



A bold voice for transportation workers

October 1, 2023

David P. Pecoske
Administrator
Transportation Security Administration
6595 Springfield Center Drive
Springfield, VA 20598

**RE: Vetting of Certain Surface Transportation Employees
Docket No. TSA-2023-0001**

Mr. Pecoske,

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to respond to the Transportation Security Administration's (TSA) notice of proposed rulemaking to require security vetting of certain public transportation, railroad, and over-the-road-bus (OTRB) employees. TTD consists of 37 affiliated unions that represent employees working across the transportation sector, including rail and public transit employees. We therefore have a vested interest in this rulemaking. Transportation labor has long been at the forefront of demanding the strongest federal measures to protect the transportation infrastructure and systems that have been terrorism targets. We believe that efforts to secure our transportation system must strike a balance. They should provide protection and security against the terrorist threat environment while also preserving the legitimate rights of employees. To that end, we encourage the TSA to conduct additional, proactive outreach to stakeholders, including transportation labor, as it finalizes this rulemaking.

Through this NPRM, the TSA seeks to implement two provisions of the 9/11 Act, (Sec. 1411 and 1520) which require the TSA to conduct terrorist and immigration status vetting of public transportation and railroad employees, similar to the checks the TSA initiated in 2006 in the maritime sector. TTD understands that controlling access to key transportation assets is needed to help guard against future attacks. TTD has previously insisted that disqualifying criminal offenses be limited to those that reasonably made someone a security risk, that all workers have the ability to appeal incorrect information or seek a waiver from an adverse decision, and that privacy rules be imposed on the collection of employee records.

This proposed rule incorporates several provisions for which TTD has consistently advocated, including appeal and waiver procedures. Appeal procedures are especially crucial given that they are intended to allow workers to correct inaccurate criminal records and prove that they do not represent a security risk. It is important to note that criminal records, including those collected by the FBI, are not infallible. The appeal procedure outlined in the NPRM would in effect require employees to

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independently correct any inaccurate records that may have contributed to a determination of ineligibility, costing time and money simply to save their jobs. We believe this proposed process is unfair to employees. Instead, the TSA should consider additional avenues to ensure the records it accesses in conducting the proposed Security Threat Analyses (STAs) are as accurate and up to date as possible in order to remove unnecessary burden from employees.

In addition, we'd like to make certain the TSA is aware that railroads have begun to establish Second Chance hiring programs to extend employment opportunities to individuals that possess a criminal record. For example, Union Pacific began its Second Chance hiring program in 2021.¹ With respect to this proposed rule, we urge the TSA to consider measures that would ensure individuals hired through Second Chance programs are not disqualified unless they present a *specific* security risk related to their job function.

The proposed notification procedure for Determinations of Eligibility (DOEs), including Preliminary Determinations of Ineligibility (PDI) and Preliminary Determinations of Ineligibility with Immediate Revocation (PDIIR), stipulates that the TSA would notify the individual of the determination and would make that information available to the owner/operator or the transportation entity. The TSA notes that it may notify the individual via letter in the U.S. postal service, an email, or another method yet to be determined. In addition to notifying the employee and their employer, the TSA should also provide DOE information to the appropriate labor union representing the individual. Furthermore, the TSA should consider utilizing multiple, simultaneous methods of notification, such as postal mail and email, to ensure timeliness and confirmation of receipt. Given the proposed 60-day timeline for an employee to initiate an appeal, it is critical that the DOE does in fact reach the recipient.

Finally, we applaud the TSA for extending the STA requirements proposed in this rule to employees contracted by the affected transit agencies. Contractors perform important functions across the transportation sector including locomotive rebuilds, crossing installations, and switch engine remanufacturing, among many others. The TSA rightly recognizes, "If TSA adopted standards in which an employer could evade vetting requirements altogether by using authorized representatives/contractors, the vetting framework would be a sieve permitting individuals with bad intent to move undetected in the transportation system."² Excluding security-sensitive contractors from the proposed STA requirements leaves the sector open to unnecessary vulnerabilities. Therefore, we urge the TSA to ensure that STA requirements are extended to contractors if they move forward with this rulemaking.

We appreciate the opportunity to comment on this proposed rulemaking and look forward to working with the TSA in the future.

Sincerely,



Greg Regan
President

¹ https://up.jobs/content/Why-Work-Here/?locale=en_US

² <https://www.regulations.gov/document/TSA-2023-0001-0001>