

ephedrine, pseudoephedrine, or phenylpropanolamine, including each of the salts, optical isomers, and salts of optical isomers of such chemicals.

(Pub. L. 109-347, title VII, § 707, Oct. 13, 2006, 120 Stat. 1946.)

#### Editorial Notes

##### REFERENCES IN TEXT

The Combat Methamphetamine Epidemic Act of 2005, referred to in subsec. (b)(2)(B), is Pub. L. 109-177, title VII, Mar. 9, 2006, 120 Stat. 256. Section 722 of the Act amended sections 2291h, 2291j, and 2291j-1 of Title 22, Foreign Relations and Intercourse, and enacted provisions set out as a note under section 2291h of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21, Food and Drugs, and Tables.

##### 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.

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

##### DEFINITIONS

For definition of “Commissioner” as used in this section, see section 901 of this title.

### § 221. Requirements with respect to administering polygraph examinations to law enforcement personnel of U.S. Customs and Border Protection

#### (a) In general

The Secretary of Homeland Security shall ensure that—

(1) by not later than 2 years after January 4, 2011, all applicants for law enforcement positions with U.S. Customs and Border Protection (except as provided in subsection (b)) receive polygraph examinations before being hired for such a position; and

(2) by not later than 180 days after January 4, 2011, U.S. Customs and Border Protection initiates all periodic background reinvestigations for all law enforcement personnel of U.S. Customs and Border Protection that should receive periodic background reinvestigations pursuant to relevant policies of U.S. Customs and Border Protection in effect on the day before January 4, 2011.

#### (b) Waiver

The Commissioner of U.S. Customs and Border Protection may waive the polygraph examination requirement under subsection (a)(1) for any applicant who—

- (1) is deemed suitable for employment;
- (2) holds a current, active Top Secret/Sensitive Compartmented Information Clearance;
- (3) has a current Single Scope Background Investigation;
- (4) was not granted any waivers to obtain his or her clearance; and

(5) is a veteran (as defined in section 2108 of title 5).

(Pub. L. 111-376, § 3, Jan. 4, 2011, 124 Stat. 4104; Pub. L. 114-279, § 5, Dec. 16, 2016, 130 Stat. 1422.)

#### Editorial Notes

##### CODIFICATION

Section was enacted as part of the Anti-Border Corruption Act of 2010, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

##### AMENDMENTS

2016—Pub. L. 114-279 designated existing provisions as subsec. (a), inserted heading, in par. (1) inserted “(except as provided in subsection (b))” after “Border Protection”, and added subsec. (b).

#### Statutory Notes and Related Subsidiaries

##### WAIVER OF CERTAIN POLYGRAPH EXAMINATION REQUIREMENTS

Pub. L. 114-328, div. A, title X, § 1049, Dec. 23, 2016, 130 Stat. 2396, provided that: “The Secretary of Homeland Security, acting through the Commissioner of U.S. Customs and Border Protection, may waive the polygraph examination requirement under section 3 of the Anti-Border Corruption Act of 2010 (Public Law 111-376) [6 U.S.C. 221] for any applicant who—

“(1) the Commissioner determines is suitable for employment;

“(2) holds a current, active Top Secret clearance and is able to access sensitive compartmented information;

“(3) has a current single scope background investigation;

“(4) was not granted any waivers to obtain the clearance; and

“(5) is a veteran (as such term is defined in section 2108 or 2109a [probably should be ‘2108a’] of title 5, United States Code).”

##### FINDINGS

Pub. L. 111-376, § 2, Jan. 4, 2011, 124 Stat. 4104, provided that: “Congress makes the following findings:

“(1) According to the Office of the Inspector General of the Department of Homeland Security, since 2003, 129 U.S. Customs and Border Protection officials have been arrested on corruption charges and, during 2009, 576 investigations were opened on allegations of improper conduct by U.S. Customs and Border Protection officials.

“(2) To foster integrity in the workplace, established policy of U.S. Customs and Border Protection calls for—

“(A) all job applicants for law enforcement positions at U.S. Customs and Border Protection to receive a polygraph examination and a background investigation before being offered employment; and

“(B) relevant employees to receive a periodic background reinvestigation every 5 years.

“(3) According to the Office of Internal Affairs of U.S. Customs and Border Protection—

“(A) in 2009, less than 15 percent of applicants for jobs with U.S. Customs and Border Protection received polygraph examinations;

“(B) as of March 2010, U.S. Customs and Border Protection had a backlog of approximately 10,000 periodic background reinvestigations of existing employees; and

“(C) without additional resources, by the end of fiscal year 2010, the backlog of periodic background reinvestigations will increase to approximately 19,000.”

### § 222. Advanced Training Center Revolving Fund

For fiscal year 2012 and thereafter, U.S. Customs and Border Protection’s Advanced Train-

ing Center is authorized to charge fees for any service and/or thing of value it provides to Federal Government or non-government entities or individuals, so long as the fees charged do not exceed the full costs associated with the service or thing of value provided: *Provided*, That notwithstanding section 3302(b) of title 31, fees collected by the Advanced Training Center are to be deposited into a separate account entitled “Advanced Training Center Revolving Fund”, and be available, without further appropriations, for necessary expenses of the Advanced Training Center program, and are to remain available until expended.

(Pub. L. 112-74, div. D, title V, § 557, Dec. 23, 2011, 125 Stat. 979.)

#### Editorial Notes

##### CODIFICATION

Section was enacted as part of the Department of Homeland Security Appropriations Act, 2012, and also as part of the Consolidated Appropriations Act, 2012, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

### § 223. Border security metrics

#### (a) Definitions

In this section:

##### (1) Appropriate congressional committees

The term “appropriate congressional committees” means—

- (A) the Committee on Homeland Security and Governmental Affairs of the Senate; and
- (B) the Committee on Homeland Security of the House of Representatives.

##### (2) Consequence Delivery System

The term “Consequence Delivery System” means the series of consequences applied by U.S. Border Patrol in collaboration with other Federal agencies to persons unlawfully entering the United States, in order to prevent unlawful border crossing recidivism.

##### (3) Got away

The term “got away” means an unlawful border crosser who—

- (A) is directly or indirectly observed making an unlawful entry into the United States;
- (B) is not apprehended; and
- (C) is not a turn back.

##### (4) Known maritime migrant flow

The term “known maritime migrant flow” means the sum of the number of undocumented migrants—

- (A) interdicted in the waters over which the United States has jurisdiction;
- (B) identified at sea either directly or indirectly, but not interdicted;
- (C) if not described in subparagraph (A) or (B), who were otherwise reported, with a significant degree of certainty, as having entered, or attempted to enter, the United States through the maritime border.

##### (5) Major violator

The term “major violator” means a person or entity that has engaged in serious criminal

activities at any land, air, or sea port of entry, including the following:

- (A) Possession of illicit drugs.
- (B) Smuggling of prohibited products.
- (C) Human smuggling.
- (D) Possession of illegal weapons.
- (E) Use of fraudulent documents.
- (F) Any other offense that is serious enough to result in an arrest.

#### (6) Secretary

The term “the Secretary” means the Secretary of Homeland Security.

#### (7) Situational awareness

The term “situational awareness” means knowledge and understanding of current unlawful cross-border activity, including the following:

- (A) Threats and trends concerning illicit trafficking and unlawful crossings.
- (B) The ability to forecast future shifts in such threats and trends.
- (C) The ability to evaluate such threats and trends at a level sufficient to create actionable plans.
- (D) The operational capability to conduct persistent and integrated surveillance of the international borders of the United States.

#### (8) Transit zone

The term “transit zone” means the sea corridors of the western Atlantic Ocean, the Gulf of Mexico, the Caribbean Sea, and the eastern Pacific Ocean through which undocumented migrants and illicit drugs transit, either directly or indirectly, to the United States.

#### (9) Turn back

The term “turn back” means an unlawful border crosser who, after making an unlawful entry into the United States, responds to United States enforcement efforts by returning promptly to the country from which such crosser entered.

#### (10) Unlawful border crossing effectiveness rate

The term “unlawful border crossing effectiveness rate” means the percentage that results from dividing the number of apprehensions and turn backs by the sum of the number of apprehensions, estimated undetected unlawful entries, turn backs, and got aways.

#### (11) Unlawful entry

The term “unlawful entry” means an unlawful border crosser who enters the United States and is not apprehended by a border security component of the Department of Homeland Security.

### (b) Metrics for securing the border between ports of entry

#### (1) In general

Not later than 180 days after December 23, 2016, the Secretary shall develop metrics, informed by situational awareness, to measure the effectiveness of security between ports of entry. The Secretary shall annually implement the metrics developed under this subsection, which shall include the following:

- (A) Estimates, using alternative methodologies where appropriate, including re-