

SUBCHAPTER IV—BORDER, MARITIME, AND TRANSPORTATION SECURITY

Editorial Notes

CODIFICATION

Pub. L. 114–125, title VIII, §802(g)(1)(B)(i), Feb. 24, 2016, 130 Stat. 211, substituted “BORDER, MARITIME, AND TRANSPORTATION SECURITY” for “DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY” in subchapter heading.

PART A—BORDER, MARITIME, AND TRANSPORTATION SECURITY RESPONSIBILITIES AND FUNCTIONS

Editorial Notes

CODIFICATION

Pub. L. 114–125, title VIII, §802(g)(1)(B)(ii)(I), Feb. 24, 2016, 130 Stat. 211, substituted “Border, Maritime, and Transportation Security Responsibilities and Functions” for “Under Secretary for Border and Transportation Security” in part heading.

§ 201. Repealed. Pub. L. 114–125, title VIII, § 802(g)(2), Feb. 24, 2016, 130 Stat. 212

Section, Pub. L. 107–296, title IV, §401, Nov. 25, 2002, 116 Stat. 2177, established the Directorate of Border and Transportation Security headed by an Under Secretary for Border and Transportation Security.

§ 202. Border, maritime, and transportation responsibilities

The Secretary shall be responsible for the following:

- (1) Preventing the entry of terrorists and the instruments of terrorism into the United States.
- (2) Securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States, including managing and coordinating those functions transferred to the Department at ports of entry.
- (3) Carrying out the immigration enforcement functions vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the date on which the transfer of functions specified under section 251 of this title takes effect.
- (4) Establishing and administering rules, in accordance with section 236 of this title, governing the granting of visas or other forms of permission, including parole, to enter the United States to individuals who are not a citizen or an alien lawfully admitted for permanent residence in the United States.
- (5) Establishing national immigration enforcement policies and priorities.
- (6) Except as provided in part C of this subchapter, administering the customs laws of the United States.
- (7) Conducting the inspection and related administrative functions of the Department of Agriculture transferred to the Secretary of Homeland Security under section 231 of this title.
- (8) In carrying out the foregoing responsibilities, ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce.

(Pub. L. 107–296, title IV, §402, Nov. 25, 2002, 116 Stat. 2177; Pub. L. 114–125, title VIII, §802(g)(1)(B)(ii)(II), Feb. 24, 2016, 130 Stat. 211.)

Editorial Notes

REFERENCES IN TEXT

Part C of this subchapter, referred to in par. (6), was in the original “subtitle C”, meaning subtitle C (§421 et seq.) of title IV of Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2182, which enacted part C (§231 et seq.) of this subchapter and amended sections 2279e and 2279f of Title 7, Agriculture, and sections 115, 44901, and 47106 of Title 49, Transportation. For complete classification of subtitle C to the Code, see Tables.

The customs laws of the United States, referred to in par. (6), are classified generally to Title 19, Customs Duties.

AMENDMENTS

2016—Pub. L. 114–125 substituted “Border, maritime, and transportation responsibilities” for “Responsibilities” in section catchline and struck out “, acting through the Under Secretary for Border and Transportation Security,” after “The Secretary” in introductory provisions.

§ 203. Functions transferred

In accordance with subchapter XII (relating to transition provisions), there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of—

- (1) the United States Customs Service of the Department of the Treasury, including the functions of the Secretary of the Treasury relating thereto;
- (2) the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto;
- (3) the Federal Protective Service of the General Services Administration, including the functions of the Administrator of General Services relating thereto;
- (4) the Federal Law Enforcement Training Center of the Department of the Treasury; and
- (5) the Office for Domestic Preparedness of the Office of Justice Programs, including the functions of the Attorney General relating thereto.

(Pub. L. 107–296, title IV, §403, Nov. 25, 2002, 116 Stat. 2178.)

§ 204. Surface Transportation Security Advisory Committee

(a) Establishment

The Administrator of the Transportation Security Administration (referred to in this section as “Administrator”) shall establish within the Transportation Security Administration the Surface Transportation Security Advisory Committee (referred to in this section as the “Advisory Committee”).

(b) Duties

(1) In general

The Advisory Committee may advise, consult with, report to, and make recommendations to the Administrator on surface transportation security matters, including the de-

velopment, refinement, and implementation of policies, programs, initiatives, rulemakings, and security directives pertaining to surface transportation security.

(2) Risk-based security

The Advisory Committee shall consider risk-based security approaches in the performance of its duties.

(c) Membership

(1) Composition

The Advisory Committee shall be composed of—

- (A) voting members appointed by the Administrator under paragraph (2); and
- (B) nonvoting members, serving in an advisory capacity, who shall be designated by—
 - (i) the Transportation Security Administration;
 - (ii) the Department of Transportation;
 - (iii) the Coast Guard; and
 - (iv) such other Federal department or agency as the Administrator considers appropriate.

(2) Appointment

The Administrator shall appoint voting members from among stakeholders representing each mode of surface transportation, such as passenger rail, freight rail, mass transit, pipelines, highways, over-the-road bus, school bus industry, and trucking, including representatives from—

- (A) associations representing such modes of surface transportation;
- (B) labor organizations representing such modes of surface transportation;
- (C) groups representing the users of such modes of surface transportation, including asset manufacturers, as appropriate;
- (D) relevant law enforcement, first responders, and security experts; and
- (E) such other groups as the Administrator considers appropriate.

(3) Chairperson

The Advisory Committee shall select a chairperson from among its voting members.

(4) Term of office

(A) Terms

(i) In general

The term of each voting member of the Advisory Committee shall be 2 years, but a voting member may continue to serve until the Administrator appoints a successor.

(ii) Reappointment

A voting member of the Advisory Committee may be reappointed.

(B) Removal

(i) In general

The Administrator may review the participation of a member of the Advisory Committee and remove such member for cause at any time.

(ii) Access to information

The Administrator may remove any member of the Advisory Committee that

the Administrator determines should be restricted from reviewing, discussing, or possessing classified information or sensitive security information.

(5) Prohibition on compensation

The members of the Advisory Committee shall not receive any compensation from the Government by reason of their service on the Advisory Committee.

(6) Meetings

(A) In general

The Administrator shall require the Advisory Committee to meet at least semiannually in person or through web conferencing and may convene additional meetings as necessary.

(B) Public meetings

At least 1 of the meetings of the Advisory Committee each year shall be—

- (i) announced in the Federal Register;
- (ii) announced on a public website; and
- (iii) open to the public.

(C) Attendance

The Advisory Committee shall maintain a record of the persons present at each meeting.

(D) Minutes

(i) In general

Unless otherwise prohibited by other Federal law, minutes of the meetings shall be published on the public website under subsection (e)(5).

(ii) Protection of classified and sensitive information

The Advisory Committee may redact or summarize, as necessary, minutes of the meetings to protect classified or other sensitive information in accordance with law.

(7) Voting member access to classified and sensitive security information

(A) Determinations

Not later than 60 days after the date on which a voting member is appointed to the Advisory Committee and before that voting member may be granted any access to classified information or sensitive security information, the Administrator shall determine if the voting member should be restricted from reviewing, discussing, or possessing classified information or sensitive security information.

(B) Access

(i) Sensitive security information

If a voting member is not restricted from reviewing, discussing, or possessing sensitive security information under subparagraph (A) and voluntarily signs a non-disclosure agreement, the voting member may be granted access to sensitive security information that is relevant to the voting member's service on the Advisory Committee.

(ii) Classified information

Access to classified materials shall be managed in accordance with Executive

Order 13526 of December 29, 2009 (75 Fed. Reg. 7077), or any subsequent corresponding Executive order.

(C) Protections

(i) Sensitive security information

Voting members shall protect sensitive security information in accordance with part 1520 of title 49, Code of Federal Regulations.

(ii) Classified information

Voting members shall protect classified information in accordance with the applicable requirements for the particular level of classification.

(8) Joint committee meetings

The Advisory Committee may meet with 1 or more of the following advisory committees to discuss multimodal security issues and other security-related issues of common concern:

(A) Aviation Security Advisory Committee established under section 44946 of title 49.

(B) Maritime Security Advisory Committee established under section 70112 of title 46.

(C) Railroad Safety Advisory Committee established by the Federal Railroad Administration.

(9) Subject matter experts

The Advisory Committee may request the assistance of subject matter experts with expertise related to the jurisdiction of the Advisory Committee.

(d) Reports

(1) Periodic reports

The Advisory Committee shall periodically submit reports to the Administrator on matters requested by the Administrator or by a majority of the members of the Advisory Committee.

(2) Annual report

(A) Submission

The Advisory Committee shall submit to the Administrator and the appropriate congressional committees an annual report that provides information on the activities, findings, and recommendations of the Advisory Committee during the preceding year.

(B) Publication

Not later than 6 months after the date that the Administrator receives an annual report under subparagraph (A), the Administrator shall publish a public version of the report, in accordance with section 552a(b) of title 5.

(e) Administration response

(1) Consideration

The Administrator shall consider the information, advice, and recommendations of the Advisory Committee in formulating policies, programs, initiatives, rulemakings, and security directives pertaining to surface transportation security.

(2) Feedback

Not later than 90 days after the date that the Administrator receives a recommendation

from the Advisory Committee under subsection (d)(2), the Administrator shall submit to the Advisory Committee written feedback on the recommendation, including—

(A) if the Administrator agrees with the recommendation, a plan describing the actions that the Administrator has taken, will take, or recommends that the head of another Federal department or agency take to implement the recommendation; or

(B) if the Administrator disagrees with the recommendation, a justification for that determination.

(3) Notices

Not later than 30 days after the date the Administrator submits feedback under paragraph (2), the Administrator shall—

(A) notify the appropriate congressional committees of the feedback, including the determination under subparagraph (A) or subparagraph (B) of that paragraph, as applicable; and

(B) provide the appropriate congressional committees with a briefing upon request.

(4) Updates

Not later than 90 days after the date the Administrator receives a recommendation from the Advisory Committee under subsection (d)(2) that the Administrator agrees with, and quarterly thereafter until the recommendation is fully implemented, the Administrator shall submit a report to the appropriate congressional committees or post on the public website under paragraph (5) an update on the status of the recommendation.

(5) Website

The Administrator shall maintain a public website that—

(A) lists the members of the Advisory Committee; and

(B) provides the contact information for the Advisory Committee.

(f) Nonapplicability of FACA

The Federal Advisory Committee Act (5 U.S.C. App.)¹ shall not apply to the Advisory Committee or any subcommittee established under this section.

(Pub. L. 107–296, title IV, § 404, as added Pub. L. 115–254, div. K, title I, § 1969(a), Oct. 5, 2018, 132 Stat. 3609.)

Editorial Notes

REFERENCES IN TEXT

Executive Order 13526, referred to in subsec. (c)(7)(B)(ii), is set out as a note under section 3161 of Title 50, War and National Defense.

The Federal Advisory Committee Act, referred to in subsec. (f), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which was set out in the Appendix to Title 5, Government Organization and Employees, and was substantially repealed and restated in chapter 10 (§ 1001 et seq.) of Title 5 by Pub. L. 117–286, §§ 3(a), 7, Dec. 27, 2022, 136 Stat. 4197, 4361. For disposition of sections of the Act into chapter 10 of Title 5, see Disposition Table preceding section 101 of Title 5.

¹ See References in Text note below.

Statutory Notes and Related Subsidiaries**SURFACE TRANSPORTATION SECURITY ADVISORY
COMMITTEE MEMBERS**

Pub. L. 115–254, div. K, title I, § 1969(b), Oct. 5, 2018, 132 Stat. 3612, provided that:

“(1) **VOTING MEMBERS.**—Not later than 180 days after the date of enactment of this Act [Oct. 5, 2018], the Administrator [of the Transportation Security Administration] shall appoint the voting members of the Surface Transportation Security Advisory Committee established under section 404 of the Homeland Security Act of 2002 [6 U.S.C. 204], as added by subsection (a) of this section.

“(2) **NONVOTING MEMBERS.**—Not later than 90 days after the date of enactment of this Act, each Federal Government department and agency with regulatory authority over a mode of surface or maritime transportation, as the Administrator considers appropriate, shall designate an appropriate representative to serve as a nonvoting member of the Surface Transportation Security Advisory Committee.”

§ 205. Ombudsman for immigration detention**(a) In general**

Within the Department, there shall be a position of Immigration Detention Ombudsman (in this section referred to as the “Ombudsman”). The Ombudsman shall be independent of Department agencies and officers and shall report directly to the Secretary. The Ombudsman shall be a senior official with a background in civil rights enforcement, civil detention care and custody, and immigration law.

(b) Functions

The functions of the Ombudsman shall be to—

(1) Establish and administer an independent, neutral, and confidential process to receive, investigate, resolve, and provide redress, including referral for investigation to the Office of the Inspector General, referral to U.S. Citizenship and Immigration Services for immigration relief, or any other action determined appropriate, for cases in which Department officers or other personnel, or contracted, subcontracted, or cooperating entity personnel, are found to have engaged in misconduct or violated the rights of individuals in immigration detention;

(2) Establish an accessible and standardized process regarding complaints against any officer or employee of U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement, or any contracted, subcontracted, or cooperating entity personnel, for violations of law, standards of professional conduct, contract terms, or policy related to immigration detention;

(3) Conduct unannounced inspections of detention facilities holding individuals in federal immigration custody, including those owned or operated by units of State or local government and privately-owned or operated facilities;

(4) Review, examine, and make recommendations to address concerns or violations of contract terms identified in reviews, audits, investigations, or detainee interviews regarding immigration detention facilities and services;

(5) Provide assistance to individuals affected by potential misconduct, excessive force, or violations of law or detention standards by De-

partment of Homeland Security officers or other personnel, or contracted, subcontracted, or cooperating entity personnel; and

(6) Ensure that the functions performed by the Ombudsman are complementary to existing functions within the Department of Homeland Security.

(c) Access to detention facilities

The Ombudsman or designated personnel of the Ombudsman, shall be provided unfettered access to any location within each such detention facility and shall be permitted confidential access to any detainee at the detainee’s request and any departmental records concerning such detainee.

(d) Coordination with department components**(1) In general**

The Director of U.S. Immigration and Customs Enforcement and the Commissioner of U.S. Customs and Border Protection shall each establish procedures to provide formal responses to recommendations submitted to such officials by the Ombudsman within 60 days of receiving such recommendations.

(2) Access to information

The Secretary shall establish procedures to provide the Ombudsman access to all departmental records necessary to execute the responsibilities of the Ombudsman under subsection (b) or (c) not later than 60 days after a request from the Ombudsman for such information.

(e) Annual report

The Ombudsman shall prepare a report to Congress on an annual basis on its activities, findings, and recommendations.

(Pub. L. 107–296, title IV, § 405, as added Pub. L. 116–93, div. D, title I, § 106(a), Dec. 20, 2019, 133 Stat. 2504.)

**PART B—U.S. CUSTOMS AND BORDER
PROTECTION****Editorial Notes****CODIFICATION**

Pub. L. 114–125, title VIII, § 802(g)(1)(B)(iii)(I), Feb. 24, 2016, 130 Stat. 211, substituted “U.S. Customs and Border Protection” for “United States Customs Service” in part heading.

**§ 211. Establishment of U.S. Customs and Border
Protection; Commissioner, Deputy Commis-
sioner, and operational offices****(a) In general**

There is established in the Department an agency to be known as U.S. Customs and Border Protection.

**(b) Commissioner of U.S. Customs and Border
Protection****(1) In general**

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

(2) Committee referral

As an exercise of the rulemaking power of the Senate, any nomination for the Commis-