

CBP WORKLOAD STAFFING MODEL ACT

MARCH 28, 2019.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. THOMPSON of Mississippi, from the Committee on Homeland Security, submitted the following

R E P O R T

[To accompany H.R. 1639]

The Committee on Homeland Security, to whom was referred the bill (H.R. 1639) to amend the Homeland Security Act of 2002 to improve U.S. Customs and Border Protection (CBP) identification of staffing needs, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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Strike all after the enacting clause and insert the following:
The amendment is as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the “CBP Workload Staffing Model Act”.

SEC. 2. ESTABLISHMENT OF WORKLOAD STAFFING MODELS FOR U.S. BORDER PATROL AND AIR AND MARINE OPERATIONS OF CBP.

(a) **IN GENERAL.**—The Commissioner of U.S. Customs and Border Protection shall in coordination with the Under Secretary for Management, Chief Human Capital Officer, and Chief Financial Officer of the Department of Homeland Security, develop and implement, by not later than one year after the date of the enactment of this Act, a workload staffing model for each of the U.S. Border Patrol and Air and Marine Operations.

(b) **RESPONSIBILITIES OF THE COMMISSIONER OF CBP.**—Subsection (c) of section 411 of the Homeland Security Act of 2002 (6 U.S.C. 211) is amended—

(1) by redesignating paragraphs (18) and (19) as paragraphs (20) and (21), respectively; and

(2) by inserting after paragraph (17) the following new paragraphs:

“(18) implement a staffing model that includes consideration for essential frontline operator activities and functions, variations in operating environments, present and planned infrastructure, present and planned technology, and required operations support levels for the U.S. Border Patrol, Air and Marine Operations, and the Office of Field Operations, to manage and assign personnel of such entities to ensure field and support posts possess adequate resources to carry out duties specified in this section;

“(19) develop standard operating procedures for a workforce tracking system within the U.S. Border Patrol, Air and Marine Operations, and the Office of Field Operations, train the workforce of each of such entities on the use, capabilities, and purpose of such system, and implement internal controls to ensure timely and accurate scheduling and reporting of actual completed work hours and activities;”.

(c) **REPORT.**—Not later than one year after the date of the enactment of this Act with respect to subsection (a) and paragraphs (18) and (19) of section 411(c) of the Homeland Security Act of 2002 (as amended by subsection (b)), and annually thereafter with respect to such paragraphs (18) and (19), the Secretary of Homeland Security shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a status update on the implementation of this Act and such paragraphs (18) and (19), and status updates on such paragraphs (18) and (19), as well as all relevant workload staffing models. Such status updates shall include information on data sources and methodology used to generate such staffing models.

(d) **INSPECTOR GENERAL REVIEW.**—Not later than 120 days after the Commissioner of U.S. Customs and Border Protection develops a workload staffing model pursuant to subsection (a), the Inspector General of the Department of Homeland Security shall review such model and provide feedback to the Secretary of Homeland Security and the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate regarding the degree to which such model is responsive to Inspector General recommendations, including recommendations from the Inspector General’s February 2019 audit, and as appropriate, any further recommendations to improve such model.

PURPOSE AND SUMMARY

H.R. 1639, the “CBP Workload Staffing Model Act” requires the use of workload staffing models to determine staffing needs for all three subcomponents of U.S. Customs and Border Protection (CBP)—the Office of Field Operations, U.S. Border Patrol, and Air and Marine Operations.

BACKGROUND AND NEED FOR LEGISLATION

In 2011, Congress directed the U.S. Border Patrol to submit a five-year staffing and deployment plan. The plan that was submitted in 2013 failed to address key goals of border security and did not identify factors that affect deployment. Congress requested a more complete five-year plan that addressed these missing factors. However, Border Patrol never completed this plan.

In 2017, President Trump signed an Executive Order 13767, Border Security and Immigration Enforcement Improvements, which directed the Department of Homeland Security (DHS or Depart-

ment) to hire an additional 5,000 Border Patrol agents. In July 2017, the Department's Office of the Inspector General (OIG) found that Border Patrol was unable to show an operational need for the 5,000 agents and could not articulate a deployment strategy for these additional agents.

In a March 2019 report, the Inspector General determined that Border Patrol has not prioritized the development of a workload staffing model and without such a model, Border Patrol's current workforce may not be deployed in the most efficient or economical way. Further, the report also found that officials did not consistently schedule agents' work duties, document hours worked, or update work duties completed. As a result, data systems have incomplete information and show a disparity between hours scheduled and the amount of time agents are paid for, which hinders CBP's ability to determine if it is fulfilling all mission requirements.

H.R. 1639 seeks to help CBP resolve the deficiencies identified in the March 2019 DHS OIG report by directing CBP to develop a workload staffing model for Border Patrol (USBP) as well as Air and Marine Operations. These staffing models will help USBP and AMO evaluate operational needs and determine where and how many additional agents would get them to optimal staffing levels. Since the Safe Port Act of 2006, CBP's Office of Field Operations (OFO) has utilized a workload staffing model that incorporates a variety of data points to calculate the optimal staffing level at each CBP port of entry. The success of this model has demonstrated the utility of such analysis in the CBP environment. Furthermore, the establishment of standard operating procedures to track activities by the CBP workforce will ensure that all three subcomponents are using staff efficiently. The bill would add both the workload staffing model requirement and the workforce tracking system requirement to the duties of the Commissioner to ensure these will be priorities to CBP moving forward. The Committee does not intend for this bill to change or modify OFO's current staffing model and standard operating procedures for tracking officer hours.

HEARINGS

The Committee did not hold any legislative hearings on H.R. 1639 in the 116th Congress. However, this legislation was informed by an Oversight, Management, and Accountability Subcommittee hearing on March 7, 2019 entitled, "CBP Workforce Challenges: Exploring Solutions to Address Recruitment and Retention." Testimony was heard from Mr. Benjamine "Carry" Huffman, Acting Executive Assistant Commissioner, Enterprise Services, U.S. Customs and Border Protection; Ms. Rebecca Gambler, Director, Homeland Security and Justice Team, U.S. Government Accountability Office; and Mr. Anthony M. Reardon, President, The National Treasury Employees Union.

COMMITTEE CONSIDERATION

The Committee met on March 13, 2019, with a quorum being present, to consider H.R. 1639 and ordered the measure to be reported to the House with a favorable recommendation, without amendment, by unanimous consent.

The following amendments were offered:
 An en bloc amendment offered by Ms. Torres Small (#1); was
 AGREED TO by unanimous consent.
 Consisting of the following amendment:
 Add at the end the following:

(d) INSPECTOR GENERAL REVIEW.—Not later than 120 days after the Commissioner of U.S. Customs and Border Protection develops a workload staffing model pursuant to subsection (a), the Inspector General of the Department of Homeland Security shall review such model and provide feedback to the Secretary of Homeland Security and the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate regarding the degree to which such model is responsive to Inspector General recommendations, including recommendations from the Inspector General’s February 2019 audit, and as appropriate, any further recommendations to improve such model.

An en bloc amendment offered by Ms. Jackson Lee (#399); was
 AGREED TO by unanimous consent.
 Consisting of the following amendment:

Page 3, line 25, after “models.” Insert “Such status updates shall include information on data sources and methodology used to generate such staffing models.”

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

No recorded votes were requested during consideration of H.R. 1639.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

CONGRESSIONAL BUDGET OFFICE ESTIMATE, NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of the Congressional Budget Office.

The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit

authority, or an increase or decrease in revenues or tax expenditures.

FEDERAL MANDATES STATEMENT

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the Congressional Record upon its receipt by the Committee.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 1639 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1639 would require the U.S. Customs and Border Protection to identify staffing needs through the use of workload staffing models for all three of its subcomponents—Office of Field Operations, U.S. Border Patrol, and Air and Marine Operations.

ADVISORY ON EARMARKS

In compliance with rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of the rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides that this bill may be cited as the “CBP Workload Staffing Model Act”.

Sec. 2. Establishment of workload staffing models for U.S. Border Patrol and Air and Marine Operations of CBP

This section requires the Commissioner of U.S. Customs and Border Protection to, in coordination with the Department of Homeland Security’s Under Secretary for Management, Chief Human Capital Officer, and Chief Financial Officer, develop and implement workload staffing models for the U.S. Border Patrol (USBP) and Air and Marine Operations (AMO). The Committee believes the use of these models will make staffing needs for USBP and AMO subcomponents data analysis driven and transparent. It will also put these two subcomponents on equal footing with the Office of Field Operations which already completes a workload staffing model on a recurring basis.

This section also includes the criteria that should be considered in such workload staffing models, and requires the development of standard operating procedures to track the workforce of the three subcomponents.

This section further requires the Secretary of Homeland Security to report to the House Committee on Homeland Security and the Senate Committee on Homeland Security and Governmental Affairs on progress made toward implementing these workload staffing models as well as providing the models within a year of enactment and annually thereafter.

The Committee considers this analysis of staffing needs an important component of border security and fulfilling CBP's multi-faceted mission along the U.S. borders.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, and existing law in which no change is proposed is shown in roman):

HOMELAND SECURITY ACT OF 2002

* * * * *

**TITLE IV—BORDER, MARITIME, AND
TRANSPORTATION SECURITY**

* * * * *

**Subtitle B—U.S. Customs and Border
Protection**

SEC. 411. ESTABLISHMENT OF U.S. CUSTOMS AND BORDER PROTECTION; COMMISSIONER, DEPUTY COMMISSIONER, AND OPERATIONAL OFFICES.

(a) **IN GENERAL.**—There is established in the Department an agency to be known as U.S. Customs and Border Protection.

(b) **COMMISSIONER OF U.S. CUSTOMS AND BORDER PROTECTION.**—

(1) **IN GENERAL.**—There shall be at the head of U.S. Customs and Border Protection a Commissioner of U.S. Customs and Border Protection (in this section referred to as the “Commissioner”).

(2) **COMMITTEE REFERRAL.**—As an exercise of the rulemaking power of the Senate, any nomination for the Commissioner submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance.

(c) **DUTIES.**—The Commissioner shall—

(1) coordinate and integrate the security, trade facilitation, and trade enforcement functions of U.S. Customs and Border Protection;

(2) ensure the interdiction of persons and goods illegally entering or exiting the United States;

(3) facilitate and expedite the flow of legitimate travelers and trade;

(4) direct and administer the commercial operations of U.S. Customs and Border Protection, and the enforcement of the customs and trade laws of the United States;

(5) detect, respond to, and interdict terrorists, drug smugglers and traffickers, human smugglers and traffickers, and other persons who may undermine the security of the United States, in cases in which such persons are entering, or have recently entered, the United States;

(6) safeguard the borders of the United States to protect against the entry of dangerous goods;

(7) ensure the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland;

(8) in coordination with U.S. Immigration and Customs Enforcement and United States Citizenship and Immigration Services, enforce and administer all immigration laws, as such term is defined in paragraph (17) of section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)), including—

(A) the inspection, processing, and admission of persons who seek to enter or depart the United States; and

(B) the detection, interdiction, removal, departure from the United States, short-term detention, and transfer of persons unlawfully entering, or who have recently unlawfully entered, the United States;

(9) develop and implement screening and targeting capabilities, including the screening, reviewing, identifying, and prioritizing of passengers and cargo across all international modes of transportation, both inbound and outbound;

(10) in coordination with the Secretary, deploy technology to collect the data necessary for the Secretary to administer the biometric entry and exit data system pursuant to section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (8 U.S.C. 1365b);

(11) enforce and administer the laws relating to agricultural import and entry inspection referred to in section 421;

(12) in coordination with the Under Secretary for Management of the Department, ensure U.S. Customs and Border Protection complies with Federal law, the Federal Acquisition Regulation, and the Department's acquisition management directives for major acquisition programs of U.S. Customs and Border Protection;

(13) ensure that the policies and regulations of U.S. Customs and Border Protection are consistent with the obligations of the United States pursuant to international agreements;

(14) enforce and administer—

(A) the Container Security Initiative program under section 205 of the Security and Accountability for Every Port Act of 2006 (6 U.S.C. 945); and

(B) the Customs–Trade Partnership Against Terrorism program under subtitle B of title II of such Act (6 U.S.C. 961 et seq.);

(15) conduct polygraph examinations in accordance with section 3(1) of the Anti-Border Corruption Act of 2010 (Public Law 111–376; 124 Stat. 4105);

(16) establish the standard operating procedures described in subsection (k);

(17) carry out the training required under subsection (l);

(18) *implement a staffing model that includes consideration for essential frontline operator activities and functions, variations in operating environments, present and planned infrastructure, present and planned technology, and required operations support levels for the U.S. Border Patrol, Air and Marine Operations, and the Office of Field Operations, to manage and assign personnel of such entities to ensure field and support posts possess adequate resources to carry out duties specified in this section;*

(19) *develop standard operating procedures for a workforce tracking system within the U.S. Border Patrol, Air and Marine Operations, and the Office of Field Operations, train the workforce of each of such entities on the use, capabilities, and purpose of such system, and implement internal controls to ensure timely and accurate scheduling and reporting of actual completed work hours and activities;*

[(18)] (20) carry out section 418, relating to the issuance of Asia-Pacific Economic Cooperation Business Travel Cards; and

[(19)] (21) carry out other duties and powers prescribed by law or delegated by the Secretary.

(d) DEPUTY COMMISSIONER.—There shall be in U.S. Customs and Border Protection a Deputy Commissioner who shall assist the Commissioner in the management of U.S. Customs and Border Protection.

(e) U.S. BORDER PATROL.—

(1) IN GENERAL.—There is established in U.S. Customs and Border Protection the U.S. Border Patrol.

(2) CHIEF.—There shall be at the head of the U.S. Border Patrol a Chief, who shall—

(A) be at the level of Executive Assistant Commissioner within U.S. Customs and Border Protection; and

(B) report to the Commissioner.

(3) DUTIES.—The U.S. Border Patrol shall—

(A) serve as the law enforcement office of U.S. Customs and Border Protection with primary responsibility for interdicting persons attempting to illegally enter or exit the United States or goods being illegally imported into or exported from the United States at a place other than a designated port of entry;

(B) deter and prevent the illegal entry of terrorists, terrorist weapons, persons, and contraband; and

(C) carry out other duties and powers prescribed by the Commissioner.

(f) AIR AND MARINE OPERATIONS.—

(1) IN GENERAL.—There is established in U.S. Customs and Border Protection an office known as Air and Marine Operations.

(2) EXECUTIVE ASSISTANT COMMISSIONER.—There shall be at the head of Air and Marine Operations an Executive Assistant Commissioner, who shall report to the Commissioner.

(3) DUTIES.—Air and Marine Operations shall—

- (A) serve as the law enforcement office within U.S. Customs and Border Protection with primary responsibility to detect, interdict, and prevent acts of terrorism and the unlawful movement of people, illicit drugs, and other contraband across the borders of the United States in the air and maritime environment;
- (B) conduct joint aviation and marine operations with U.S. Immigration and Customs Enforcement;
- (C) conduct aviation and marine operations with international, Federal, State, and local law enforcement agencies, as appropriate;
- (D) administer the Air and Marine Operations Center established under paragraph (4); and
- (E) carry out other duties and powers prescribed by the Commissioner.

(4) AIR AND MARINE OPERATIONS CENTER.—

(A) IN GENERAL.—There is established in Air and Marine Operations an Air and Marine Operations Center.

(B) EXECUTIVE DIRECTOR.—There shall be at the head of the Air and Marine Operations Center an Executive Director, who shall report to the Executive Assistant Commissioner of Air and Marine Operations.

(C) DUTIES.—The Air and Marine Operations Center shall—

- (i) manage the air and maritime domain awareness of the Department, as directed by the Secretary;
- (ii) monitor and coordinate the airspace for unmanned aerial systems operations of Air and Marine Operations in U.S. Customs and Border Protection;
- (iii) detect, identify, and coordinate a response to threats to national security in the air domain, in coordination with other appropriate agencies, as determined by the Executive Assistant Commissioner;
- (iv) provide aviation and marine support to other Federal, State, tribal, and local agencies; and
- (v) carry out other duties and powers prescribed by the Executive Assistant Commissioner.

(g) OFFICE OF FIELD OPERATIONS.—

(1) IN GENERAL.—There is established in U.S. Customs and Border Protection an Office of Field Operations.

(2) EXECUTIVE ASSISTANT COMMISSIONER.—There shall be at the head of the Office of Field Operations an Executive Assistant Commissioner, who shall report to the Commissioner.

(3) DUTIES.—The Office of Field Operations shall coordinate the enforcement activities of U.S. Customs and Border Protection at United States air, land, and sea ports of entry to—

- (A) deter and prevent terrorists and terrorist weapons from entering the United States at such ports of entry;
- (B) conduct inspections at such ports of entry to safeguard the United States from terrorism and illegal entry of persons;
- (C) prevent illicit drugs, agricultural pests, and contraband from entering the United States;
- (D) in coordination with the Commissioner, facilitate and expedite the flow of legitimate travelers and trade;

- (E) administer the National Targeting Center established under paragraph (4);
- (F) coordinate with the Executive Assistant Commissioner for the Office of Trade with respect to the trade facilitation and trade enforcement activities of U.S. Customs and Border Protection; and
- (G) carry out other duties and powers prescribed by the Commissioner.

(4) NATIONAL TARGETING CENTER.—

- (A) IN GENERAL.—There is established in the Office of Field Operations a National Targeting Center.
- (B) EXECUTIVE DIRECTOR.—There shall be at the head of the National Targeting Center an Executive Director, who shall report to the Executive Assistant Commissioner of the Office of Field Operations.

(C) DUTIES.—The National Targeting Center shall—

- (i) serve as the primary forum for targeting operations within U.S. Customs and Border Protection to collect and analyze traveler and cargo information in advance of arrival in the United States to identify and address security risks and strengthen trade enforcement;
- (ii) identify, review, and target travelers and cargo for examination;
- (iii) coordinate the examination of entry and exit of travelers and cargo;
- (iv) develop and conduct commercial risk assessment targeting with respect to cargo destined for the United States;
- (v) coordinate with the Transportation Security Administration, as appropriate;
- (vi) issue Trade Alerts pursuant to section 111(b) of the Trade Facilitation and Trade Enforcement Act of 2015; and
- (vii) carry out other duties and powers prescribed by the Executive Assistant Commissioner.

(5) ANNUAL REPORT ON STAFFING.—

- (A) IN GENERAL.—Not later than 30 days after the date of the enactment of the Trade Facilitation and Trade Enforcement Act of 2015, and annually thereafter, the Executive Assistant Commissioner shall submit to the Committee on Homeland Security and the Committee on Ways and Means of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Finance of the Senate a report on the staffing model for the Office of Field Operations, including information on how many supervisors, front-line U.S. Customs and Border Protection officers, and support personnel are assigned to each Field Office and port of entry.

- (B) FORM.—The report required under subparagraph (A) shall, to the greatest extent practicable, be submitted in unclassified form, but may be submitted in classified form, if the Executive Assistant Commissioner determines that such is appropriate and informs the Committee on Home-

land Security and the Committee on Ways and Means of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Finance of the Senate of the reasoning for such.

(h) OFFICE OF INTELLIGENCE.—

(1) IN GENERAL.—There is established in U.S. Customs and Border Protection an Office of Intelligence.

(2) ASSISTANT COMMISSIONER.—There shall be at the head of the Office of Intelligence an Assistant Commissioner, who shall report to the Commissioner.

(3) DUTIES.—The Office of Intelligence shall—

(A) develop, provide, coordinate, and implement intelligence capabilities into a cohesive intelligence enterprise to support the execution of the duties and responsibilities of U.S. Customs and Border Protection;

(B) manage the counterintelligence operations of U.S. Customs and Border Protection;

(C) establish, in coordination with the Chief Intelligence Officer of the Department, as appropriate, intelligence-sharing relationships with Federal, State, local, and tribal agencies and intelligence agencies;

(D) conduct risk-based covert testing of U.S. Customs and Border Protection operations, including for nuclear and radiological risks; and

(E) carry out other duties and powers prescribed by the Commissioner.

(i) OFFICE OF INTERNATIONAL AFFAIRS.—

(1) IN GENERAL.—There is established in U.S. Customs and Border Protection an Office of International Affairs.

(2) ASSISTANT COMMISSIONER.—There shall be at the head of the Office of International Affairs an Assistant Commissioner, who shall report to the Commissioner.

(3) DUTIES.—The Office of International Affairs, in collaboration with the Office of Policy of the Department, shall—

(A) coordinate and support U.S. Customs and Border Protection's foreign initiatives, policies, programs, and activities;

(B) coordinate and support U.S. Customs and Border Protection's personnel stationed abroad;

(C) maintain partnerships and information-sharing agreements and arrangements with foreign governments, international organizations, and United States agencies in support of U.S. Customs and Border Protection's duties and responsibilities;

(D) provide necessary capacity building, training, and assistance to foreign customs and border control agencies to strengthen border, global supply chain, and travel security, as appropriate;

(E) coordinate mission support services to sustain U.S. Customs and Border Protection's global activities;

(F) coordinate with customs authorities of foreign countries with respect to trade facilitation and trade enforcement;

- (G) coordinate U.S. Customs and Border Protection's engagement in international negotiations;
 - (H) advise the Commissioner with respect to matters arising in the World Customs Organization and other international organizations as such matters relate to the policies and procedures of U.S. Customs and Border Protection;
 - (I) advise the Commissioner regarding international agreements to which the United States is a party as such agreements relate to the policies and regulations of U.S. Customs and Border Protection; and
 - (J) carry out other duties and powers prescribed by the Commissioner.
- (j) OFFICE OF PROFESSIONAL RESPONSIBILITY.—
- (1) IN GENERAL.—There is established in U.S. Customs and Border Protection an Office of Professional Responsibility.
 - (2) ASSISTANT COMMISSIONER.—There shall be at the head of the Office of Professional Responsibility an Assistant Commissioner, who shall report to the Commissioner.
 - (3) DUTIES.—The Office of Professional Responsibility shall—
 - (A) investigate criminal and administrative matters and misconduct by officers, agents, and other employees of U.S. Customs and Border Protection;
 - (B) manage integrity-related programs and policies of U.S. Customs and Border Protection;
 - (C) conduct research and analysis regarding misconduct of officers, agents, and other employees of U.S. Customs and Border Protection; and
 - (D) carry out other duties and powers prescribed by the Commissioner.
- (k) STANDARD OPERATING PROCEDURES.—
- (1) IN GENERAL.—The Commissioner shall establish—
 - (A) standard operating procedures for searching, reviewing, retaining, and sharing information contained in communication, electronic, or digital devices encountered by U.S. Customs and Border Protection personnel at United States ports of entry;
 - (B) standard use of force procedures that officers and agents of U.S. Customs and Border Protection may employ in the execution of their duties, including the use of deadly force;
 - (C) uniform, standardized, and publicly-available procedures for processing and investigating complaints against officers, agents, and employees of U.S. Customs and Border Protection for violations of professional conduct, including the timely disposition of complaints and a written notification to the complainant of the status or outcome, as appropriate, of the related investigation, in accordance with section 552a of title 5, United States Code (commonly referred to as the "Privacy Act" or the "Privacy Act of 1974");
 - (D) an internal, uniform reporting mechanism regarding incidents involving the use of deadly force by an officer or agent of U.S. Customs and Border Protection, including an

evaluation of the degree to which the procedures required under subparagraph (B) were followed; and

(E) standard operating procedures, acting through the Executive Assistant Commissioner for Air and Marine Operations and in coordination with the Office for Civil Rights and Civil Liberties and the Office of Privacy of the Department, to provide command, control, communication, surveillance, and reconnaissance assistance through the use of unmanned aerial systems, including the establishment of—

(i) a process for other Federal, State, and local law enforcement agencies to submit mission requests;

(ii) a formal procedure to determine whether to approve or deny such a mission request;

(iii) a formal procedure to determine how such mission requests are prioritized and coordinated; and

(iv) a process regarding the protection and privacy of data and images collected by U.S. Customs and Border Protection through the use of unmanned aerial systems.

(2) REQUIREMENTS REGARDING CERTAIN NOTIFICATIONS.—The standard operating procedures established pursuant to subparagraph (A) of paragraph (1) shall require—

(A) in the case of a search of information conducted on an electronic device by U.S. Customs and Border Protection personnel, the Commissioner to notify the individual subject to such search of the purpose and authority for such search, and how such individual may obtain information on reporting concerns about such search; and

(B) in the case of information collected by U.S. Customs and Border Protection through a search of an electronic device, if such information is transmitted to another Federal agency for subject matter assistance, translation, or decryption, the Commissioner to notify the individual subject to such search of such transmission.

(3) EXCEPTIONS.—The Commissioner may withhold the notifications required under paragraphs (1)(C) and (2) if the Commissioner determines, in the sole and unreviewable discretion of the Commissioner, that such notifications would impair national security, law enforcement, or other operational interests.

(4) UPDATE AND REVIEW.—The Commissioner shall review and update every three years the standard operating procedures required under this subsection.

(5) AUDITS.—The Inspector General of the Department of Homeland Security shall develop and annually administer, during each of the three calendar years beginning in the calendar year that begins after the date of the enactment of the Trade Facilitation and Trade Enforcement Act of 2015, an auditing mechanism to review whether searches of electronic devices at or between United States ports of entry are being conducted in conformity with the standard operating procedures required under subparagraph (A) of paragraph (1). Such audits shall be submitted to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland

Security and Governmental Affairs of the Senate and shall include the following:

- (A) A description of the activities of officers and agents of U.S. Customs and Border Protection with respect to such searches.
 - (B) The number of such searches.
 - (C) The number of instances in which information contained in such devices that were subjected to such searches was retained, copied, shared, or entered in an electronic database.
 - (D) The number of such devices detained as the result of such searches.
 - (E) The number of instances in which information collected from such devices was subjected to such searches and was transmitted to another Federal agency, including whether such transmissions resulted in a prosecution or conviction.
- (6) REQUIREMENTS REGARDING OTHER NOTIFICATIONS.—The standard use of force procedures established pursuant to subparagraph (B) of paragraph (1) shall require—
- (A) in the case of an incident of the use of deadly force by U.S. Customs and Border Protection personnel, the Commissioner to notify the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate; and
 - (B) the Commissioner to provide to such committees a copy of the evaluation pursuant to subparagraph (D) of such paragraph not later than 30 days after completion of such evaluation.
- (7) REPORT ON UNMANNED AERIAL SYSTEMS.—The Commissioner shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate an annual report, for each of the three calendar years beginning in the calendar year that begins after the date of the enactment of the Trade Facilitation and Trade Enforcement Act of 2015, that reviews whether the use of unmanned aerial systems is being conducted in conformity with the standard operating procedures required under subparagraph (E) of paragraph (1). Such reports—
- (A) shall be submitted with the annual budget of the United States Government submitted by the President under section 1105 of title 31, United States Code;
 - (B) may be submitted in classified form if the Commissioner determines that such is appropriate; and
 - (C) shall include—
 - (i) a detailed description of how, where, and for how long data and images collected through the use of unmanned aerial systems by U.S. Customs and Border Protection are collected and stored; and
 - (ii) a list of Federal, State, and local law enforcement agencies that submitted mission requests in the previous year and the disposition of such requests.

(l) TRAINING.—The Commissioner shall require all officers and agents of U.S. Customs and Border Protection to participate in a specified amount of continuing education (to be determined by the Commissioner) to maintain an understanding of Federal legal rulings, court decisions, and departmental policies, procedures, and guidelines.

(m) SHORT-TERM DETENTION STANDARDS.—

(1) ACCESS TO FOOD AND WATER.—The Commissioner shall make every effort to ensure that adequate access to food and water is provided to an individual apprehended and detained at a United States port of entry or between ports of entry as soon as practicable following the time of such apprehension or during subsequent short-term detention.

(2) ACCESS TO INFORMATION ON DETAINEE RIGHTS AT BORDER PATROL PROCESSING CENTERS.—

(A) IN GENERAL.—The Commissioner shall ensure that an individual apprehended by a U.S. Border Patrol agent or an Office of Field Operations officer is provided with information concerning such individual's rights, including the right to contact a representative of such individual's government for purposes of United States treaty obligations.

(B) FORM.—The information referred to in subparagraph (A) may be provided either verbally or in writing, and shall be posted in the detention holding cell in which such individual is being held. The information shall be provided in a language understandable to such individual.

(3) SHORT-TERM DETENTION DEFINED.—In this subsection, the term “short-term detention” means detention in a U.S. Customs and Border Protection processing center for 72 hours or less, before repatriation to a country of nationality or last habitual residence.

(4) DAYTIME REPATRIATION.—When practicable, repatriations shall be limited to daylight hours and avoid locations that are determined to have high indices of crime and violence.

(5) REPORT ON PROCUREMENT PROCESS AND STANDARDS.—Not later than 180 days after the date of the enactment of the Trade Facilitation and Trade Enforcement Act of 2015, the Comptroller General of the United States shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the procurement process and standards of entities with which U.S. Customs and Border Protection has contracts for the transportation and detention of individuals apprehended by agents or officers of U.S. Customs and Border Protection. Such report should also consider the operational efficiency of contracting the transportation and detention of such individuals.

(6) REPORT ON INSPECTIONS OF SHORT-TERM CUSTODY FACILITIES.—The Commissioner shall—

(A) annually inspect all facilities utilized for short-term detention; and

(B) make publicly available information collected pursuant to such inspections, including information regarding the requirements under paragraphs (1) and (2) and, where

appropriate, issue recommendations to improve the conditions of such facilities.

(n) WAIT TIMES TRANSPARENCY.—

(1) IN GENERAL.—The Commissioner shall—

(A) publish live wait times for travelers entering the United States at the 20 United States airports that support the highest volume of international travel (as determined by available Federal flight data);

(B) make information about such wait times available to the public in real time through the U.S. Customs and Border Protection website;

(C) submit to the Committee on Homeland Security and the Committee on Ways and Means of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Finance of the Senate, for each of the five calendar years beginning in the calendar year that begins after the date of the enactment of the Trade Facilitation and Trade Enforcement Act of 2015, a report that includes compilations of all such wait times and a ranking of such United States airports by wait times; and

(D) provide adequate staffing at the U.S. Customs and Border Protection information center to ensure timely access for travelers attempting to submit comments or speak with a representative about their entry experiences.

(2) CALCULATION.—The wait times referred to in paragraph (1)(A) shall be determined by calculating the time elapsed between an individual's entry into the U.S. Customs and Border Protection inspection area and such individual's clearance by a U.S. Customs and Border Protection officer.

(o) OTHER AUTHORITIES.—

(1) IN GENERAL.—The Secretary may establish such other offices or positions of Assistant Commissioners (or other similar officers or officials) as the Secretary determines necessary to carry out the missions, duties, functions, and authorities of U.S. Customs and Border Protection.

(2) NOTIFICATION.—If the Secretary exercises the authority provided under paragraph (1), the Secretary shall notify the Committee on Homeland Security and the Committee on Ways and Means of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Finance of the Senate not later than 30 days before exercising such authority.

(p) REPORTS TO CONGRESS.—The Commissioner shall, on and after the date of the enactment of the Trade Facilitation and Trade Enforcement Act of 2015, continue to submit to the Committee on Homeland Security and the Committee on Ways and Means of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Finance of the Senate any report required, on the day before such date of enactment, to be submitted under any provision of law.

(q) OTHER FEDERAL AGENCIES.—Nothing in this section may be construed as affecting in any manner the authority, existing on the day before the date of the enactment of the Trade Facilitation and

Trade Enforcement Act of 2015, of any other Federal agency or component of the Department.

(r) DEFINITIONS.—In this section, the terms “commercial operations”, “customs and trade laws of the United States”, “trade enforcement”, and “trade facilitation” have the meanings given such terms in section 2 of the Trade Facilitation and Trade Enforcement Act of 2015.

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