an assessment of both publicly and privately operated systems;
- security threats to the assets and systems;
- an assessment of actions already taken by operators to address identified security vulnerabilities;
- an assessment of additional actions and investments necessary to improve the security of school children traveling on school buses;
- an assessment of whether additional legislation or Federal programs are needed to provide for the security of such children; and
- an assessment of the psychological and economic impacts of an attack on school buses.