

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 Repealed.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. 707), 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-

sioner submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance.

(c) Duties

The Commissioner shall—

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

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

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

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

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

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

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

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

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

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

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

(10) in coordination with the Secretary, deploy technology to collect the data necessary for the Secretary to administer the biometric entry and exit data system pursuant to section 1365b of title 8;

(11) enforce and administer the laws relating to agricultural import and entry inspection referred to in section 231 of this title;

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

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

(14) enforce and administer—

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

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

(15) conduct polygraph examinations in accordance with section 221(1) of this title;

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

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

(18) carry out section 218 of this title, relating to the issuance of Asia-Pacific Economic Cooperation Business Travel Cards; and

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

(d) Deputy Commissioner

There shall be in U.S. Customs and Border Protection a Deputy Commissioner who shall assist the Commissioner in the management of U.S. Customs and Border Protection.

(e) U.S. Border Patrol

(1) In general

There is established in U.S. Customs and Border Protection the U.S. Border Patrol.

(2) Chief

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

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

(B) report to the Commissioner.

(3) Duties

The U.S. Border Patrol shall—

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

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

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

(f) Air and Marine Operations

(1) In general

There is established in U.S. Customs and Border Protection an office known as Air and Marine Operations.

(2) Executive Assistant Commissioner

There shall be at the head of Air and Marine Operations an Executive Assistant Commissioner, who shall report to the Commissioner.

(3) Duties

Air and Marine Operations shall—

(A) serve as the law enforcement office within U.S. Customs and Border Protection with primary responsibility to detect, interdict, and prevent acts of terrorism and the

unlawful movement of people, illicit drugs, and other contraband across the borders of the United States in the air and maritime environment;

(B) conduct joint aviation and marine operations with U.S. Immigration and Customs Enforcement;

(C) conduct aviation and marine operations with international, Federal, State, and local law enforcement agencies, as appropriate;

(D) administer the Air and Marine Operations Center established under paragraph (4); and

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

(4) Air and Marine Operations Center

(A) In general

There is established in Air and Marine Operations an Air and Marine Operations Center.

(B) Executive Director

There shall be at the head of the Air and Marine Operations Center an Executive Director, who shall report to the Executive Assistant Commissioner of Air and Marine Operations.

(C) Duties

The Air and Marine Operations Center shall—

(i) manage the air and maritime domain awareness of the Department, as directed by the Secretary;

(ii) monitor and coordinate the airspace for unmanned aerial systems operations of Air and Marine Operations in U.S. Customs and Border Protection;

(iii) detect, identify, and coordinate a response to threats to national security in the air domain, in coordination with other appropriate agencies, as determined by the Executive Assistant Commissioner;

(iv) provide aviation and marine support to other Federal, State, tribal, and local agencies; and

(v) carry out other duties and powers prescribed by the Executive Assistant Commissioner.

(g) Office of Field Operations

(1) In general

There is established in U.S. Customs and Border Protection an Office of Field Operations.

(2) Executive Assistant Commissioner

There shall be at the head of the Office of Field Operations an Executive Assistant Commissioner, who shall report to the Commissioner.

(3) Duties

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

(A) deter and prevent terrorists and terrorist weapons from entering the United States at such ports of entry;

(B) conduct inspections at such ports of entry to safeguard the United States from terrorism and illegal entry of persons;

(C) prevent illicit drugs, agricultural pests, and contraband from entering the United States;

(D) in coordination with the Commissioner, facilitate and expedite the flow of legitimate travelers and trade;

(E) administer the National Targeting Center established under paragraph (4);

(F) coordinate with the Executive Assistant Commissioner for the Office of Trade with respect to the trade facilitation and trade enforcement activities of U.S. Customs and Border Protection; and

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

(4) National Targeting Center

(A) In general

There is established in the Office of Field Operations a National Targeting Center.

(B) Executive Director

There shall be at the head of the National Targeting Center an Executive Director, who shall report to the Executive Assistant Commissioner of the Office of Field Operations.

(C) Duties

The National Targeting Center shall—

(i) serve as the primary forum for targeting operations within U.S. Customs and Border Protection to collect and analyze traveler and cargo information in advance of arrival in the United States to identify and address security risks and strengthen trade enforcement;

(ii) identify, review, and target travelers and cargo for examination;

(iii) coordinate the examination of entry and exit of travelers and cargo;

(iv) develop and conduct commercial risk assessment targeting with respect to cargo destined for the United States;

(v) coordinate with the Transportation Security Administration, as appropriate;

(vi) issue Trade Alerts pursuant to section 4318(b) of title 19; and

(vii) carry out other duties and powers prescribed by the Executive Assistant Commissioner.

(5) Annual report on staffing

(A) In general

Not later than 30 days after February 24, 2016, and annually thereafter, the Executive Assistant Commissioner shall submit to the Committee on Homeland Security and the Committee on Ways and Means of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Finance of the Senate a report on the staffing model for the Office of Field Operations, including information on how many supervisors, front-line U.S. Customs and Border Protection officers, and support personnel are assigned to each Field Office and port of entry.

(B) Form

The report required under subparagraph (A) shall, to the greatest extent practicable,

be submitted in unclassified form, but may be submitted in classified form, if the Executive Assistant Commissioner determines that such is appropriate and informs the Committee on Homeland Security and the Committee on Ways and Means of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Finance of the Senate of the reasoning for such.

(h) Office of Intelligence

(1) In general

There is established in U.S. Customs and Border Protection an Office of Intelligence.

(2) Assistant Commissioner

There shall be at the head of the Office of Intelligence an Assistant Commissioner, who shall report to the Commissioner.

(3) Duties

The Office of Intelligence shall—

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

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

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

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

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

(i) Office of International Affairs

(1) In general

There is established in U.S. Customs and Border Protection an Office of International Affairs.

(2) Assistant Commissioner

There shall be at the head of the Office of International Affairs an Assistant Commissioner, who shall report to the Commissioner.

(3) Duties

The Office of International Affairs, in collaboration with the Office of Policy of the Department, shall—

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

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

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

(D) provide necessary capacity building, training, and assistance to foreign customs

and border control agencies to strengthen border, global supply chain, and travel security, as appropriate;

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

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

(G) coordinate U.S. Customs and Border Protection's engagement in international negotiations;

(H) advise the Commissioner with respect to matters arising in the World Customs Organization and other international organizations as such matters relate to the policies and procedures of U.S. Customs and Border Protection;

(I) advise the Commissioner regarding international agreements to which the United States is a party as such agreements relate to the policies and regulations of U.S. Customs and Border Protection; and

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

(j) Office of Professional Responsibility

(1) In general

There is established in U.S. Customs and Border Protection an Office of Professional Responsibility.

(2) Assistant Commissioner

There shall be at the head of the Office of Professional Responsibility an Assistant Commissioner, who shall report to the Commissioner.

(3) Duties

The Office of Professional Responsibility shall—

(A) investigate criminal and administrative matters and misconduct by officers, agents, and other employees of U.S. Customs and Border Protection;

(B) manage integrity-related programs and policies of U.S. Customs and Border Protection;

(C) conduct research and analysis regarding misconduct of officers, agents, and other employees of U.S. Customs and Border Protection; and

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

(k) Standard operating procedures

(1) In general

The Commissioner shall establish—

(A) standard operating procedures for searching, reviewing, retaining, and sharing information contained in communication, electronic, or digital devices encountered by U.S. Customs and Border Protection personnel at United States ports of entry;

(B) standard use of force procedures that officers and agents of U.S. Customs and Border Protection may employ in the execution of their duties, including the use of deadly force;

(C) uniform, standardized, and publicly-available procedures for processing and investigating complaints against officers,

agents, and employees of U.S. Customs and Border Protection for violations of professional conduct, including the timely disposition of complaints and a written notification to the complainant of the status or outcome, as appropriate, of the related investigation, in accordance with section 552a of title 5 (commonly referred to as the “Privacy Act” or the “Privacy Act of 1974”);

(D) an internal, uniform reporting mechanism regarding incidents involving the use of deadly force by an officer or agent of U.S. Customs and Border Protection, including an evaluation of the degree to which the procedures required under subparagraph (B) were followed; and

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

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

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

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

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

(2) Requirements regarding certain notifications

The standard operating procedures established pursuant to subparagraph (A) of paragraph (1) shall require—

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

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

(3) Exceptions

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

(4) Update and review

The Commissioner shall review and update every three years the standard operating procedures required under this subsection.

(5) Audits

The Inspector General of the Department of Homeland Security shall develop and annually administer, during each of the three calendar years beginning in the calendar year that begins after February 24, 2016, an auditing mechanism to review whether searches of electronic devices at or between United States ports of entry are being conducted in conformity with the standard operating procedures required under subparagraph (A) of paragraph (1). Such audits shall be submitted to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate and shall include the following:

(A) A description of the activities of officers and agents of U.S. Customs and Border Protection with respect to such searches.

(B) The number of such searches.

(C) The number of instances in which information contained in such devices that were subjected to such searches was retained, copied, shared, or entered in an electronic database.

(D) The number of such devices detained as the result of such searches.

(E) The number of instances in which information collected from such devices was subjected to such searches and was transmitted to another Federal agency, including whether such transmissions resulted in a prosecution or conviction.

(6) Requirements regarding other notifications

The standard use of force procedures established pursuant to subparagraph (B) of paragraph (1) shall require—

(A) in the case of an incident of the use of deadly force by U.S. Customs and Border Protection personnel, the Commissioner to notify the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate; and

(B) the Commissioner to provide to such committees a copy of the evaluation pursuant to subparagraph (D) of such paragraph not later than 30 days after completion of such evaluation.

(7) Report on unmanned aerial systems

The Commissioner shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate an annual report, for each of the three calendar years beginning in the calendar year that begins after February 24, 2016, that reviews whether the use of unmanned aerial systems is being conducted in conformity with the standard operating procedures required under subparagraph (E) of paragraph (1). Such reports—

(A) shall be submitted with the annual budget of the United States Government submitted by the President under section 1105 of title 31;

(B) may be submitted in classified form if the Commissioner determines that such is appropriate; and

(C) shall include—

(i) a detailed description of how, where, and for how long data and images collected through the use of unmanned aerial systems by U.S. Customs and Border Protection are collected and stored; and

(ii) a list of Federal, State, and local law enforcement agencies that submitted mission requests in the previous year and the disposition of such requests.

(l) Training

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

(m) Short-term detention standards

(1) Access to food and water

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

(2) Access to information on detainee rights at border patrol processing centers

(A) In general

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

(B) Form

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

(3) Short-term detention defined

In this subsection, the term "short-term detention" means detention in a U.S. Customs and Border Protection processing center for 72 hours or less, before repatriation to a country of nationality or last habitual residence.

(4) Daytime repatriation

When practicable, repatriations shall be limited to daylight hours and avoid locations that are determined to have high indices of crime and violence.

(5) Report on procurement process and standards

Not later than 180 days after February 24, 2016, the Comptroller General of the United States shall submit to the Committee on

Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the procurement process and standards of entities with which U.S. Customs and Border Protection has contracts for the transportation and detention of individuals apprehended by agents or officers of U.S. Customs and Border Protection. Such report should also consider the operational efficiency of contracting the transportation and detention of such individuals.

(6) Report on inspections of short-term custody facilities

The Commissioner shall—

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

(B) make publicly available information collected pursuant to such inspections, including information regarding the requirements under paragraphs (1) and (2) and, where appropriate, issue recommendations to improve the conditions of such facilities.

(n) Wait times transparency

(1) In general

The Commissioner shall—

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

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

(C) submit to the Committee on Homeland Security and the Committee on Ways and Means of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Finance of the Senate, for each of the five calendar years beginning in the calendar year that begins after February 24, 2016, a report that includes compilations of all such wait times and a ranking of such United States airports by wait times; and

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

(2) Calculation

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

(o) Other authorities

(1) In general

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

(2) Notification

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

(3) Rescue beacons

Beginning in fiscal year 2019, in carrying out subsection (c)(8), the Commissioner shall purchase, deploy, and maintain not more than 250 self-powering, 9–1–1 cellular relay rescue beacons along the southern border of the United States at locations determined appropriate by the Commissioner to mitigate migrant deaths.

(p) Reports to Congress

The Commissioner shall, on and after February 24, 2016, continue to submit to the Committee on Homeland Security and the Committee on Ways and Means of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Finance of the Senate any report required, on the day before February 24, 2016, to be submitted under any provision of law.

(q) Other Federal agencies

Nothing in this section may be construed as affecting in any manner the authority, existing on the day before February 24, 2016, of any other Federal agency or component of the Department.

(r) Definitions

In this section, the terms “commercial operations”, “customs and trade laws of the United States”, “trade enforcement”, and “trade facilitation” have the meanings given such terms in section 4301 of title 19.

(Pub. L. 107–296, title IV, § 411, Nov. 25, 2002, 116 Stat. 2178; Pub. L. 114–125, title VIII, § 802(a), Feb. 24, 2016, 130 Stat. 199; Pub. L. 115–79, § 4(a), Nov. 2, 2017, 131 Stat. 1260; Pub. L. 116–277, § 3, Dec. 31, 2020, 134 Stat. 3370; Pub. L. 117–103, div. F, title II, § 212, Mar. 15, 2022, 136 Stat. 322.)

Editorial Notes**REFERENCES IN TEXT**

The Security and Accountability for Every Port Act of 2006, referred to in subsec. (c)(14)(B), is Pub. L. 109–347, Oct. 13, 2006, 120 Stat. 1884, also known as the SAFE Port Act. Subtitle B of title II of the Act is classified generally to part B (§ 961 et seq.) of subchapter II of chapter 3 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 901 of this title and Tables.

CODIFICATION

Section is comprised of section 411 of Pub. L. 107–296. Former subsec. (b)(2) of section 411 of Pub. L. 107–296 amended section 5314 of Title 5, Government Organization and Employees.

AMENDMENTS

2022—Subsec. (o)(3). Pub. L. 117–103 substituted “250” for “170”.

2020—Subsec. (o)(3). Pub. L. 116–277 added par. (3).

2017—Subsec. (c)(18), (19). Pub. L. 115–79 added par. (18) and redesignated former par. (18) as (19).

2016—Pub. L. 114–125 amended section generally. Prior to amendment, section established the United States Customs Service headed by a Commissioner of Customs.

Statutory Notes and Related Subsidiaries**CHANGE OF NAME**

Pub. L. 114–125, title VIII, § 802(d)(2), Feb. 24, 2016, 130 Stat. 210, provided that: “On and after the date of the enactment of this Act [Feb. 24, 2016], any reference in law or regulations to the ‘Commissioner of Customs’ or the ‘Commissioner of the Customs Service’ shall be deemed to be a reference to the Commissioner of U.S. Customs and Border Protection.”

EFFECTIVE DATE OF 2016 AMENDMENT; CONTINUITY OF FUNCTIONS, RULES, AND ACTIONS

Pub. L. 114–125, title VIII, § 802(b), Feb. 24, 2016, 130 Stat. 209, provided that:

“(1) TREATMENT.—Section 411 of the Homeland Security Act of 2002 [6 U.S.C. 211], as amended by subsection (a) of this section, shall be treated as if included in such Act [Pub. L. 107–296] as of the date of the enactment of such Act [Nov. 25, 2002], and, in addition to the functions, missions, duties, and authorities specified in such amended section 411, U.S. Customs and Border Protection shall continue to perform and carry out the functions, missions, duties, and authorities under section 411 of such Act as in existence on the day before the date of the enactment of this Act [Feb. 24, 2016], and section 415 of the Homeland Security Act of 2002 [6 U.S.C. 215].

“(2) RULES OF CONSTRUCTION.—

“(A) RULES AND REGULATIONS.—Notwithstanding paragraph (1), nothing in this title [see Tables for classification] or any amendment made by this title may be construed as affecting in any manner any rule or regulation issued or promulgated pursuant to any provision of law, including section 411 of the Homeland Security Act of 2002 as in existence on the day before the date of the enactment of this Act [Feb. 24, 2016], and any such rule or regulation shall continue to have full force and effect on and after such date.

“(B) OTHER ACTIONS.—Notwithstanding paragraph (1), nothing in this Act [see Tables for classification] may be construed as affecting in any manner any action, determination, policy, or decision pursuant to section 411 of the Homeland Security Act of 2002 as in existence on the day before the date of the enactment of this Act, and any such action, determination, policy, or decision shall continue to have full force and effect on and after such date.”

LARGE-SCALE NON-INTRUSIVE INSPECTION SCANNING

Pub. L. 116–299, Jan. 5, 2021, 134 Stat. 4906, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Securing America’s Ports Act’.

“SEC. 2. LARGE-SCALE NON-INTRUSIVE INSPECTION SCANNING PLAN.

“(a) DEFINITIONS.—In this section:

“(1) LARGE-SCALE NON-INTRUSIVE INSPECTION SYSTEM.—The term ‘large-scale, non-intrusive inspection system’ means a technology, including x-ray, gamma-ray, and passive imaging systems, capable of producing an image of the contents of a commercial or passenger vehicle or freight rail car in 1 pass of such vehicle or car.

“(2) SCANNING.—The term ‘scanning’ means utilizing nonintrusive imaging equipment, radiation detection equipment, or both, to capture data, including images of a commercial or passenger vehicle or freight rail car.

“(b) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Jan. 5, 2021], the Sec-

retary of Homeland Security shall submit a plan to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives for increasing to 100 percent the rate of high-throughput scanning of commercial and passenger vehicles and freight rail traffic entering the United States at land ports of entry and rail-border crossings along the border using large-scale non-intrusive inspection systems or similar technology to enhance border security.

“(c) BASELINE INFORMATION.—The plan under subsection (b) shall include, at a minimum, the following information regarding large-scale non-intrusive inspection systems or similar technology operated by U.S. Customs and Border Protection at land ports of entry and rail-border crossings as of the date of the enactment of this Act:

“(1) An inventory of large-scale non-intrusive inspection systems or similar technology in use at each land port of entry.

“(2) For each system or technology identified in the inventory under paragraph (1)—

“(A) the scanning method of such system or technology;

“(B) the location of such system or technology at each land port of entry that specifies whether in use in pre-primary, primary, or secondary inspection area, or some combination of such areas;

“(C) the percentage of commercial and passenger vehicles and freight rail traffic scanned by such system or technology;

“(D) seizure data directly attributed to scanned commercial and passenger vehicles and freight rail traffic; and

“(E) the number of personnel required to operate each system or technology.

“(3) Information regarding the continued use of other technology and tactics used for scanning, such as canines and human intelligence in conjunction with large scale, nonintrusive inspection systems.

“(d) ELEMENTS.—The plan under subsection (b) shall include the following information:

“(1) Benchmarks for achieving incremental progress towards 100 percent high-throughput scanning within the next 6 years of commercial and passenger vehicles and freight rail traffic entering the United States at land ports of entry and rail-border crossings along the border with corresponding projected incremental improvements in scanning rates by fiscal year and rationales for the specified timeframes for each land port of entry.

“(2) Estimated costs, together with an acquisition plan, for achieving the 100 percent high-throughput scanning rate within the timeframes specified in paragraph (1), including acquisition, operations, and maintenance costs for large-scale, nonintrusive inspection systems or similar technology, and associated costs for any necessary infrastructure enhancements or configuration changes at each port of entry. Such acquisition plan shall promote, to the extent practicable, opportunities for entities that qualify as small business concerns (as defined under section 3(a) of the Small Business Act (15 U.S.C. 632(a))).

“(3) Any projected impacts, as identified by the Commissioner of U.S. Customs and Border Protection, on the total number of commercial and passenger vehicles and freight rail traffic entering at land ports of entry and rail-border crossings where such systems are in use, and average wait times at peak and non-peak travel times, by lane type if applicable, as scanning rates are increased.

“(4) Any projected impacts, as identified by the Commissioner of U.S. Customs and Border Protection, on land ports of entry and rail-border crossings border security operations as a result of implementation actions, including any changes to the number of U.S. Customs and Border Protection officers or their duties and assignments.

“(e) ANNUAL REPORT.—Not later than 1 year after the submission of the plan under subsection (b), and bienni-

ally thereafter for the following 6 years, the Secretary of Homeland Security shall submit a report to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives that describes the progress implementing the plan and includes—

“(1) an inventory of large-scale, nonintrusive inspection systems or similar technology operated by U.S. Customs and Border Protection at each land port of entry;

“(2) for each system or technology identified in the inventory required under paragraph (1)—

“(A) the scanning method of such system or technology;

“(B) the location of such system or technology at each land port of entry that specifies whether in use in pre-primary, primary, or secondary inspection area, or some combination of such areas;

“(C) the percentage of commercial and passenger vehicles and freight rail traffic scanned by such system or technology; and

“(D) seizure data directly attributed to scanned commercial and passenger vehicles and freight rail traffic;

“(3) the total number of commercial and passenger vehicles and freight rail traffic entering at each land port of entry at which each system or technology is in use, and information on average wait times at peak and non-peak travel times, by lane type if applicable;

“(4) a description of the progress towards reaching the benchmarks referred to in subsection (d)(1), and an explanation if any of such benchmarks are not achieved as planned;

“(5) a comparison of actual costs (including information on any awards of associated contracts) to estimated costs set forth in subsection (d)(2);

“(6) any realized impacts, as identified by the Commissioner of U.S. Customs and Border Protection, on land ports of entry and rail-border crossings operations as a result of implementation actions, including any changes to the number of U.S. Customs and Border Protection officers or their duties and assignments;

“(7) any proposed changes to the plan and an explanation for such changes, including changes made in response to any Department of Homeland Security research and development findings or changes in terrorist or transnational criminal organizations tactics, techniques, or procedures; and

“(8) any challenges to implementing the plan or meeting the benchmarks, and plans to mitigate any such challenges.”

DHS OPIOID DETECTION RESILIENCE

Pub. L. 116-254, Dec. 23, 2020, 134 Stat. 1137, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘DHS Opioid Detection Resilience Act of 2019’.

“SEC. 2. STRATEGY TO ENSURE DETECTION OF ALL OPIOID PURITY LEVELS AT PORTS OF ENTRY.

“Not later than 180 days after the date of the enactment of this section [Dec. 23, 2020], the Commissioner of U.S. Customs and Border Protection (CBP) shall—

“(1) implement a strategy to ensure deployed chemical screening devices are able to identify in an operational environment narcotics at purity levels less than or equal to 10 percent, or provide ports of entry with an alternate method for identifying narcotics at lower purity levels; and

“(2) require testing of any new chemical screening devices to understand the abilities and limitations of such devices relating to identifying narcotics at various purity levels before CBP commits to the acquisition of such devices.

“SEC. 3. PLAN TO ENSURE OPIOID DETECTION EQUIPMENT RESILIENCY.

“Not later than 180 days after the date of the enactment of this section, the Secretary of Homeland Secu-

rity shall implement a plan for the long-term development of a centralized spectral database for chemical screening devices. Such plan shall address the following:

- “(1) How newly identified spectra will be collected, stored, and distributed to such devices in their operational environment, including at ports of entry.
- “(2) Identification of parties responsible for updates and maintenance of such database.”

PROTECTING AMERICA’S FOOD AND AGRICULTURE

Pub. L. 116-122, Mar. 3, 2020, 134 Stat. 143, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Protecting America’s Food and Agriculture Act of 2019’.

“SEC. 2. FINDING.

“Congress finds that—

- “(1) it is in the national security interest of the United States to ensure that the Nation’s food supply is sufficiently protected; and
- “(2) a vital part of such protection is the availability of adequate resources at the border to conduct inspections of incoming food and agricultural goods.

“SEC. 3. DEFINITIONS.

“In this Act:

“(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means—

- “(A) the Committee on Homeland Security and Governmental Affairs of the Senate;
- “(B) the Committee on Agriculture, Nutrition, and Forestry of the Senate;
- “(C) the Committee on Homeland Security of the House of Representatives; and
- “(D) the Committee on Agriculture of the House of Representatives.

“(2) CBP.—The term ‘CBP’ means U.S. Customs and Border Protection.

“SEC. 4. ADDITIONAL U.S. CUSTOMS AND BORDER PROTECTION PERSONNEL.

“(a) CBP AGRICULTURE SPECIALISTS.—The Commissioner of U.S. Customs and Border Protection may hire, train, and assign 240 new CBP Agriculture Specialists above the current attrition level during every fiscal year until the total number of CBP Agriculture Specialists equals and sustains the requirements identified each year in the Agriculture Resource Allocation Model.

“(b) MISSION AND OPERATIONAL SUPPORT STAFF.—

“(1) IN GENERAL.—The Commissioner of U.S. Customs and Border Protection may hire, train, and assign support staff to support CBP Agriculture Specialists.

“(2) CBP AGRICULTURE TECHNICIANS.—The Commissioner of U.S. Customs and Border Protection may hire, train, and assign 200 new CBP Agriculture Technicians during each fiscal year until the total number of CBP Agriculture Technicians equals and sustains the requirements identified each year in the Mission and Operational Support Resource Allocation Model.

“(c) CBP AGRICULTURE CANINE TEAMS.—The Commissioner of U.S. Customs and Border Protection may hire, train, and assign 20 new CBP agriculture canine teams during each of the first 3 fiscal years beginning after the date of the enactment of this Act [Mar. 3, 2020].

“(d) TRAFFIC FORECASTS.—In calculating the number of CBP Agriculture Specialists needed at each port of entry through the Agriculture Resource Allocation Model, the Office of Field Operations shall—

- “(1) rely on data collected regarding the inspections and other activities conducted at each such port of entry; and
- “(2) consider volume from seasonal surges, other projected changes in commercial and passenger volumes, the most current commercial forecasts, and other relevant information.

“(e) AUTHORIZATION OF APPROPRIATIONS.—

“(1) CBP AGRICULTURE SPECIALISTS.—There is authorized to be appropriated to carry out subsection (a)—

- “(A) \$29,900,000 for fiscal year 2020;
- “(B) \$36,100,000 for fiscal year 2021; and
- “(C) \$40,500,000 for fiscal year 2022.

“(2) CBP AGRICULTURE TECHNICIANS.—There is authorized to be appropriated to carry out subsection (b)—

- “(A) \$11,000,000 for fiscal year 2020;
- “(B) \$25,000,000 for fiscal year 2021; and
- “(C) \$38,000,000 for fiscal year 2022.

“(3) CBP AGRICULTURE CANINE TEAMS.—There is authorized to be appropriated to carry out subsection (c)—

- “(A) \$3,500,000 for fiscal year 2020;
- “(B) \$7,400,000 for fiscal year 2021; and
- “(C) \$12,200,000 for fiscal year 2022.

“(4) TRAINING.—There is authorized to be appropriated for training costs associated with the new CBP personnel and canine teams hired pursuant to subsections (a), (b), and (c) \$6,000,000 for each of the fiscal years 2020, 2021, and 2022.

“SEC. 5. GAO STUDY, BRIEFING, AND REPORT.

“(a) STUDY.—The Comptroller General of the United States, after consultation with the appropriate congressional committees, shall conduct a review of the efforts of the Department of Homeland Security, the Department of Agriculture, and other Federal agencies to address risks to the agricultural supply that analyzes—

- “(1) interagency coordination and the distribution of responsibilities among Federal agencies with respect to the inspection of agricultural commodities entering the United States;
- “(2) the effectiveness of such inspection responsibilities among Federal agencies; and
- “(3) the training provided to, and working conditions of, CBP Agriculture Specialists.

“(b) BRIEFING.—Not later than 1 year after the date of the enactment of this Act [Mar. 3, 2020], the Comptroller General shall brief the appropriate congressional committees regarding the results of the study conducted pursuant to subsection (a).

“(c) REPORT.—Not later than 90 days after the briefing required under subsection (b), the Comptroller General shall complete the study required under subsection (a) and make the results of the study available to the public.”

USE OF FUNDS TO CONTINUE DETENTION SERVICES CONTRACTS

Pub. L. 117-328, div. F, title II, §214, Dec. 29, 2022, 136 Stat. 4736, provided that:

“(a) None of the funds provided under the heading ‘U.S. Immigration and Customs Enforcement—Operations and Support’ may be used to continue any contract for the provision of detention services if the two most recent overall performance evaluations received by the contracted facility are less than ‘adequate’ or the equivalent median score in any subsequent performance evaluation system.

“(b) The performance evaluations referenced in subsection (a) shall be conducted by the U.S. Immigration and Customs Enforcement Office of Professional Responsibility.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 117-103, div. F, title II, §215, Mar. 15, 2022, 136 Stat. 322.

Pub. L. 116-260, div. F, title II, §215, Dec. 27, 2020, 134 Stat. 1457.

Pub. L. 116-93, div. D, title II, §215, Dec. 20, 2019, 133 Stat. 2513.

PORTS OF ENTRY THREAT AND OPERATIONAL REVIEW

Pub. L. 115-372, Dec. 21, 2018, 132 Stat. 5107, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘United States Ports of Entry Threat and Operational Review Act’.

“SEC. 2. PORTS OF ENTRY THREAT AND OPERATIONAL ANALYSIS.

“(a) IN GENERAL.—

“(1) REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act [Dec. 21, 2018], the Secretary of Homeland Security, acting through the Commissioner of U.S. Customs and Border Protection, shall submit to the Committee on Homeland Security and the Committee on Ways and Means of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Finance of the Senate a threat and operational analysis of ports of entry.

“(2) CONTENTS.—The threat and operational analysis required under paragraph (1) shall include an assessment of the following:

“(A) Current and potential threats posed by individuals and organized groups seeking—

“(i) to exploit security vulnerabilities at ports of entry; or

“(ii) to unlawfully enter the United States through such ports of entry.

“(B) Methods and pathways used to exploit security vulnerabilities at ports of entry.

“(C) Improvements needed at ports of entry to prevent the unlawful movement of people, illicit drugs, and other contraband across the borders of the United States.

“(D) Improvements needed to enhance travel and trade facilitation and reduce wait times at ports of entry, including—

“(i) security vulnerabilities associated with prolonged wait times;

“(ii) current technology at ports of entry that can be adapted to handle more volume, increase efficiency, and improve accuracy of detection efforts; and

“(iii) infrastructure additions and upgrades.

“(E) Processes conducted at ports of entry that do not require law enforcement training and could be—

“(i) filled with—

“(I) non-law enforcement staff; or

“(II) the private sector, for processes or activities determined to not be inherently governmental (as such term is defined in section 5 of the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270; [31 U.S.C. 501 note])); or

“(ii) automated.

“(3) ANALYSIS REQUIREMENTS.—In compiling the threat and operational analysis required under paragraph (1), the Secretary of Homeland Security, acting through the Commissioner of U.S. Customs and Border Protection, shall consider and examine the following:

“(A) Personnel needs, including K-9 Units, and estimated costs, at each port of entry, including such needs and challenges associated with recruitment and hiring.

“(B) Technology needs, including radiation portal monitors and non-intrusive inspection technology, and estimated costs at each port of entry.

“(C) Infrastructure needs and estimated costs at each port of entry.

“(b) PORTS OF ENTRY STRATEGY AND IMPLEMENTATION PLAN.—

“(1) IN GENERAL.—Not later than 270 days after the submission of the threat and operational analysis required under subsection (a) and every 5 years thereafter for 10 years, the Secretary of Homeland Security, acting through the Commissioner of U.S. Customs and Border Protection (CBP), shall provide to the Committee on Homeland Security and the Committee on Ways and Means of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Finance of the Senate a ports of entry strategy and implementation plan.

“(2) CONTENTS.—The ports of entry strategy and implementation plan required under paragraph (1) shall include a consideration of the following:

“(A) The ports of entry threat and operational analysis required under subsection (a), with an emphasis on efforts to mitigate threats and challenges identified in such analysis.

“(B) Efforts to reduce wait times at ports of entry and standards against which the effectiveness of such efforts may be determined.

“(C) Efforts to prevent the unlawful movement of people, illicit drugs, and other contraband across the borders of the United States at the earliest possible point at ports of entry and standards against which the effectiveness of such efforts may be determined.

“(D) Efforts to focus intelligence collection and information analysis to disrupt transnational criminal organizations attempting to exploit vulnerabilities at ports of entry and standards against which the effectiveness of such efforts may be determined.

“(E) Efforts to verify that any new port of entry technology acquisition can be operationally integrated with existing technologies in use by the Department of Homeland Security.

“(F) Lessons learned from reports on the business transformation initiative under section 802(i)(1) of the Trade Facilitation and Trade Enforcement Act of 2015 (Public Law 114–125).

“(G) CBP staffing requirements for all ports of entry.

“(H) Efforts to identify and detect fraudulent documents at ports of entry and standards against which the effectiveness of such efforts may be determined.

“(I) Efforts to prevent, detect, investigate, and mitigate corruption at ports of entry and standards against which the effectiveness of such efforts may be determined.

“(c) PORTS OF ENTRY DESCRIBED.—In this section, the term ‘ports of entry’ means United States air, land, and sea ports of entry.”

REQUIRED NOTICE OF AIRCRAFT TRANSFERS

Pub. L. 115–141, div. F, title II, §203, Mar. 23, 2018, 132 Stat. 612, provided that: “Hereafter, no U.S. Customs and Border Protection aircraft or other related equipment, with the exception of aircraft that are one of a kind and have been identified as excess to U.S. Customs and Border Protection requirements and aircraft that have been damaged beyond repair, shall be transferred to any other Federal agency, department, or office outside of the Department of Homeland Security without prior notice to the Committees on Appropriations of the Senate and the House of Representatives.”

DETECTING INCOMING CONTRABAND WITH TECHNOLOGY

Pub. L. 115–112, Jan. 10, 2018, 131 Stat. 2274, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘International Narcotics Trafficking Emergency Response by Detecting Incoming Contraband with Technology Act’ or the ‘INTERDICT Act’.

“SEC. 2. DEFINITIONS.

“In this Act:

“(1) CHEMICAL SCREENING DEVICE.—The term ‘chemical screening device’ means an immunoassay, narcotics field test kit, infrared spectrophotometer, mass spectrometer, nuclear magnetic resonance spectrometer, Raman spectrophotometer, or other scientific instrumentation able to collect data that can be interpreted to determine the presence of fentanyl, other synthetic opioids, and other narcotics and psychoactive substances.

“(2) COMMISSIONER.—The term ‘Commissioner’ means the Commissioner of U.S. Customs and Border Protection.

“(3) EXPRESS CONSIGNMENT OPERATOR OR CARRIER.—The term ‘express consignment operator or carrier’

has the meaning given that term in section 128.1 of title 19, Code of Federal Regulations (or any similar successor regulation).

“SEC. 3. INTERDICTION OF FENTANYL, OTHER SYNTHETIC OPIOIDS, AND OTHER NARCOTICS AND PSYCHOACTIVE SUBSTANCES.

“(a) CHEMICAL SCREENING DEVICES.—The Commissioner shall—

“(1) increase the number of chemical screening devices available to U.S. Customs and Border Protection officers over the number of such devices that are available on the date of the enactment of this Act [Jan. 10, 2018]; and

“(2) make such additional chemical screening devices available to U.S. Customs and Border Protection officers as the Commissioner determines are necessary to interdict fentanyl, other synthetic opioids, and other narcotics and psychoactive substances that are illegally imported into the United States, including such substances that are imported through the mail or by an express consignment operator or carrier.

“(b) PERSONNEL TO INTERPRET DATA.—The Commissioner shall dedicate the appropriate number of U.S. Customs and Border Protection personnel, including scientists, so that such personnel are available during all operational hours to interpret data collected by chemical screening devices.

“SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

“There is authorized to be appropriated to the Commissioner \$9,000,000 to ensure that U.S. Customs and Border Protection has resources, including chemical screening devices, personnel, and scientists, available during all operational hours to prevent, detect, and interdict the unlawful importation of fentanyl, other synthetic opioids, and other narcotics and psychoactive substances.”

CONTINUATION IN OFFICE

Pub. L. 114-125, title VIII, §802(c), Feb. 24, 2016, 130 Stat. 210, provided that:

“(1) COMMISSIONER.—The individual serving as the Commissioner of Customs on the day before the date of the enactment of this Act [Feb. 24, 2016] may serve as the Commissioner of U.S. Customs and Border Protection on and after such date of enactment until a Commissioner of U.S. Customs and Border Protection is appointed under section 411 of the Homeland Security Act of 2002 [6 U.S.C. 211], as amended by subsection (a) of this section.

“(2) OTHER POSITIONS.—The individual serving as Deputy Commissioner, and the individuals serving as Assistant Commissioners and other officers and officials, under section 411 of the Homeland Security Act of 2002 on the day before the date of the enactment of this Act [Feb. 24, 2016] may serve as the Executive Assistant Commissioners, Deputy Commissioner, Assistant Commissioners, and other officers and officials, as appropriate, under such section 411 as amended by subsection (a) of this section unless the Commissioner of U.S. Customs and Border Protection determines that another individual should hold such position or positions.”

BORDER JOBS FOR VETERANS

Pub. L. 114-68, Oct. 16, 2015, 129 Stat. 555, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Border Jobs for Veterans Act of 2015’.

“SEC. 2. FINDINGS.

“Congress finds the following:

“(1) Customs and Border Protection officers at United States ports of entry carry out critical law enforcement duties associated with screening foreign visitors, returning United States citizens, and imported cargo entering the United States.

“(2) It is in the national interest for United States ports of entry to be adequately staffed with Customs

and Border Protection officers in a timely fashion, including meeting the congressionally funded staffing target of 23,775 officers for fiscal year 2015.

“(3) An estimated 250,000 to 300,000 members of the Armed Forces separate from military service every year.

“(4) Recruiting efforts and expedited hiring procedures must be enhanced to ensure that individuals separating from military service are aware of, and partake in, opportunities to fill vacant Customs and Border Protection officer positions.

“SEC. 3. EXPEDITED HIRING OF APPROPRIATE SEPARATING SERVICE MEMBERS.

“The Secretary of Homeland Security shall consider the expedited hiring of qualified candidates who have the ability to perform the essential functions of the position of a Customs and Border Protection officer and who are eligible for a veterans recruitment appointment authorized under section 4214 of title 38, United States Code.

“SEC. 4. ENHANCEMENTS TO EXISTING PROGRAMS TO RECRUIT SERVICE MEMBERS SEPARATING FROM MILITARY SERVICE FOR CUSTOMS AND BORDER PROTECTION OFFICER VACANCIES.

“(a) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Secretary of Defense, and acting through existing programs, authorities, and agreements, where applicable, shall enhance the efforts of the Department of Homeland Security to recruit members of the Armed Forces who are separating from military service to serve as Customs and Border Protection officers.

“(b) ELEMENTS.—The enhanced recruiting efforts under subsection (a) shall—

“(1) include Customs and Border Protection officer opportunities in relevant job assistance efforts under the Transition Assistance Program;

“(2) place U.S. Customs and Border Protection officials or other relevant Department of Homeland Security officials at recruiting events and jobs fairs involving members of the Armed Forces who are separating from military service;

“(3) provide opportunities for local U.S. Customs and Border Protection field offices to partner with military bases in the region;

“(4) include outreach efforts to educate members of the Armed Forces with Military Occupational Specialty Codes and Officer Branches, Air Force Specialty Codes, Naval Enlisted Classifications and Officer Designators, and Coast Guard competencies that are transferable to the requirements, qualifications, and duties assigned to Customs and Border Protection officers of available hiring opportunities to become Customs and Border Protection officers;

“(5) identify shared activities and opportunities for reciprocity related to steps in hiring Customs and Border Protection officers with the goal of minimizing the time required to hire qualified applicants;

“(6) ensure the streamlined interagency transfer of relevant background investigations and security clearances; and

“(7) include such other elements as may be necessary to ensure that members of the Armed Forces who are separating from military service are aware of opportunities to fill vacant Customs and Border Protection officer positions.

“SEC. 5. REPORT TO CONGRESS.

“(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Oct. 16, 2015], and by December 31 of each of the next 3 years thereafter, the Secretary of Homeland Security, in consultation with the Secretary of Defense, shall submit a report to the Committee on Homeland Security and the Committee on Armed Services of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Armed Services of the Senate that includes a description and assessment of the efforts of the Department of Homeland Se-

curity to hire members of the Armed Forces who are separating from military service as Customs and Border Protection officers under section 4.

“(b) **CONTENT.**—The report required under subsection (a) shall include—

“(1) a detailed description of the efforts to implement section 4, including—

“(A) elements of the enhanced recruiting efforts and the goals associated with such elements; and

“(B) a description of how the elements and goals referred to in subparagraph (A) will assist in meeting statutorily mandated staffing levels and agency hiring benchmarks;

“(2) a detailed description of the efforts that have been undertaken under section 4;

“(3) the estimated number of separating service members made aware of Customs and Border Protection officer vacancies;

“(4) the number of Customs and Border Protection officer vacancies filled with separating service members; and

“(5) the number of Customs and Border Protection officer vacancies filled with separating service members under Veterans Recruitment Appointment authorized under section 4214 of title 38, United States Code.

“**SEC. 6. RULES OF CONSTRUCTION.**

“Nothing in this Act may be construed—

“(1) as superseding, altering, or amending existing Federal veterans’ hiring preferences or Federal hiring authorities; or

“(2) to authorize the appropriation of additional amounts to carry out this Act.”

PORT OF ENTRY PARTNERSHIP PILOT PROGRAM

Pub. L. 113-76, div. F, title V, §559, Jan. 17, 2014, 128 Stat. 279, as amended by Pub. L. 114-4, title V, §552(a), Mar. 4, 2015, 129 Stat. 71; Pub. L. 114-113, div. F, title V, §550, Dec. 18, 2015, 129 Stat. 2519, which established a pilot program to permit U.S. Customs and Border Protection to enter into partnerships with private sector and government entities at ports of entry for certain services and to accept certain donations, was repealed by Pub. L. 114-279, §4(b), Dec. 16, 2016, 130 Stat. 1422.

REDUCING PASSENGER PROCESSING TIMES

Pub. L. 113-76, div. F, title V, §571, Jan. 17, 2014, 128 Stat. 287, provided that:

“(a) The Commissioner of U.S. Customs and Border Protection shall develop metrics that support a goal of reducing passenger processing times at air, land, and sea ports of entry, taking into consideration the capacity of an air or land port’s physical infrastructure, airline arrival schedules, peak processing periods, and security requirements.

“(b) Not later than 240 days after the date of enactment of this Act [Jan. 17, 2014], the Commissioner of U.S. Customs and Border Protection shall develop and implement operational work plans to meet the goals of subsection (a) at United States air, land, and sea ports with the highest passenger volume and longest wait times. In developing such plans, the Commissioner of U.S. Customs and Border Protection shall consult with appropriate stakeholders, including, but not limited to, airlines and airport operators, port authorities, and importers.”

§ 212. Retention of Customs revenue functions by Secretary of the Treasury

(a) Retention of Customs revenue functions by Secretary of the Treasury

(1) Retention of authority

Notwithstanding section 203(a)(1)¹ of this title, authority related to Customs revenue

functions that was vested in the Secretary of the Treasury by law before the effective date of this chapter under those provisions of law set forth in paragraph (2) shall not be transferred to the Secretary by reason of this chapter, and on and after the effective date of this chapter, the Secretary of the Treasury may delegate any such authority to the Secretary at the discretion of the Secretary of the Treasury. The Secretary of the Treasury shall consult with the Secretary regarding the exercise of any such authority not delegated to the Secretary.

(2) Statutes

The provisions of law referred to in paragraph (1) are the following: the Tariff Act of 1930 [19 U.S.C. 1202 et seq.]; section 249 of the Revised Statutes of the United States (19 U.S.C. 3); section 2 of the Act of March 4, 1923 (19 U.S.C. 6); section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c); section 251 of the Revised Statutes of the United States (19 U.S.C. 66); section 1 of the Act of June 26, 1930 (19 U.S.C. 68); the Foreign Trade Zones Act (19 U.S.C. 81a et seq.); section 1 of the Act of March 2, 1911 (19 U.S.C. 198); the Trade Act of 1974 [19 U.S.C. 2101 et seq.]; the Trade Agreements Act of 1979; the North American Free Trade Area Implementation Act; the Uruguay Round Agreements Act; the Caribbean Basin Economic Recovery Act [19 U.S.C. 2701 et seq.]; the Andean Trade Preference Act [19 U.S.C. 3201 et seq.]; the African Growth and Opportunity Act [19 U.S.C. 3701 et seq.]; and any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(b) Maintenance of Customs revenue functions

(1) Maintenance of functions

Notwithstanding any other provision of this chapter, the Secretary may not consolidate, discontinue, or diminish those functions described in paragraph (2) performed by U.S. Customs and Border Protection (as established under section 211 of this title) on or after the effective date of this chapter, reduce the staffing level, or reduce the resources attributable to such functions, and the Secretary shall ensure that an appropriate management structure is implemented to carry out such functions.

(2) Functions

The functions referred to in paragraph (1) are those functions performed by the following personnel, and associated support staff, of U.S. Customs and Border Protection on the day before the effective date of this chapter: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

(c) New personnel

The Secretary of the Treasury is authorized to appoint up to 20 new personnel to work with personnel of the Department in performing customs revenue functions.

¹ So in original. Probably should be section “203(1)”.

(Pub. L. 107–296, title IV, §412, Nov. 25, 2002, 116 Stat. 2179; Pub. L. 114–125, title VIII, §802(g)(1)(B)(iii)(II), Feb. 24, 2016, 130 Stat. 211.)

Editorial Notes

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsecs. (a)(1) and (b), is 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of this title.

This chapter, referred to in subsecs. (a)(1) and (b)(1), 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 Tariff Act of 1930, referred to in subsec. (a)(2), is act June 17, 1930, ch. 497, 46 Stat. 590, which is classified generally to chapter 4 (§1202 et seq.) of Title 19, Customs Duties. For complete classification of this Act to the Code, see section 1654 of Title 19 and Tables.

The Foreign Trade Zones Act, referred to in subsec. (a)(2), is act June 18, 1934, ch. 590, 48 Stat. 998, which is classified generally to chapter 1A (§81a et seq.) of Title 19, Customs Duties. For complete classification of this Act to the Code, see Tables.

The Trade Act of 1974, referred to in subsec. (a)(2), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, which is classified principally to chapter 12 (§2101 et seq.) of Title 19, Customs Duties. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of Title 19 and Tables.

The Trade Agreements Act of 1979, referred to in subsec. (a)(2), is Pub. L. 96–39, July 26, 1979, 93 Stat. 144. For complete classification of this Act to the Code, see References in Text note set out under section 2501 of Title 19, Customs Duties, and Tables.

The North American Free Trade Area Implementation Act, referred to in subsec. (a)(2), probably means the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, Dec. 8, 1993, 107 Stat. 2057. For complete classification of this Act to the Code, see Short Title note under section 3301 of Title 19, Customs Duties, and Tables.

The Uruguay Round Agreements Act, referred to in subsec. (a)(2), is Pub. L. 103–465, Dec. 8, 1994, 108 Stat. 4809. For complete classification of this Act to the Code, see Short Title note set out under section 3501 of Title 19, Customs Duties, and Tables.

The Caribbean Basin Economic Recovery Act, referred to in subsec. (a)(2), is title II of Pub. L. 98–67, Aug. 5, 1983, 97 Stat. 384, which is classified principally to chapter 15 (§2701 et seq.) of Title 19, Customs Duties. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of Title 19 and Tables.

The Andean Trade Preference Act, referred to in subsec. (a)(2), is title II of Pub. L. 102–182, Dec. 4, 1991, 105 Stat. 1236, which is classified generally to chapter 20 (§3201 et seq.) of Title 19, Customs Duties. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of Title 19 and Tables.

The African Growth and Opportunity Act, referred to in subsec. (a)(2), is title I of Pub. L. 106–200, May 18, 2000, 114 Stat. 252, which is classified principally to chapter 23 (§3701 et seq.) of Title 19, Customs Duties. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of Title 19 and Tables.

AMENDMENTS

2016—Subsec. (b). Pub. L. 114–125 substituted “U.S. Customs and Border Protection” for “the United States Customs Service” in pars. (1) and (2).

§ 213. Preservation of Customs funds

Notwithstanding any other provision of this chapter, no funds collected under paragraphs (1)

through (8) of section 58c(a) of title 19 may be transferred for use by any other agency or office in the Department.

(Pub. L. 107–296, title IV, §413, Nov. 25, 2002, 116 Stat. 2180; Pub. L. 114–125, title VIII, §802(g)(1)(B)(iii)(III), Feb. 24, 2016, 130 Stat. 211.)

Editorial Notes

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.

AMENDMENTS

2016—Pub. L. 114–125 struck out “available to the United States Customs Service or” after “no funds”.

§ 214. Separate budget request for Customs

The President shall include in each budget transmitted to Congress under section 1105 of title 31 a separate budget request for U.S. Customs and Border Protection.

(Pub. L. 107–296, title IV, §414, Nov. 25, 2002, 116 Stat. 2180; Pub. L. 114–125, title VIII, §802(g)(1)(B)(iii)(IV), Feb. 24, 2016, 130 Stat. 211.)

Editorial Notes

AMENDMENTS

2016—Pub. L. 114–125 substituted “U.S. Customs and Border Protection” for “the United States Customs Service”.

Statutory Notes and Related Subsidiaries

LAND BORDER PROJECTS

Pub. L. 112–74, div. D, title II, Dec. 23, 2011, 125 Stat. 949, provided in part: “That for fiscal year 2012 and thereafter, the annual budget submission of U.S. Customs and Border Protection for ‘Construction and Facilities Management’ shall, in consultation with the General Services Administration, include a detailed 5-year plan for all Federal land border port of entry projects with a yearly update of total projected future funding needs delineated by land port of entry”.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 111–83, title II, Oct. 28, 2009, 123 Stat. 2148.

Pub. L. 110–329, div. D, title II, Sept. 30, 2008, 122 Stat. 3658.

§ 215. Definition

In this part, the term “customs revenue function” means the following:

(1) Assessing and collecting customs duties (including antidumping and countervailing duties and duties imposed under safeguard provisions), excise taxes, fees, and penalties due on imported merchandise, including classifying and valuing merchandise for purposes of such assessment.

(2) Processing and denial of entry of persons, baggage, cargo, and mail, with respect to the assessment and collection of import duties.

(3) Detecting and apprehending persons engaged in fraudulent practices designed to circumvent the customs laws of the United States.

(4) Enforcing section 1337 of title 19 and provisions relating to import quotas and the marking of imported merchandise, and providing Customs Recordations for copyrights, patents, and trademarks.

(5) Collecting accurate import data for compilation of international trade statistics.

(6) Enforcing reciprocal trade agreements.

(7) Functions performed by the following personnel, and associated support staff, of the United States Customs Service on the day before the effective date of this chapter, and of U.S. Customs and Border Protection on the day before the effective date of the U.S. Customs and Border Protection Authorization Act: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

(8) Functions performed by the following offices, with respect to any function described in any of paragraphs (1) through (7), and associated support staff, of the United States Customs Service on the day before the effective date of this chapter, and of U.S. Customs and Border Protection on the day before the effective date of the U.S. Customs and Border Protection Authorization Act: the Office of Information and Technology, the Office of Laboratory Services, the Office of the Chief Counsel, the Office of Congressional Affairs, the Office of International Affairs, and the Office of Training and Development.

(Pub. L. 107-296, title IV, §415, Nov. 25, 2002, 116 Stat. 2180; Pub. L. 114-125, title VIII, §802(g)(1)(B)(iii)(V), Feb. 24, 2016, 130 Stat. 211.)

Editorial Notes

REFERENCES IN TEXT

This part, referred to in text, was in the original “this subtitle”, meaning subtitle B (§§411-419) of title IV of Pub. L. 107-296, Nov. 25, 2002, 116 Stat. 2178, which enacted this part, amended section 5314 of Title 5, Government Organization and Employees, section 58c of Title 19, Customs Duties, and provisions set out as a note under section 2075 of Title 19. For complete classification of subtitle B to the Code, see Tables.

The effective date of this chapter, referred to in pars. (7) and (8), is 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of this title.

The effective date of the U.S. Customs and Border Protection Authorization Act, referred to in pars. (7) and (8), is the effective date of title VIII of Pub. L. 114-125, which is Feb. 24, 2016.

AMENDMENTS

2016—Pars. (7), (8). Pub. L. 114-125 inserted “, and of U.S. Customs and Border Protection on the day before the effective date of the U.S. Customs and Border Protection Authorization Act” before the colon.

§ 216. Protection against potential synthetic opioid exposure

(a) In general

The Commissioner of U.S. Customs and Border Protection shall issue a policy that specifies effective protocols and procedures for the safe handling of potential synthetic opioids, includ-

ing fentanyl, by U.S. Customs and Border Protection officers, agents, other personnel, and canines, and to reduce the risk of injury or death resulting from accidental exposure and enhance post-exposure management.

(b) Training

(1) In general

Together with the issuance of the policy described in subsection (a), the Commissioner of U.S. Customs and Border Protection shall require mandatory and recurrent training on the following:

(A) The potential risk of opioid exposure and safe handling procedures for potential synthetic opioids, including precautionary measures such as the use of personal protective equipment during such handling.

(B) How to access and administer opioid receptor antagonists, including naloxone, post-exposure to potential synthetic opioids.

(C) How to use containment devices to prevent potential synthetic opioid exposure.

(2) Integration

The training described in paragraph (1) may be integrated into existing training under section 211(f) of this title for U.S. Customs and Border Protection officers, agents, and other personnel.

(c) Personal protective equipment, containment devices, and opioid receptor antagonists

Together with the issuance of the policy described in subsection (a), the Commissioner of U.S. Customs and Border Protection shall ensure the availability of personal protective equipment, opioid receptor antagonists, including naloxone, and containment devices, to all U.S. Customs and Border Protection officers, agents, other personnel, and canines at risk of accidental exposure to synthetic opioids.

(d) Oversight

To ensure effectiveness of the policy described in subsection (a)—

(1) the Commissioner of U.S. Customs and Border Protection shall regularly monitor the efficacy of the implementation of such policy and adjust protocols and procedures, as necessary; and

(2) the Inspector General of the Department shall audit compliance with the requirements of this section not less than once during the 3-year period after December 27, 2020.

(Pub. L. 107-296, title IV, §416, as added Pub. L. 116-260, div. U, title III, §302(a), Dec. 27, 2020, 134 Stat. 2291; amended Pub. L. 117-263, div. G, title LXXI, §7135(a), (b), Dec. 23, 2022, 136 Stat. 3650.)

Editorial Notes

PRIOR PROVISIONS

A prior section 216 of this title, Pub. L. 107-296, title IV, §416, Nov. 25, 2002, 116 Stat. 2181, related to GAO report to Congress, prior to repeal by Pub. L. 114-125, title VIII, §802(f), Feb. 24, 2016, 130 Stat. 210.

AMENDMENTS

2022—Subsec. (b)(1)(C). Pub. L. 117-263, §7135(a), added subpar. (C).

Subsec. (c). Pub. L. 117-263, §7135(b), inserted “, containment devices,” after “equipment” in heading

and substituted “, opioid receptor antagonists, including naloxone, and containment devices” for “and opioid receptor antagonists, including naloxone” in text.

Statutory Notes and Related Subsidiaries

APPLICABILITY TO OTHER COMPONENTS

Pub. L. 117-263, div. G, title LXXI, § 7135(c), Dec. 23, 2022, 136 Stat. 3650, provided that: “If the Secretary of Homeland Security determines that officers, agents, other personnel, or canines of a component of the Department of Homeland Security other than U.S. Customs and Border Protection are at risk of potential synthetic opioid exposure in the course of their duties, the head of such component shall carry out the responsibilities under section 416 of the Homeland Security Act of 2002 (6 U.S.C. 216) in the same manner and to the same degree as the Commissioner of U.S. Customs and Border Protection carries out such responsibilities.”

§ 217. Allocation of resources by the Secretary

(a) In general

The Secretary shall ensure that adequate staffing is provided to assure that levels of customs revenue services provided on the day before the effective date of this chapter shall continue to be provided.

(b) Notification of Congress

The Secretary shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate at least 90 days prior to taking any action which would—

- (1) result in any significant reduction in customs revenue services, including hours of operation, provided at any office within the Department or any port of entry;
- (2) eliminate or relocate any office of the Department which provides customs revenue services; or
- (3) eliminate any port of entry.

(c) Definition

In this section, the term “customs revenue services” means those customs revenue functions described in paragraphs (1) through (6) and paragraph (8) of section 215 of this title.

(Pub. L. 107-296, title IV, § 417, Nov. 25, 2002, 116 Stat. 2181.)

Editorial Notes

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a), is 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of this title.

§ 218. Asia-Pacific Economic Cooperation Business Travel Cards

(a) In general

The Commissioner of U.S. Customs and Border Protection is authorized to issue an Asia-Pacific Economic Cooperation Business Travel Card (referred to in this section as an “ABT Card”) to any individual described in subsection (b).

(b) Card issuance

An individual described in this subsection is an individual who—

- (1) is a citizen of the United States;

(2) has been approved and is in good standing in an existing international trusted traveler program of the Department; and

(3) is—

(A) engaged in business in the Asia-Pacific region, as determined by the Commissioner of U.S. Customs and Border Protection; or

(B) a United States Government official actively engaged in Asia-Pacific Economic Cooperation business, as determined by the Commissioner of U.S. Customs and Border Protection.

(c) Integration with existing travel programs

The Commissioner of U.S. Customs and Border Protection shall integrate application procedures for, and issuance, renewal, and revocation of, ABT Cards with existing international trusted traveler programs of the Department.

(d) Cooperation with private entities and non-governmental organizations

In carrying out this section, the Commissioner of U.S. Customs and Border Protection may consult with appropriate private sector entities and nongovernmental organizations, including academic institutions.

(e) Fee

(1) In general

The Commissioner of U.S. Customs and Border Protection shall—

- (A) prescribe and collect a fee for the issuance and renewal of ABT Cards; and
- (B) adjust such fee to the extent the Commissioner determines necessary to comply with paragraph (2).

(2) Limitation

The Commissioner of U.S. Customs and Border Protection shall ensure that the total amount of the fees collected under paragraph (1) during any fiscal year is sufficient to offset the direct and indirect costs associated with carrying out this section during such fiscal year, including the costs associated with operating and maintaining the ABT Card issuance and renewal processes.

(3) Account for collections

There is established in the Treasury of the United States an “Asia-Pacific Economic Cooperation Business Travel Card Account” into which the fees collected under paragraph (1) shall be deposited as offsetting receipts.

(4) Use of funds

Amounts deposited into the Asia Pacific¹ Economic Cooperation Business Travel Card Account established under paragraph (3) shall—

- (A) be credited to the appropriate account of the² U.S. Customs and Border Protection for expenses incurred in carrying out this section; and
- (B) remain available until expended.

(f) Notification

The Commissioner of U.S. Customs and Border Protection shall notify the Committee on Home-

¹ So in original. Probably should be “Asia-Pacific”.

² So in original. The word “the” probably should not appear.

land Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate not later than 60 days after the expenditures of funds to operate and provide ABT Card services beyond the amounts collected under subsection (e)(1).

(g) Trusted traveler program defined

In this section, the term “trusted traveler program” means a voluntary program of the Department that allows U.S. Customs and Border Protection to expedite clearance of pre-approved, low-risk travelers arriving in the United States.

(Pub. L. 107-296, title IV, § 418, as added Pub. L. 115-79, § 2(a), Nov. 2, 2017, 131 Stat. 1258.)

Editorial Notes

PRIOR PROVISIONS

A prior section 218, Pub. L. 107-296, title IV, § 418, Nov. 25, 2002, 116 Stat. 2181, related to reports to Congress from the United States Customs Service and the Secretary of the Treasury, prior to repeal by Pub. L. 114-125, title VIII, § 802(f), Feb. 24, 2016, 130 Stat. 210.

Statutory Notes and Related Subsidiaries

TRANSFER OF FUNDS FROM APEC BUSINESS TRAVEL CARD ACCOUNT

Pub. L. 115-79, § 3, Nov. 2, 2017, 131 Stat. 1259, provided that:

“(a) *In General.*—Notwithstanding the repeal of the Asia-Pacific Economic Cooperation Business Travel Cards Act of 2011 (Public Law 112-54; 8 U.S.C. 1185 note) pursuant to section 4(b)(1), amounts deposited into the APEC Business Travel Card Account established pursuant to such Act as of the date of the enactment of this Act [Nov. 2, 2017] are hereby transferred to the Asia-Pacific Economic Cooperation Business Travel Card Account established pursuant to section 418(e) of the Homeland Security Act of 2002 [6 U.S.C. 218(e)] (as added by section 2(a) of this Act), and shall be available without regard to whether such amounts are expended in connection with expenses incurred with respect to an ABT Card issued at any time before or after such date of enactment.

“(b) *Availability.*—Amounts deposited in the Asia-Pacific Economic Cooperation Business Travel Card Account established pursuant to section 418(e) of the Homeland Security Act of 2002, in addition to the purposes for which such amounts are available pursuant to such subsection, shall also be available for expenditure in connection with expenses incurred with respect to ABT Cards issued at any time before the date of the enactment of such section.

“(c) *Termination.*—After the completion of the transfer described in subsection (a), the Asia-Pacific Economic Cooperation Business Travel Card Account established pursuant to the Asia-Pacific Economic Cooperation Business Travel Cards Act of 2011 shall be closed.”

§ 220. Methamphetamine and methamphetamine precursor chemicals

(a) Compliance with performance plan requirements

As part of the annual performance plan required in the budget submission of the United States Customs and Border Protection under section 1115 of title 31, the Commissioner shall establish performance indicators relating to the seizure of methamphetamine and methamphetamine precursor chemicals in order to evaluate

the performance goals of the United States Customs and Border Protection with respect to the interdiction of illegal drugs entering the United States.

(b) Study and report relating to methamphetamine and methamphetamine precursor chemicals

(1) Analysis

The Commissioner shall, on an ongoing basis, analyze the movement of methamphetamine and methamphetamine precursor chemicals into the United States. In conducting the analysis, the Commissioner shall—

(A) consider the entry of methamphetamine and methamphetamine precursor chemicals through ports of entry, between ports of entry, through international mails, and through international courier services;

(B) examine the export procedures of each foreign country where the shipments of methamphetamine and methamphetamine precursor chemicals originate and determine if changes in the country's customs over time provisions would alleviate the export of methamphetamine and methamphetamine precursor chemicals; and

(C) identify emerging trends in smuggling techniques and strategies.

(2) Report

Not later than September 30, 2007, and each 2-year period thereafter, the Commissioner, in the consultation with the Attorney General, United States Immigration and Customs Enforcement, the United States Drug Enforcement Administration, and the United States Department of State, shall submit a report to the Committee on Finance of the Senate, the Committee on Foreign Relations of the Senate, the Committee on the Judiciary of the Senate, the Committee on Ways and Means of the House of Representatives, the Committee on International Relations of the House of Representatives, and the Committee on the Judiciary of the House of Representatives, that includes—

(A) a comprehensive summary of the analysis described in paragraph (1); and

(B) a description of how the United¹ States Customs and Border Protection utilized the analysis described in paragraph (1) to target shipments presenting a high risk for smuggling or circumvention of the Combat Methamphetamine Epidemic Act of 2005 (Public Law 109-177).

(3) Availability of analysis

The Commissioner shall ensure that the analysis described in paragraph (1) is made available in a timely manner to the Secretary of State to facilitate the Secretary in fulfilling the Secretary's reporting requirements in section 722 of the Combat Methamphetamine Epidemic Act of 2005.

(c) Definition

In this section, the term “methamphetamine precursor chemicals” means the chemicals

¹ So in original.

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-

civism data, survey data, known-flow data, and technologically-measured data, of the following:

- (i) The rate of apprehension of attempted unlawful border crossers.
- (ii) The number of detected unlawful entries.
- (iii) The number of estimated undetected unlawful entries.
- (iv) Turn backs.
- (v) Got aways.

(B) A measurement of situational awareness achieved in each U.S. Border Patrol sector.

(C) An unlawful border crossing effectiveness rate in each U.S. Border Patrol sector.

(D) A probability of detection rate, which compares the estimated total unlawful border crossing attempts not detected by U.S. Border Patrol to the unlawful border crossing effectiveness rate under subparagraph (C), as informed by subparagraph (A).

(E) The number of apprehensions in each U.S. Border Patrol sector.

(F) The number of apprehensions of unaccompanied alien children, and the nationality of such children, in each U.S. Border Patrol sector.

(G) The number of apprehensions of family units, and the nationality of such family units, in each U.S. Border Patrol sector.

(H) An illicit drugs seizure rate for drugs seized by U.S. Border Patrol between ports of entry, which compares the ratio of the amount and type of illicit drugs seized between ports of entry in any fiscal year to the average of the amount and type of illicit drugs seized between ports of entry in the immediately preceding five fiscal years.

(I) Estimates of the impact of the Consequence Delivery System on the rate of recidivism of unlawful border crossers over multiple fiscal years.

(J) An examination of each consequence under the Consequence Delivery System referred to in subparagraph (I), including the following:

- (i) Voluntary return.
- (ii) Warrant of arrest or notice to appear.
- (iii) Expedited removal.
- (iv) Reinstatement of removal.
- (v) Alien transfer exit program.
- (vi) Criminal consequence program.
- (vii) Standard prosecution.
- (viii) Operation Against Smugglers Initiative on Safety and Security.

(2) Metrics consultation

To ensure that authoritative data sources are utilized in the development of the metrics described in paragraph (1), the Secretary shall—

(A) consult with the heads of the appropriate components of the Department of Homeland Security; and

(B) where appropriate, with the heads of other agencies, including the Office of Refugee Resettlement of the Department of Health and Human Services and the Executive Office for Immigration Review of the Department of Justice.

(3) Manner of collection

The data collected to inform the metrics developed in accordance with paragraph (1) shall be collected and reported in a consistent and standardized manner across all U.S. Border Patrol sectors, informed by situational awareness.

(c) Metrics for securing the border at 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 at 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 recidivism data, survey data, and randomized secondary screening data, of the following:

- (i) Total inadmissible travelers who attempt to, or successfully, enter the United States at a port of entry.
- (ii) The rate of refusals and interdictions for travelers who attempt to, or successfully, enter the United States at a port of entry.
- (iii) The number of unlawful entries at a port of entry.

(B) The amount and type of illicit drugs seized by the Office of Field Operations of U.S. Customs and Border Protection at ports of entry during the previous fiscal year.

(C) An illicit drugs seizure rate for drugs seized by the Office of Field Operations, which compares the ratio of the amount and type of illicit drugs seized by the Office of Field Operations in any fiscal year to the average of the amount and type of illicit drugs seized by the Office of Field Operations in the immediately preceding five fiscal years.

(D) The number of infractions related to travelers and cargo committed by major violators who are interdicted by the Office of Field Operations at ports of entry, and the estimated number of such infractions committed by major violators who are not so interdicted.

(E) In consultation with the heads of the Office of National Drug Control Policy and the United States Southern Command, a cocaine seizure effectiveness rate, which is the percentage resulting from dividing the amount of cocaine seized by the Office of Field Operations by the total estimated cocaine flow rate at ports of entry along the United States land border with Mexico and Canada.

(F) A measurement of how border security operations affect crossing times, including the following:

- (i) A wait time ratio that compares the average wait times to total commercial and private vehicular traffic volumes at each land port of entry.
- (ii) An infrastructure capacity utilization rate that measures traffic volume against the physical and staffing capacity at each land port of entry.

(iii) A secondary examination rate that measures the frequency of secondary examinations at each land port of entry.

(iv) An enforcement rate that measures the effectiveness of such secondary examinations at detecting major violators.

(G) A seaport scanning rate that includes the following:

(i) The number of all cargo containers that are considered potentially “high-risk”, as determined by the Executive Assistant Commissioner of the Office of Field Operations.

(ii) A comparison of the number of potentially high-risk cargo containers scanned by the Office of Field Operations at each sea port of entry during a fiscal year to the total number of high-risk cargo containers entering the United States at each such sea port of entry during the previous fiscal year.

(iii) The number of potentially high-risk cargo containers scanned upon arrival at a United States sea port of entry.

(iv) The number of potentially high-risk cargo containers scanned before arrival at a United States sea port of entry.

(2) Metrics consultation

To ensure that authoritative data sources are utilized in the development of the metrics described in paragraph (1), the Secretary shall—

(A) consult with the heads of the appropriate components of the Department of Homeland Security; and

(B) where appropriate, work with heads of other appropriate agencies, including the Office of Refugee Resettlement of the Department of Health and Human Services and the Executive Office for Immigration Review of the Department of Justice.

(3) Manner of collection

The data collected to inform the metrics developed in accordance with paragraph (1) shall be collected and reported in a consistent and standardized manner across all United States ports of entry, informed by situational awareness.

(d) Metrics for securing the maritime border

(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 in the maritime environment. The Secretary shall annually implement the metrics developed under this subsection, which shall include the following:

(A) Situational awareness achieved in the maritime environment.

(B) A known maritime migrant flow rate.

(C) An illicit drugs removal rate for drugs removed inside and outside of a transit zone, which compares the amount and type of illicit drugs removed, including drugs abandoned at sea, by the maritime security components of the Department of Homeland Security in any fiscal year to the average of the amount and type of illicit drugs removed

by such maritime components for the immediately preceding five fiscal years.

(D) In consultation with the heads of the Office of National Drug Control Policy and the United States Southern Command, a cocaine removal effectiveness rate for cocaine removed inside a transit zone and outside a transit zone, which compares the amount of cocaine removed by the maritime security components of the Department of Homeland Security by the total documented cocaine flow rate, as contained in Federal drug databases.

(E) A response rate, which compares the ability of the maritime security components of the Department of Homeland Security to respond to and resolve known maritime threats, whether inside or outside a transit zone, by placing assets on-scene, to the total number of events with respect to which the Department has known threat information.

(F) An intergovernmental response rate, which compares the ability of the maritime security components of the Department of Homeland Security or other United States Government entities to respond to and resolve actionable maritime threats, whether inside or outside a transit zone, with the number of such threats detected.

(2) Metrics consultation

To ensure that authoritative data sources are utilized in the development of the metrics described in paragraph (1), the Secretary shall—

(A) consult with the heads of the appropriate components of the Department of Homeland Security; and

(B) where appropriate, work with the heads of other agencies, including the Drug Enforcement Agency, the Department of Defense, and the Department of Justice.

(3) Manner of collection

The data used by the Secretary shall be collected and reported in a consistent and standardized manner by the maritime security components of the Department of Homeland Security, informed by situational awareness.

(e) Air and Marine security metrics in the land domain

(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 the aviation assets and operations of Air and Marine Operations of U.S. Customs and Border Protection. The Secretary shall annually implement the metrics developed under this subsection, which shall include the following:

(A) A flight hour effectiveness rate, which compares Air and Marine Operations flight hours requirements to the number of flight hours flown by Air and Marine Operations.

(B) A funded flight hour effectiveness rate, which compares the number of funded flight hours appropriated to Air and Marine Operations to the number of actual flight hours flown by Air and Marine Operations.

(C) A readiness rate, which compares the number of aviation missions flown by Air

and Marine Operations to the number of aviation missions cancelled by Air and Marine Operations due to maintenance, operations, or other causes.

(D) The number of missions cancelled by Air and Marine Operations due to weather compared to the total planned missions.

(E) The number of individuals detected by Air and Marine Operations through the use of unmanned aerial systems and manned aircraft.

(F) The number of apprehensions assisted by Air and Marine Operations through the use of unmanned aerial systems and manned aircraft.

(G) The number and quantity of illicit drug seizures assisted by Air and Marine Operations through the use of unmanned aerial systems and manned aircraft.

(H) The number of times that actionable intelligence related to border security was obtained through the use of unmanned aerial systems and manned aircraft.

(2) Metrics consultation

To ensure that authoritative data sources are utilized in the development of the metrics described in paragraph (1), the Secretary shall—

(A) consult with the heads of the appropriate components of the Department of Homeland Security; and

(B) as appropriate, work with the heads of other departments and agencies, including the Department of Justice.

(3) Manner of collection

The data collected to inform the metrics developed in accordance with paragraph (1) shall be collected and reported in a consistent and standardized manner by Air and Marine Operations, informed by situational awareness.

(f) Data transparency

The Secretary shall—

(1) in accordance with applicable privacy laws, make data related to apprehensions, inadmissible aliens, drug seizures, and other enforcement actions available to the public, law enforcement communities, and academic research communities; and

(2) provide the Office of Immigration Statistics of the Department of Homeland Security with unfettered access to the data referred to in paragraph (1).

(g) Evaluation by the Government Accountability Office and the Secretary

(1) Metrics report

(A) Mandatory disclosures

The Secretary shall submit to the appropriate congressional committees and the Comptroller General of the United States an annual report containing the metrics required under this section and the data and methodology used to develop such metrics.

(B) Permissible disclosures

The Secretary, for the purpose of validation and verification, may submit the annual report described in subparagraph (A) to—

(i) the Center for Borders, Trade, and Immigration Research of the Centers of Excellence network of the Department of Homeland Security;

(ii) the head of a national laboratory within the Department of Homeland Security laboratory network with prior expertise in border security; and

(iii) a Federally Funded Research and Development Center.

(2) GAO report

Not later than 270 days after receiving the first report under paragraph (1)(A) and biennially thereafter for the following ten years with respect to every other such report, the Comptroller General of the United States shall submit to the appropriate congressional committees a report that—

(A) analyzes the suitability and statistical validity of the data and methodology contained in each such report; and

(B) includes recommendations on—

(i) the feasibility of other suitable metrics that may be used to measure the effectiveness of border security; and

(ii) improvements that need to be made to the metrics being used to measure the effectiveness of border security.

(3) State of the Border report

Not later than 60 days after the end of each fiscal year through fiscal year 2026, the Secretary shall submit to the appropriate congressional committees a “State of the Border” report that—

(A) provides trends for each metric under this section for the last ten fiscal years, to the greatest extent possible;

(B) provides selected analysis into related aspects of illegal flow rates, including undocumented migrant flows and stock estimation techniques;

(C) provides selected analysis into related aspects of legal flow rates; and

(D) includes any other information that the Secretary determines appropriate.

(4) Metrics update

(A) In general

After submitting the tenth report to the Comptroller General under paragraph (1), the Secretary may reevaluate and update any of the metrics developed in accordance with this section to ensure that such metrics are suitable to measure the effectiveness of border security.

(B) Congressional notification

Not later than 30 days before updating the metrics pursuant to subparagraph (A), the Secretary shall notify the appropriate congressional committees of such updates.

(Pub. L. 114-328, div. A, title X, §1092, Dec. 23, 2016, 130 Stat. 2429.)

Editorial Notes

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2017, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

§ 224. Other reporting requirements**(a) Unidentified remains****(1) Reporting requirement**

Not later than 1 year after December 31, 2020, and annually thereafter, the Commissioner of U.S. Customs and Border Protection shall submit a report to the appropriate committees of Congress regarding all unidentified remains discovered, during the reporting period, on or near the border between the United States and Mexico, including—

(A) for each deceased person—

(i) the cause and manner of death, if known;

(ii) the sex, age (at time of death), and country of origin (if such information is determinable); and

(iii) the location of each unidentified remain;

(B) the total number of deceased people whose unidentified remains were discovered by U.S. Customs and Border Protection during the reporting period;

(C) to the extent such information is available to U.S. Customs and Border Protection, the total number of deceased people whose unidentified remains were discovered by Federal, State, local or Tribal law enforcement officers, military personnel, or medical examiners offices;

(D) the efforts of U.S. Customs and Border Protection to engage with nongovernmental organizations, institutions of higher education, medical examiners and coroners, and law enforcement agencies—

(i) to identify and map the locations at which migrant deaths occur; and

(ii) to count the number of deaths that occur at such locations; and

(E) a detailed description of U.S. Customs and Border Protection's Missing Migrant Program, including how the program helps mitigate migrant deaths while maintaining border security.

(2) Public disclosure

Not later than 30 days after each report required under paragraph (1) is submitted, the Commissioner of U.S. Customs and Border Protection shall publish on the website of the agency the information described in subparagraphs (A), (B), and (C) of paragraph (1) during each reporting period.

(b) Rescue beacons

Not later than 1 year after December 31, 2020, and annually thereafter, the Commissioner of U.S. Customs and Border Protection shall submit a report to the appropriate committees of Congress regarding the use of rescue beacons along the border between the United States and Mexico, including, for the reporting period—

(1) the number of rescue beacons in each border patrol sector;

(2) the specific location of each rescue beacon;

(3) the frequency with which each rescue beacon was activated by a person in distress;

(4) a description of the nature of the distress that resulted in each rescue beacon activation (if such information is determinable); and

(5) an assessment, in consultation with local stakeholders, including elected officials, nongovernmental organizations, and landowners, of necessary additional rescue beacons and recommendations for locations for deployment to reduce migrant deaths.

(c) GAO report

Not later than 6 months after the report required under subsection (a) is submitted to the appropriate committees of Congress, the Comptroller General of the United States shall submit a report to the same committees that describes—

(1) how U.S. Customs and Border Protection collects and records border-crossing death data;

(2) the differences (if any) in U.S. Customs and Border Protection border-crossing death data collection methodology across its sectors;

(3) how U.S. Customs and Border Protection's data and statistical analysis on trends in the numbers, locations, causes, and characteristics of border-crossing deaths compare to other sources of data on these deaths, including border county medical examiners and coroners and the Centers for Disease Control and Prevention;

(4) how U.S. Customs and Border Protection measures the effectiveness of its programs to mitigate migrant deaths; and

(5) the extent to which U.S. Customs and Border Protection engages Federal, State, local, and Tribal governments, foreign diplomatic and consular posts, and nongovernmental organizations—

(A) to accurately identify deceased individuals;

(B) to resolve cases involving unidentified remains;

(C) to resolve cases involving unidentified persons; and

(D) to share information on missing persons and unidentified remains, specifically with the National Missing and Unidentified Persons System (NamUs).

(Pub. L. 116–277, § 5, Dec. 31, 2020, 134 Stat. 3370.)

Editorial Notes**CODIFICATION**

Section was enacted as part of Missing Persons and Unidentified Remains Act of 2019, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

§ 225. Reports, evaluations, and research regarding drug interdiction at and between ports of entry**(a) Research on additional technologies to detect fentanyl**

Not later than one year after December 23, 2022, the Secretary of Homeland Security, in consultation with the Attorney General, the Secretary of Health and Human Services, and the Director of the Office of National Drug Control Policy, shall research additional technological solutions to—

(1) target and detect illicit fentanyl, fentanyl analogs, and precursor chemicals, in-

cluding low-purity fentanyl, especially in counterfeit pressed tablets, and illicit pill press molds; and

(2) enhance detection of such counterfeit pressed tablets through nonintrusive, noninvasive, and other advanced screening technologies.

(b) Evaluation of current technologies and strategies in illicit drug interdiction and procurement decisions

(1) In general

The Secretary of Homeland Security, in consultation with the Attorney General, the Secretary of Health and Human Services, and the Director of the Office of National Drug Control Policy, shall establish a program to collect available data and develop metrics to measure how technologies and strategies used by the Department of Homeland Security, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and other relevant Federal agencies have helped detect trafficked illicit fentanyl, fentanyl analogs, and precursor chemicals or deter illicit fentanyl, fentanyl analogs, and precursor chemicals from being trafficked into the United States at and between land, air, and sea ports of entry.

(2) Considerations

The data and metrics program established pursuant to paragraph (1) may consider—

(A) the rate of detection of illicit fentanyl, fentanyl analogs, and precursor chemicals at land, air, and sea ports of entry;

(B) investigations and intelligence sharing into the origins of illicit fentanyl, fentanyl analogs, and precursor chemicals within the United States; and

(C) other data or metrics considered appropriate by the Secretary of Homeland Security.

(3) Updates

The Secretary of Homeland Security, as appropriate and in the coordination with the officials referred to in paragraph (1), may update the data and metrics program established pursuant to paragraph (1).

(4) Reports

(A) Secretary of Homeland Security

Not later than one year after December 23, 2022, and biennially thereafter, the Secretary of Homeland Security, in consultation with the Attorney General, the Secretary of Health and Human Services, and the Director of the Office of National Drug Control Policy shall, based on the data collected and metrics developed pursuant to the program established pursuant to paragraph (1), submit to the Committee on Homeland Security, the Committee on Energy and Commerce, the Committee on Science, Space, and Technology, and the Committee on the Judiciary of the House of Representatives and the Committee on Homeland Security and Governmental Affairs, the Committee on Commerce, Science, and Transportation, and the Committee on the Judiciary of the Senate a report that—

(i) examines and analyzes current technologies, including pilot technologies, deployed at land, air, and sea ports of entry to assess how well such technologies detect, deter, and address illicit fentanyl, fentanyl analogs, and precursor chemicals; and

(ii) examines and analyzes current technologies, including pilot technologies, deployed between land ports of entry to assess how well and accurately such technologies detect, deter, interdict, and address illicit fentanyl, fentanyl analogs, and precursor chemicals;¹

(B) Government Accountability Office

Not later than one year after the submission of each of the first three reports required under subparagraph (A), the Comptroller General of the United States shall submit to the Committee on Homeland Security, the Committee on Energy and Commerce, the Committee on Science, Space, and Technology, and the Committee on the Judiciary of the House of Representatives and the Committee on Homeland Security and Governmental Affairs, the Committee on Commerce, Science, and Transportation, and the Committee on the Judiciary of the Senate a report that evaluates and, as appropriate, makes recommendations to improve, the collection of data under the program established pursuant to paragraph (1) and metrics used in the subsequent reports required under such subparagraph.

(Pub. L. 117-263, div. G, title LXXI, §7136, Dec. 23, 2022, 136 Stat. 3650.)

Editorial Notes

CODIFICATION

Section was enacted as part of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

PART C—MISCELLANEOUS PROVISIONS

§ 231. Transfer of certain agricultural inspection functions of the Department of Agriculture

(a) Transfer of agricultural import and entry inspection functions

There shall be transferred to the Secretary the functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under the laws specified in subsection (b).

(b) Covered animal and plant protection laws

The laws referred to in subsection (a) are the following:

(1) The Act commonly known as the Virus-Serum-Toxin Act (the eighth paragraph under the heading “Bureau of Animal Industry” in the Act of March 4, 1913; 21 U.S.C. 151 et seq.).

(2) Section 1 of the Act of August 31, 1922 (commonly known as the Honeybee Act; 7 U.S.C. 281).

(3) Title III of the Federal Seed Act (7 U.S.C. 1581 et seq.).

¹ So in original. The semicolon probably should be a period.

(4) The Plant Protection Act (7 U.S.C. 7701 et seq.).

(5) The Animal Health Protection Act (subtitle E of title X of Public Law 107-171; 7 U.S.C. 8301 et seq.).

(6) The Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.).

(7) Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540).

(c) Exclusion of quarantine activities

For purposes of this section, the term “functions” does not include any quarantine activities carried out under the laws specified in subsection (b).

(d) Effect of transfer

(1) Compliance with Department of Agriculture regulations

The authority transferred pursuant to subsection (a) shall be exercised by the Secretary in accordance with the regulations, policies, and procedures issued by the Secretary of Agriculture regarding the administration of the laws specified in subsection (b).

(2) Rulemaking coordination

The Secretary of Agriculture shall coordinate with the Secretary whenever the Secretary of Agriculture prescribes regulations, policies, or procedures for administering the functions transferred under subsection (a) under a law specified in subsection (b).

(3) Effective administration

The Secretary, in consultation with the Secretary of Agriculture, may issue such directives and guidelines as are necessary to ensure the effective use of personnel of the Department of Homeland Security to carry out the functions transferred pursuant to subsection (a).

(e) Transfer agreement

(1) Agreement required; revision

Before the end of the transition period, as defined in section 541 of this title, the Secretary of Agriculture and the Secretary shall enter into an agreement to effectuate the transfer of functions required by subsection (a) of this section. The Secretary of Agriculture and the Secretary may jointly revise the agreement as necessary thereafter.

(2) Required terms

The agreement required by this subsection shall specifically address the following:

(A) The supervision by the Secretary of Agriculture of the training of employees of the Secretary to carry out the functions transferred pursuant to subsection (a).

(B) The transfer of funds to the Secretary under subsection (f).

(3) Cooperation and reciprocity

The Secretary of Agriculture and the Secretary may include as part of the agreement the following:

(A) Authority for the Secretary to perform functions delegated to the Animal and Plant Health Inspection Service of the Department of Agriculture regarding the protection of domestic livestock and plants, but not trans-

ferred to the Secretary pursuant to subsection (a).

(B) Authority for the Secretary of Agriculture to use employees of the Department of Homeland Security to carry out authorities delegated to the Animal and Plant Health Inspection Service regarding the protection of domestic livestock and plants.

(f) Periodic transfer of funds to Department of Homeland Security

(1) Transfer of funds

Out of funds collected by fees authorized under sections 136 and 136a of title 21, the Secretary of Agriculture shall transfer, from time to time in accordance with the agreement under subsection (e), to the Secretary funds for activities carried out by the Secretary for which such fees were collected.

(2) Limitation

The proportion of fees collected pursuant to such sections that are transferred to the Secretary under this subsection may not exceed the proportion of the costs incurred by the Secretary to all costs incurred to carry out activities funded by such fees.

(g) Transfer of Department of Agriculture employees

Not later than the completion of the transition period defined under section 541 of this title, the Secretary of Agriculture shall transfer to the Secretary not more than 3,200 full-time equivalent positions of the Department of Agriculture.

(Pub. L. 107-296, title IV, § 421, Nov. 25, 2002, 116 Stat. 2182.)

Editorial Notes

REFERENCES IN TEXT

The Virus-Serum-Toxin Act, referred to in subsec. (b)(1), is the eighth paragraph under the heading “Bureau of Animal Industry” in act Mar. 4, 1913, ch. 145, 37 Stat. 832, 833, which is classified generally to chapter 5 (§ 151 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 151 of Title 21 and Tables.

The Federal Seed Act, referred to in subsec. (b)(3), is act Aug. 9, 1939, ch. 615, 53 Stat. 1275. Title III of the Act is classified generally to subchapter III (§ 1581 et seq.) of chapter 37 of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1551 of Title 7 and Tables.

The Plant Protection Act, referred to in subsec. (b)(4), is title IV of Pub. L. 106-224, June 20, 2000, 114 Stat. 438, which is classified principally to chapter 104 (§ 7701 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of Title 7 and Tables.

The Animal Health Protection Act, referred to in subsec. (b)(5), is subtitle E (§§ 10401-10418) of title X of Pub. L. 107-171, May 13, 2002, 116 Stat. 494, which is classified principally to chapter 109 (§ 8301 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of Title 7 and Tables.

The Lacey Act Amendments of 1981, referred to in subsec. (b)(6), is Pub. L. 97-79, Nov. 16, 1981, 95 Stat. 1073, which enacted chapter 53 (§ 3371 et seq.) of Title 16, Conservation, amended section 1540 of Title 16 and section 42 of Title 18, Crimes and Criminal Procedure, repealed sections 667e and 851 to 856 of Title 16 and sections 43, 44, 3054, and 3112 of Title 18, and enacted provi-

sions set out as notes under sections 1540 and 3371 of Title 16. For complete classification of this Act to the Code, see Short Title note set out under section 3371 of Title 16 and Tables.

CODIFICATION

Section is comprised of section 421 of Pub. L. 107–296. Subsec. (h) of section 421 of Pub. L. 107–296 amended sections 2279e and 2279f of Title 7, Agriculture.

§ 232. Functions of Administrator of General Services

(a) Operation, maintenance, and protection of Federal buildings and grounds

Nothing in this chapter may be construed to affect the functions or authorities of the Administrator of General Services with respect to the operation, maintenance, and protection of buildings and grounds owned or occupied by the Federal Government and under the jurisdiction, custody, or control of the Administrator. Except for the law enforcement and related security functions transferred under section 203(3) of this title, the Administrator shall retain all powers, functions, and authorities vested in the Administrator under chapter 1, except section 121(e)(2)(A), and chapters 5 to 11 of title 40 and other provisions of law that are necessary for the operation, maintenance, and protection of such buildings and grounds.

(b) Collection of rents and fees; Federal Buildings Fund

(1) Statutory construction

Nothing in this chapter may be construed—

(A) to direct the transfer of, or affect, the authority of the Administrator of General Services to collect rents and fees, including fees collected for protective services; or

(B) to authorize the Secretary or any other official in the Department to obligate amounts in the Federal Buildings Fund established by section 592 of title 40.

(2) Use of transferred amounts

Any amounts transferred by the Administrator of General Services to the Secretary out of rents and fees collected by the Administrator shall be used by the Secretary solely for the protection of buildings or grounds owned or occupied by the Federal Government.

(Pub. L. 107–296, title IV, § 422, Nov. 25, 2002, 116 Stat. 2184.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(1), 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.

CODIFICATION

“Chapter 1, except section 121(e)(2)(A), and chapters 5 to 11 of title 40” substituted in subsec. (a) for “chapter 10 of title 40” and “section 592 of title 40” substituted in subsec. (b)(1)(B) for “section 490(f) of title 40” on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

§ 233. Functions of Transportation Security Administration

(a) Consultation with Federal Aviation Administration

The Secretary and other officials in the Department shall consult with the Administrator of the Federal Aviation Administration before taking any action that might affect aviation safety, air carrier operations, aircraft airworthiness, or the use of airspace. The Secretary shall establish a liaison office within the Department for the purpose of consulting with the Administrator of the Federal Aviation Administration.

(b) Report to Congress

Not later than 60 days after November 25, 2002, the Secretary of Transportation shall transmit to Congress a report containing a plan for complying with the requirements of section 44901(d) of title 49.

(c) Limitations on statutory construction

(1) Grant of authority

Nothing in this chapter may be construed to vest in the Secretary or any other official in the Department any authority over transportation security that is not vested in the Under Secretary of Transportation for Security, or in the Secretary of Transportation under chapter 449 of title 49 on the day before November 25, 2002.

(2) Obligation of AIP funds

Nothing in this chapter may be construed to authorize the Secretary or any other official in the Department to obligate amounts made available under section 48103 of title 49.

(Pub. L. 107–296, title IV, § 423, Nov. 25, 2002, 116 Stat. 2185.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), 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.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Reference to Under Secretary of Transportation for Security deemed to refer to Administrator of the Transportation Security Administration, see section 1194 of Pub. L. 115–254, set out as a note under section 114 of Title 49, Transportation.

§ 234. Preservation of Transportation Security Administration as a distinct entity

Notwithstanding any other provision of this chapter, the Transportation Security Administration shall be maintained as a distinct entity within the Department.

(Pub. L. 107–296, title IV, § 424, as added Pub. L. 114–125, title VIII, § 802(g)(1)(B)(iv)(I), Feb. 24, 2016, 130 Stat. 212.)

Editorial Notes**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.

PRIOR PROVISIONS

A prior section 234, Pub. L. 107–296, title IV, § 424, Nov. 25, 2002, 116 Stat. 2185, provided for the preservation of the Transportation Security Administration as a distinct entity applicable until 2 years after Nov. 25, 2002, prior to repeal by Pub. L. 114–125, title VIII, § 802(g)(1)(B)(iv)(I), Feb. 24, 2016, 130 Stat. 212.

§ 235. Coordination of information and information technology**(a) Definition of affected agency**

In this section, the term “affected agency” means—

- (1) the Department;
- (2) the Department of Agriculture;
- (3) the Department of Health and Human Services; and
- (4) any other department or agency determined to be appropriate by the Secretary.

(b) Coordination

The Secretary, in coordination with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary, shall ensure that appropriate information (as determined by the Secretary) concerning inspections of articles that are imported or entered into the United States, and are inspected or regulated by 1 or more affected agencies, is timely and efficiently exchanged between the affected agencies.

(c) Report and plan

Not later than 18 months after November 25, 2002, the Secretary, in consultation with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary, shall submit to Congress—

- (1) a report on the progress made in implementing this section; and
- (2) a plan to complete implementation of this section.

(Pub. L. 107–296, title IV, § 427, Nov. 25, 2002, 116 Stat. 2187.)

§ 236. Visa issuance**(a) Definition**

In this subsection,¹ the term “consular officer”² has the meaning given that term under section 101(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(9)).

(b) In general

Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or

any other provision of law, and except as provided in subsection (c) of this section, the Secretary—

(1) shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of such Act [8 U.S.C. 1101 et seq.], and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas, and shall have the authority to refuse visas in accordance with law and to develop programs of homeland security training for consular officers (in addition to consular training provided by the Secretary of State), which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien; and

(2) shall have authority to confer or impose upon any officer or employee of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in paragraph (1).

(c) Authority of the Secretary of State**(1) In general**

Notwithstanding subsection (b), the Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State deems such refusal necessary or advisable in the foreign policy or security interests of the United States.

(2) Construction regarding authority

Nothing in this section, consistent with the Secretary of Homeland Security’s authority to refuse visas in accordance with law, shall be construed as affecting the authorities of the Secretary of State under the following provisions of law:

(A) Section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)).

(B) Section 204(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1154) (as it will take effect upon the entry into force of the Convention on Protection of Children and Cooperation in Respect to Inter-Country adoption).

(C) Section 212(a)(3)(B)(i)(IV)(bb) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(IV)(bb)).

(D) Section 212(a)(3)(B)(i)(VI) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(VI)).

(E) Section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)(II)).

(F) Section 212(a)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

(G) Section 212(a)(10)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(C)).

(H) Section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(I) Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).

(J) Section 237(a)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(C)).

¹ So in original. Probably should be “section”.

² So in original. Probably should be “‘consular officer’”.

(K) Section 401 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 [22 U.S.C. 6091].

(L) Section 613 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1999³ (as contained in section 101(b) of division A of Public Law 105-277) (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; 112 Stat. 2681; H.R. 4328 (originally H.R. 4276) as amended by section 617 of Public Law 106-553).

(M) Section 103(f) of the Chemical Weapon Convention Implementation Act of 1998 [22 U.S.C. 6713(f)] (112 Stat. 2681-865).

(N) Section 801 of H.R. 3427, the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 [8 U.S.C. 1182e], as enacted by reference in Public Law 106-113.

(O) Section 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107-115).

(P) Section 51 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2723).

(d) Consular officers and chiefs of missions

(1) In general

Nothing in this section may be construed to alter or affect—

(A) the employment status of consular officers as employees of the Department of State; or

(B) the authority of a chief of mission under section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

(2) Construction regarding delegation of authority

Nothing in this section shall be construed to affect any delegation of authority to the Secretary of State by the President pursuant to any proclamation issued under section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)), consistent with the Secretary of Homeland Security's authority to refuse visas in accordance with law.

(e) Assignment of Homeland Security employees to diplomatic and consular posts

(1) In general

The Secretary is authorized to assign employees of the Department to each diplomatic and consular post at which visas are issued, unless the Secretary determines that such an assignment at a particular post would not promote homeland security.

(2) Functions

Employees assigned under paragraph (1) shall perform the following functions:

(A) Provide expert advice and training to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications.

(B) Review any such applications, either on the initiative of the employee of the Department or upon request by a consular offi-

cer or other person charged with adjudicating such applications.

(C) Conduct investigations with respect to consular matters under the jurisdiction of the Secretary.

(3) Evaluation of consular officers

The Secretary of State shall evaluate, in consultation with the Secretary, as deemed appropriate by the Secretary, the performance of consular officers with respect to the processing and adjudication of applications for visas in accordance with performance standards developed by the Secretary for these procedures.

(4) Report

The Secretary shall, on an annual basis, submit a report to Congress that describes the basis for each determination under paragraph (1) that the assignment of an employee of the Department at a particular diplomatic post would not promote homeland security.

(5) Permanent assignment; participation in terrorist lookout committee

When appropriate, employees of the Department assigned to perform functions described in paragraph (2) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

(6) Training and hiring

(A) In general

The Secretary shall ensure, to the extent possible, that any employees of the Department assigned to perform functions under paragraph (2) and, as appropriate, consular officers, shall be provided the necessary training to enable them to carry out such functions, including training in foreign languages, interview techniques, and fraud detection techniques, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.

(B) Use of Center

The Secretary is authorized to use the National Foreign Affairs Training Center, on a reimbursable basis, to obtain the training described in subparagraph (A).

(7) Report

Not later than 1 year after November 25, 2002, the Secretary and the Secretary of State shall submit to Congress—

(A) a report on the implementation of this subsection; and

(B) any legislative proposals necessary to further the objectives of this subsection.

(8) Effective date

This subsection shall take effect on the earlier of—

(A) the date on which the President publishes notice in the Federal Register that

³ See References in Text note below.

the President has submitted a report to Congress setting forth a memorandum of understanding between the Secretary and the Secretary of State governing the implementation of this section; or

(B) the date occurring 1 year after November 25, 2002.

(f) No creation of private right of action

Nothing in this section shall be construed to create or authorize a private right of action to challenge a decision of a consular officer or other United States official or employee to grant or deny a visa.

(g) Study regarding use of foreign nationals

(1) In general

The Secretary of Homeland Security shall conduct a study of the role of foreign nationals in the granting or refusal of visas and other documents authorizing entry of aliens into the United States. The study shall address the following:

(A) The proper role, if any, of foreign nationals in the process of rendering decisions on such grants and refusals.

(B) Any security concerns involving the employment of foreign nationals.

(C) Whether there are cost-effective alternatives to the use of foreign nationals.

(2) Report

Not later than 1 year after November 25, 2002, the Secretary shall submit a report containing the findings of the study conducted under paragraph (1) to the Committee on the Judiciary, the Committee on International Relations, and the Committee on Government Reform of the House of Representatives, and the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Government⁴ Affairs of the Senate.

(h) Report

Not later than 120 days after November 25, 2002, the Director of the Office of Science and Technology Policy shall submit to Congress a report on how the provisions of this section will affect procedures for the issuance of student visas.

(i) Visa issuance program for Saudi Arabia

Notwithstanding any other provision of law, after November 25, 2002, all third party screening programs in Saudi Arabia shall be terminated. On-site personnel of the Department of Homeland Security shall review all visa applications prior to adjudication.

(Pub. L. 107-296, title IV, § 428, Nov. 25, 2002, 116 Stat. 2187.)

Editorial Notes

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (b)(1), is act June 27, 1952, ch. 477, 66 Stat. 163, which is classified principally to chapter 12 (§1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

⁴ So in original. Probably should be “Governmental”.

Section 613 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1999, referred to in subsec. (c)(2)(L), probably means section 101(b) [title VI, §616] of Pub. L. 105-277, div. A, Oct. 21, 1998, 112 Stat. 2681-50, 2681-114, which prohibits use of funds for issuance of visas to persons alleged to have ordered, carried out, or materially assisted in extrajudicial and political killings in Haiti and to certain others and is not classified to the Code.

Section 103(f) of the Chemical Weapon Convention Implementation Act of 1998, referred to in subsec. (c)(2)(M), probably means section 103(f) of the Chemical Weapons Convention Implementation Act of 1998, which is classified to section 6713(f) of Title 22, Foreign Relations and Intercourse.

Section 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002, referred to in subsec. (c)(2)(O), is section 568 of title V of Pub. L. 107-115, Jan. 10, 2002, 115 Stat. 2166, which is not classified to the Code.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

References to National Foreign Affairs Training Center considered to refer to George P. Shultz National Foreign Affairs Training Center, see section 1(b) of Pub. L. 107-132, set out as a note under section 4021 of Title 22, Foreign Relations and Intercourse.

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.

Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019.

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

§ 237. Information on visa denials required to be entered into electronic data system

(a) In general

Whenever a consular officer of the United States denies a visa to an applicant, the consular officer shall enter the fact and the basis of the denial and the name of the applicant into the interoperable electronic data system implemented under section 1722(a) of title 8.

(b) Prohibition

In the case of any alien with respect to whom a visa has been denied under subsection (a)—

(1) no subsequent visa may be issued to the alien unless the consular officer considering the alien's visa application has reviewed the information concerning the alien placed in the interoperable electronic data system, has indicated on the alien's application that the information has been reviewed, and has stated for the record why the visa is being issued or a waiver of visa ineligibility recommended in spite of that information; and

(2) the alien may not be admitted to the United States without a visa issued in accordance with the procedures described in paragraph (1).

(Pub. L. 107–296, title IV, § 429, Nov. 25, 2002, 116 Stat. 2191.)

§ 238. Office for Domestic Preparedness

(a) Establishment

There is established in the Department an Office for Domestic Preparedness.

(b) Director

There shall be a Director of the Office for Domestic Preparedness, who shall be appointed by the President.

(c) Responsibilities

The Office for Domestic Preparedness shall have the primary responsibility within the executive branch of Government for the preparedness of the United States for acts of terrorism, including—

(1) coordinating preparedness efforts at the Federal level, and working with all State, local, tribal, parish, and private sector emergency response providers on all matters pertaining to combating terrorism, including training, exercises, and equipment support;

(2) coordinating or, as appropriate, consolidating communications and systems of communications relating to homeland security at all levels of government;

(3) directing and supervising terrorism preparedness grant programs of the Federal Government (other than those programs administered by the Department of Health and Human Services) for all emergency response providers;

(4) incorporating the Strategy priorities into planning guidance on an agency level for the preparedness efforts of the Office for Domestic Preparedness;

(5) providing agency-specific training for agents and analysts within the Department, other agencies, and State and local agencies and international entities;

(6) as the lead executive branch agency for preparedness of the United States for acts of terrorism, cooperating closely with the Federal Emergency Management Agency, which shall have the primary responsibility within the executive branch to prepare for and mitigate the effects of nonterrorist-related disasters in the United States;

(7) assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities of State, local, and tribal governments consistent with the mission and functions of the Department;

(8) those elements of the Office of National Preparedness of the Federal Emergency Management Agency which relate to terrorism, which shall be consolidated within the Department in the Office for Domestic Preparedness established under this section; and

(9) helping to ensure the acquisition of interoperable communication technology by State and local governments and emergency response providers.

(d) Fiscal years 2003 and 2004

During fiscal year 2003 and fiscal year 2004, the Director of the Office for Domestic Preparedness

established under this section shall manage and carry out those functions of the Office for Domestic Preparedness of the Department of Justice (transferred under this section) before September 11, 2001, under the same terms, conditions, policies, and authorities, and with the required level of personnel, assets, and budget before September 11, 2001.

(Pub. L. 107–296, title IV, § 430, Nov. 25, 2002, 116 Stat. 2191; Pub. L. 108–458, title VII, § 7303(h)(2), Dec. 17, 2004, 118 Stat. 3847; Pub. L. 112–166, § 2(f)(1), Aug. 10, 2012, 126 Stat. 1284; Pub. L. 114–125, title VIII, § 802(g)(1)(B)(iv)(II), Feb. 24, 2016, 130 Stat. 212.)

Editorial Notes

AMENDMENTS

2016—Subsec. (a). Pub. L. 114–125, § 802(g)(1)(B)(iv)(II)(aa), amended subsec. (a) generally. Prior to amendment, text read as follows: “The Office for Domestic Preparedness shall be within the Directorate of Border and Transportation Security.”

Subsec. (b). Pub. L. 114–125, § 802(g)(1)(B)(iv)(II)(bb), struck out at end “The Director of the Office for Domestic Preparedness shall report directly to the Under Secretary for Border and Transportation Security.”

Subsec. (c)(7). Pub. L. 114–125, § 802(g)(1)(B)(iv)(II)(cc), substituted “functions of the Department” for “functions of the Directorate”.

2012—Subsec. (b). Pub. L. 112–166 struck out “, by and with the advice and consent of the Senate” before period at end of first sentence.

2004—Subsec. (c)(9). Pub. L. 108–458 added par. (9).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–166 effective 60 days after Aug. 10, 2012, and applicable to appointments made on and after that effective date, including any nomination pending in the Senate on that date, see section 6(a) of Pub. L. 112–166, set out as a note under section 113 of this title.

§ 239. Office of Cargo Security Policy

(a) Establishment

There is established within the Department an Office of Cargo Security Policy (referred to in this section as the “Office”).

(b) Purpose

The Office shall—

(1) coordinate all Department policies relating to cargo security; and

(2) consult with stakeholders and coordinate with other Federal agencies in the establishment of standards and regulations and to promote best practices.

(c) Director

(1) Appointment

The Office shall be headed by a Director, who shall—

(A) be appointed by the Secretary; and

(B) report to the Assistant Secretary for Policy.

(2) Responsibilities

The Director shall—

(A) advise the Assistant Secretary for Policy in the development of Department-wide policies regarding cargo security;

(B) coordinate all policies relating to cargo security among the agencies and offices within the Department relating to cargo security; and

(C) coordinate the cargo security policies of the Department with the policies of other executive agencies.

(Pub. L. 107-296, title IV, § 431, as added Pub. L. 109-347, title III, § 301(a), Oct. 13, 2006, 120 Stat. 1920.)

Statutory Notes and Related Subsidiaries

RULE OF CONSTRUCTION

Pub. L. 109-347, title III, § 301(c), Oct. 13, 2006, 120 Stat. 1920, provided that: “Nothing in this section [enacting this section and section 1001 of this title] shall be construed to affect—

“(1) the authorities, functions, or capabilities of the Coast Guard to perform its missions; or

“(2) the requirement under section 888 of the Homeland Security Act (6 U.S.C. 468) that those authorities, functions, and capabilities be maintained intact.”

§ 240. Border Enforcement Security Task Force

(a) Establishment

There is established within the Department a program to be known as the Border Enforcement Security Task Force (referred to in this section as “BEST”).

(b) Purpose

The purpose of BEST is to establish units to enhance border security by addressing and reducing border security threats and violence by—

(1) facilitating collaboration among Federal, State, local, tribal, and foreign law enforcement agencies to execute coordinated activities in furtherance of border security, and homeland security; and

(2) enhancing information-sharing, including the dissemination of homeland security information among such agencies.

(c) Composition and establishment of units

(1) Composition

BEST units may be comprised of personnel from—

(A) U.S. Immigration and Customs Enforcement;

(B) U.S. Customs and Border Protection;

(C) the United States Coast Guard;

(D) other Department personnel, as appropriate¹

(E) other Federal agencies, as appropriate;

(F) appropriate State law enforcement agencies;

(G) foreign law enforcement agencies, as appropriate;

(H) local law enforcement agencies from affected border cities and communities; and

(I) appropriate tribal law enforcement agencies.

(2) Establishment of units

The Secretary is authorized to establish BEST units in jurisdictions in which such units can contribute to BEST missions, as appropriate. Before establishing a BEST unit, the Secretary shall consider—

(A) whether the area in which the BEST unit would be established is significantly impacted by cross-border threats;

(B) the availability of Federal, State, local, tribal, and foreign law enforcement resources to participate in the BEST unit;

(C) the extent to which border security threats are having a significant harmful impact in the jurisdiction in which the BEST unit is to be established, and other jurisdictions in the country; and

(D) whether or not an Integrated Border Enforcement Team already exists in the area in which the BEST unit would be established.

(3) Duplication of efforts

In determining whether to establish a new BEST unit or to expand an existing BEST unit in a given jurisdiction, the Secretary shall ensure that the BEST unit under consideration does not duplicate the efforts of other existing interagency task forces or centers within that jurisdiction.

(d) Operation

After determining the jurisdictions in which to establish BEST units under subsection (c)(2), and in order to provide Federal assistance to such jurisdictions, the Secretary may—

(1) direct the assignment of Federal personnel to BEST, subject to the approval of the head of the department or agency that employs such personnel; and

(2) take other actions to assist Federal, State, local, and tribal entities to participate in BEST, including providing financial assistance, as appropriate, for operational, administrative, salary reimbursement, and technological costs associated with the participation of Federal, State, local, and tribal law enforcement agencies in BEST.

(e) Report

Not later than 180 days after the date on which BEST is established under this section, and annually thereafter for the following 5 years, the Secretary shall submit a report to Congress that describes the effectiveness of BEST in enhancing border security and reducing the drug trafficking, arms smuggling, illegal alien trafficking and smuggling, violence, and kidnapping along and across the international borders of the United States, as measured by crime statistics, including violent deaths, incidents of violence, and drug-related arrests.

(Pub. L. 107-296, title IV, § 432, as added Pub. L. 112-205, § 3(a), Dec. 7, 2012, 126 Stat. 1488; amended Pub. L. 117-159, div. A, title II, § 12004(j), June 25, 2022, 136 Stat. 1332.)

Editorial Notes

AMENDMENTS

2022—Subsec. (d)(2). Pub. L. 117-159 inserted “salary reimbursement,” after “administrative,”.

Statutory Notes and Related Subsidiaries

RULE OF CONSTRUCTION

Nothing in amendment made by Pub. L. 117-159 to be construed to allow the establishment of a Federal sys-

¹ So in original. Probably should be followed by a semicolon.

tem of registration of firearms, firearms owners, or firearms transactions or dispositions, see section 12004(k) of Pub. L. 117-159, set out as a note under section 922 of Title 18, Crimes and Criminal Procedure.

FINDINGS AND DECLARATION OF PURPOSES

Pub. L. 112-205, § 2, Dec. 7, 2012, 126 Stat. 1487, provided that: “Congress finds the following:

“(1) The Department of Homeland Security’s (DHS) overriding mission is to lead a unified national effort to protect the United States. United States Immigration and Customs Enforcement (ICE) is the largest investigative agency within DHS and is charged with enforcing a wide array of laws, including laws related to securing the border and combating criminal smuggling.

“(2) Mexico’s northern border with the United States has experienced a dramatic surge in border crime and violence in recent years due to intense competition between Mexican drug cartels and criminal smuggling organizations that employ predatory tactics to realize their profits.

“(3) Law enforcement agencies at the United States northern border also face challenges from transnational smuggling organizations.

“(4) In response, DHS has partnered with Federal, State, local, tribal, and foreign law enforcement counterparts to create the Border Enforcement Security Task Force (BEST) initiative as a comprehensive approach to addressing border security threats. These multi-agency teams are designed to increase information-sharing and collaboration among the participating law enforcement agencies.

“(5) BEST teams incorporate personnel from ICE, United States Customs and Border Protection (CBP), the Drug Enforcement Administration (DEA), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATFE), the Federal Bureau of Investigation (FBI), the United States Coast Guard (USCG), and the U.S. Attorney’s Office (USAO), along with other key Federal, State and local law enforcement agencies.

“(6) Foreign law enforcement agencies participating in BEST include Mexico’s Secretaria de Seguridad Publica (SSP), the Canada Border Services Agency (CBSA), the Ontario Provincial Police (OPP), and the Royal Canadian Mounted Police (RCMP).”

§ 241. Prevention of international child abduction

(a) Program established

The Secretary, through the Commissioner of U.S. Customs and Border Protection (referred to in this section as “CBP”), in coordination with the Secretary of State, the Attorney General, and the Director of the Federal Bureau of Investigation, shall establish a program that—

(1) seeks to prevent a child (as defined in section 1204(b)(1) of title 18) from departing from the territory of the United States if a parent or legal guardian of such child presents a court order from a court of competent jurisdiction prohibiting the removal of such child from the United States to a CBP Officer in sufficient time to prevent such departure for the duration of such court order; and

(2) leverages other existing authorities and processes to address the wrongful removal and return of a child.

(b) Interagency coordination

(1) In general

The Secretary of State shall convene and chair an interagency working group to prevent international parental child abduction. The group shall be composed of presidentially appointed, Senate confirmed officials from—

(A) the Department of State;

(B) the Department of Homeland Security, including U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement; and

(C) the Department of Justice, including the Federal Bureau of Investigation.

(2) Department of Defense

The Secretary of Defense shall designate an official within the Department of Defense—

(A) to coordinate with the Department of State on international child abduction issues; and

(B) to oversee activities designed to prevent or resolve international child abduction cases relating to active duty military service members.

(Pub. L. 107-296, title IV, § 433, as added Pub. L. 113-150, title III, § 301(a), Aug. 8, 2014, 128 Stat. 1822.)

§ 242. Department of Homeland Security Blue Campaign

(a) Definition

In this section, the term “human trafficking” means an act or practice described in paragraph (9) or (10)¹ of section 7102 of title 22.

(b) Establishment

There is established within the Department a program, which shall be known as the “Blue Campaign”. The Blue Campaign shall be headed by a Director, who shall be appointed by the Secretary.

(c) Purpose

The purpose of the Blue Campaign shall be to unify and coordinate Department efforts to address human trafficking.

(d) Responsibilities

The Secretary, working through the Director, shall, in accordance with subsection (e)—

(1) issue Department-wide guidance to appropriate Department personnel;

(2) develop training programs for such personnel;

(3) coordinate departmental efforts, including training for such personnel; and

(4) provide guidance and training on trauma-informed practices to ensure that human trafficking victims are afforded prompt access to victim support service providers, in addition to the assistance required under section 7105 of title 22, to address their immediate and long-term needs.

(e) Guidance and training

The Blue Campaign shall provide guidance and training to Department personnel and other Federal, State, tribal, and law enforcement personnel, as appropriate, regarding—

(1) programs to help identify instances of human trafficking;

(2) the types of information that should be collected and recorded in information technology systems utilized by the Department to help identify individuals suspected or convicted of human trafficking;

¹ See References in Text note below.

(3) systematic and routine information sharing within the Department and among Federal, State, tribal, and local law enforcement agencies regarding—

(A) individuals suspected or convicted of human trafficking; and

(B) patterns and practices of human trafficking;

(4) techniques to identify suspected victims of trafficking along the United States border and at airport security checkpoints;

(5) methods to be used by the Transportation Security Administration and personnel from other appropriate agencies to—

(A) train employees of the Transportation Security Administration to identify suspected victims of trafficking; and

(B) serve as a liaison and resource regarding human trafficking prevention to appropriate State, local, and private sector aviation workers and the traveling public;

(6) developing and utilizing, in consultation with the Blue Campaign Advisory Board established pursuant to subsection (g), resources such as indicator cards, fact sheets, pamphlets, posters, brochures, and radio and television campaigns to—

(A) educate partners and stakeholders; and

(B) increase public awareness of human trafficking;

(7) leveraging partnerships with State and local governmental, nongovernmental, and private sector organizations to raise public awareness of human trafficking; and

(8) any other activities the Secretary determines necessary to carry out the Blue Campaign.

(f) Web-based training programs

To enhance training opportunities, the Director of the Blue Campaign shall develop web-based interactive training videos that utilize a learning management system to provide online training opportunities. During the 10-year period beginning on the date that is 90 days after December 27, 2021, such training opportunities shall be made available to the following individuals:

(1) Federal, State, local, Tribal, and territorial law enforcement officers.

(2) Non-Federal correction system personnel.

(3) Such other individuals as the Director determines appropriate.

(g) Blue Campaign Advisory Board

(1) In general

There is established in the Department a Blue Campaign Advisory Board, which shall be comprised of representatives assigned by the Secretary from—

(A) the Office for Civil Rights and Civil Liberties of the Department;

(B) the Privacy Office of the Department; and

(C) not fewer than four other separate components or offices of the Department.

(2) Charter

The Secretary is authorized to issue a charter for the Blue Campaign Advisory Board, and such charter shall specify the following:

(A) The Board's mission, goals, and scope of its activities.

(B) The duties of the Board's representatives.

(C) The frequency of the Board's meetings.

(3) Consultation

The Director shall consult the Blue Campaign Advisory Board and, as appropriate, experts from other components and offices of the Center for Countering Human Trafficking of the Department regarding the following:

(A) Recruitment tactics used by human traffickers to inform the development of training and materials by the Blue Campaign.

(B) The development of effective awareness tools for distribution to Federal and non-Federal officials to identify and prevent instances of human trafficking.

(C) Identification of additional persons or entities that may be uniquely positioned to recognize signs of human trafficking and the development of materials for such persons.

(h) Consultation

With regard to the development of programs under the Blue Campaign and the implementation of such programs, the Director is authorized to consult with State, local, Tribal, and territorial agencies, non-governmental organizations, private sector organizations, and experts.

(Pub. L. 107–296, title IV, § 434, as added Pub. L. 115–125, § 2(a), Feb. 14, 2018, 132 Stat. 315; amended Pub. L. 117–81, div. F, title LXIV, § 6407, Dec. 27, 2021, 135 Stat. 2403.)

Editorial Notes

REFERENCES IN TEXT

Paragraphs (9) and (10) of section 7102 of title 22, referred to in subsec. (a), were redesignated pars. (11) and (12), respectively, of section 7102 of title 22 by Pub. L. 115–427, § 2(1), Jan. 9, 2019, 132 Stat. 5503.

AMENDMENTS

2021—Subsec. (e)(6). Pub. L. 117–81, § 6407(1), substituted “developing and utilizing, in consultation with the Blue Campaign Advisory Board established pursuant to subsection (g), resources” for “utilizing resources,” in introductory provisions.

Subsecs. (f) to (h). Pub. L. 117–81, § 6407(2), added subsecs. (f) to (h).

Statutory Notes and Related Subsidiaries

TRANSFER OF OTHER FUNCTIONS RELATED TO HUMAN TRAFFICKING

Pub. L. 117–322, § 6, Dec. 27, 2022, 136 Stat. 4436, provided that:

“(a) BLUE CAMPAIGN.—The functions and resources of the Blue Campaign located within the Office of Partnership and Engagement on the day before the date of the enactment of this Act [Dec. 27, 2022] are hereby transferred to CCHT [Center for Countering Human Trafficking].

“(b) OTHER TRANSFER.—

“(1) AUTHORIZATION.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security may transfer the functions and resources of any component, directorate, or other office of the Department of Homeland Security related to combating human trafficking to the CCHT.

“(2) NOTIFICATION.—Not later than 30 days before executing any transfer authorized under paragraph

(1), the Secretary of Homeland Security shall notify the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives of such planned transfer.”

INFORMATION TECHNOLOGY SYSTEMS

Pub. L. 115–125, §3, Feb. 14, 2018, 132 Stat. 316, provided that: “Not later than one year after the date of the enactment of this Act [Feb. 14, 2018], the Secretary of Homeland Security shall ensure, in accordance with the Department of Homeland Security-wide guidance required under section 434(d) of the Homeland Security Act of 2002 [6 U.S.C. 242(d)], as added by section 2 of this Act, the integration of information technology systems utilized within the Department to record and track information regarding individuals suspected or convicted of human trafficking (as such term is defined in such section).”

§ 242a. Department of Homeland Security Center for Countering Human Trafficking

(a) Establishment

(1) In general

The Secretary of Homeland Security shall operate, within U.S. Immigration and Customs Enforcement’s Homeland Security Investigations, the Center for Countering Human Trafficking (referred to in this Act as “CCHT”).

(2) Purpose

The purpose of CCHT shall be to serve at the forefront of the Department of Homeland Security’s unified global efforts to counter human trafficking through law enforcement operations and victim protection, prevention, and awareness programs.

(3) Administration

Homeland Security Investigations shall—

(A) maintain a concept of operations that identifies CCHT participants, funding, core functions, and personnel; and

(B) update such concept of operations, as needed, to accommodate its mission and the threats to such mission.

(4) Personnel

(A) Director

The Secretary of Homeland Security shall appoint a CCHT Director, who shall—

(i) be a member of the Senior Executive Service; and

(ii) serve as the Department of Homeland Security’s representative on human trafficking.

(B) Minimum core personnel requirements

Subject to appropriations, the Secretary of Homeland Security shall ensure that CCHT is staffed with at least 45 employees in order to maintain continuity of effort, subject matter expertise, and necessary support to the Department of Homeland Security, including—

(i) employees who are responsible for the Continued Presence Program and other victim protection duties;

(ii) employees who are responsible for training, including curriculum development, and public awareness and education;

(iii) employees who are responsible for stakeholder engagement, Federal inter-

agency coordination, multilateral partnerships, and policy;

(iv) employees who are responsible for public relations, human resources, evaluation, data analysis and reporting, and information technology;

(v) special agents and criminal analysts necessary to accomplish its mission of combating human trafficking and the importation of goods produced with forced labor; and

(vi) managers.

(b) Operations Unit

The CCHT Director shall operate, within CCHT, an Operations Unit, which shall, at a minimum—

(1) support criminal investigations of human trafficking (including sex trafficking and forced labor)—

(A) by developing, tracking, and coordinating leads; and

(B) by providing subject matter expertise;

(2) augment the enforcement of the prohibition on the importation of goods produced with forced labor through civil and criminal authorities;

(3) coordinate a Department-wide effort to conduct procurement audits and enforcement actions, including suspension and debarment, in order to mitigate the risk of human trafficking throughout Department acquisitions and contracts; and

(4) support all CCHT enforcement efforts with intelligence by conducting lead development, lead validation, case support, strategic analysis, and data analytics.

(c) Protection and Awareness Programs Unit

The CCHT Director shall operate, within CCHT, a Protection and Awareness Programs Unit, which shall—

(1) incorporate a victim-centered approach throughout Department of Homeland Security policies, training, and practices;

(2) operate a comprehensive Continued Presence program;

(3) conduct, review, and assist with Department of Homeland Security human trafficking training, screening, and identification tools and efforts;

(4) operate the Blue Campaign’s nationwide public awareness effort and any other awareness efforts needed to encourage victim identification and reporting to law enforcement and to prevent human trafficking; and

(5) coordinate external engagement, including training and events, regarding human trafficking with critical partners, including survivors, nongovernmental organizations, corporations, multilateral entities, law enforcement agencies, and other interested parties.

(Pub. L. 117–322, §3, Dec. 27, 2022, 136 Stat. 4433.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(1), is Pub. L. 117–322, Dec. 27, 2022, 136 Stat. 4433, known as the Countering Human Trafficking Act of 2021, which enacted this section and section 242b of this title and provisions set out as notes under this section and section 242 of

this title. For complete classification of this Act to the Code, see section 1 of Pub. L. 117–322, set out as a Short Title of 2022 Amendment note under section 101 of this title and Tables.

CODIFICATION

Section was enacted as part of the Countering Human Trafficking Act of 2021, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

Statutory Notes and Related Subsidiaries

FORCED LABOR REQUIREMENTS: DEPARTMENT OF HOMELAND SECURITY

Pub. L. 117–347, title IV, § 406(b), Jan. 5, 2023, 136 Stat. 6209, provided that:

“(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act [Jan. 5, 2023], the Secretary of Homeland Security shall establish a team of not less than 10 agents within the Center for Countering Human Trafficking of the Department of Homeland Security to be assigned to exclusively investigate labor trafficking.

“(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out paragraph (1) \$2,000,000 for each of fiscal years 2022 to 2027, to remain available until expended.”

SENSE OF CONGRESS

Pub. L. 117–322, § 2, Dec. 27, 2022, 136 Stat. 4433, provided that: “It is the sense of Congress that—

“(1) the victim-centered approach must become universally understood, adopted, and practiced;

“(2) criminal justice efforts must increase the focus on, and adeptness at, investigating and prosecuting forced labor cases;

“(3) corporations must eradicate forced labor from their supply chains;

“(4) the Department of Homeland Security must lead by example—

“(A) by ensuring that its government supply chain of contracts and procurement are not tainted by forced labor; and

“(B) by leveraging all of its authorities against the importation of goods produced with forced labor; and

“(5) human trafficking training, awareness, identification, and screening efforts—

“(A) are a necessary first step for prevention, protection, and enforcement; and

“(B) should be evidence-based to be most effective.”

§ 242b. Reports

(a) Information sharing to facilitate reports and analysis

Each subagency of the Department of Homeland Security shall share with CCHT—

(1) any information needed by CCHT to develop the strategy and proposal required under section 4(a);¹ and

(2) any additional data analysis to help CCHT better understand the issues surrounding human trafficking.

(b) Report to Congress

Not later than 1 year after December 27, 2022, the CCHT Director shall submit a report to Congress that identifies any legislation that is needed to facilitate the Department of Homeland Security’s mission to end human trafficking.

(c) Annual report on potential human trafficking victims

Not later than 1 year after December 27, 2022, and annually thereafter, the Secretary of Home-

land Security shall submit a report to Congress that includes—

(1) the numbers of screened and identified potential victims of trafficking (as defined in section 7102(17) of title 22) at or near the international border between the United States and Mexico, including a summary of the age ranges of such victims and their countries of origin; and

(2) an update on the Department of Homeland Security’s efforts to establish protocols and methods for personnel to report human trafficking, pursuant to the Department of Homeland Security Strategy to Combat Human Trafficking, the Importation of Goods Produced with Forced Labor, and Child Sexual Exploitation, published in January 2020.

(Pub. L. 117–322, § 5, Dec. 27, 2022, 136 Stat. 4435.)

Editorial Notes

REFERENCES IN TEXT

CCHT, referred to in text, means the Center for Countering Human Trafficking, see section 242a(a)(1) of this title.

Section 4(a), referred to in subsec. (a)(1), means section 4(a) of Pub. L. 117–322, Dec. 27, 2022, 136 Stat. 4435, which is not classified to the Code.

CODIFICATION

Section was enacted as part of the Countering Human Trafficking Act of 2021, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

§ 243. Maritime operations coordination plan

(a) In general

Not later than 180 days after October 5, 2018, and biennially thereafter, the Secretary shall—

(1) update the Maritime Operations Coordination Plan, published by the Department on July 7, 2011, to strengthen coordination, planning, information sharing, and intelligence integration for maritime operations of components and offices of the Department with responsibility for maritime security missions; and

(2) submit each update to the Committee on Commerce, Science, and Transportation and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives.

(b) Contents

Each update shall address the following:

(1) Coordinating the planning, integration of maritime operations, and development of joint maritime domain awareness efforts of any component or office of the Department with responsibility for maritime security missions.

(2) Maintaining effective information sharing and, as appropriate, intelligence integration, with Federal, State, and local officials and the private sector, regarding threats to maritime security.

(3) Cooperating and coordinating with Federal departments and agencies, and State and local agencies, in the maritime environment, in support of maritime security missions.

(4) Highlighting the work completed within the context of other national and Department

¹ See References in Text note below.

maritime security strategic guidance and how that work fits with the Maritime Operations Coordination Plan.

(Pub. L. 107-296, title IV, § 435, as added Pub. L. 115-254, div. J, § 1807(a), Oct. 5, 2018, 132 Stat. 3536.)

§ 244. Maritime security capabilities assessments

Not later than 180 days after October 5, 2018, and annually thereafter, the Secretary shall submit to the Committee on Commerce, Science, and Transportation and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives, an assessment of the number and type of maritime assets and the number of personnel required to increase the Department's maritime response rate pursuant to section 223 of this title.

(Pub. L. 107-296, title IV, § 436, as added Pub. L. 115-254, div. J, § 1811(a), Oct. 5, 2018, 132 Stat. 3538.)

§ 245. Operational data sharing capability

(a) In general

Not later than 18 months after December 23, 2022, the Secretary shall, consistent with the ongoing Integrated Multi-Domain Enterprise joint effort by the Department of Homeland Security and the Department of Defense, establish a secure, centralized capability to allow real-time, or near real-time, data and information sharing between Customs and Border Protection and the Coast Guard for purposes of maritime boundary domain awareness and enforcement activities along the maritime boundaries of the United States, including the maritime boundaries in the northern and southern continental United States and Alaska.

(b) Priority

In establishing the capability under subsection (a), the Secretary shall prioritize enforcement areas experiencing the highest levels of enforcement activity.

(c) Requirements

The capability established under subsection (a) shall be sufficient for the secure sharing of data, information, and surveillance necessary for operational missions, including data from governmental assets, irrespective of whether an asset located in or around mission operation areas belongs to the Coast Guard, Customs and Border Protection, or any other partner agency.

(d) Elements

The Commissioner of Customs and Border Protection and the Commandant shall jointly—

- (1) assess and delineate the types of data and quality of data sharing needed to meet the respective operational missions of Customs and Border Protection and the Coast Guard, including video surveillance, seismic sensors, infrared detection, space-based remote sensing, and any other data or information necessary;
- (2) develop appropriate requirements and processes for the credentialing of personnel of

Customs and Border Protection and personnel of the Coast Guard to access and use the capability established under subsection (a); and

- (3) establish a cost-sharing agreement for the long-term operation and maintenance of the capability and the assets that provide data to the capability.

(e) Report

Not later than 2 years after December 23, 2022, the Secretary shall submit to the Committee on Commerce, Science, and Transportation and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives a report on the establishment of the capability under this section.

(f) Rule of construction

Nothing in this section may be construed to authorize the Coast Guard, Customs and Border Protection, or any other partner agency to acquire, share, or transfer personal information relating to an individual in violation of any Federal or State law or regulation.

(Pub. L. 117-263, div. K, title CXII, § 11264, Dec. 23, 2022, 136 Stat. 4062.)

Editorial Notes

CODIFICATION

Section was enacted as part of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

Statutory Notes and Related Subsidiaries

RULE OF CONSTRUCTION

Pub. L. 117-263, div. K, § 11003, Dec. 23, 2022, 136 Stat. 4003, provided that:

“(a) IN GENERAL.—Nothing in this division [div. K (§§ 11001–11808) of Pub. L. 117-263, see Tables for classification] may be construed—

“(1) to satisfy any requirement for government-to-government consultation with Tribal governments; or

“(2) to affect or modify any treaty or other right of any Tribal government.

“(b) TRIBAL GOVERNMENT DEFINED.—In this section, the term ‘Tribal government’ means the recognized governing body of any Indian or Alaska Native Tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of the enactment of this Act [Dec. 23, 2022] pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).”

DEFINITIONS

For definitions of “Secretary” and “Commandant” as referred to in this section, see section 11002 of div. K of Pub. L. 117-263, set out as a note under section 106 of Title 14, Coast Guard.

PART D—IMMIGRATION ENFORCEMENT FUNCTIONS

§ 251. Transfer of functions

In accordance with subchapter XII (relating to transition provisions), there shall be transferred from the Commissioner of Immigration and Naturalization to the Secretary all functions per-

formed under the following programs, and all personnel, assets, and liabilities pertaining to such programs, immediately before such transfer occurs:

- (1) The Border Patrol program.
- (2) The detention and removal program.
- (3) The intelligence program.
- (4) The investigations program.
- (5) The inspections program.

(Pub. L. 107-296, title IV, § 441, Nov. 25, 2002, 116 Stat. 2192; Pub. L. 114-125, title VIII, § 802(g)(1)(B)(v)(I), Feb. 24, 2016, 130 Stat. 212.)

Editorial Notes

AMENDMENTS

2016—Pub. L. 114-125 substituted “Transfer of functions” for “Transfer of functions to Under Secretary for Border and Transportation Security” in section catchline and “Secretary” for “Under Secretary for Border and Transportation Security” in introductory provisions.

§ 252. Establishment of Bureau of Border Security

(a) Establishment of Bureau

(1) In general

There shall be in the Department of Homeland Security a bureau to be known as the “Bureau of Border Security”.

(2) Assistant Secretary

The head of the Bureau of Border Security shall be the Assistant Secretary of the Bureau of Border Security, who—

(A) shall report directly to the Under Secretary for Border and Transportation Security; and

(B) shall have a minimum of 5 years professional experience in law enforcement, and a minimum of 5 years of management experience.

(3) Functions

The Assistant Secretary of the Bureau of Border Security—

(A) shall establish the policies for performing such functions as are—

(i) transferred to the Under Secretary for Border and Transportation Security by section 251 of this title and delegated to the Assistant Secretary by the Under Secretary for Border and Transportation Security; or

(ii) otherwise vested in the Assistant Secretary by law;

(B) shall oversee the administration of such policies; and

(C) shall advise the Under Secretary for Border and Transportation Security with respect to any policy or operation of the Bureau of Border Security that may affect the Bureau of Citizenship and Immigration Services established under part E of this subchapter, including potentially conflicting policies or operations.

(4) Program to collect information relating to foreign students

The Assistant Secretary of the Bureau of Border Security shall be responsible for ad-

ministering the program to collect information relating to nonimmigrant foreign students and other exchange program participants described in section 1372 of title 8, including the Student and Exchange Visitor Information System established under that section, and shall use such information to carry out the enforcement functions of the Bureau.

(5) Managerial rotation program

(A) In general

Not later than 1 year after the date on which the transfer of functions specified under section 251 of this title takes effect, the Assistant Secretary of the Bureau of Border Security shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, as a GS-14 or above, shall—

- (i) gain some experience in all the major functions performed by such bureau; and
- (ii) work in at least one local office of such bureau.

(B) Report

Not later than 2 years after the date on which the transfer of functions specified under section 251 of this title takes effect, the Secretary shall submit a report to the Congress on the implementation of such program.

(b) Chief of Policy and Strategy

(1) In general

There shall be a position of Chief of Policy and Strategy for the Bureau of Border Security.

(2) Functions

In consultation with Bureau of Border Security personnel in local offices, the Chief of Policy and Strategy shall be responsible for—

(A) making policy recommendations and performing policy research and analysis on immigration enforcement issues; and

(B) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services (established under part E of this subchapter), as appropriate.

(c) Legal advisor

There shall be a principal legal advisor to the Assistant Secretary of the Bureau of Border Security. The legal advisor shall provide specialized legal advice to the Assistant Secretary of the Bureau of Border Security and shall represent the bureau in all exclusion, deportation, and removal proceedings before the Executive Office for Immigration Review.

(Pub. L. 107-296, title IV, § 442, Nov. 25, 2002, 116 Stat. 2193.)

Editorial Notes

REFERENCES IN TEXT

Part E of this subchapter, referred to in subsecs. (a)(3)(C) and (b)(2)(B), was in the original “subtitle E”, meaning subtitle E (§§ 451-462) of title IV of Pub. L.

107–296, Nov. 25, 2002, 116 Stat. 2195, which enacted part E (§271 et seq.) of this subchapter, amended sections 1356 and 1573 of Title 8, Aliens and Nationality, and enacted provisions set out as a note under section 271 of this title. For complete classification of subtitle E to the Code, see Tables.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Bureau of Border Security, referred to in section catchline and text, changed to Bureau of Immigration and Customs Enforcement by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108–32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

§ 253. Professional responsibility and quality review

The Secretary shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of U.S. Immigration and Customs Enforcement that are not subject to investigation by the Inspector General for the Department;

(2) inspecting the operations of U.S. Immigration and Customs Enforcement and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of U.S. Immigration and Customs Enforcement.

(Pub. L. 107–296, title IV, §443, Nov. 25, 2002, 116 Stat. 2194; Pub. L. 114–125, title VIII, §802(g)(1)(B)(v)(II), Feb. 24, 2016, 130 Stat. 212.)

Editorial Notes

AMENDMENTS

2016—Pub. L. 114–125 substituted “Secretary” for “Under Secretary for Border and Transportation Security” in introductory provisions and “U.S. Immigration and Customs Enforcement” for “the Bureau of Border Security” in pars. (1) to (3).

§ 254. Employee discipline

Notwithstanding any other provision of law, the Secretary may impose disciplinary action on any employee of U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection who willfully deceives Congress or agency leadership on any matter.

(Pub. L. 107–296, title IV, §444, Nov. 25, 2002, 116 Stat. 2194; Pub. L. 114–125, title VIII, §802(g)(1)(B)(v)(III), Feb. 24, 2016, 130 Stat. 212.)

Editorial Notes

AMENDMENTS

2016—Pub. L. 114–125 amended section generally. Prior to amendment, text read as follows: “The Under Secretary for Border and Transportation Security may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Border Security who willfully deceives the Congress or agency leadership on any matter.”

§ 255. Report on improving enforcement functions

(a) In general

The Secretary, not later than 1 year after being sworn into office, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report with a plan detailing how the Bureau of Border Security, after the transfer of functions specified under section 251 of this title takes effect, will enforce comprehensively, effectively, and fairly all the enforcement provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) relating to such functions.

(b) Consultation

In carrying out subsection (a), the Secretary of Homeland Security shall consult with the Attorney General, the Secretary of State, the Director of the Federal Bureau of Investigation, the Secretary of the Treasury, the Secretary of Labor, the Commissioner of Social Security, the Director of the Executive Office for Immigration Review, and the heads of State and local law enforcement agencies to determine how to most effectively conduct enforcement operations.

(Pub. L. 107–296, title IV, §445, Nov. 25, 2002, 116 Stat. 2194.)

Editorial Notes

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (a), is act June 27, 1952, ch. 477, 66 Stat. 163, which is classified principally to chapter 12 (§1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Bureau of Border Security, referred to in subsec. (a), changed to Bureau of Immigration and Customs Enforcement by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108–32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

§ 256. Sense of Congress regarding construction of fencing near San Diego, California

It is the sense of the Congress that completing the 14-mile border fence project required to be carried out under section 102(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) should be a priority for the Secretary.

(Pub. L. 107–296, title IV, §446, Nov. 25, 2002, 116 Stat. 2195.)

Editorial Notes

REFERENCES IN TEXT

Section 102(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, referred to in text, is section 102(b) of title I of div. C of Pub. L. 104–208, which is set out as a note under section 1103 of Title 8, Aliens and Nationality.

§ 257. Report

(a) In general

The Secretary of Homeland Security shall submit an annual report to the congressional com-

mittees set forth in subsection (b) that includes a description of—

- (1) the cross-border tunnels along the border between Mexico and the United States discovered during the preceding fiscal year; and
- (2) the needs of the Department of Homeland Security to effectively prevent, investigate and prosecute border tunnel construction along the border between Mexico and the United States.

(b) Congressional committees

The congressional committees set forth in this subsection are—

- (1) the Committee on Homeland Security and Governmental Affairs of the Senate;
- (2) the Committee on the Judiciary of the Senate;
- (3) the Committee on Appropriations of the Senate;
- (4) the Committee on Homeland Security of the House of Representatives;
- (5) the Committee on the Judiciary of the House of Representatives; and
- (6) the Committee on Appropriations of the House of Representatives.

(Pub. L. 112–127, § 8, June 5, 2012, 126 Stat. 371.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Border Tunnel Prevention Act of 2012, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

Statutory Notes and Related Subsidiaries

DHS ILLICIT CROSS-BORDER TUNNEL DEFENSE

Pub. L. 117–263, div. G, title LXXI, § 7134, Dec. 23, 2022, 136 Stat. 3649, provided that:

“(a) COUNTER ILLICIT CROSS-BORDER TUNNEL OPERATIONS STRATEGIC PLAN.—

“(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2022], the Commissioner of U.S. Customs and Border Protection, in coordination with the Under Secretary for Science and Technology, and, as appropriate, other officials of the Department of Homeland Security, shall develop a counter illicit cross-border tunnel operations strategic plan (in this section referred to as the ‘strategic plan’) to address the following:

“(A) Risk-based criteria to be used to prioritize the identification, breach, assessment, and remediation of illicit cross-border tunnels.

“(B) Promote the use of innovative technologies to identify, breach, assess, and remediate illicit cross-border tunnels in a manner that, among other considerations, reduces the impact of such activities on surrounding communities.

“(C) Processes to share relevant illicit cross-border tunnel location, operations, and technical information.

“(D) Indicators of specific types of illicit cross-border tunnels found in each U.S. Border Patrol sector identified through operations to be periodically disseminated to U.S. Border Patrol sector chiefs to educate field personnel.

“(E) A counter illicit cross-border tunnel operations resource needs assessment that includes consideration of the following:

“(i) Technology needs.

“(ii) Staffing needs, including the following:

“(I) A position description for counter illicit cross-border tunnel operations personnel.

“(II) Any specialized skills required of such personnel.

“(III) The number of such full time personnel, disaggregated by U.S. Border Patrol sector.

“(2) REPORT TO CONGRESS ON STRATEGIC PLAN.—Not later than one year after the development of the strategic plan, the Commissioner of U.S. Customs and Border Protection shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the implementation of the strategic plan.

“(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Commissioner of U.S. Customs and Border Protection \$1,000,000 for each of fiscal years 2023 and 2024 to carry out—

“(1) the development of the strategic plan; and

“(2) remediation operations of illicit cross-border tunnels in accordance with the strategic plan to the maximum extent practicable.”

PART E—CITIZENSHIP AND IMMIGRATION SERVICES

§ 271. Establishment of Bureau of Citizenship and Immigration Services

(a) Establishment of Bureau

(1) In general

There shall be in the Department a bureau to be known as the “Bureau of Citizenship and Immigration Services”.

(2) Director

The head of the Bureau of Citizenship and Immigration Services shall be the Director of the Bureau of Citizenship and Immigration Services, who—

(A) shall report directly to the Deputy Secretary;

(B) shall have a minimum of 5 years of management experience; and

(C) shall be paid at the same level as the Assistant Secretary of the Bureau of Border Security.

(3) Functions

The Director of the Bureau of Citizenship and Immigration Services—

(A) shall establish the policies for performing such functions as are transferred to the Director by this section or this chapter or otherwise vested in the Director by law;

(B) shall oversee the administration of such policies;

(C) shall advise the Deputy Secretary with respect to any policy or operation of the Bureau of Citizenship and Immigration Services that may affect the Bureau of Border Security of the Department, including potentially conflicting policies or operations;

(D) shall establish national immigration services policies and priorities;

(E) shall meet regularly with the Ombudsman described in section 272 of this title to correct serious service problems identified by the Ombudsman; and

(F) shall establish procedures requiring a formal response to any recommendations submitted in the Ombudsman’s annual report to Congress within 3 months after its submission to Congress.

(4) Managerial rotation program

(A) In general

Not later than 1 year after the effective date specified in section 455,¹ the Director of

¹ See References in Text note below.

the Bureau of Citizenship and Immigration Services shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, as a GS-14 or above, shall—

- (i) gain some experience in all the major functions performed by such bureau; and
- (ii) work in at least one field office and one service center of such bureau.

(B) Report

Not later than 2 years after the effective date specified in section 455,¹ the Secretary shall submit a report to Congress on the implementation of such program.

(5) Pilot initiatives for backlog elimination

The Director of the Bureau of Citizenship and Immigration Services is authorized to implement innovative pilot initiatives to eliminate any remaining backlog in the processing of immigration benefit applications, and to prevent any backlog in the processing of such applications from recurring, in accordance with section 1573(a) of title 8. Such initiatives may include measures such as increasing personnel, transferring personnel to focus on areas with the largest potential for backlog, and streamlining paperwork.

(b) Transfer of functions from Commissioner

In accordance with subchapter XII (relating to transition provisions), there are transferred from the Commissioner of Immigration and Naturalization to the Director of the Bureau of Citizenship and Immigration Services the following functions, and all personnel, infrastructure, and funding provided to the Commissioner in support of such functions immediately before the effective date specified in section 455:¹

- (1) Adjudications of immigrant visa petitions.
- (2) Adjudications of naturalization petitions.
- (3) Adjudications of asylum and refugee applications.
- (4) Adjudications performed at service centers.
- (5) All other adjudications performed by the Immigration and Naturalization Service immediately before the effective date specified in section 455.¹

(c) Chief of Policy and Strategy

(1) In general

There shall be a position of Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services.

(2) Functions

In consultation with Bureau of Citizenship and Immigration Services personnel in field offices, the Chief of Policy and Strategy shall be responsible for—

- (A) making policy recommendations and performing policy research and analysis on immigration services issues; and
- (B) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Border Security of the Department.

(d) Legal advisor

(1) In general

There shall be a principal legal advisor to the Director of the Bureau of Citizenship and Immigration Services.

(2) Functions

The legal advisor shall be responsible for—

- (A) providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Director of the Bureau of Citizenship and Immigration Services with respect to legal matters affecting the Bureau of Citizenship and Immigration Services; and
- (B) representing the Bureau of Citizenship and Immigration Services in visa petition appeal proceedings before the Executive Office for Immigration Review.

(e) Budget Officer

(1) In general

There shall be a Budget Officer for the Bureau of Citizenship and Immigration Services.

(2) Functions

(A)² In general

The Budget Officer shall be responsible for—

- (i) formulating and executing the budget of the Bureau of Citizenship and Immigration Services;
- (ii) financial management of the Bureau of Citizenship and Immigration Services; and
- (iii) collecting all payments, fines, and other debts for the Bureau of Citizenship and Immigration Services.

(f) Chief of Office of Citizenship

(1) In general

There shall be a position of Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services.

(2) Functions

The Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services shall be responsible for promoting instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens of the United States, including the development of educational materials.

(Pub. L. 107-296, title IV, § 451, Nov. 25, 2002, 116 Stat. 2195; Pub. L. 110-382, § 2(a), Oct. 9, 2008, 122 Stat. 4087.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(3)(A), 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.

For the effective date specified in section 455, referred to in subsecs. (a)(4) and (b), see Effective Date note below.

² So in original. There is no subpar. (B).

AMENDMENTS

2008—Subsec. (g). Pub. L. 110-382, §§2(a), 4, temporarily added subsec. (g) which established an Office of the FBI Liaison in the Department of Homeland Security, defined its functions, and authorized appropriations. See Termination Date of 2008 Amendment note below.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Bureau of Border Security, referred to in subsecs. (a)(2)(C), (3)(C), and (c)(2)(B), changed to Bureau of Immigration and Customs Enforcement by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108-32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

TERMINATION DATE OF 2008 AMENDMENT

Pub. L. 110-382, §4, Oct. 9, 2008, 122 Stat. 4089, provided that: “This Act [amending this section and section 1439 of Title 8, Aliens and Nationality, and enacting provisions set out as notes under this section and section 1101 of Title 8] and the amendments made by this Act are repealed on the date that is 5 years after the date of the enactment of this Act [Oct. 9, 2008].”

EFFECTIVE DATE

Pub. L. 107-296, title IV, §455, Nov. 25, 2002, 116 Stat. 2200, provided that: “Notwithstanding section 4 [enacting provisions set out as a note under section 101 of this title], sections 451 through 456 [enacting this section and sections 272 to 275 of this title], and the amendments made by such sections, shall take effect on the date on which the transfer of functions specified under section 441 [enacting section 251 of this title] takes effect.” [For date on which transfer of functions specified under section 441 takes effect, see section 251 of this title and Department of Homeland Security Reorganization Plan, Nov. 25, 2002, set out as a note under section 542 of this title.]

RULEMAKING

Pub. L. 110-382, §2(b), Oct. 9, 2008, 122 Stat. 4087, which required the Secretary of Homeland Security, in consultation with the Attorney General, to promulgate rules to carry out the amendment made by section 2(a) of Pub. L. 110-382 no later than 180 days after Oct. 9, 2008, was repealed by Pub. L. 110-382, §4, Oct. 9, 2008, 122 Stat. 4089, effective 5 years after Oct. 9, 2008.

§ 272. Citizenship and Immigration Services Ombudsman

(a) In general

Within the Department, there shall be a position of Citizenship and Immigration Services Ombudsman (in this section referred to as the “Ombudsman”). The Ombudsman shall report directly to the Deputy Secretary. The Ombudsman shall have a background in customer services as well as immigration law.

(b) Functions

It shall be the function of the Ombudsman—

- (1) to assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;
- (2) to identify areas in which individuals and employers have problems in dealing with the Bureau of Citizenship and Immigration Services; and
- (3) to the extent possible, to propose changes in the administrative practices of the Bureau of Citizenship and Immigration Services to

mitigate problems identified under paragraph (2).

(c) Annual reports

(1) Objectives

Not later than June 30 of each calendar year, the Ombudsman shall report to the Committee on the Judiciary of the House of Representatives and the Senate on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and—

(A) shall identify the recommendations the Office of the Ombudsman has made on improving services and responsiveness of the Bureau of Citizenship and Immigration Services;

(B) shall contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems;

(C) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action has been taken and the result of such action;

(D) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action remains to be completed and the period during which each item has remained on such inventory;

(E) shall contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and shall identify any official of the Bureau of Citizenship and Immigration Services who is responsible for such inaction;

(F) shall contain recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications; and

(G) shall include such other information as the Ombudsman may deem advisable.

(2) Report to be submitted directly

Each report required under this subsection shall be provided directly to the committees described in paragraph (1) without any prior comment or amendment from the Secretary, Deputy Secretary, Director of the Bureau of Citizenship and Immigration Services, or any other officer or employee of the Department or the Office of Management and Budget.

(d) Other responsibilities

The Ombudsman—

(1) shall monitor the coverage and geographic allocation of local offices of the Ombudsman;

(2) shall develop guidance to be distributed to all officers and employees of the Bureau of Citizenship and Immigration Services outlining the criteria for referral of inquiries to local offices of the Ombudsman;

(3) shall ensure that the local telephone number for each local office of the Ombuds-

man is published and available to individuals and employers served by the office; and

(4) shall meet regularly with the Director of the Bureau of Citizenship and Immigration Services to identify serious service problems and to present recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers.

(e) Personnel actions

(1) In general

The Ombudsman shall have the responsibility and authority—

(A) to appoint local ombudsmen and make available at least 1 such ombudsman for each State; and

(B) to evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of the Ombudsman.

(2) Consultation

The Ombudsman may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services in carrying out the Ombudsman's responsibilities under this subsection.

(f) Responsibilities of Bureau of Citizenship and Immigration Services

The Director of the Bureau of Citizenship and Immigration Services shall establish procedures requiring a formal response to all recommendations submitted to such director by the Ombudsman within 3 months after submission to such director.

(g) Operation of local offices

(1) In general

Each local ombudsman—

(A) shall report to the Ombudsman or the delegate thereof;

(B) may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services regarding the daily operation of the local office of such ombudsman;

(C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or employer that the local offices of the Ombudsman operate independently of any other component of the Department and report directly to Congress through the Ombudsman; and

(D) at the local ombudsman's discretion, may determine not to disclose to the Bureau of Citizenship and Immigration Services contact with, or information provided by, such individual or employer.

(2) Maintenance of independent communications

Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office address, that is separate from those maintained by the Bureau of Citizenship and Immigration Services, or any component of the Bureau of Citizenship and Immigration Services.

(Pub. L. 107–296, title IV, § 452, Nov. 25, 2002, 116 Stat. 2197.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective on the date on which the transfer of functions specified under section 251 of this title takes effect, see section 455 of Pub. L. 107–296, set out as a note under section 271 of this title.

§ 273. Professional responsibility and quality review

(a) In general

The Director of the Bureau of Citizenship and Immigration Services shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Citizenship and Immigration Services that are not subject to investigation by the Inspector General for the Department;

(2) inspecting the operations of the Bureau of Citizenship and Immigration Services and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of the Bureau of Citizenship and Immigration Services.

(b) Special considerations

In providing assessments in accordance with subsection (a)(2) with respect to a decision of the Bureau of Citizenship and Immigration Services, or any of its components, consideration shall be given to—

(1) the accuracy of the findings of fact and conclusions of law used in rendering the decision;

(2) any fraud or misrepresentation associated with the decision; and

(3) the efficiency with which the decision was rendered.

(Pub. L. 107–296, title IV, § 453, Nov. 25, 2002, 116 Stat. 2199.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective on the date on which the transfer of functions specified under section 251 of this title takes effect, see section 455 of Pub. L. 107–296, set out as a note under section 271 of this title.

§ 274. Employee discipline

The Director of the Bureau of Citizenship and Immigration Services may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Citizenship and Immigration Services who willfully deceives Congress or agency leadership on any matter.

(Pub. L. 107–296, title IV, § 454, Nov. 25, 2002, 116 Stat. 2200.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective on the date on which the transfer of functions specified under section 251 of this title takes

effect, see section 455 of Pub. L. 107-296, set out as a note under section 271 of this title.

§ 275. Transition

(a) References

With respect to any function transferred by this part to, and exercised on or after the effective date specified in section 455¹ by, the Director of the Bureau of Citizenship and Immigration Services, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Bureau of Citizenship and Immigration Services; or

(2) to such component is deemed to refer to the Bureau of Citizenship and Immigration Services.

(b) Other transition issues

(1) Exercise of authorities

Except as otherwise provided by law, a Federal official to whom a function is transferred by this part may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in section 455.¹

(2) Transfer and allocation of appropriations and personnel

The personnel of the Department of Justice employed in connection with the functions transferred by this part (and functions that the Secretary determines are properly related to the functions of the Bureau of Citizenship and Immigration Services), and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this part, subject to section 1531 of title 31, shall be transferred to the Director of the Bureau of Citizenship and Immigration Services for allocation to the appropriate component of the Department. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated. The Secretary shall have the right to adjust or realign transfers of funds and personnel effected pursuant to this part for a period of 2 years after the effective date specified in section 455.¹

(Pub. L. 107-296, title IV, § 456, Nov. 25, 2002, 116 Stat. 2200.)

Editorial Notes

REFERENCES IN TEXT

This part, referred to in text, was in the original “this subtitle”, meaning subtitle E (§§ 451-462) of title IV of Pub. L. 107-296, Nov. 25, 2002, 116 Stat. 2195, which

¹ See References in Text note below.

enacted this part, amended sections 1356 and 1573 of Title 8, Aliens and Nationality, and enacted provisions set out as a note under section 271 of this title. For complete classification of subtitle E to the Code, see Tables.

For the effective date specified in section 455, referred to in text, see section 455 of Pub. L. 107-296, set out as an Effective Date note under section 271 of this title.

CODIFICATION

In subsec. (b)(2), “section 1531 of title 31” substituted for “section 202 of the Budget and Accounting Procedures Act of 1950” on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective on the date on which the transfer of functions specified under section 251 of this title takes effect, see section 455 of Pub. L. 107-296, set out as a note under section 271 of this title.

§ 276. Report on improving immigration services

(a) In general

The Secretary, not later than 1 year after the effective date of this chapter, shall submit to the Committees on the Judiciary and Appropriations of the House of Representatives and of the Senate a report with a plan detailing how the Bureau of Citizenship and Immigration Services, after the transfer of functions specified in this part takes effect, will complete efficiently, fairly, and within a reasonable time, the adjudications described in paragraphs (1) through (5) of section 271(b) of this title.

(b) Contents

For each type of adjudication to be undertaken by the Director of the Bureau of Citizenship and Immigration Services, the report shall include the following:

(1) Any potential savings of resources that may be implemented without affecting the quality of the adjudication.

(2) The goal for processing time with respect to the application.

(3) Any statutory modifications with respect to the adjudication that the Secretary considers advisable.

(c) Consultation

In carrying out subsection (a), the Secretary shall consult with the Secretary of State, the Secretary of Labor, the Assistant Secretary of the Bureau of Border Security of the Department, and the Director of the Executive Office for Immigration Review to determine how to streamline and improve the process for applying for and making adjudications described in section 271(b) of this title and related processes.

(Pub. L. 107-296, title IV, § 459, Nov. 25, 2002, 116 Stat. 2201.)

Editorial Notes

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a), is 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of this title.

Statutory Notes and Related Subsidiaries**CHANGE OF NAME**

Bureau of Border Security, referred to in subsec. (c), changed to Bureau of Immigration and Customs Enforcement by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108-32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

§ 277. Report on responding to fluctuating needs

Not later than 30 days after November 25, 2002, the Attorney General shall submit to Congress a report on changes in law, including changes in authorizations of appropriations and in appropriations, that are needed to permit the Immigration and Naturalization Service, and, after the transfer of functions specified in this part takes effect, the Bureau of Citizenship and Immigration Services of the Department, to ensure a prompt and timely response to emergent, unforeseen, or impending changes in the number of applications for immigration benefits, and otherwise to ensure the accommodation of changing immigration service needs.

(Pub. L. 107-296, title IV, § 460, Nov. 25, 2002, 116 Stat. 2201.)

§ 278. Application of Internet-based technologies**(a) Establishment of tracking system**

The Secretary, not later than 1 year after the effective date of this chapter, in consultation with the Technology Advisory Committee established under subsection (c), shall establish an Internet-based system, that will permit a person, employer, immigrant, or nonimmigrant who has filings with the Secretary for any benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), access to online information about the processing status of the filing involved.

(b) Feasibility study for online filing and improved processing**(1) Online filing**

The Secretary, in consultation with the Technology Advisory Committee established under subsection (c), shall conduct a feasibility study on the online filing of the filings described in subsection (a). The study shall include a review of computerization and technology of the Immigration and Naturalization Service relating to the immigration services and processing of filings related to immigrant services. The study shall also include an estimate of the timeframe and cost and shall consider other factors in implementing such a filing system, including the feasibility of fee payment online.

(2) Report

A report on the study under this subsection shall be submitted to the Committees on the Judiciary of the House of Representatives and the Senate not later than 1 year after the effective date of this chapter.

(c) Technology Advisory Committee**(1) Establishment**

The Secretary shall establish, not later than 60 days after the effective date of this chapter,

an advisory committee (in this section referred to as the “Technology Advisory Committee”) to assist the Secretary in—

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b).

The Technology Advisory Committee shall be established after consultation with the Committees on the Judiciary of the House of Representatives and the Senate.

(2) Composition

The Technology Advisory Committee shall be composed of representatives from high technology companies capable of establishing and implementing the system in an expeditious manner, and representatives of persons who may use the tracking system described in subsection (a) and the online filing system described in subsection (b)(1).

(Pub. L. 107-296, title IV, § 461, Nov. 25, 2002, 116 Stat. 2202.)

Editorial Notes**REFERENCES IN TEXT**

The effective date of this chapter, referred to in subsecs. (a), (b)(2), and (c)(1), is 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of this title.

The Immigration and Nationality Act, referred to in subsec. (a), is act June 27, 1952, ch. 477, 66 Stat. 163, which is classified principally to chapter 12 (§1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

Statutory Notes and Related Subsidiaries**TERMINATION OF ADVISORY COMMITTEES**

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to expiration of such 2-year period, or in the case of a committee established by Congress, its duration is otherwise provided for by law. See section 1013 of Title 5, Government Organization and Employees.

§ 279. Children’s affairs**(a) Transfer of functions**

There are transferred to the Director of the Office of Refugee Resettlement of the Department of Health and Human Services functions under the immigration laws of the United States with respect to the care of unaccompanied alien children that were 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 effective date specified in subsection (d).

(b) Functions**(1) In general**

Pursuant to the transfer made by subsection (a), the Director of the Office of Refugee Resettlement shall be responsible for—

(A) coordinating and implementing the care and placement of unaccompanied alien

children who are in Federal custody by reason of their immigration status, including developing a plan to be submitted to Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child, consistent with the law regarding appointment of counsel that is in effect on November 25, 2002;

(B) ensuring that the interests of the child are considered in decisions and actions relating to the care and custody of an unaccompanied alien child;

(C) making placement determinations for all unaccompanied alien children who are in Federal custody by reason of their immigration status;

(D) implementing the placement determinations;

(E) implementing policies with respect to the care and placement of unaccompanied alien children;

(F) identifying a sufficient number of qualified individuals, entities, and facilities to house unaccompanied alien children;

(G) overseeing the infrastructure and personnel of facilities in which unaccompanied alien children reside;

(H) reuniting unaccompanied alien children with a parent abroad in appropriate cases;

(I) compiling, updating, and publishing at least annually a state-by-state list of professionals or other entities qualified to provide guardian and attorney representation services for unaccompanied alien children;

(J) maintaining statistical information and other data on unaccompanied alien children for whose care and placement the Director is responsible, which shall include—

(i) biographical information, such as a child's name, gender, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the child came into Federal custody by reason of his or her immigration status;

(iii) information relating to the child's placement, removal, or release from each facility in which the child has resided;

(iv) in any case in which the child is placed in detention or released, an explanation relating to the detention or release; and

(v) the disposition of any actions in which the child is the subject;

(K) collecting and compiling statistical information from the Department of Justice, the Department of Homeland Security, and the Department of State on each department's actions relating to unaccompanied alien children; and

(L) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside, including regular follow-up visits to such facilities, placements, and other entities, to assess the continued suitability of such placements.

(2) Coordination with other entities; no release on own recognizance

In making determinations described in paragraph (1)(C), the Director of the Office of Refugee Resettlement—

(A) shall consult with appropriate juvenile justice professionals, the Director of the Bureau of Citizenship and Immigration Services, and the Assistant Secretary of the Bureau of Border Security to ensure that such determinations ensure that unaccompanied alien children described in such subparagraph—

(i) are likely to appear for all hearings or proceedings in which they are involved;

(ii) are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity; and

(iii) are placed in a setting in which they are not likely to pose a danger to themselves or others; and

(B) shall not release such children upon their own recognizance.

(3) Duties with respect to foster care

In carrying out the duties described in paragraph (1), the Director of the Office of Refugee Resettlement is encouraged to use the refugee children foster care system established pursuant to section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)) for the placement of unaccompanied alien children.

(4) Rule of construction

Nothing in paragraph (2)(B) may be construed to require that a bond be posted for an unaccompanied alien child who is released to a qualified sponsor.

(c) Rule of construction

Nothing in this section may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) from the authority of any official of the Department of Justice, the Department of Homeland Security, or the Department of State.

(d) Effective date

Notwithstanding section 4,¹ this section shall take effect on the date on which the transfer of functions specified under section 251 of this title takes effect.

(e) References

With respect to any function transferred by this section, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Office of Refugee Resettlement; or

(2) to such component is deemed to refer to the Office of Refugee Resettlement of the Department of Health and Human Services.

¹ See References in Text note below.

(f) Other transition issues**(1) Exercise of authorities**

Except as otherwise provided by law, a Federal official to whom a function is transferred by this section may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in subsection (d).

(2) Savings provisions

Subsections (a), (b), and (c) of section 552 of this title shall apply to a transfer of functions under this section in the same manner as such provisions apply to a transfer of functions under this chapter to the Department of Homeland Security.

(3) Transfer and allocation of appropriations and personnel

The personnel of the Department of Justice employed in connection with the functions transferred by this section, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this section, subject to section 1531 of title 31, shall be transferred to the Director of the Office of Refugee Resettlement for allocation to the appropriate component of the Department of Health and Human Services. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated.

(g) Definitions

As used in this section—

(1) the term “placement” means the placement of an unaccompanied alien child in either a detention facility or an alternative to such a facility; and

(2) the term “unaccompanied alien child” means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained 18 years of age; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

(Pub. L. 107–296, title IV, § 462, Nov. 25, 2002, 116 Stat. 2202; Pub. L. 110–457, title II, § 235(f), Dec. 23, 2008, 122 Stat. 5081.)

Editorial Notes**REFERENCES IN TEXT**

The Immigration and Nationality Act, referred to in subsec. (c), is act June 27, 1952, ch. 477, 66 Stat. 163, which is classified principally to chapter 12 (§1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

Section 4, referred to in subsec. (d), is section 4 of Pub. L. 107–296, which is set out as an Effective Date note under section 101 of this title.

This chapter, referred to in subsec. (f)(2), 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.

CODIFICATION

In subsec. (f)(3), “section 1531 of title 31” substituted for “section 202 of the Budget and Accounting Procedures Act of 1950” on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2008—Subsec. (b)(1)(L). Pub. L. 110–457, § 235(f)(1), substituted “, including regular follow-up visits to such facilities, placements, and other entities, to assess the continued suitability of such placements.” for period at end.

Subsec. (b)(3). Pub. L. 110–457, § 235(f)(2)(A), substituted “paragraph (1),” for “paragraph (1)(G).”

Subsec. (b)(4). Pub. L. 110–457, § 235(f)(2)(B), added par. (4).

Statutory Notes and Related Subsidiaries**CHANGE OF NAME**

Bureau of Border Security, referred to in subsec. (b)(2)(A), changed to Bureau of Immigration and Customs Enforcement by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108–32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

NOTIFICATION OF USE OF UNLICENSED INFLUX FACILITY

Pub. L. 117–328, div. H, title II, § 232, Dec. 29, 2022, 136 Stat. 4886, provided that: “In addition to the existing Congressional notification for formal site assessments of potential influx facilities, the Secretary [of Health and Human Services] shall notify the Committees on Appropriations of the House of Representatives and the Senate at least 15 days before operationalizing an unlicensed facility, and shall (1) specify whether the facility is hard-sided or soft-sided, and (2) provide analysis that indicates that, in the absence of the influx facility, the likely outcome is that unaccompanied alien children will remain in the custody of the Department of Homeland Security for longer than 72 hours or that unaccompanied alien children will be otherwise placed in danger. Within 60 days of bringing such a facility online, and monthly thereafter, the Secretary shall provide to the Committees on Appropriations of the House of Representatives and the Senate a report detailing the total number of children in care at the facility, the average length of stay and average length of care of children at the facility, and, for any child that has been at the facility for more than 60 days, their length of stay and reason for delay in release.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 117–103, div. H, title II, § 232, Mar. 15, 2022, 136 Stat. 473.

Pub. L. 116–260, div. H, title II, § 233, Dec. 27, 2020, 134 Stat. 1596.

Pub. L. 116–94, div. A, title II, § 233, Dec. 20, 2019, 133 Stat. 2585.

REPORT ON CHILDREN SEPARATED FROM PARENTS OR LEGAL GUARDIANS

Pub. L. 117–328, div. H, title II, § 234, Dec. 29, 2022, 136 Stat. 4886, provided that: “Not later than 14 days after the date of enactment of this Act [Dec. 29, 2022], and monthly thereafter, the Secretary shall submit to the

Committees on Appropriations of the House of Representatives and the Senate, and make publicly available online, a report with respect to children who were separated from their parents or legal guardians by the Department of Homeland Security (DHS) (regardless of whether or not such separation was pursuant to an option selected by the children, parents, or guardians), subsequently classified as unaccompanied alien children, and transferred to the care and custody of ORR [Office of Refugee Resettlement] during the previous month. Each report shall contain the following information:

“(1) the number and ages of children so separated subsequent to apprehension at or between ports of entry, to be reported by sector where separation occurred; and

“(2) the documented cause of separation, as reported by DHS when each child was referred.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 117–103, div. H, title II, § 234, Mar. 15, 2022, 136 Stat. 473.

Pub. L. 116–260, div. H, title II, § 235, Dec. 27, 2020, 134 Stat. 1597.

Pub. L. 116–94, div. A, title II, § 235, Dec. 20, 2019, 133 Stat. 2585.

PART F—GENERAL IMMIGRATION PROVISIONS

§ 291. Abolishment of INS

(a) In general

Upon completion of all transfers from the Immigration and Naturalization Service as provided for by this chapter, the Immigration and Naturalization Service of the Department of Justice is abolished.

(b) Prohibition

The authority provided by section 542 of this title may be used to reorganize functions or organizational units within the Bureau of Border Security or the Bureau of Citizenship and Immigration Services, but may not be used to recombine the two bureaus into a single agency or otherwise to combine, join, or consolidate functions or organizational units of the two bureaus with each other.

(Pub. L. 107–296, title IV, § 471, Nov. 25, 2002, 116 Stat. 2205.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), 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.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Bureau of Border Security, referred to in subsec. (b), changed to Bureau of Immigration and Customs Enforcement by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108–32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

§ 292. Voluntary separation incentive payments

(a) Definitions

For purposes of this section—

(1) the term “employee” means an employee (as defined by section 2105 of title 5) who—

(A) has completed at least 3 years of current continuous service with 1 or more covered entities; and

(B) is serving under an appointment without time limitation,

but does not include any person under subparagraphs (A)–(G) of section 663(a)(2) of Public Law 104–208 (5 U.S.C. 5597 note);

(2) the term “covered entity” means—

(A) the Immigration and Naturalization Service;

(B) the Bureau of Border Security of the Department of Homeland Security; and

(C) the Bureau of Citizenship and Immigration Services of the Department of Homeland Security; and

(3) the term “transfer date” means the date on which the transfer of functions specified under section 251 of this title takes effect.

(b) Strategic restructuring plan

Before the Attorney General or the Secretary obligates any resources for voluntary separation incentive payments under this section, such official shall submit to the appropriate committees of Congress a strategic restructuring plan, which shall include—

(1) an organizational chart depicting the covered entities after their restructuring pursuant to this chapter;

(2) a summary description of how the authority under this section will be used to help carry out that restructuring; and

(3) the information specified in section 663(b)(2) of Public Law 104–208 (5 U.S.C. 5597 note).

As used in the preceding sentence, the “appropriate committees of Congress” are the Committees on Appropriations, Government Reform, and the Judiciary of the House of Representatives, and the Committees on Appropriations, Governmental Affairs, and the Judiciary of the Senate.

(c) Authority

The Attorney General and the Secretary may, to the extent necessary to help carry out their respective strategic restructuring plan described in subsection (b), make voluntary separation incentive payments to employees. Any such payment—

(1) shall be paid to the employee, in a lump sum, after the employee has separated from service;

(2) shall be paid from appropriations or funds available for the payment of basic pay of the employee;

(3) shall be equal to the lesser of—

(A) the amount the employee would be entitled to receive under section 5595(c) of title 5; or

(B) an amount not to exceed \$25,000, as determined by the Attorney General or the Secretary;

(4) may not be made except in the case of any qualifying employee who voluntarily separates (whether by retirement or resignation) before the end of—

(A) the 3-month period beginning on the date on which such payment is offered or made available to such employee; or

(B) the 3-year period beginning on November 25, 2002,

whichever occurs first;

(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and

(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595 of title 5, based on any other separation.

(d) Additional agency contributions to the retirement fund

(1) In general

In addition to any payments which it is otherwise required to make, the Department of Justice and the Department of Homeland Security shall, for each fiscal year with respect to which it makes any voluntary separation incentive payments under this section, remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund the amount required under paragraph (2).

(2) Amount required

The amount required under this paragraph shall, for any fiscal year, be the amount under subparagraph (A) or (B), whichever is greater.

(A) First method

The amount under this subparagraph shall, for any fiscal year, be equal to the minimum amount necessary to offset the additional costs to the retirement systems under title 5 (payable out of the Civil Service Retirement and Disability Fund) resulting from the voluntary separation of the employees described in paragraph (3), as determined under regulations of the Office of Personnel Management.

(B) Second method

The amount under this subparagraph shall, for any fiscal year, be equal to 45 percent of the sum total of the final basic pay of the employees described in paragraph (3).

(3) Computations to be based on separations occurring in the fiscal year involved

The employees described in this paragraph are those employees who receive a voluntary separation incentive payment under this section based on their separating from service during the fiscal year with respect to which the payment under this subsection relates.

(4) Final basic pay defined

In this subsection, the term “final basic pay” means, with respect to an employee, the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee’s final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefor.

(e) Effect of subsequent employment with the Government

An individual who receives a voluntary separation incentive payment under this section and who, within 5 years after the date of the separation on which the payment is based, accepts any compensated employment with the Government or works for any agency of the Government through a personal services contract, shall be required to pay, prior to the individual’s first day of employment, the entire amount of the incentive payment. Such payment shall be made to the covered entity from which the individual separated or, if made on or after the transfer date, to the Deputy Secretary or the Under Secretary for Border and Transportation Security (for transfer to the appropriate component of the Department of Homeland Security, if necessary).

(f) Effect on employment levels

(1) Intended effect

Voluntary separations under this section are not intended to necessarily reduce the total number of full-time equivalent positions in any covered entity.

(2) Use of voluntary separations

A covered entity may redeploy or use the full-time equivalent positions vacated by voluntary separations under this section to make other positions available to more critical locations or more critical occupations.

(Pub. L. 107–296, title IV, §472, Nov. 25, 2002, 116 Stat. 2205.)

Editorial Notes

REFERENCES IN TEXT

Section 663 of Public Law 104–208, referred to in subsecs. (a)(1) and (b)(3), probably means Pub. L. 104–208, div. A, title I, §101(f) [title VI, §663], Sept. 30, 1996, 110 Stat. 3009–314, 3009–383, which is classified as a note under section 5597 of Title 5, Government Organization and Employees.

This chapter, referred to in subsec. (b)(1), 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.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Bureau of Border Security, referred to in subsec. (a)(2)(B), changed to Bureau of Immigration and Customs Enforcement by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108–32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019.

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by

Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

§ 293. Authority to conduct a demonstration project relating to disciplinary action

(a) In general

The Attorney General and the Secretary may each, during a period ending not later than 5 years after November 25, 2002, conduct a demonstration project for the purpose of determining whether one or more changes in the policies or procedures relating to methods for disciplining employees would result in improved personnel management.

(b) Scope

A demonstration project under this section—

(1) may not cover any employees apart from those employed in or under a covered entity; and

(2) shall not be limited by any provision of chapter 43, 75, or 77 of title 5.

(c) Procedures

Under the demonstration project—

(1) the use of alternative means of dispute resolution (as defined in section 571 of title 5) shall be encouraged, whenever appropriate; and

(2) each covered entity under the jurisdiction of the official conducting the project shall be required to provide for the expeditious, fair, and independent review of any action to which section 4303 or subchapter II of chapter 75 of such title 5 would otherwise apply (except an action described in section 7512(5) of such title 5).

(d) Actions involving discrimination

Notwithstanding any other provision of this section, if, in the case of any matter described in section 7702(a)(1)(B) of title 5, there is no judicially reviewable action under the demonstration project within 120 days after the filing of an appeal or other formal request for review (referred to in subsection (c)(2)), an employee shall be entitled to file a civil action to the same extent and in the same manner as provided in section 7702(e)(1) of such title 5 (in the matter following subparagraph (C) thereof).

(e) Certain employees

Employees shall not be included within any project under this section if such employees are—

(1) neither managers nor supervisors; and

(2) within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 71 of title 5.

Notwithstanding the preceding sentence, an aggrieved employee within a unit (referred to in paragraph (2)) may elect to participate in a complaint procedure developed under the demonstration project in lieu of any negotiated grievance procedure and any statutory procedure (as such term is used in section 7121 of such title 5).

(f) Reports

The Government Accountability Office shall prepare and submit to the Committees on Government Reform and the Judiciary of the House

of Representatives and the Committees on Governmental Affairs and the Judiciary of the Senate periodic reports on any demonstration project conducted under this section, such reports to be submitted after the second and fourth years of its operation. Upon request, the Attorney General or the Secretary shall furnish such information as the Government Accountability Office may require to carry out this subsection.

(g) Definition

In this section, the term “covered entity” has the meaning given such term in section 292(a)(2) of this title.

(Pub. L. 107–296, title IV, § 473, Nov. 25, 2002, 116 Stat. 2208; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

Editorial Notes

AMENDMENTS

2004—Subsec. (f). Pub. L. 108–271 substituted “Government Accountability Office” for “General Accounting Office” in two places.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019.

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

§ 294. Sense of Congress

It is the sense of Congress that—

(1) the missions of the Bureau of Border Security and the Bureau of Citizenship and Immigration Services are equally important and, accordingly, they each should be adequately funded; and

(2) the functions transferred under this part should not, after such transfers take effect, operate at levels below those in effect prior to November 25, 2002.

(Pub. L. 107–296, title IV, § 474, Nov. 25, 2002, 116 Stat. 2209.)

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Bureau of Border Security, referred to in par. (1), changed to Bureau of Immigration and Customs Enforcement by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108–32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

§ 295. Director of Shared Services

(a) In general

Within the Office of Deputy Secretary, there shall be a Director of Shared Services.

(b) Functions

The Director of Shared Services shall be responsible for the coordination of resources for the Bureau of Border Security and the Bureau of Citizenship and Immigration Services, including—

- (1) information resources management, including computer databases and information technology;
- (2) records and file management; and
- (3) forms management.

(Pub. L. 107-296, title IV, § 475, Nov. 25, 2002, 116 Stat. 2209.)

Statutory Notes and Related Subsidiaries**CHANGE OF NAME**

Bureau of Border Security, referred to in subsec. (b), changed to Bureau of Immigration and Customs Enforcement by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108-32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

§ 296. Separation of funding**(a) In general**

There shall be established separate accounts in the Treasury of the United States for appropriated funds and other deposits available for the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(b) Separate budgets

To ensure that the Bureau of Citizenship and Immigration Services and the Bureau of Border Security are funded to the extent necessary to fully carry out their respective functions, the Director of the Office of Management and Budget shall separate the budget requests for each such entity.

(c) Fees

Fees imposed for a particular service, application, or benefit shall be deposited into the account established under subsection (a) that is for the bureau with jurisdiction over the function to which the fee relates.

(d) Fees not transferable

No fee may be transferred between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security for purposes not authorized by section 1356 of title 8.

(Pub. L. 107-296, title IV, § 476, Nov. 25, 2002, 116 Stat. 2209.)

Statutory Notes and Related Subsidiaries**CHANGE OF NAME**

Bureau of Border Security, referred to in subsecs. (a), (b), and (d), changed to Bureau of Immigration and Customs Enforcement by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108-32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

§ 297. Reports and implementation plans**(a) Division of funds**

The Secretary, not later than 120 days after the effective date of this chapter, shall submit to the Committees on Appropriations and the

Judiciary of the House of Representatives and of the Senate a report on the proposed division and transfer of funds, including unexpended funds, appropriations, and fees, between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(b) Division of personnel

The Secretary, not later than 120 days after the effective date of this chapter, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report on the proposed division of personnel between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(c) Implementation plan**(1) In general**

The Secretary, not later than 120 days after the effective date of this chapter, and every 6 months thereafter until the termination of fiscal year 2005, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate an implementation plan to carry out this chapter.

(2) Contents

The implementation plan should include details concerning the separation of the Bureau of Citizenship and Immigration Services and the Bureau of Border Security, including the following:

- (A) Organizational structure, including the field structure.
- (B) Chain of command.
- (C) Procedures for interaction among such bureaus.
- (D) Fraud detection and investigation.
- (E) The processing and handling of removal proceedings, including expedited removal and applications for relief from removal.
- (F) Recommendations for conforming amendments to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).
- (G) Establishment of a transition team.
- (H) Methods to phase in the costs of separating the administrative support systems of the Immigration and Naturalization Service in order to provide for separate administrative support systems for the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(d) Comptroller General studies and reports**(1) Status reports on transition**

Not later than 18 months after the date on which the transfer of functions specified under section 251 of this title takes effect, and every 6 months thereafter, until full implementation of this part has been completed, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the House of Representatives and the Senate a report containing the following:

- (A) A determination of whether the transfers of functions made by parts D and E of this subchapter have been completed, and if a transfer of functions has not taken place,

identifying the reasons why the transfer has not taken place.

(B) If the transfers of functions made by parts D and E of this subchapter have been completed, an identification of any issues that have arisen due to the completed transfers.

(C) An identification of any issues that may arise due to any future transfer of functions.

(2) Report on management

Not later than 4 years after the date on which the transfer of functions specified under section 251 of this title takes effect, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the House of Representatives and the Senate a report, following a study, containing the following:

(A) Determinations of whether the transfer of functions from the Immigration and Naturalization Service to the Bureau of Citizenship and Immigration Services and the Bureau of Border Security have improved, with respect to each function transferred, the following:

- (i) Operations.
- (ii) Management, including accountability and communication.
- (iii) Financial administration.
- (iv) Recordkeeping, including information management and technology.

(B) A statement of the reasons for the determinations under subparagraph (A).

(C) Any recommendations for further improvements to the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(3) Report on fees

Not later than 1 year after November 25, 2002, the Comptroller General of the United States shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report examining whether the Bureau of Citizenship and Immigration Services is likely to derive sufficient funds from fees to carry out its functions in the absence of appropriated funds.

(Pub. L. 107-296, title IV, § 477, Nov. 25, 2002, 116 Stat. 2209.)

Editorial Notes

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsecs. (a), (b), and (c)(1), is 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of this title.

This chapter, referred to in subsec. (c)(1), 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 Immigration and Nationality Act, referred to in subsec. (c)(2)(F), is act June 27, 1952, ch. 477, 66 Stat. 163, which is classified principally to chapter 12 (§ 1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

Parts D and E of this subchapter, referred to in subsec. (d)(1)(A), (B), was in the original “subtitles D and E”, meaning subtitles D (§§ 441-446) and E (§§ 451-462) of title IV of Pub. L. 107-296, Nov. 25, 2002, 116 Stat. 2192, 2195, which enacted parts D and E of this subchapter, amended sections 1356 and 1573 of Title 8, Aliens and Nationality, and enacted provisions set out as a note under section 271 of this title. For complete classification of subtitles D and E to the Code, see Tables.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Bureau of Border Security, referred to in text, changed to Bureau of Immigration and Customs Enforcement by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108-32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

§ 298. Immigration functions

(a) Annual report

(1) In general

One year after November 25, 2002, and each year thereafter, the Secretary shall submit a report to the President, to the Committees on the Judiciary and Government Reform of the House of Representatives, and to the Committees on the Judiciary and Government Affairs of the Senate, on the impact the transfers made by this part has had on immigration functions.

(2) Matter included

The report shall address the following with respect to the period covered by the report:

(A) The aggregate number of all immigration applications and petitions received, and processed, by the Department.

(B) Region-by-region statistics on the aggregate number of immigration applications and petitions filed by an alien (or filed on behalf of an alien) and denied, disaggregated by category of denial and application or petition type.

(C) The quantity of backlogged immigration applications and petitions that have been processed, the aggregate number awaiting processing, and a detailed plan for eliminating the backlog.

(D) The average processing period for immigration applications and petitions, disaggregated by application or petition type.

(E) The number and types of immigration-related grievances filed with any official of the Department of Justice, and if those grievances were resolved.

(F) Plans to address grievances and improve immigration services.

(G) Whether immigration-related fees were used consistent with legal requirements regarding such use.

(H) Whether immigration-related questions conveyed by customers to the Department (whether conveyed in person, by telephone, or by means of the Internet) were answered effectively and efficiently.

(b) Sense of Congress regarding immigration services

It is the sense of Congress that—

(1) the quality and efficiency of immigration services rendered by the Federal Government should be improved after the transfers made by this part take effect; and

(2) the Secretary should undertake efforts to guarantee that concerns regarding the quality and efficiency of immigration services are addressed after such effective date.

(Pub. L. 107-296, title IV, § 478, Nov. 25, 2002, 116 Stat. 2211.)

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019.

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

PART G—U.S. CUSTOMS AND BORDER PROTECTION PUBLIC PRIVATE PARTNERSHIPS

§ 301. Fee agreements for certain services at ports of entry

(a) In general

Notwithstanding section 58c(e) of title 19 and section 1451 of title 19, the Commissioner of U.S. Customs and Border Protection, upon the request of any entity, may enter into a fee agreement with such entity under which—

(1) U.S. Customs and Border Protection shall provide services described in subsection (b) at a United States port of entry or any other facility at which U.S. Customs and Border Protection provides or will provide such services;

(2) such entity shall remit to U.S. Customs and Border Protection a fee imposed under subsection (h) in an amount equal to the full costs that are incurred or will be incurred in providing such services; and

(3) if space is provided by such entity, each facility at which U.S. Customs and Border Protection services are performed shall be maintained and equipped by such entity, without cost to the Federal Government, in accordance with U.S. Customs and Border Protection specifications.

(b) Services described

The services described in this subsection are any activities of any employee or Office of Field Operations contractor of U.S. Customs and Border Protection (except employees of the U.S. Border Patrol, as established under section 211(e) of this title) pertaining to, or in support of, customs, agricultural processing, border security, or immigration inspection-related matters at a port of entry or any other facility at which U.S. Customs and Border Protection provides or will provide services.

(c) Modification of prior agreements

The Commissioner of U.S. Customs and Border Protection, at the request of an entity who has

previously entered into an agreement with U.S. Customs and Border Protection for the reimbursement of fees in effect on December 16, 2016, may modify such agreement to implement any provisions of this section.

(d) Limitations

(1) Impacts of services

The Commissioner of U.S. Customs and Border Protection—

(A) may enter into fee agreements under this section only for services that—

(i) will increase or enhance the operational capacity of U.S. Customs and Border Protection based on available staffing and workload; and

(ii) will not shift the cost of services funded in any appropriations Act, or provided from any account in the Treasury of the United States derived by the collection of fees, to entities under this chapter; and

(B) may not enter into a fee agreement under this section if such agreement would unduly and permanently impact services funded in any appropriations Act, or provided from any account in the Treasury of the United States, derived by the collection of fees.

(2) Number

There shall be no limit to the number of fee agreements that the Commissioner of U.S. Customs and Border Protection may enter into under this section.

(e) Air ports of entry

(1) Fee agreement

Except as otherwise provided in this subsection, a fee agreement for U.S. Customs and Border Protection services at an air port of entry may only provide for the payment of overtime costs of U.S. Customs and Border Protection officers and salaries and expenses of U.S. Customs and Border Protection employees to support U.S. Customs and Border Protection officers in performing services described in subsection (b).

(2) Small airports

Notwithstanding paragraph (1), U.S. Customs and Border Protection may receive reimbursement in addition to overtime costs if the fee agreement is for services at an air port of entry that has fewer than 100,000 arriving international passengers annually.

(3) Covered services

In addition to costs described in paragraph (1), a fee agreement for U.S. Customs and Border Protection services at an air port of entry referred to in paragraph (2) may provide for the reimbursement of—

(A) salaries and expenses of not more than five full-time equivalent U.S. Customs and Border Protection Officers beyond the number of such officers assigned to the port of entry on the date on which the fee agreement was signed;

(B) salaries and expenses of employees of U.S. Customs and Border Protection, other than the officers referred to in subparagraph (A), to support U.S. Customs and Border

Protection officers in performing law enforcement functions; and

(C) other costs incurred by U.S. Customs and Border Protection relating to services described in subparagraph (B), such as temporary placement or permanent relocation of employees, including incentive pay for relocation, as appropriate.

(f) Port of entry size

The Commissioner of U.S. Customs and Border Protection shall ensure that each fee agreement proposal is given equal consideration regardless of the size of the port of entry.

(g) Denied application

(1) In general

If the Commissioner of U.S. Customs and Border Protection denies a proposal for a fee agreement under this section, the Commissioner shall provide the entity submitting such proposal with the reason for the denial unless—

(A) the reason for the denial is law enforcement sensitive; or

(B) withholding the reason for the denial is in the national security interests of the United States.

(2) Judicial review

Decisions of the Commissioner of U.S. Customs and Border Protection under paragraph (1) are in the discretion of the Commissioner and are not subject to judicial review.

(h) Fee

(1) In general

The amount of the fee to be charged under an agreement authorized under subsection (a) shall be paid by each entity requesting U.S. Customs and Border Protection services, and shall be for the full cost of providing such services, including the salaries and expenses of employees and contractors of U.S. Customs and Border Protection, to provide such services and other costs incurred by U.S. Customs and Border Protection relating to such services, such as temporary placement or permanent relocation of such employees and contractors.

(2) Timing

The Commissioner of U.S. Customs and Border Protection may require that the fee referred to in paragraph (1) be paid by each entity that has entered into a fee agreement under subsection (a) with U.S. Customs and Border Protection in advance of the performance of U.S. Customs and Border Protection services.

(3) Oversight of fees

The Commissioner of U.S. Customs and Border Protection shall develop a process to oversee the services for which fees are charged pursuant to an agreement under subsection (a), including—

(A) a determination and report on the full costs of providing such services, and a process for increasing such fees, as necessary;

(B) the establishment of a periodic remittance schedule to replenish appropriations, accounts, or funds, as necessary; and

(C) the identification of costs paid by such fees.

(i) Deposit of funds

(1) Account

Funds collected pursuant to any agreement entered into pursuant to subsection (a)—

(A) shall be deposited as offsetting collections;

(B) shall remain available until expended without fiscal year limitation; and

(C) shall be credited to the applicable appropriation, account, or fund for the amount paid out of such appropriation, account, or fund for any expenses incurred or to be incurred by U.S. Customs and Border Protection in providing U.S. Customs and Border Protection services under any such agreement and any other costs incurred or to be incurred by U.S. Customs and Border Protection relating to such services.

(2) Return of unused funds

The Commissioner of U.S. Customs and Border Protection shall return any unused funds collected and deposited into the account described in paragraph (1) if a fee agreement entered into pursuant to subsection (a) is terminated for any reason or the terms of such fee agreement change by mutual agreement to cause a reduction of U.S. Customs and Border Protection¹ services. No interest shall be owed upon the return of any such unused funds.

(j) Termination

(1) In general

The Commissioner of U.S. Customs and Border Protection shall terminate the services provided pursuant to a fee agreement entered into under subsection (a) with an entity that, after receiving notice from the Commissioner that a fee under subsection (h) is due, fails to pay such fee in a timely manner. If such services are terminated, all costs incurred by U.S. Customs and Border Protection that have not been paid shall become immediately due and payable. Interest on unpaid fees shall accrue based on the rate and amount established under sections 6621 and 6622 of title 26.

(2) Penalty

Any entity that, after notice and demand for payment of any fee under subsection (h), fails to pay such fee in a timely manner shall be liable for a penalty or liquidated damage equal to two times the amount of such fee. Any such amount collected under this paragraph shall be deposited into the appropriate account specified under subsection (i) and shall be available as described in such subsection.

(3) Termination by the entity

Any entity who has previously entered into an agreement with U.S. Customs and Border Protection for the reimbursement of fees in effect on December 16, 2016, or under the provisions of this section, may request that such agreement be amended to provide for termination upon advance notice, length, and terms

¹ So in original. Probably should be “Protection”.

that are negotiated between such entity and U.S. Customs and Border Protection.

(k) Annual report

The Commissioner of U.S. Customs and Border Protection shall—

(1) submit an annual report identifying the activities undertaken and the agreements entered into pursuant to this section to—

(A) the Committee on Appropriations of the Senate;

(B) the Committee on Finance of the Senate;

(C) the Committee on Homeland Security and Governmental Affairs of the Senate;

(D) the Committee on the Judiciary of the Senate;

(E) the Committee on Appropriations of the House of Representatives;

(F) the Committee on Homeland Security of the House of Representatives;

(G) the Committee on the Judiciary of the House of Representatives; and

(H) the Committee on Ways and Means of the House of Representatives; and

(2) not later than 15 days before entering into a fee agreement, notify the members of Congress that represent the State or Congressional District in which the affected port of entry or facility is located of such agreement.

(l) Rule of construction

Nothing in this section may be construed as imposing on U.S. Customs and Border Protection any responsibilities, duties, or authorities relating to real property.

(Pub. L. 107–296, title IV, § 481, as added Pub. L. 114–279, § 2(a), Dec. 16, 2016, 130 Stat. 1413.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(1)(A)(ii), 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.

§ 301a. Port of entry donation authority

(a) Personal property donation authority

(1) In general

The Commissioner of U.S. Customs and Border Protection, in consultation with the Administrator of General Services, may enter into an agreement with any entity to accept a donation of personal property, money, or non-personal services for the uses described in paragraph (3) only with respect to the following locations at which U.S. Customs and Border Protection performs or will be performing inspection services:

(A) A new or existing sea or air port of entry.

(B) An existing Federal Government-owned or -leased land port of entry.

(C) A new Federal Government-owned or -leased land port of entry if—

(i) the fair market value of the donation is \$75,000,000 or less; and

(ii) the fair market value of donations with respect to the land port of entry total \$75,000,000 or less over the preceding five years.

(2) Limitation on monetary donations

Any monetary donation accepted pursuant to this subsection may not be used to pay the salaries of U.S. Customs and Border Protection employees performing inspection services.

(3) Uses

Donations accepted pursuant to this subsection may be used for activities of the Office of Field Operations set forth in subparagraphs (A) through (F) of section 211(g)(3) of this title, which are related to a new or existing sea or air port of entry or a new or existing Federal Government-owned or -leased land port of entry described in paragraph (1), including expenses related to—

(A) furniture, fixtures, equipment, or technology, including the installation or deployment of such items; and

(B) the operation and maintenance of such furniture, fixtures, equipment, or technology.

(b) Real property donation authority

(1) In general

Subject to paragraph (3), the Commissioner of U.S. Customs and Border Protection, and the Administrator of General Services, as applicable, may enter into an agreement with any entity to accept a donation of real property or money for uses described in paragraph (2) only with respect to the following locations at which U.S. Customs and Border Protection performs or will be performing inspection services:

(A) A new or existing sea or air port of entry.

(B) An existing Federal Government-owned land port of entry.

(C) A new Federal Government-owned land port of entry if—

(i) the fair market value of the donation is \$75,000,000 or less; and

(ii) the fair market value of donations with respect to the land port of entry total \$75,000,000 or less over the preceding five years.

(2) Use

Donations accepted pursuant to this subsection may be used for activities of the Office of Field Operations set forth in section 211(g) of this title, which are related to the construction, alteration, operation, or maintenance of a new or existing sea or air port of entry or a new or existing a¹ Federal Government-owned land port of entry described in paragraph (1), including expenses related to—

(A) land acquisition, design, construction, repair, or alteration; and

(B) operation and maintenance of such port of entry facility.

(3) Limitation on real property donations

A donation of real property under this subsection at an existing land port of entry owned

¹ So in original.

by the General Services Administration may only be accepted by the Administrator of General Services.

(4) Sunset

(A) In general

The authority to enter into an agreement under this subsection shall terminate on December 31, 2026.

(B) Rule of construction

The termination date referred to in subparagraph (A) shall not apply to a proposal accepted for consideration by U.S. Customs and Border Protection or the General Services Administration pursuant to this section or a prior pilot program prior to such termination date.

(c) General provisions

(1) Duration

An agreement entered into under subsection (a) or (b) (and, in the case of such subsection (b), in accordance with paragraph (4) of such subsection) may last as long as required to meet the terms of such agreement.

(2) Criteria

In carrying out an agreement entered into under subsection (a) or (b), the Commissioner of U.S. Customs and Border Protection, in consultation with the Administrator of General Services, shall establish criteria regarding—

- (A) the selection and evaluation of donors;
- (B) the identification of roles and responsibilities between U.S. Customs and Border Protection, the General Services Administration, and donors;
- (C) the identification, allocation, and management of explicit and implicit risks of partnering between the Federal Government and donors;
- (D) decision-making and dispute resolution processes; and
- (E) processes for U.S. Customs and Border Protection, and the General Services Administration, as applicable, to terminate agreements if selected donors are not meeting the terms of any such agreement, including the security standards established by U.S. Customs and Border Protection.

(3) Evaluation procedures

(A) In general

The Commissioner of U.S. Customs and Border Protection, in consultation with the Administrator of General Services, as applicable, shall—

- (i) establish criteria for evaluating a proposal to enter into an agreement under subsection (a) or (b); and
- (ii) make such criteria publicly available.

(B) Considerations

Criteria established pursuant to subparagraph (A) shall consider—

- (i) the impact of a proposal referred to in such subparagraph on the land, sea, or air port of entry at issue and other ports of entry or similar facilities or other infrastructure near the location of the proposed donation;

(ii) such proposal's potential to increase trade and travel efficiency through added capacity;

(iii) such proposal's potential to enhance the security of the port of entry at issue;

(iv) the impact of the proposal on reducing wait times at that port of entry or facility and other ports of entry on the same border;

(v) for a donation under subsection (b)—

(I) whether such donation satisfies the requirements of such proposal, or whether additional real property would be required; and

(II) how such donation was acquired, including if eminent domain was used;

(vi) the funding available to complete the intended use of such donation;

(vii) the costs of maintaining and operating such donation;

(viii) the impact of such proposal on U.S. Customs and Border Protection staffing requirements; and

(ix) other factors that the Commissioner or Administrator determines to be relevant.

(C) Determination and notification

(i) Incomplete proposals

(I) In general

Not later than 60 days after receiving the proposals for a donation agreement from an entity, the Commissioner of U.S. Customs and Border Protection shall notify such entity as to whether such proposal is complete or incomplete.

(II) Resubmission

If the Commissioner of U.S. Customs and Border Protection determines that a proposal is incomplete, the Commissioner shall—

- (aa) notify the appropriate entity and provide such entity with a description of all information or material that is needed to complete review of the proposal; and
- (bb) allow the entity to resubmit the proposal with additional information and material described in item (aa) to complete the proposal.

(ii) Complete proposals

Not later than 180 days after receiving a completed proposal to enter into an agreement under subsection (a) or (b), the Commissioner of U.S. Customs and Border Protection, with the concurrence of the Administrator of General Services, as applicable, shall—

- (I) determine whether to approve or deny such proposal; and
- (II) notify the entity that submitted such proposal of such determination.

(4) Supplemental funding

Except as required under section 3307 of title 40, real property donations to the Administrator of General Services made pursuant to subsection¹ (a) and¹ (b) at a GSA-owned land port of entry may be used in addition to any

other funding for such purpose, including appropriated funds, property, or services.

(5) Return of donations

The Commissioner of U.S. Customs and Border Protection, or the Administrator of General Services, as applicable, may return any donation made pursuant to subsection (a) or (b). No interest shall be owed to the donor with respect to any donation provided under such subsections that is returned pursuant to this subsection.

(6) Prohibition on certain funding

(A) In general

Except as provided in subsections (a) and (b) regarding the acceptance of donations, the Commissioner of U.S. Customs and Border Protection and the Administrator of General Services, as applicable, may not, with respect to an agreement entered into under either of such subsections, obligate or expend amounts in excess of amounts that have been appropriated pursuant to any appropriations Act for purposes specified in either of such subsections or otherwise made available for any of such purposes.

(B) Certification requirement

Before accepting any donations pursuant to an agreement under subsection (a) or (b), the Commissioner of U.S. Customs and Border Protection shall certify to the congressional committees set forth in paragraph (7) that²

(i) the donation will not be used for the construction of a detention facility or a border fence or wall; and

(ii) the donor will be notified in the Donations Acceptance Agreement that the donor shall be financially responsible for all costs and operating expenses related to the operation, maintenance, and repair of the donated real property until such time as U.S. Customs and Border Protection provides the donor written notice otherwise.

(7) Annual reports

The Commissioner of U.S. Customs and Border Protection, in collaboration with the Administrator of General Services, as applicable, shall submit an annual report identifying the activities undertaken and agreements entered into pursuant to subsections (a) and (b) to—

(A) the Committee on Appropriations of the Senate;

(B) the Committee on Environment and Public Works of the Senate;

(C) the Committee on Finance of the Senate;

(D) the Committee on Homeland Security and Governmental Affairs of the Senate;

(E) the Committee on the Judiciary of the Senate;

(F) the Committee on Appropriations of the House of Representatives;

(G) the Committee on Homeland Security of the House of Representatives;

(H) the Committee on the Judiciary of the House of Representatives;

(I) the Committee on Transportation and Infrastructure of the House of Representatives; and

(J) the Committee on Ways and Means of the House of Representatives.

(d) GAO report

The Comptroller General of the United States shall submit an³ biennial report to the congressional committees referred to in subsection (c)(7) that evaluates—

(1) fee agreements entered into pursuant to section 301 of this title;

(2) donation agreements entered into pursuant to subsections (a) and (b); and

(3) the fees and donations received by U.S. Customs and Border Protection pursuant to such agreements.

(e) Judicial review

Decisions of the Commissioner of U.S. Customs and Border Protection and the Administrator of General Services under this section regarding the acceptance of real or personal property are in the discretion of the Commissioner and the Administrator and are not subject to judicial review.

(f) Rule of construction

Except as otherwise provided in this section, nothing in this section may be construed as affecting in any manner the responsibilities, duties, or authorities of U.S. Customs and Border Protection or the General Services Administration.

(Pub. L. 107–296, title IV, § 482, as added Pub. L. 114–279, § 2(a), Dec. 16, 2016, 130 Stat. 1417; amended Pub. L. 116–260, div. O, title III, § 301, Dec. 27, 2020, 134 Stat. 2149; Pub. L. 117–81, div. F, title LXIV, § 6410, Dec. 27, 2021, 135 Stat. 2408.)

Editorial Notes

AMENDMENTS

2021—Subsec. (a)(1)(B), (C). Pub. L. 117–81, § 6410(1)(A)(i), (ii)(I), inserted “or -leased” before “land”.

Subsec. (a)(1)(C)(i). Pub. L. 117–81, § 6410(1)(A)(ii)(II), substituted “\$75,000,000” for “\$50,000,000”.

Subsec. (a)(1)(C)(ii). Pub. L. 117–81, § 6410(1)(A)(ii)(III), amended cl. (ii) generally. Prior to amendment, text read as follows: “the fair market value, including any personal and real property donations in total, of such port of entry when completed, is \$50,000,000 or less.”

Subsec. (a)(3). Pub. L. 117–81, § 6410(1)(B), inserted “or -leased” before “land” in introductory provisions.

Subsec. (b)(1). Pub. L. 117–81, § 6410(2)(A), which directed substitution of “Administrator of General Services” for “Administrator of the General Services Administration” in the matter preceding par. (1), was executed in par. (1) to reflect the probable intent of Congress.

Subsec. (b)(1)(C)(i). Pub. L. 117–81, § 6410(2)(B)(i), substituted “\$75,000,000” for “\$50,000,000”.

Subsec. (b)(1)(C)(ii). Pub. L. 117–81, § 6410(2)(b)(ii), amended cl. (ii) generally. Prior to amendment, text read as follows: “the fair market value, including any personal and real property donations in total, of such port of entry when completed, is \$50,000,000 or less.”

Subsec. (b)(4)(A). Pub. L. 117–81, § 6410(2)(C)(i), substituted “terminate on December 31, 2026.” for “terminate on the date that is December 16, 2021.”

Subsec. (b)(4)(B). Pub. L. 117–81, § 6410(2)(C)(ii), substituted “a proposal accepted for consideration by U.S.

² So in original. Probably should be followed by a dash.

³ So in original. Probably should be “a”.

Customs and Border Protection or the General Services Administration pursuant to this section or a prior pilot program prior to such termination date” for “carrying out the terms of an agreement under this subsection if such agreement is entered into before such termination date”.

Subsec. (c)(6)(B). Pub. L. 117–81, § 6410(3), substituted cls. (i) and (ii) for “the donation will not be used for the construction of a detention facility or a border fence or wall.”

Subsec. (d). Pub. L. 117–81, § 6401(4), substituted “biennial” for “annual” in introductory provisions.

Subsec. (e). Pub. L. 117–81, § 6410(d), substituted “Administrator of General Services” for “Administrator of the General Services Administration”.

2020—Subsec. (b)(4)(A). Pub. L. 116–260, which directed substitution of “December 16, 2021” for “4 years after December 16, 2016”, was executed by making the substitution for original text reading “4 years after the date of the enactment of this section”, which had been translated as “4 years after December 16, 2016”, to reflect the probable intent of Congress.

§ 301b. Current and proposed agreements

Nothing in this part or in section 4 of the Cross-Border Trade Enhancement Act of 2016 may be construed as affecting—

(1) any agreement entered into pursuant to section 560 of division D of the Consolidated and Further Continuing Appropriations Act, 2013 (Public Law 113–6) or section 559 of title V of division F of the Consolidated Appropriations Act, 2014 (6 U.S.C. 211 note; Public Law 113–76), as in existence on the day before December 16, 2016, and any such agreement shall continue to have full force and effect on and after such date; or

(2) a proposal accepted for consideration by U.S. Customs and Border Protection pursuant to such section 559, as in existence on the day before December 16, 2016.

(Pub. L. 107–296, title IV, § 483, as added Pub. L. 114–279, § 2(a), Dec. 16, 2016, 130 Stat. 1421.)

Editorial Notes

REFERENCES IN TEXT

Section 4 of the Cross-Border Trade Enhancement Act of 2016, referred to in text, is section 4 of Pub. L. 114–279, Dec. 16, 2016, 130 Stat. 1422, which repealed section 560 of division D of Pub. L. 113–6 and section 559 of title V of division F of Pub. L. 113–76. Section 560 of Pub. L. 113–6, was not classified to the Code. Section 559 of Pub. L. 113–76 was classified as a note under section 211 of this title.

§ 301c. Definitions

In this part:

(1) Donor

The term “donor” means any entity that is proposing to make a donation under this chapter.

(2) Entity

The term “entity” means any—

(A) person;

(B) partnership, corporation, trust, estate, cooperative, association, or any other organized group of persons;

(C) Federal, State or local government (including any subdivision, agency or instrumentality thereof); or

(D) any other private or governmental entity.

(Pub. L. 107–296, title IV, § 484, as added Pub. L. 114–279, § 2(a), Dec. 16, 2016, 130 Stat. 1421.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in par. (1), 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.

SUBCHAPTER V—NATIONAL EMERGENCY MANAGEMENT

Editorial Notes

CODIFICATION

Pub. L. 109–295, title VI, § 611(1), Oct. 4, 2006, 120 Stat. 1395, substituted “NATIONAL EMERGENCY MANAGEMENT” for “EMERGENCY PREPAREDNESS AND RESPONSE” in subchapter heading.

§ 311. Definitions

In this subchapter—

(1) the term “Administrator” means the Administrator of the Agency;

(2) the term “Agency” means the Federal Emergency Management Agency;

(3) the term “catastrophic incident” means any natural disaster, act of terrorism, or other man-made disaster that results in extraordinary levels of casualties or damage or disruption severely affecting the population (including mass evacuations), infrastructure, environment, economy, national morale, or government functions in an area;

(4) the terms “credentialed” and “credentialing” mean having provided, or providing, respectively, documentation that identifies personnel and authenticates and verifies the qualifications of such personnel by ensuring that such personnel possess a minimum common level of training, experience, physical and medical fitness, and capability appropriate for a particular position in accordance with standards created under section 320 of this title;

(5) the term “Federal coordinating officer” means a Federal coordinating officer as described in section 5143 of title 42;

(6) the term “interoperable” has the meaning given the term “interoperable communications” under section 194(g)(1) of this title;

(7) the term “National Incident Management System” means a system to enable effective, efficient, and collaborative incident management;

(8) the term “National Response Plan” means the National Response Plan or any successor plan prepared under section 314(a)(6)¹ of this title;

(9) the term “Regional Administrator” means a Regional Administrator appointed under section 317 of this title;

(10) the term “Regional Office” means a Regional Office established under section 317 of this title;

¹ See References in Text note below.