

committees not later than 30 days prior to the finalization of any Department policies, initiatives, or actions that will have a major impact on trade and customs revenue functions. Such notifications shall include a description of the proposed policies, initiatives, or actions and any comments or recommendations provided by the Commercial Operations Advisory Committee and other relevant groups regarding the proposed policies, initiatives, or actions.

**(B) Exception**

If the Secretary determines that it is important to the national security interest of the United States to finalize any Department policies, initiatives, or actions prior to the consultation described in subparagraph (A), the Secretary shall—

(i) notify and provide any recommendations of the Commercial Operations Advisory Committee received to the appropriate congressional committees not later than 45 days after the date on which the policies, initiatives, or actions are finalized; and

(ii) to the extent appropriate, modify the policies, initiatives, or actions based upon the consultations with the appropriate congressional committees.

**(d) Notification of reorganization of customs revenue functions**

**(1) In general**

Not less than 45 days prior to any change in the organization of any of the customs revenue functions of the Department, the Secretary shall notify the Committee on Appropriations, the Committee on Finance, and the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Appropriations, the Committee on Homeland Security, and the Committee on Ways and Means of the House of Representatives of the specific assets, functions, or personnel to be transferred as part of such reorganization, and the reason for such transfer. The notification shall also include—

(A) an explanation of how trade enforcement functions will be impacted by the reorganization;

(B) an explanation of how the reorganization meets the requirements of section 212(b) of this title that the Department not diminish the customs revenue and trade facilitation functions formerly performed by the United States Customs Service; and

(C) any comments or recommendations provided by the Commercial Operations Advisory Committee regarding such reorganization.

**(2) Analysis**

Any congressional committee referred to in paragraph (1) may request that the Commercial Operations Advisory Committee provide a report to the committee analyzing the impact of the reorganization and providing any recommendations for modifying the reorganization.

**(3) Report**

Not later than 1 year after any reorganization referred to in paragraph (1) takes place,

the Secretary, in consultation with the Commercial Operations Advisory Committee, shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives. Such report shall include an assessment of the impact of, and any suggested modifications to, such reorganization.

(Pub. L. 109-347, title IV, §401, Oct. 13, 2006, 120 Stat. 1921.)

CODIFICATION

Section was enacted as part of the Security and Accountability For Every Port Act of 2006, also known as the SAFE Port Act, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

DEFINITIONS

For definitions of terms used in this section, see section 901 of this title.

SUBCHAPTER II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

PART A—INFORMATION AND ANALYSIS AND INFRASTRUCTURE PROTECTION; ACCESS TO INFORMATION

AMENDMENTS

2007—Pub. L. 110-53, title V, §531(b)(3), Aug. 3, 2007, 121 Stat. 334, substituted “Information and” for “Directorate for Information” in part heading.

**§ 121. Information and Analysis and Infrastructure Protection**

**(a) Intelligence and analysis and infrastructure protection**

There shall be in the Department an Office of Intelligence and Analysis and an Office of Infrastructure Protection.

**(b) Under Secretary for Intelligence and Analysis and Assistant Secretary for Infrastructure Protection**

**(1) Office of Intelligence and Analysis**

The Office of Intelligence and Analysis shall be headed by an Under Secretary for Intelligence and Analysis, who shall be appointed by the President, by and with the advice and consent of the Senate.

**(2) Chief Intelligence Officer**

The Under Secretary for Intelligence and Analysis shall serve as the Chief Intelligence Officer of the Department.

**(3) Office of Infrastructure Protection**

The Office of Infrastructure Protection shall be headed by an Assistant Secretary for Infrastructure Protection, who shall be appointed by the President.

**(c) Discharge of responsibilities**

The Secretary shall ensure that the responsibilities of the Department relating to information analysis and infrastructure protection, including those described in subsection (d), are carried out through the Under Secretary for Intelligence and Analysis or the Assistant Secretary for Infrastructure Protection, as appropriate.

**(d) Responsibilities of Secretary relating to intelligence and analysis and infrastructure protection**

The responsibilities of the Secretary relating to intelligence and analysis and infrastructure protection shall be as follows:

(1) To access, receive, and analyze law enforcement information, intelligence information, and other information from agencies of the Federal Government, State and local government agencies (including law enforcement agencies), and private sector entities, and to integrate such information, in support of the mission responsibilities of the Department and the functions of the National Counterterrorism Center established under section 119 of the National Security Act of 1947 (50 U.S.C. 404o), in order to—

(A) identify and assess the nature and scope of terrorist threats to the homeland;

(B) detect and identify threats of terrorism against the United States; and

(C) understand such threats in light of actual and potential vulnerabilities of the homeland.

(2) To carry out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States, including the performance of risk assessments to determine the risks posed by particular types of terrorist attacks within the United States (including an assessment of the probability of success of such attacks and the feasibility and potential efficacy of various countermeasures to such attacks).

(3) To integrate relevant information, analysis, and vulnerability assessments (regardless of whether such information, analysis or assessments are provided by or produced by the Department) in order to—

(A) identify priorities for protective and support measures regarding terrorist and other threats to homeland security by the Department, other agencies of the Federal Government, State, and local government agencies and authorities, the private sector, and other entities; and

(B) prepare finished intelligence and information products in both classified and unclassified formats, as appropriate, whenever reasonably expected to be of benefit to a State, local, or tribal government (including a State, local, or tribal law enforcement agency) or a private sector entity.

(4) To ensure, pursuant to section 122 of this title, the timely and efficient access by the Department to all information necessary to discharge the responsibilities under this section, including obtaining such information from other agencies of the Federal Government.

(5) To develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States, including power production, generation, and distribution systems, information technology and telecommunications systems (including satellites), electronic financial and property record storage and transmission systems, emergency preparedness communications sys-

tems, and the physical and technological assets that support such systems.

(6) To recommend measures necessary to protect the key resources and critical infrastructure of the United States in coordination with other agencies of the Federal Government and in cooperation with State and local government agencies and authorities, the private sector, and other entities.

(7) To review, analyze, and make recommendations for improvements to the policies and procedures governing the sharing of information within the scope of the information sharing environment established under section 485 of this title, including homeland security information, terrorism information, and weapons of mass destruction information, and any policies, guidelines, procedures, instructions, or standards established under that section.

(8) To disseminate, as appropriate, information analyzed by the Department within the Department, to other agencies of the Federal Government with responsibilities relating to homeland security, and to agencies of State and local governments and private sector entities with such responsibilities in order to assist in the deterrence, prevention, preemption of, or response to, terrorist attacks against the United States.

(9) To consult with the Director of National Intelligence and other appropriate intelligence, law enforcement, or other elements of the Federal Government to establish collection priorities and strategies for information, including law enforcement-related information, relating to threats of terrorism against the United States through such means as the representation of the Department in discussions regarding requirements and priorities in the collection of such information.

(10) To consult with State and local governments and private sector entities to ensure appropriate exchanges of information, including law enforcement-related information, relating to threats of terrorism against the United States.

(11) To ensure that—

(A) any material received pursuant to this chapter is protected from unauthorized disclosure and handled and used only for the performance of official duties; and

(B) any intelligence information under this chapter is shared, retained, and disseminated consistent with the authority of the Director of National Intelligence to protect intelligence sources and methods under the National Security Act of 1947 (50 U.S.C. 401 et seq.) and related procedures and, as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information.

(12) To request additional information from other agencies of the Federal Government, State and local government agencies, and the private sector relating to threats of terrorism in the United States, or relating to other areas of responsibility assigned by the Secretary, including the entry into cooperative agreements through the Secretary to obtain such information.

(13) To establish and utilize, in conjunction with the chief information officer of the De-

partment, a secure communications and information technology infrastructure, including data-mining and other advanced analytical tools, in order to access, receive, and analyze data and information in furtherance of the responsibilities under this section, and to disseminate information acquired and analyzed by the Department, as appropriate.

(14) To ensure, in conjunction with the chief information officer of the Department, that any information databases and analytical tools developed or utilized by the Department—

(A) are compatible with one another and with relevant information databases of other agencies of the Federal Government; and

(B) treat information in such databases in a manner that complies with applicable Federal law on privacy.

(15) To coordinate training and other support to the elements and personnel of the Department, other agencies of the Federal Government, and State and local governments that provide information to the Department, or are consumers of information provided by the Department, in order to facilitate the identification and sharing of information revealed in their ordinary duties and the optimal utilization of information received from the Department.

(16) To coordinate with elements of the intelligence community and with Federal, State, and local law enforcement agencies, and the private sector, as appropriate.

(17) To provide intelligence and information analysis and support to other elements of the Department.

(18) To coordinate and enhance integration among the intelligence components of the Department, including through strategic oversight of the intelligence activities of such components.

(19) To establish the intelligence collection, processing, analysis, and dissemination priorities, policies, processes, standards, guidelines, and procedures for the intelligence components of the Department, consistent with any directions from the President and, as applicable, the Director of National Intelligence.

(20) To establish a structure and process to support the missions and goals of the intelligence components of the Department.

(21) To ensure that, whenever possible, the Department—

(A) produces and disseminates unclassified reports and analytic products based on open-source information; and

(B) produces and disseminates such reports and analytic products contemporaneously with reports or analytic products concerning the same or similar information that the Department produced and disseminated in a classified format.

(22) To establish within the Office of Intelligence and Analysis an internal continuity of operations plan.

(23) Based on intelligence priorities set by the President, and guidance from the Secretary and, as appropriate, the Director of National Intelligence—

(A) to provide to the heads of each intelligence component of the Department guidance for developing the budget pertaining to the activities of such component; and

(B) to present to the Secretary a recommendation for a consolidated budget for the intelligence components of the Department, together with any comments from the heads of such components.

(24) To perform such other duties relating to such responsibilities as the Secretary may provide.

(25) To prepare and submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security in the House of Representatives, and to other appropriate congressional committees having jurisdiction over the critical infrastructure or key resources, for each sector identified in the National Infrastructure Protection Plan, a report on the comprehensive assessments carried out by the Secretary of the critical infrastructure and key resources of the United States, evaluating threat, vulnerability, and consequence, as required under this subsection. Each such report—

(A) shall contain, if applicable, actions or countermeasures recommended or taken by the Secretary or the head of another Federal agency to address issues identified in the assessments;

(B) shall be required for fiscal year 2007 and each subsequent fiscal year and shall be submitted not later than 35 days after the last day of the fiscal year covered by the report; and

(C) may be classified.

**(e) Staff**

**(1) In general**

The Secretary shall provide the Office of Intelligence and Analysis and the Office of Infrastructure Protection with a staff of analysts having appropriate expertise and experience to assist such offices in discharging responsibilities under this section.

**(2) Private sector analysts**

Analysts under this subsection may include analysts from the private sector.

**(3) Security clearances**

Analysts under this subsection shall possess security clearances appropriate for their work under this section.

**(f) Detail of personnel**

**(1) In general**

In order to assist the Office of Intelligence and Analysis and the Office of Infrastructure Protection in discharging responsibilities under this section, personnel of the agencies referred to in paragraph (2) may be detailed to the Department for the performance of analytic functions and related duties.

**(2) Covered agencies**

The agencies referred to in this paragraph are as follows:

(A) The Department of State.

(B) The Central Intelligence Agency.

- (C) The Federal Bureau of Investigation.
- (D) The National Security Agency.
- (E) The National Geospatial-Intelligence Agency.
- (F) The Defense Intelligence Agency.
- (G) Any other agency of the Federal Government that the President considers appropriate.

### (3) Cooperative agreements

The Secretary and the head of the agency concerned may enter into cooperative agreements for the purpose of detailing personnel under this subsection.

### (4) Basis

The detail of personnel under this subsection may be on a reimbursable or non-reimbursable basis.

### (g) Functions transferred

In accordance with subchapter XII of this chapter, there shall be transferred to the Secretary, for assignment to the Office of Intelligence and Analysis and the Office of Infrastructure Protection under this section, the functions, personnel, assets, and liabilities of the following:

- (1) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section), including the functions of the Attorney General relating thereto.
- (2) The National Communications System of the Department of Defense, including the functions of the Secretary of Defense relating thereto.
- (3) The Critical Infrastructure Assurance Office of the Department of Commerce, including the functions of the Secretary of Commerce relating thereto.
- (4) The National Infrastructure Simulation and Analysis Center of the Department of Energy and the energy security and assurance program and activities of the Department, including the functions of the Secretary of Energy relating thereto.
- (5) The Federal Computer Incident Response Center of the General Services Administration, including the functions of the Administrator of General Services relating thereto.

(Pub. L. 107-296, title II, §201, Nov. 25, 2002, 116 Stat. 2145; Pub. L. 110-53, title V, §§501(a)(2)(A), (b), 531(a), title X, §1002(a), Aug. 3, 2007, 121 Stat. 309, 332, 374; Pub. L. 110-417, [div. A], title IX, §931(b)(5), Oct. 14, 2008, 122 Stat. 4575; Pub. L. 111-84, div. A, title X, §1073(c)(9), Oct. 28, 2009, 123 Stat. 2475; Pub. L. 111-258, §5(b)(1), Oct. 7, 2010, 124 Stat. 2650.)

#### REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(11), was in the original “this Act”, meaning Pub. L. 107-296, Nov. 25, 2002, 116 Stat. 2135, known as the Homeland Security Act of 2002, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 101 of this title and Tables.

The National Security Act of 1947, referred to in subsec. (d)(11)(B), is act July 26, 1947, ch. 343, 61 Stat. 495. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 50, War and National Defense, and Tables.

#### CODIFICATION

Section is comprised of section 201 of Pub. L. 107-296. Subsec. (h) of section 201 of Pub. L. 107-296 amended section 401a of Title 50, War and National Defense.

#### AMENDMENTS

2010—Subsec. (d)(3). Pub. L. 111-258 amended par. (3) generally. Prior to amendment, par. (3) read as follows: “To integrate relevant information, analyses, and vulnerability assessments (whether such information, analyses, or assessments are provided or produced by the Department or others) in order to identify priorities for protective and support measures by the Department, other agencies of the Federal Government, State and local government agencies and authorities, the private sector, and other entities.”

2009—Subsec. (f)(2)(E). Pub. L. 111-84 made technical amendment to directory language of Pub. L. 110-417. See 2008 amendment note below.

2008—Subsec. (f)(2)(E). Pub. L. 110-417, §931(b)(5), as amended by Pub. L. 111-84, substituted “National Geospatial-Intelligence Agency” for “National Imagery and Mapping Agency”.

2007—Pub. L. 110-53, §531(a)(1), substituted “Information and” for “Directorate for Information” in section catchline.

Subsecs. (a) to (c). Pub. L. 110-53, §531(a)(2), added subsecs. (a) to (c) and struck out former subsecs. (a) to (c) which related to, in subsec. (a), establishment and responsibilities of Directorate for Information Analysis and Infrastructure Protection, in subsec. (b), positions of Assistant Secretary for Information Analysis and Assistant Secretary for Infrastructure Protection, and, in subsec. (c), Secretary’s duty to ensure that responsibilities regarding information analysis and infrastructure protection would be carried out through the Under Secretary for Information Analysis and Infrastructure Protection.

Subsec. (d). Pub. L. 110-53, §531(a)(3), substituted “Secretary relating to intelligence and analysis and infrastructure protection” for “Under Secretary” in heading and “The responsibilities of the Secretary relating to intelligence and analysis and infrastructure protection” for “Subject to the direction and control of the Secretary, the responsibilities of the Under Secretary for Information Analysis and Infrastructure Protection” in introductory provisions.

Subsec. (d)(1). Pub. L. 110-53, §501(b)(1), inserted “, in support of the mission responsibilities of the Department and the functions of the National Counterterrorism Center established under section 119 of the National Security Act of 1947 (50 U.S.C. 404o),” after “to integrate such information” in introductory provisions.

Subsec. (d)(7). Pub. L. 110-53, §501(b)(2), added par. (7) and struck out former par. (7) which read as follows: “To review, analyze, and make recommendations for improvements in the policies and procedures governing the sharing of law enforcement information, intelligence information, intelligence-related information, and other information relating to homeland security within the Federal Government and between the Federal Government and State and local government agencies and authorities.”

Pub. L. 110-53, §501(a)(2)(A), redesignated par. (8) as (7) and struck out former par. (7) which read as follows: “To administer the Homeland Security Advisory System, including—

“(A) exercising primary responsibility for public advisories related to threats to homeland security; and

“(B) in coordination with other agencies of the Federal Government, providing specific warning information, and advice about appropriate protective measures and countermeasures, to State and local government agencies and authorities, the private sector, other entities, and the public.”

Subsec. (d)(8). Pub. L. 110-53, §501(a)(2)(A)(ii), redesignated par. (9) as (8). Former par. (8) redesignated (7).

Subsec. (d)(9). Pub. L. 110-53, § 531(a)(3)(C), substituted “Director of National Intelligence” for “Director of Central Intelligence”.

Pub. L. 110-53, § 501(a)(2)(A)(ii), redesignated par. (10) as (9). Former par. (9) redesignated (8).

Subsec. (d)(10). Pub. L. 110-53, § 501(a)(2)(A)(ii), redesignated par. (11) as (10). Former par. (10) redesignated (9).

Subsec. (d)(11). Pub. L. 110-53, § 501(a)(2)(A)(ii), redesignated par. (12) as (11). Former par. (11) redesignated (10).

Subsec. (d)(11)(B). Pub. L. 110-53, § 531(a)(3)(D), substituted “Director of National Intelligence” for “Director of Central Intelligence”.

Subsec. (d)(12) to (17). Pub. L. 110-53, § 501(a)(2)(A)(ii), redesignated pars. (13) to (18) as (12) to (17), respectively. Former par. (12) redesignated (11).

Subsec. (d)(18). Pub. L. 110-53, § 531(a)(3)(E), (F), added par. (18) and redesignated former par. (18) as (24).

Pub. L. 110-53, § 501(a)(2)(A)(ii), redesignated par. (19) as (18). Former par. (18) redesignated (17).

Subsec. (d)(19). Pub. L. 110-53, § 531(a)(3)(F), added par. (19).

Pub. L. 110-53, § 501(a)(2)(A)(ii), redesignated par. (19) as (18).

Subsec. (d)(20) to (23). Pub. L. 110-53, § 531(a)(3)(F), added pars. (20) to (23).

Subsec. (d)(24). Pub. L. 110-53, § 531(a)(3)(E), redesignated par. (18) as (24).

Subsec. (d)(25). Pub. L. 110-53, § 1002(a), added par. (25).

Subsec. (e)(1). Pub. L. 110-53, § 531(a)(4), substituted “provide the Office of Intelligence and Analysis and the Office of Infrastructure Protection” for “provide the Directorate” and “assist such offices in discharging” for “assist the Directorate in discharging”.

Subsec. (f)(1). Pub. L. 110-53, § 531(a)(5), substituted “Office of Intelligence and Analysis and the Office of Infrastructure Protection” for “Directorate”.

Subsec. (g). Pub. L. 110-53, § 531(a)(6), substituted “Office of Intelligence and Analysis and the Office of Infrastructure Protection” for “Under Secretary for Information Analysis and Infrastructure Protection” in introductory provisions.

#### EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-84, div. A, title X, § 1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment by section 1073(c)(9) is effective as of Oct. 14, 2008, and as if included in Pub. L. 110-417 as enacted.

#### REGULATIONS

Pub. L. 109-295, title V, § 550, Oct. 4, 2006, 120 Stat. 1388, as amended by Pub. L. 110-161, div. E, title V, § 534, Dec. 26, 2007, 121 Stat. 2075; Pub. L. 111-83, title V, § 550, Oct. 28, 2009, 123 Stat. 2177; Pub. L. 112-10, div. B, title VI, § 1650, Apr. 15, 2011, 125 Stat. 146; Pub. L. 112-74, div. D, title V, § 540, Dec. 23, 2011, 125 Stat. 976, provided that:

“(a) No later than six months after the date of enactment of this Act [Oct. 4, 2006], the Secretary of Homeland Security shall issue interim final regulations establishing risk-based performance standards for security of chemical facilities and requiring vulnerability assessments and the development and implementation of site security plans for chemical facilities: *Provided*, That such regulations shall apply to chemical facilities that, in the discretion of the Secretary, present high levels of security risk: *Provided further*, That such regulations shall permit each such facility, in developing and implementing site security plans, to select layered security measures that, in combination, appropriately address the vulnerability assessment and the risk-based performance standards for security for the facility: *Provided further*, That the Secretary may not disapprove a site security plan submitted under this section based on the presence or absence of a particular security measure, but the Secretary may disapprove a site security plan if the plan fails to satisfy the risk-based performance standards established by this section: *Pro-*

*vided further*, That the Secretary may approve alternative security programs established by private sector entities, Federal, State, or local authorities, or other applicable laws if the Secretary determines that the requirements of such programs meet the requirements of this section and the interim regulations: *Provided further*, That the Secretary shall review and approve each vulnerability assessment and site security plan required under this section: *Provided further*, That the Secretary shall not apply regulations issued pursuant to this section to facilities regulated pursuant to the Maritime Transportation Security Act of 2002, Public Law 107-295, as amended [see Tables for classification]; Public Water Systems, as defined by section 1401 of the Safe Drinking Water Act, Public Law 93-523, as amended [42 U.S.C. 300f]; Treatment Works as defined in section 212 of the Federal Water Pollution Control Act, Public Law 92-500, as amended [33 U.S.C. 1292]; any facility owned or operated by the Department of Defense or the Department of Energy, or any facility subject to regulation by the Nuclear Regulatory Commission.

“(b) Interim regulations issued under this section shall apply until the effective date of interim or final regulations promulgated under other laws that establish requirements and standards referred to in subsection (a) and expressly supersede this section: *Provided*, That the authority provided by this section shall terminate on October 4, 2012.

“(c) Notwithstanding any other provision of law and subsection (b), information developed under this section, including vulnerability assessments, site security plans, and other security related information, records, and documents shall be given protections from public disclosure consistent with similar information developed by chemical facilities subject to regulation under section 70103 of title 46, United States Code: *Provided*, That this subsection does not prohibit the sharing of such information, as the Secretary deems appropriate, with State and local government officials possessing the necessary security clearances, including law enforcement officials and first responders, for the purpose of carrying out this section, provided that such information may not be disclosed pursuant to any State or local law: *Provided further*, That in any proceeding to enforce this section, vulnerability assessments, site security plans, and other information submitted to or obtained by the Secretary under this section, and related vulnerability or security information, shall be treated as if the information were classified material.

“(d) Any person who violates an order issued under this section shall be liable for a civil penalty under section 70119(a) of title 46, United States Code: *Provided*, That nothing in this section confers upon any person except the Secretary a right of action against an owner or operator of a chemical facility to enforce any provision of this section.

“(e) The Secretary of Homeland Security shall audit and inspect chemical facilities for the purposes of determining compliance with the regulations issued pursuant to this section.

“(f) Nothing in this section shall be construed to supersede, amend, alter, or affect any Federal law that regulates the manufacture, distribution in commerce, use, sale, other treatment, or disposal of chemical substances or mixtures.

“(g) If the Secretary determines that a chemical facility is not in compliance with this section, the Secretary shall provide the owner or operator with written notification (including a clear explanation of deficiencies in the vulnerability assessment and site security plan) and opportunity for consultation, and issue an order to comply by such date as the Secretary determines to be appropriate under the circumstances: *Provided*, That if the owner or operator continues to be in noncompliance, the Secretary may issue an order for the facility to cease operation, until the owner or operator complies with the order.

“(h) This section shall not preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of

performance with respect to chemical facility security that is more stringent than a regulation, requirement, or standard of performance issued under this section, or otherwise impair any right or jurisdiction of any State with respect to chemical facilities within that State, unless there is an actual conflict between this section and the law of that State.”

CYBERSECURITY COLLABORATION BETWEEN THE DEPARTMENT OF DEFENSE AND THE DEPARTMENT OF HOMELAND SECURITY

Pub. L. 112-81, div. A, title X, § 1090, Dec. 31, 2011, 125 Stat. 1603, provided that:

“(a) INTERDEPARTMENTAL COLLABORATION.—

“(1) IN GENERAL.—The Secretary of Defense and the Secretary of Homeland Security shall provide personnel, equipment, and facilities in order to increase interdepartmental collaboration with respect to—

“(A) strategic planning for the cybersecurity of the United States;

“(B) mutual support for cybersecurity capabilities development; and

“(C) synchronization of current operational cybersecurity mission activities.

“(2) EFFICIENCIES.—The collaboration provided for under paragraph (1) shall be designed—

“(A) to improve the efficiency and effectiveness of requirements formulation and requests for products, services, and technical assistance for, and coordination and performance assessment of, cybersecurity missions executed across a variety of Department of Defense and Department of Homeland Security elements; and

“(B) to leverage the expertise of each individual Department and to avoid duplicating, replicating, or aggregating unnecessarily the diverse line organizations across technology developments, operations, and customer support that collectively execute the cybersecurity mission of each Department.

“(b) RESPONSIBILITIES.—

“(1) DEPARTMENT OF HOMELAND SECURITY.—The Secretary of Homeland Security shall identify and assign, in coordination with the Department of Defense, a Director of Cybersecurity Coordination within the Department of Homeland Security to undertake collaborative activities with the Department of Defense.

“(2) DEPARTMENT OF DEFENSE.—The Secretary of Defense shall identify and assign, in coordination with the Department of Homeland Security, one or more officials within the Department of Defense to coordinate, oversee, and execute collaborative activities and the provision of cybersecurity support to the Department of Homeland Security.”

CYBERSECURITY OVERSIGHT

Pub. L. 111-259, title III, § 336, Oct. 7, 2010, 124 Stat. 2689, provided that:

“(a) NOTIFICATION OF CYBERSECURITY PROGRAMS.—

“(1) REQUIREMENT FOR NOTIFICATION.—

“(A) EXISTING PROGRAMS.—Not later than 30 days after the date of the enactment of this Act [Oct. 7, 2010], the President shall submit to Congress a notification for each cybersecurity program in operation on such date that includes the documentation referred to in subparagraphs (A) through (F) of paragraph (2).

“(B) NEW PROGRAMS.—Not later than 30 days after the date of the commencement of operations of a new cybersecurity program, the President shall submit to Congress a notification of such commencement that includes the documentation referred to in subparagraphs (A) through (F) of paragraph (2).

“(2) DOCUMENTATION.—A notification required by paragraph (1) for a cybersecurity program shall include—

“(A) the legal basis for the cybersecurity program;

“(B) the certification, if any, made pursuant to section 2511(2)(a)(ii)(B) of title 18, United States

Code, or other statutory certification of legality for the cybersecurity program;

“(C) the concept for the operation of the cybersecurity program that is approved by the head of the appropriate department or agency of the United States;

“(D) the assessment, if any, of the privacy impact of the cybersecurity program prepared by the privacy or civil liberties protection officer or comparable officer of such department or agency;

“(E) the plan, if any, for independent audit or review of the cybersecurity program to be carried out by the head of such department or agency, in conjunction with the appropriate inspector general; and

“(F) recommendations, if any, for legislation to improve the capabilities of the United States Government to protect the cybersecurity of the United States.

“(b) PROGRAM REPORTS.—

“(1) REQUIREMENT FOR REPORTS.—The head of a department or agency of the United States with responsibility for a cybersecurity program for which a notification was submitted under subsection (a), in consultation with the inspector general for that department or agency, shall submit to Congress and the President a report on such cybersecurity program that includes—

“(A) the results of any audit or review of the cybersecurity program carried out under the plan referred to in subsection (a)(2)(E), if any; and

“(B) an assessment of whether the implementation of the cybersecurity program—

“(i) is in compliance with—

“(I) the legal basis referred to in subsection (a)(2)(A); and

“(II) an assessment referred to in subsection (a)(2)(D), if any;

“(ii) is adequately described by the concept of operation referred to in subsection (a)(2)(C); and

“(iii) includes an adequate independent audit or review system and whether improvements to such independent audit or review system are necessary.

“(2) SCHEDULE FOR SUBMISSION OF REPORTS.—

“(A) EXISTING PROGRAMS.—Not later than 180 days after the date of the enactment of this Act [Oct. 7, 2010], and annually thereafter, the head of a department or agency of the United States with responsibility for a cybersecurity program for which a notification is required to be submitted under subsection (a)(1)(A) shall submit a report required under paragraph (1).

“(B) NEW PROGRAMS.—Not later than 120 days after the date on which a certification is submitted under subsection (a)(1)(B), and annually thereafter, the head of a department or agency of the United States with responsibility for the cybersecurity program for which such certification is submitted shall submit a report required under paragraph (1).

“(3) COOPERATION AND COORDINATION.—

“(A) COOPERATION.—The head of each department or agency of the United States required to submit a report under paragraph (1) for a particular cybersecurity program, and the inspector general of each such department or agency, shall, to the extent practicable, work in conjunction with any other such head or inspector general required to submit such a report for such cybersecurity program.

“(B) COORDINATION.—The heads of all of the departments and agencies of the United States required to submit a report under paragraph (1) for a particular cybersecurity program shall designate one such head to coordinate the conduct of the reports on such program.

“(c) INFORMATION SHARING REPORT.—Not later than one year after the date of the enactment of this Act [Oct. 7, 2010], the Inspector General of the Department of Homeland Security and the Inspector General of the

Intelligence Community shall jointly submit to Congress and the President a report on the status of the sharing of cyber-threat information, including—

“(1) a description of how cyber-threat intelligence information, including classified information, is shared among the agencies and departments of the United States and with persons responsible for critical infrastructure;

“(2) a description of the mechanisms by which classified cyber-threat information is distributed;

“(3) an assessment of the effectiveness of cyber-threat information sharing and distribution; and

“(4) any other matters identified by either Inspector General that would help to fully inform Congress or the President regarding the effectiveness and legality of cybersecurity programs.

“(d) PERSONNEL DETAILS.—

“(1) AUTHORITY TO DETAIL.—Notwithstanding any other provision of law, the head of an element of the intelligence community that is funded through the National Intelligence Program may detail an officer or employee of such element to the National Cyber Investigative Joint Task Force or to the Department of Homeland Security to assist the Task Force or the Department with cybersecurity, as jointly agreed by the head of such element and the Task Force or the Department.

“(2) BASIS FOR DETAIL.—A personnel detail made under paragraph (1) may be made—

“(A) for a period of not more than three years; and

“(B) on a reimbursable or nonreimbursable basis.

“(e) ADDITIONAL PLAN.—Not later than 180 days after the date of the enactment of this Act [Oct. 7, 2010], the Director of National Intelligence shall submit to Congress a plan for recruiting, retaining, and training a highly-qualified cybersecurity intelligence community workforce to secure the networks of the intelligence community. Such plan shall include—

“(1) an assessment of the capabilities of the current workforce;

“(2) an examination of issues of recruiting, retention, and the professional development of such workforce, including the possibility of providing retention bonuses or other forms of compensation;

“(3) an assessment of the benefits of outreach and training with both private industry and academic institutions with respect to such workforce;

“(4) an assessment of the impact of the establishment of the Department of Defense Cyber Command on such workforce;

“(5) an examination of best practices for making the intelligence community workforce aware of cybersecurity best practices and principles; and

“(6) strategies for addressing such other matters as the Director of National Intelligence considers necessary to the cybersecurity of the intelligence community.

“(f) REPORT ON GUIDELINES AND LEGISLATION TO IMPROVE CYBERSECURITY OF THE UNITED STATES.—

“(1) INITIAL.—Not later than one year after the date of the enactment of this Act [Oct. 7, 2010], the Director of National Intelligence, in coordination with the Attorney General, the Director of the National Security Agency, the White House Cybersecurity Coordinator, and any other officials the Director of National Intelligence considers appropriate, shall submit to Congress a report containing guidelines or legislative recommendations, if appropriate, to improve the capabilities of the intelligence community and law enforcement agencies to protect the cybersecurity of the United States. Such report shall include guidelines or legislative recommendations on—

“(A) improving the ability of the intelligence community to detect hostile actions and attribute attacks to specific parties;

“(B) the need for data retention requirements to assist the intelligence community and law enforcement agencies;

“(C) improving the ability of the intelligence community to anticipate nontraditional targets of foreign intelligence services; and

“(D) the adequacy of existing criminal statutes to successfully deter cyber attacks, including statutes criminalizing the facilitation of criminal acts, the scope of laws for which a cyber crime constitutes a predicate offense, trespassing statutes, data breach notification requirements, and victim restitution statutes.

“(2) SUBSEQUENT.—Not later than one year after the date on which the initial report is submitted under paragraph (1), and annually thereafter for two years, the Director of National Intelligence, in consultation with the Attorney General, the Director of the National Security Agency, the White House Cybersecurity Coordinator, and any other officials the Director of National Intelligence considers appropriate, shall submit to Congress an update of the report required under paragraph (1).

“(g) SUNSET.—The requirements and authorities of subsections (a) through (e) shall terminate on December 31, 2013.

“(h) DEFINITIONS.—In this section:

“(1) CYBERSECURITY PROGRAM.—The term ‘cybersecurity program’ means a class or collection of similar cybersecurity operations of a department or agency of the United States that involves personally identifiable data that is—

“(A) screened by a cybersecurity system outside of the department or agency of the United States that was the intended recipient of the personally identifiable data;

“(B) transferred, for the purpose of cybersecurity, outside the department or agency of the United States that was the intended recipient of the personally identifiable data; or

“(C) transferred, for the purpose of cybersecurity, to an element of the intelligence community.

“(2) NATIONAL CYBER INVESTIGATIVE JOINT TASK FORCE.—The term ‘National Cyber Investigative Joint Task Force’ means the multiagency cyber investigation coordination organization overseen by the Director of the Federal Bureau of Investigation known as the National Cyber Investigative Joint Task Force that coordinates, integrates, and provides pertinent information related to cybersecurity investigations.

“(3) CRITICAL INFRASTRUCTURE.—The term ‘critical infrastructure’ has the meaning given that term in section 1016 of the USA PATRIOT Act (42 U.S.C. 5195c).”

[For definition of “intelligence community” as used in section 336 of Pub. L. 111-259, set out above, see section 2 of Pub. L. 111-259, set out as a note under section 401a of Title 50, War and National Defense.]

#### TREATMENT OF INCUMBENT UNDER SECRETARY FOR INTELLIGENCE AND ANALYSIS

Pub. L. 110-53, title V, § 531(c), Aug. 3, 2007, 121 Stat. 335, provided that: “The individual administratively performing the duties of the Under Secretary for Intelligence and Analysis as of the date of the enactment of this Act [Aug. 3, 2007] may continue to perform such duties after the date on which the President nominates an individual to serve as the Under Secretary pursuant to section 201 of the Homeland Security Act of 2002 [6 U.S.C. 121], as amended by this section, and until the individual so appointed assumes the duties of the position.”

#### REPORTS TO BE SUBMITTED TO CERTAIN COMMITTEES

Pub. L. 110-53, title XXIV, § 2403, Aug. 3, 2007, 121 Stat. 547, provided that: “The Committee on Commerce, Science, and Transportation of the Senate shall receive the reports required by the following provisions of law in the same manner and to the same extent that the reports are to be received by the Committee on Homeland Security and Governmental Affairs of the Senate:

“(1) Section 1016(j)(1) of the Intelligence Reform and Terrorist [Terrorism] Prevention Act of 2004 (6 U.S.C. 485(j)(1)).

“(2) Section 511(d) of this Act [121 Stat. 323].

“(3) Subsection (a)(3)(D) of section 2022 of the Homeland Security Act of 2002 [6 U.S.C. 612(a)(3)(D)], as added by section 101 of this Act.

“(4) Section 7215(d) of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 123(d)).

“(5) Section 7209(b)(1)(C) of the Intelligence Reform and Terrorism Prevention Act of 2004 [Pub. L. 108–458] (8 U.S.C. 1185 note).

“(6) Section 804(c) of this Act [42 U.S.C. 2000ee–3(c)].

“(7) Section 901(b) of this Act [121 Stat. 370].

“(8) Section 1002(a) of this Act [amending this section].

“(9) Title III of this Act [enacting sections 579 and 580 of this title and amending sections 194 and 572 of this title].”

SECURITY MANAGEMENT SYSTEMS DEMONSTRATION  
PROJECT

Pub. L. 110–53, title XXIV, §2404, Aug. 3, 2007, 121 Stat. 548, provided that:

“(a) DEMONSTRATION PROJECT REQUIRED.—Not later than 120 days after the date of enactment of this Act [Aug. 3, 2007], the Secretary of Homeland Security shall—

“(1) establish a demonstration project to conduct demonstrations of security management systems that—

“(A) shall use a management system standards approach; and

“(B) may be integrated into quality, safety, environmental and other internationally adopted management systems; and

“(2) enter into one or more agreements with a private sector entity to conduct such demonstrations of security management systems.

“(b) SECURITY MANAGEMENT SYSTEM DEFINED.—In this section, the term ‘security management system’ means a set of guidelines that address the security assessment needs of critical infrastructure and key resources that are consistent with a set of generally accepted management standards ratified and adopted by a standards making body.”

EX. ORD. NO. 13231. CRITICAL INFRASTRUCTURE  
PROTECTION IN THE INFORMATION AGE

Ex. Ord. No. 13231, Oct. 16, 2001, 66 F.R. 53063, as amended by Ex. Ord. No. 13284, §2, Jan. 23, 2003, 68 F.R. 4075; Ex. Ord. No. 13286, §7, Feb. 28, 2003, 68 F.R. 10620; Ex. Ord. No. 13385, §5, Sept. 29, 2005, 70 F.R. 57990, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to ensure protection of information systems for critical infrastructure, including emergency preparedness communications and the physical assets that support such systems, in the information age, it is hereby ordered as follows:

SECTION 1. *Policy.* The information technology revolution has changed the way business is transacted, government operates, and national defense is conducted. Those three functions now depend on an interdependent network of critical information infrastructures. It is the policy of the United States to protect against disruption of the operation of information systems for critical infrastructure and thereby help to protect the people, economy, essential human and government services, and national security of the United States, and to ensure that any disruptions that occur are infrequent, of minimal duration, and manageable, and cause the least damage possible. The implementation of this policy shall include a voluntary public-private partnership, involving corporate and nongovernmental organizations.

SEC. 2. *Continuing Authorities.* This order does not alter the existing authorities or roles of United States Government departments and agencies. Authorities set forth in 44 U.S.C. chapter 35, and other applicable law, provide senior officials with responsibility for the security of Federal Government information systems.

(a) Executive Branch Information Systems Security. The Director of the Office of Management and Budget (OMB) has the responsibility to develop and oversee the implementation of government-wide policies, principles, standards, and guidelines for the security of information systems that support the executive branch departments and agencies, except those noted in section 2(b) of this order. The Director of OMB shall advise the President and the appropriate department or agency head when there is a critical deficiency in the security practices within the purview of this section in an executive branch department or agency.

(b) National Security Information Systems. The Secretary of Defense and the Director of Central Intelligence (DCI) shall have responsibility to oversee, develop, and ensure implementation of policies, principles, standards, and guidelines for the security of information systems that support the operations under their respective control. In consultation with the Assistant to the President for National Security Affairs and the affected departments and agencies, the Secretary of Defense and the DCI shall develop policies, principles, standards, and guidelines for the security of national security information systems that support the operations of other executive branch departments and agencies with national security information.

(i) Policies, principles, standards, and guidelines developed under this subsection may require more stringent protection than those developed in accordance with section 2(a) of this order.

(ii) The Assistant to the President for National Security Affairs shall advise the President and the appropriate department or agency when there is a critical deficiency in the security practices of a department or agency within the purview of this section.

(iii) National Security Systems. The National Security Telecommunications and Information Systems Security Committee, as established by and consistent with NSD–42 and chaired by the Department of Defense, shall be designated as the “Committee on National Security Systems.”

(c) Additional Responsibilities. The heads of executive branch departments and agencies are responsible and accountable for providing and maintaining adequate levels of security for information systems, including emergency preparedness communications systems, for programs under their control. Heads of such departments and agencies shall ensure the development and, within available appropriations, funding of programs that adequately address these mission systems, especially those critical systems that support the national security and other essential government programs. Additionally, security should enable, and not unnecessarily impede, department and agency business operations.

SEC. 3. *The National Infrastructure Advisory Council.* The National Infrastructure Advisory Council (NIAC), established on October 16, 2001, shall provide the President through the Secretary of Homeland Security with advice on the security of the critical infrastructure sectors and their information systems.

(a) Membership. The NIAC shall be composed of not more than 30 members appointed by the President, taking appropriate account of the benefits of having members (i) from the private sector, including but not limited to banking and finance, transportation, energy, communications, and emergency services organizations and institutions of higher learning, and State, local, and tribal governments, (ii) with senior leadership responsibilities for the reliability and availability, which include security, of the critical infrastructure and key resource sectors, (iii) with expertise relevant to the functions of the NIAC, and (iv) with experience equivalent to that of a chief executive of an organization. Unless otherwise determined by the President, no full-time officer or employee of the executive branch shall be appointed to serve as a member of the NIAC. The President shall designate from among the members of the NIAC a Chair and a Vice Chair, who shall perform the functions of the Chair if the Chair is absent, disabled, or in the instance of a vacancy in the Chair.

(b) Functions of the NIAC. The NIAC shall meet periodically to:

(i) enhance the partnership of the public and private sectors in protecting critical infrastructures and their information systems and provide reports on this issue to the President through the Secretary of Homeland Security, as appropriate;

(ii) propose and develop ways to encourage private industry to perform periodic risk assessments;

(iii) monitor the development and operations of private sector coordinating councils and their information sharing mechanisms and provide recommendations to the President through the Secretary of Homeland Security on how these organizations can best foster improved cooperation among the sectors, the Department of Homeland Security, and other Federal Government entities;

(iv) report to the President through the Secretary of Homeland Security, who shall ensure appropriate coordination with the Assistant to the President for Homeland Security and Counterterrorism, the Assistant to the President for Economic Policy, and the Assistant to the President for National Security Affairs under the terms of this order; and

(v) advise sector specific agencies with critical infrastructure responsibilities to include issues pertaining to sector and government coordinating councils and their information sharing mechanisms.

(c) Administration of the NIAC.

(i) The NIAC may hold hearings, conduct inquiries, and establish subcommittees, as appropriate.

(ii) Upon request of the Chair, and to the extent permitted by law, the heads of the executive departments and agencies shall provide the NIAC with information and advice relating to its functions.

(iii) Senior Federal Government officials may participate in the meetings of the NIAC, as appropriate.

(iv) Members shall serve without compensation for their work on the NIAC. However, members may be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Federal Government service (5 U.S.C. 5701-5707).

(v) To the extent permitted by law and subject to the availability of appropriations, the Department of Homeland Security shall provide the NIAC with administrative services, staff, and other support services, and such funds as may be necessary for the performance of the NIAC's functions.

SEC. 4. *Judicial Review.* This order does not create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

GEORGE W. BUSH.

#### EXTENSION OF TERM OF NATIONAL INFRASTRUCTURE ADVISORY COUNCIL

Term of the National Infrastructure Advisory Council extended until Sept. 30, 2005, by Ex. Ord. No. 13316, Sept. 17, 2003, 68 F.R. 55255, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organizations and Employees.

Term of the National Infrastructure Advisory Council extended until Sept. 30, 2007, by Ex. Ord. No. 13385, Sept. 29, 2005, 70 F.R. 57989, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the National Infrastructure Advisory Council extended until Sept. 30, 2009, by Ex. Ord. No. 13446, Sept. 28, 2007, 72 F.R. 56175, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the National Infrastructure Advisory Council extended until Sept. 30, 2011, by Ex. Ord. No. 13511, Sept. 29, 2009, 74 F.R. 50909, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the National Infrastructure Advisory Council extended until Sept. 30, 2013, by Ex. Ord. No. 13585, Sept. 30, 2011, 76 F.R. 62281, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

#### EX. ORD. NO. 13284. AMENDMENT OF EXECUTIVE ORDERS, AND OTHER ACTIONS, IN CONNECTION WITH THE ESTABLISHMENT OF THE DEPARTMENT OF HOMELAND SECURITY

Ex. Ord. No. 13284, Jan. 23, 2003, 68 F.R. 4075, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Homeland Security Act of 2002 (Public Law 107-296) [see Tables for classification], and the National Security Act of 1947, as amended (50 U.S.C. 401 *et seq.*), and in order to reflect responsibilities vested in the Secretary of Homeland Security and take other actions in connection with the establishment of the Department of Homeland Security, it is hereby ordered as follows:

SECTION 1. [Amended Ex. Ord. No. 13234.]

SEC. 2. [Amended Ex. Ord. No. 13231, set out above.]

SEC. 3. Executive Order 13228 of October 8, 2001 ("Establishing the Office of Homeland Security and the Homeland Security Council") [50 U.S.C. 402 note], is amended by inserting "the Secretary of Homeland Security," after "the Secretary of Transportation," in section 5(b). Further, during the period from January 24, 2003, until March 1, 2003, the Secretary of Homeland Security shall have the responsibility for coordinating the domestic response efforts otherwise assigned to the Assistant to the President for Homeland Security pursuant to section 3(g) of Executive Order 13228.

SEC. 4. [Amended Ex. Ord. No. 13224, listed in a table under section 1701 of Title 50, War and National Defense.]

SEC. 5. [Amended Ex. Ord. No. 13151, set out as a note under section 5195 of Title 42, The Public Health and Welfare.]

SEC. 6. [Amended Ex. Ord. No. 13122, set out as a note under section 3121 of Title 42, The Public Health and Welfare.]

SEC. 7. [Amended Ex. Ord. No. 13048, set out as a note under section 501 of Title 31, Money and Finance.]

SEC. 8. [Amended Ex. Ord. No. 12992, set out as a note under section 1708 of Title 21, Food and Drugs.]

SEC. 9. [Amended Ex. Ord. No. 12881, set out as a note under section 6601 of Title 42, The Public Health and Welfare.]

SEC. 10. [Amended Ex. Ord. No. 12859, set out as a note preceding section 101 of Title 3, The President.]

SEC. 11. [Amended Ex. Ord. No. 12590, set out as a note under former section 1201 of Title 21, Food and Drugs.]

SEC. 12. [Amended Ex. Ord. No. 12260, set out as a note under section 2511 of Title 19, Customs Duties.]

SEC. 13. [Amended Ex. Ord. No. 11958, set out as a note under section 2751 of Title 22, Foreign Relations and Intercourse.]

SEC. 14. [Amended Ex. Ord. No. 11423, set out as a note under section 301 of Title 3, The President.]

SEC. 15. [Amended Ex. Ord. No. 10865, set out as a note under section 435 of Title 50, War and National Defense.]

SEC. 16. [Amended Ex. Ord. No. 13011, set out as a note under section 11101 of Title 40, Public Buildings, Property, and Works.]

SEC. 17. Those elements of the Department of Homeland Security that are supervised by the Department's Under Secretary for Information Analysis and Infrastructure Protection through the Department's Assistant Secretary for Information Analysis, with the exception of those functions that involve no analysis of foreign intelligence information, are designated as elements of the Intelligence Community under section 201(h) of the Homeland Security Act of 2002 [Pub. L. 107-296, amending 50 U.S.C. 401a] and section 3(4) of the National Security Act of 1947, as amended (50 U.S.C. 401a[(4)]).

SEC. 18. [Amended Ex. Ord. No. 12333, set out as a note under section 401 of title 50, War and National Defense.]

*SEC. 19. Functions of Certain Officials in the Department of Homeland Security.*

The Secretary of Homeland Security, the Deputy Secretary of Homeland Security, the Under Secretary for Information Analysis and Infrastructure Protection, Department of Homeland Security, and the Assistant Secretary for Information Analysis, Department of Homeland Security, each shall be considered a “Senior Official of the Intelligence Community” for purposes of Executive Order 12333 [50 U.S.C. 401 note], and all other relevant authorities, and shall:

(a) recognize and give effect to all current clearances for access to classified information held by those who become employees of the Department of Homeland Security by operation of law pursuant to the Homeland Security Act of 2002 or by Presidential appointment;

(b) recognize and give effect to all current clearances for access to classified information held by those in the private sector with whom employees of the Department of Homeland Security may seek to interact in the discharge of their homeland security-related responsibilities;

(c) make all clearance and access determinations pursuant to Executive Order 12968 of August 2, 1995 [50 U.S.C. 435 note], or any successor Executive Order, as to employees of, and applicants for employment in, the Department of Homeland Security who do not then hold a current clearance for access to classified information; and

(d) ensure all clearance and access determinations for those in the private sector with whom employees of the Department of Homeland Security may seek to interact in the discharge of their homeland security-related responsibilities are made in accordance with Executive Order 12829 of January 6, 1993 [50 U.S.C. 435 note].

*SEC. 20. Pursuant to the provisions of section 1.4 of Executive Order 12958 of April 17, 1995 (“Classified National Security Information”) [50 U.S.C. 435 note], I hereby authorize the Secretary of Homeland Security to classify information originally as “Top Secret.” Any delegation of this authority shall be in accordance with section 1.4 of that order or any successor Executive Orders.*

*SEC. 21. This order shall become effective on January 24, 2003.*

*SEC. 22. This order does not create any right or benefit, substantive or procedural, enforceable at law or equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.*

GEORGE W. BUSH.

## § 122. Access to information

### (a) In general

#### (1) Threat and vulnerability information

Except as otherwise directed by the President, the Secretary shall have such access as the Secretary considers necessary to all information, including reports, assessments, analyses, and unevaluated intelligence relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary, and to all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed, that may be collected, possessed, or prepared by any agency of the Federal Government.

#### (2) Other information

The Secretary shall also have access to other information relating to matters under the responsibility of the Secretary that may be collected, possessed, or prepared by an agency of the Federal Government as the President may further provide.

### (b) Manner of access

Except as otherwise directed by the President, with respect to information to which the Secretary has access pursuant to this section—

(1) the Secretary may obtain such material upon request, and may enter into cooperative arrangements with other executive agencies to provide such material or provide Department officials with access to it on a regular or routine basis, including requests or arrangements involving broad categories of material, access to electronic databases, or both; and

(2) regardless of whether the Secretary has made any request or entered into any cooperative arrangement pursuant to paragraph (1), all agencies of the Federal Government shall promptly provide to the Secretary—

(A) all reports (including information reports containing intelligence which has not been fully evaluated), assessments, and analytical information relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary;

(B) all information concerning the vulnerability of the infrastructure of the United States, or other vulnerabilities of the United States, to terrorism, whether or not such information has been analyzed;

(C) all other information relating to significant and credible threats of terrorism against the United States, whether or not such information has been analyzed; and

(D) such other information or material as the President may direct.

### (c) Treatment under certain laws

The Secretary shall be deemed to be a Federal law enforcement, intelligence, protective, national defense, immigration, or national security official, and shall be provided with all information from law enforcement agencies that is required to be given to the Director of Central Intelligence, under any provision of the following:

(1) The USA PATRIOT Act of 2001 (Public Law 107-56).

(2) Section 2517(6) of title 18.

(3) Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure.

### (d) Access to intelligence and other information

#### (1) Access by elements of Federal Government

Nothing in this subchapter shall preclude any element of the intelligence community (as that term is defined in section 401a(4) of title 50,<sup>1</sup> or any other element of the Federal Government with responsibility for analyzing terrorist threat information, from receiving any intelligence or other information relating to terrorism.

#### (2) Sharing of information

The Secretary, in consultation with the Director of Central Intelligence, shall work to ensure that intelligence or other information relating to terrorism to which the Department has access is appropriately shared with the

<sup>1</sup> So in original. There probably should be a closing parenthesis after “50”.

elements of the Federal Government referred to in paragraph (1), as well as with State and local governments, as appropriate.

(Pub. L. 107-296, title II, §202, Nov. 25, 2002, 116 Stat. 2149.)

#### REFERENCES IN TEXT

The USA PATRIOT Act of 2001, referred to in subsec. (c)(1), is Pub. L. 107-56, Oct. 26, 2001, 115 Stat. 272, known as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 or the USA PATRIOT Act. For complete classification of this Act to the Code, see Short Title of 2001 Amendment note set out under section 1 of Title 18, Crimes and Criminal Procedure, and Tables.

The Federal Rules of Criminal Procedure, referred to in subsec. (c)(3), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

This subchapter, referred to in subsec. (d)(1), was in the original “this title”, meaning title II of Pub. L. 107-296, Nov. 25, 2002, 116 Stat. 2145, which enacted this subchapter, amended sections 1030, 2511, 2512, 2520, 2701 to 2703, and 3125 of Title 18, Crimes and Criminal Procedure, sections 3712 and 3722 of Title 42, The Public Health and Welfare, and section 401a of Title 50, War and National Defense, and enacted provisions set out as a note under section 101 of this title and listed in a Provisions for Review, Promulgation, or Amendment of Federal Sentencing Guidelines Relating to Specific Offenses table set out under section 994 of Title 28, Judiciary and Judicial Procedure. For complete classification of title II to the Code, see Tables.

#### CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108-458, set out as a note under section 401 of Title 50, War and National Defense.

### § 123. Terrorist travel program

#### (a) Requirement to establish

Not later than 90 days after August 3, 2007, the Secretary of Homeland Security, in consultation with the Director of the National Counterterrorism Center and consistent with the strategy developed under section 7201,<sup>1</sup> shall establish a program to oversee the implementation of the Secretary’s responsibilities with respect to terrorist travel.

#### (b) Head of the program

The Secretary of Homeland Security shall designate an official of the Department of Homeland Security to be responsible for carrying out the program. Such official shall be—

- (1) the Assistant Secretary for Policy of the Department of Homeland Security; or
- (2) an official appointed by the Secretary who reports directly to the Secretary.

#### (c) Duties

The official designated under subsection (b) shall assist the Secretary of Homeland Security in improving the Department’s ability to pre-

vent terrorists from entering the United States or remaining in the United States undetected by—

- (1) developing relevant strategies and policies;
- (2) reviewing the effectiveness of existing programs and recommending improvements, if necessary;
- (3) making recommendations on budget requests and on the allocation of funding and personnel;
- (4) ensuring effective coordination, with respect to policies, programs, planning, operations, and dissemination of intelligence and information related to terrorist travel—
  - (A) among appropriate subdivisions of the Department of Homeland Security, as determined by the Secretary and including—
    - (i) United States Customs and Border Protection;
    - (ii) United States Immigration and Customs Enforcement;
    - (iii) United States Citizenship and Immigration Services;
    - (iv) the Transportation Security Administration; and
    - (v) the United States Coast Guard; and
  - (B) between the Department of Homeland Security and other appropriate Federal agencies; and

(5) serving as the Secretary’s primary point of contact with the National Counterterrorism Center for implementing initiatives related to terrorist travel and ensuring that the recommendations of the Center related to terrorist travel are carried out by the Department.

#### (d) Report

Not later than 180 days after August 3, 2007, the Secretary of Homeland Security shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a report on the implementation of this section.

(Pub. L. 108-458, title VII, §7215, Dec. 17, 2004, 118 Stat. 3832; Pub. L. 110-53, title VII, §722, Aug. 3, 2007, 121 Stat. 348.)

#### REFERENCES IN TEXT

Section 7201, referred to in subsec. (a), is section 7201 of Pub. L. 108-458, title VII, Dec. 17, 2004, 118 Stat. 3808, which enacted section 1776 of Title 8, Aliens and Nationality, and provisions set out as notes under section 1776 of Title 8 and sections 403-1 and 404o of Title 50, War and National Defense.

#### CODIFICATION

Section was enacted as part of the Intelligence Reform and Terrorism Prevention Act of 2004, and also as part of the 9/11 Commission Implementation Act of 2004, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

#### AMENDMENTS

2007—Pub. L. 110-53 reenacted section catchline without change and amended text generally, substituting provisions relating to establishment of a program to oversee the implementation of the Secretary’s responsibilities with respect to terrorist travel not later than 90 days after Aug. 3, 2007, and relating to the head of the program, such official’s duties, and report on imple-

<sup>1</sup> See References in Text note below.

mentation for provisions relating to establishment of a program to oversee the implementation of the Department's responsibilities with respect to terrorist travel.

#### § 124. Homeland Security Advisory System

##### (a) Requirement

The Secretary shall administer the Homeland Security Advisory System in accordance with this section to provide advisories or warnings regarding the threat or risk that acts of terrorism will be committed on the homeland to Federal, State, local, and tribal government authorities and to the people of the United States, as appropriate. The Secretary shall exercise primary responsibility for providing such advisories or warnings.

##### (b) Required elements

In administering the Homeland Security Advisory System, the Secretary shall—

- (1) establish criteria for the issuance and revocation of such advisories or warnings;
- (2) develop a methodology, relying on the criteria established under paragraph (1), for the issuance and revocation of such advisories or warnings;
- (3) provide, in each such advisory or warning, specific information and advice regarding appropriate protective measures and countermeasures that may be taken in response to the threat or risk, at the maximum level of detail practicable to enable individuals, government entities, emergency response providers, and the private sector to act appropriately;
- (4) whenever possible, limit the scope of each such advisory or warning to a specific region, locality, or economic sector believed to be under threat or at risk; and
- (5) not, in issuing any advisory or warning, use color designations as the exclusive means of specifying homeland security threat conditions that are the subject of the advisory or warning.

(Pub. L. 107-296, title II, §203, as added Pub. L. 110-53, title V, §501(a)(1), Aug. 3, 2007, 121 Stat. 306.)

#### § 124a. Homeland security information sharing

##### (a) Information sharing

Consistent with section 485 of this title, the Secretary, acting through the Under Secretary for Intelligence and Analysis, shall integrate the information and standardize the format of the products of the intelligence components of the Department containing homeland security information, terrorism information, weapons of mass destruction information, or national intelligence (as defined in section 401a(5) of title 50) except for any internal security protocols or personnel information of such intelligence components, or other administrative processes that are administered by any chief security officer of the Department.

##### (b) Information sharing and knowledge management officers

For each intelligence component of the Department, the Secretary shall designate an information sharing and knowledge management officer who shall report to the Under Secretary

for Intelligence and Analysis regarding coordinating the different systems used in the Department to gather and disseminate homeland security information or national intelligence (as defined in section 401a(5) of title 50).

##### (c) State, local, and private-sector sources of information

###### (1) Establishment of business processes

The Secretary, acting through the Under Secretary for Intelligence and Analysis or the Assistant Secretary for Infrastructure Protection, as appropriate, shall—

- (A) establish Department-wide procedures for the review and analysis of information provided by State, local, and tribal governments and the private sector;
- (B) as appropriate, integrate such information into the information gathered by the Department and other departments and agencies of the Federal Government; and
- (C) make available such information, as appropriate, within the Department and to other departments and agencies of the Federal Government.

###### (2) Feedback

The Secretary shall develop mechanisms to provide feedback regarding the analysis and utility of information provided by any entity of State, local, or tribal government or the private sector that provides such information to the Department.

##### (d) Training and evaluation of employees

###### (1) Training

The Secretary, acting through the Under Secretary for Intelligence and Analysis or the Assistant Secretary for Infrastructure Protection, as appropriate, shall provide to employees of the Department opportunities for training and education to develop an understanding of—

- (A) the definitions of homeland security information and national intelligence (as defined in section 401a(5) of title 50); and
- (B) how information available to such employees as part of their duties—
  - (i) might qualify as homeland security information or national intelligence; and
  - (ii) might be relevant to the Office of Intelligence and Analysis and the intelligence components of the Department.

###### (2) Evaluations

The Under Secretary for Intelligence and Analysis shall—

- (A) on an ongoing basis, evaluate how employees of the Office of Intelligence and Analysis and the intelligence components of the Department are utilizing homeland security information or national intelligence, sharing information within the Department, as described in this subchapter, and participating in the information sharing environment established under section 485 of this title; and
- (B) provide to the appropriate component heads regular reports regarding the evaluations under subparagraph (A).

(Pub. L. 107-296, title II, §204, as added Pub. L. 110-53, title V, §501(a)(1), Aug. 3, 2007, 121 Stat. 307.)

## REFERENCES IN TEXT

This subchapter, referred to in subsec. (d)(2)(A), was in the original “this title”, meaning title II of Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2145, which enacted this subchapter, amended sections 1030, 2511, 2512, 2520, 2701 to 2703, and 3125 of Title 18, Crimes and Criminal Procedure, sections 3712 and 3722 of Title 42, The Public Health and Welfare, and section 401a of Title 50, War and National Defense, and enacted provisions set out as a note under section 101 of this title and listed in a Provisions for Review, Promulgation, or Amendment of Federal Sentencing Guidelines Relating to Specific Offenses table set out under section 994 of Title 28, Judiciary and Judicial Procedure. For complete classification of title II to the Code, see Tables.

RECEIPT OF INFORMATION FROM UNITED STATES  
SECRET SERVICE

Pub. L. 110–53, title V, §502(b), Aug. 3, 2007, 121 Stat. 311, provided that:

“(1) IN GENERAL.—The Under Secretary for Intelligence and Analysis shall receive from the United States Secret Service homeland security information, terrorism information, weapons of mass destruction information (as these terms are defined in Section [sic] 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485)), or national intelligence, as defined in Section [sic] 3(5) of the National Security Act of 1947 (50 U.S.C. 401a(5)), as well as suspect information obtained in criminal investigations. The United States Secret Service shall cooperate with the Under Secretary for Intelligence and Analysis with respect to activities under sections 204 and 205 of the Homeland Security Act of 2002 [6 U.S.C. 124a, 124b].

“(2) SAVINGS CLAUSE.—Nothing in this Act [see Tables for classification] shall interfere with the operation of Section [sic] 3056(g) of Title 18, United States Code, or with the authority of the Secretary of Homeland Security or the Director of the United States Secret Service regarding the budget of the United States Secret Service.”

**§ 124b. Comprehensive information technology network architecture****(a) Establishment**

The Secretary, acting through the Under Secretary for Intelligence and Analysis, shall establish, consistent with the policies and procedures developed under section 485 of this title, and consistent with the enterprise architecture of the Department, a comprehensive information technology network architecture for the Office of Intelligence and Analysis that connects the various databases and related information technology assets of the Office of Intelligence and Analysis and the intelligence components of the Department in order to promote internal information sharing among the intelligence and other personnel of the Department.

**(b) Comprehensive information technology network architecture defined**

The term “comprehensive information technology network architecture” means an integrated framework for evolving or maintaining existing information technology and acquiring new information technology to achieve the strategic management and information resources management goals of the Office of Intelligence and Analysis.

(Pub. L. 107–296, title II, §205, as added Pub. L. 110–53, title V, §501(a)(1), Aug. 3, 2007, 121 Stat. 308.)

**§ 124c. Coordination with information sharing environment****(a) Guidance**

All activities to comply with sections 124, 124a, and 124b of this title shall be—

(1) consistent with any policies, guidelines, procedures, instructions, or standards established under section 485 of this title;

(2) implemented in coordination with, as appropriate, the program manager for the information sharing environment established under that section;

(3) consistent with any applicable guidance issued by the Director of National Intelligence; and

(4) consistent with any applicable guidance issued by the Secretary relating to the protection of law enforcement information or proprietary information.

**(b) Consultation**

In carrying out the duties and responsibilities under this part, the Under Secretary for Intelligence and Analysis shall take into account the views of the heads of the intelligence components of the Department.

(Pub. L. 107–296, title II, §206, as added Pub. L. 110–53, title V, §501(a)(1), Aug. 3, 2007, 121 Stat. 309.)

**§ 124d. Intelligence components**

Subject to the direction and control of the Secretary, and consistent with any applicable guidance issued by the Director of National Intelligence, the responsibilities of the head of each intelligence component of the Department are as follows:

(1) To ensure that the collection, processing, analysis, and dissemination of information within the scope of the information sharing environment, including homeland security information, terrorism information, weapons of mass destruction information, and national intelligence (as defined in section 401a(5) of title 50), are carried out effectively and efficiently in support of the intelligence mission of the Department, as led by the Under Secretary for Intelligence and Analysis.

(2) To otherwise support and implement the intelligence mission of the Department, as led by the Under Secretary for Intelligence and Analysis.

(3) To incorporate the input of the Under Secretary for Intelligence and Analysis with respect to performance appraisals, bonus or award recommendations, pay adjustments, and other forms of commendation.

(4) To coordinate with the Under Secretary for Intelligence and Analysis in developing policies and requirements for the recruitment and selection of intelligence officials of the intelligence component.

(5) To advise and coordinate with the Under Secretary for Intelligence and Analysis on any plan to reorganize or restructure the intelligence component that would, if implemented, result in realignments of intelligence functions.

(6) To ensure that employees of the intelligence component have knowledge of, and

comply with, the programs and policies established by the Under Secretary for Intelligence and Analysis and other appropriate officials of the Department and that such employees comply with all applicable laws and regulations.

(7) To perform such other activities relating to such responsibilities as the Secretary may provide.

(Pub. L. 107–296, title II, §207, as added Pub. L. 110–53, title V, §503(a), Aug. 3, 2007, 121 Stat. 311.)

**§ 124e. Training for employees of intelligence components**

The Secretary shall provide training and guidance for employees, officials, and senior executives of the intelligence components of the Department to develop knowledge of laws, regulations, operations, policies, procedures, and programs that are related to the functions of the Department relating to the collection, processing, analysis, and dissemination of information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information, or national intelligence (as defined in section 401a(5) of title 50).

(Pub. L. 107–296, title II, §208, as added Pub. L. 110–53, title V, §503(a), Aug. 3, 2007, 121 Stat. 312.)

**§ 124f. Intelligence training development for State and local government officials**

**(a) Curriculum**

The Secretary, acting through the Under Secretary for Intelligence and Analysis, shall—

(1) develop a curriculum for training State, local, and tribal government officials, including law enforcement officers, intelligence analysts, and other emergency response providers, in the intelligence cycle and Federal laws, practices, and regulations regarding the development, handling, and review of intelligence and other information; and

(2) ensure that the curriculum includes executive level training for senior level State, local, and tribal law enforcement officers, intelligence analysts, and other emergency response providers.

**(b) Training**

To the extent possible, the Federal Law Enforcement Training Center and other existing Federal entities with the capacity and expertise to train State, local, and tribal government officials based on the curriculum developed under subsection (a) shall be used to carry out the training programs created under this section. If such entities do not have the capacity, resources, or capabilities to conduct such training, the Secretary may approve another entity to conduct such training.

**(c) Consultation**

In carrying out the duties described in subsection (a), the Under Secretary for Intelligence and Analysis shall consult with the Director of the Federal Law Enforcement Training Center, the Attorney General, the Director of National Intelligence, the Administrator of the Federal Emergency Management Agency, and other appropriate parties, such as private industry, in-

stitutions of higher education, nonprofit institutions, and other intelligence agencies of the Federal Government.

(Pub. L. 107–296, title II, §209, as added Pub. L. 110–53, title V, §503(a), Aug. 3, 2007, 121 Stat. 312.)

**§ 124g. Information sharing incentives**

**(a) Awards**

In making cash awards under chapter 45 of title 5, the President or the head of an agency, in consultation with the program manager designated under section 485 of this title, may consider the success of an employee in appropriately sharing information within the scope of the information sharing environment established under that section, including homeland security information, terrorism information, and weapons of mass destruction information, or national intelligence (as defined in section 401a(5) of title 50<sup>1</sup>, in a manner consistent with any policies, guidelines, procedures, instructions, or standards established by the President or, as appropriate, the program manager of that environment for the implementation and management of that environment.

**(b) Other incentives**

The head of each department or agency described in section 485(i) of this title, in consultation with the program manager designated under section 485 of this title, shall adopt best practices regarding effective ways to educate and motivate officers and employees of the Federal Government to participate fully in the information sharing environment, including—

(1) promotions and other nonmonetary awards; and

(2) publicizing information sharing accomplishments by individual employees and, where appropriate, the tangible end benefits that resulted.

(Pub. L. 107–296, title II, §210, as added Pub. L. 110–53, title V, §503(a), Aug. 3, 2007, 121 Stat. 313.)

**§ 124h. Department of Homeland Security State, Local, and Regional Fusion Center Initiative**

**(a) Establishment**

The Secretary, in consultation with the program manager of the information sharing environment established under section 485 of this title, the Attorney General, the Privacy Officer of the Department, the Officer for Civil Rights and Civil Liberties of the Department, and the Privacy and Civil Liberties Oversight Board established under section 2000ee of title 42, shall establish a Department of Homeland Security State, Local, and Regional Fusion Center Initiative to establish partnerships with State, local, and regional fusion centers.

**(b) Department support and coordination**

Through the Department of Homeland Security State, Local, and Regional Fusion Center Initiative, and in coordination with the principal officials of participating State, local, or regional fusion centers and the officers designated as the Homeland Security Advisors of the States, the Secretary shall—

<sup>1</sup> So in original. A closing parenthesis probably should precede the comma.

(1) provide operational and intelligence advice and assistance to State, local, and regional fusion centers;

(2) support efforts to include State, local, and regional fusion centers into efforts to establish an information sharing environment;

(3) conduct tabletop and live training exercises to regularly assess the capability of individual and regional networks of State, local, and regional fusion centers to integrate the efforts of such networks with the efforts of the Department;

(4) coordinate with other relevant Federal entities engaged in homeland security-related activities;

(5) provide analytic and reporting advice and assistance to State, local, and regional fusion centers;

(6) review information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information, that is gathered by State, local, and regional fusion centers, and to incorporate such information, as appropriate, into the Department's own such information;

(7) provide management assistance to State, local, and regional fusion centers;

(8) serve as a point of contact to ensure the dissemination of information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information;

(9) facilitate close communication and coordination between State, local, and regional fusion centers and the Department;

(10) provide State, local, and regional fusion centers with expertise on Department resources and operations;

(11) provide training to State, local, and regional fusion centers and encourage such fusion centers to participate in terrorism threat-related exercises conducted by the Department; and

(12) carry out such other duties as the Secretary determines are appropriate.

**(c) Personnel assignment**

**(1) In general**

The Under Secretary for Intelligence and Analysis shall, to the maximum extent practicable, assign officers and intelligence analysts from components of the Department to participating State, local, and regional fusion centers.

**(2) Personnel sources**

Officers and intelligence analysts assigned to participating fusion centers under this subsection may be assigned from the following Department components, in coordination with the respective component head and in consultation with the principal officials of participating fusion centers:

(A) Office of Intelligence and Analysis.

(B) Office of Infrastructure Protection.

(C) Transportation Security Administration.

(D) United States Customs and Border Protection.

(E) United States Immigration and Customs Enforcement.

(F) United States Coast Guard.

(G) Other components of the Department, as determined by the Secretary.

**(3) Qualifying criteria**

**(A) In general**

The Secretary shall develop qualifying criteria for a fusion center to participate in the assigning of Department officers or intelligence analysts under this section.

**(B) Criteria**

Any criteria developed under subparagraph (A) may include—

(i) whether the fusion center, through its mission and governance structure, focuses on a broad counterterrorism approach, and whether that broad approach is pervasive through all levels of the organization;

(ii) whether the fusion center has sufficient numbers of adequately trained personnel to support a broad counterterrorism mission;

(iii) whether the fusion center has—

(I) access to relevant law enforcement, emergency response, private sector, open source, and national security data; and

(II) the ability to share and analytically utilize that data for lawful purposes;

(iv) whether the fusion center is adequately funded by the State, local, or regional government to support its counterterrorism mission; and

(v) the relevancy of the mission of the fusion center to the particular source component of Department officers or intelligence analysts.

**(4) Prerequisite**

**(A) Intelligence analysis, privacy, and civil liberties training**

Before being assigned to a fusion center under this section, an officer or intelligence analyst shall undergo—

(i) appropriate intelligence analysis or information sharing training using an intelligence-led policing curriculum that is consistent with—

(I) standard training and education programs offered to Department law enforcement and intelligence personnel; and

(II) the Criminal Intelligence Systems Operating Policies under part 23 of title 28, Code of Federal Regulations (or any corresponding similar rule or regulation);

(ii) appropriate privacy and civil liberties training that is developed, supported, or sponsored by the Privacy Officer appointed under section 142 of this title and the Officer for Civil Rights and Civil Liberties of the Department, in consultation with the Privacy and Civil Liberties Oversight Board established under section 2000ee of title 42; and

(iii) such other training prescribed by the Under Secretary for Intelligence and Analysis.

**(B) Prior work experience in area**

In determining the eligibility of an officer or intelligence analyst to be assigned to a fusion center under this section, the Under Secretary for Intelligence and Analysis shall consider the familiarity of the officer or intelligence analyst with the State, locality, or region, as determined by such factors as whether the officer or intelligence analyst—

(i) has been previously assigned in the geographic area; or

(ii) has previously worked with intelligence officials or law enforcement or other emergency response providers from that State, locality, or region.

**(5) Expedited security clearance processing**

The Under Secretary for Intelligence and Analysis—

(A) shall ensure that each officer or intelligence analyst assigned to a fusion center under this section has the appropriate security clearance to contribute effectively to the mission of the fusion center; and

(B) may request that security clearance processing be expedited for each such officer or intelligence analyst and may use available funds for such purpose.

**(6) Further qualifications**

Each officer or intelligence analyst assigned to a fusion center under this section shall satisfy any other qualifications the Under Secretary for Intelligence and Analysis may prescribe.

**(d) Responsibilities**

An officer or intelligence analyst assigned to a fusion center under this section shall—

(1) assist law enforcement agencies and other emergency response providers of State, local, and tribal governments and fusion center personnel in using information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information, to develop a comprehensive and accurate threat picture;

(2) review homeland security-relevant information from law enforcement agencies and other emergency response providers of State, local, and tribal government;

(3) create intelligence and other information products derived from such information and other homeland security-relevant information provided by the Department; and

(4) assist in the dissemination of such products, as coordinated by the Under Secretary for Intelligence and Analysis, to law enforcement agencies and other emergency response providers of State, local, and tribal government, other fusion centers, and appropriate Federal agencies.

**(e) Border intelligence priority****(1) In general**

The Secretary shall make it a priority to assign officers and intelligence analysts under this section from United States Customs and Border Protection, United States Immigration and Customs Enforcement, and the Coast Guard to participating State, local, and re-

gional fusion centers located in jurisdictions along land or maritime borders of the United States in order to enhance the integrity of and security at such borders by helping Federal, State, local, and tribal law enforcement authorities to identify, investigate, and otherwise interdict persons, weapons, and related contraband that pose a threat to homeland security.

**(2) Border intelligence products**

When performing the responsibilities described in subsection (d), officers and intelligence analysts assigned to participating State, local, and regional fusion centers under this section shall have, as a primary responsibility, the creation of border intelligence products that—

(A) assist State, local, and tribal law enforcement agencies in deploying their resources most efficiently to help detect and interdict terrorists, weapons of mass destruction, and related contraband at land or maritime borders of the United States;

(B) promote more consistent and timely sharing of border security-relevant information among jurisdictions along land or maritime borders of the United States; and

(C) enhance the Department's situational awareness of the threat of acts of terrorism at or involving the land or maritime borders of the United States.

**(f) Database access**

In order to fulfill the objectives described under subsection (d), each officer or intelligence analyst assigned to a fusion center under this section shall have appropriate access to all relevant Federal databases and information systems, consistent with any policies, guidelines, procedures, instructions, or standards established by the President or, as appropriate, the program manager of the information sharing environment for the implementation and management of that environment.

**(g) Consumer feedback****(1) In general**

The Secretary shall create a voluntary mechanism for any State, local, or tribal law enforcement officer or other emergency response provider who is a consumer of the intelligence or other information products referred to in subsection (d) to provide feedback to the Department on the quality and utility of such intelligence products.

**(2) Report**

Not later than one year after August 3, 2007, and annually thereafter, the Secretary shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a report that includes a description of the consumer feedback obtained under paragraph (1) and, if applicable, how the Department has adjusted its production of intelligence products in response to that consumer feedback.

**(h) Rule of construction****(1) In general**

The authorities granted under this section shall supplement the authorities granted

under section 121(d) of this title and nothing in this section shall be construed to abrogate the authorities granted under section 121(d) of this title.

**(2) Participation**

Nothing in this section shall be construed to require a State, local, or regional government or entity to accept the assignment of officers or intelligence analysts of the Department into the fusion center of that State, locality, or region.

**(i) Guidelines**

The Secretary, in consultation with the Attorney General, shall establish guidelines for fusion centers created and operated by State and local governments, to include standards that any such fusion center shall—

(1) collaboratively develop a mission statement, identify expectations and goals, measure performance, and determine effectiveness for that fusion center;

(2) create a representative governance structure that includes law enforcement officers and other emergency response providers and, as appropriate, the private sector;

(3) create a collaborative environment for the sharing of intelligence and information among Federal, State, local, and tribal government agencies (including law enforcement officers and other emergency response providers), the private sector, and the public, consistent with any policies, guidelines, procedures, instructions, or standards established by the President or, as appropriate, the program manager of the information sharing environment;

(4) leverage the databases, systems, and networks available from public and private sector entities, in accordance with all applicable laws, to maximize information sharing;

(5) develop, publish, and adhere to a privacy and civil liberties policy consistent with Federal, State, and local law;

(6) provide, in coordination with the Privacy Officer of the Department and the Officer for Civil Rights and Civil Liberties of the Department, appropriate privacy and civil liberties training for all State, local, tribal, and private sector representatives at the fusion center;

(7) ensure appropriate security measures are in place for the facility, data, and personnel;

(8) select and train personnel based on the needs, mission, goals, and functions of that fusion center;

(9) offer a variety of intelligence and information services and products to recipients of fusion center intelligence and information; and

(10) incorporate law enforcement officers, other emergency response providers, and, as appropriate, the private sector, into all relevant phases of the intelligence and fusion process, consistent with the mission statement developed under paragraph (1), either through full time representatives or liaison relationships with the fusion center to enable the receipt and sharing of information and intelligence.

**(j) Definitions**

In this section—

(1) the term “fusion center” means a collaborative effort of 2 or more Federal, State, local, or tribal government agencies that combines resources, expertise, or information with the goal of maximizing the ability of such agencies to detect, prevent, investigate, apprehend, and respond to criminal or terrorist activity;

(2) the term “information sharing environment” means the information sharing environment established under section 485 of this title;

(3) the term “intelligence analyst” means an individual who regularly advises, administers, supervises, or performs work in the collection, gathering, analysis, evaluation, reporting, production, or dissemination of information on political, economic, social, cultural, physical, geographical, scientific, or military conditions, trends, or forces in foreign or domestic areas that directly or indirectly affect national security;

(4) the term “intelligence-led policing” means the collection and analysis of information to produce an intelligence end product designed to inform law enforcement decision making at the tactical and strategic levels; and

(5) the term “terrorism information” has the meaning given that term in section 485 of this title.

**(k) Authorization of appropriations**

There is authorized to be appropriated \$10,000,000 for each of fiscal years 2008 through 2012, to carry out this section, except for subsection (i), including for hiring officers and intelligence analysts to replace officers and intelligence analysts who are assigned to fusion centers under this section.

(Pub. L. 107-296, title II, §210A, as added Pub. L. 110-53, title V, §511(a), Aug. 3, 2007, 121 Stat. 317.)

**TRAINING FOR PREDEPLOYED OFFICERS AND ANALYSTS**

Pub. L. 110-53, title V, §511(b), Aug. 3, 2007, 121 Stat. 323, provided that: “An officer or analyst assigned to a fusion center by the Secretary of Homeland Security before the date of the enactment of this Act [Aug. 3, 2007] shall undergo the training described in section 210A(c)(4)(A) of the Homeland Security Act of 2002 [6 U.S.C. 124h(c)(4)(A)], as added by subsection (a), by not later than 6 months after such date.”

**§ 124i. Homeland Security Information Sharing Fellows Program**

**(a) Establishment**

**(1) In general**

The Secretary, acting through the Under Secretary for Intelligence and Analysis, and in consultation with the Chief Human Capital Officer, shall establish a fellowship program in accordance with this section for the purpose of—

(A) detailing State, local, and tribal law enforcement officers and intelligence analysts to the Department in accordance with subchapter VI of chapter 33 of title 5 to participate in the work of the Office of Intelligence and Analysis in order to become familiar with—

(i) the relevant missions and capabilities of the Department and other Federal agencies; and

(ii) the role, programs, products, and personnel of the Office of Intelligence and Analysis; and

(B) promoting information sharing between the Department and State, local, and tribal law enforcement officers and intelligence analysts by assigning such officers and analysts to—

(i) serve as a point of contact in the Department to assist in the representation of State, local, and tribal information requirements;

(ii) identify information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information, that is of interest to State, local, and tribal law enforcement officers, intelligence analysts, and other emergency response providers;

(iii) assist Department analysts in preparing and disseminating products derived from information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information, that are tailored to State, local, and tribal law enforcement officers and intelligence analysts and designed to prepare for and thwart acts of terrorism; and

(iv) assist Department analysts in preparing products derived from information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information, that are tailored to State, local, and tribal emergency response providers and assist in the dissemination of such products through appropriate Department channels.

## **(2) Program name**

The program under this section shall be known as the “Homeland Security Information Sharing Fellows Program”.

## **(b) Eligibility**

### **(1) In general**

In order to be eligible for selection as an Information Sharing Fellow under the program under this section, an individual shall—

(A) have homeland security-related responsibilities;

(B) be eligible for an appropriate security clearance;

(C) possess a valid need for access to classified information, as determined by the Under Secretary for Intelligence and Analysis;

(D) be an employee of an eligible entity; and

(E) have undergone appropriate privacy and civil liberties training that is developed, supported, or sponsored by the Privacy Officer and the Officer for Civil Rights and Civil Liberties, in consultation with the Privacy and Civil Liberties Oversight Board established under section 2000ee of title 42.

## **(2) Eligible entities**

In this subsection, the term “eligible entity” means—

(A) a State, local, or regional fusion center;

(B) a State or local law enforcement or other government entity that serves a major metropolitan area, suburban area, or rural area, as determined by the Secretary;

(C) a State or local law enforcement or other government entity with port, border, or agricultural responsibilities, as determined by the Secretary;

(D) a tribal law enforcement or other authority; or

(E) such other entity as the Secretary determines is appropriate.

## **(c) Optional participation**

No State, local, or tribal law enforcement or other government entity shall be required to participate in the Homeland Security Information Sharing Fellows Program.

## **(d) Procedures for nomination and selection**

### **(1) In general**

The Under Secretary for Intelligence and Analysis shall establish procedures to provide for the nomination and selection of individuals to participate in the Homeland Security Information Sharing Fellows Program.

### **(2) Limitations**

The Under Secretary for Intelligence and Analysis shall—

(A) select law enforcement officers and intelligence analysts representing a broad cross-section of State, local, and tribal agencies; and

(B) ensure that the number of Information Sharing Fellows selected does not impede the activities of the Office of Intelligence and Analysis.

(Pub. L. 107-296, title II, §210B, as added Pub. L. 110-53, title V, §512(a), Aug. 3, 2007, 121 Stat. 324.)

## **§ 124j. Rural Policing Institute**

### **(a) In general**

The Secretary shall establish a Rural Policing Institute, which shall be administered by the Federal Law Enforcement Training Center, to target training to law enforcement agencies and other emergency response providers located in rural areas. The Secretary, through the Rural Policing Institute, shall—

(1) evaluate the needs of law enforcement agencies and other emergency response providers in rural areas;

(2) develop expert training programs designed to address the needs of law enforcement agencies and other emergency response providers in rural areas as identified in the evaluation conducted under paragraph (1), including training programs about intelligence-led policing and protections for privacy, civil rights, and civil liberties;

(3) provide the training programs developed under paragraph (2) to law enforcement agencies and other emergency response providers in rural areas; and

(4) conduct outreach efforts to ensure that local and tribal governments in rural areas are aware of the training programs developed under paragraph (2) so they can avail themselves of such programs.

**(b) Curricula**

The training at the Rural Policing Institute established under subsection (a) shall—

(1) be configured in a manner so as not to duplicate or displace any law enforcement or emergency response program of the Federal Law Enforcement Training Center or a local or tribal government entity in existence on August 3, 2007; and

(2) to the maximum extent practicable, be delivered in a cost-effective manner at facilities of the Department, on closed military installations with adequate training facilities, or at facilities operated by the participants.

**(c) Definition**

In this section, the term “rural” means an area that is not located in a metropolitan statistical area, as defined by the Office of Management and Budget.

**(d) Authorization of appropriations**

There are authorized to be appropriated to carry out this section (including for contracts, staff, and equipment)—

(1) \$10,000,000 for fiscal year 2008; and

(2) \$5,000,000 for each of fiscal years 2009 through 2013.

(Pub. L. 107–296, title II, §210C, as added Pub. L. 110–53, title V, §513(a), Aug. 3, 2007, 121 Stat. 327.)

RURAL AREA

Pub. L. 112–74, div. D, title V, §546, Dec. 23, 2011, 125 Stat. 977, provided that: “For fiscal year 2012 and thereafter, for purposes of section 210C of the Homeland Security Act of 2002 (6 U.S.C. 124j), a rural area shall also include any area that is located in a metropolitan statistical area and a county, borough, parish, or area under the jurisdiction of an Indian tribe with a population of not more than 50,000.”

**§ 124k. Interagency Threat Assessment and Coordination Group**

**(a) In general**

To improve the sharing of information within the scope of the information sharing environment established under section 485 of this title with State, local, tribal, and private sector officials, the Director of National Intelligence, through the program manager for the information sharing environment, in coordination with the Secretary, shall coordinate and oversee the creation of an Interagency Threat Assessment and Coordination Group (referred to in this section as the “ITACG”).

**(b) Composition of ITACG**

The ITACG shall consist of—

(1) an ITACG Advisory Council to set policy and develop processes for the integration, analysis, and dissemination of federally-coordinated information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information; and

(2) an ITACG Detail comprised of State, local, and tribal homeland security and law enforcement officers and intelligence analysts detailed to work in the National Counterterrorism Center with Federal intelligence analysts for the purpose of integrating, analyzing, and assisting in the dissemination of federally-coordinated information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information, through appropriate channels identified by the ITACG Advisory Council.

**(c) Responsibilities of program manager**

The program manager shall—

(1) monitor and assess the efficacy of the ITACG;

(2) not later than 180 days after August 3, 2007, and at least annually thereafter, submit to the Secretary, the Attorney General, the Director of National Intelligence, the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a report on the progress of the ITACG; and

(3) in each report required by paragraph (2) submitted after October 7, 2010, include an assessment of whether the detailees under subsection (d)(5) have appropriate access to all relevant information, as required by subsection (g)(2)(C).

**(d) Responsibilities of Secretary**

The Secretary, or the Secretary’s designee, in coordination with the Director of the National Counterterrorism Center and the ITACG Advisory Council, shall—

(1) create policies and standards for the creation of information products derived from information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information, that are suitable for dissemination to State, local, and tribal governments and the private sector;

(2) evaluate and develop processes for the timely dissemination of federally-coordinated information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information, to State, local, and tribal governments and the private sector;

(3) establish criteria and a methodology for indicating to State, local, and tribal governments and the private sector the reliability of information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information, disseminated to them;

(4) educate the intelligence community about the requirements of the State, local, and tribal homeland security, law enforcement, and other emergency response providers regarding information within the scope of the information sharing environment, including homeland security information, terrorism in-

formation, and weapons of mass destruction information;

(5) establish and maintain the ITACG Detail, which shall assign an appropriate number of State, local, and tribal homeland security and law enforcement officers and intelligence analysts to work in the National Counterterrorism Center who shall—

(A) educate and advise National Counterterrorism Center intelligence analysts about the requirements of the State, local, and tribal homeland security and law enforcement officers, and other emergency response providers regarding information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information;

(B) assist National Counterterrorism Center intelligence analysts in integrating, analyzing, and otherwise preparing versions of products derived from information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information that are unclassified or classified at the lowest possible level and suitable for dissemination to State, local, and tribal homeland security and law enforcement agencies in order to help deter and prevent terrorist attacks;

(C) implement, in coordination with National Counterterrorism Center intelligence analysts, the policies, processes, procedures, standards, and guidelines developed by the ITACG Advisory Council;

(D) assist in the dissemination of products derived from information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information, to State, local, and tribal jurisdictions only through appropriate channels identified by the ITACG Advisory Council;

(E) make recommendations, as appropriate, to the Secretary or the Secretary's designee, for the further dissemination of intelligence products that could likely inform or improve the security of a State, local, or tribal government, (including a State, local, or tribal law enforcement agency) or a private sector entity; and

(F) report directly to the senior intelligence official from the Department under paragraph (6);

(6) detail a senior intelligence official from the Department of Homeland Security to the National Counterterrorism Center, who shall—

(A) manage the day-to-day operations of the ITACG Detail;

(B) report directly to the Director of the National Counterterrorism Center or the Director's designee; and

(C) in coordination with the Director of the Federal Bureau of Investigation, and subject to the approval of the Director of the National Counterterrorism Center, select a deputy from the pool of available detailees from the Federal Bureau of Investigation in the National Counterterrorism Center;

(7) establish, within the ITACG Advisory Council, a mechanism to select law enforcement officers and intelligence analysts for placement in the National Counterterrorism Center consistent with paragraph (5), using criteria developed by the ITACG Advisory Council that shall encourage participation from a broadly representative group of State, local, and tribal homeland security and law enforcement agencies; and

(8) compile an annual assessment of the ITACG Detail's performance, including summaries of customer feedback, in preparing, disseminating, and requesting the dissemination of intelligence products intended for State, local and tribal government (including State, local, and tribal law enforcement agencies) and private sector entities; and

(9) provide the assessment developed pursuant to paragraph (8) to the program manager for use in the annual reports required by subsection (c)(2).

#### **(e) Membership**

The Secretary, or the Secretary's designee, shall serve as the chair of the ITACG Advisory Council, which shall include—

(1) representatives of—

- (A) the Department;
- (B) the Federal Bureau of Investigation;
- (C) the National Counterterrorism Center;
- (D) the Department of Defense;
- (E) the Department of Energy;
- (F) the Department of State; and
- (G) other Federal entities as appropriate;

(2) the program manager of the information sharing environment, designated under section 485(f) of this title, or the program manager's designee; and

(3) executive level law enforcement and intelligence officials from State, local, and tribal governments.

#### **(f) Criteria**

The Secretary, in consultation with the Director of National Intelligence, the Attorney General, and the program manager of the information sharing environment established under section 485 of this title, shall—

(1) establish procedures for selecting members of the ITACG Advisory Council and for the proper handling and safeguarding of products derived from information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information, by those members; and

(2) ensure that at least 50 percent of the members of the ITACG Advisory Council are from State, local, and tribal governments.

#### **(g) Operations**

##### **(1) In general**

Beginning not later than 90 days after August 3, 2007, the ITACG Advisory Council shall meet regularly, but not less than quarterly, at the facilities of the National Counterterrorism Center of the Office of the Director of National Intelligence.

**(2) Management**

Pursuant to section 404o(f)(E)<sup>1</sup> of title 50, the Director of the National Counterterrorism Center, acting through the senior intelligence official from the Department of Homeland Security detailed pursuant to subsection (d)(6), shall ensure that—

(A) the products derived from information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information, prepared by the National Counterterrorism Center and the ITACG Detail for distribution to State, local, and tribal homeland security and law enforcement agencies reflect the requirements of such agencies and are produced consistently with the policies, processes, procedures, standards, and guidelines established by the ITACG Advisory Council;

(B) in consultation with the ITACG Advisory Council and consistent with sections 403–1(f)(1)(B)(iii) and 404o(f)(E)<sup>1</sup> of title 50, all products described in subparagraph (A) are disseminated through existing channels of the Department and the Department of Justice and other appropriate channels to State, local, and tribal government officials and other entities;

(C) all detailees under subsection (d)(5) have appropriate access to all relevant information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information, available at the National Counterterrorism Center in order to accomplish the objectives under that paragraph;

(D) all detailees under subsection (d)(5) have the appropriate security clearances and are trained in the procedures for handling, processing, storing, and disseminating classified products derived from information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information; and

(E) all detailees under subsection (d)(5) complete appropriate privacy and civil liberties training.

**(h) Inapplicability of the Federal Advisory Committee Act**

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the ITACG or any subsidiary groups thereof.

**(i) Authorization of appropriations**

There are authorized to be appropriated such sums as may be necessary for each of fiscal years 2008 through 2012 to carry out this section, including to obtain security clearances for the State, local, and tribal participants in the ITACG.

(Pub. L. 107–296, title II, §210D, as added Pub. L. 110–53, title V, §521(a), Aug. 3, 2007, 121 Stat. 328; amended Pub. L. 111–258, §5(b)(2), (c), Oct. 7, 2010, 124 Stat. 2650, 2651.)

<sup>1</sup> So in original. Probably should be section “404o(f)(1)(E)”.

## REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (h), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

## AMENDMENTS

2010—Subsec. (c). Pub. L. 111–258, §5(c)(1), struck out “, in consultation with the Information Sharing Council,” after “program manager” in introductory provisions.

Subsec. (c)(3). Pub. L. 111–258, §5(c)(2)–(4), added par. (3).

Subsec. (d)(5)(E), (F). Pub. L. 111–258, §5(b)(2)(A), added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (d)(8), (9). Pub. L. 111–258, §5(b)(2)(B)–(D), added pars. (8) and (9).

**§ 124I. National asset database****(a) Establishment****(1) National asset database**

The Secretary shall establish and maintain a national database of each system or asset that—

(A) the Secretary, in consultation with appropriate homeland security officials of the States, determines to be vital and the loss, interruption, incapacity, or destruction of which would have a negative or debilitating effect on the economic security, public health, or safety of the United States, any State, or any local government; or

(B) the Secretary determines is appropriate for inclusion in the database.

**(2) Prioritized critical infrastructure list**

In accordance with Homeland Security Presidential Directive–7, as in effect on January 1, 2007, the Secretary shall establish and maintain a single classified prioritized list of systems and assets included in the database under paragraph (1) that the Secretary determines would, if destroyed or disrupted, cause national or regional catastrophic effects.

**(b) Use of database**

The Secretary shall use the database established under subsection (a)(1) in the development and implementation of Department plans and programs as appropriate.

**(c) Maintenance of database****(1) In general**

The Secretary shall maintain and annually update the database established under subsection (a)(1) and the list established under subsection (a)(2), including—

(A) establishing data collection guidelines and providing such guidelines to the appropriate homeland security official of each State;

(B) regularly reviewing the guidelines established under subparagraph (A), including by consulting with the appropriate homeland security officials of States, to solicit feedback about the guidelines, as appropriate;

(C) after providing the homeland security official of a State with the guidelines under subparagraph (A), allowing the official a reasonable amount of time to submit to the

Secretary any data submissions recommended by the official for inclusion in the database established under subsection (a)(1);

(D) examining the contents and identifying any submissions made by such an official that are described incorrectly or that do not meet the guidelines established under subparagraph (A); and

(E) providing to the appropriate homeland security official of each relevant State a list of submissions identified under subparagraph (D) for review and possible correction before the Secretary finalizes the decision of which submissions will be included in the database established under subsection (a)(1).

**(2) Organization of information in database**

The Secretary shall organize the contents of the database established under subsection (a)(1) and the list established under subsection (a)(2) as the Secretary determines is appropriate. Any organizational structure of such contents shall include the categorization of the contents—

(A) according to the sectors listed in National Infrastructure Protection Plan developed pursuant to Homeland Security Presidential Directive-7; and

(B) by the State and county of their location.

**(3) Private sector integration**

The Secretary shall identify and evaluate methods, including the Department's Protected Critical Infrastructure Information Program, to acquire relevant private sector information for the purpose of using that information to generate any database or list, including the database established under subsection (a)(1) and the list established under subsection (a)(2).

**(4) Retention of classification**

The classification of information required to be provided to Congress, the Department, or any other department or agency under this section by a sector-specific agency, including the assignment of a level of classification of such information, shall be binding on Congress, the Department, and that other Federal agency.

**(d) Reports**

**(1) Report required**

Not later than 180 days after August 3, 2007, and annually thereafter, the Secretary shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a report on the database established under subsection (a)(1) and the list established under subsection (a)(2).

**(2) Contents of report**

Each such report shall include the following:

(A) The name, location, and sector classification of each of the systems and assets on the list established under subsection (a)(2).

(B) The name, location, and sector classification of each of the systems and assets on

such list that are determined by the Secretary to be most at risk to terrorism.

(C) Any significant challenges in compiling the list of the systems and assets included on such list or in the database established under subsection (a)(1).

(D) Any significant changes from the preceding report in the systems and assets included on such list or in such database.

(E) If appropriate, the extent to which such database and such list have been used, individually or jointly, for allocating funds by the Federal Government to prevent, reduce, mitigate, or respond to acts of terrorism.

(F) The amount of coordination between the Department and the private sector, through any entity of the Department that meets with representatives of private sector industries for purposes of such coordination, for the purpose of ensuring the accuracy of such database and such list.

(G) Any other information the Secretary deems relevant.

**(3) Classified information**

The report shall be submitted in unclassified form but may contain a classified annex.

**(e) Inspector General study**

By not later than two years after August 3, 2007, the Inspector General of the Department shall conduct a study of the implementation of this section.

**(f) National Infrastructure Protection Consortium**

The Secretary may establish a consortium to be known as the "National Infrastructure Protection Consortium". The Consortium may advise the Secretary on the best way to identify, generate, organize, and maintain any database or list of systems and assets established by the Secretary, including the database established under subsection (a)(1) and the list established under subsection (a)(2). If the Secretary establishes the National Infrastructure Protection Consortium, the Consortium may—

(1) be composed of national laboratories, Federal agencies, State and local homeland security organizations, academic institutions, or national Centers of Excellence that have demonstrated experience working with and identifying critical infrastructure and key resources; and

(2) provide input to the Secretary on any request pertaining to the contents of such database or such list.

(Pub. L. 107-296, title II, §210E, as added Pub. L. 110-53, title X, §1001(a), Aug. 3, 2007, 121 Stat. 372.)

DEADLINES FOR IMPLEMENTATION AND NOTIFICATION OF CONGRESS

Pub. L. 110-53, title X, §1001(b), Aug. 3, 2007, 121 Stat. 374, provided that: "Not later than 180 days after the date of the enactment of this Act [Aug. 3, 2007], the Secretary of Homeland Security shall submit the first report required under section 210E(d) of the Homeland Security Act of 2002 [6 U.S.C. 124I(d)], as added by subsection (a)."

**§ 124m. Classified Information Advisory Officer****(a) Requirement to establish**

The Secretary shall identify and designate within the Department a Classified Information Advisory Officer, as described in this section.

**(b) Responsibilities**

The responsibilities of the Classified Information Advisory Officer shall be as follows:

(1) To develop and disseminate educational materials and to develop and administer training programs to assist State, local, and tribal governments (including State, local, and tribal law enforcement agencies) and private sector entities—

(A) in developing plans and policies to respond to requests related to classified information without communicating such information to individuals who lack appropriate security clearances;

(B) regarding the appropriate procedures for challenging classification designations of information received by personnel of such entities; and

(C) on the means by which such personnel may apply for security clearances.

(2) To inform the Under Secretary for Intelligence and Analysis on policies and procedures that could facilitate the sharing of classified information with such personnel, as appropriate.

**(c) Initial designation**

Not later than 90 days after October 7, 2010, the Secretary shall—

(1) designate the initial Classified Information Advisory Officer; and

(2) submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a written notification of the designation.

(Pub. L. 107–296, title II, §210F, as added Pub. L. 111–258, §4(a), Oct. 7, 2010, 124 Stat. 2649.)

## FINDINGS

Pub. L. 111–258, §2, Oct. 7, 2010, 124 Stat. 2648, provided that: “Congress finds the following:

“(1) The National Commission on Terrorist Attacks Upon the United States (commonly known as the ‘9/11 Commission’) concluded that security requirements nurture over-classification and excessive compartmentation of information among agencies.

“(2) The 9/11 Commission and others have observed that the over-classification of information interferes with accurate, actionable, and timely information sharing, increases the cost of information security, and needlessly limits stakeholder and public access to information.

“(3) Over-classification of information causes considerable confusion regarding what information may be shared with whom, and negatively affects the dissemination of information within the Federal Government and with State, local, and tribal entities, and with the private sector.

“(4) Over-classification of information is antithetical to the creation and operation of the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485).

“(5) Federal departments or agencies authorized to make original classification decisions or that perform derivative classification of information are re-

sponsible for developing, implementing, and administering policies, procedures, and programs that promote compliance with applicable laws, executive orders, and other authorities pertaining to the proper use of classification markings and the policies of the National Archives and Records Administration.”

## PART B—CRITICAL INFRASTRUCTURE INFORMATION

**§ 131. Definitions**

In this part:

**(1) Agency**

The term “agency” has the meaning given it in section 551 of title 5.

**(2) Covered Federal agency**

The term “covered Federal agency” means the Department of Homeland Security.

**(3) Critical infrastructure information**

The term “critical infrastructure information” means information not customarily in the public domain and related to the security of critical infrastructure or protected systems—

(A) actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or other similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates Federal, State, or local law, harms interstate commerce of the United States, or threatens public health or safety;

(B) the ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk management planning, or risk audit; or

(C) any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.

**(4) Critical infrastructure protection program**

The term “critical infrastructure protection program” means any component or bureau of a covered Federal agency that has been designated by the President or any agency head to receive critical infrastructure information.

**(5) Information Sharing and Analysis Organization**

The term “Information Sharing and Analysis Organization” means any formal or informal entity or collaboration created or employed by public or private sector organizations, for purposes of—

(A) gathering and analyzing critical infrastructure information in order to better understand security problems and interdependencies related to critical infrastructure and protected systems, so as to ensure the availability, integrity, and reliability thereof;

(B) communicating or disclosing critical infrastructure information to help prevent, detect, mitigate, or recover from the effects of a<sup>1</sup> interference, compromise, or a<sup>2</sup> incapacitation problem related to critical infrastructure or protected systems; and

(C) voluntarily disseminating critical infrastructure information to its members, State, local, and Federal Governments, or any other entities that may be of assistance in carrying out the purposes specified in subparagraphs (A) and (B).

**(6) Protected system**

The term “protected system”—

(A) means any service, physical or computer-based system, process, or procedure that directly or indirectly affects the viability of a facility of critical infrastructure; and

(B) includes any physical or computer-based system, including a computer, computer system, computer or communications network, or any component hardware or element thereof, software program, processing instructions, or information or data in transmission or storage therein, irrespective of the medium of transmission or storage.

**(7) Voluntary**

**(A) In general**

The term “voluntary”, in the case of any submittal of critical infrastructure information to a covered Federal agency, means the submittal thereof in the absence of such agency’s exercise of legal authority to compel access to or submission of such information and may be accomplished by a single entity or an Information Sharing and Analysis Organization on behalf of itself or its members.

**(B) Exclusions**

The term “voluntary”—

(i) in the case of any action brought under the securities laws as is defined in section 78c(a)(47) of title 15—

(I) does not include information or statements contained in any documents or materials filed with the Securities and Exchange Commission, or with Federal banking regulators, pursuant to section 78l(i) of title 15; and

(II) with respect to the submittal of critical infrastructure information, does not include any disclosure or writing that when made accompanied the solicitation of an offer or a sale of securities; and

(ii) does not include information or statements submitted or relied upon as a basis for making licensing or permitting determinations, or during regulatory proceedings.

(Pub. L. 107–296, title II, §212, Nov. 25, 2002, 116 Stat. 2150.)

SHORT TITLE

For short title of this part as the “Critical Infrastructure Information Act of 2002”, see section 211 of

<sup>1</sup> So in original. Probably should be “an”.

<sup>2</sup> So in original. The word “a” probably should not appear.

Pub. L. 107–296, set out as a note under section 101 of this title.

**§ 132. Designation of critical infrastructure protection program**

A critical infrastructure protection program may be designated as such by one of the following:

- (1) The President.
- (2) The Secretary of Homeland Security.

(Pub. L. 107–296, title II, §213, Nov. 25, 2002, 116 Stat. 2152.)

**§ 133. Protection of voluntarily shared critical infrastructure information**

**(a) Protection**

**(1) In general**

Notwithstanding any other provision of law, critical infrastructure information (including the identity of the submitting person or entity) that is voluntarily submitted to a covered Federal agency for use by that agency regarding the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose, when accompanied by an express statement specified in paragraph (2)—

(A) shall be exempt from disclosure under section 552 of title 5 (commonly referred to as the Freedom of Information Act);

(B) shall not be subject to any agency rules or judicial doctrine regarding ex parte communications with a decision making official;

(C) shall not, without the written consent of the person or entity submitting such information, be used directly by such agency, any other Federal, State, or local authority, or any third party, in any civil action arising under Federal or State law if such information is submitted in good faith;

(D) shall not, without the written consent of the person or entity submitting such information, be used or disclosed by any officer or employee of the United States for purposes other than the purposes of this part, except—

(i) in furtherance of an investigation or the prosecution of a criminal act; or

(ii) when disclosure of the information would be—

(I) to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee thereof or subcommittee of any such joint committee; or

(II) to the Comptroller General, or any authorized representative of the Comptroller General, in the course of the performance of the duties of the Government Accountability Office.<sup>1</sup>

(E) shall not, if provided to a State or local government or government agency—

(i) be made available pursuant to any State or local law requiring disclosure of information or records;

<sup>1</sup> So in original. The period probably should be a semicolon.

(ii) otherwise be disclosed or distributed to any party by said State or local government or government agency without the written consent of the person or entity submitting such information; or

(iii) be used other than for the purpose of protecting critical infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act; and

(F) does not constitute a waiver of any applicable privilege or protection provided under law, such as trade secret protection.

**(2) Express statement**

For purposes of paragraph (1), the term “express statement”, with respect to information or records, means—

(A) in the case of written information or records, a written marking on the information or records substantially similar to the following: “This information is voluntarily submitted to the Federal Government in expectation of protection from disclosure as provided by the provisions of the Critical Infrastructure Information Act of 2002.”; or

(B) in the case of oral information, a similar written statement submitted within a reasonable period following the oral communication.

**(b) Limitation**

No communication of critical infrastructure information to a covered Federal agency made pursuant to this part shall be considered to be an action subject to the requirements of the Federal Advisory Committee Act.

**(c) Independently obtained information**

Nothing in this section shall be construed to limit or otherwise affect the ability of a State, local, or Federal Government entity, agency, or authority, or any third party, under applicable law, to obtain critical infrastructure information in a manner not covered by subsection (a) of this section, including any information lawfully and properly disclosed generally or broadly to the public and to use such information in any manner permitted by law.

**(d) Treatment of voluntary submittal of information**

The voluntary submittal to the Government of information or records that are protected from disclosure by this part shall not be construed to constitute compliance with any requirement to submit such information to a Federal agency under any other provision of law.

**(e) Procedures**

**(1) In general**

The Secretary of the Department of Homeland Security shall, in consultation with appropriate representatives of the National Security Council and the Office of Science and Technology Policy, establish uniform procedures for the receipt, care, and storage by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government. The procedures shall be established not later than 90 days after November 25, 2002.

**(2) Elements**

The procedures established under paragraph (1) shall include mechanisms regarding—

(A) the acknowledgement of receipt by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government;

(B) the maintenance of the identification of such information as voluntarily submitted to the Government for purposes of and subject to the provisions of this part;

(C) the care and storage of such information; and

(D) the protection and maintenance of the confidentiality of such information so as to permit the sharing of such information within the Federal Government and with State and local governments, and the issuance of notices and warnings related to the protection of critical infrastructure and protected systems, in such manner as to protect from public disclosure the identity of the submitting person or entity, or information that is proprietary, business sensitive, relates specifically to the submitting person or entity, and is otherwise not appropriately in the public domain.

**(f) Penalties**

Whoever, being an officer or employee of the United States or of any department or agency thereof, knowingly publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law, any critical infrastructure information protected from disclosure by this part coming to him in the course of this employment or official duties or by reason of any examination or investigation made by, or return, report, or record made to or filed with, such department or agency or officer or employee thereof, shall be fined under title 18, imprisoned not more than 1 year, or both, and shall be removed from office or employment.

**(g) Authority to issue warnings**

The Federal Government may provide advisories, alerts, and warnings to relevant companies, targeted sectors, other governmental entities, or the general public regarding potential threats to critical infrastructure as appropriate. In issuing a warning, the Federal Government shall take appropriate actions to protect from disclosure—

(1) the source of any voluntarily submitted critical infrastructure information that forms the basis for the warning; or

(2) information that is proprietary, business sensitive, relates specifically to the submitting person or entity, or is otherwise not appropriately in the public domain.

**(h) Authority to delegate**

The President may delegate authority to a critical infrastructure protection program, designated under section 132 of this title, to enter into a voluntary agreement to promote critical infrastructure security, including with any Information Sharing and Analysis Organization, or a plan of action as otherwise defined in section 2158 of title 50, Appendix.

(Pub. L. 107-296, title II, §214, Nov. 25, 2002, 116 Stat. 2152; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

## REFERENCES IN TEXT

The Critical Infrastructure Information Act of 2002, referred to in subsec. (a)(2)(A), is subtitle B (§211 et seq.) of title II of Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2150, which is classified generally to this part. For complete classification of this Act to the Code, see Short Title note set out under section 101 of this title and Tables.

The Federal Advisory Committee Act, referred to in subsec. (b), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

## AMENDMENTS

2004—Subsec. (a)(1)(D)(ii)(II). Pub. L. 108–271 substituted “Government Accountability Office” for “General Accounting Office”.

**§ 134. No private right of action**

Nothing in this part may be construed to create a private right of action for enforcement of any provision of this chapter.

(Pub. L. 107–296, title II, §215, Nov. 25, 2002, 116 Stat. 2155.)

## REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2135, known as the Homeland Security Act of 2002, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 101 of this title and Tables.

## PART C—INFORMATION SECURITY

**§ 141. Procedures for sharing information**

The Secretary shall establish procedures on the use of information shared under this subchapter that—

- (1) limit the dissemination of such information to ensure that it is not used for an unauthorized purpose;
- (2) ensure the security and confidentiality of such information;
- (3) protect the constitutional and statutory rights of any individuals who are subjects of such information; and
- (4) provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

(Pub. L. 107–296, title II, §221, Nov. 25, 2002, 116 Stat. 2155.)

## REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this title”, meaning title II of Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2145, which enacted this subchapter, amended sections 1030, 2511, 2512, 2520, 2701 to 2703, and 3125 of Title 18, Crimes and Criminal Procedure, sections 3712 and 3722 of Title 42, The Public Health and Welfare, and section 401a of Title 50, War and National Defense, and enacted provisions set out as a note under section 101 of this title and listed in a Provisions for Review, Promulgation, or Amendment of Federal Sentencing Guidelines Relating to Specific Offenses table set out under section 994 of Title 28, Judiciary and Judicial Procedure. For complete classification of title II to the Code, see Tables.

**§ 142. Privacy officer****(a) Appointment and responsibilities**

The Secretary shall appoint a senior official in the Department, who shall report directly to the

Secretary, to assume primary responsibility for privacy policy, including—

(1) assuring that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information;

(2) assuring that personal information contained in Privacy Act systems of records is handled in full compliance with fair information practices as set out in the Privacy Act of 1974 [5 U.S.C. 552a];

(3) evaluating legislative and regulatory proposals involving collection, use, and disclosure of personal information by the Federal Government;

(4) conducting a privacy impact assessment of proposed rules of the Department or that of the Department on the privacy of personal information, including the type of personal information collected and the number of people affected;

(5) coordinating with the Officer for Civil Rights and Civil Liberties to ensure that—

(A) programs, policies, and procedures involving civil rights, civil liberties, and privacy considerations are addressed in an integrated and comprehensive manner; and

(B) Congress receives appropriate reports on such programs, policies, and procedures; and

(6) preparing a report to Congress on an annual basis on activities of the Department that affect privacy, including complaints of privacy violations, implementation of the Privacy Act of 1974 [5 U.S.C. 552a], internal controls, and other matters.

**(b) Authority to investigate****(1) In general**

The senior official appointed under subsection (a) may—

(A) have access to all records, reports, audits, reviews, documents, papers, recommendations, and other materials available to the Department that relate to programs and operations with respect to the responsibilities of the senior official under this section;

(B) make such investigations and reports relating to the administration of the programs and operations of the Department as are, in the senior official’s judgment, necessary or desirable;

(C) subject to the approval of the Secretary, require by subpoena the production, by any person other than a Federal agency, of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary to performance of the responsibilities of the senior official under this section; and

(D) administer to or take from any person an oath, affirmation, or affidavit, whenever necessary to performance of the responsibilities of the senior official under this section.

**(2) Enforcement of subpoenas**

Any subpoena issued under paragraph (1)(C) shall, in the case of contumacy or refusal to obey, be enforceable by order of any appropriate United States district court.

**(3) Effect of oaths**

Any oath, affirmation, or affidavit administered or taken under paragraph (1)(D) by or before an employee of the Privacy Office designated for that purpose by the senior official appointed under subsection (a) shall have the same force and effect as if administered or taken by or before an officer having a seal of office.

**(c) Supervision and coordination****(1) In general**

The senior official appointed under subsection (a) shall—

(A) report to, and be under the general supervision of, the Secretary; and

(B) coordinate activities with the Inspector General of the Department in order to avoid duplication of effort.

**(2) Coordination with the Inspector General****(A) In general**

Except as provided in subparagraph (B), the senior official appointed under subsection (a) may investigate any matter relating to possible violations or abuse concerning the administration of any program or operation of the Department relevant to the purposes under this section.

**(B) Coordination****(i) Referral**

Before initiating any investigation described under subparagraph (A), the senior official shall refer the matter and all related complaints, allegations, and information to the Inspector General of the Department.

**(ii) Determinations and notifications by the Inspector General****(I) In general**

Not later than 30 days after the receipt of a matter referred under clause (i), the Inspector General shall—

(aa) make a determination regarding whether the Inspector General intends to initiate an audit or investigation of the matter referred under clause (i); and

(bb) notify the senior official of that determination.

**(II) Investigation not initiated**

If the Inspector General notifies the senior official under subclause (I)(bb) that the Inspector General intended to initiate an audit or investigation, but does not initiate that audit or investigation within 90 days after providing that notification, the Inspector General shall further notify the senior official that an audit or investigation was not initiated. The further notification under this subclause shall be made not later than 3 days after the end of that 90-day period.

**(iii) Investigation by senior official**

The senior official may investigate a matter referred under clause (i) if—

(I) the Inspector General notifies the senior official under clause (ii)(I)(bb)

that the Inspector General does not intend to initiate an audit or investigation relating to that matter; or

(II) the Inspector General provides a further notification under clause (ii)(II) relating to that matter.

**(iv) Privacy training**

Any employee of the Office of Inspector General who audits or investigates any matter referred under clause (i) shall be required to receive adequate training on privacy laws, rules, and regulations, to be provided by an entity approved by the Inspector General in consultation with the senior official appointed under subsection (a).

**(d) Notification to Congress on removal**

If the Secretary removes the senior official appointed under subsection (a) or transfers that senior official to another position or location within the Department, the Secretary shall—

(1) promptly submit a written notification of the removal or transfer to Houses of Congress; and

(2) include in any such notification the reasons for the removal or transfer.

**(e) Reports by senior official to Congress**

The senior official appointed under subsection (a) shall—

(1) submit reports directly to the Congress regarding performance of the responsibilities of the senior official under this section, without any prior comment or amendment by the Secretary, Deputy Secretary, or any other officer or employee of the Department or the Office of Management and Budget; and

(2) inform the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives not later than—

(A) 30 days after the Secretary disapproves the senior official's request for a subpoena under subsection (b)(1)(C) or the Secretary substantively modifies the requested subpoena; or

(B) 45 days after the senior official's request for a subpoena under subsection (b)(1)(C), if that subpoena has not either been approved or disapproved by the Secretary.

(Pub. L. 107-296, title II, §222, Nov. 25, 2002, 116 Stat. 2155; Pub. L. 108-458, title VIII, §8305, Dec. 17, 2004, 118 Stat. 3868; Pub. L. 110-53, title VIII, §802, Aug. 3, 2007, 121 Stat. 358.)

## REFERENCES IN TEXT

The Privacy Act of 1974, referred to in subsec. (a)(2), (6), is Pub. L. 93-579, Dec. 31, 1974, 88 Stat. 1896, as amended, which enacted section 552a of Title 5, Government Organization and Employees, and provisions set out as notes under section 552a of Title 5. For complete classification of this Act to the Code, see Short Title of 1974 Amendment note set out under section 552a of Title 5 and Tables.

## AMENDMENTS

2007—Pub. L. 110-53 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) to (e).

2004—Pub. L. 108-458, §8305(1), inserted “, who shall report directly to the Secretary,” after “in the Department” in introductory provisions.

Pars. (5), (6). Pub. L. 108-458, §8305(2)-(4), added par. (5) and redesignated former par. (5) as (6).

### § 143. Enhancement of non-Federal cybersecurity

In carrying out the responsibilities under section 121 of this title, the Under Secretary for Intelligence and Analysis, in cooperation with the Assistant Secretary for Infrastructure Protection<sup>1</sup> shall—

(1) as appropriate, provide to State and local government entities, and upon request to private entities that own or operate critical information systems—

(A) analysis and warnings related to threats to, and vulnerabilities of, critical information systems; and

(B) in coordination with the Under Secretary for Emergency Preparedness and Response, crisis management support in response to threats to, or attacks on, critical information systems; and

(2) as appropriate, provide technical assistance, upon request, to the private sector and other government entities, in coordination with the Under Secretary for Emergency Preparedness and Response, with respect to emergency recovery plans to respond to major failures of critical information systems.

(Pub. L. 107-296, title II, §223, Nov. 25, 2002, 116 Stat. 2156; Pub. L. 110-53, title V, §531(b)(1)(A), Aug. 3, 2007, 121 Stat. 334.)

#### AMENDMENTS

2007—Pub. L. 110-53 substituted “Under Secretary for Intelligence and Analysis, in cooperation with the Assistant Secretary for Infrastructure Protection” for “Under Secretary for Information Analysis and Infrastructure Protection” in introductory provisions.

### § 144. NET Guard

The Assistant Secretary for Infrastructure Protection may establish a national technology guard, to be known as “NET Guard”, comprised of local teams of volunteers with expertise in relevant areas of science and technology, to assist local communities to respond and recover from attacks on information systems and communications networks.

(Pub. L. 107-296, title II, §224, Nov. 25, 2002, 116 Stat. 2156; Pub. L. 110-53, title V, §531(b)(1)(B), Aug. 3, 2007, 121 Stat. 334.)

#### AMENDMENTS

2007—Pub. L. 110-53 substituted “Assistant Secretary for Infrastructure Protection” for “Under Secretary for Information Analysis and Infrastructure Protection”.

### § 145. Cyber Security Enhancement Act of 2002

#### (a) Short title

This section may be cited as the “Cyber Security Enhancement Act of 2002”.

#### (b) Amendment of sentencing guidelines relating to certain computer crimes

##### (1) Directive to the United States Sentencing Commission

Pursuant to its authority under section 994(p) of title 28 and in accordance with this

subsection, the United States Sentencing Commission shall review and, if appropriate, amend its guidelines and its policy statements applicable to persons convicted of an offense under section 1030 of title 18.

#### (2) Requirements

In carrying out this subsection, the Sentencing Commission shall—

(A) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses described in paragraph (1), the growing incidence of such offenses, and the need for an effective deterrent and appropriate punishment to prevent such offenses;

(B) consider the following factors and the extent to which the guidelines may or may not account for them—

(i) the potential and actual loss resulting from the offense;

(ii) the level of sophistication and planning involved in the offense;

(iii) whether the offense was committed for purposes of commercial advantage or private financial benefit;

(iv) whether the defendant acted with malicious intent to cause harm in committing the offense;

(v) the extent to which the offense violated the privacy rights of individuals harmed;

(vi) whether the offense involved a computer used by the government in furtherance of national defense, national security, or the administration of justice;

(vii) whether the violation was intended to or had the effect of significantly interfering with or disrupting a critical infrastructure; and

(viii) whether the violation was intended to or had the effect of creating a threat to public health or safety, or injury to any person;

(C) assure reasonable consistency with other relevant directives and with other sentencing guidelines;

(D) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(E) make any necessary conforming changes to the sentencing guidelines; and

(F) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18.

#### (c) Study and report on computer crimes

Not later than May 1, 2003, the United States Sentencing Commission shall submit a brief report to Congress that explains any actions taken by the Sentencing Commission in response to this section and includes any recommendations the Commission may have regarding statutory penalties for offenses under section 1030 of title 18.

#### (d) Emergency disclosure exception

##### (1) Omitted

##### (2) Reporting of disclosures

A government entity that receives a disclosure under section 2702(b) of title 18 shall file,

<sup>1</sup> So in original. Probably should be followed by a comma.

not later than 90 days after such disclosure, a report to the Attorney General stating the paragraph of that section under which the disclosure was made, the date of the disclosure, the entity to which the disclosure was made, the number of customers or subscribers to whom the information disclosed pertained, and the number of communications, if any, that were disclosed. The Attorney General shall publish all such reports into a single report to be submitted to Congress 1 year after November 25, 2002.

(Pub. L. 107–296, title II, § 225, Nov. 25, 2002, 116 Stat. 2156.)

#### CODIFICATION

Section is comprised of section 225 of Pub. L. 107–296. Subsecs. (d)(1) and (e) to (j) of section 225 of Pub. L. 107–296 amended sections 1030, 2511, 2512, 2520, 2701 to 2703, and 3125 of Title 18, Crimes and Criminal Procedure.

#### PART D—OFFICE OF SCIENCE AND TECHNOLOGY

### § 161. Establishment of Office; Director

#### (a) Establishment

##### (1) In general

There is hereby established within the Department of Justice an Office of Science and Technology (hereinafter in this subchapter referred to as the “Office”).

##### (2) Authority

The Office shall be under the general authority of the Assistant Attorney General, Office of Justice Programs, and shall be established within the National Institute of Justice.

#### (b) Director

The Office shall be headed by a Director, who shall be an individual appointed based on approval by the Office of Personnel Management of the executive qualifications of the individual.

(Pub. L. 107–296, title II, § 231, Nov. 25, 2002, 116 Stat. 2159.)

#### REFERENCES IN TEXT

This subchapter, referred to in subsec. (a)(1), was in the original “this title”, meaning title II of Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2145, which enacted this subchapter, amended sections 1030, 2511, 2512, 2520, 2701 to 2703, and 3125 of Title 18, Crimes and Criminal Procedure, sections 3712 and 3722 of Title 42, The Public Health and Welfare, and section 401a of Title 50, War and National Defense, and enacted provisions set out as a note under section 101 of this title and listed in a Provisions for Review, Promulgation, or Amendment of Federal Sentencing Guidelines Relating to Specific Offenses table set out under section 994 of Title 28, Judiciary and Judicial Procedure. For complete classification of title II to the Code, see Tables.

### § 162. Mission of Office; duties

#### (a) Mission

The mission of the Office shall be—

- (1) to serve as the national focal point for work on law enforcement technology; and
- (2) to carry out programs that, through the provision of equipment, training, and technical assistance, improve the safety and effectiveness of law enforcement technology and

improve access to such technology by Federal, State, and local law enforcement agencies.

#### (b) Duties

In carrying out its mission, the Office shall have the following duties:

(1) To provide recommendations and advice to the Attorney General.

(2) To establish and maintain advisory groups (which shall be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.)) to assess the law enforcement technology needs of Federal, State, and local law enforcement agencies.

(3) To establish and maintain performance standards in accordance with the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113) for, and test and evaluate law enforcement technologies that may be used by, Federal, State, and local law enforcement agencies.

(4) To establish and maintain a program to certify, validate, and mark or otherwise recognize law enforcement technology products that conform to standards established and maintained by the Office in accordance with the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113). The program may, at the discretion of the Office, allow for supplier’s declaration of conformity with such standards.

(5) To work with other entities within the Department of Justice, other Federal agencies, and the executive office of the President to establish a coordinated Federal approach on issues related to law enforcement technology.

(6) To carry out research, development, testing, evaluation, and cost-benefit analyses in fields that would improve the safety, effectiveness, and efficiency of law enforcement technologies used by Federal, State, and local law enforcement agencies, including, but not limited to—

(A) weapons capable of preventing use by unauthorized persons, including personalized guns;

(B) protective apparel;

(C) bullet-resistant and explosion-resistant glass;

(D) monitoring systems and alarm systems capable of providing precise location information;

(E) wire and wireless interoperable communication technologies;

(F) tools and techniques that facilitate investigative and forensic work, including computer forensics;

(G) equipment for particular use in counterterrorism, including devices and technologies to disable terrorist devices;

(H) guides to assist State and local law enforcement agencies;

(I) DNA identification technologies; and

(J) tools and techniques that facilitate investigations of computer crime.

(7) To administer a program of research, development, testing, and demonstration to improve the interoperability of voice and data public safety communications.

(8) To serve on the Technical Support Working Group of the Department of Defense, and

on other relevant interagency panels, as requested.

(9) To develop, and disseminate to State and local law enforcement agencies, technical assistance and training materials for law enforcement personnel, including prosecutors.

(10) To operate the regional National Law Enforcement and Corrections Technology Centers and, to the extent necessary, establish additional centers through a competitive process.

(11) To administer a program of acquisition, research, development, and dissemination of advanced investigative analysis and forensic tools to assist State and local law enforcement agencies in combating cybercrime.

(12) To support research fellowships in support of its mission.

(13) To serve as a clearinghouse for information on law enforcement technologies.

(14) To represent the United States and State and local law enforcement agencies, as requested, in international activities concerning law enforcement technology.

(15) To enter into contracts and cooperative agreements and provide grants, which may require in-kind or cash matches from the recipient, as necessary to carry out its mission.

(16) To carry out other duties assigned by the Attorney General to accomplish the mission of the Office.

**(c) Competition required**

Except as otherwise expressly provided by law, all research and development carried out by or through the Office shall be carried out on a competitive basis.

**(d) Information from Federal agencies**

Federal agencies shall, upon request from the Office and in accordance with Federal law, provide the Office with any data, reports, or other information requested, unless compliance with such request is otherwise prohibited by law.

**(e) Publications**

Decisions concerning publications issued by the Office shall rest solely with the Director of the Office.

**(f) Transfer of funds**

The Office may transfer funds to other Federal agencies or provide funding to non-Federal entities through grants, cooperative agreements, or contracts to carry out its duties under this section: *Provided*, That any such transfer or provision of funding shall be carried out in accordance with section 605 of Public Law 107-77.

**(g) Annual report**

The Director of the Office shall include with the budget justification materials submitted to Congress in support of the Department of Justice budget for each fiscal year (as submitted with the budget of the President under section 1105(a) of title 31) a report on the activities of the Office. Each such report shall include the following:

(1) For the period of 5 fiscal years beginning with the fiscal year for which the budget is submitted—

(A) the Director's assessment of the needs of Federal, State, and local law enforcement

agencies for assistance with respect to law enforcement technology and other matters consistent with the mission of the Office; and

(B) a strategic plan for meeting such needs of such law enforcement agencies.

(2) For the fiscal year preceding the fiscal year for which such budget is submitted, a description of the activities carried out by the Office and an evaluation of the extent to which those activities successfully meet the needs assessed under paragraph (1)(A) in previous reports.

(Pub. L. 107-296, title II, §232, Nov. 25, 2002, 116 Stat. 2159; Pub. L. 108-7, div. L, §103(1), Feb. 20, 2003, 117 Stat. 529.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (b)(2), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The National Technology Transfer and Advancement Act of 1995, referred to in subsec. (b)(3), (4), is Pub. L. 104-113, Mar. 7, 1996, 110 Stat. 775, as amended. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 3701 of Title 15, Commerce and Trade, and Tables.

Section 605 of Public Law 107-77, referred to in subsec. (f), is section 605 of Pub. L. 107-77, title VI, Nov. 28, 2001, 115 Stat. 798, which is not classified to the Code.

AMENDMENTS

2003—Subsec. (f). Pub. L. 108-7 inserted before period at end “: *Provided*, That any such transfer or provision of funding shall be carried out in accordance with section 605 of Public Law 107-77”.

**§ 163. Definition of law enforcement technology**

For the purposes of this subchapter, the term “law enforcement technology” includes investigative and forensic technologies, corrections technologies, and technologies that support the judicial process.

(Pub. L. 107-296, title II, §233, Nov. 25, 2002, 116 Stat. 2161.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this title”, meaning title II of Pub. L. 107-296, Nov. 25, 2002, 116 Stat. 2145, which enacted this subchapter, amended sections 1030, 2511, 2512, 2520, 2701 to 2703, and 3125 of Title 18, Crimes and Criminal Procedure, sections 3712 and 3722 of Title 42, The Public Health and Welfare, and section 401a of Title 50, War and National Defense, and enacted provisions set out as a note under section 101 of this title and listed in a Provisions for Review, Promulgation, or Amendment of Federal Sentencing Guidelines Relating to Specific Offenses table set out under section 994 of Title 28, Judiciary and Judicial Procedure. For complete classification of title II to the Code, see Tables.

**§ 164. Abolishment of Office of Science and Technology of National Institute of Justice; transfer of functions**

**(a) Authority to transfer functions**

The Attorney General may transfer to the Office any other program or activity of the Department of Justice that the Attorney General, in consultation with the Committee on the Judiciary of the Senate and the Committee on the

Judiciary of the House of Representatives, determines to be consistent with the mission of the Office.

**(b) Transfer of personnel and assets**

With respect to any function, power, or duty, or any program or activity, that is established in the Office, those employees and assets of the element of the Department of Justice from which the transfer is made that the Attorney General determines are needed to perform that function, power, or duty, or for that program or activity, as the case may be, shall be transferred to the Office: *Provided*, That any such transfer shall be carried out in accordance with section 605 of Public Law 107-77.

**(c) Report on implementation**

Not later than 1 year after November 25, 2002, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the implementation of this subchapter. The report shall—

(1) provide an accounting of the amounts and sources of funding available to the Office to carry out its mission under existing authorizations and appropriations, and set forth the future funding needs of the Office; and

(2) include such other information and recommendations as the Attorney General considers appropriate.

(Pub. L. 107-296, title II, §234, Nov. 25, 2002, 116 Stat. 2161; Pub. L. 108-7, div. L, §103(2), Feb. 20, 2003, 117 Stat. 529.)

REFERENCES IN TEXT

Section 605 of Public Law 107-77, referred to in subsec. (b), is section 605 of Pub. L. 107-77, title VI, Nov. 28, 2001, 115 Stat. 798, which is not classified to the Code.

This subchapter, referred to in subsec. (c), was in the original “this title”, meaning title II of Pub. L. 107-296, Nov. 25, 2002, 116 Stat. 2145, which enacted this subchapter, amended sections 1030, 2511, 2512, 2520, 2701 to 2703, and 3125 of Title 18, Crimes and Criminal Procedure, sections 3712 and 3722 of Title 42, The Public Health and Welfare, and section 401a of Title 50, War and National Defense, and enacted provisions set out as a note under section 101 of this title and listed in a Provisions for Review, Promulgation, or Amendment of Federal Sentencing Guidelines Relating to Specific Offenses table set out under section 994 of Title 28, Judiciary and Judicial Procedure. For complete classification of title II to the Code, see Tables.

AMENDMENTS

2003—Subsec. (b). Pub. L. 108-7 inserted before period at end “: *Provided*, That any such transfer shall be carried out in accordance with section 605 of Public Law 107-77”.

**§ 165. National Law Enforcement and Corrections Technology Centers**

**(a) In general**

The Director of the Office shall operate and support National Law Enforcement and Corrections Technology Centers (hereinafter in this section referred to as “Centers”) and, to the extent necessary, establish new centers through a merit-based, competitive process.

**(b) Purpose of Centers**

The purpose of the Centers shall be to—

(1) support research and development of law enforcement technology;

(2) support the transfer and implementation of technology;

(3) assist in the development and dissemination of guidelines and technological standards; and

(4) provide technology assistance, information, and support for law enforcement, corrections, and criminal justice purposes.

**(c) Annual meeting**

Each year, the Director shall convene a meeting of the Centers in order to foster collaboration and communication between Center participants.

**(d) Report**

Not later than 12 months after November 25, 2002, the Director shall transmit to the Congress a report assessing the effectiveness of the existing system of Centers and identify the number of Centers necessary to meet the technology needs of Federal, State, and local law enforcement in the United States.

(Pub. L. 107-296, title II, §235, Nov. 25, 2002, 116 Stat. 2162.)

SUBCHAPTER III—SCIENCE AND TECHNOLOGY IN SUPPORT OF HOMELAND SECURITY

**§ 181. Under Secretary for Science and Technology**

There shall be in the Department a Director of Science and Technology headed by an Under Secretary for Science and Technology.

(Pub. L. 107-296, title III, §301, Nov. 25, 2002, 116 Stat. 2163.)

**§ 182. Responsibilities and authorities of the Under Secretary for Science and Technology**

The Secretary, acting through the Under Secretary for Science and Technology, shall have the responsibility for—

(1) advising the Secretary regarding research and development efforts and priorities in support of the Department’s missions;

(2) developing, in consultation with other appropriate executive agencies, a national policy and strategic plan for, identifying priorities, goals, objectives and policies for, and coordinating the Federal Government’s civilian efforts to identify and develop countermeasures to chemical, biological,<sup>1</sup> and other emerging terrorist threats, including the development of comprehensive, research-based definable goals for such efforts and development of annual measurable objectives and specific targets to accomplish and evaluate the goals for such efforts;

(3) supporting the Under Secretary for Intelligence and Analysis and the Assistant Secretary for Infrastructure Protection, by assessing and testing homeland security vulnerabilities and possible threats;

(4) conducting basic and applied research, development, demonstration, testing, and

<sup>1</sup> So in original.