

SEC. 86. *Exception from the Provisions of the Government Employees Training Act.*

Those elements of the Department of Homeland Security that are supervised by the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection through the Department's Assistant Secretary for Information Analysis are, pursuant to section 4102(b)(1) of title 5, United States Code, and in the public interest, excepted from the following provisions of the Government Employees Training Act as codified in title 5: sections 4103(a)(1), 4108, 4115, 4117, and 4118, and that part of 4109(a) that provides "under the regulations prescribed under section 4118(a)(8) of this title and".

SEC. 87. *Functions of Certain Officials in the Coast Guard.*

The Commandant and the Assistant Commandant for Intelligence of the Coast Guard each shall be considered a "Senior Official of the Intelligence Community" for purposes of Executive Order 12333 of December 4, 1981 [50 U.S.C. 3001 note], and all other relevant authorities.

SEC. 88. *Order of Succession.*

Subject to the provisions of subsection (b) of this section, the officers named in subsection (a) of this section, in the order listed, shall act as, and perform the functions and duties of the office of, the Secretary of Homeland Security (Secretary), if they are eligible to act as Secretary under the provisions of the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 et seq. (Vacancies Act), during any period in which the Secretary has died, resigned, or otherwise become unable to perform the functions and duties of the office of Secretary.

(a) Order of Succession.

- (i) Deputy Secretary of Homeland Security;
- (ii) Under Secretary for Management;
- (iii) Administrator of the Federal Emergency Management Agency;
- (iv) Under Secretary for National Protection and Programs;
- (v) Under Secretary for Science and Technology;
- (vi) Under Secretary for Intelligence and Analysis;
- (vii) Commissioner of U.S. Customs and Border Protection;
- (viii) Administrator of the Transportation Security Administration;
- (ix) Director of U.S. Immigration and Customs Enforcement;
- (x) Director of U.S. Citizenship and Immigration Services;
- (xi) Assistant Secretary for Policy;
- (xii) General Counsel;
- (xiii) Deputy Under Secretary for Management;
- (xiv) Deputy Commissioner of U.S. Customs and Border Protection;
- (xv) Deputy Administrator of the Transportation Security Administration;
- (xvi) Deputy Director of U.S. Immigration and Customs Enforcement;
- (xvii) Deputy Director of U.S. Citizenship and Immigration Services; and
- (xviii) Director of the Federal Law Enforcement Training Center.

(b) Exceptions.

- (i) No individual who is serving in an office listed in subsection (a) in an acting capacity, by virtue of so serving, shall act as Secretary pursuant to this section.
- (ii) Notwithstanding the provisions of this section, the President retains discretion, to the extent permitted by the Vacancies Act, to depart from this order in designating an acting Secretary.

SEC. 89. *Savings Provision.*

Except as otherwise specifically provided above or in Executive Order 13284 of January 23, 2003 ("Amendment of Executive Orders, and Other Actions, in Connection With the Establishment of the Department of Homeland Security") [6 U.S.C. 121 note], references in any prior Executive Order relating to an agency or an agency component that is transferred to the Department of Homeland Security ("the Department"), or relating to

a function that is transferred to the Secretary of Homeland Security, shall be deemed to refer, as appropriate, to the Department or its officers, employees, agents, organizational units, or functions.

SEC. 90. Nothing in this order shall be construed to impair or otherwise affect the authority of the Secretary of Defense with respect to the Department of Defense, including the chain of command for the armed forces of the United States under section 162(b) of title 10, United States Code, and the authority of the Secretary of Defense with respect to the Department of Defense under section 113(b) of that title.

SEC. 91. Nothing in this order shall be construed to limit or restrict the authorities of the Central Intelligence Agency and the Director of Central Intelligence pursuant to the National Security Act of 1947 [act July 26, 1947, ch. 343; see Tables for classification] and the CIA Act of 1949 [probably means the Central Intelligence Agency Act of 1949, act June 20, 1949, ch. 227; see Tables for classification].

SEC. 92. This order shall become effective on March 1, 2003.

SEC. 93. This order does not create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

[Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a) and (b) of Pub. L. 108-458, set out as a note under section 3001 of Title 50, War and National Defense.]

EXECUTIVE ORDER NO. 13362

Ex. Ord. No. 13362, Nov. 29, 2004, 69 F.R. 70173, which designated additional officers for the Department of Homeland Security order of succession, was revoked by Ex. Ord. No. 13442, § 2, Aug. 13, 2007, 72 F.R. 45878.

§ 112. Secretary; functions

(a) Secretary

(1) In general

There is a Secretary of Homeland Security, appointed by the President, by and with the advice and consent of the Senate.

(2) Head of Department

The Secretary is the head of the Department and shall have direction, authority, and control over it.

(3) Functions vested in Secretary

All functions of all officers, employees, and organizational units of the Department are vested in the Secretary.

(b) Functions

The Secretary—

(1) except as otherwise provided by this chapter, may delegate any of the Secretary's functions to any officer, employee, or organizational unit of the Department;

(2) shall have the authority to make contracts, grants, and cooperative agreements, and to enter into agreements with other executive agencies, as may be necessary and proper to carry out the Secretary's responsibilities under this chapter or otherwise provided by law; and

(3) shall take reasonable steps to ensure that information systems and databases of the Department are compatible with each other and with appropriate databases of other Departments.

(c) Coordination with non-Federal entities

With respect to homeland security, the Secretary shall coordinate through the Office of State and Local Coordination¹ (established under section 361 of this title) (including the provision of training and equipment) with State and local government personnel, agencies, and authorities, with the private sector, and with other entities, including by—

(1) coordinating with State and local government personnel, agencies, and authorities, and with the private sector, to ensure adequate planning, equipment, training, and exercise activities;

(2) coordinating and, as appropriate, consolidating, the Federal Government's communications and systems of communications relating to homeland security with State and local government personnel, agencies, and authorities, the private sector, other entities, and the public; and

(3) distributing or, as appropriate, coordinating the distribution of, warnings and information to State and local government personnel, agencies, and authorities and to the public.

(d) Meetings of National Security Council

The Secretary may, subject to the direction of the President, attend and participate in meetings of the National Security Council.

(e) Issuance of regulations

The issuance of regulations by the Secretary shall be governed by the provisions of chapter 5 of title 5, except as specifically provided in this chapter, in laws granting regulatory authorities that are transferred by this chapter, and in laws enacted after November 25, 2002.

(f) Special Assistant to the Secretary

The Secretary shall appoint a Special Assistant to the Secretary who shall be responsible for—

(1) creating and fostering strategic communications with the private sector to enhance the primary mission of the Department to protect the American homeland;

(2) advising the Secretary on the impact of the Department's policies, regulations, processes, and actions on the private sector;

(3) interfacing with other relevant Federal agencies with homeland security missions to assess the impact of these agencies' actions on the private sector;

(4) creating and managing private sector advisory councils composed of representatives of industries and associations designated by the Secretary to—

(A) advise the Secretary on private sector products, applications, and solutions as they relate to homeland security challenges;

(B) advise the Secretary on homeland security policies, regulations, processes, and

actions that affect the participating industries and associations; and

(C) advise the Secretary on private sector preparedness issues, including effective methods for—

(i) promoting voluntary preparedness standards to the private sector; and

(ii) assisting the private sector in adopting voluntary preparedness standards;

(5) working with Federal laboratories, federally funded research and development centers, other federally funded organizations, academia, and the private sector to develop innovative approaches to address homeland security challenges to produce and deploy the best available technologies for homeland security missions;

(6) promoting existing public-private partnerships and developing new public-private partnerships to provide for collaboration and mutual support to address homeland security challenges;

(7) assisting in the development and promotion of private sector best practices to secure critical infrastructure;

(8) providing information to the private sector regarding voluntary preparedness standards and the business justification for preparedness and promoting to the private sector the adoption of voluntary preparedness standards;

(9) coordinating industry efforts, with respect to functions of the Department of Homeland Security, to identify private sector resources and capabilities that could be effective in supplementing Federal, State, and local government agency efforts to prevent or respond to a terrorist attack;

(10) coordinating with the Commissioner of U.S. Customs and Border Protection and the Assistant Secretary for Trade Development of the Department of Commerce on issues related to the travel and tourism industries; and

(11) consulting with the Office of State and Local Government Coordination and Preparedness on all matters of concern to the private sector, including the tourism industry.

(g) Standards policy

All standards activities of the Department shall be conducted in accordance with section 12(d) of the National Technology Transfer Advancement Act of 1995 (15 U.S.C. 272 note) and Office of Management and Budget Circular A-119.

(h) Planning requirements

The Secretary shall ensure the head of each office and component of the Department takes into account the needs of children, including children within under-served communities, in mission planning and mission execution. In furtherance of this subsection, the Secretary shall require each such head to seek, to the extent practicable, advice and feedback from organizations representing the needs of children. The Federal Advisory Committee Act (5 U.S.C. App.)² shall not apply whenever such advice or

¹ So in original. Probably should be "Office for State and Local Government Coordination".

² See References in Text note below.

feedback is sought in accordance with this subsection.

(Pub. L. 107-296, title I, §102, Nov. 25, 2002, 116 Stat. 2142; Pub. L. 108-458, title VII, §7402, Dec. 17, 2004, 118 Stat. 3850; Pub. L. 110-53, title IX, §902, Aug. 3, 2007, 121 Stat. 371; Pub. L. 114-125, title VIII, §802(g)(1)(A)(i), Feb. 24, 2016, 130 Stat. 210; Pub. L. 117-130, §2, June 6, 2022, 136 Stat. 1229.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(1), (2), and (e), 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.

Section 12(d) of the National Technology Transfer Advancement Act of 1995, referred to in subsec. (g), probably means section 12(d) of the National Technology Transfer and Advancement Act of 1995, which is section 12(d) of Pub. L. 104-113, and which is set out as a note under section 272 of Title 15, Commerce and Trade.

The Federal Advisory Committee Act, referred to in subsec. (h), 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.

AMENDMENTS

2022—Subsec. (h). Pub. L. 117-130 added subsec. (h).

2016—Subsec. (f)(10). Pub. L. 114-125 substituted “the Commissioner of U.S. Customs and Border Protection” for “the Directorate of Border and Transportation Security”.

2007—Subsec. (f)(4)(C). Pub. L. 110-53, §902(b), added subpar. (C).

Subsec. (f)(8) to (11). Pub. L. 110-53, §902(a), added par. (8) and redesignated former pars. (8) to (10) as (9) to (11), respectively.

2004—Subsec. (f)(8) to (10). Pub. L. 108-458 added pars. (8) to (10).

Statutory Notes and Related Subsidiaries

DAILY PUBLIC REPORT OF COVERED CONTRACT AWARDS

Pub. L. 117-263, div. G, title LXXI, §7113, Dec. 23, 2022, 136 Stat. 3631, provided that:

“(a) DAILY CONTRACT REPORTING REQUIREMENTS.—

“(1) REPORT.—

“(A) IN GENERAL.—The Secretary shall post, maintain, and update in accordance with paragraph (2), on a publicly available website of the Department, a daily report of all covered contract awards.

“(B) CONTENTS.—Each report under this paragraph shall include, for each covered contract award, information relating to the following:

“(i) The contract number, modification number, or delivery order number.

“(ii) The contract type.

“(iii) The amount obligated for the award.

“(iv) The total contract value for the award, including all options.

“(v) The description of the purpose for the award.

“(vi) The number of proposals or bids received.

“(vii) The name and address of the vendor, and whether the vendor is a small business.

“(viii) The period and primary place of performance for the award.

“(ix) Whether the award is multiyear.

“(x) The contracting office.

“(2) UPDATE.—The Secretary shall make updates referred to in paragraph (1) not later than five business days after the date on which a covered contract is authorized or modified.

“(3) EFFECTIVE DATE.—Paragraph (1) shall take effect on the date that is 180 days after the date of the enactment of this Act [Dec. 23, 2022].

“(b) UNDEFINITIZED CONTRACT ACTION OR DEFINITIZED AMOUNT.—If a covered contract award reported under subsection (a) includes an undefinitized contract action, the Secretary shall—

“(1) report the estimated total contract value for the award and the amount obligated upon award; and

“(2) once there is a definitized amount for the award, update the total contract value and amount obligated.

“(c) EXEMPTION.—Each report required under subsection (a) shall not include covered contract awards for which synopsis was exempted under section 5.202(a)(1) of the Federal Acquisition Regulation, or any successor thereto.

“(d) DEFINITIONS.—In this section:

“(1) COVERED CONTRACT AWARD.—The term ‘covered contract award’—

“(A) means a contract action of the Department with a total contract value of not less than \$4,000,000, including unexercised options; and

“(B) includes—

“(i) contract awards governed by the Federal Acquisition Regulation;

“(ii) modifications to a contract award that increase the total value, expand the scope of work, or extend the period of performance;

“(iii) orders placed on a multiple-award or multiple-agency contract that includes delivery or quantity terms that are indefinite;

“(iv) other transaction authority agreements; and

“(v) contract awards made with other than full and open competition.

“(2) DEFINITIZED AMOUNT.—The term ‘definitized amount’ means the final amount of a covered contract award after agreement between the Department and the contractor at issue.

“(3) DEPARTMENT.—The term ‘Department’ means the Department of Homeland Security.

“(4) SECRETARY.—The term ‘Secretary’ means the Secretary of Homeland Security.

“(5) SMALL BUSINESS.—The term ‘small business’ means an entity that qualifies as a small business concern, as defined under section 3 of the Small Business Act (15 U.S.C. 632).

“(6) TOTAL CONTRACT VALUE.—The term ‘total contract value’ means the total amount of funds expected to be provided to the contractor at issue under the terms of the contract through the full period of performance.

“(7) UNDEFINITIZED CONTRACT ACTION.—The term ‘undefinitized contract action’ means any contract action for which the contract terms, specifications, or price is not established prior to the start of the performance of the covered contract award.

“(e) SUNSET.—This section shall cease to have force or effect on the date that is five years after the date of the enactment of this Act [Dec. 23, 2022].”

REQUIRED COORDINATION

Pub. L. 108-458, title VII, §7405, Dec. 17, 2004, 118 Stat. 3851, provided that: “The Secretary of Homeland Security shall ensure that there is effective and ongoing coordination of Federal efforts to prevent, prepare for, and respond to acts of terrorism and other major disasters and emergencies among the divisions of the Department of Homeland Security, including the Directorate of Emergency Preparedness and Response and the Office for State and Local Government Coordination and Preparedness.”

PROTECTIONS FOR HUMAN RESEARCH SUBJECTS OF THE
DEPARTMENT OF HOMELAND SECURITY

Pub. L. 108-458, title VIII, §8306, Dec. 17, 2004, 118 Stat. 3869, provided that: “The Secretary of Homeland Security shall ensure that the Department of Homeland Security complies with the protections for human research subjects, as described in part 46 of title 45, Code of Federal Regulations, or in equivalent regulations as promulgated by such Secretary, with respect to research that is conducted or supported by the Department.”

§ 113. Other officers

(a) Deputy Secretary; Under Secretaries

(1) In general

Except as provided under paragraph (2), there are the following officers, appointed by the President, by and with the advice and consent of the Senate:

(A) A Deputy Secretary of Homeland Security, who shall be the Secretary’s first assistant for purposes of subchapter III of chapter 33 of title 5.

(B) An Under Secretary for Science and Technology.

(C) A Commissioner of U.S. Customs and Border Protection.

(D) An Administrator of the Federal Emergency Management Agency.

(E) A Director of the Bureau of Citizenship and Immigration Services.

(F) An Under Secretary for Management, who shall be first assistant to the Deputy Secretary of Homeland Security for purposes of subchapter III of chapter 33 of title 5.

(G) A Director of U.S. Immigration and Customs Enforcement.

(H) A Director of the Cybersecurity and Infrastructure Security Agency.

(I) Not more than 12 Assistant Secretaries.

(J) A General Counsel, who shall be the chief legal officer of the Department.

(K) An Under Secretary for Strategy, Policy, and Plans.

(2) Assistant Secretaries

If any of the Assistant Secretaries referred to under paragraph (1)(I) is designated to be the Assistant Secretary for Health Affairs, the Assistant Secretary for Legislative Affairs, or the Assistant Secretary for Public Affairs, that Assistant Secretary shall be appointed by the President without the advice and consent of the Senate.

(b) Inspector General

There shall be in the Department an Office of Inspector General and an Inspector General at the head of such office, as provided in chapter 4 of title 5.

(c) Commandant of the Coast Guard

To assist the Secretary in the performance of the Secretary’s functions, there is a Commandant of the Coast Guard, who shall be appointed as provided in section 44¹ of title 14 and who shall report directly to the Secretary. In addition to such duties as may be provided in this chapter and as assigned to the Commandant by the Secretary, the duties of the Commandant

shall include those required by section 2¹ of title 14.

(d) Other officers

To assist the Secretary in the performance of the Secretary’s functions, there are the following officers, appointed by the President:

(1) A Director of the Secret Service.

(2) A Chief Information Officer.

(3) An Officer for Civil Rights and Civil Liberties.

(4) An Assistant Secretary for the Countering Weapons of Mass Destruction Office.

(5) Any Director of a Joint Task Force under section 348 of this title.

(e) Chief Financial Officer

There shall be in the Department a Chief Financial Officer, as provided in chapter 9 of title 31.

(f) Performance of specific functions

Subject to the provisions of this chapter, every officer of the Department shall perform the functions specified by law for the official’s office or prescribed by the Secretary.

(g) Vacancies

(1) Absence, disability, or vacancy of Secretary or Deputy Secretary

Notwithstanding chapter 33 of title 5, the Under Secretary for Management shall serve as the Acting Secretary if by reason of absence, disability, or vacancy in office, neither the Secretary nor Deputy Secretary is available to exercise the duties of the Office of the Secretary.

(2) Further order of succession

Notwithstanding chapter 33 of title 5, the Secretary may designate such other officers of the Department in further order of succession to serve as Acting Secretary.

(3) Notification of vacancies

The Secretary 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 any vacancies that require notification under sections 3345 through 3349d of title 5 (commonly known as the “Federal Vacancies Reform Act of 1998”).

(Pub. L. 107-296, title I, §103, Nov. 25, 2002, 116 Stat. 2144; Pub. L. 108-7, div. L, §104(a), Feb. 20, 2003, 117 Stat. 529; Pub. L. 108-330, §3(d)(1)(A), Oct. 16, 2004, 118 Stat. 1276; Pub. L. 108-458, title VII, §7407(b), Dec. 17, 2004, 118 Stat. 3853; Pub. L. 109-295, title VI, §612(b), Oct. 4, 2006, 120 Stat. 1410; Pub. L. 109-347, title V, §501(b)(1), Oct. 13, 2006, 120 Stat. 1935; Pub. L. 110-53, title V, §531(b)(2), Aug. 3, 2007, 121 Stat. 334; Pub. L. 110-388, §1, Oct. 10, 2008, 122 Stat. 4144; Pub. L. 112-166, §2(f)(5), Aug. 10, 2012, 126 Stat. 1285; Pub. L. 114-125, title VIII, §802(g)(1)(A)(ii), Feb. 24, 2016, 130 Stat. 211; Pub. L. 114-328, div. A, title XIX, §§1901(a), 1903(a), Dec. 23, 2016, 130 Stat. 2665, 2672; Pub. L. 115-278, §2(g)(1), Nov. 16, 2018, 132 Stat. 4176; Pub. L. 115-387, §2(f)(1), Dec. 21, 2018, 132 Stat. 5168; Pub. L. 117-286, §4(b)(21), Dec. 27, 2022, 136 Stat. 4345.)

¹ See References in Text note below.