

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 4, 2018, and as if included in Pub. L. 115—282, see section 8507(d)(7) of Pub. L. 116—283, set out as an Effective Date of 2021 Amendment note under section 1226 of Title 33, Navigation and Navigable Waters.

§ 70103. Maritime transportation security plans

(a) NATIONAL MARITIME TRANSPORTATION SECURITY PLAN.—(1) The Secretary shall prepare a National Maritime Transportation Security Plan for deterring and responding to a transportation security incident.

(2) The National Maritime Transportation Security Plan shall provide for efficient, coordinated, and effective action to deter and minimize damage from a transportation security incident, and shall include the following:

(A) Assignment of duties and responsibilities among Federal departments and agencies and coordination with State and local governmental agencies.

(B) Identification of security resources.

(C) Procedures and techniques to be employed in deterring a national transportation security incident.

(D) Establishment of procedures for the coordination of activities of—

(i) Coast Guard maritime security teams established under this chapter; and

(ii) Federal Maritime Security Coordinators required under this chapter.

(E) A system of surveillance and notice designed to safeguard against as well as ensure earliest possible notice of a transportation security incident and imminent threats of such a security incident to the appropriate State and Federal agencies.

(F) Establishment of criteria and procedures to ensure immediate and effective Federal identification of a transportation security incident, or the substantial threat of such a security incident.

(G) Designation of—

(i) areas for which Area Maritime Transportation Security Plans are required to be prepared under subsection (b); and

(ii) a Coast Guard official who shall be the Federal Maritime Security Coordinator for each such area.

(H) A risk-based system for evaluating the potential for violations of security zones designated by the Secretary on the waters subject to the jurisdiction of the United States.

(I) A recognition of certified systems of intermodal transportation.

(J) A plan for ensuring that the flow of cargo through United States ports is reestablished as efficiently and quickly as possible after a transportation security incident.

(K) A plan to detect, respond to, and recover from cybersecurity risks that may cause transportation security incidents.

(3) The Secretary shall, as the Secretary considers advisable, revise or otherwise amend the National Maritime Transportation Security Plan.

(4) Actions by Federal agencies to deter and minimize damage from a transportation secu-

urity incident shall, to the greatest extent possible, be in accordance with the National Maritime Transportation Security Plan.

(5) The Secretary shall inform vessel and facility owners or operators of the provisions in the National Transportation Security Plan that the Secretary considers necessary for security purposes.

(b) AREA MARITIME TRANSPORTATION SECURITY PLANS.—(1) The Federal Maritime Security Coordinator designated under subsection (a)(2)(G) for an area shall—

(A) submit to the Secretary an Area Maritime Transportation Security Plan for the area; and

(B) solicit advice from the Area Security Advisory Committee required under this chapter, for the area to assure preplanning of joint deterrence efforts, including appropriate procedures for deterrence of a transportation security incident.

(2) The Area Maritime Transportation Security Plan for an area shall—

(A) when implemented in conjunction with the National Maritime Transportation Security Plan, be adequate to deter a transportation security incident in or near the area to the maximum extent practicable;

(B) describe the area and infrastructure covered by the plan, including the areas of population or special economic, environmental, or national security importance that might be damaged by a transportation security incident;

(C) describe in detail how the plan is integrated with other Area Maritime Transportation Security Plans, and with facility security plans and vessel security plans under this section;

(D) include consultation and coordination with the Department of Defense on matters relating to Department of Defense facilities and vessels;

(E) establish area response and recovery protocols to prepare for, respond to, mitigate against, and recover from a transportation security incident consistent with section 202 of the SAFE Port Act of 2006 (6 U.S.C. 942) and subsection (a) of this section;

(F) include any other information the Secretary requires;

(G) include a salvage response plan—

(i) to identify salvage equipment capable of restoring operational trade capacity; and

(ii) to ensure that the waterways are cleared and the flow of commerce through United States ports is reestablished as efficiently and quickly as possible after a maritime transportation security incident;

(H) include a plan for detecting, responding to, and recovering from cybersecurity risks that may cause transportation security incidents; and

(I) be updated at least every 5 years by the Federal Maritime Security Coordinator.

(3) The Secretary shall review and approve Area Maritime Transportation Security Plans and updates under this subsection.

(4) In security zones designated by the Secretary in each Area Maritime Transportation Security Plan, the Secretary shall consider—

(A) the use of public/private partnerships to enforce security within the security zones, shoreside protection alternatives, and the environmental, public safety, and relative effectiveness of such alternatives; and

(B) technological means of enhancing the security zones of port, territorial waters, and waterways of the United States.

(C) VESSEL AND FACILITY SECURITY PLANS.—(1) Within 6 months after the prescription of interim final regulations on vessel and facility security plans, an owner or operator of a vessel or facility described in paragraph (2) shall prepare and submit to the Secretary a security plan for the vessel or facility, for deterring a transportation security incident to the maximum extent practicable.

(2) The vessels and facilities referred to in paragraph (1)—

(A) except as provided in subparagraph (B), are vessels and facilities that the Secretary believes may be involved in a transportation security incident; and

(B) do not include any vessel or facility owned or operated by the Department of Defense.

(3) A security plan required under this subsection shall—

(A) be consistent with the requirements of the National Maritime Transportation Security Plan and Area Maritime Transportation Security Plans;

(B) identify the qualified individual having full authority to implement security actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment pursuant to subparagraph (C);

(C) include provisions for—

(i) establishing and maintaining physical security, passenger and cargo security, and personnel security;

(ii) establishing and controlling access to secure areas of the vessel or facility, including access by persons engaged in the surface transportation of intermodal containers in or out of a port facility;

(iii) procedural security policies;

(iv) communications systems;

(v) detecting, responding to, and recovering from cybersecurity risks that may cause transportation security incidents; and

(vi) other security systems;

(D) identify, and ensure by contract or other means approved by the Secretary, the availability of security measures necessary to deter to the maximum extent practicable a transportation security incident or a substantial threat of such a security incident;

(E) describe the training, periodic unannounced drills, and security actions of persons on the vessel or at the facility, to be carried out under the plan to deter to the maximum extent practicable a transportation security incident, or a substantial threat of such a security incident;

(F) provide a strategy and timeline for conducting training and periodic unannounced drills;

(G) be updated at least every 5 years;

(H) be resubmitted for approval of each change to the vessel or facility that may substantially affect the security of the vessel or facility; and

(I) in the case of a security plan for a facility, be resubmitted for approval of each change in the ownership or operator of the facility that may substantially affect the security of the facility.

(4) The Secretary shall—

(A) promptly review each such plan or update;

(B) require amendments to any plan or update that does not meet the requirements of this subsection;

(C) approve any plan or update that meets the requirements of this subsection; and

(D) subject to the availability of appropriations, periodically, but not less than one time per year, conduct a risk-based, no notice facility inspection to verify the effectiveness of each such facility security plan or update.

(5) A vessel or facility for which a plan is required to be submitted under this subsection may not operate after the end of the 12-month period beginning on the date of the prescription of interim final regulations on vessel and facility security plans, unless—

(A) the plan has been approved by the Secretary; and

(B) the vessel or facility is operating in compliance with the plan.

(6) Notwithstanding paragraph (5), the Secretary may authorize a vessel or facility to operate without a security plan approved under this subsection, until not later than 1 year after the date of the submission to the Secretary of a plan for the vessel or facility, if the owner or operator of the vessel or facility certifies that the owner or operator has ensured by contract or other means approved by the Secretary to deter to the maximum extent practicable a transportation security incident or a substantial threat of such a security incident.

(7) The Secretary shall require each owner or operator of a vessel or facility located within or adjacent to waters subject to the jurisdiction of the United States to implement any necessary interim security measures, including cargo security programs, to deter to the maximum extent practicable a transportation security incident until the security plan for that vessel or facility operator is approved.

(8)(A) The Secretary shall require that the qualified individual having full authority to implement security actions for a facility described in paragraph (2) shall be a citizen of the United States.

(B) The Secretary may waive the requirement of subparagraph (A) with respect to an individual if the Secretary determines that it is appropriate to do so based on a complete background check of the individual and a review of all terrorist watch lists to ensure that the individual is not identified on any such terrorist watch list.

(d) NONDISCLOSURE OF INFORMATION.—

(1) IN GENERAL.—Information developed under this section or sections 70102, 70104, and

70108 is not required to be disclosed to the public, including—

(A) facility security plans, vessel security plans, and port vulnerability assessments; and

(B) other information related to security plans, procedures, or programs for vessels or facilities authorized under this section or sections 70102, 70104, and 70108.

(2) LIMITATIONS.—Nothing in paragraph (1) shall be construed to authorize the designation of information as sensitive security information (as defined in section 1520.5 of title 49, Code of Federal Regulations)—

(A) to conceal a violation of law, inefficiency, or administrative error;

(B) to prevent embarrassment to a person, organization, or agency;

(C) to restrain competition; or

(D) to prevent or delay the release of information that does not require protection in the interest of transportation security, including basic scientific research information not clearly related to transportation security.

(e) ESPECIALLY HAZARDOUS CARGO.—

(1) ENFORCEMENT OF SECURITY ZONES.—Consistent with other provisions of Federal law, the Coast Guard shall coordinate and be responsible for the enforcement of any Federal security zone established by the Coast Guard around a vessel containing especially hazardous cargo. The Coast Guard shall allocate available resources so as to deter and respond to a transportation security incident, to the maximum extent practicable, and to protect lives or protect property in danger.

(2) ESPECIALLY HAZARDOUS CARGO DEFINED.—In this subsection, the term “especially hazardous cargo” means anhydrous ammonia, ammonium nitrate, chlorine, liquefied natural gas, liquefied petroleum gas, and any other substance, material, or group or class of material, in a particular amount and form that the Secretary determines by regulation poses a significant risk of creating a transportation security incident while being transported in maritime commerce.

(f) NONDISCLOSURE OF PORT SECURITY PLANS.—Notwithstanding any other provision of law, information related to security plans, procedures, or programs for passenger vessels or passenger terminals authorized under this chapter is not required to be disclosed to the public.

(Added Pub. L. 107–295, title I, §102(a), Nov. 25, 2002, 116 Stat. 2069; amended Pub. L. 108–458, title IV, §4072(a), Dec. 17, 2004, 118 Stat. 3730; Pub. L. 109–347, title I, §§101–103, 113(c), Oct. 13, 2006, 120 Stat. 1887, 1888, 1896; Pub. L. 111–83, title V, §561(b), Oct. 28, 2009, 123 Stat. 2182; Pub. L. 111–281, title VIII, §§812(c), 826, Oct. 15, 2010, 124 Stat. 2997, 3004; Pub. L. 115–254, div. J, §§1805(d)(2), 1806, Oct. 5, 2018, 132 Stat. 3535, 3536; Pub. L. 115–282, title IV, §§402(c), 408(d), Dec. 4, 2018, 132 Stat. 4264, 4268; Pub. L. 116–283, div. G, title LVXXXII [LXXXII], §8240(a), title LVXXXIII [LXXXIII], §8344, title LVXXXV [LXXXV], §8507(d)(1), Jan. 1, 2021, 134 Stat. 4666, 4710, 4754.)

Editorial Notes

CODIFICATION

Section 1226(c) of Title 33, Navigation and Navigable Waters, which was transferred and redesignated as subsec. (f) of this section by Pub. L. 115–282, title IV, §§402(c)(1), 408(d)(1), Dec. 4, 2018, 132 Stat. 4264, 4268, was based on section 7(c) of Pub. L. 92–340, as added by Pub. L. 104–324, title III, §302, Oct. 19, 1996, 110 Stat. 3917.

AMENDMENTS

2021—Subsec. (b)(3). Pub. L. 116–283, §8344(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “The Secretary shall—

“(A) review and approve Area Maritime Transportation Security Plans under this subsection; and

“(B) periodically review previously approved Area Maritime Transportation Security Plans.”

Subsec. (c)(4). Pub. L. 116–283, §8344(2), inserted “or update” after “plan” wherever appearing.

Subsec. (e). Pub. L. 116–283, §8240(a), amended subsec. (e) generally. Prior to amendment, subsec. (e) consisted of pars. (1) and (2) relating to enforcement of security zones and resource deficiency reporting, respectively.

Subsec. (f). Pub. L. 116–283, §8507(d)(1), repealed amendments by Pub. L. 115–282, §408(d). See 2018 Amendment notes below.

2018—Subsec. (a)(1). Pub. L. 115–254, §1805(d)(2)(A), substituted “The” for “Not later than April 1, 2005, the”.

Subsec. (a)(2)(K). Pub. L. 115–254, §1805(d)(2)(B), added subpar. (K).

Subsec. (b)(2)(H), (I). Pub. L. 115–254, §1805(d)(2)(C), added subpar. (H) and redesignated former subpar. (H) as (I).

Subsec. (c)(3)(v), (vi). Pub. L. 115–254, §1805(d)(2)(D), added cl. (v) and redesignated former cl. (v) as (vi).

Subsec. (c)(4)(D). Pub. L. 115–254, §1806, amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “subject to the availability of appropriations, verify the effectiveness of each such facility security plan periodically, but not less than 2 times per year, at least 1 of which shall be an inspection of the facility that is conducted without notice to the facility.”

Subsec. (f). Pub. L. 115–282, §408(d)(2), which directed substitution of “this chapter” for “this Act” identical to amendment made by section 402(c)(2) of Pub. L. 115–282, was repealed by Pub. L. 116–283, §8507(d)(1).

Pub. L. 115–282, §402(c)(2), substituted “this chapter” for “this Act”.

Pub. L. 115–282, §408(d)(1), which directed redesignation and transfer of subsec. (c) of section 7 of Pub. L. 92–340 to subsec. (f) of this section identical to amendment made by section 402(c)(1) of Pub. L. 115–282, was repealed by Pub. L. 116–283, §8507(d)(1).

Pub. L. 115–282, §402(c)(1), redesignated and transferred subsec. (c) of section 7 of Pub. L. 92–340 to subsec. (f) of this section. See Codification note above.

2010—Subsec. (b)(2)(E) to (H). Pub. L. 111–281, §826, added subpar. (E) and redesignated former subpars. (E) to (G) as (F) to (H), respectively.

Subsec. (e). Pub. L. 111–281, §812(c), added subsec.(e).

2009—Subsec. (d). Pub. L. 111–83 amended subsec. (d) generally. Prior to amendment, text read as follows: “Notwithstanding any other provision of law, information developed under this chapter is not required to be disclosed to the public, including—

“(1) facility security plans, vessel security plans, and port vulnerability assessments; and

“(2) other information related to security plans, procedures, or programs for vessels or facilities authorized under this chapter.”

2006—Subsec. (b)(2)(F), (G). Pub. L. 109–347, §101, added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (c)(3)(C)(ii). Pub. L. 109–347, §102(1)(A), substituted “facility, including access by persons engaged in the surface transportation of intermodal containers in or out of a port facility” for “facility”.

Subsec. (c)(3)(F), (G). Pub. L. 109-347, §113(c), added subpar. (F) and redesignated former subpar. (F) as (G). Former subpar. (G) redesignated (H).

Subsec. (c)(3)(H). Pub. L. 109-347, §113(c)(1), redesignated subpar. (G) as (H). Former subpar. (H) redesignated (I).

Pub. L. 109-347, §102(1)(B)-(D), added subpar. (H).

Subsec. (c)(3)(I). Pub. L. 109-347, §113(c)(1), redesignated subpar. (H) as (I).

Subsec. (c)(4)(D). Pub. L. 109-347, §103, amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “review each plan periodically thereafter.”

Subsec. (c)(8). Pub. L. 109-347, §102(2), added par. (8).

2004—Subsec. (a)(1). Pub. L. 108-458 substituted “Not later than April 1, 2005, the Secretary” for “The Secretary”.

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EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 8507(d)(1) of div. G of Pub. L. 116-283 effective Dec. 4, 2018, as if included in Pub. L. 115-282, see section 8507(d)(7) of Pub. L. 116-283, set out as a note under section 1226 of Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment of section by section 1805(d) of Pub. L. 115-254 applicable to assessments or security plans, or updates to such assessments or plans, submitted after the date that the cybersecurity risk assessment model is developed under subsection 1805(a) of Pub. L. 115-254, set out as a note under section 70112 of this title, see section 1805(d)(3) of Pub. L. 115-254, set out as a note under section 70102 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 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.

SEAMEN'S SHORESIDE ACCESS

Pub. L. 111-281, title VIII, §811, Oct. 15, 2010, 124 Stat. 2995, provided that: “Each facility security plan approved under section 70103(c) of title 46, United States Code, shall provide a system for seamen assigned to a vessel at that facility, pilots, and representatives of seamen's welfare and labor organizations to board and depart the vessel through the facility in a timely manner at no cost to the individual.”

RISK ASSESSMENT TOOL

Pub. L. 109-347, title I, §111, Oct. 13, 2006, 120 Stat. 1894, provided that: “In updating Area Maritime Security Plans required under section 70103(b)(2)(F) [now section 70103(b)(2)(G)] of title 46, United States Code, and in applying for grants under section 70107 of such title, the Secretary of the Department in which the Coast Guard is operating shall make available, and Area Maritime Security Committees may use a risk assessment tool that uses standardized risk criteria, such as the Maritime Security Risk Assessment Tool used by the Coast Guard.”

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 Secu-

rity: 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.)

Statutory Notes and Related Subsidiaries

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