

TITLE 6—DOMESTIC SECURITY

Chap. **1. Homeland Security Organization ...** Sec. **101**

PRIOR PROVISIONS

A prior Title 6, Surety Bonds, was enacted by act July 30, 1947, ch. 390, §1, 61 Stat. 646, and was repealed by act Sept. 13, 1982, Pub. L. 97-258, §5(b), 96 Stat. 1068, 1085.

Sections 1 to 5 were repealed by Pub. L. 92-310, title II, §203(1), June 6, 1972, 86 Stat. 202.

Section 1, acts July 30, 1947, ch. 390, 61 Stat. 646; Oct. 31, 1951, ch. 655, §13, 65 Stat. 715, related to custody of official bonds.

Section 2, act July 30, 1947, ch. 390, 61 Stat. 647, directed examination at least once every two years of sufficiency of sureties on official bonds.

Section 3, acts July 30, 1947, ch. 390, 61 Stat. 647; Sept. 3, 1954, ch. 1263, §15, 68 Stat. 1231, related to renewal of bonds and continuance of liability.

Section 4, act July 30, 1947, ch. 390, 61 Stat. 647, related to notice of delinquency of principal. The provisions of the section were reenacted by section 260 of Pub. L. 92-310, which was classified to section 497a of former Title 31. See section 3532 of Title 31, Money and Finance.

Section 5, act July 30, 1947, ch. 390, 61 Stat. 648, related to limitation of actions against sureties.

Sections 6 to 13 were repealed by Pub. L. 97-258, §5(b), Sept. 13, 1982, 96 Stat. 1068, 1085.

Section 6, acts July 30, 1947, ch. 390, 61 Stat. 648; Aug. 9, 1955, ch. 683, §2, 69 Stat. 620; June 6, 1972, Pub. L. 92-310, title II, §203(2), 86 Stat. 202, related to surety companies as sureties. See section 9304 of Title 31, Money and Finance.

Section 7, act July 30, 1947, ch. 390, 61 Stat. 648, related to appointment of agents and service of process with regards to surety companies as sureties. See section 9306 of Title 31.

Section 8, act July 30, 1947, ch. 390, 61 Stat. 649, related to deposit of copy of charter of surety company before transacting business under sections 6 to 13 of this title. See section 9305 of Title 31.

Section 9, act July 30, 1947, ch. 390, 61 Stat. 649, related to quarterly statements of surety companies filed with Secretary of the Treasury. See section 9305 of Title 31.

Section 10, act July 30, 1947, ch. 390, 61 Stat. 649, related to jurisdiction over surety companies with regards to suits on bonds. See section 9307 of Title 31.

Section 11, act July 30, 1947, ch. 390, 61 Stat. 649, provided sanctions for nonpayment of a judgment by surety company. See section 9305 of Title 31.

Section 12, act July 30, 1947, ch. 390, 61 Stat. 649, es-topped a surety company to deny its corporate powers, etc. See section 9307 of Title 31.

Section 13, act July 30, 1947, ch. 390, 61 Stat. 650, provided for fining of surety companies for their failure to comply with law. See section 9308 of Title 31.

Section 14, acts July 30, 1947, ch. 390, 61 Stat. 650; Aug. 9, 1955, ch. 683, §1, 69 Stat. 618, which related to purchase of bonds to cover officers and employees of Federal Government, was repealed by Pub. L. 92-310, title II, §203(1), June 6, 1972, 86 Stat. 202.

Section 15, act July 30, 1947, ch. 390, 61 Stat. 650, which related to bonds and notes of United States in

lieu of recognizance, stipulation, bond, guarantee, or undertaking and contractors' bonds, was repealed by Pub. L. 97-258, §5(b), Sept. 13, 1982, 96 Stat. 1068, 1085. See sections 9301 and 9303 of Title 31, Money and Finance.

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§ 101. Definitions

In this chapter, the following definitions apply:

- (1) Each of the terms “American homeland” and “homeland” means the United States.
- (2) The term “appropriate congressional committee” means any committee of the House of Representatives or the Senate having legislative or oversight jurisdiction under the Rules of the House of Representatives or the Senate, respectively, over the matter concerned.
- (3) The term “assets” includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).
- (4) The term “critical infrastructure” has the meaning given that term in section 5195c(e) of title 42.
- (5) The term “Department” means the Department of Homeland Security.
- (6) The term “emergency response providers” includes Federal, State, and local emergency public safety, law enforcement, emergency response, emergency medical (including hospital emergency facilities), and related personnel, agencies, and authorities.
- (7) The term “executive agency” means an executive agency and a military department, as defined, respectively, in sections 105 and 102 of title 5.
- (8) The term “functions” includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, and responsibilities.
- (9) The term “key resources” means publicly or privately controlled resources essential to the minimal operations of the economy and government.
- (10) The term “local government” means—
 - (A) a county, municipality, city, town, township, local public authority, school dis-

tract, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(B) an Indian tribe or authorized tribal organization, or in Alaska a Native village or Alaska Regional Native Corporation; and

(C) a rural community, unincorporated town or village, or other public entity.

(11) The term “major disaster” has the meaning given in section 5122(2) of title 42.

(12) The term “personnel” means officers and employees.

(13) The term “Secretary” means the Secretary of Homeland Security.

(14) The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any possession of the United States.

(15) The term “terrorism” means any activity that—

(A) involves an act that—

(i) is dangerous to human life or potentially destructive of critical infrastructure or key resources; and

(ii) is a violation of the criminal laws of the United States or of any State or other subdivision of the United States; and

(B) appears to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping.

(16)(A) The term “United States”, when used in a geographic sense, means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, any possession of the United States, and any waters within the jurisdiction of the United States.

(B) Nothing in this paragraph or any other provision of this chapter shall be construed to modify the definition of “United States” for the purposes of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] or any other immigration or nationality law.

(Pub. L. 107–296, § 2, Nov. 25, 2002, 116 Stat. 2140.)

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 below and Tables.

The Immigration and Nationality Act, referred to in par. (16)(B), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, 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.

EFFECTIVE DATE

Pub. L. 107–296, § 4, Nov. 25, 2002, 116 Stat. 2142, provided that: “This Act [see Tables for classification] shall take effect 60 days after the date of enactment [Nov. 25, 2002].”

SHORT TITLE OF 2004 AMENDMENTS

Pub. L. 108–458, title VII, § 7001, Dec. 17, 2004, 118 Stat. 3775, provided that: “This title [see Tables for classification] may be cited as the ‘9/11 Commission Implementation Act of 2004’.”

Pub. L. 108–458, title VIII, § 8301, Dec. 17, 2004, 118 Stat. 3867, provided that: “This subtitle [subtitle C (§§ 8301–8306) of title VIII of Pub. L. 108–458, amending sections 111, 142, and 345 of this title and section 8I of the Inspector General Act of 1978, Pub. L. 95–452, set out in the Appendix to Title 5, Government Organization and Employees, and enacting provisions set out as a note under section 112 of this title] may be cited as the ‘Homeland Security Civil Rights and Civil Liberties Protection Act of 2004’.”

Pub. L. 108–330, § 1, Oct. 16, 2004, 118 Stat. 1275, provided that: “This Act [amending sections 113, 342, and 454 of this title and sections 901 and 3516 of Title 31, Money and Finance, and enacting provisions set out as notes under section 342 of this title and sections 901 and 3516 of Title 31] may be cited as ‘Department of Homeland Security Financial Accountability Act’.”

SHORT TITLE OF 2003 AMENDMENT

Pub. L. 108–7, div. L, Feb. 20, 2003, 117 Stat. 532, provided in part that: “This division [enacting sections 103 and 552a of this title and section 8I of the Inspector General Act of 1978, Pub. L. 95–452, set out in the Appendix to Title 5, Government Organization and Employees, amending sections 113, 162, 164, 188, 395, 453, and 551 of this title, section 8D of the Inspector General Act of 1978, sections 1103 and 1356 of Title 8, Aliens and Nationality, and section 300aa–33 of Title 42, The Public Health and Welfare, redesignating section 8I of the Inspector General Act of 1978 as section 8J, repealing section 371 of this title and former section 8J of the Inspector General Act of 1978, enacting provisions set out as notes under section 521 of this title, section 1356 of Title 8, and section 300aa–33 of Title 42, and repealing provisions set out as a note under section 300aa–33 of Title 42] may be cited as the ‘Homeland Security Act Amendments of 2003’.”

SHORT TITLE

Pub. L. 107–296, § 1(a), Nov. 25, 2002, 116 Stat. 2135, provided that: “This Act [see Tables for classification] may be cited as the ‘Homeland Security Act of 2002’.”

Pub. L. 107–296, title II, § 211, Nov. 25, 2002, 116 Stat. 2150, provided that: “This subtitle [subtitle B (§§ 211–215) of title II of Pub. L. 107–296, enacting part B of subchapter II of this chapter] may be cited as the ‘Critical Infrastructure Information Act of 2002’.”

Pub. L. 107–296, title VIII, § 861, Nov. 25, 2002, 116 Stat. 2238, provided that: “This subtitle [subtitle G (§§ 861–865) of title VIII of Pub. L. 107–296, enacting part G of subchapter VIII of this chapter] may be cited as the ‘Support Anti-terrorism by Fostering Effective Technologies Act of 2002’ or the ‘SAFETY Act’.”

For short title of part I of subchapter VIII of this chapter as the “Homeland Security Information Sharing Act”, see section 481(a) of this title.

Pub. L. 107–296, title X, § 1001(a), Nov. 25, 2002, 116 Stat. 2259, provided that: “This title [enacting subchapter X of this chapter and sections 3531 to 3537 and 3538 of Title 44, Public Printing and Documents, amending section 2224 of Title 10, Armed Forces, sections 278g–3 and 278g–4 of Title 15, Commerce and Trade, section 11331 of Title 40, Public Buildings, Property, and Works, and sections 3504 to 3506 of Title 44, and repealing section 11332 of Title 40 and provisions set out as

notes under section 3531 of Title 44] may be cited as the ‘Federal Information Security Management Act of 2002.’”

[For another Federal Information Security Management Act of 2002, see section 301(a) of Pub. L. 107-347, title III, Dec. 17, 2002, 116 Stat. 2946, set out as a note under section 101 of Title 44, Public Printing and Documents.]

NATIONAL COMMISSION ON TERRORIST ATTACKS UPON
THE UNITED STATES

Pub. L. 107-306, title VI, Nov. 27, 2002, 116 Stat. 2408, as amended by Pub. L. 108-207, §1, Mar. 16, 2004, 118 Stat. 556, provided that:

“SEC. 601. ESTABLISHMENT OF COMMISSION.

“There is established in the legislative branch the National Commission on Terrorist Attacks Upon the United States (in this title referred to as the ‘Commission’).

“SEC. 602. PURPOSES.

“The purposes of the Commission are to—

“(1) examine and report upon the facts and causes relating to the terrorist attacks of September 11, 2001, occurring at the World Trade Center in New York, New York, in Somerset County, Pennsylvania, and at the Pentagon in Virginia;

“(2) ascertain, evaluate, and report on the evidence developed by all relevant governmental agencies regarding the facts and circumstances surrounding the attacks;

“(3) build upon the investigations of other entities, and avoid unnecessary duplication, by reviewing the findings, conclusions, and recommendations of—

“(A) the Joint Inquiry of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives regarding the terrorist attacks of September 11, 2001, (hereinafter in this title referred to as the ‘Joint Inquiry’); and

“(B) other executive branch, congressional, or independent commission investigations into the terrorist attacks of September 11, 2001, other terrorist attacks, and terrorism generally;

“(4) make a full and complete accounting of the circumstances surrounding the attacks, and the extent of the United States’ preparedness for, and immediate response to, the attacks; and

“(5) investigate and report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of terrorism.

“SEC. 603. COMPOSITION OF COMMISSION.

“(a) MEMBERS.—The Commission shall be composed of 10 members, of whom—

“(1) 1 member shall be appointed by the President, who shall serve as chairman of the Commission;

“(2) 1 member shall be appointed by the leader of the Senate (majority or minority leader, as the case may be) of the Democratic Party, in consultation with the leader of the House of Representatives (majority or minority leader, as the case may be) of the Democratic Party, who shall serve as vice chairman of the Commission;

“(3) 2 members shall be appointed by the senior member of the Senate leadership of the Democratic Party;

“(4) 2 members shall be appointed by the senior member of the leadership of the House of Representatives of the Republican Party;

“(5) 2 members shall be appointed by the senior member of the Senate leadership of the Republican Party; and

“(6) 2 members shall be appointed by the senior member of the leadership of the House of Representatives of the Democratic Party.

“(b) QUALIFICATIONS; INITIAL MEETING.—

“(1) POLITICAL PARTY AFFILIATION.—Not more than 5 members of the Commission shall be from the same political party.

“(2) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Commission may not be an officer or employee of the Federal Government or any State or local government.

“(3) OTHER QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in such professions as governmental service, law enforcement, the armed services, law, public administration, intelligence gathering, commerce (including aviation matters), and foreign affairs.

“(4) DEADLINE FOR APPOINTMENT.—All members of the Commission shall be appointed on or before December 15, 2002.

“(5) INITIAL MEETING.—The Commission shall meet and begin the operations of the Commission as soon as practicable.

“(c) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the call of the chairman or a majority of its members. Six members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

“SEC. 604. FUNCTIONS OF COMMISSION.

“(a) IN GENERAL.—The functions of the Commission are to—

“(1) conduct an investigation that—

“(A) investigates relevant facts and circumstances relating to the terrorist attacks of September 11, 2001, including any relevant legislation, Executive order, regulation, plan, policy, practice, or procedure; and

“(B) may include relevant facts and circumstances relating to—

“(i) intelligence agencies;

“(ii) law enforcement agencies;

“(iii) diplomacy;

“(iv) immigration, nonimmigrant visas, and border control;

“(v) the flow of assets to terrorist organizations;

“(vi) commercial aviation;

“(vii) the role of congressional oversight and resource allocation; and

“(viii) other areas of the public and private sectors determined relevant by the Commission for its inquiry;

“(2) identify, review, and evaluate the lessons learned from the terrorist attacks of September 11, 2001, regarding the structure, coordination, management policies, and procedures of the Federal Government, and, if appropriate, State and local governments and nongovernmental entities, relative to detecting, preventing, and responding to such terrorist attacks; and

“(3) submit to the President and Congress such reports as are required by this title containing such findings, conclusions, and recommendations as the Commission shall determine, including proposing organization, coordination, planning, management arrangements, procedures, rules, and regulations.

“(b) RELATIONSHIP TO INTELLIGENCE COMMITTEES’ INQUIRY.—When investigating facts and circumstances relating to the intelligence community, the Commission shall—

“(1) first review the information compiled by, and the findings, conclusions, and recommendations of, the Joint Inquiry; and

“(2) after that review pursue any appropriate area of inquiry if the Commission determines that—

“(A) the Joint Inquiry had not investigated that area;

“(B) the Joint Inquiry’s investigation of that area had not been complete; or

“(C) new information not reviewed by the Joint Inquiry had become available with respect to that area.

“SEC. 605. POWERS OF COMMISSION.

“(a) IN GENERAL.—

“(1) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this title—

“(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

“(B) subject to paragraph (2)(A), require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable.

“(2) SUBPOENAS.—

“(A) ISSUANCE.—

“(i) IN GENERAL.—A subpoena may be issued under this subsection only—

“(I) by the agreement of the chairman and the vice chairman; or

“(II) by the affirmative vote of 6 members of the Commission.

“(ii) SIGNATURE.—Subject to clause (i), subpoenas issued under this subsection may be issued under the signature of the chairman or any member designated by a majority of the Commission, and may be served by any person designated by the chairman or by a member designated by a majority of the Commission.

“(B) ENFORCEMENT.—

“(i) IN GENERAL.—In the case of contumacy or failure to obey a subpoena issued under subsection (a), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

“(ii) ADDITIONAL ENFORCEMENT.—In the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section, the Commission may, by majority vote, certify a statement of fact constituting such failure to the appropriate United States attorney, who may bring the matter before the grand jury for its action, under the same statutory authority and procedures as if the United States attorney had received a certification under sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194).

“(b) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

“(c) INFORMATION FROM FEDERAL AGENCIES.—

“(1) IN GENERAL.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government, information, suggestions, estimates, and statistics for the purposes of this title. Each department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the chairman, the chairman of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

“(2) RECEIPT, HANDLING, STORAGE, AND DISSEMINATION.—Information shall only be received, handled, stored, and disseminated by members of the Commission and its staff consistent with all applicable statutes, regulations, and Executive orders.

“(d) ASSISTANCE FROM FEDERAL AGENCIES.—

“(1) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

“(2) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States may provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

“(e) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

“(f) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

“SEC. 606. NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.

“(a) IN GENERAL.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

“(b) PUBLIC MEETINGS AND RELEASE OF PUBLIC VERSIONS OF REPORTS.—The Commission shall—

“(1) hold public hearings and meetings to the extent appropriate; and

“(2) release public versions of the reports required under section 610(a) and (b).

“(c) PUBLIC HEARINGS.—Any public hearings of the Commission shall be conducted in a manner consistent with the protection of information provided to or developed for or by the Commission as required by any applicable statute, regulation, or Executive order.

“SEC. 607. STAFF OF COMMISSION.

“(a) IN GENERAL.—

“(1) APPOINTMENT AND COMPENSATION.—The chairman, in consultation with vice chairman, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

“(2) PERSONNEL AS FEDERAL EMPLOYEES.—

“(A) IN GENERAL.—The executive director and any personnel of the Commission who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

“(B) MEMBERS OF COMMISSION.—Subparagraph (A) shall not be construed to apply to members of the Commission.

“(1) DETAILEES.—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

“(c) CONSULTANT SERVICES.—The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

“SEC. 608. COMPENSATION AND TRAVEL EXPENSES.

“(a) COMPENSATION.—Each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

“(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) [5703] of title 5, United States Code.

“SEC. 609. SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.

“The appropriate Federal agencies or departments shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances to the extent possible pursuant to existing procedures and requirements, except that no person shall be provided with access to classified information under this title without the appropriate security clearances.

“SEC. 610. REPORTS OF COMMISSION; TERMINATION.

“(a) INTERIM REPORTS.—The Commission may submit to the President and Congress interim reports containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

“(b) FINAL REPORT.—Not later than 20 months after the date of the enactment of this Act [Nov. 27, 2002], the Commission shall submit to the President and Congress a final report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

“(c) TERMINATION.—

“(1) IN GENERAL.—The Commission, and all the authorities of this title, shall terminate 30 days after the date on which the final report is submitted under subsection (b).

“(2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the 30-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the final report.

“SEC. 611. FUNDING.

“(a) TRANSFER FROM THE NATIONAL FOREIGN INTELLIGENCE PROGRAM.—Of the amounts authorized to be appropriated by this Act [see Tables for classification] and made available in public law 107-248 [see Tables for classification] (Department of Defense Appropriations Act, 2003) for the National Foreign Intelligence Program, not to exceed \$3,000,000 shall be available for transfer to the Commission for purposes of the activities of the Commission under this title.

“(b) ADDITIONAL FUNDING.—In addition to the amounts made available to the Commission under subsection (a) and under chapter 2 of title II of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108-11; 117 Stat. 591), of the amounts appropriated for the programs and activities of the Federal Government for fiscal year 2004 that remain available for obligation, not more than \$1,000,000 shall be available for transfer to the Commission for purposes of the activities of the Commission under this title.

“(c) DURATION OF AVAILABILITY.—Amounts made available to the Commission under this section shall remain available until the termination of the Commission.”

§ 102. Construction; severability

Any provision of this chapter held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this chapter and shall not affect the

remainder thereof, or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

(Pub. L. 107-296, § 3, Nov. 25, 2002, 116 Stat. 2141.)

§ 103. Use of appropriated funds

Notwithstanding any other provision of this chapter, any report, notification, or consultation addressing directly or indirectly the use of appropriated funds and stipulated by this chapter to be submitted to, or held with, the Congress or any Congressional committee shall also be submitted to, or held with, the Committees on Appropriations of the Senate and the House of Representatives under the same conditions and with the same restrictions as stipulated by this chapter.

(Pub. L. 107-296, title XVII, § 1714, as added Pub. L. 108-7, div. L, § 103(5), Feb. 20, 2003, 117 Stat. 529.)

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 1714 of Pub. L. 107-296 amended section 300aa-33 of Title 42, The Public Health and Welfare, prior to repeal by Pub. L. 108-7, div. L, § 102(a), Feb. 20, 2003, 117 Stat. 528.

NOTIFICATIONS FOR REPROGRAMMING OR TRANSFER OF FUNDS

Pub. L. 109-90, title V, § 503(e), Oct. 18, 2005, 119 Stat. 2082, provided that: “Hereafter, notwithstanding any other provision of law, notifications pursuant to this section or any other authority for reprogramming or transfer of funds shall be made solely to the Committees on Appropriations of the Senate and the House of Representatives.”

SUBCHAPTER I—DEPARTMENT OF HOMELAND SECURITY

§ 111. Executive department; mission

(a) Establishment

There is established a Department of Homeland Security, as an executive department of the United States within the meaning of title 5.

(b) Mission

(1) In general

The primary mission of the Department is to—

(A) prevent terrorist attacks within the United States;

(B) reduce the vulnerability of the United States to terrorism;

(C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States;

(D) carry out all functions of entities transferred to the Department, including by acting as a focal point regarding natural and manmade crises and emergency planning;

(E) ensure that the functions of the agencies and subdivisions within the Department

that are not related directly to securing the homeland are not diminished or neglected except by a specific explicit Act of Congress;

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

(G) ensure that the civil rights and civil liberties of persons are not diminished by efforts, activities, and programs aimed at securing the homeland; and

(H) monitor connections between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and otherwise contribute to efforts to interdict illegal drug trafficking.

(2) Responsibility for investigating and prosecuting terrorism

Except as specifically provided by law with respect to entities transferred to the Department under this chapter, primary responsibility for investigating and prosecuting acts of terrorism shall be vested not in the Department, but rather in Federal, State, and local law enforcement agencies with jurisdiction over the acts in question.

(Pub. L. 107-296, title I, §101, Nov. 25, 2002, 116 Stat. 2142; Pub. L. 108-458, title VIII, §8302, Dec. 17, 2004, 118 Stat. 3867.)

REFERENCES IN TEXT

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

AMENDMENTS

2004—Subsec. (b)(1)(G), (H). Pub. L. 108-458 added subpar. (G) and redesignated former subpar. (G) as (H).

TRANSFER OF CERTAIN OPM AUTHORITY TO
DEPARTMENT OF HOMELAND SECURITY

Pub. L. 109-90, title V, §516, Oct. 18, 2005, 119 Stat. 2084, provided that: “Notwithstanding any other provision of law, the authority of the Office of Personnel Management to conduct personnel security and suitability background investigations, update investigations, and periodic reinvestigations of applicants for, or appointees in, positions in the Office of the Secretary and Executive Management, the Office of the Under Secretary for Management, Analysis and Operations, Immigration and Customs Enforcement, Directorate for Preparedness, and the Directorate of Science and Technology of the Department of Homeland Security is transferred to the Department of Homeland Security: *Provided*, That on request of the Department of Homeland Security, the Office of Personnel Management shall cooperate with and assist the Department in any investigation or reinvestigation under this section: *Provided further*, That this section shall cease to be effective at such time as the President has selected a single agency to conduct security clearance investigations pursuant to section 3001(c) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458; 50 U.S.C. 435b) and the entity selected under section 3001(b) of such Act has reported to Congress that the agency selected pursuant to such section 3001(c) is capable of conducting all necessary investigations in a timely manner or has authorized the entities within the Department of Homeland Security covered by this section to conduct their own investigations pursuant to section 3001 of such Act.”

Similar provisions were contained in the following prior appropriation act:

Pub. L. 108-334, title V, §518, Oct. 18, 2004, 118 Stat. 1318.

EX. ORD. NO. 13286. AMENDMENT OF EXECUTIVE ORDERS, AND OTHER ACTIONS, IN CONNECTION WITH THE TRANSFER OF CERTAIN FUNCTIONS TO THE SECRETARY OF HOMELAND SECURITY

Ex. Ord. No. 13286, Feb. 28, 2003, 68 F.R. 10619, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Homeland Security Act of 2002 (Public Law 107-296) [see Tables for classification] and section 301 of title 3, United States Code, and in order to reflect the transfer of certain functions to, and other responsibilities vested in, the Secretary of Homeland Security, the transfer of certain agencies and agency components to the Department of Homeland Security, and the delegation of appropriate responsibilities to the Secretary of Homeland Security, it is hereby ordered as follows:

SECTION 1. [Amended Ex. Ord. No. 13276, set out as a note under section 1182 of Title 8, Aliens and Nationality.]

SEC. 2. [Amended Ex. Ord. No. 13274, set out as a note under section 301 of Title 49, Transportation.]

SEC. 3. [Amended Ex. Ord. No. 13271, set out as a note under section 509 of Title 28, Judiciary and Judicial Procedure.]

SEC. 4. [Amended and revoked Ex. Ord. No. 13260, set out as a note under section 402 of Title 50, War and National Defense.]

SEC. 5. [Amended Ex. Ord. No. 13257, set out as a note under section 7103 of Title 22, Foreign Relations and Intercourse.]

SEC. 6. [Amended Ex. Ord. No. 13254, set out as a note under section 12501 of Title 42, The Public Health and Welfare.]

SEC. 7. [Amended Ex. Ord. No. 13231, set out as a note under section 121 of this title.]

SEC. 8. [Amended Ex. Ord. No. 13228, set out as a note under section 402 of Title 50, War and National Defense.]

SEC. 9. [Amended Ex. Ord. No. 13223, set out as a note under section 12302 of Title 10, Armed Forces.]

SEC. 10. [Amended Ex. Ord. No. 13212, set out as a note under section 13201 of Title 42, The Public Health and Welfare.]

SEC. 11. [Amended Ex. Ord. No. 13165, set out as a note under section 1701 of Title 21, Food and Drugs.]

SEC. 12. [Amended Ex. Ord. No. 13154.]

SEC. 13. [Amended Ex. Ord. No. 13133.]

SEC. 14. [Amended Ex. Ord. No. 13120, set out as a note under section 12304 of Title 10, Armed Forces.]

SEC. 15. [Amended Ex. Ord. No. 13112, set out as a note under section 4321 of Title 42, The Public Health and Welfare.]

SEC. 16. [Amended Ex. Ord. No. 13100, set out as a note under section 341 of Title 21, Food and Drugs.]

SEC. 17. [Amended Ex. Ord. No. 13076, set out as a note under section 12304 of Title 10, Armed Forces.]

SEC. 18. [Amended Ex. Ord. No. 13011, set out as a note under section 11101 of Title 40, Public Buildings, Property, and Works.]

SEC. 19. [Amended Ex. Ord. No. 12989, set out as a note under section 1324a of Title 8, Aliens and Nationality.]

SEC. 20. [Amended Ex. Ord. No. 12985, set out as a note preceding section 1121 of Title 10, Armed Forces.]

SEC. 21. [Amended Ex. Ord. No. 12982, set out as a note under section 12304 of Title 10, Armed Forces.]

SEC. 22. [Amended Ex. Ord. No. 12978, set out as a note under section 1701 of Title 50, War and National Defense.]

SEC. 23. [Amended Ex. Ord. No. 12977, set out as a note under section 121 of Title 40, Public Buildings, Property, and Works.]

SEC. 24. [Amended Ex. Ord. No. 12919, set out as a note under section 2153 of Title 50, Appendix, War and National Defense.]

SEC. 25. [Amended Ex. Ord. No. 12906, set out as a note under section 1457 of Title 43, Public Lands.]

SEC. 26. [Amended Ex. Ord. No. 12870, set out as a note under section 4727 of Title 15, Commerce and Trade.]

SEC. 27. [Amended Ex. Ord. No. 12835, set out as a note under section 1023 of Title 15, Commerce and Trade.]

SEC. 28. [Amended Ex. Ord. No. 12830, set out as a note preceding section 1121 of Title 10, Armed Forces.]

SEC. 29. [Amended Ex. Ord. No. 12824, set out as a note under section 492 of Title 14, Coast Guard.]

SEC. 30. [Amended Ex. Ord. No. 12807, set out as a note under section 1182 of Title 8, Aliens and Nationality.]

SEC. 31. [Amended Ex. Ord. No. 12793, set out as a note preceding section 1121 of Title 10, Armed Forces.]

SEC. 32. [Amended Ex. Ord. No. 12789, set out as a note under section 1364 of Title 8, Aliens and Nationality.]

SEC. 33. [Amended Ex. Ord. No. 12788, set out as a note under section 2391 of Title 10, Armed Forces.]

SEC. 34. [Amended Ex. Ord. No. 12777, set out as a note under section 1321 of Title 33, Navigation and Navigable Waters.]

SEC. 35. [Amended Ex. Ord. No. 12743, formerly set out as a note under section 12302 of Title 10, Armed Forces.]

SEC. 36. [Amended Ex. Ord. No. 12742, set out as a note under section 82 of Title 50, War and National Defense.]

SEC. 37. [Amended Ex. Ord. No. 12733, set out as a note under section 12304 of Title 10, Armed Forces.]

SEC. 38. [Amended Ex. Ord. No. 12728, set out as a note under section 12305 of Title 10, Armed Forces.]

SEC. 39. [Amended Ex. Ord. No. 12727, set out as a note under section 12304 of Title 10, Armed Forces.]

SEC. 40. [Amended Ex. Ord. No. 12699, set out as a note under section 7704 of Title 42, The Public Health and Welfare.]

SEC. 41. [Amended Ex. Ord. No. 12657, set out as a note under section 5195 of Title 42, The Public Health and Welfare.]

SEC. 42. [(a) to (i) amended Ex. Ord. No. 12656, set out as a note under section 5195 of Title 42, The Public Health and Welfare.]

Without prejudice to subsections (a) through (i) of this section, all responsibilities assigned to specific Federal officials pursuant to Executive Order 12656 that are substantially the same as any responsibility assigned to, or function transferred to, the Secretary of Homeland Security pursuant to the Homeland Security Act of 2002 (regardless of whether such responsibility or function is expressly required to be carried out through another official of the Department of Homeland Security or not pursuant to such Act), or intended or required to be carried out by an agency or an agency component transferred to the Department of Homeland Security pursuant to such Act, are hereby reassigned to the Secretary of Homeland Security.

SEC. 43. [Amended Ex. Ord. No. 12580, set out as a note under section 9615 of Title 42, The Public Health and Welfare.]

SEC. 44. [Amended Ex. Ord. No. 12555, set out as a note under section 2602 of Title 19, Customs Duties.]

SEC. 45. [Amended Ex. Ord. No. 12501, set out as a note under section 4101 of Title 15, Commerce and Trade.]

SEC. 46. [Amended Ex. Ord. No. 12472, set out as a note under section 5195 of Title 42, The Public Health and Welfare.]

SEC. 47. [Amended Ex. Ord. No. 12382, set out as a note under section 901 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.]

SEC. 48. [Amended Ex. Ord. No. 12341, set out as a note under section 1522 of Title 8, Aliens and Nationality.]

SEC. 49. [Amended Ex. Ord. No. 12208, set out as a note under section 1157 of Title 8, Aliens and Nationality.]

SEC. 50. [Amended Ex. Ord. No. 12188, set out as a note under section 2171 of Title 19, Customs Duties.]

SEC. 51. [Amended Ex. Ord. No. 12160, set out as a note under section 3501 of Title 42, The Public Health and Welfare.]

SEC. 52. [Amended Ex. Ord. No. 12148, set out as a note under section 5195 of Title 42, The Public Health and Welfare.]

SEC. 53. [Amended Ex. Ord. No. 12146, set out as a note under section 509 of Title 28, Judiciary and Judicial Procedures.]

SEC. 54. [Amended Ex. Ord. No. 12002, set out as a note under section 2403 of Title 50, Appendix, War and National Defense.]

SEC. 55. [Amended Ex. Ord. No. 11965, set out as a note preceding section 1121 of Title 10, Armed Forces.]

SEC. 56. [Amended Ex. Ord. No. 11926, set out as a note preceding section 1121 of Title 10, Armed Forces.]

SEC. 57. [Amended Ex. Ord. No. 11858, set out as a note under section 78b of Title 15, Commerce and Trade.]

SEC. 58. [Amended Ex. Ord. No. 11800, formerly set out as a note under section 301a of Title 37, Pay and Allowances of the Uniformed Services.]

SEC. 59. [Amended Ex. Ord. No. 11645, set out as a note under section 475 of Title 14, Coast Guard.]

SEC. 60. [Amended Ex. Ord. No. 11623, set out as a note under section 460 of Title 50, Appendix, War and National Defense.]

SEC. 61. [Amended Ex. Ord. No. 11448, set out as a note preceding section 1121 of Title 10, Armed Forces.]

SEC. 62. [Amended Ex. Ord. No. 11446, set out as a note under section 7342 of Title 5, Government Organization and Employees.]

SEC. 63. [Amended Ex. Ord. No. 11438, set out as a note under section 1124 of Title 10, Armed Forces.]

SEC. 64. [Amended Ex. Ord. No. 11366, set out as a note under section 12303 of Title 10, Armed Forces.]

SEC. 65. [Amended Ex. Ord. No. 11239, set out as a note under former section 1051 of Title 33, Navigation and Navigable Waters.]

SEC. 66. [Amended Ex. Ord. No. 11231.]

SEC. 67. [Amended Ex. Ord. No. 11190, set out as a note under section 10149 of Title 10, Armed Forces.]

SEC. 68. [Amended Ex. Ord. No. 11139.]

SEC. 69. [Amended Ex. Ord. No. 11079, set out as a note under section 2603 of Title 10, Armed Forces.]

SEC. 70. [Amended Ex. Ord. No. 11046, set out as a note under section 3746 of Title 10, Armed Forces.]

SEC. 71. [Amended Ex. Ord. No. 11016.]

SEC. 72. [Amended Ex. Ord. No. 10977.]

SEC. 73. [Amended Ex. Ord. No. 10789, set out as a note under section 1431 of Title 50, War and National Defense.]

SEC. 74. [Amended Ex. Ord. No. 10694.]

SEC. 75. [Amended Ex. Ord. No. 10637, set out as a note under section 301 of Title 3, The President.]

SEC. 76. [Amended Ex. Ord. No. 10631, set out as a note under section 802 of Title 10, Armed Forces.]

SEC. 77. [Amended Ex. Ord. No. 10554, set out as a note under section 772 of Title 10, Armed Forces.]

SEC. 78. [Amended Ex. Ord. No. 10499.]

SEC. 79. [Amended Ex. Ord. No. 10448.]

SEC. 80. [Amended Ex. Ord. No. 10271, set out as a note under section 471 of Title 50, Appendix, War and National Defense.]

SEC. 81. [Amended Ex. Ord. No. 10179.]

SEC. 82. [Amended Ex. Ord. No. 10163.]

SEC. 83. [Amended Ex. Ord. No. 10113, set out as a note under section 418 of Title 37, Pay and Allowances of the Uniformed Services.]

SEC. 84. [Amended Ex. Ord. No. 4601.]

SEC. 85. *Designation as a Defense Agency of the United States.*

I hereby designate the Department of Homeland Security as a defense agency of the United States for the purposes of chapter 17 of title 35 of the United States Code.

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. 401 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 Secretary of Homeland Security (“Secretary”) 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 Border and Transportation Security;
- (iii) Under Secretary for Emergency Preparedness and Response;
- (iv) Under Secretary for Information Analysis and Infrastructure Protection;
- (v) Under Secretary for Management;
- (vi) Under Secretary for Science and Technology;
- (vii) General Counsel; and
- (viii) Assistant Secretaries in the Department in the order of their date of appointment as such.

(b) Exceptions.

(i) No individual who is serving in an office listed in subsection (a) in an acting capacity 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 Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, 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 [see Short Title note set out under 50 U.S.C. 401] and the CIA Act of 1949 [probably means the Central Intelligence Agency Act of 1949, see Short Title note set out under 50 U.S.C. 403a].

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.

GEORGE W. BUSH.

[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 Na-

tional 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 401 of Title 50, War and National Defense.]

EX. ORD. NO. 13362. DESIGNATION OF ADDITIONAL OFFICERS FOR THE DEPARTMENT OF HOMELAND SECURITY ORDER OF SUCCESSION

Ex. Ord. No. 13362, Nov. 29, 2004, 69 F.R. 70173, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America and pursuant to the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

SECTION 1. During any period when the Secretary of Homeland Security (Secretary), the Deputy Secretary of Homeland Security, and the officers designated to perform the functions and duties of the office of Secretary by section 88 of Executive Order 13286 of February 28, 2003 (“Amendment of Executive Orders, and Other Actions, in Connection With the Transfer of Certain Functions to the Secretary of Homeland Security”) [set out as a note above], have died, resigned, or otherwise become unable to perform the functions and duties of the office of Secretary, the following officers of the Department of Homeland Security, in the order listed, shall perform the functions and duties of the office of Secretary, if they are eligible to act as Secretary under the provisions of the Federal Vacancies Reform Act of 1998, until such time as at least one of the officers mentioned above is able to perform the functions and duties of the office of Secretary:

Director, Region V, Federal Emergency Management Agency;

Director, Region VI, Federal Emergency Management Agency;

Director, Region VII, Federal Emergency Management Agency;

Director, Region VIII, Federal Emergency Management Agency; and

Director, Region X, Federal Emergency Management Agency.

SEC. 2. **Exceptions.**

(a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Secretary pursuant to this order.

(b) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Secretary.

GEORGE W. BUSH.

§ 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; and

(B) advise the Secretary on homeland security policies, regulations, processes, and actions that affect the participating industries and associations;

(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) 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;

(9) coordinating with the Directorate of Border and Transportation Security and the Assistant Secretary for Trade Development of the Department of Commerce on issues related to the travel and tourism industries; and

(10) 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.

(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.)

REFERENCES IN TEXT

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.

AMENDMENTS

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

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 co-

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

ordination 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

There are the following officers, appointed by the President, by and with the advice and consent of the Senate:

- (1) 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.
- (2) An Under Secretary for Information Analysis and Infrastructure Protection.
- (3) An Under Secretary for Science and Technology.
- (4) An Under Secretary for Border and Transportation Security.
- (5) An Under Secretary for Emergency Preparedness and Response.
- (6) A Director of the Bureau of Citizenship and Immigration Services.
- (7) An Under Secretary for Management.
- (8) A Director of the Office of Counter-narcotics Enforcement.
- (9) Not more than 12 Assistant Secretaries.
- (10) A General Counsel, who shall be the chief legal officer of the Department.

(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 the Inspector General Act of 1978 (5 U.S.C. App.).

(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 44 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 2 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) A Chief Human Capital Officer.
- (4) An Officer for Civil Rights and Civil Liberties.

(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.

(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.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (b), is Pub. L. 95-452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2004—Subsec. (a)(8) to (10). Pub. L. 108-458 added par. (8) and redesignated former pars. (8) and (9) as (9) and (10), respectively.

Subsec. (d)(4), (5). Pub. L. 108-330, §3(d)(1)(A)(i), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: “A Chief Financial Officer.”

Subsecs. (e), (f). Pub. L. 108-330, §3(d)(1)(A)(ii), (iii), added subsec. (e) and redesignated former subsec. (e) as (f).

2003—Subsec. (b). Pub. L. 108-7 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “There is an Inspector General, who shall be appointed as provided in section 3(a) of the Inspector General Act of 1978.”

§ 114. Sensitive Security Information

Using funds made available in this Act, the Secretary of Homeland Security shall provide that each office within the Department that handles documents marked as Sensitive Security Information (SSI) shall have at least one employee in that office with authority to coordinate and make determinations on behalf of the agency that such documents meet the criteria for marking as SSI: *Provided*, That not later than December 31, 2005, the Secretary shall submit to the Committees on Appropriations of the Senate and the House of Representatives: (1) Department-wide policies for designating, coordinating and marking documents as SSI; (2) Department-wide auditing and accountability procedures for documents designated and marked as SSI; (3) the total number of SSI Coordinators within the Department; and (4) the total number of staff authorized to designate SSI documents within the Department: *Provided further*, That not later than January 31, 2006, the Secretary shall provide to the Committees on Appropriations of the Senate and the House of Representatives the title of all DHS documents that are designated as SSI in their entirety during the period October 1, 2005, through December 31, 2005: *Provided further*, That not later than January 31 of each succeeding year, starting on January 31, 2007, the Secretary shall provide annually a similar report to the Committees on Appropriations of the Senate and the House of Representatives on the titles of all DHS documents that are designated as SSI in their en-

tirety during the period of January 1 through December 31 for the preceding year: *Provided further*, That the Secretary shall promulgate guidance that includes common but extensive examples of SSI that further define the individual categories of information cited under 49 CFR 1520(b)(1) through (16) and eliminates judgment by covered persons in the application of the SSI marking: *Provided further*, That such guidance shall serve as the primary basis and authority for the marking of DHS information as SSI by covered persons.

(Pub. L. 109–90, title V, §537, Oct. 18, 2005, 119 Stat. 2088.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 109–90, Oct. 18, 2005, 119 Stat. 2064, known as the Department of Homeland Security Appropriations Act, 2006. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Department of Homeland Security Appropriations Act, 2006, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

SUBCHAPTER II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

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

§ 121. Directorate for Information Analysis and Infrastructure Protection

(a) Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection

(1) In general

There shall be in the Department a Directorate for Information Analysis and Infrastructure Protection headed by an Under Secretary for Information Analysis and Infrastructure Protection, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Responsibilities

The Under Secretary shall assist the Secretary in discharging the responsibilities assigned by the Secretary.

(b) Assistant Secretary for Information Analysis; Assistant Secretary for Infrastructure Protection

(1) Assistant Secretary for Information Analysis

There shall be in the Department an Assistant Secretary for Information Analysis, who shall be appointed by the President.

(2) Assistant Secretary for Infrastructure Protection

There shall be in the Department an Assistant Secretary for Infrastructure Protection, who shall be appointed by the President.

(3) Responsibilities

The Assistant Secretary for Information Analysis and the Assistant Secretary for Infrastructure Protection shall assist the Under

Secretary for Information Analysis and Infrastructure Protection in discharging the responsibilities of the Under Secretary under this section.

(c) Discharge of information analysis and infrastructure protection

The Secretary shall ensure that the responsibilities of the Department regarding information analysis and infrastructure protection are carried out through the Under Secretary for Information Analysis and Infrastructure Protection.

(d) Responsibilities of Under Secretary

Subject to the direction and control of the Secretary, the responsibilities of the Under Secretary for Information Analysis and Infrastructure Protection shall be as follows:

(1) To access, receive, and analyze law enforcement information, intelligence information, and other information from agencies of the Federal Government, State and local government agencies (including law enforcement agencies), and private sector entities, and to integrate such information in order to—

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

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

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

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

(3) To integrate relevant information, analyses, and vulnerability assessments (whether such information, analyses, or assessments are provided or produced by the Department or others) in order to identify priorities for protective and support measures by the Department, other agencies of the Federal Government, State and local government agencies and authorities, the private sector, and other entities.

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

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

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

(7) To administer the Homeland Security Advisory System, including—

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

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

(8) To review, analyze, and make recommendations for improvements in the policies and procedures governing the sharing of law enforcement information, intelligence information, intelligence-related information, and other information relating to homeland security within the Federal Government and between the Federal Government and State and local government agencies and authorities.

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

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

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

(12) To ensure that—

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

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

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

(14) To establish and utilize, in conjunction with the chief information officer of the Department, a secure communications and information technology infrastructure, including data-mining and other advanced analytical tools, in order to access, receive, and analyze data and information in furtherance of the responsibilities under this section, and to disseminate information acquired and analyzed by the Department, as appropriate.

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

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

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

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

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

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

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

(e) Staff

(1) In general

The Secretary shall provide the Directorate with a staff of analysts having appropriate expertise and experience to assist the Directorate in discharging responsibilities under this section.

(2) Private sector analysts

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

(3) Security clearances

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

(f) Detail of personnel

(1) In general

In order to assist the Directorate in discharging responsibilities under this section,

personnel of the agencies referred to in paragraph (2) may be detailed to the Department for the performance of analytic functions and related duties.

(2) Covered agencies

The agencies referred to in this paragraph are as follows:

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

(3) Cooperative agreements

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

(4) Basis

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

(g) Functions transferred

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

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

(Pub. L. 107-296, title II, §201, Nov. 25, 2002, 116 Stat. 2145; Pub. L. 108-136, div. A, title IX, §921(g), Nov. 24, 2003, 117 Stat. 1570.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(12), was in the original “this Act”, meaning Pub. L. 107-296, Nov. 25, 2002, 116 Stat. 2135, known as the Homeland Security Act of 2002, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 101 of this title and Tables.

The National Security Act of 1947, referred to in subsec. (d)(12)(B), is act July 26, 1947, ch. 343, 61 Stat. 495, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 50, War and National Defense, and Tables.

CODIFICATION

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

AMENDMENTS

2003—Subsec. (f)(2)(E). Pub. L. 108-136 substituted “National Geospatial-Intelligence Agency” for “National Imagery and Mapping Agency”.

CHANGE OF NAME

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

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

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

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

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

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

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

(b) National Security Information Systems. The Secretary of Defense and the Director of Central Intel-

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

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

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

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

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

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

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

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

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

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

(iii) monitor the development and operations of private sector coordinating councils and their information sharing mechanisms and provide recommendations to the President through the Secretary of

Homeland Security on how these organizations can best foster improved cooperation among the sectors, the Department of Homeland Security, and other Federal Government entities;

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

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

(c) Administration of the NIAC.

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

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

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

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

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

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

GEORGE W. BUSH.

EXTENSION OF TERM OF NATIONAL INFRASTRUCTURE ADVISORY COUNCIL

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

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

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

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

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

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

SEC. 3. Executive Order 13228 of October 8, 2001 (“Establishing the Office of Homeland Security and the Homeland Security Council”) [50 U.S.C. 402 note], is amended by inserting “the Secretary of Homeland Security,” after “the Secretary of Transportation,” in section 5(b). Further, during the period from January

24, 2003, until March 1, 2003, the Secretary of Homeland Security shall have the responsibility for coordinating the domestic response efforts otherwise assigned to the Assistant to the President for Homeland Security pursuant to section 3(g) of Executive Order 13228.

SEC. 4. [Amended Ex. Ord. No. 13224, set out as a note under section 1701 of Title 50, War and National Defense.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

GEORGE W. BUSH.

§ 122. Access to information

(a) In general

(1) Threat and vulnerability information

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

(2) Other information

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

(b) Manner of access

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

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

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

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

(B) all information concerning the vulnerability of the infrastructure of the United

States, or other vulnerabilities of the United States, to terrorism, whether or not such information has been analyzed;

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

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

(c) Treatment under certain laws

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

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

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

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

(d) Access to intelligence and other information

(1) Access by elements of Federal Government

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

(2) Sharing of information

The Secretary, in consultation with the Director of Central Intelligence, shall work to ensure that intelligence or other information relating to terrorism to which the Department has access is appropriately shared with the elements of the Federal Government referred to in paragraph (1), as well as with State and local governments, as appropriate.

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

REFERENCES IN TEXT

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

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

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

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

Federal Sentencing Guidelines Relating to Specific Offenses table set out under section 994 of Title 28, Judiciary and Judicial Procedure. For complete classification of title II to the Code, see Tables.

CHANGE OF NAME

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

§ 123. Terrorist travel program

The Secretary of Homeland Security, in consultation with the Director of the National Counterterrorism Center, and consistent with the strategy developed under section 7201,¹ shall establish a program to oversee the implementation of the Department’s responsibilities with respect to terrorist travel, including the analysis, coordination, and dissemination of terrorist travel intelligence and operational information—

(1) among appropriate subdivisions of the Department of Homeland Security, including—

(A) the Bureau of Customs and Border Protection;

(B) United States Immigration and Customs Enforcement;

(C) United States Citizenship and Immigration Services;

(D) the Transportation Security Administration; and

(E) any other subdivision, as determined by the Secretary; and

(2) between the Department of Homeland Security and other appropriate Federal agencies.

(Pub. L. 108-458, title VII, § 7215, Dec. 17, 2004, 118 Stat. 3832.)

REFERENCES IN TEXT

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

CODIFICATION

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

PART B—CRITICAL INFRASTRUCTURE INFORMATION

§ 131. Definitions

In this part:

(1) Agency

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

¹ See References in Text note below.

(2) Covered Federal agency

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

(3) Critical infrastructure information

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

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

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

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

(4) Critical infrastructure protection program

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

(5) Information Sharing and Analysis Organization

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

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

(B) communicating or disclosing critical infrastructure information to help prevent, detect, mitigate, or recover from the effects of a¹ interference, compromise, or a² incapacitation problem related to critical infrastructure or protected systems; and

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

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

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

(6) Protected system

The term “protected system”—

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

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

(7) Voluntary**(A) In general**

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

(B) Exclusions

The term “voluntary”—

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

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

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

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

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

SHORT TITLE

For short title of this part as the “Critical Infrastructure Information Act of 2002”, see section 211 of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 132. Designation of critical infrastructure protection program

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

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

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

§ 133. Protection of voluntarily shared critical infrastructure information

(a) Protection

(1) In general

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

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

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

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

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

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

(ii) when disclosure of the information would be—

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

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

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

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

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

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

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

(2) Express statement

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

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

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

(b) Limitation

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

(c) Independently obtained information

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

(d) Treatment of voluntary submittal of information

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

(e) Procedures

(1) In general

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

(2) Elements

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

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

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

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

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

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

(f) Penalties

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

(g) Authority to issue warnings

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

- (1) the source of any voluntarily submitted critical infrastructure information that forms the basis for the warning; or
- (2) information that is proprietary, business sensitive, relates specifically to the submitting person or entity, or is otherwise not appropriately in the public domain.

(h) Authority to delegate

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

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

REFERENCES IN TEXT

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

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

AMENDMENTS

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

§ 134. No private right of action

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

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

PART C—INFORMATION SECURITY

§ 141. Procedures for sharing information

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

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

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

REFERENCES IN TEXT

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

§ 142. Privacy officer

The Secretary shall appoint a senior official in the Department, who shall report directly to the Secretary, to assume primary responsibility for privacy policy, including—

- (1) assuring that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information;
- (2) assuring that personal information contained in Privacy Act systems of records is handled in full compliance with fair information practices as set out in the Privacy Act of 1974 [5 U.S.C. 552a];
- (3) evaluating legislative and regulatory proposals involving collection, use, and disclosure of personal information by the Federal Government;
- (4) conducting a privacy impact assessment of proposed rules of the Department or that of the Department on the privacy of personal information, including the type of personal information collected and the number of people affected;

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

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

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

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

(Pub. L. 107–296, title II, § 222, Nov. 25, 2002, 116 Stat. 2155; Pub. L. 108–458, title VIII, § 8305, Dec. 17, 2004, 118 Stat. 3868.)

REFERENCES IN TEXT

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

AMENDMENTS

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

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

§ 143. Enhancement of non-Federal cybersecurity

In carrying out the responsibilities under section 121 of this title, the Under Secretary for Information Analysis and Infrastructure Protection shall—

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

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

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

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

(Pub. L. 107–296, title II, § 223, Nov. 25, 2002, 116 Stat. 2156.)

§ 144. NET Guard

The Under Secretary for Information Analysis and Infrastructure Protection may establish a national technology guard, to be known as “NET Guard”, comprised of local teams of volunteers with expertise in relevant areas of science and technology, to assist local commu-

nities to respond and recover from attacks on information systems and communications networks.

(Pub. L. 107–296, title II, § 224, Nov. 25, 2002, 116 Stat. 2156.)

§ 145. Cyber Security Enhancement Act of 2002

(a) Short title

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

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

(1) Directive to the United States Sentencing Commission

Pursuant to its authority under section 994(p) of title 28 and in accordance with this subsection, the United States Sentencing Commission shall review and, if appropriate, amend its guidelines and its policy statements applicable to persons convicted of an offense under section 1030 of title 18.

(2) Requirements

In carrying out this subsection, the Sentencing Commission shall—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Study and report on computer crimes

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

(d) Emergency disclosure exception

(1) Omitted

(2) Reporting of disclosures

A government entity that receives a disclosure under section 2702(b) of title 18 shall file, not later than 90 days after such disclosure, a report to the Attorney General stating the paragraph of that section under which the disclosure was made, the date of the disclosure, the entity to which the disclosure was made, the number of customers or subscribers to whom the information disclosed pertained, and the number of communications, if any, that were disclosed. The Attorney General shall publish all such reports into a single report to be submitted to Congress 1 year after November 25, 2002.

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

CODIFICATION

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

PART D—OFFICE OF SCIENCE AND TECHNOLOGY

§ 161. Establishment of Office; Director

(a) Establishment

(1) In general

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

(2) Authority

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

(b) Director

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

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

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a)(1), was in the original “this title”, meaning title II of Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2145, which enacted this subchapter, amended sections 1030, 2511, 2512, 2520, 2701 to 2703, and 3125 of Title 18, Crimes and Criminal Procedure,

sections 3712 and 3722 of Title 42, The Public Health and Welfare, and section 401a of Title 50, War and National Defense, and enacted provisions set out as a note under section 101 of this title and listed in a Provisions for Review, Promulgation, or Amendment of Federal Sentencing Guidelines Relating to Specific Offenses table set out under section 994 of Title 28, Judiciary and Judicial Procedure. For complete classification of title II to the Code, see Tables.

§ 162. Mission of Office; duties

(a) Mission

The mission of the Office shall be—

(1) to serve as the national focal point for work on law enforcement technology; and

(2) to carry out programs that, through the provision of equipment, training, and technical assistance, improve the safety and effectiveness of law enforcement technology and improve access to such technology by Federal, State, and local law enforcement agencies.

(b) Duties

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

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

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

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

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

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

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

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

(B) protective apparel;

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

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

(E) wire and wireless interoperable communication technologies;

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

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

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

(I) DNA identification technologies; and

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

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

(8) To serve on the Technical Support Working Group of the Department of Defense, and on other relevant interagency panels, as requested.

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

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

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

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

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

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

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

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

(c) Competition required

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

(d) Information from Federal agencies

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

(e) Publications

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

(f) Transfer of funds

The Office may transfer funds to other Federal agencies or provide funding to non-Federal entities through grants, cooperative agreements, or contracts to carry out its duties under this sec-

tion: *Provided*, That any such transfer or provision of funding shall be carried out in accordance with section 605 of Public Law 107-77.

(g) Annual report

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

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

(A) the Director's assessment of the needs of Federal, State, and local law enforcement agencies for assistance with respect to law enforcement technology and other matters consistent with the mission of the Office; and

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

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

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

REFERENCES IN TEXT

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

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

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

AMENDMENTS

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

§ 163. Definition of law enforcement technology

For the purposes of this subchapter, the term “law enforcement technology” includes investigative and forensic technologies, corrections technologies, and technologies that support the judicial process.

(Pub. L. 107-296, title II, §233, Nov. 25, 2002, 116 Stat. 2161.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this title”, meaning title II of Pub. L. 107-296, Nov. 25, 2002, 116 Stat. 2145, which enacted this subchapter, amended sections 1030, 2511, 2512, 2520, 2701 to 2703, and 3125 of Title 18, Crimes and Criminal Procedure, sections 3712 and 3722 of Title 42, The Public Health and

Welfare, and section 401a of Title 50, War and National Defense, and enacted provisions set out as a note under section 101 of this title and listed in a Provisions for Review, Promulgation, or Amendment of Federal Sentencing Guidelines Relating to Specific Offenses table set out under section 994 of Title 28, Judiciary and Judicial Procedure. For complete classification of title II to the Code, see Tables.

§ 164. Abolishment of Office of Science and Technology of National Institute of Justice; transfer of functions

(a) Authority to transfer functions

The Attorney General may transfer to the Office any other program or activity of the Department of Justice that the Attorney General, in consultation with the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, determines to be consistent with the mission of the Office.

(b) Transfer of personnel and assets

With respect to any function, power, or duty, or any program or activity, that is established in the Office, those employees and assets of the element of the Department of Justice from which the transfer is made that the Attorney General determines are needed to perform that function, power, or duty, or for that program or activity, as the case may be, shall be transferred to the Office: *Provided*, That any such transfer shall be carried out in accordance with section 605 of Public Law 107-77.

(c) Report on implementation

Not later than 1 year after November 25, 2002, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the implementation of this subchapter. The report shall—

(1) provide an accounting of the amounts and sources of funding available to the Office to carry out its mission under existing authorizations and appropriations, and set forth the future funding needs of the Office; and

(2) include such other information and recommendations as the Attorney General considers appropriate.

(Pub. L. 107-296, title II, § 234, Nov. 25, 2002, 116 Stat. 2161; Pub. L. 108-7, div. L, § 103(2), Feb. 20, 2003, 117 Stat. 529.)

REFERENCES IN TEXT

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

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

AMENDMENTS

2003—Subsec. (b). Pub. L. 108-7 inserted before period at end “: *Provided*, That any such transfer shall be car-

ried out in accordance with section 605 of Public Law 107-77”.

§ 165. National Law Enforcement and Corrections Technology Centers

(a) In general

The Director of the Office shall operate and support National Law Enforcement and Corrections Technology Centers (hereinafter in this section referred to as “Centers”) and, to the extent necessary, establish new centers through a merit-based, competitive process.

(b) Purpose of Centers

The purpose of the Centers shall be to—

(1) support research and development of law enforcement technology;

(2) support the transfer and implementation of technology;

(3) assist in the development and dissemination of guidelines and technological standards; and

(4) provide technology assistance, information, and support for law enforcement, corrections, and criminal justice purposes.

(c) Annual meeting

Each year, the Director shall convene a meeting of the Centers in order to foster collaboration and communication between Center participants.

(d) Report

Not later than 12 months after November 25, 2002, the Director shall transmit to the Congress a report assessing the effectiveness of the existing system of Centers and identify the number of Centers necessary to meet the technology needs of Federal, State, and local law enforcement in the United States.

(Pub. L. 107-296, title II, § 235, Nov. 25, 2002, 116 Stat. 2162.)

SUBCHAPTER III—SCIENCE AND TECHNOLOGY IN SUPPORT OF HOMELAND SECURITY

§ 181. Under Secretary for Science and Technology

There shall be in the Department a Directorate of Science and Technology headed by an Under Secretary for Science and Technology.

(Pub. L. 107-296, title III, § 301, Nov. 25, 2002, 116 Stat. 2163.)

§ 182. Responsibilities and authorities of the Under Secretary for Science and Technology

The Secretary, acting through the Under Secretary for Science and Technology, shall have the responsibility for—

(1) advising the Secretary regarding research and development efforts and priorities in support of the Department’s missions;

(2) developing, in consultation with other appropriate executive agencies, a national policy and strategic plan for, identifying priorities, goals, objectives and policies for, and coordinating the Federal Government’s civilian efforts to identify and develop countermeasures to chemical, biological, radiological,

nuclear, and other emerging terrorist threats, including the development of comprehensive, research-based definable goals for such efforts and development of annual measurable objectives and specific targets to accomplish and evaluate the goals for such efforts;

(3) supporting the Under Secretary for Information Analysis and Infrastructure Protection, by assessing and testing homeland security vulnerabilities and possible threats;

(4) conducting basic and applied research, development, demonstration, testing, and evaluation activities that are relevant to any or all elements of the Department, through both intramural and extramural programs, except that such responsibility does not extend to human health-related research and development activities;

(5) establishing priorities for, directing, funding, and conducting national research, development, test and evaluation, and procurement of technology and systems for—

(A) preventing the importation of chemical, biological, radiological, nuclear, and related weapons and material; and

(B) detecting, preventing, protecting against, and responding to terrorist attacks;

(6) establishing a system for transferring homeland security developments or technologies to Federal, State, local government, and private sector entities;

(7) entering into work agreements, joint sponsorships, contracts, or any other agreements with the Department of Energy regarding the use of the national laboratories or sites and support of the science and technology base at those facilities;

(8) collaborating with the Secretary of Agriculture and the Attorney General as provided in section 8401 of title 7;

(9) collaborating with the Secretary of Health and Human Services and the Attorney General in determining any new biological agents and toxins that shall be listed as “select agents” in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to section 262a of title 42;

(10) supporting United States leadership in science and technology;

(11) establishing and administering the primary research and development activities of the Department, including the long-term research and development needs and capabilities for all elements of the Department;

(12) coordinating and integrating all research, development, demonstration, testing, and evaluation activities of the Department;

(13) coordinating with other appropriate executive agencies in developing and carrying out the science and technology agenda of the Department to reduce duplication and identify unmet needs; and

(14) developing and overseeing the administration of guidelines for merit review of research and development projects throughout the Department, and for the dissemination of research conducted or sponsored by the Department.

(Pub. L. 107–296, title III, §302, Nov. 25, 2002, 116 Stat. 2163.)

§ 183. Functions transferred

In accordance with subchapter XII of this chapter, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following entities:

(1) The following programs and activities of the Department of Energy, including the functions of the Secretary of Energy relating thereto (but not including programs and activities relating to the strategic nuclear defense posture of the United States):

(A) The chemical and biological national security and supporting programs and activities of the nonproliferation and verification research and development program.

(B) The nuclear smuggling programs and activities within the proliferation detection program of the nonproliferation and verification research and development program. The programs and activities described in this subparagraph may be designated by the President either for transfer to the Department or for joint operation by the Secretary and the Secretary of Energy.

(C) The nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program.

(D) Such life sciences activities of the biological and environmental research program related to microbial pathogens as may be designated by the President for transfer to the Department.

(E) The Environmental Measurements Laboratory.

(F) The advanced scientific computing research program and activities at Lawrence Livermore National Laboratory.

(2) The National Bio-Weapons Defense Analysis Center of the Department of Defense, including the functions of the Secretary of Defense related thereto.

(Pub. L. 107–296, title III, §303, Nov. 25, 2002, 116 Stat. 2164.)

§ 184. Conduct of certain public health-related activities

(a) In general

With respect to civilian human health-related research and development activities relating to countermeasures for chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities, goals, objectives, and policies and develop a coordinated strategy for such activities in collaboration with the Secretary of Homeland Security to ensure consistency with the national policy and strategic plan developed pursuant to section 182(2) of this title.

(b) Evaluation of progress

In carrying out subsection (a) of this section, the Secretary of Health and Human Services shall collaborate with the Secretary in devel-

oping specific benchmarks and outcome measurements for evaluating progress toward achieving the priorities and goals described in such subsection.

(Pub. L. 107–296, title III, §304, Nov. 25, 2002, 116 Stat. 2165.)

CODIFICATION

Section is comprised of section 304 of Pub. L. 107–296. Subsec. (c) of section 304 of Pub. L. 107–296 amended section 233 of Title 42, The Public Health and Welfare.

§ 185. Federally funded research and development centers

The Secretary, acting through the Under Secretary for Science and Technology, shall have the authority to establish or contract with 1 or more federally funded research and development centers to provide independent analysis of homeland security issues, or to carry out other responsibilities under this chapter, including coordinating and integrating both the extramural and intramural programs described in section 188 of this title.

(Pub. L. 107–296, title III, §305, Nov. 25, 2002, 116 Stat. 2168.)

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.

§ 186. Miscellaneous provisions

(a) Classification

To the greatest extent practicable, research conducted or supported by the Department shall be unclassified.

(b) Construction

Nothing in this subchapter shall be construed to preclude any Under Secretary of the Department from carrying out research, development, demonstration, or deployment activities, as long as such activities are coordinated through the Under Secretary for Science and Technology.

(c) Regulations

The Secretary, acting through the Under Secretary for Science and Technology, may issue necessary regulations with respect to research, development, demonstration, testing, and evaluation activities of the Department, including the conducting, funding, and reviewing of such activities.

(d) Notification of Presidential life sciences designations

Not later than 60 days before effecting any transfer of Department of Energy life sciences activities pursuant to section 183(1)(D) of this title, the President shall notify the appropriate congressional committees of the proposed transfer and shall include the reasons for the transfer and a description of the effect of the transfer on the activities of the Department of Energy.

(Pub. L. 107–296, title III, §306, Nov. 25, 2002, 116 Stat. 2168.)

§ 187. Homeland Security Advanced Research Projects Agency

(a) Definitions

In this section:

(1) Fund

The term “Fund” means the Acceleration Fund for Research and Development of Homeland Security Technologies established in subsection (c) of this section.

(2) Homeland security research

The term “homeland security research” means research relevant to the detection of, prevention of, protection against, response to, attribution of, and recovery from homeland security threats, particularly acts of terrorism.

(3) HSARPA

The term “HSARPA” means the Homeland Security Advanced Research Projects Agency established in subsection (b) of this section.

(4) Under Secretary

The term “Under Secretary” means the Under Secretary for Science and Technology.

(b) Homeland Security Advanced Research Projects Agency

(1) Establishment

There is established the Homeland Security Advanced Research Projects Agency.

(2) Director

HSARPA shall be headed by a Director, who shall be appointed by the Secretary. The Director shall report to the Under Secretary.

(3) Responsibilities

The Director shall administer the Fund to award competitive, merit-reviewed grants, cooperative agreements or contracts to public or private entities, including businesses, federally funded research and development centers, and universities. The Director shall administer the Fund to—

(A) support basic and applied homeland security research to promote revolutionary changes in technologies that would promote homeland security;

(B) advance the development, testing and evaluation, and deployment of critical homeland security technologies; and

(C) accelerate the prototyping and deployment of technologies that would address homeland security vulnerabilities.

(4) Targeted competitions

The Director may solicit proposals to address specific vulnerabilities identified by the Director.

(5) Coordination

The Director shall ensure that the activities of HSARPA are coordinated with those of other relevant research agencies, and may run projects jointly with other agencies.

(6) Personnel

In hiring personnel for HSARPA, the Secretary shall have the hiring and management authorities described in section 1101 of the

Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note; Public Law 105-261). The term of appointments for employees under subsection (c)(1) of that section may not exceed 5 years before the granting of any extension under subsection (c)(2) of that section.

(7) Demonstrations

The Director, periodically, shall hold homeland security technology demonstrations to improve contact among technology developers, vendors and acquisition personnel.

(c) Fund

(1) Establishment

There is established the Acceleration Fund for Research and Development of Homeland Security Technologies, which shall be administered by the Director of HSARPA.

(2) Authorization of appropriations

There are authorized to be appropriated \$500,000,000 to the Fund for fiscal year 2003 and such sums as may be necessary thereafter.

(3) Coast Guard

Of the funds authorized to be appropriated under paragraph (2), not less than 10 percent of such funds for each fiscal year through fiscal year 2005 shall be authorized only for the Under Secretary, through joint agreement with the Commandant of the Coast Guard, to carry out research and development of improved ports, waterways and coastal security surveillance and perimeter protection capabilities for the purpose of minimizing the possibility that Coast Guard cutters, aircraft, helicopters, and personnel will be diverted from non-homeland security missions to the ports, waterways and coastal security mission.

(Pub. L. 107-296, title III, §307, Nov. 25, 2002, 116 Stat. 2168.)

§ 188. Conduct of research, development, demonstration, testing and evaluation

(a) In general

The Secretary, acting through the Under Secretary for Science and Technology, shall carry out the responsibilities under section 182(4) of this title through both extramural and intramural programs.

(b) Extramural programs

(1) In general

The Secretary, acting through the Under Secretary for Science and Technology, shall operate extramural research, development, demonstration, testing, and evaluation programs so as to—

(A) ensure that colleges, universities, private research institutes, and companies (and consortia thereof) from as many areas of the United States as practicable participate;

(B) ensure that the research funded is of high quality, as determined through merit review processes developed under section 182(14) of this title; and

(C) distribute funds through grants, cooperative agreements, and contracts.

(2) University-based centers for homeland security

(A) Designation

The Secretary, acting through the Under Secretary for Science and Technology, shall designate a university-based center or several university-based centers for homeland security. The purpose of the center or these centers shall be to establish a coordinated, university-based system to enhance the Nation's homeland security.

(B) Criteria for designation

Criteria for the designation of colleges or universities as a center for homeland security, shall include, but are not limited to, demonstrated expertise in—

(i) The training of first responders.

(ii) Responding to incidents involving weapons of mass destruction and biological warfare.

(iii) Emergency and diagnostic medical services.

(iv) Chemical, biological, radiological, and nuclear countermeasures or detection.

(v) Animal and plant health and diagnostics.

(vi) Food safety.

(vii) Water and wastewater operations.

(viii) Port and waterway security.

(ix) Multi-modal transportation.

(x) Information security and information engineering.

(xi) Engineering.

(xii) Educational outreach and technical assistance.

(xiii) Border transportation and security.

(xiv) The public policy implications and public dissemination of homeland security related research and development.

(C) Discretion of Secretary

To the extent that exercising such discretion is in the interest of homeland security, and with respect to the designation of any given university-based center for homeland security, the Secretary may except certain criteria as specified in subparagraph (B) and consider additional criteria beyond those specified in subparagraph (B). Upon designation of a university-based center for homeland security, the Secretary shall that day publish in the Federal Register the criteria that were excepted or added in the selection process and the justification for the set of criteria that were used for that designation.

(D) Report to Congress

The Secretary shall report annually, from the date of enactment, to Congress concerning the implementation of this section. That report shall indicate which center or centers have been designated and how the designation or designations enhance homeland security, as well as report any decisions to revoke or modify such designations.

(E) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

(c) Intramural programs**(1) Consultation**

In carrying out the duties under section 182 of this title, the Secretary, acting through the Under Secretary for Science and Technology, may draw upon the expertise of any laboratory of the Federal Government, whether operated by a contractor or the Government.

(2) Laboratories

The Secretary, acting through the Under Secretary for Science and Technology, may establish a headquarters laboratory for the Department at any laboratory or site and may establish additional laboratory units at other laboratories or sites.

(3) Criteria for headquarters laboratory

If the Secretary chooses to establish a headquarters laboratory pursuant to paragraph (2), then the Secretary shall do the following:

(A) Establish criteria for the selection of the headquarters laboratory in consultation with the National Academy of Sciences, appropriate Federal agencies, and other experts.

(B) Publish the criteria in the Federal Register.

(C) Evaluate all appropriate laboratories or sites against the criteria.

(D) Select a laboratory or site on the basis of the criteria.

(E) Report to the appropriate congressional committees on which laboratory was selected, how the selected laboratory meets the published criteria, and what duties the headquarters laboratory shall perform.

(4) Limitation on operation of laboratories

No laboratory shall begin operating as the headquarters laboratory of the Department until at least 30 days after the transmittal of the report required by paragraph (3)(E).

(Pub. L. 107-296, title III, §308, Nov. 25, 2002, 116 Stat. 2170; Pub. L. 108-7, div. L, §101(1), Feb. 20, 2003, 117 Stat. 526.)

REFERENCES IN TEXT

The date of enactment, referred to in subsec. (b)(2)(D), probably means the date of enactment of this section by Pub. L. 107-296, which was approved Nov. 25, 2002.

AMENDMENTS

2003—Subsecs. (a) to (c)(1). Pub. L. 108-7 added subsecs. (a) to (c)(1) and struck out former subsecs. (a) to (c)(1) which related to the responsibilities of the Secretary, acting through the Under Secretary for Science and Technology, to carry out the responsibilities under section 182(4) of this title through both extramural and intramural programs, to operate extramural research, development, demonstration, testing, and evaluation programs, to establish a coordinated, university-based system to enhance the Nation's homeland security, and to draw upon the expertise of any laboratory of the Federal Government.

§ 189. Utilization of Department of Energy national laboratories and sites in support of homeland security activities**(a) Authority to utilize national laboratories and sites****(1) In general**

In carrying out the missions of the Department, the Secretary may utilize the Depart-

ment of Energy national laboratories and sites through any 1 or more of the following methods, as the Secretary considers appropriate:

(A) A joint sponsorship arrangement referred to in subsection (b) of this section.

(B) A direct contract between the Department and the applicable Department of Energy laboratory or site, subject to subsection (c) of this section.

(C) Any “work for others” basis made available by that laboratory or site.

(D) Any other method provided by law.

(2) Acceptance and performance by labs and sites

Notwithstanding any other law governing the administration, mission, use, or operations of any of the Department of Energy national laboratories and sites, such laboratories and sites are authorized to accept and perform work for the Secretary, consistent with resources provided, and perform such work on an equal basis to other missions at the laboratory and not on a noninterference basis with other missions of such laboratory or site.

(b) Joint sponsorship arrangements**(1) Laboratories**

The Department may be a joint sponsor, under a multiple agency sponsorship arrangement with the Department of Energy, of 1 or more Department of Energy national laboratories in the performance of work.

(2) Sites

The Department may be a joint sponsor of a Department of Energy site in the performance of work as if such site were a federally funded research and development center and the work were performed under a multiple agency sponsorship arrangement with the Department.

(3) Primary sponsor

The Department of Energy shall be the primary sponsor under a multiple agency sponsorship arrangement referred to in paragraph (1) or (2).

(4) Lead agent

The Secretary of Energy shall act as the lead agent in coordinating the formation and performance of a joint sponsorship arrangement under this subsection between the Department and a Department of Energy national laboratory or site.

(5) Federal acquisition regulation

Any work performed by a Department of Energy national laboratory or site under a joint sponsorship arrangement under this subsection shall comply with the policy on the use of federally funded research and development centers under the Federal Acquisition Regulations.

(6) Funding

The Department shall provide funds for work at the Department of Energy national laboratories or sites, as the case may be, under a joint sponsorship arrangement under this subsection under the same terms and conditions as apply to the primary sponsor of such national laboratory under section 253(b)(1)(C) of

title 41 or of such site to the extent such section applies to such site as a federally funded research and development center by reason of this subsection.

(c) Separate contracting

To the extent that programs or activities transferred by this chapter from the Department of Energy to the Department of Homeland Security are being carried out through direct contracts with the operator of a national laboratory or site of the Department of Energy, the Secretary of Homeland Security and the Secretary of Energy shall ensure that direct contracts for such programs and activities between the Department of Homeland Security and such operator are separate from the direct contracts of the Department of Energy with such operator.

(d) Authority with respect to cooperative research and development agreements and licensing agreements

In connection with any utilization of the Department of Energy national laboratories and sites under this section, the Secretary may permit the director of any such national laboratory or site to enter into cooperative research and development agreements or to negotiate licensing agreements with any person, any agency or instrumentality, of the United States, any unit of State or local government, and any other entity under the authority granted by section 3710a of title 15. Technology may be transferred to a non-Federal party to such an agreement consistent with the provisions of sections 3710 and 3710a of title 15.

(e) Reimbursement of costs

In the case of an activity carried out by the operator of a Department of Energy national laboratory or site in connection with any utilization of such laboratory or site under this section, the Department of Homeland Security shall reimburse the Department of Energy for costs of such activity through a method under which the Secretary of Energy waives any requirement for the Department of Homeland Security to pay administrative charges or personnel costs of the Department of Energy or its contractors in excess of the amount that the Secretary of Energy pays for an activity carried out by such contractor and paid for by the Department of Energy.

(f) Laboratory directed research and development by the Department of Energy

No funds authorized to be appropriated or otherwise made available to the Department in any fiscal year may be obligated or expended for laboratory directed research and development activities carried out by the Department of Energy unless such activities support the missions of the Department of Homeland Security.

(g) Office for National Laboratories

There is established within the Directorate of Science and Technology an Office for National Laboratories, which shall be responsible for the coordination and utilization of the Department of Energy national laboratories and sites under this section in a manner to create a networked laboratory system for the purpose of supporting the missions of the Department.

(h) Department of Energy coordination on homeland security related research

The Secretary of Energy shall ensure that any research, development, test, and evaluation activities conducted within the Department of Energy that are directly or indirectly related to homeland security are fully coordinated with the Secretary to minimize duplication of effort and maximize the effective application of Federal budget resources.

(Pub. L. 107-296, title III, § 309, Nov. 25, 2002, 116 Stat. 2172.)

§ 190. Transfer of Plum Island Animal Disease Center, Department of Agriculture

(a) In general

In accordance with subchapter XII of this chapter, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security the Plum Island Animal Disease Center of the Department of Agriculture, including the assets and liabilities of the Center.

(b) Continued Department of Agriculture access

On completion of the transfer of the Plum Island Animal Disease Center under subsection (a) of this section, the Secretary of Homeland Security and the Secretary of Agriculture shall enter into an agreement to ensure that the Department of Agriculture is able to carry out research, diagnostic, and other activities of the Department of Agriculture at the Center.

(c) Direction of activities

The Secretary of Agriculture shall continue to direct the research, diagnostic, and other activities of the Department of Agriculture at the Center described in subsection (b) of this section.

(d) Notification

(1) In general

At least 180 days before any change in the biosafety level at the Plum Island Animal Disease Center, the President shall notify Congress of the change and describe the reasons for the change.

(2) Limitation

No change described in paragraph (1) may be made earlier than 180 days after the completion of the transition period (as defined in section 541 of this title).

(Pub. L. 107-296, title III, § 310, Nov. 25, 2002, 116 Stat. 2174.)

§ 191. Homeland Security Science and Technology Advisory Committee

(a) Establishment

There is established within the Department a Homeland Security Science and Technology Advisory Committee (in this section referred to as the "Advisory Committee"). The Advisory Committee shall make recommendations with respect to the activities of the Under Secretary for Science and Technology, including identifying research areas of potential importance to the security of the Nation.

(b) Membership**(1) Appointment**

The Advisory Committee shall consist of 20 members appointed by the Under Secretary for Science and Technology, which shall include emergency first-responders or representatives of organizations or associations of emergency first-responders. The Advisory Committee shall also include representatives of citizen groups, including economically disadvantaged communities. The individuals appointed as members of the Advisory Committee—

(A) shall be eminent in fields such as emergency response, research, engineering, new product development, business, and management consulting;

(B) shall be selected solely on the basis of established records of distinguished service;

(C) shall not be employees of the Federal Government; and

(D) shall be so selected as to provide representation of a cross-section of the research, development, demonstration, and deployment activities supported by the Under Secretary for Science and Technology.

(2) National Research Council

The Under Secretary for Science and Technology may enter into an arrangement for the National Research Council to select members of the Advisory Committee, but only if the panel used by the National Research Council reflects the representation described in paragraph (1).

(c) Terms of office**(1) In general**

Except as otherwise provided in this subsection, the term of office of each member of the Advisory Committee shall be 3 years.

(2) Original appointments

The original members of the Advisory Committee shall be appointed to three classes. One class of six shall have a term of 1 year, one class of seven a term of 2 years, and one class of seven a term of 3 years.

(3) Vacancies

A member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of such term.

(d) Eligibility

A person who has completed two consecutive full terms of service on the Advisory Committee shall thereafter be ineligible for appointment during the 1-year period following the expiration of the second such term.

(e) Meetings

The Advisory Committee shall meet at least quarterly at the call of the Chair or whenever one-third of the members so request in writing. Each member shall be given appropriate notice of the call of each meeting, whenever possible not less than 15 days before the meeting.

(f) Quorum

A majority of the members of the Advisory Committee not having a conflict of interest in

the matter being considered by the Advisory Committee shall constitute a quorum.

(g) Conflict of interest rules

The Advisory Committee shall establish rules for determining when 1 of its members has a conflict of interest in a matter being considered by the Advisory Committee.

(h) Reports**(1) Annual report**

The Advisory Committee shall render an annual report to the Under Secretary for Science and Technology for transmittal to Congress on or before January 31 of each year. Such report shall describe the activities and recommendations of the Advisory Committee during the previous year.

(2) Additional reports

The Advisory Committee may render to the Under Secretary for transmittal to Congress such additional reports on specific policy matters as it considers appropriate.

(i) Federal Advisory Committee Act exemption

Section 14 of the Federal Advisory Committee Act shall not apply to the Advisory Committee.

(j) Termination

The Department of Homeland Security Science and Technology Advisory Committee shall terminate 3 years after the effective date of this chapter.

(Pub. L. 107-296, title III, §311, Nov. 25, 2002, 116 Stat. 2174; Pub. L. 108-334, title V, §520, Oct. 18, 2004, 118 Stat. 1318.)

REFERENCES IN TEXT

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (i), is section 14 of Pub. L. 92-463, which is set out in the Appendix to Title 5, Government Organization and Employees.

The effective date of this chapter, referred to in subsec. (j), 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.

AMENDMENTS

2004—Subsec. (c)(2). Pub. L. 108-334 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “The original members of the Advisory Committee shall be appointed to three classes of three members each. One class shall have a term of 1 year, 1 a term of 2 years, and the other a term of 3 years.”

§ 192. Homeland Security Institute**(a) Establishment**

The Secretary shall establish a federally funded research and development center to be known as the “Homeland Security Institute” (in this section referred to as the “Institute”).

(b) Administration

The Institute shall be administered as a separate entity by the Secretary.

(c) Duties

The duties of the Institute shall be determined by the Secretary, and may include the following:

(1) Systems analysis, risk analysis, and simulation and modeling to determine the

vulnerabilities of the Nation's critical infrastructures and the effectiveness of the systems deployed to reduce those vulnerabilities.

(2) Economic and policy analysis to assess the distributed costs and benefits of alternative approaches to enhancing security.

(3) Evaluation of the effectiveness of measures deployed to enhance the security of institutions, facilities, and infrastructure that may be terrorist targets.

(4) Identification of instances when common standards and protocols could improve the interoperability and effective utilization of tools developed for field operators and first responders.

(5) Assistance for Federal agencies and departments in establishing testbeds to evaluate the effectiveness of technologies under development and to assess the appropriateness of such technologies for deployment.

(6) Design of metrics and use of those metrics to evaluate the effectiveness of homeland security programs throughout the Federal Government, including all national laboratories.

(7) Design of and support for the conduct of homeland security-related exercises and simulations.

(8) Creation of strategic technology development plans to reduce vulnerabilities in the Nation's critical infrastructure and key resources.

(d) Consultation on Institute activities

In carrying out the duties described in subsection (c) of this section, the Institute shall consult widely with representatives from private industry, institutions of higher education, nonprofit institutions, other Government agencies, and federally funded research and development centers.

(e) Use of centers

The Institute shall utilize the capabilities of the National Infrastructure Simulation and Analysis Center.

(f) Annual reports

The Institute shall transmit to the Secretary and Congress an annual report on the activities of the Institute under this section.

(g) Termination

The Homeland Security Institute shall terminate 5 years after its establishment.

(Pub. L. 107-296, title III, §312, Nov. 25, 2002, 116 Stat. 2176; Pub. L. 108-334, title V, §519, Oct. 18, 2004, 118 Stat. 1318.)

AMENDMENTS

2004—Subsec. (g). Pub. L. 108-334 amended heading and text of subsec. (g) generally. Prior to amendment, text read as follows: "The Homeland Security Institute shall terminate 3 years after the effective date of this chapter."

§ 193. Technology clearinghouse to encourage and support innovative solutions to enhance homeland security

(a) Establishment of program

The Secretary, acting through the Under Secretary for Science and Technology, shall estab-

lish and promote a program to encourage technological innovation in facilitating the mission of the Department (as described in section 111 of this title).

(b) Elements of program

The program described in subsection (a) of this section shall include the following components:

(1) The establishment of a centralized Federal clearinghouse for information relating to technologies that would further the mission of the Department for dissemination, as appropriate, to Federal, State, and local government and private sector entities for additional review, purchase, or use.

(2) The issuance of announcements seeking unique and innovative technologies to advance the mission of the Department.

(3) The establishment of a technical assistance team to assist in screening, as appropriate, proposals submitted to the Secretary (except as provided in subsection (c)(2) of this section) to assess the feasibility, scientific and technical merits, and estimated cost of such proposals, as appropriate.

(4) The provision of guidance, recommendations, and technical assistance, as appropriate, to assist Federal, State, and local government and private sector efforts to evaluate and implement the use of technologies described in paragraph (1) or (2).

(5) The provision of information for persons seeking guidance on how to pursue proposals to develop or deploy technologies that would enhance homeland security, including information relating to Federal funding, regulation, or acquisition.

(c) Miscellaneous provisions

(1) In general

Nothing in this section shall be construed as authorizing the Secretary or the technical assistance team established under subsection (b)(3) of this section to set standards for technology to be used by the Department, any other executive agency, any State or local government entity, or any private sector entity.

(2) Certain proposals

The technical assistance team established under subsection (b)(3) of this section shall not consider or evaluate proposals submitted in response to a solicitation for offers for a pending procurement or for a specific agency requirement.

(3) Coordination

In carrying out this section, the Secretary shall coordinate with the Technical Support Working Group (organized under the April 1982 National Security Decision Directive Numbered 30).

(Pub. L. 107-296, title III, §313, Nov. 25, 2002, 116 Stat. 2176.)

§ 194. Enhancement of public safety communications interoperability

(a) Coordination of public safety interoperable communications programs

(1) Program

The Secretary of Homeland Security, in consultation with the Secretary of Commerce and

the Chairman of the Federal Communications Commission, shall establish a program to enhance public safety interoperable communications at all levels of government. Such program shall—

(A) establish a comprehensive national approach to achieving public safety interoperable communications;

(B) coordinate with other Federal agencies in carrying out subparagraph (A);

(C) develop, in consultation with other appropriate Federal agencies and State and local authorities, appropriate minimum capabilities for communications interoperability for Federal, State, and local public safety agencies;

(D) accelerate, in consultation with other Federal agencies, including the National Institute of Standards and Technology, the private sector, and nationally recognized standards organizations as appropriate, the development of national voluntary consensus standards for public safety interoperable communications, recognizing—

(i) the value, life cycle, and technical capabilities of existing communications infrastructure;

(ii) the need for cross-border interoperability between States and nations;

(iii) the unique needs of small, rural communities; and

(iv) the interoperability needs for daily operations and catastrophic events;

(E) encourage the development and implementation of flexible and open architectures incorporating, where possible, technologies that currently are commercially available, with appropriate levels of security, for short-term and long-term solutions to public safety communications interoperability;

(F) assist other Federal agencies in identifying priorities for research, development, and testing and evaluation with regard to public safety interoperable communications;

(G) identify priorities within the Department of Homeland Security for research, development, and testing and evaluation with regard to public safety interoperable communications;

(H) establish coordinated guidance for Federal grant programs for public safety interoperable communications;

(I) provide technical assistance to State and local public safety agencies regarding planning, acquisition strategies, interoperability architectures, training, and other functions necessary to achieve public safety communications interoperability;

(J) develop and disseminate best practices to improve public safety communications interoperability; and

(K) develop appropriate performance measures and milestones to systematically measure the Nation's progress toward achieving public safety communications interoperability, including the development of national voluntary consensus standards.

(2) Office for Interoperability and Compatibility

(A) Establishment of Office

The Secretary may establish an Office for Interoperability and Compatibility within

the Directorate of Science and Technology to carry out this subsection.

(B) Functions

If the Secretary establishes such office, the Secretary shall, through such office—

(i) carry out Department of Homeland Security responsibilities and authorities relating to the SAFECOM Program; and

(ii) carry out section 321 of this title.

(3) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out this subsection—

(A) \$22,105,000 for fiscal year 2005;

(B) \$22,768,000 for fiscal year 2006;

(C) \$23,451,000 for fiscal year 2007;

(D) \$24,155,000 for fiscal year 2008; and

(E) \$24,879,000 for fiscal year 2009.

(b) Report

Not later than 120 days after December 17, 2004, the Secretary shall report to the Congress on Department of Homeland Security plans for accelerating the development of national voluntary consensus standards for public safety interoperable communications, a schedule of milestones for such development, and achievements of such development.

(c) International interoperability

Not later than 18 months after December 17, 2004, the President shall establish a mechanism for coordinating cross-border interoperability issues between—

(1) the United States and Canada; and

(2) the United States and Mexico.

(d) Omitted

(e) Multiyear interoperability grants

(1) Multiyear commitments

In awarding grants to any State, region, local government, or Indian tribe for the purposes of enhancing interoperable communications capabilities for emergency response providers, the Secretary may commit to obligate Federal assistance beyond the current fiscal year, subject to the limitations and restrictions in this subsection.

(2) Restrictions

(A) Time limit

No multiyear interoperability commitment may exceed 3 years in duration.

(B) Amount of committed funds

The total amount of assistance the Secretary has committed to obligate for any future fiscal year under paragraph (1) may not exceed \$150,000,000.

(3) Letters of intent

(A) Issuance

Pursuant to paragraph (1), the Secretary may issue a letter of intent to an applicant committing to obligate from future budget authority an amount, not more than the Federal Government's share of the project's cost, for an interoperability communications project (including interest costs and costs of formulating the project).

(B) Schedule

A letter of intent under this paragraph shall establish a schedule under which the

Secretary will reimburse the applicant for the Federal Government's share of the project's costs, as amounts become available, if the applicant, after the Secretary issues the letter, carries out the project before receiving amounts under a grant issued by the Secretary.

(C) Notice to Secretary

An applicant that is issued a letter of intent under this subsection shall notify the Secretary of the applicant's intent to carry out a project pursuant to the letter before the project begins.

(D) Notice to Congress

The Secretary shall transmit a written notification to the Congress no later than 3 days before the issuance of a letter of intent under this section.

(E) Limitations

A letter of intent issued under this section is not an obligation of the Government under section 1501 of title 31 and is not deemed to be an administrative commitment for financing. An obligation or administrative commitment may be made only as amounts are provided in authorization and appropriations laws.

(F) Statutory construction

Nothing in this subsection shall be construed—

- (i) to prohibit the obligation of amounts pursuant to a letter of intent under this subsection in the same fiscal year as the letter of intent is issued; or
- (ii) to apply to, or replace, Federal assistance intended for interoperable communications that is not provided pursuant to a commitment under this subsection.

(f) Interoperable communications plans

Any applicant requesting funding assistance from the Secretary for interoperable communications for emergency response providers shall submit an Interoperable Communications Plan to the Secretary for approval. Such a plan shall—

- (1) describe the current state of communications interoperability in the applicable jurisdictions among Federal, State, and local emergency response providers and other relevant private resources;
- (2) describe the available and planned use of public safety frequency spectrum and resources for interoperable communications within such jurisdictions;
- (3) describe how the planned use of spectrum and resources for interoperable communications is compatible with surrounding capabilities and interoperable communications plans of Federal, State, and local governmental entities, military installations, foreign governments, critical infrastructure, and other relevant entities;
- (4) include a 5-year plan for the dedication of Federal, State, and local government and private resources to achieve a consistent, secure, and effective interoperable communications system, including planning, system design and engineering, testing and technology develop-

ment, procurement and installation, training, and operations and maintenance; and

(5) describe how such 5-year plan meets or exceeds any applicable standards and grant requirements established by the Secretary.

(g) Definitions

In this section:

(1) Interoperable communications

The term “interoperable communications” means the ability of emergency response providers and relevant Federal, State, and local government agencies to communicate with each other as necessary, through a dedicated public safety network utilizing information technology systems and radio communications systems, and to exchange voice, data, or video with one another on demand, in real time, as necessary.

(2) Emergency response providers

The term “emergency response providers” has the meaning that term has under section 101 of this title.

(h) Omitted

(i) Sense of Congress regarding interoperable communications

(1) Finding

The Congress finds that—

- (A) many first responders working in the same jurisdiction or in different jurisdictions cannot effectively and efficiently communicate with one another; and
- (B) their inability to do so threatens the public's safety and may result in unnecessary loss of lives and property.

(2) Sense of Congress

It is the sense of Congress that interoperable emergency communications systems and radios should continue to be deployed as soon as practicable for use by the first responder community, and that upgraded and new digital communications systems and new digital radios must meet prevailing national, voluntary consensus standards for interoperability.

(Pub. L. 108-458, title VII, § 7303, Dec. 17, 2004, 118 Stat. 3843.)

CODIFICATION

Section is comprised of section 7303 of Pub. L. 108-458. Subsec. (d) of section 7303 of Pub. L. 108-458 enacted section 321 of this title. Subsec. (h) of section 7303 of Pub. L. 108-458 amended sections 238 and 312 of this title.

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

EFFECTIVE DATE

Pub. L. 108-458, title VII, § 7308, Dec. 17, 2004, 118 Stat. 3849, provided that: “Notwithstanding any other provision of this Act [see Tables for classification], this subtitle [subtitle C (§§ 7301-7308) of title VII of Pub. L. 108-458, enacting this section and section 321 of this title, amending sections 238 and 312 of this title, and enacting provisions set out as notes under this section and section 5196 of Title 42, The Public Health and Welfare] shall take effect on the date of enactment of this Act [Dec. 17, 2004].”

REGIONAL MODEL STRATEGIC PLAN PILOT PROJECTS

Pub. L. 108-458, title VII, § 7304, Dec. 17, 2004, 118 Stat. 3847, provided that:

“(a) PILOT PROJECTS.—Consistent with sections 302 and 430 of the Homeland Security Act of 2002 (6 U.S.C. 182, 238), not later than 90 days after the date of enactment of this Act [Dec. 17, 2004], the Secretary of Homeland Security shall establish not fewer than 2 pilot projects in high threat urban areas or regions that are likely to implement a national model strategic plan.

“(b) PURPOSES.—The purposes of the pilot projects required by this section shall be to develop a regional strategic plan to foster interagency communication in the area in which it is established and coordinate the gathering of all Federal, State, and local first responders in that area, consistent with the national strategic plan developed by the Department of Homeland Security.

“(c) SELECTION CRITERIA.—In selecting urban areas for the location of pilot projects under this section, the Secretary shall consider—

“(1) the level of risk to the area, as determined by the Department of Homeland Security;

“(2) the number of Federal, State, and local law enforcement agencies located in the area;

“(3) the number of potential victims from a large scale terrorist attack in the area; and

“(4) such other criteria reflecting a community’s risk and vulnerability as the Secretary determines is appropriate.

“(d) INTERAGENCY ASSISTANCE.—The Secretary of Homeland Security shall consult with the Secretary of Defense as necessary for the development of the pilot projects required by this section, including examining relevant standards, equipment, and protocols in order to improve interagency communication among first responders.

“(e) REPORTS TO CONGRESS.—The Secretary of Homeland Security shall submit to Congress—

“(1) an interim report regarding the progress of the interagency communications pilot projects required by this section 6 months after the date of enactment of this Act [Dec. 17, 2004]; and

“(2) a final report 18 months after that date of enactment [Dec. 17, 2004].

“(f) FUNDING.—There are authorized to be made available to the Secretary of Homeland Security, such sums as may be necessary to carry out this section.”

SUBCHAPTER IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

PART A—UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY

§ 201. Under Secretary for Border and Transportation Security

There shall be in the Department a Directorate of Border and Transportation Security headed by an Under Secretary for Border and Transportation Security.

(Pub. L. 107-296, title IV, § 401, Nov. 25, 2002, 116 Stat. 2177.)

§ 202. Responsibilities

The Secretary, acting through the Under Secretary for Border and Transportation Security, 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.)

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.

§ 203. Functions transferred

In accordance with subchapter XII of this chapter (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.)

PART B—UNITED STATES CUSTOMS SERVICE

§ 211. Establishment; Commissioner of Customs**(a) Establishment**

There is established in the Department the United States Customs Service, under the authority of the Under Secretary for Border and Transportation Security, which shall be vested with those functions including, but not limited to those set forth in section 215(7) of this title, and the personnel, assets, and liabilities attributable to those functions.

(b) Commissioner of Customs**(1) In general**

There shall be at the head of the Customs Service a Commissioner of Customs, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Omitted**(3) Continuation in office**

The individual serving as the Commissioner of Customs on the day before the effective date of this chapter may serve as the Commissioner of Customs on and after such effective date until a Commissioner of Customs is appointed under paragraph (1).

(Pub. L. 107-296, title IV, §411, Nov. 25, 2002, 116 Stat. 2178.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (b)(3), 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.

CODIFICATION

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

CHANGE OF NAME

Customs Service, referred to in subsecs. (a) and (b)(1), changed to Bureau of Customs and Border Protection 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.

§ 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 con-

sult 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 the United States Customs Service (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 the United States Customs Service 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.

(Pub. L. 107-296, title IV, §412, Nov. 25, 2002, 116 Stat. 2179.)

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,

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

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, as amended, 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, as amended, 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, as amended, 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, as amended. 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, as amended. For complete classification of this Act to the Code, see Short Title note set out 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, as amended. 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, as amended, 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, as amended, 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, as amended, 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.

CHANGE OF NAME

Customs Service, referred to in subsec. (b), changed to Bureau of Customs and Border Protection 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.

§ 213. Preservation of Customs funds

Notwithstanding any other provision of this chapter, no funds available to the United States Customs Service or 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.)

CHANGE OF NAME

Customs Service, referred to in text, changed to Bureau of Customs and Border Protection 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.

§ 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 the United States Customs Service.

(Pub. L. 107-296, title IV, §414, Nov. 25, 2002, 116 Stat. 2180.)

CHANGE OF NAME

Customs Service, referred to in text, changed to Bureau of Customs and Border Protection 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.

§ 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: 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: 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.)

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.

§ 216. GAO report to Congress

Not later than 3 months after the effective date of this chapter, the Comptroller General of the United States shall submit to Congress a report that sets forth all trade functions performed by the executive branch, specifying each agency that performs each such function.

(Pub. L. 107–296, title IV, §416, Nov. 25, 2002, 116 Stat. 2181.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in text, 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.

§ 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.)

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. Reports to Congress**(a) Continuing reports**

The United States Customs Service shall, on and after the effective date of this chapter, con-

tinue to submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate any report required, on the day before such the¹ effective date of this chapter, to be so submitted under any provision of law.

(b) Report on conforming amendments

Not later than 60 days after November 25, 2002, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of proposed conforming amendments to the statutes set forth under section 212(a)(2) of this title in order to determine the appropriate allocation of legal authorities described under this subsection. The Secretary of the Treasury shall also identify those authorities vested in the Secretary of the Treasury that are exercised by the Commissioner of Customs on or before the effective date of this section.

(Pub. L. 107–296, title IV, §418, Nov. 25, 2002, 116 Stat. 2181.)

REFERENCES IN TEXT

The effective date of this chapter and the effective date of this section, referred to in text, 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.

CHANGE OF NAME

Customs Service, referred to in subsec. (a), changed to Bureau of Customs and Border Protection 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.

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) of this section.

(b) Covered animal and plant protection laws

The laws referred to in subsection (a) of this section 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.).
- (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.).

¹ So in original.

(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) of this section.

(d) Effect of transfer

(1) Compliance with Department of Agriculture regulations

The authority transferred pursuant to subsection (a) of this section 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) of this section.

(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) of this section under a law specified in subsection (b) of this section.

(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) of this section.

(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) of this section.

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

(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 transferred to the Secretary pursuant to subsection (a) of this section.

(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) of this section, 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.)

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, as amended, 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, as amended. 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, as amended, 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, as amended, 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 provisions 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.)

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.)

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

(a) In general

Notwithstanding any other provision of this chapter, and subject to subsection (b) of this section, the Transportation Security Administration shall be maintained as a distinct entity within the Department under the Under Secretary for Border Transportation and Security.

(b) Sunset

Subsection (a) of this section shall cease to apply 2 years after November 25, 2002.

(Pub. L. 107-296, title IV, §424, Nov. 25, 2002, 116 Stat. 2185.)

§ 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 office”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) of this section, 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)).

(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

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

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

³ See References in Text note below.

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 officer 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 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

⁴So in original. Probably should be "Governmental".

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.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (b)(1), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, 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 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, as amended, 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.

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 this title.

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) of this section—

(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) In general

The Office for Domestic Preparedness shall be within the Directorate of Border and Transportation Security.

(b) Director

There shall be a Director of the Office for Domestic Preparedness, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director of the Office for Domestic Preparedness shall report directly to the Under Secretary for Border and Transportation Security.

(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 Directorate;

(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.)

AMENDMENTS

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

PART D—IMMIGRATION ENFORCEMENT FUNCTIONS

§ 251. Transfer of functions to Under Secretary for Border and Transportation Security

In accordance with subchapter XII of this chapter (relating to transition provisions), there shall be transferred from the Commissioner of Immigration and Naturalization to the Under Secretary for Border and Transportation Security all functions performed 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.)

§ 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 administering 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.)

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.

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 Under Secretary for Border and Transportation Security shall be responsible for—

- (1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Border Security that are not subject to investigation by the Inspector General for the Department;
- (2) inspecting the operations of the Bureau of Border Security 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 Border Security.

(Pub. L. 107–296, title IV, § 443, Nov. 25, 2002, 116 Stat. 2194.)

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.

§ 254. Employee discipline

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.

(Pub. L. 107–296, title IV, § 444, Nov. 25, 2002, 116 Stat. 2194.)

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.

§ 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) of this section, 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.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (a), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, 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.

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.)

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.

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 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 of this chapter (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—

¹ See References in Text note below.

(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) 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.)

REFERENCES IN TEXT

For the effective date specified in section 455, referred to in subsecs. (a)(4) and (b), see Effective Date note below.

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.

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.]

§ 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 service 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 Ombudsman 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.)

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) of this section 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.)

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.)

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, authoriza-

tions, 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.)

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 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.

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.

¹ See References in Text note below.

(c) Consultation

In carrying out subsection (a) of this section, 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.)

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.

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) of this section, shall establish an Internet-based system, that will permit a person, employer, immigrant, or non-immigrant 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) of this section, shall conduct a feasibility study on the online filing of the filings described in subsection (a) of this section. The study shall include a review of computerization and technology of the Immi-

gration 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 time-frame 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) of this section; and

(B) conducting the study under subsection (b) of this section.

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) of this section and the online filing system described in subsection (b)(1) of this section.

(Pub. L. 107–296, title IV, § 461, Nov. 25, 2002, 116 Stat. 2202.)

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, as amended, 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.

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 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to 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 Depart-

ment 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) of this section.

(b) Functions

(1) In general

Pursuant to the transfer made by subsection (a) of this section, 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.

(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)(G), 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.

(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

¹ See References in Text note below.

(2) to such component is deemed to refer to the Office of Refugee Resettlement of the Department of Health and Human Services.

(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) of this section.

(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.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (c), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, 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.

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.

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.

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.)

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) of this section, 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.)

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.

CHANGE OF NAME

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.

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.

§ 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) of this section), 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.)

AMENDMENTS

2004—Subsec. (f). Pub. L. 108–271 substituted “Government Accountability Office” for “General Accounting Office” in two places.

CHANGE OF NAME

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.)

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.)

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) of this section 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.)

CHANGE OF NAME

Bureau of Border Security, referred to in subsections (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.)

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.

The Immigration and Nationality Act, referred to in subsec. (c)(2)(F), is act June 27, 1952, ch. 477, 66 Stat.

163, as amended, 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.

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.)

SUBCHAPTER V—EMERGENCY PREPAREDNESS AND RESPONSE

§ 311. Under Secretary for Emergency Preparedness and Response

There shall be in the Department a Directorate of Emergency Preparedness and Response headed by an Under Secretary for Emergency Preparedness and Response.

(Pub. L. 107-296, title V, §501, Nov. 25, 2002, 116 Stat. 2212.)

§ 312. Responsibilities

The Secretary,¹ acting through the Under Secretary for Emergency Preparedness and Response, shall include—

(1) helping to ensure the effectiveness of emergency response providers to terrorist attacks, major disasters, and other emergencies;

(2) with respect to the Nuclear Incident Response Team (regardless of whether it is operating as an organizational unit of the Department pursuant to this subchapter)—

(A) establishing standards and certifying when those standards have been met;

(B) conducting joint and other exercises and training and evaluating performance; and

(C) providing funds to the Department of Energy and the Environmental Protection Agency, as appropriate, for homeland security planning, exercises and training, and equipment;

(3) providing the Federal Government's response to terrorist attacks and major disasters, including—

(A) managing such response;

(B) directing the Domestic Emergency Support Team, the National Disaster Medical System, and (when operating as an organizational unit of the Department pursuant to this subchapter) the Nuclear Incident Response Team;

(C) overseeing the Metropolitan Medical Response System; and

(D) coordinating other Federal response resources, including requiring deployment of the Strategic National Stockpile, in the event of a terrorist attack or major disaster;

(4) aiding the recovery from terrorist attacks and major disasters;

(5) building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and disasters;

(6) consolidating existing Federal Government emergency response plans into a single, coordinated national response plan; and

(7) helping to ensure that emergency response providers acquire interoperable communications technology.

(Pub. L. 107-296, title V, §502, Nov. 25, 2002, 116 Stat. 2212; Pub. L. 108-276, §3(b)(1), July 21, 2004, 118 Stat. 852; Pub. L. 108-458, title VII, §7303(h)(1), Dec. 17, 2004, 118 Stat. 3846.)

AMENDMENTS

2004—Par. (3)(B). Pub. L. 108-276, §3(b)(1)(A), struck out “the Strategic National Stockpile,” after “Domestic Emergency Support Team,”.

Par. (3)(D). Pub. L. 108-276, §3(b)(1)(B), inserted “, including requiring deployment of the Strategic National Stockpile,” after “resources”.

Par. (7). Pub. L. 108-458 struck out “developing comprehensive programs for developing interoperative communications technology, and” before “helping” and substituted “acquire interoperable communications technology” for “acquire such technology”.

EX. ORD. NO. 13347. INDIVIDUALS WITH DISABILITIES IN EMERGENCY PREPAREDNESS

Ex. Ord. No. 13347, July 22, 2004, 69 F.R. 44573, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to strengthen emergency preparedness with respect to individuals with disabilities, it is hereby ordered as follows:

SECTION 1. *Policy.* To ensure that the Federal Government appropriately supports safety and security for individuals with disabilities in situations involving disasters, including earthquakes, tornadoes, fires, floods, hurricanes, and acts of terrorism, it shall be the policy of the United States that executive departments and agencies of the Federal Government (agencies):

(a) consider, in their emergency preparedness planning, the unique needs of agency employees with disabilities and individuals with disabilities whom the agency serves;

(b) encourage, including through the provision of technical assistance, as appropriate, consideration of the unique needs of employees and individuals with disabilities served by State, local, and tribal governments and private organizations and individuals in emergency preparedness planning; and

(c) facilitate cooperation among Federal, State, local, and tribal governments and private organizations and individuals in the implementation of emergency preparedness plans as they relate to individuals with disabilities.

SEC. 2. *Establishment of Council.* (a) There is hereby established, within the Department of Homeland Security for administrative purposes, the Interagency Coordinating Council on Emergency Preparedness and Individuals with Disabilities (the “Council”). The Council shall consist exclusively of the following members or their designees:

(i) the heads of executive departments, the Administrator of the Environmental Protection Agency, the Administrator of General Services, the Director of the Office of Personnel Management, and the Commissioner of Social Security; and

(ii) any other agency head as the Secretary of Homeland Security may, with the concurrence of the agency head, designate.

(b) The Secretary of Homeland Security shall chair the Council, convene and preside at its meetings, determine its agenda, direct its work, and, as appropriate to particular subject matters, establish and direct subgroups of the Council, which shall consist exclusively of Council members.

(c) A member of the Council may designate, to perform the Council functions of the member, an employee

¹ So in original.

of the member's department or agency who is either an officer of the United States appointed by the President, or a full-time employee serving in a position with pay equal to or greater than the minimum rate payable for GS-15 of the General Schedule.

SEC. 3. *Functions of Council.* (a) The Council shall:

(i) coordinate implementation by agencies of the policy set forth in section 1 of this order;

(ii) whenever the Council obtains in the performance of its functions information or advice from any individual who is not a full-time or permanent part-time Federal employee, obtain such information and advice only in a manner that seeks individual advice and does not involve collective judgment or consensus advice or deliberation; and

(iii) at the request of any agency head (or the agency head's designee under section 2(c) of this order) who is a member of the Council, unless the Secretary of Homeland Security declines the request, promptly review and provide advice, for the purpose of furthering the policy set forth in section 1, on a proposed action by that agency.

(b) The Council shall submit to the President each year beginning 1 year after the date of this order, through the Assistant to the President for Homeland Security, a report that describes:

(i) the achievements of the Council in implementing the policy set forth in section 1;

(ii) the best practices among Federal, State, local, and tribal governments and private organizations and individuals for emergency preparedness planning with respect to individuals with disabilities; and

(iii) recommendations of the Council for advancing the policy set forth in section 1.

SEC. 4. *General.* (a) To the extent permitted by law:

(i) agencies shall assist and provide information to the Council for the performance of its functions under this order; and

(ii) the Department of Homeland Security shall provide funding and administrative support for the Council.

(b) Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(c) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

GEORGE W. BUSH.

§ 313. Functions transferred

In accordance with subchapter XII of this chapter, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following entities:

(1) The Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto.

(2) The Integrated Hazard Information System of the National Oceanic and Atmospheric Administration, which shall be renamed "FIRESAT".

(3) The National Domestic Preparedness Office of the Federal Bureau of Investigation, including the functions of the Attorney General relating thereto.

(4) The Domestic Emergency Support Teams of the Department of Justice, including the functions of the Attorney General relating thereto.

(5) The Office of Emergency Preparedness, the National Disaster Medical System, and the

Metropolitan Medical Response System of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and the Assistant Secretary for Public Health Emergency Preparedness relating thereto.

(Pub. L. 107-296, title V, §503, Nov. 25, 2002, 116 Stat. 2213; Pub. L. 108-276, §3(c)(3), July 21, 2004, 118 Stat. 853.)

AMENDMENTS

2004—Par. (6). Pub. L. 108-276 struck out par. (6) which read as follows: "The Strategic National Stockpile of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services relating thereto."

§ 314. Nuclear incident response

(a) In general

At the direction of the Secretary (in connection with an actual or threatened terrorist attack, major disaster, or other emergency in the United States), the Nuclear Incident Response Team shall operate as an organizational unit of the Department. While so operating, the Nuclear Incident Response Team shall be subject to the direction, authority, and control of the Secretary.

(b) Rule of construction

Nothing in this subchapter shall be construed to limit the ordinary responsibility of the Secretary of Energy and the Administrator of the Environmental Protection Agency for organizing, training, equipping, and utilizing their respective entities in the Nuclear Incident Response Team, or (subject to the provisions of this subchapter) from exercising direction, authority, and control over them when they are not operating as a unit of the Department.

(Pub. L. 107-296, title V, §504, Nov. 25, 2002, 116 Stat. 2213.)

§ 315. Conduct of certain public health-related activities

(a) In general

With respect to all public health-related activities to improve State, local, and hospital preparedness and response to chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities and preparedness goals and further develop a coordinated strategy for such activities in collaboration with the Secretary.

(b) Evaluation of progress

In carrying out subsection (a) of this section, the Secretary of Health and Human Services shall collaborate with the Secretary in developing specific benchmarks and outcome measurements for evaluating progress toward achieving the priorities and goals described in such subsection.

(Pub. L. 107-296, title V, §505, Nov. 25, 2002, 116 Stat. 2213.)

§ 316. Definition

In this subchapter, the term “Nuclear Incident Response Team” means a resource that includes—

- (1) those entities of the Department of Energy that perform nuclear or radiological emergency support functions (including accident response, search response, advisory, and technical operations functions), radiation exposure functions at the medical assistance facility known as the Radiation Emergency Assistance Center/Training Site (REAC/TS), radiological assistance functions, and related functions; and
- (2) those entities of the Environmental Protection Agency that perform such support functions (including radiological emergency response functions) and related functions.

(Pub. L. 107–296, title V, § 506, Nov. 25, 2002, 116 Stat. 2214.)

§ 317. Role of Federal Emergency Management Agency**(a) In general**

The functions of the Federal Emergency Management Agency include the following:

- (1) All functions and authorities prescribed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).
- (2) Carrying out its mission to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a comprehensive, risk-based emergency management program—
 - (A) of mitigation, by taking sustained actions to reduce or eliminate long-term risk to people and property from hazards and their effects;
 - (B) of planning for building the emergency management profession to prepare effectively for, mitigate against, respond to, and recover from any hazard;
 - (C) of response, by conducting emergency operations to save lives and property through positioning emergency equipment and supplies, through evacuating potential victims, through providing food, water, shelter, and medical care to those in need, and through restoring critical public services;
 - (D) of recovery, by rebuilding communities so individuals, businesses, and governments can function on their own, return to normal life, and protect against future hazards; and
 - (E) of increased efficiencies, by coordinating efforts relating to mitigation, planning, response, and recovery.

(b) Federal Response Plan**(1) Role of FEMA**

Notwithstanding any other provision of this chapter, the Federal Emergency Management Agency shall remain the lead agency for the Federal Response Plan established under Executive Order No. 12148 (44 Fed. Reg. 43239) and Executive Order No. 12656 (53 Fed. Reg. 47491).

(2) Revision of Response Plan

Not later than 60 days after November 25, 2002, the Director of the Federal Emergency

Management Agency shall revise the Federal Response Plan to reflect the establishment of and incorporate the Department.

(Pub. L. 107–296, title V, § 507, Nov. 25, 2002, 116 Stat. 2214.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (a)(1), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

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.

Executive Orders Nos. 12148 and 12656, referred to in subsec. (b)(1), are set out as notes under section 5195 of Title 42, The Public Health and Welfare.

§ 318. Use of national private sector networks in emergency response

To the maximum extent practicable, the Secretary shall use national private sector networks and infrastructure for emergency response to chemical, biological, radiological, nuclear, or explosive disasters, and other major disasters.

(Pub. L. 107–296, title V, § 508, Nov. 25, 2002, 116 Stat. 2215.)

§ 319. Use of commercially available technology, goods, and services

It is the sense of Congress that—

- (1) the Secretary should, to the maximum extent possible, use off-the-shelf commercially developed technologies to ensure that the Department’s information technology systems allow the Department to collect, manage, share, analyze, and disseminate information securely over multiple channels of communication; and
- (2) in order to further the policy of the United States to avoid competing commercially with the private sector, the Secretary should rely on commercial sources to supply the goods and services needed by the Department.

(Pub. L. 107–296, title V, § 509, Nov. 25, 2002, 116 Stat. 2215.)

§ 320. Procurement of security countermeasures for Strategic National Stockpile**(a) Authorization of appropriations**

For the procurement of security countermeasures under section 247d–6b(c) of title 42 (referred to in this section as the “security countermeasures program”), there is authorized to be appropriated up to \$5,593,000,000 for the fiscal years 2004 through 2013. Of the amounts appropriated under the preceding sentence, not to exceed \$3,418,000,000 may be obligated during the fiscal years 2004 through 2008, of which not to exceed \$890,000,000 may be obligated during fiscal year 2004.

(b) Special reserve fund

For purposes of the security countermeasures program, the term “special reserve fund” means the “Biodefense Countermeasures” appropriations account or any other appropriation made under subsection (a) of this section.

(c) Availability

Amounts appropriated under subsection (a) of this section become available for a procurement under the security countermeasures program only upon the approval by the President of such availability for the procurement in accordance with paragraph (6)(B) of such program.

(d) Related authorizations of appropriations**(1) Threat assessment capabilities**

For the purpose of carrying out the responsibilities of the Secretary for terror threat assessment under the security countermeasures program, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2006, for the hiring of professional personnel within the Directorate for Information Analysis and Infrastructure Protection, who shall be analysts responsible for chemical, biological, radiological, and nuclear threat assessment (including but not limited to analysis of chemical, biological, radiological, and nuclear agents, the means by which such agents could be weaponized or used in a terrorist attack, and the capabilities, plans, and intentions of terrorists and other non-state actors who may have or acquire such agents). All such analysts shall meet the applicable standards and qualifications for the performance of intelligence activities promulgated by the Director of Central Intelligence pursuant to section 403-4¹ of title 50.

(2) Intelligence sharing infrastructure

For the purpose of carrying out the acquisition and deployment of secure facilities (including information technology and physical infrastructure, whether mobile and temporary, or permanent) sufficient to permit the Secretary to receive, not later than 180 days after July 21, 2004, all classified information and products to which the Under Secretary for Information Analysis and Infrastructure Protection is entitled under part A of subchapter II of this chapter, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2006.

(Pub. L. 107-296, title V, § 510, as added Pub. L. 108-276, § 3(b)(2), July 21, 2004, 118 Stat. 852.)

REFERENCES IN TEXT

Section 403-4 of title 50, referred to in subsec. (d)(1), was repealed and a new section 403-4 enacted by Pub. L. 108-458, title I, § 1011(a), Dec. 17, 2004, 118 Stat. 3660, and, as so enacted, section 403-4 no longer relates to promulgation of standards and qualifications for the performance of intelligence activities.

CODIFICATION

Another section 510 of Pub. L. 107-296 is classified to section 321 of this title.

¹ See References in Text note below.

CHANGE OF NAME

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

§ 321. Urban and other high risk area communications capabilities**(a) In general**

The Secretary, in consultation with the Federal Communications Commission and the Secretary of Defense, and with appropriate governors, mayors, and other State and local government officials, shall provide technical guidance, training, and other assistance, as appropriate, to support the rapid establishment of consistent, secure, and effective interoperable communications capabilities in the event of an emergency in urban and other areas determined by the Secretary to be at consistently high levels of risk from terrorist attack.

(b) Minimum capabilities

The interoperable communications capabilities established under subsection (a) of this section shall ensure the ability of all levels of government agencies, emergency response providers (as defined in section 101 of this title), and other organizations with emergency response capabilities—

(1) to communicate with each other in the event of an emergency; and

(2) to have appropriate and timely access to the Information Sharing Environment described in section 485 of this title.

(Pub. L. 107-296, title V, § 510, as added Pub. L. 108-458, title VII, § 7303(d), Dec. 17, 2004, 118 Stat. 3844.)

CODIFICATION

Another section 510 of Pub. L. 107-296 is classified to section 320 of this title.

SUBCHAPTER VI—TREATMENT OF CHARITABLE TRUSTS FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES AND OTHER GOVERNMENTAL ORGANIZATIONS

§ 331. Treatment of charitable trusts for members of the Armed Forces of the United States and other governmental organizations**(a) Findings**

Congress finds the following:

(1) Members of the Armed Forces of the United States defend the freedom and security of our Nation.

(2) Members of the Armed Forces of the United States have lost their lives while battling the evils of terrorism around the world.

(3) Personnel of the Central Intelligence Agency (CIA) charged with the responsibility of covert observation of terrorists around the

world are often put in harm's way during their service to the United States.

(4) Personnel of the Central Intelligence Agency have also lost their lives while battling the evils of terrorism around the world.

(5) Employees of the Federal Bureau of Investigation (FBI) and other Federal agencies charged with domestic protection of the United States put their lives at risk on a daily basis for the freedom and security of our Nation.

(6) United States military personnel, CIA personnel, FBI personnel, and other Federal agents in the service of the United States are patriots of the highest order.

(7) CIA officer Johnny Micheal Spann became the first American to give his life for his country in the War on Terrorism declared by President George W. Bush following the terrorist attacks of September 11, 2001.

(8) Johnny Micheal Spann left behind a wife and children who are very proud of the heroic actions of their patriot father.

(9) Surviving dependents of members of the Armed Forces of the United States who lose their lives as a result of terrorist attacks or military operations abroad receive a \$6,000 death benefit, plus a small monthly benefit.

(10) The current system of compensating spouses and children of American patriots is inequitable and needs improvement.

(b) Designation of Johnny Micheal Spann Patriot Trusts

Any charitable corporation, fund, foundation, or trust (or separate fund or account thereof) which otherwise meets all applicable requirements under law with respect to charitable entities and meets the requirements described in subsection (c) of this section shall be eligible to characterize itself as a "Johnny Micheal Spann Patriot Trust".

(c) Requirements for the designation of Johnny Micheal Spann Patriot Trusts

The requirements described in this subsection are as follows:

(1) Not taking into account funds or donations reasonably necessary to establish a trust, at least 85 percent of all funds or donations (including any earnings on the investment of such funds or donations) received or collected by any Johnny Micheal Spann Patriot Trust must be distributed to (or, if placed in a private foundation, held in trust for) surviving spouses, children, or dependent parents, grandparents, or siblings of 1 or more of the following:

(A) members of the Armed Forces of the United States;

(B) personnel, including contractors, of elements of the intelligence community, as defined in section 401a(4) of title 50;

(C) employees of the Federal Bureau of Investigation; and

(D) officers, employees, or contract employees of the United States Government,

whose deaths occur in the line of duty and arise out of terrorist attacks, military operations, intelligence operations, or law enforcement operations or accidents connected with

activities occurring after September 11, 2001, and related to domestic or foreign efforts to curb international terrorism, including the Authorization for Use of Military Force (Public Law 107-40; 115 Stat. 224).

(2) Other than funds or donations reasonably necessary to establish a trust, not more than 15 percent of all funds or donations (or 15 percent of annual earnings on funds invested in a private foundation) may be used for administrative purposes.

(3) No part of the net earnings of any Johnny Micheal Spann Patriot Trust may inure to the benefit of any individual based solely on the position of such individual as a shareholder, an officer or employee of such Trust.

(4) None of the activities of any Johnny Micheal Spann Patriot Trust shall be conducted in a manner inconsistent with any law that prohibits attempting to influence legislation.

(5) No Johnny Micheal Spann Patriot Trust may participate in or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office, including by publication or distribution of statements.

(6) Each Johnny Micheal Spann Patriot Trust shall comply with the instructions and directions of the Director of Central Intelligence, the Attorney General, or the Secretary of Defense relating to the protection of intelligence sources and methods, sensitive law enforcement information, or other sensitive national security information, including methods for confidentially disbursing funds.

(7) Each Johnny Micheal Spann Patriot Trust that receives annual contributions totaling more than \$1,000,000 must be audited annually by an independent certified public accounting firm. Such audits shall be filed with the Internal Revenue Service, and shall be open to public inspection, except that the conduct, filing, and availability of the audit shall be consistent with the protection of intelligence sources and methods, of sensitive law enforcement information, and of other sensitive national security information.

(8) Each Johnny Micheal Spann Patriot Trust shall make distributions to beneficiaries described in paragraph (1) at least once every calendar year, beginning not later than 12 months after the formation of such Trust, and all funds and donations received and earnings not placed in a private foundation dedicated to such beneficiaries must be distributed within 36 months after the end of the fiscal year in which such funds, donations, and earnings are received.

(9)(A) When determining the amount of a distribution to any beneficiary described in paragraph (1), a Johnny Micheal Spann Patriot Trust should take into account the amount of any collateral source compensation that the beneficiary has received or is entitled to receive as a result of the death of an individual described in paragraph (1).

(B) Collateral source compensation includes all compensation from collateral sources, including life insurance, pension funds, death benefit programs, and payments by Federal, State, or local governments related to the

death of an individual described in paragraph (1).

(d) Treatment of Johnny Micheal Spann Patriot Trusts

Each Johnny Micheal Spann Patriot Trust shall refrain from conducting the activities described in clauses (i) and (ii) of section 431(20)(A) of title 2 so that a general solicitation of funds by an individual described in paragraph (1) of section 441(e) of title 2 will be permissible if such solicitation meets the requirements of paragraph (4)(A) of such section.

(e) Notification of Trust beneficiaries

Notwithstanding any other provision of law, and in a manner consistent with the protection of intelligence sources and methods and sensitive law enforcement information, and other sensitive national security information, the Secretary of Defense, the Director of the Federal Bureau of Investigation, or the Director of Central Intelligence, or their designees, as applicable, may forward information received from an executor, administrator, or other legal representative of the estate of a decedent described in subparagraph (A), (B), (C), or (D) of subsection (c)(1) of this section, to a Johnny Micheal Spann Patriot Trust on how to contact individuals eligible for a distribution under subsection (c)(1) of this section for the purpose of providing assistance from such Trust: *Provided*, That, neither forwarding nor failing to forward any information under this subsection shall create any cause of action against any Federal department, agency, officer, agent, or employee.

(f) Regulations

Not later than 90 days after November 25, 2002, the Secretary of Defense, in coordination with the Attorney General, the Director of the Federal Bureau of Investigation, and the Director of Central Intelligence, shall prescribe regulations to carry out this section.

(Pub. L. 107–296, title VI, § 601, Nov. 25, 2002, 116 Stat. 2215.)

REFERENCES IN TEXT

The Authorization for Use of Military Force, referred to in subsec. (c)(1), is Pub. L. 107–40, Sept. 18, 2001, 115 Stat. 224, which is set out as a note under section 1541 of Title 50, War and National Defense.

CHANGE OF NAME

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

SUBCHAPTER VII—MANAGEMENT

§ 341. Under Secretary for Management

(a) In general

The Secretary, acting through the Under Secretary for Management, shall be responsible for

the management and administration of the Department, including the following:

(1) The budget, appropriations, expenditures of funds, accounting, and finance.

(2) Procurement.

(3) Human resources and personnel.

(4) Information technology and communications systems.

(5) Facilities, property, equipment, and other material resources.

(6) Security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources.

(7) Identification and tracking of performance measures relating to the responsibilities of the Department.

(8) Grants and other assistance management programs.

(9) The transition and reorganization process, to ensure an efficient and orderly transfer of functions and personnel to the Department, including the development of a transition plan.

(10) The conduct of internal audits and management analyses of the programs and activities of the Department.

(11) Any other management duties that the Secretary may designate.

(b) Immigration

(1) In general

In addition to the responsibilities described in subsection (a) of this section, the Under Secretary for Management shall be responsible for the following:

(A) Maintenance of all immigration statistical information of the Bureau of Border Security and the Bureau of Citizenship and Immigration Services. Such statistical information shall include information and statistics of the type contained in the publication entitled "Statistical Yearbook of the Immigration and Naturalization Service" prepared by the Immigration and Naturalization Service (as in effect immediately before the date on which the transfer of functions specified under section 251 of this title takes effect), including region-by-region statistics on the aggregate number of applications and petitions filed by an alien (or filed on behalf of an alien) and denied by such bureau, and the reasons for such denials, disaggregated by category of denial and application or petition type.

(B) Establishment of standards of reliability and validity for immigration statistics collected by such bureaus.

(2) Transfer of functions

In accordance with subchapter XII of this chapter, there shall be transferred to the Under Secretary for Management all functions performed immediately before such transfer occurs by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service with respect to the following programs:

(A) The Border Patrol program.

(B) The detention and removal program.

(C) The intelligence program.

- (D) The investigations program.
 - (E) The inspections program.
 - (F) Adjudication of immigrant visa petitions.
 - (G) Adjudication of naturalization petitions.
 - (H) Adjudication of asylum and refugee applications.
 - (I) Adjudications performed at service centers.
 - (J) All other adjudications performed by the Immigration and Naturalization Service.
- (Pub. L. 107–296, title VII, §701, Nov. 25, 2002, 116 Stat. 2218.)

CHANGE OF NAME

Bureau of Border Security, referred to in subsec. (b)(1)(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.

§ 342. Chief Financial Officer

(a) In general

The Chief Financial Officer shall perform functions as specified in chapter 9 of title 31 and, with respect to all such functions and other responsibilities that may be assigned to the Chief Financial Officer from time to time, shall also report to the Under Secretary for Management.

(b) Program analysis and evaluation function

(1) Establishment of Office of Program Analysis and Evaluation

Not later than 90 days after October 16, 2004, the Secretary shall establish an Office of Program Analysis and Evaluation within the Department (in this section referred to as the “Office”).

(2) Responsibilities

The Office shall perform the following functions:

- (A) Analyze and evaluate plans, programs, and budgets of the Department in relation to United States homeland security objectives, projected threats, vulnerability assessments, estimated costs, resource constraints, and the most recent homeland security strategy developed pursuant to section 454(b)(2) of this title.
- (B) Develop and perform analyses and evaluations of alternative plans, programs, personnel levels, and budget submissions for the Department in relation to United States homeland security objectives, projected threats, vulnerability assessments, estimated costs, resource constraints, and the most recent homeland security strategy developed pursuant to section 454(b)(2) of this title.
- (C) Establish policies for, and oversee the integration of, the planning, programming, and budgeting system of the Department.
- (D) Review and ensure that the Department meets performance-based budget requirements established by the Office of Management and Budget.
- (E) Provide guidance for, and oversee the development of, the Future Years Homeland

Security Program of the Department, as specified under section 454 of this title.

(F) Ensure that the costs of Department programs, including classified programs, are presented accurately and completely.

(G) Oversee the preparation of the annual performance plan for the Department and the program and performance section of the annual report on program performance for the Department, consistent with sections 1115 and 1116, respectively, of title 31.

(H) Provide leadership in developing and promoting improved analytical tools and methods for analyzing homeland security planning and the allocation of resources.

(I) Any other responsibilities delegated by the Secretary consistent with an effective program analysis and evaluation function.

(3) Director of Program Analysis and Evaluation

There shall be a Director of Program Analysis and Evaluation, who—

(A) shall be a principal staff assistant to the Chief Financial Officer of the Department for program analysis and evaluation; and

(B) shall report to an official no lower than the Chief Financial Officer.

(4) Reorganization

(A) In general

The Secretary may allocate or reallocate the functions of the Office, or discontinue the Office, in accordance with section 452(a) of this title.

(B) Exemption from limitations

Section 452(b) of this title shall not apply to any action by the Secretary under this paragraph.

(c) Notification regarding transfer or reprogramming of funds

In any case in which appropriations available to the Department or any officer of the Department are transferred or reprogrammed and notice of such transfer or reprogramming is submitted to the Congress (including any officer, office, or Committee of the Congress), the Chief Financial Officer of the Department shall simultaneously submit such notice to the Select Committee on Homeland Security (or any successor to the jurisdiction of that committee) and the Committee on Government Reform of the House of Representatives, and to the Committee on Governmental Affairs of the Senate.

(Pub. L. 107–296, title VII, §702, Nov. 25, 2002, 116 Stat. 2219; Pub. L. 108–330, §§3(d)(1)(B), 6, 7, Oct. 16, 2004, 118 Stat. 1276, 1278, 1279.)

AMENDMENTS

2004—Pub. L. 108–330, §§6, 7, designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

Pub. L. 108–330, §3(d)(1)(B), substituted “shall perform functions as specified in chapter 9 of title 31 and, with respect to all such functions and other responsibilities that may be assigned to the Chief Financial Officer from time to time, shall also report to the Under Secretary for Management” for “shall report to the Secretary, or to another official of the Department, as the Secretary may direct”.

CHANGE OF NAME

Select Committee on Homeland Security, which was established by House Resolution 449, One Hundred Seventh Congress, June 19, 2002, and reestablished by section 4 of House Resolution 5, One Hundred Eighth Congress, Jan. 4, 2005, was not reestablished in the One Hundred Ninth Congress. Rule X(1)(i) of the Rules of the House of Representatives, One Hundred Ninth Congress, as amended by section 2 of House Resolution 5, One Hundred Ninth Congress, Jan. 4, 2005, established a Committee on Homeland Security. For jurisdiction of the Select Committee on Homeland Security and of the Committee on Homeland Security, see section 4 of House Resolution 5, One Hundred Eighth Congress, and Rule X(1)(i) of the Rules of the House, One Hundred Ninth Congress.

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.

FINDINGS

Pub. L. 108-330, § 2, Oct. 16, 2004, 118 Stat. 1275, provided that: “The Congress finds the following:

“(1) Influential financial management leadership is of vital importance to the mission success of the Department of Homeland Security. For this reason, the Chief Financial Officer of the Department must be a key figure in the Department’s management.

“(2) To provide a sound financial leadership structure, the provisions of law enacted by the Chief Financial Officers Act of 1990 (Public Law 101-576) [see Short Title of 1990 Amendment note set out under section 501 of Title 31, Money and Finance] provide that the Chief Financial Officer of each of the Federal executive departments is to be a Presidential appointee who reports directly to the Secretary of that department on financial management matters. Because the Department of Homeland Security was only recently created, the provisions enacted by that Act must be amended to include the Department within these provisions.

“(3) The Department of Homeland Security was created by consolidation of 22 separate Federal agencies, each with its own accounting and financial management system. None of these systems was developed with a view to executing the mission of the Department of Homeland Security to prevent terrorist attacks within the United States, reduce the Nation’s vulnerability to terrorism, and minimize the damage and assist in the recovery from terrorist attacks. For these reasons, a strong Chief Financial Officer is needed within the Department both to consolidate financial management operations, and to insure that management control systems are comprehensively designed to achieve the mission and execute the strategy of the Department.

“(4) The provisions of law enacted by the Chief Financial Officers Act of 1990 require agency Chief Financial Officers to improve the financial information available to agency managers and the Congress. Those provisions also specify that agency financial management systems must provide for the systematic measurement of performance. In the case of the Department of Homeland Security, therefore, it is vitally important that management control systems be designed with a clear view of a homeland security strategy, including the priorities of the Department in addressing those risks of terrorism deemed most significant based upon a comprehensive assessment of potential threats, vulnerabilities, criticality, and consequences. For this reason, Federal law should be amended to clearly state the responsibilities of the Chief Financial Officer of the Department of Homeland Security to provide management control information, for the benefit of managers within the Department and to help inform the Congress, that permits an assessment of the Department’s performance in executing a homeland security strategy.”

§ 343. Chief Information Officer**(a) In general**

The Chief Information Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

(b) Geospatial information functions**(1) Definitions**

As used in this subsection:

(A) Geospatial information

The term “geospatial information” means graphical or digital data depicting natural or manmade physical features, phenomena, or boundaries of the earth and any information related thereto, including surveys, maps, charts, remote sensing data, and images.

(B) Geospatial technology

The term “geospatial technology” means any technology utilized by analysts, specialists, surveyors, photogrammetrists, hydrographers, geodesists, cartographers, architects, or engineers for the collection, storage, retrieval, or dissemination of geospatial information, including—

- (i) global satellite surveillance systems;
- (ii) global position systems;
- (iii) geographic information systems;
- (iv) mapping equipment;
- (v) geocoding technology; and
- (vi) remote sensing devices.

(2) Office of Geospatial Management**(A) Establishment**

The Office of Geospatial Management is established within the Office of the Chief Information Officer.

(B) Geospatial Information Officer**(i) Appointment**

The Office of Geospatial Management shall be administered by the Geospatial Information Officer, who shall be appointed by the Secretary and serve under the direction of the Chief Information Officer.

(ii) Functions

The Geospatial Information Officer shall assist the Chief Information Officer in carrying out all functions under this section and in coordinating the geospatial information needs of the Department.

(C) Coordination of geospatial information

The Chief Information Officer shall establish and carry out a program to provide for the efficient use of geospatial information, which shall include—

- (i) providing such geospatial information as may be necessary to implement the critical infrastructure protection programs;
- (ii) providing leadership and coordination in meeting the geospatial information requirements of those responsible for planning, prevention, mitigation, assessment and response to emergencies, critical infrastructure protection, and other functions of the Department; and

(iii) coordinating with users of geospatial information within the Department to assure interoperability and prevent unnecessary duplication.

(D) Responsibilities

In carrying out this subsection, the responsibilities of the Chief Information Officer shall include—

(i) coordinating the geospatial information needs and activities of the Department;

(ii) implementing standards, as adopted by the Director of the Office of Management and Budget under the processes established under section 216 of the E-Government Act of 2002 (44 U.S.C. 3501 note), to facilitate the interoperability of geospatial information pertaining to homeland security among all users of such information within—

- (I) the Department;
- (II) State and local government; and
- (III) the private sector;

(iii) coordinating with the Federal Geographic Data Committee and carrying out the responsibilities of the Department pursuant to Office of Management and Budget Circular A-16 and Executive Order 12906; and

(iv) making recommendations to the Secretary and the Executive Director of the Office for State and Local Government Coordination and Preparedness on awarding grants to—

- (I) fund the creation of geospatial data; and
- (II) execute information sharing agreements regarding geospatial data with State, local, and tribal governments.

(3) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this subsection for each fiscal year.

(Pub. L. 107-296, title VII, § 703, Nov. 25, 2002, 116 Stat. 2219; Pub. L. 108-458, title VIII, § 8201(b), Dec. 17, 2004, 118 Stat. 3865.)

REFERENCES IN TEXT

Section 216 of the E-Government Act of 2002, referred to in subsec. (b)(2)(D)(ii), is section 216 of Pub. L. 107-347, which is set out in a note under section 3501 of Title 44, Public Printing and Documents.

Executive Order 12906, referred to in subsec. (b)(2)(D)(iii), is set out as a note under section 1457 of Title 43, Public Lands.

AMENDMENTS

2004—Pub. L. 108-458 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

FINDINGS

Pub. L. 108-458, title VIII, § 8201(a), Dec. 17, 2004, 118 Stat. 3865, provided that: “Congress makes the following findings:

“(1) Geospatial technologies and geospatial data improve government capabilities to detect, plan for, prepare for, and respond to disasters in order to save lives and protect property.

“(2) Geospatial data improves the ability of information technology applications and systems to enhance public security in a cost-effective manner.

“(3) Geospatial information preparedness in the United States, and specifically in the Department of Homeland Security, is insufficient because of—

- “(A) inadequate geospatial data compatibility;
- “(B) insufficient geospatial data sharing; and
- “(C) technology interoperability barriers.”

§ 344. Chief Human Capital Officer

The Chief Human Capital Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct and shall ensure that all employees of the Department are informed of their rights and remedies under chapters 12 and 23 of title 5 by—

- (1) participating in the 2302(c) Certification Program of the Office of Special Counsel;
- (2) achieving certification from the Office of Special Counsel of the Department’s compliance with section 2302(c) of title 5; and
- (3) informing Congress of such certification not later than 24 months after November 25, 2002.

(Pub. L. 107-296, title VII, § 704, Nov. 25, 2002, 116 Stat. 2219.)

§ 345. Establishment of Officer for Civil Rights and Civil Liberties

(a) In general

The Officer for Civil Rights and Civil Liberties, who shall report directly to the Secretary, shall—

- (1) review and assess information concerning abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion, by employees and officials of the Department;
- (2) make public through the Internet, radio, television, or newspaper advertisements information on the responsibilities and functions of, and how to contact, the Officer;
- (3) assist the Secretary, directorates, and offices of the Department to develop, implement, and periodically review Department policies and procedures to ensure that the protection of civil rights and civil liberties is appropriately incorporated into Department programs and activities;
- (4) oversee compliance with constitutional, statutory, regulatory, policy, and other requirements relating to the civil rights and civil liberties of individuals affected by the programs and activities of the Department;
- (5) coordinate with the Privacy Officer to ensure that—

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

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

(6) investigate complaints and information indicating possible abuses of civil rights or civil liberties, unless the Inspector General of the Department determines that any such complaint or information should be investigated by the Inspector General.

(b) Report

The Secretary shall submit to the President of the Senate, the Speaker of the House of Rep-

representatives, and the appropriate committees and subcommittees of Congress on an annual basis a report on the implementation of this section, including the use of funds appropriated to carry out this section, and detailing any allegations of abuses described under subsection (a)(1) of this section and any actions taken by the Department in response to such allegations.

(Pub. L. 107-296, title VII, § 705, Nov. 25, 2002, 116 Stat. 2219; Pub. L. 108-458, title VIII, § 8303, Dec. 17, 2004, 118 Stat. 3867.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-458, § 8303(1), reenacted heading without change and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: “The Secretary shall appoint in the Department an Officer for Civil Rights and Civil Liberties, who shall—”.

Subsec. (a)(1). Pub. L. 108-458, § 8303(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “review and assess information alleging abuses of civil rights, civil liberties, and racial and ethnic profiling by employees and officials of the Department; and”.

Subsec. (a)(3) to (6). Pub. L. 108-458, § 8303(3), (4), added pars. (3) to (6).

§ 346. Consolidation and co-location of offices

Not later than 1 year after November 25, 2002, the Secretary shall develop and submit to Congress a plan for consolidating and co-locating—

(1) any regional offices or field offices of agencies that are transferred to the Department under this chapter, if such officers¹ are located in the same municipality; and

(2) portions of regional and field offices of other Federal agencies, to the extent such offices perform functions that are transferred to the Secretary under this chapter.

(Pub. L. 107-296, title VII, § 706, Nov. 25, 2002, 116 Stat. 2220.)

REFERENCES IN TEXT

This chapter, referred to in pars. (1) and (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.

SUBCHAPTER VIII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

PART A—COORDINATION WITH NON-FEDERAL ENTITIES

§ 361. Office for State and Local Government Coordination

(a) Establishment

There is established within the Office of the Secretary the Office for State and Local Government Coordination, to oversee and coordinate departmental programs for and relationships with State and local governments.

(b) Responsibilities

The Office established under subsection (a) of this section shall—

(1) coordinate the activities of the Department relating to State and local government;

(2) assess, and advocate for, the resources needed by State and local government to implement the national strategy for combating terrorism;

(3) provide State and local government with regular information, research, and technical support to assist local efforts at securing the homeland; and

(4) develop a process for receiving meaningful input from State and local government to assist the development of the national strategy for combating terrorism and other homeland security activities.

(Pub. L. 107-296, title VIII, § 801, Nov. 25, 2002, 116 Stat. 2220.)

PART B—INSPECTOR GENERAL

§ 371. Repealed. Pub. L. 108-7, div. L, § 104(c)(1), Feb. 20, 2003, 117 Stat. 531

Section, Pub. L. 107-296, title VIII, § 811, Nov. 25, 2002, 116 Stat. 2221, related to authority of Secretary of Homeland Security with respect to Inspector General.

PART C—UNITED STATES SECRET SERVICE

§ 381. Functions transferred

In accordance with subchapter XII of this chapter, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the United States Secret Service, which shall be maintained as a distinct entity within the Department, including the functions of the Secretary of the Treasury relating thereto.

(Pub. L. 107-296, title VIII, § 821, Nov. 25, 2002, 116 Stat. 2224.)

PART D—ACQUISITIONS

§ 391. Research and development projects

(a) Authority

During the 5-year period following the effective date of this chapter, the Secretary may carry out a pilot program under which the Secretary may exercise the following authorities:

(1) In general

When the Secretary carries out basic, applied, and advanced research and development projects, including the expenditure of funds for such projects, the Secretary may exercise the same authority (subject to the same limitations and conditions) with respect to such research and projects as the Secretary of Defense may exercise under section 2371 of title 10 (except for subsections (b) and (f)), after making a determination that the use of a contract, grant, or cooperative agreement for such project is not feasible or appropriate. The annual report required under subsection (b) of this section, as applied to the Secretary by this paragraph, shall be submitted to the President of the Senate and the Speaker of the House of Representatives.

(2) Prototype projects

The Secretary may, under the authority of paragraph (1), carry out prototype projects in

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

accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160). In applying the authorities of that section 845, subsection (c) of that section shall apply with respect to prototype projects under this paragraph, and the Secretary shall perform the functions of the Secretary of Defense under subsection (d) thereof.

(b) Report

Not later than 2 years after the effective date of this chapter, and annually thereafter, the Comptroller General shall report to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate on—

(1) whether use of the authorities described in subsection (a) of this section attracts nontraditional Government contractors and results in the acquisition of needed technologies; and

(2) if such authorities were to be made permanent, whether additional safeguards are needed with respect to the use of such authorities.

(c) Procurement of temporary and intermittent services

The Secretary may—

(1) procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109(b) of title 5; and

(2) whenever necessary due to an urgent homeland security need, procure temporary (not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

(d) Definition of nontraditional Government contractor

In this section, the term “nontraditional Government contractor” has the same meaning as the term “nontraditional defense contractor” as defined in section 845(e) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 10 U.S.C. 2371 note).

(Pub. L. 107-296, title VIII, § 831, Nov. 25, 2002, 116 Stat. 2224.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsecs. (a) 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.

Section 845 of the National Defense Authorization Act for Fiscal Year 1994, referred to in subsecs. (a)(2) and (d), is section 845 of Pub. L. 103-160, which is set out as a note under section 2371 of Title 10, Armed Forces.

CHANGE OF NAME

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.

§ 392. Personal services

The Secretary—

(1) may procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109 of title 5; and

(2) may, whenever necessary due to an urgent homeland security need, procure temporary (not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

(Pub. L. 107-296, title VIII, § 832, Nov. 25, 2002, 116 Stat. 2225.)

§ 393. Special streamlined acquisition authority

(a) Authority

(1) In general

The Secretary may use the authorities set forth in this section with respect to any procurement made during the period beginning on the effective date of this chapter and ending September 30, 2007, if the Secretary determines in writing that the mission of the Department (as described in section 111 of this title) would be seriously impaired without the use of such authorities.

(2) Delegation

The authority to make the determination described in paragraph (1) may not be delegated by the Secretary to an officer of the Department who is not appointed by the President with the advice and consent of the Senate.

(3) Notification

Not later than the date that is 7 days after the date of any determination under paragraph (1), the Secretary shall submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate—

(A) notification of such determination; and

(B) the justification for such determination.

(b) Increased micro-purchase threshold for certain procurements

(1) In general

The Secretary may designate certain employees of the Department to make procurements described in subsection (a) of this section for which in the administration of section 428 of title 41 the amount specified in subsections (c), (d), and (f) of such section 428 shall be deemed to be \$7,500.

(2) Number of employees

The number of employees designated under paragraph (1) shall be—

(A) fewer than the number of employees of the Department who are authorized to make purchases without obtaining competitive quotations, pursuant to section 428(c) of title 41;

(B) sufficient to ensure the geographic dispersal of the availability of the use of the procurement authority under such paragraph at locations reasonably considered to be potential terrorist targets; and

(C) sufficiently limited to allow for the careful monitoring of employees designated under such paragraph.

(3) Review

Procurements made under the authority of this subsection shall be subject to review by a designated supervisor on not less than a monthly basis. The supervisor responsible for the review shall be responsible for no more than 7 employees making procurements under this subsection.

(c) Simplified acquisition procedures**(1) In general**

With respect to a procurement described in subsection (a) of this section, the Secretary may deem the simplified acquisition threshold referred to in section 403(11) of title 41 to be—

(A) in the case of a contract to be awarded and performed, or purchase to be made, within the United States, \$200,000; and

(B) in the case of a contract to be awarded and performed, or purchase to be made, outside of the United States, \$300,000.

(2) Omitted**(d) Application of certain commercial items authorities****(1) In general**

With respect to a procurement described in subsection (a) of this section, the Secretary may deem any item or service to be a commercial item for the purpose of Federal procurement laws.

(2) Limitation

The \$5,000,000 limitation provided in section 427(a)(2) of title 41 and section 253(g)(1)(B) of title 41 shall be deemed to be \$7,500,000 for purposes of property or services under the authority of this subsection.

(3) Certain authority

Authority under a provision of law referred to in paragraph (2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104-106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for a procurement described in subsection (a) of this section.

(e) Report

Not later than 180 days after the end of fiscal year 2005, the Comptroller General shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives a report on the use of the authorities provided in this section. The report shall contain the following:

(1) An assessment of the extent to which property and services acquired using authorities provided under this section contributed to the capacity of the Federal workforce to facilitate the mission of the Department as described in section 111 of this title.

(2) An assessment of the extent to which prices for property and services acquired using authorities provided under this section reflected the best value.

(3) The number of employees designated by each executive agency under subsection (b)(1) of this section.

(4) An assessment of the extent to which the Department has implemented subsections

(b)(2) and (b)(3) of this section to monitor the use of procurement authority by employees designated under subsection (b)(1) of this section.

(5) Any recommendations of the Comptroller General for improving the effectiveness of the implementation of the provisions of this section.

(Pub. L. 107-296, title VIII, § 833, Nov. 25, 2002, 116 Stat. 2225.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a)(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.

Section 4202(e) of the Clinger-Cohen Act of 1996, referred to in subsec. (d)(3), is section 4202(e) of Pub. L. 104-106, which is set out as a note under section 2304 of Title 10, Armed Forces.

CODIFICATION

Section is comprised of section 833 of Pub. L. 107-296. Subsec. (c)(2) of section 833 of Pub. L. 107-296 amended section 416 of Title 41, Public Contracts.

CHANGE OF NAME

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.

§ 394. Unsolicited proposals**(a) Regulations required**

Within 1 year of November 25, 2002, the Federal Acquisition Regulation shall be revised to include regulations with regard to unsolicited proposals.

(b) Content of regulations

The regulations prescribed under subsection (a) of this section shall require that before initiating a comprehensive evaluation, an agency contact point shall consider, among other factors, that the proposal—

(1) is not submitted in response to a previously published agency requirement; and

(2) contains technical and cost information for evaluation and overall scientific, technical or socioeconomic merit, or cost-related or price-related factors.

(Pub. L. 107-296, title VIII, § 834, Nov. 25, 2002, 116 Stat. 2227.)

§ 395. Prohibition on contracts with corporate expatriates**(a) In general**

The Secretary may not enter into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation under subsection (b) of this section, or any subsidiary of such an entity.

(b) Inverted domestic corporation

For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) the entity completes before, on, or after November 25, 2002, the direct or indirect acqui-

sition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership;

(2) after the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

(A) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation; or

(B) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership; and

(3) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

(c) Definitions and special rules

(1) Rules for application of subsection (b)

In applying subsection (b) of this section for purposes of subsection (a) of this section, the following rules shall apply:

(A) Certain stock disregarded

There shall not be taken into account in determining ownership for purposes of subsection (b)(2) of this section—

(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity; or

(ii) stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1) of this section.

(B) Plan deemed in certain cases

If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (b)(2) of this section are met, such actions shall be treated as pursuant to a plan.

(C) Certain transfers disregarded

The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(D) Special rule for related partnerships

For purposes of applying subsection (b) of this section to the acquisition of a domestic partnership, except as provided in regulations, all domestic partnerships which are under common control (within the meaning of section 482 of title 26) shall be treated as I¹ partnership.

(E) Treatment of certain rights

The Secretary shall prescribe such regulations as may be necessary to—

(i) treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock; and

(ii) treat stock as not stock.

(2) Expanded affiliated group

The term “expanded affiliated group” means an affiliated group as defined in section 1504(a) of title 26 (without regard to section 1504(b) of such title), except that section 1504 of such title shall be applied by substituting “more than 50 percent” for “at least 80 percent” each place it appears.

(3) Foreign incorporated entity

The term “foreign incorporated entity” means any entity which is, or but for subsection (b) of this section would be, treated as a foreign corporation for purposes of title 26.

(4) Other definitions

The terms “person”, “domestic”, and “foreign” have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701(a) of title 26, respectively.

(d) Waivers

The Secretary shall waive subsection (a) of this section with respect to any specific contract if the Secretary determines that the waiver is required in the interest of national security.

(Pub. L. 107-296, title VIII, §835, Nov. 25, 2002, 116 Stat. 2227; Pub. L. 108-7, div. L, §101(2), Feb. 20, 2003, 117 Stat. 528; Pub. L. 108-334, title V, §523, Oct. 18, 2004, 118 Stat. 1320.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-334, §523(1), inserted before period at end “, or any subsidiary of such an entity”.

Subsec. (b)(1). Pub. L. 108-334, §523(2), inserted “before, on, or” after “completes”.

Subsec. (c)(1)(B). Pub. L. 108-334, §523(3), struck out “which is after November 25, 2002, and” after “beginning on the date”.

Subsec. (d). Pub. L. 108-334, §523(4), substituted “national” for “homeland”.

2003—Subsec. (d). Pub. L. 108-7 struck out “, or to prevent the loss of any jobs in the United States or prevent the Government from incurring any additional costs that otherwise would not occur” before period at end.

PART E—HUMAN RESOURCES MANAGEMENT

§ 411. Establishment of human resources management system

(a) Authority

(1) Sense of Congress

It is the sense of Congress that—

(A) it is extremely important that employees of the Department be allowed to participate in a meaningful way in the creation of any human resources management system affecting them;

(B) such employees have the most direct knowledge of the demands of their jobs and have a direct interest in ensuring that their human resources management system is conducive to achieving optimal operational efficiencies;

¹ So in original.

(C) the 21st century human resources management system envisioned for the Department should be one that benefits from the input of its employees; and

(D) this collaborative effort will help secure our homeland.

(2), (3) Omitted

(b) Effect on personnel

(1) Nonseparation or nonreduction in grade or compensation of full-time personnel and part-time personnel holding permanent positions

Except as otherwise provided in this chapter, the transfer under this chapter of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for 1 year after the date of transfer to the Department.

(2) Positions compensated in accordance with Executive Schedule

Any person who, on the day preceding such person's date of transfer pursuant to this chapter, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5 and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such position, for the duration of the service of such person in such new position.

(3) Coordination rule

Any exercise of authority under chapter 97 of title 5, including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

(Pub. L. 107–296, title VIII, § 841, Nov. 25, 2002, 116 Stat. 2229.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1), (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

Section is comprised of section 841 of Pub. L. 107–296. Subsec. (a)(2), (3) of section 841 of Pub. L. 107–296 enacted chapter 97 (§ 9701) of Title 5, Government Organization and Employees.

§ 412. Labor-management relations

(a) Limitation on exclusionary authority

(1) In general

No agency or subdivision of an agency which is transferred to the Department pursuant to this chapter shall be excluded from the coverage of chapter 71 of title 5 as a result of any order issued under section 7103(b)(1) of such title 5 after June 18, 2002, unless—

(A) the mission and responsibilities of the agency (or subdivision) materially change; and

(B) a majority of the employees within such agency (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) Exclusions allowable

Nothing in paragraph (1) shall affect the effectiveness of any order to the extent that such order excludes any portion of an agency or subdivision of an agency as to which—

(A) recognition as an appropriate unit has never been conferred for purposes of chapter 71 of such title 5; or

(B) any such recognition has been revoked or otherwise terminated as a result of a determination under subsection (b)(1) of this section.

(b) Provisions relating to bargaining units

(1) Limitation relating to appropriate units

Each unit which is recognized as an appropriate unit for purposes of chapter 71 of title 5 as of the day before the effective date of this chapter (and any subdivision of any such unit) shall, if such unit (or subdivision) is transferred to the Department pursuant to this chapter, continue to be so recognized for such purposes, unless—

(A) the mission and responsibilities of such unit (or subdivision) materially change; and

(B) a majority of the employees within such unit (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) Limitation relating to positions or employees

No position or employee within a unit (or subdivision of a unit) as to which continued recognition is given in accordance with paragraph (1) shall be excluded from such unit (or subdivision), for purposes of chapter 71 of such title 5, unless the primary job duty of such position or employee—

(A) materially changes; and

(B) consists of intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

In the case of any positions within a unit (or subdivision) which are first established on or after the effective date of this chapter and any employees first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

(c) Waiver

If the President determines that the application of subsections (a), (b), and (d) of this section would have a substantial adverse impact on the ability of the Department to protect homeland security, the President may waive the application of such subsections 10 days after the President has submitted to Congress a written explanation of the reasons for such determination.

(d) Coordination rule

No other provision of this chapter or of any amendment made by this chapter may be construed or applied in a manner so as to limit, su-

persede, or otherwise affect the provisions of this section, except to the extent that it does so by specific reference to this section.

(e) Rule of construction

Nothing in section 9701(e) of title 5 shall be considered to apply with respect to any agency or subdivision of any agency, which is excluded from the coverage of chapter 71 of title 5 by virtue of an order issued in accordance with section 7103(b) of such title 5 and the preceding provisions of this section (as applicable), or to any employees of any such agency or subdivision or to any individual or entity representing any such employees or any representatives thereof.

(Pub. L. 107-296, title VIII, § 842, Nov. 25, 2002, 116 Stat. 2234.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (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.

§ 413. Use of counternarcotics enforcement activities in certain employee performance appraisals

(a) In general

Each subdivision of the Department that is a National Drug Control Program Agency shall include as one of the criteria in its performance appraisal system, for each employee directly or indirectly involved in the enforcement of Federal, State, or local narcotics laws, the performance of that employee with respect to the enforcement of Federal, State, or local narcotics laws, relying to the greatest extent practicable on objective performance measures, including—

- (1) the contribution of that employee to seizures of narcotics and arrests of violators of Federal, State, or local narcotics laws; and
- (2) the degree to which that employee cooperated with or contributed to the efforts of other employees, either within the Department or other Federal, State, or local agencies, in counternarcotics enforcement.

(b) Definitions

For purposes of this section—

- (1) the term “National Drug Control Program Agency” means—
 - (A) a National Drug Control Program Agency, as defined in section 1701(7) of title 21 (as last in effect); and
 - (B) any subdivision of the Department that has a significant counternarcotics responsibility, as determined by—
 - (i) the counternarcotics officer, appointed under section 458 of this title; or
 - (ii) if applicable, the counternarcotics officer’s successor in function (as determined by the Secretary); and
- (2) the term “performance appraisal system” means a system under which periodic appraisals of job performance of employees are made, whether under chapter 43 of title 5, or otherwise.

(Pub. L. 107-296, title VIII, § 843, as added Pub. L. 108-458, title VII, § 7408(a), Dec. 17, 2004, 118 Stat. 3854.)

REFERENCES IN TEXT

For repeal of section 1701 of title 21, referred to in subsec. (b)(1)(A), see section 1712 of Title 21, Food and Drugs.

PART F—FEDERAL EMERGENCY PROCUREMENT FLEXIBILITY

§ 421. Definition

In this part, the term “executive agency” has the meaning given that term under section 403(1) of title 41.

(Pub. L. 107-296, title VIII, § 851, Nov. 25, 2002, 116 Stat. 2235.)

§ 422. Procurements for defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack

The authorities provided in this part apply to any procurement of property or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack, but only if a solicitation of offers for the procurement is issued during the 1-year period beginning on November 25, 2002.

(Pub. L. 107-296, title VIII, § 852, Nov. 25, 2002, 116 Stat. 2235.)

§ 423. Increased simplified acquisition threshold for procurements in support of humanitarian or peacekeeping operations or contingency operations

(a) Temporary threshold amounts

For a procurement referred to in section 422 of this title that is carried out in support of a humanitarian or peacekeeping operation or a contingency operation, the simplified acquisition threshold definitions shall be applied as if the amount determined under the exception provided for such an operation in those definitions were—

- (1) in the case of a contract to be awarded and performed, or purchase to be made, inside the United States, \$200,000; or
- (2) in the case of a contract to be awarded and performed, or purchase to be made, outside the United States, \$300,000.

(b) Simplified acquisition threshold definitions

In this section, the term “simplified acquisition threshold definitions” means the following:

- (1) Section 403(11) of title 41.
- (2) Section 259(d) of title 41.
- (3) Section 2302(7) of title 10.

(c) Small business reserve

For a procurement carried out pursuant to subsection (a) of this section, section 644(j) of title 15 shall be applied as if the maximum anticipated value identified therein is equal to the amounts referred to in subsection (a) of this section.

(Pub. L. 107-296, title VIII, § 853, Nov. 25, 2002, 116 Stat. 2235.)

§ 424. Increased micro-purchase threshold for certain procurements

In the administration of section 428 of title 41 with respect to a procurement referred to in sec-

tion 422 of this title, the amount specified in subsections (c), (d), and (f) of such section 428 shall be deemed to be \$7,500.

(Pub. L. 107–296, title VIII, § 854, Nov. 25, 2002, 116 Stat. 2236.)

§ 425. Application of certain commercial items authorities to certain procurements

(a) Authority

(1) In general

The head of an executive agency may apply the provisions of law listed in paragraph (2) to a procurement referred to in section 422 of this title without regard to whether the property or services are commercial items.

(2) Commercial item laws

The provisions of law referred to in paragraph (1) are as follows:

- (A) Sections 427 and 430 of title 41.
- (B) Section 2304(g) of title 10.
- (C) Section 253(g) of title 41.

(b) Inapplicability of limitation on use of simplified acquisition procedures

(1) In general

The \$5,000,000 limitation provided in section 427(a)(2) of title 41, section 2304(g)(1)(B) of title 10, and section 253(g)(1)(B) of title 41 shall not apply to purchases of property or services to which any of the provisions of law referred to in subsection (a) of this section are applied under the authority of this section.

(2) OMB guidance

The Director of the Office of Management and Budget shall issue guidance and procedures for the use of simplified acquisition procedures for a purchase of property or services in excess of \$5,000,000 under the authority of this section.

(c) Continuation of authority for simplified purchase procedures

Authority under a provision of law referred to in subsection (a)(2) of this section that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for use by the head of an executive agency as provided in subsections (a) and (b) of this section.

(Pub. L. 107–296, title VIII, § 855, Nov. 25, 2002, 116 Stat. 2236.)

REFERENCES IN TEXT

Section 4202(e) of the Clinger-Cohen Act of 1996, referred to in subsec. (c), is section 4202(e) of Pub. L. 104–106, which is set out as a note under section 2304 of Title 10, Armed Forces.

§ 426. Use of streamlined procedures

(a) Required use

The head of an executive agency shall, when appropriate, use streamlined acquisition authorities and procedures authorized by law for a procurement referred to in section 422 of this title, including authorities and procedures that are provided under the following provisions of law:

(1) Federal Property and Administrative Services Act of 1949

In title III of the Federal Property and Administrative Services Act of 1949 [41 U.S.C. 251 et seq.]:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 303 (41 U.S.C. 253), relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 303J (41 U.S.C. 253j), relating to orders under task and delivery order contracts.

(2) Title 10

In chapter 137 of title 10:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 2304, relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 2304c, relating to orders under task and delivery order contracts.

(3) Office of Federal Procurement Policy Act

Paragraphs (1)(B), (1)(D), and (2) of section 18(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(c)), relating to inapplicability of a requirement for procurement notice.

(b) Waiver of certain small business threshold requirements

Subclause (II) of section 637(a)(1)(D)(i) of title 15 and clause (ii) of section 657a(b)(2)(A) of title 15 shall not apply in the use of streamlined acquisition authorities and procedures referred to in paragraphs (1)(A) and (2)(A) of subsection (a) of this section for a procurement referred to in section 422 of this title.

(Pub. L. 107–296, title VIII, § 856, Nov. 25, 2002, 116 Stat. 2237.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (a)(1), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title III of the Act is classified generally to subchapter IV (§251 et seq.) of chapter 4 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Tables.

§ 427. Review and report by Comptroller General

(a) Requirements

Not later than March 31, 2004, the Comptroller General shall—

(1) complete a review of the extent to which procurements of property and services have been made in accordance with this part; and

(2) submit a report on the results of the review to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

(b) Content of report

The report under subsection (a)(2) of this section shall include the following matters:

(1) Assessment

The Comptroller General's assessment of—

(A) the extent to which property and services procured in accordance with this subchapter have contributed to the capacity of the workforce of Federal Government employees within each executive agency to carry out the mission of the executive agency; and

(B) the extent to which Federal Government employees have been trained on the use of technology.

(2) Recommendations

Any recommendations of the Comptroller General resulting from the assessment described in paragraph (1).

(c) Consultation

In preparing for the review under subsection (a)(1) of this section, the Comptroller shall consult with the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives on the specific issues and topics to be reviewed. The extent of coverage needed in areas such as technology integration, employee training, and human capital management, as well as the data requirements of the study, shall be included as part of the consultation.

(Pub. L. 107-296, title VIII, § 857, Nov. 25, 2002, 116 Stat. 2237.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b)(1)(A), was in the original “this title”, meaning title VIII of Pub. L. 107-296, which enacted this subchapter, chapter 97 of Title 5, Government Organization and Employees, and section 8J of the Inspector General Act of 1978, Pub. L. 95-452, set out in the Appendix to Title 5, amended section 6 of the Inspector General Act of 1978, section 2517 of Title 18, Crimes and Criminal Procedure, Rule 6 of the Federal Rules of Criminal Procedure, set out in the Appendix to Title 18, section 1105 of Title 31, Money and Finance, section 416 of Title 41, Public Contracts, and sections 403-5d, 1806, and 1825 of Title 50, War and National Defense, enacted provisions set out as notes under section 101 of this title, section 6 of the Inspector General Act of 1978, and section 1105 of Title 31, amended provisions set out as notes under section 2517 of Title 18, section 40101 of Title 49, Transportation, and section 2301 of Title 50, and repealed provisions set out as a note under section 1113 of Title 31. For complete classification of title VIII to the Code, see Tables.

CHANGE OF NAME

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.

§ 428. Identification of new entrants into the Federal marketplace

The head of each executive agency shall conduct market research on an ongoing basis to identify effectively the capabilities, including the capabilities of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the requirements of the executive agency in furtherance of defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The head of the executive agency shall, to the maximum extent practicable, take advantage of commercially available market research

methods, including use of commercial databases, to carry out the research.

(Pub. L. 107-296, title VIII, § 858, Nov. 25, 2002, 116 Stat. 2238.)

PART G—SUPPORT ANTI-TERRORISM BY FOSTERING EFFECTIVE TECHNOLOGIES

§ 441. Administration

(a) In general

The Secretary shall be responsible for the administration of this part.

(b) Designation of qualified anti-terrorism technologies

The Secretary may designate anti-terrorism technologies that qualify for protection under the system of risk management set forth in this part in accordance with criteria that shall include, but not be limited to, the following:

(1) Prior United States Government use or demonstrated substantial utility and effectiveness.

(2) Availability of the technology for immediate deployment in public and private settings.

(3) Existence of extraordinarily large or extraordinarily unquantifiable potential third party liability risk exposure to the Seller or other provider of such anti-terrorism technology.

(4) Substantial likelihood that such anti-terrorism technology will not be deployed unless protections under the system of risk management provided under this part are extended.

(5) Magnitude of risk exposure to the public if such anti-terrorism technology is not deployed.

(6) Evaluation of all scientific studies that can be feasibly conducted in order to assess the capability of the technology to substantially reduce risks of harm.

(7) Anti-terrorism technology that would be effective in facilitating the defense against acts of terrorism, including technologies that prevent, defeat or respond to such acts.

(c) Regulations

The Secretary may issue such regulations, after notice and comment in accordance with section 553 of title 5, as may be necessary to carry out this part.

(Pub. L. 107-296, title VIII, § 862, Nov. 25, 2002, 116 Stat. 2238.)

SHORT TITLE

For short title of this part as the “Support Anti-terrorism by Fostering Effective Technologies Act of 2002” or the “SAFETY Act”, see section 861 of Pub. L. 107-296, set out as a Short Title note under section 101 of this title.

§ 442. Litigation management

(a) Federal cause of action

(1) In general

There shall exist a Federal cause of action for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recov-

ery from such act and such claims result or may result in loss to the Seller. The substantive law for decision in any such action shall be derived from the law, including choice of law principles, of the State in which such acts of terrorism occurred, unless such law is inconsistent with or preempted by Federal law. Such Federal cause of action shall be brought only for claims for injuries that are proximately caused by sellers that provide qualified anti-terrorism technology to Federal and non-Federal government customers.

(2) Jurisdiction

Such appropriate district court of the United States shall have original and exclusive jurisdiction over all actions for any claim for loss of property, personal injury, or death arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller.

(b) Special rules

In an action brought under this section for damages the following provisions apply:

(1) Punitive damages

No punitive damages intended to punish or deter, exemplary damages, or other damages not intended to compensate a plaintiff for actual losses may be awarded, nor shall any party be liable for interest prior to the judgment.

(2) Noneconomic damages

(A) In general

Noneconomic damages may be awarded against a defendant only in an amount directly proportional to the percentage of responsibility of such defendant for the harm to the plaintiff, and no plaintiff may recover noneconomic damages unless the plaintiff suffered physical harm.

(B) Definition

For purposes of subparagraph (A), the term “noneconomic damages” means damages for losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and any other nonpecuniary losses.

(c) Collateral sources

Any recovery by a plaintiff in an action under this section shall be reduced by the amount of collateral source compensation, if any, that the plaintiff has received or is entitled to receive as a result of such acts of terrorism that result or may result in loss to the Seller.

(d) Government contractor defense

(1) In general

Should a product liability or other lawsuit be filed for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in paragraphs (2)

and (3) of this subsection, have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller, there shall be a rebuttable presumption that the government contractor defense applies in such lawsuit. This presumption shall only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary’s consideration of such technology under this subsection. This presumption of the government contractor defense shall apply regardless of whether the claim against the Seller arises from a sale of the product to Federal Government or non-Federal Government customers.

(2) Exclusive responsibility

The Secretary will be exclusively responsible for the review and approval of anti-terrorism technology for purposes of establishing a government contractor defense in any product liability lawsuit for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in this paragraph and paragraph (3), have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller. Upon the Seller’s submission to the Secretary for approval of anti-terrorism technology, the Secretary will conduct a comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller’s specifications, and is safe for use as intended. The Seller will conduct safety and hazard analyses on such technology and will supply the Secretary with all such information.

(3) Certificate

For anti-terrorism technology reviewed and approved by the Secretary, the Secretary will issue a certificate of conformance to the Seller and place the anti-terrorism technology on an Approved Product List for Homeland Security.

(e) Exclusion

Nothing in this section shall in any way limit the ability of any person to seek any form of recovery from any person, government, or other entity that—

(1) attempts to commit, knowingly participates in, aids and abets, or commits any act of terrorism, or any criminal act related to or resulting from such act of terrorism; or

(2) participates in a conspiracy to commit any such act of terrorism or any such criminal act.

(Pub. L. 107-296, title VIII, §863, Nov. 25, 2002, 116 Stat. 2239.)

§ 443. Risk management

(a) In general

(1) Liability insurance required

Any person or entity that sells or otherwise provides a qualified anti-terrorism technology to Federal and non-Federal Government cus-

tomers (“Seller”) shall obtain liability insurance of such types and in such amounts as shall be required in accordance with this section and certified by the Secretary to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act.

(2) Maximum amount

For the total claims related to 1 such act of terrorism, the Seller is not required to obtain liability insurance of more than the maximum amount of liability insurance reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of Seller’s anti-terrorism technologies.

(3) Scope of coverage

Liability insurance obtained pursuant to this subsection shall, in addition to the Seller, protect the following, to the extent of their potential liability for involvement in the manufacture, qualification, sale, use, or operation of qualified anti-terrorism technologies deployed in defense against or response or recovery from an act of terrorism:

(A) Contractors, subcontractors, suppliers, vendors and customers of the Seller.

(B) Contractors, subcontractors, suppliers, and vendors of the customer.

(4) Third party claims

Such liability insurance under this section shall provide coverage against third party claims arising out of, relating to, or resulting from the sale or use of anti-terrorism technologies.

(b) Reciprocal waiver of claims

The Seller shall enter into a reciprocal waiver of claims with its contractors, subcontractors, suppliers, vendors and customers, and contractors and subcontractors of the customers, involved in the manufacture, sale, use or operation of qualified anti-terrorism technologies, under which each party to the waiver agrees to be responsible for losses, including business interruption losses, that it sustains, or for losses sustained by its own employees resulting from an activity resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act.

(c) Extent of liability

Notwithstanding any other provision of law, liability for all claims against a Seller arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller, whether for compensatory or punitive damages or for contribution or indemnity, shall not be in an amount greater than the limits of liability insurance coverage required to be maintained by the Seller under this section.

(Pub. L. 107–296, title VIII, §864, Nov. 25, 2002, 116 Stat. 2240.)

§ 444. Definitions

For purposes of this part, the following definitions apply:

(1) Qualified anti-terrorism technology

For purposes of this part, the term “qualified anti-terrorism technology” means any product, equipment, service (including support services), device, or technology (including information technology) designed, developed, modified, or procured for the specific purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause, that is designated as such by the Secretary.

(2) Act of terrorism

(A) The term “act of terrorism” means any act that the Secretary determines meets the requirements under subparagraph (B), as such requirements are further defined and specified by the Secretary.

(B) REQUIREMENTS.—An act meets the requirements of this subparagraph if the act—

(i) is unlawful;

(ii) causes harm to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States-flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States; and

(iii) uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

(3) Insurance carrier

The term “insurance carrier” means any corporation, association, society, order, firm, company, mutual, partnership, individual aggregation of individuals, or any other legal entity that provides commercial property and casualty insurance. Such term includes any affiliates of a commercial insurance carrier.

(4) Liability insurance

(A)¹ In general

The term “liability insurance” means insurance for legal liabilities incurred by the insured resulting from—

(i) loss of or damage to property of others;

(ii) ensuing loss of income or extra expense incurred because of loss of or damage to property of others;

(iii) bodily injury (including) to persons other than the insured or its employees; or

(iv) loss resulting from debt or default of another.

(5) Loss

The term “loss” means death, bodily injury, or loss of or damage to property, including business interruption loss.

(6) Non-Federal Government customers

The term “non-Federal Government customers” means any customer of a Seller that

¹ So in original. No subpar. (B) has been enacted.

is not an agency or instrumentality of the United States Government with authority under Public Law 85–804 [50 U.S.C. 1431 et seq.] to provide for indemnification under certain circumstances for third-party claims against its contractors, including but not limited to State and local authorities and commercial entities.

(Pub. L. 107–296, title VIII, § 865, Nov. 25, 2002, 116 Stat. 2241.)

REFERENCES IN TEXT

Public Law 85–804, referred to in par. (6), is Pub. L. 85–804, Aug. 28, 1958, 72 Stat. 972, as amended, which is classified generally to chapter 29 (§1431 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

PART H—MISCELLANEOUS PROVISIONS

§ 451. Advisory committees

(a) In general

The Secretary may establish, appoint members of, and use the services of, advisory committees, as the Secretary may deem necessary. An advisory committee established under this section may be exempted by the Secretary from Public Law 92–463, but the Secretary shall publish notice in the Federal Register announcing the establishment of such a committee and identifying its purpose and membership. Notwithstanding the preceding sentence, members of an advisory committee that is exempted by the Secretary under the preceding sentence who are special Government employees (as that term is defined in section 202 of title 18) shall be eligible for certifications under subsection (b)(3) of section 208 of title 18 for official actions taken as a member of such advisory committee.

(b) Termination

Any advisory committee established by the Secretary shall terminate 2 years after the date of its establishment, unless the Secretary makes a written determination to extend the advisory committee to a specified date, which shall not be more than 2 years after the date on which such determination is made. The Secretary may make any number of subsequent extensions consistent with this subsection.

(Pub. L. 107–296, title VIII, § 871, Nov. 25, 2002, 116 Stat. 2243.)

REFERENCES IN TEXT

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

§ 452. Reorganization

(a) Reorganization

The Secretary may allocate or reallocate functions among the officers of the Department, and may establish, consolidate, alter, or discontinue organizational units within the Department, but only—

- (1) pursuant to section 542(b) of this title; or
- (2) after the expiration of 60 days after providing notice of such action to the appropriate

congressional committees, which shall include an explanation of the rationale for the action.

(b) Limitations

(1) In general

Authority under subsection (a)(1) of this section does not extend to the abolition of any agency, entity, organizational unit, program, or function established or required to be maintained by this chapter.

(2) Abolitions

Authority under subsection (a)(2) of this section does not extend to the abolition of any agency, entity, organizational unit, program, or function established or required to be maintained by statute.

(Pub. L. 107–296, title VIII, § 872, Nov. 25, 2002, 116 Stat. 2243.)

§ 453. Use of appropriated funds

(a) Disposal of property

(1) Strict compliance

If specifically authorized to dispose of real property in this chapter or any other Act, the Secretary shall exercise this authority in strict compliance with subchapter IV of chapter 5 of title 40.

(2) Deposit of proceeds

The Secretary shall deposit the proceeds of any exercise of property disposal authority into the miscellaneous receipts of the Treasury in accordance with section 3302(b) of title 31.

(b) Gifts

Except as authorized by section 2601 of title 10 and by section 93 of title 14, gifts or donations of services or property of or for the Department may not be accepted, used, or disposed of unless specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(c) Budget request

Under section 1105 of title 31, the President shall submit to Congress a detailed budget request for the Department for fiscal year 2004, and for each subsequent fiscal year.

(Pub. L. 107–296, title VIII, § 873, Nov. 25, 2002, 116 Stat. 2243; Pub. L. 108–7, div. L, §103(3), Feb. 20, 2003, 117 Stat. 529.)

CODIFICATION

In subsec. (a)(1), “subchapter IV of chapter 5 of title 40” substituted for “section 204 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485)” 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.

AMENDMENTS

2003—Subsec. (b). Pub. L. 108–7 substituted “Except as authorized by section 2601 of title 10 and by section 93 of title 14, gifts” for “Gifts”.

§ 453a. Additional uses of appropriated funds

In fiscal year 2004 and thereafter, unless otherwise provided, funds may be used for purchase of

uniforms without regard to the general purchase price limitation for the current fiscal year; purchase of insurance for official motor vehicles operated in foreign countries; entering into contracts with the Department of State to furnish health and medical services to employees and their dependents serving in foreign countries; services authorized by section 3109 of title 5; and the hire and purchase of motor vehicles, as authorized by section 1343 of title 31: *Provided*, That purchase for police-type use of passenger vehicles may be made without regard to the general purchase price limitation for the current fiscal year.

(Pub. L. 108-90, title V, §505, Oct. 1, 2003, 117 Stat. 1153.)

CODIFICATION

Section was enacted as part of the Department of Homeland Security Appropriations Act, 2004, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

§ 454. Future Years Homeland Security Program

(a) In general

Each budget request submitted to Congress for the Department under section 1105 of title 31 shall, at or about the same time, be accompanied by a Future Years Homeland Security Program.

(b) Contents

The Future Years Homeland Security Program under subsection (a) of this section shall—

(1) include the same type of information, organizational structure, and level of detail as the future years defense program submitted to Congress by the Secretary of Defense under section 221 of title 10;

(2) set forth the homeland security strategy of the Department, which shall be developed and updated as appropriate annually by the Secretary, that was used to develop program planning guidance for the Future Years Homeland Security Program; and

(3) include an explanation of how the resource allocations included in the Future Years Homeland Security Program correlate to the homeland security strategy set forth under paragraph (2).

(c) Effective date

This section shall take effect with respect to the preparation and submission of the fiscal year 2005 budget request for the Department and for any subsequent fiscal year, except that the first Future Years Homeland Security Program shall be submitted not later than 90 days after the Department's fiscal year 2005 budget request is submitted to Congress.

(Pub. L. 107-296, title VIII, §874, Nov. 25, 2002, 116 Stat. 2244; Pub. L. 108-330, §5, Oct. 16, 2004, 118 Stat. 1278.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108-330 added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: “The Future Years Homeland Security Program under subsection (a) of this section shall be structured, and include the same type of information and level of detail, as the Future Years Defense Pro-

gram submitted to Congress by the Department of Defense under section 221 of title 10.”

§ 455. Miscellaneous authorities

(a) Seal

The Department shall have a seal, whose design is subject to the approval of the President.

(b) Participation of members of the Armed Forces

With respect to the Department, the Secretary shall have the same authorities that the Secretary of Transportation has with respect to the Department of Transportation under section 324 of title 49.

(c) Redlegation of functions

Unless otherwise provided in the delegation or by law, any function delegated under this chapter may be redelegated to any subordinate.

(Pub. L. 107-296, title VIII, §875, Nov. 25, 2002, 116 Stat. 2244.)

§ 456. Military activities

Nothing in this chapter shall confer upon the Secretary any authority to engage in warfighting, the military defense of the United States, or other military activities, nor shall anything in this chapter limit the existing authority of the Department of Defense or the Armed Forces to engage in warfighting, the military defense of the United States, or other military activities.

(Pub. L. 107-296, title VIII, §876, Nov. 25, 2002, 116 Stat. 2244.)

§ 457. Regulatory authority and preemption

(a) Regulatory authority

Except as otherwise provided in sections 186(c) and 441(c) of this title and section 1315 of title 40,¹ this chapter vests no new regulatory authority in the Secretary or any other Federal official, and transfers to the Secretary or another Federal official only such regulatory authority as exists on November 25, 2002, within any agency, program, or function transferred to the Department pursuant to this chapter, or that on November 25, 2002, is exercised by another official of the executive branch with respect to such agency, program, or function. Any such transferred authority may not be exercised by an official from whom it is transferred upon transfer of such agency, program, or function to the Secretary or another Federal official pursuant to this chapter. This chapter may not be construed as altering or diminishing the regulatory authority of any other executive agency, except to the extent that this chapter transfers such authority from the agency.

(b) Preemption of State or local law

Except as otherwise provided in this chapter, this chapter preempts no State or local law, except that any authority to preempt State or local law vested in any Federal agency or official transferred to the Department pursuant to this chapter shall be transferred to the Department effective on the date of the transfer to the Department of that Federal agency or official.

¹ See References in Text note below.

(Pub. L. 107-296, title VIII, § 877, Nov. 25, 2002, 116 Stat. 2244.)

REFERENCES IN TEXT

Section 1315 of title 40, referred to in subsec. (a), was in the original “1706(b)”, meaning section 1706(b) of Pub. L. 107-296, which amended generally section 1315 of Title 40, Public Buildings, Property, and Works, and enacted provisions set out as a note under section 1315 of Title 40. For complete classification of section 1706(b) to the Code, see Tables.

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.

§ 458. Office of Counternarcotics Enforcement

(a) Office

There is established in the Department an Office of Counternarcotics Enforcement, which shall be headed by a Director appointed by the President, by and with the advice and consent of the Senate.

(b) Assignment of personnel

(1) In general

The Secretary shall assign permanent staff to the Office, consistent with effective management of Department resources.

(2) Liaisons

The Secretary shall designate senior employees from each appropriate subdivision of the Department that has significant counternarcotics responsibilities to act as a liaison between that subdivision and the Office of Counternarcotics Enforcement.

(c) Limitation on concurrent employment

Except as provided in subsection (d) of this section, the Director of the Office of Counternarcotics Enforcement shall not be employed by, assigned to, or serve as the head of, any other branch of the Federal Government, any State or local government, or any subdivision of the Department other than the Office of Counternarcotics Enforcement.

(d) Eligibility to serve as the United States Interdiction Coordinator

The Director of the Office of Counternarcotics Enforcement may be appointed as the United States Interdiction Coordinator by the Director of the Office of National Drug Control Policy, and shall be the only person at the Department eligible to be so appointed.

(e) Responsibilities

The Secretary shall direct the Director of the Office of Counternarcotics Enforcement—

(1) to coordinate policy and operations within the Department, between the Department and other Federal departments and agencies, and between the Department and State and local agencies with respect to stopping the entry of illegal drugs into the United States;

(2) to ensure the adequacy of resources within the Department for stopping the entry of illegal drugs into the United States;

(3) to recommend the appropriate financial and personnel resources necessary to help the

Department better fulfill its responsibility to stop the entry of illegal drugs into the United States;

(4) within the Joint Terrorism Task Force construct to track and sever connections between illegal drug trafficking and terrorism; and

(5) to be a representative of the Department on all task forces, committees, or other entities whose purpose is to coordinate the counternarcotics enforcement activities of the Department and other Federal, State or local agencies.

(f) Savings clause

Nothing in this section shall be construed to authorize direct control of the operations conducted by the Directorate of Border and Transportation Security, the Coast Guard, or joint terrorism task forces.

(g) Reports to Congress

(1) Annual budget review

The Director of the Office of Counternarcotics Enforcement shall, not later than 30 days after the submission by the President to Congress of any request for expenditures for the Department, submit to the Committees on Appropriations and the authorizing committees of jurisdiction of the House of Representatives and the Senate a review and evaluation of such request. The review and evaluation shall—

(A) identify any request or subpart of any request that affects or may affect the counternarcotics activities of the Department or any of its subdivisions, or that affects the ability of the Department or any subdivision of the Department to meet its responsibility to stop the entry of illegal drugs into the United States;

(B) describe with particularity how such requested funds would be or could be expended in furtherance of counternarcotics activities; and

(C) compare such requests with requests for expenditures and amounts appropriated by Congress in the previous fiscal year.

(2) Evaluation of counternarcotics activities

The Director of the Office of Counternarcotics Enforcement shall, not later than February 1 of each year, submit to the Committees on Appropriations and the authorizing committees of jurisdiction of the House of Representatives and the Senate a review and evaluation of the counternarcotics activities of the Department for the previous fiscal year. The review and evaluation shall—

(A) describe the counternarcotics activities of the Department and each subdivision of the Department (whether individually or in cooperation with other subdivisions of the Department, or in cooperation with other branches of the Federal Government or with State or local agencies), including the methods, procedures, and systems (including computer systems) for collecting, analyzing, sharing, and disseminating information concerning narcotics activity within the Department and between the Department and other Federal, State, and local agencies;

(B) describe the results of those activities, using quantifiable data whenever possible;

(C) state whether those activities were sufficient to meet the responsibility of the Department to stop the entry of illegal drugs into the United States, including a description of the performance measures of effectiveness that were used in making that determination; and

(D) recommend, where appropriate, changes to those activities to improve the performance of the Department in meeting its responsibility to stop the entry of illegal drugs into the United States.

(3) Classified or law enforcement sensitive information

Any content of a review and evaluation described in the reports required in this subsection that involves information classified under criteria established by an Executive order, or whose public disclosure, as determined by the Secretary, would be detrimental to the law enforcement or national security activities of the Department or any other Federal, State, or local agency, shall be presented to Congress separately from the rest of the review and evaluation.

(Pub. L. 107-296, title VIII, § 878, Nov. 25, 2002, 116 Stat. 2245; Pub. L. 108-458, title VII, § 7407(a), Dec. 17, 2004, 118 Stat. 3851.)

AMENDMENTS

2004—Pub. L. 108-458 amended section catchline and text generally. Prior to amendment, text read as follows: “The Secretary shall appoint a senior official in the Department to assume primary responsibility for coordinating policy and operations within the Department and between the Department and other Federal departments and agencies with respect to interdicting the entry of illegal drugs into the United States, and tracking and severing connections between illegal drug trafficking and terrorism. Such official shall—

“(1) ensure the adequacy of resources within the Department for illicit drug interdiction; and

“(2) serve as the United States Interdiction Coordinator for the Director of National Drug Control Policy.”

§ 459. Office of International Affairs

(a) Establishment

There is established within the Office of the Secretary an Office of International Affairs. The Office shall be headed by a Director, who shall be a senior official appointed by the Secretary.

(b) Duties of the Director

The Director shall have the following duties:

(1) To promote information and education exchange with nations friendly to the United States in order to promote sharing of best practices and technologies relating to homeland security. Such exchange shall include the following:

(A) Exchange of information on research and development on homeland security technologies.

(B) Joint training exercises of first responders.

(C) Exchange of expertise on terrorism prevention, response, and crisis management.

(2) To identify areas for homeland security information and training exchange where the

United States has a demonstrated weakness and another friendly nation or nations have a demonstrated expertise.

(3) To plan and undertake international conferences, exchange programs, and training activities.

(4) To manage international activities within the Department in coordination with other Federal officials with responsibility for counter-terrorism matters.

(Pub. L. 107-296, title VIII, § 879, Nov. 25, 2002, 116 Stat. 2245.)

§ 460. Prohibition of the Terrorism Information and Prevention System

Any and all activities of the Federal Government to implement the proposed component program of the Citizen Corps known as Operation TIPS (Terrorism Information and Prevention System) are hereby prohibited.

(Pub. L. 107-296, title VIII, § 880, Nov. 25, 2002, 116 Stat. 2245.)

§ 461. Review of pay and benefit plans

Notwithstanding any other provision of this chapter, the Secretary shall, in consultation with the Director of the Office of Personnel Management, review the pay and benefit plans of each agency whose functions are transferred under this chapter to the Department and, within 90 days after November 25, 2002, submit a plan to the President of the Senate and the Speaker of the House of Representatives and the appropriate committees and subcommittees of Congress, for ensuring, to the maximum extent practicable, the elimination of disparities in pay and benefits throughout the Department, especially among law enforcement personnel, that are inconsistent with merit system principles set forth in section 2301 of title 5.

(Pub. L. 107-296, title VIII, § 881, Nov. 25, 2002, 116 Stat. 2246.)

§ 462. Office of National Capital Region Coordination

(a) Establishment

(1) In general

There is established within the Office of the Secretary the Office of National Capital Region Coordination, to oversee and coordinate Federal programs for and relationships with State, local, and regional authorities in the National Capital Region, as defined under section 2674(f)(2) of title 10.

(2) Director

The Office established under paragraph (1) shall be headed by a Director, who shall be appointed by the Secretary.

(3) Cooperation

The Secretary shall cooperate with the Mayor of the District of Columbia, the Governors of Maryland and Virginia, and other State, local, and regional officers in the National Capital Region to integrate the District of Columbia, Maryland, and Virginia into the planning, coordination, and execution of the activities of the Federal Government for the

enhancement of domestic preparedness against the consequences of terrorist attacks.

(b) Responsibilities

The Office established under subsection (a)(1) of this section shall—

(1) coordinate the activities of the Department relating to the National Capital Region, including cooperation with the Office for State and Local Government Coordination;

(2) assess, and advocate for, the resources needed by State, local, and regional authorities in the National Capital Region to implement efforts to secure the homeland;

(3) provide State, local, and regional authorities in the National Capital Region with regular information, research, and technical support to assist the efforts of State, local, and regional authorities in the National Capital Region in securing the homeland;

(4) develop a process for receiving meaningful input from State, local, and regional authorities and the private sector in the National Capital Region to assist in the development of the homeland security plans and activities of the Federal Government;

(5) coordinate with Federal agencies in the National Capital Region on terrorism preparedness, to ensure adequate planning, information sharing, training, and execution of the Federal role in domestic preparedness activities;

(6) coordinate with Federal, State, local, and regional agencies, and the private sector in the National Capital Region on terrorism preparedness to ensure adequate planning, information sharing, training, and execution of domestic preparedness activities among these agencies and entities; and

(7) serve as a liaison between the Federal Government and State, local, and regional authorities, and private sector entities in the National Capital Region to facilitate access to Federal grants and other programs.

(c) Annual report

The Office established under subsection (a) of this section shall submit an annual report to Congress that includes—

(1) the identification of the resources required to fully implement homeland security efforts in the National Capital Region;

(2) an assessment of the progress made by the National Capital Region in implementing homeland security efforts; and

(3) recommendations to Congress regarding the additional resources needed to fully implement homeland security efforts in the National Capital Region.

(d) Limitation

Nothing contained in this section shall be construed as limiting the power of State and local governments.

(Pub. L. 107–296, title VIII, § 882, Nov. 25, 2002, 116 Stat. 2246.)

§ 463. Requirement to comply with laws protecting equal employment opportunity and providing whistleblower protections

Nothing in this chapter shall be construed as exempting the Department from requirements applicable with respect to executive agencies—

(1) to provide equal employment protection for employees of the Department (including pursuant to the provisions in section 2302(b)(1) of title 5 and the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (Public Law 107–174)); or

(2) to provide whistleblower protections for employees of the Department (including pursuant to the provisions in section 2302(b)(8) and (9) of such title and the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002).

(Pub. L. 107–296, title VIII, § 883, Nov. 25, 2002, 116 Stat. 2247.)

REFERENCES IN TEXT

The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, referred to in pars. (1) and (2), is Pub. L. 107–174, May 15, 2002, 116 Stat. 566, which is set out as a note under section 2301 of Title 5, Government Organization and Employees. For complete classification of this Act to the Code, see Tables.

§ 464. Federal Law Enforcement Training Center

(a) In general

The transfer of an authority or an agency under this chapter to the Department of Homeland Security does not affect training agreements already entered into with the Federal Law Enforcement Training Center with respect to the training of personnel to carry out that authority or the duties of that transferred agency.

(b) Continuity of operations

All activities of the Federal Law Enforcement Training Center transferred to the Department of Homeland Security under this chapter shall continue to be carried out at the locations such activities were carried out before such transfer.

(Pub. L. 107–296, title VIII, § 884, Nov. 25, 2002, 116 Stat. 2247.)

§ 464a. Acceptance and use of gifts

In fiscal year 2004 and thereafter, the Center is authorized to accept and use gifts of property, both real and personal, and to accept services, for authorized purposes.

(Pub. L. 108–90, title IV, Oct. 1, 2003, 117 Stat. 1150.)

REFERENCES IN TEXT

The Center, referred to in text, means the Federal Law Enforcement Training Center.

CODIFICATION

Section was enacted as part of the Department of Homeland Security Appropriations Act, 2004, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

STANDARDS FOR MEASURING AND ASSESSING THE QUALITY AND EFFECTIVENESS OF FEDERAL LAW ENFORCEMENT TRAINING

Pub. L. 108–334, title V, § 506, Oct. 18, 2004, 118 Stat. 1316, provided that: “The Federal Law Enforcement Training Center shall establish an accrediting body, to include representatives from the Federal law enforcement community and non-Federal accreditation experts involved in law enforcement training, to establish standards for measuring and assessing the quality and

effectiveness of Federal law enforcement training programs, facilities, and instructors.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108-90, title V, § 509, Oct. 1, 2003, 117 Stat. 1154.
 Pub. L. 108-7, div. J, title I, § 122, Feb. 20, 2003, 117 Stat. 439.

ANNUAL OUTSTANDING STUDENT AWARD

Pub. L. 108-7, div. J, title I, Feb. 20, 2003, 117 Stat. 431, provided in part: “That the [Federal Law Enforcement Training] Center is authorized to accept and use gifts of property, both real and personal, and to accept services, for authorized purposes, including funding of a gift of intrinsic value which shall be awarded annually by the Director of the Center to the outstanding student who graduated from a basic training program at the Center during the previous fiscal year, which shall be funded only by gifts received through the Center’s gift authority”.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107-67, title I, Nov. 12, 2001, 115 Stat. 516.
 Pub. L. 106-554, § 1(a)(3) [title I], Dec. 21, 2000, 114 Stat. 2763, 2763A-127.
 Pub. L. 106-58, title I, Sept. 29, 1999, 113 Stat. 432.
 Pub. L. 105-277, div. A, § 101(h) [title I], Oct. 21, 1998, 112 Stat. 2681-480, 2681-483.
 Pub. L. 105-61, title I, Oct. 10, 1997, 111 Stat. 1275.
 Pub. L. 104-208, div. A, title I, § 101(f) [title I], Sept. 30, 1996, 110 Stat. 3009-314, 3009-317.
 Pub. L. 104-52, title I, Nov. 19, 1995, 109 Stat. 470.
 Pub. L. 103-329, title I, Sept. 30, 1994, 108 Stat. 2383.
 Pub. L. 103-123, title I, Oct. 28, 1993, 107 Stat. 1227.
 Pub. L. 102-393, title I, Oct. 6, 1992, 106 Stat. 1730.
 Pub. L. 102-141, title I, Oct. 28, 1991, 105 Stat. 835.
 Pub. L. 101-509, title I, Nov. 5, 1990, 104 Stat. 1390.
 Pub. L. 101-136, title I, Nov. 3, 1989, 103 Stat. 784.

§ 464b. Staffing accreditation function

In fiscal year 2004 and thereafter, the Center is authorized to accept detailees from other Federal agencies, on a non-reimbursable basis, to staff the accreditation function.

(Pub. L. 108-90, title IV, Oct. 1, 2003, 117 Stat. 1150.)

REFERENCES IN TEXT

The Center, referred to in text, means the Federal Law Enforcement Training Center.

CODIFICATION

Section was enacted as part of the Department of Homeland Security Appropriations Act, 2004, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

PRIOR PROVISIONS

Similar provisions were contained in the following prior appropriation act:

Pub. L. 108-7, div. J, title I, Feb. 20, 2003, 117 Stat. 431.

§ 464c. Student housing

In fiscal year 2004 and thereafter, students attending training at any Center site shall reside in on-Center or Center-provided housing, insofar as available and in accordance with Center policy.

(Pub. L. 108-90, title IV, Oct. 1, 2003, 117 Stat. 1151.)

REFERENCES IN TEXT

The Center, referred to in text, means the Federal Law Enforcement Training Center.

CODIFICATION

Section was enacted as part of the Department of Homeland Security Appropriations Act, 2004, and not as

part of the Homeland Security Act of 2002 which comprises this chapter.

PRIOR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108-7, div. J, title I, Feb. 20, 2003, 117 Stat. 431.
 Pub. L. 107-67, title I, Nov. 12, 2001, 115 Stat. 517.
 Pub. L. 106-554, § 1(a)(3) [title I], Dec. 21, 2000, 114 Stat. 2763, 2763A-127.
 Pub. L. 106-58, title I, Sept. 29, 1999, 113 Stat. 432.
 Pub. L. 105-277, div. A, § 101(h) [title I], Oct. 21, 1998, 112 Stat. 2681-480, 2681-483.
 Pub. L. 105-61, title I, Oct. 10, 1997, 111 Stat. 1275.
 Pub. L. 104-208, div. A, title I, § 101(f) [title I], Sept. 30, 1996, 110 Stat. 3009-314, 3009-317.
 Pub. L. 104-52, title I, Nov. 19, 1995, 109 Stat. 470.
 Pub. L. 103-329, title I, Sept. 30, 1994, 108 Stat. 2383.
 Pub. L. 103-123, title I, Oct. 28, 1993, 107 Stat. 1227.
 Pub. L. 102-393, title I, Oct. 6, 1992, 106 Stat. 1730.
 Pub. L. 102-141, title I, Oct. 28, 1991, 105 Stat. 835.
 Pub. L. 101-509, title I, Nov. 5, 1990, 104 Stat. 1390.
 Pub. L. 101-136, title I, Nov. 3, 1989, 103 Stat. 784.

§ 464d. Additional funds for training

In fiscal year 2004 and thereafter, funds appropriated in this account shall be available, at the discretion of the Director, for the following: training United States Postal Service law enforcement personnel and Postal police officers; State and local government law enforcement training on a space-available basis; training of foreign law enforcement officials on a space-available basis with reimbursement of actual costs to this appropriation, except that reimbursement may be waived by the Secretary for law enforcement training activities in foreign countries undertaken under section 801 of the Antiterrorism and Effective Death Penalty Act of 1996 (28 U.S.C. 509 note); training of private sector security officials on a space-available basis with reimbursement of actual costs to this appropriation; and travel expenses of non-Federal personnel to attend course development meetings and training sponsored by the Center.

(Pub. L. 108-90, title IV, Oct. 1, 2003, 117 Stat. 1151.)

REFERENCES IN TEXT

“Funds appropriated in this account”, and “this appropriation”, referred to in text, mean funds appropriated under the headings “FEDERAL LAW ENFORCEMENT TRAINING CENTER” and “SALARIES AND EXPENSES” of title IV of the Department of Homeland Security Appropriations Act, 2004, Pub. L. 108-90.

Section 801 of the Antiterrorism and Effective Death Penalty Act of 1996, referred to in text, is section 801 of Pub. L. 104-132, which is set out as a note under section 509 of Title 28, Judiciary and Judicial Procedure.

The Center, referred to in text, means the Federal Law Enforcement Training Center.

CODIFICATION

Section was enacted as part of the Department of Homeland Security Appropriations Act, 2004, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

PRIOR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108-7, div. J, title I, Feb. 20, 2003, 117 Stat. 431.
 Pub. L. 107-67, title I, Nov. 12, 2001, 115 Stat. 516.
 Pub. L. 106-554, § 1(a)(3) [title I], Dec. 21, 2000, 114 Stat. 2763, 2763A-127.

- Pub. L. 106-58, title I, Sept. 29, 1999, 113 Stat. 432.
 Pub. L. 105-277, div. A, §101(h) [title I], Oct. 21, 1998, 112 Stat. 2681-480, 2681-483.
 Pub. L. 105-61, title I, Oct. 10, 1997, 111 Stat. 1276.
 Pub. L. 104-208, div. A, title I, §101(f) [title I], Sept. 30, 1996, 110 Stat. 3009-314, 3009-317.
 Pub. L. 104-52, title I, Nov. 19, 1995, 109 Stat. 470.
 Pub. L. 103-329, title I, Sept. 30, 1994, 108 Stat. 2383.

§ 464e. Short-term medical services for students

In fiscal year 2004 and thereafter, the Center is authorized to provide short-term medical services for students undergoing training at the Center.

(Pub. L. 108-90, title IV, Oct. 1, 2003, 117 Stat. 1151.)

REFERENCES IN TEXT

The Center, referred to in text, means the Federal Law Enforcement Training Center.

CODIFICATION

Section was enacted as part of the Department of Homeland Security Appropriations Act, 2004, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

PRIOR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:

- Pub. L. 108-7, div. J, title I, Feb. 20, 2003, 117 Stat. 431.
 Pub. L. 107-67, title I, Nov. 12, 2001, 115 Stat. 517.
 Pub. L. 106-554, §1(a)(3) [title I], Dec. 21, 2000, 114 Stat. 2763, 2763A-127.
 Pub. L. 106-58, title I, Sept. 29, 1999, 113 Stat. 433.
 Pub. L. 105-277, div. A, §101(h) [title I], Oct. 21, 1998, 112 Stat. 2681-480, 2681-483.
 Pub. L. 105-61, title I, Oct. 10, 1997, 111 Stat. 1276.
 Pub. L. 104-208, div. A, title I, §101(f) [title I], Sept. 30, 1996, 110 Stat. 3009-314, 3009-318.
 Pub. L. 104-52, title I, Nov. 19, 1995, 109 Stat. 470.
 Pub. L. 103-329, title I, Sept. 30, 1994, 108 Stat. 2384.
 Pub. L. 103-123, title I, Oct. 28, 1993, 107 Stat. 1228.
 Pub. L. 102-393, title I, Oct. 6, 1992, 106 Stat. 1730.

§ 465. Joint Interagency Task Force

(a) Establishment

The Secretary may establish and operate a permanent Joint Interagency Homeland Security Task Force composed of representatives from military and civilian agencies of the United States Government for the purposes of anticipating terrorist threats against the United States and taking appropriate actions to prevent harm to the United States.

(b) Structure

It is the sense of Congress that the Secretary should model the Joint Interagency Homeland Security Task Force on the approach taken by the Joint Interagency Task Forces for drug interdiction at Key West, Florida and Alameda, California, to the maximum extent feasible and appropriate.

(Pub. L. 107-296, title VIII, § 885, Nov. 25, 2002, 116 Stat. 2247.)

§ 466. Sense of Congress reaffirming the continued importance and applicability of the Posse Comitatus Act

(a) Findings

Congress finds the following:

(1) Section 1385 of title 18 (commonly known as the “Posse Comitatus Act”) prohibits the use of the Armed Forces as a posse comitatus to execute the laws except in cases and under circumstances expressly authorized by the Constitution or Act of Congress.

(2) Enacted in 1878, the Posse Comitatus Act was expressly intended to prevent United States Marshals, on their own initiative, from calling on the Army for assistance in enforcing Federal law.

(3) The Posse Comitatus Act has served the Nation well in limiting the use of the Armed Forces to enforce the law.

(4) Nevertheless, by its express terms, the Posse Comitatus Act is not a complete barrier to the use of the Armed Forces for a range of domestic purposes, including law enforcement functions, when the use of the Armed Forces is authorized by Act of Congress or the President determines that the use of the Armed Forces is required to fulfill the President’s obligations under the Constitution to respond promptly in time of war, insurrection, or other serious emergency.

(5) Existing laws, including chapter 15 of title 10 (commonly known as the “Insurrection Act”), and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), grant the President broad powers that may be invoked in the event of domestic emergencies, including an attack against the Nation using weapons of mass destruction, and these laws specifically authorize the President to use the Armed Forces to help restore public order.

(b) Sense of Congress

Congress reaffirms the continued importance of section 1385 of title 18, and it is the sense of Congress that nothing in this chapter should be construed to alter the applicability of such section to any use of the Armed Forces as a posse comitatus to execute the laws.

(Pub. L. 107-296, title VIII, § 886, Nov. 25, 2002, 116 Stat. 2248.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (a)(5), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

§ 467. Coordination with the Department of Health and Human Services under the Public Health Service Act

(a) In general

The annual Federal response plan developed by the Department shall be consistent with section 319 of the Public Health Service Act (42 U.S.C. 247d).

(b) Disclosures among relevant agencies

(1) In general

Full disclosure among relevant agencies shall be made in accordance with this subsection.

(2) Public health emergency

During the period in which the Secretary of Health and Human Services has declared the existence of a public health emergency under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), the Secretary of Health and Human Services shall keep relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, fully and currently informed.

(3) Potential public health emergency

In cases involving, or potentially involving, a public health emergency, but in which no determination of an emergency by the Secretary of Health and Human Services under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), has been made, all relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, shall keep the Secretary of Health and Human Services and the Director of the Centers for Disease Control and Prevention fully and currently informed.

(Pub. L. 107–296, title VIII, § 887, Nov. 25, 2002, 116 Stat. 2248.)

§ 468. Preserving Coast Guard mission performance**(a) Definitions**

In this section:

(1) Non-homeland security missions

The term “non-homeland security missions” means the following missions of the Coast Guard:

- (A) Marine safety.
- (B) Search and rescue.
- (C) Aids to navigation.
- (D) Living marine resources (fisheries law enforcement).
- (E) Marine environmental protection.
- (F) Ice operations.

(2) Homeland security missions

The term “homeland security missions” means the following missions of the Coast Guard:

- (A) Ports, waterways and coastal security.
- (B) Drug interdiction.
- (C) Migrant interdiction.
- (D) Defense readiness.
- (E) Other law enforcement.

(b) Transfer

There are transferred to the Department the authorities, functions, personnel, and assets of the Coast Guard, which shall be maintained as a distinct entity within the Department, including the authorities and functions of the Secretary of Transportation relating thereto.

(c) Maintenance of status of functions and assets

Notwithstanding any other provision of this chapter, the authorities, functions, and capabilities of the Coast Guard to perform its missions shall be maintained intact and without significant reduction after the transfer of the Coast Guard to the Department, except as specified in subsequent Acts.

(d) Certain transfers prohibited

No mission, function, or asset (including for purposes of this subsection any ship, aircraft, or helicopter) of the Coast Guard may be diverted to the principal and continuing use of any other organization, unit, or entity of the Department, except for details or assignments that do not reduce the Coast Guard’s capability to perform its missions.

(e) Changes to missions**(1) Prohibition**

The Secretary may not substantially or significantly reduce the missions of the Coast Guard or the Coast Guard’s capability to perform those missions, except as specified in subsequent Acts.

(2) Waiver

The Secretary may waive the restrictions under paragraph (1) for a period of not to exceed 90 days upon a declaration and certification by the Secretary to Congress that a clear, compelling, and immediate need exists for such a waiver. A certification under this paragraph shall include a detailed justification for the declaration and certification, including the reasons and specific information that demonstrate that the Nation and the Coast Guard cannot respond effectively if the restrictions under paragraph (1) are not waived.

(f) Annual review**(1) In general**

The Inspector General of the Department shall conduct an annual review that shall assess thoroughly the performance by the Coast Guard of all missions of the Coast Guard (including non-homeland security missions and homeland security missions) with a particular emphasis on examining the non-homeland security missions.

(2) Report

The report under this paragraph shall be submitted to—

- (A) the Committee on Governmental Affairs of the Senate;
- (B) the Committee on Government Reform of the House of Representatives;
- (C) the Committees on Appropriations of the Senate and the House of Representatives;
- (D) the Committee on Commerce, Science, and Transportation of the Senate; and
- (E) the Committee on Transportation and Infrastructure of the House of Representatives.

(g) Direct reporting to Secretary

Upon the transfer of the Coast Guard to the Department, the Commandant shall report directly to the Secretary without being required to report through any other official of the Department.

(h) Operation as a service in the Navy

None of the conditions and restrictions in this section shall apply when the Coast Guard operates as a service in the Navy under section 3 of title 14.

(i) Report on accelerating the Integrated Deepwater System

Not later than 90 days after November 25, 2002, the Secretary, in consultation with the Commandant of the Coast Guard, shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives that—

- (1) analyzes the feasibility of accelerating the rate of procurement in the Coast Guard's Integrated Deepwater System from 20 years to 10 years;
- (2) includes an estimate of additional resources required;
- (3) describes the resulting increased capabilities;
- (4) outlines any increases in the Coast Guard's homeland security readiness;
- (5) describes any increases in operational efficiencies; and
- (6) provides a revised asset phase-in time line.

(Pub. L. 107-296, title VIII, § 888, Nov. 25, 2002, 116 Stat. 2249.)

CHANGE OF NAME

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.

§ 469. Fees for credentialing and background investigations in transportation

For fiscal year 2004 and thereafter, the Secretary of Homeland Security shall charge reasonable fees for providing credentialing and background investigations in the field of transportation: *Provided*, That the establishment and collection of fees shall be subject to the following requirements:

- (1) such fees, in the aggregate, shall not exceed the costs incurred by the Department of Homeland Security associated with providing the credential or performing the background record checks;
- (2) the Secretary shall charge fees in amounts that are reasonably related to the costs of providing services in connection with the activity or item for which the fee is charged;
- (3) a fee may not be collected except to the extent such fee will be expended to pay for the costs of conducting or obtaining a criminal history record check and a review of available law enforcement databases and commercial databases and records of other governmental and international agencies; reviewing and adjudicating requests for waiver and appeals of agency decisions with respect to providing the credential, performing the background record check, and denying requests for waiver and appeals; and any other costs related to providing the credential or performing the background record check; and
- (4) any fee collected shall be available for expenditure only to pay the costs incurred in

providing services in connection with the activity or item for which the fee is charged and shall remain available until expended.

(Pub. L. 108-90, title V, § 520, Oct. 1, 2003, 117 Stat. 1156.)

CODIFICATION

Section was enacted as part of the Department of Homeland Security Appropriations Act, 2004, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

PART I—INFORMATION SHARING

§ 481. Short title; findings; and sense of Congress

(a) Short title

This part may be cited as the “Homeland Security Information Sharing Act”.

(b) Findings

Congress finds the following:

(1) The Federal Government is required by the Constitution to provide for the common defense, which includes terrorist attack.

(2) The Federal Government relies on State and local personnel to protect against terrorist attack.

(3) The Federal Government collects, creates, manages, and protects classified and sensitive but unclassified information to enhance homeland security.

(4) Some homeland security information is needed by the State and local personnel to prevent and prepare for terrorist attack.

(5) The needs of State and local personnel to have access to relevant homeland security information to combat terrorism must be reconciled with the need to preserve the protected status of such information and to protect the sources and methods used to acquire such information.

(6) Granting security clearances to certain State and local personnel is one way to facilitate the sharing of information regarding specific terrorist threats among Federal, State, and local levels of government.

(7) Methods exist to declassify, redact, or otherwise adapt classified information so it may be shared with State and local personnel without the need for granting additional security clearances.

(8) State and local personnel have capabilities and opportunities to gather information on suspicious activities and terrorist threats not possessed by Federal agencies.

(9) The Federal Government and State and local governments and agencies in other jurisdictions may benefit from such information.

(10) Federal, State, and local governments and intelligence, law enforcement, and other emergency preparation and response agencies must act in partnership to maximize the benefits of information gathering and analysis to prevent and respond to terrorist attacks.

(11) Information systems, including the National Law Enforcement Telecommunications System and the Terrorist Threat Warning System, have been established for rapid sharing of classified and sensitive but unclassified information among Federal, State, and local entities.

(12) Increased efforts to share homeland security information should avoid duplicating existing information systems.

(c) Sense of Congress

It is the sense of Congress that Federal, State, and local entities should share homeland security information to the maximum extent practicable, with special emphasis on hard-to-reach urban and rural communities.

(Pub. L. 107–296, title VIII, § 891, Nov. 25, 2002, 116 Stat. 2252.)

REFERENCES IN TEXT

This part, referred to in subsec. (a), was in the original “This subtitle”, meaning subtitle I (§§ 891–899) of title VIII of Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2252, which enacted this part, amended section 2517 of Title 18, Crimes and Criminal Procedure, Rule 6 of the Federal Rules of Criminal Procedure, set out in the Appendix to Title 18, and sections 403–5d, 1806, and 1825 of Title 50, War and National Defense, and amended provisions set out as a note under section 2517 of Title 18. For complete classification of subtitle I to the Code, see Tables.

§ 482. Facilitating homeland security information sharing procedures

(a) Procedures for determining extent of sharing of homeland security information

(1) The President shall prescribe and implement procedures under which relevant Federal agencies—

(A) share relevant and appropriate homeland security information with other Federal agencies, including the Department, and appropriate State and local personnel;

(B) identify and safeguard homeland security information that is sensitive but unclassified; and

(C) to the extent such information is in classified form, determine whether, how, and to what extent to remove classified information, as appropriate, and with which such personnel it may be shared after such information is removed.

(2) The President shall ensure that such procedures apply to all agencies of the Federal Government.

(3) Such procedures shall not change the substantive requirements for the classification and safeguarding of classified information.

(4) Such procedures shall not change the requirements and authorities to protect sources and methods.

(b) Procedures for sharing of homeland security information

(1) Under procedures prescribed by the President, all appropriate agencies, including the intelligence community, shall, through information sharing systems, share homeland security information with Federal agencies and appropriate State and local personnel to the extent such information may be shared, as determined in accordance with subsection (a) of this section, together with assessments of the credibility of such information.

(2) Each information sharing system through which information is shared under paragraph (1) shall—

(A) have the capability to transmit unclassified or classified information, though the procedures and recipients for each capability may differ;

(B) have the capability to restrict delivery of information to specified subgroups by geographic location, type of organization, position of a recipient within an organization, or a recipient’s need to know such information;

(C) be configured to allow the efficient and effective sharing of information; and

(D) be accessible to appropriate State and local personnel.

(3) The procedures prescribed under paragraph (1) shall establish conditions on the use of information shared under paragraph (1)—

(A) to limit the dissemination of such information to ensure that such information is not used for an unauthorized purpose;

(B) to ensure the security and confidentiality of such information;

(C) to protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(D) to provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

(4) The procedures prescribed under paragraph (1) shall ensure, to the greatest extent practicable, that the information sharing system through which information is shared under such paragraph include existing information sharing systems, including, but not limited to, the National Law Enforcement Telecommunications System, the Regional Information Sharing System, and the Terrorist Threat Warning System of the Federal Bureau of Investigation.

(5) Each appropriate Federal agency, as determined by the President, shall have access to each information sharing system through which information is shared under paragraph (1), and shall therefore have access to all information, as appropriate, shared under such paragraph.

(6) The procedures prescribed under paragraph (1) shall ensure that appropriate State and local personnel are authorized to use such information sharing systems—

(A) to access information shared with such personnel; and

(B) to share, with others who have access to such information sharing systems, the homeland security information of their own jurisdictions, which shall be marked appropriately as pertaining to potential terrorist activity.

(7) Under procedures prescribed jointly by the Director of Central Intelligence and the Attorney General, each appropriate Federal agency, as determined by the President, shall review and assess the information shared under paragraph (6) and integrate such information with existing intelligence.

(c) Sharing of classified information and sensitive but unclassified information with State and local personnel

(1) The President shall prescribe procedures under which Federal agencies may, to the extent the President considers necessary, share with appropriate State and local personnel homeland security information that remains classified or

otherwise protected after the determinations prescribed under the procedures set forth in subsection (a) of this section.

(2) It is the sense of Congress that such procedures may include 1 or more of the following means:

(A) Carrying out security clearance investigations with respect to appropriate State and local personnel.

(B) With respect to information that is sensitive but unclassified, entering into non-disclosure agreements with appropriate State and local personnel.

(C) Increased use of information-sharing partnerships that include appropriate State and local personnel, such as the Joint Terrorism Task Forces of the Federal Bureau of Investigation, the Anti-Terrorism Task Forces of the Department of Justice, and regional Terrorism Early Warning Groups.

(3)(A) The Secretary shall establish a program to provide appropriate training to officials described in subparagraph (B) in order to assist such officials in—

(i) identifying sources of potential terrorist threats through such methods as the Secretary determines appropriate;

(ii) reporting information relating to such potential terrorist threats to the appropriate Federal agencies in the appropriate form and manner;

(iii) assuring that all reported information is systematically submitted to and passed on by the Department for use by appropriate Federal agencies; and

(iv) understanding the mission and roles of the intelligence community to promote more effective information sharing among Federal, State, and local officials and representatives of the private sector to prevent terrorist attacks against the United States.

(B) The officials referred to in subparagraph (A) are officials of State and local government agencies and representatives of private sector entities with responsibilities relating to the oversight and management of first responders, counterterrorism activities, or critical infrastructure.

(C) The Secretary shall consult with the Attorney General to ensure that the training program established in subparagraph (A) does not duplicate the training program established in section 908 of the USA PATRIOT Act (Public Law 107-56; 28 U.S.C. 509 note).

(D) The Secretary shall carry out this paragraph in consultation with the Director of Central Intelligence and the Attorney General.

(d) Responsible officials

For each affected Federal agency, the head of such agency shall designate an official to administer this chapter with respect to such agency.

(e) Federal control of information

Under procedures prescribed under this section, information obtained by a State or local government from a Federal agency under this section shall remain under the control of the Federal agency, and a State or local law authorizing or requiring such a government to disclose information shall not apply to such information.

(f) Definitions

As used in this section:

(1) The term “homeland security information” means any information possessed by a Federal, State, or local agency that—

(A) relates to the threat of terrorist activity;

(B) relates to the ability to prevent, interdict, or disrupt terrorist activity;

(C) would improve the identification or investigation of a suspected terrorist or terrorist organization; or

(D) would improve the response to a terrorist act.

(2) The term “intelligence community” has the meaning given such term in section 401a(4) of title 50.

(3) The term “State and local personnel” means any of the following persons involved in prevention, preparation, or response for terrorist attack:

(A) State Governors, mayors, and other locally elected officials.

(B) State and local law enforcement personnel and firefighters.

(C) Public health and medical professionals.

(D) Regional, State, and local emergency management agency personnel, including State adjutant generals.

(E) Other appropriate emergency response agency personnel.

(F) Employees of private-sector entities that affect critical infrastructure, cyber, economic, or public health security, as designated by the Federal Government in procedures developed pursuant to this section.

(4) The term “State” includes the District of Columbia and any commonwealth, territory, or possession of the United States.

(g) Construction

Nothing in this chapter shall be construed as authorizing any department, bureau, agency, officer, or employee of the Federal Government to request, receive, or transmit to any other Government entity or personnel, or transmit to any State or local entity or personnel otherwise authorized by this chapter to receive homeland security information, any information collected by the Federal Government solely for statistical purposes in violation of any other provision of law relating to the confidentiality of such information.

(Pub. L. 107-296, title VIII, §892, Nov. 25, 2002, 116 Stat. 2253; Pub. L. 108-177, title III, §316(a), Dec. 13, 2003, 117 Stat. 2610.)

AMENDMENTS

2003—Subsec. (c)(3). Pub. L. 108-177 added par. (3).

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agen-

cy. See section 1081(a), (b) of Pub. L. 108-458, set out as a note under section 401 of Title 50, War and National Defense.

EX. ORD. NO. 13311. HOMELAND SECURITY INFORMATION SHARING

Ex. Ord. No. 13311, July 29, 2003, 68 F.R. 45149, as amended by Ex. Ord. No. 13388, §8(a), Oct. 25, 2005, 70 F.R. 62025, provided:

By the authority vested in me by the Constitution and the laws of the United States, including sections 892 and 893 of the Homeland Security Act of 2002 (the “Act”) (6 U.S.C. 482 and 483) and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. *Assignment of Functions.* (a) The functions of the President under section 892 of the Act are assigned to the Secretary of Homeland Security (the “Secretary”), except the functions of the President under subsections 892(a)(2) and 892(b)(7).

(b) Subject to section 2(b) of this order, the function of the President under section 893 of the Act is assigned to the Secretary.

(c) Procedures issued by the Secretary in the performance of the function of the President under section 892(a)(1) of the Act shall apply to all agencies of the Federal Government. Such procedures shall specify that the President may make, or may authorize another officer of the United States to make, exceptions to the procedures.

(d) The function of the President under section 892(b)(7) of the Act is delegated to the Attorney General and the Director of National Intelligence, to be exercised jointly.

(e) In performing the functions assigned to the Secretary by subsection (a) of this section, the Secretary shall coordinate with the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Energy, the Director of the Office of Management and Budget, the Director of National Intelligence, the Archivist of the United States, and as the Secretary deems appropriate, other officers of the United States.

(f) A determination, under the procedures issued by the Secretary in the performance of the function of the President under section 892(a)(1) of the Act, as to whether, or to what extent, an individual who falls within the category of “State and local personnel” as defined in sections 892(f)(3) and (f)(4) of the Act shall have access to information classified pursuant to Executive Order 12958 of April 17, 1995 [50 U.S.C. 435 note], as amended, is a discretionary determination and shall be conclusive and not subject to review or appeal.

SEC. 2. *Rules of Construction.* Nothing in this order shall be construed to impair or otherwise affect:

(a) the authority of the Director of National Intelligence under section 102A(i)(1) of the National Security Act of 1947, as amended (50 U.S.C. 403-3(c)(7) [403-1(i)(1)]), to protect intelligence sources and methods from unauthorized disclosure;

(b) the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals; or

(c) the provisions of Executive Orders 12958 of April 17, 1995 [50 U.S.C. 435 note], as amended, and 12968 of August 2, 1995 [50 U.S.C. 435 note], as amended.

SEC. 3. *General Provision.* This order is intended only to improve the internal management of the Federal Government and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

GEORGE W. BUSH.

§ 483. Report

(a) Report required

Not later than 12 months after November 25, 2002, the President shall submit to the congressional committees specified in subsection (b) of

this section a report on the implementation of section 482 of this title. The report shall include any recommendations for additional measures or appropriation requests, beyond the requirements of section 482 of this title, to increase the effectiveness of sharing of information between and among Federal, State, and local entities.

(b) Specified congressional committees

The congressional committees referred to in subsection (a) of this section are the following committees:

(1) The Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.

(2) The Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

(Pub. L. 107-296, title VIII, §893, Nov. 25, 2002, 116 Stat. 2255.)

DELEGATION OF FUNCTIONS

For assignment of function of President under this section, subject to certain limitations, to Secretary of Homeland Security, see Ex. Ord. No. 13311, §1(b), July 29, 2003, 68 F.R. 45149, set out as a note under section 482 of this title.

§ 484. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out section 482 of this title.

(Pub. L. 107-296, title VIII, §894, Nov. 25, 2002, 116 Stat. 2256.)

§ 485. Information sharing

(a) Definitions

In this section:

(1) Information Sharing Council

The term “Information Sharing Council” means the Information Systems Council established by Executive Order 13356, or any successor body designated by the President, and referred to under subsection (g) of this section.

(2) Information sharing environment; ISE

The terms “information sharing environment” and “ISE” mean an approach that facilitates the sharing of terrorism information, which approach may include any methods determined necessary and appropriate for carrying out this section.

(3) Program manager

The term “program manager” means the program manager designated under subsection (f) of this section.

(4) Terrorism information

The term “terrorism information” means all information, whether collected, produced, or distributed by intelligence, law enforcement, military, homeland security, or other activities relating to—

(A) the existence, organization, capabilities, plans, intentions, vulnerabilities, means of finance or material support, or activities of foreign or international terrorist groups or individuals, or of domestic groups or individuals involved in transnational terrorism;

(B) threats posed by such groups or individuals to the United States, United States persons, or United States interests, or to those of other nations;

(C) communications of or by such groups or individuals; or

(D) groups or individuals reasonably believed to be assisting or associated with such groups or individuals.

(b) Information sharing environment

(1) Establishment

The President shall—

(A) create an information sharing environment for the sharing of terrorism information in a manner consistent with national security and with applicable legal standards relating to privacy and civil liberties;

(B) designate the organizational and management structures that will be used to operate and manage the ISE; and

(C) determine and enforce the policies, directives, and rules that will govern the content and usage of the ISE.

(2) Attributes

The President shall, through the structures described in subparagraphs (B) and (C) of paragraph (1), ensure that the ISE provides and facilitates the means for sharing terrorism information among all appropriate Federal, State, local, and tribal entities, and the private sector through the use of policy guidelines and technologies. The President shall, to the greatest extent practicable, ensure that the ISE provides the functional equivalent of, or otherwise supports, a decentralized, distributed, and coordinated environment that—

(A) connects existing systems, where appropriate, provides no single points of failure, and allows users to share information among agencies, between levels of government, and, as appropriate, with the private sector;

(B) ensures direct and continuous online electronic access to information;

(C) facilitates the availability of information in a form and manner that facilitates its use in analysis, investigations and operations;

(D) builds upon existing systems capabilities currently in use across the Government;

(E) employs an information access management approach that controls access to data rather than just systems and networks, without sacrificing security;

(F) facilitates the sharing of information at and across all levels of security;

(G) provides directory services, or the functional equivalent, for locating people and information;

(H) incorporates protections for individuals' privacy and civil liberties; and

(I) incorporates strong mechanisms to enhance accountability and facilitate oversight, including audits, authentication, and access controls.

(c) Preliminary report

Not later than 180 days after December 17, 2004, the program manager shall, in consultation with the Information Sharing Council—

(1) submit to the President and Congress a description of the technological, legal, and policy issues presented by the creation of the ISE, and the way in which these issues will be addressed;

(2) establish an initial capability to provide electronic directory services, or the functional equivalent, to assist in locating in the Federal Government intelligence and terrorism information and people with relevant knowledge about intelligence and terrorism information; and

(3) conduct a review of relevant current Federal agency capabilities, databases, and systems for sharing information.

(d) Guidelines and requirements

As soon as possible, but in no event later than 270 days after December 17, 2004, the President shall—

(1) leverage all ongoing efforts consistent with establishing the ISE and issue guidelines for acquiring, accessing, sharing, and using information, including guidelines to ensure that information is provided in its most shareable form, such as by using tearlines to separate out data from the sources and methods by which the data are obtained;

(2) in consultation with the Privacy and Civil Liberties Oversight Board established under section 1061,¹ issue guidelines that—

(A) protect privacy and civil liberties in the development and use of the ISE; and

(B) shall be made public, unless nondisclosure is clearly necessary to protect national security; and

(3) require the heads of Federal departments and agencies to promote a culture of information sharing by—

(A) reducing disincentives to information sharing, including over-classification of information and unnecessary requirements for originator approval, consistent with applicable laws and regulations; and

(B) providing affirmative incentives for information sharing.

(e) Implementation plan report

Not later than one year after December 17, 2004, the President shall, with the assistance of the program manager, submit to Congress a report containing an implementation plan for the ISE. The report shall include the following:

(1) A description of the functions, capabilities, resources, and conceptual design of the ISE, including standards.

(2) A description of the impact on enterprise architectures of participating agencies.

(3) A budget estimate that identifies the incremental costs associated with designing, testing, integrating, deploying, and operating the ISE.

(4) A project plan for designing, testing, integrating, deploying, and operating the ISE.

(5) The policies and directives referred to in subsection (b)(1)(C) of this section, as well as the metrics and enforcement mechanisms that will be utilized.

(6) Objective, systemwide performance measures to enable the assessment of progress to—

¹ See References in Text note below.

ward achieving the full implementation of the ISE.

(7) A description of the training requirements needed to ensure that the ISE will be adequately implemented and properly utilized.

(8) A description of the means by which privacy and civil liberties will be protected in the design and operation of the ISE.

(9) The recommendations of the program manager, in consultation with the Information Sharing Council, regarding whether, and under what conditions, the ISE should be expanded to include other intelligence information.

(10) A delineation of the roles of the Federal departments and agencies that will participate in the ISE, including an identification of the agencies that will deliver the infrastructure needed to operate and manage the ISE (as distinct from individual department or agency components that are part of the ISE), with such delineation of roles to be consistent with—

(A) the authority of the Director of National Intelligence under this title,¹ and the amendments made by this title, to set standards for information sharing throughout the intelligence community; and

(B) the authority of the Secretary of Homeland Security and the Attorney General, and the role of the Department of Homeland Security and the Attorney General, in coordinating with State, local, and tribal officials and the private sector.

(11) The recommendations of the program manager, in consultation with the Information Sharing Council, for a future management structure for the ISE, including whether the position of program manager should continue to remain in existence.

(f) Program manager

(1) Designation

Not later than 120 days after December 17, 2004, with notification to Congress, the President shall designate an individual as the program manager responsible for information sharing across the Federal Government. The individual designated as the program manager shall serve as program manager during the two-year period beginning on the date of designation under this paragraph unless sooner removed from service and replaced by the President (at the President's sole discretion). The program manager shall have and exercise governmentwide authority.

(2) Duties and responsibilities

(A) In general

The program manager shall, in consultation with the Information Sharing Council—

(i) plan for and oversee the implementation of, and manage, the ISE;

(ii) assist in the development of policies, procedures, guidelines, rules, and standards as appropriate to foster the development and proper operation of the ISE; and

(iii) assist, monitor, and assess the implementation of the ISE by Federal departments and agencies to ensure adequate progress, technological consistency and

policy compliance; and regularly report the findings to Congress.

(B) Content of policies, procedures, guidelines, rules, and standards

The policies, procedures, guidelines, rules, and standards under subparagraph (A)(ii) shall—

(i) take into account the varying missions and security requirements of agencies participating in the ISE;

(ii) address development, implementation, and oversight of technical standards and requirements;

(iii) take into account ongoing and planned efforts that support development, implementation and management of the ISE;

(iv) address and facilitate information sharing between and among departments and agencies of the intelligence community, the Department of Defense, the homeland security community and the law enforcement community;

(v) address and facilitate information sharing between Federal departments and agencies and State, tribal, and local governments;

(vi) address and facilitate, as appropriate, information sharing between Federal departments and agencies and the private sector;

(vii) address and facilitate, as appropriate, information sharing between Federal departments and agencies with foreign partners and allies; and

(viii) ensure the protection of privacy and civil liberties.

(g) Information Sharing Council

(1) Establishment

There is established an Information Sharing Council that shall assist the President and the program manager in their duties under this section. The Information Sharing Council shall serve during the two-year period beginning on the date of the initial designation of the program manager by the President under subsection (f)(1) of this section, unless sooner removed from service and replaced by the President (at the sole discretion of the President) with a successor body.

(2) Specific duties

In assisting the President and the program manager in their duties under this section, the Information Sharing Council shall—

(A) advise the President and the program manager in developing policies, procedures, guidelines, roles, and standards necessary to establish, implement, and maintain the ISE;

(B) work to ensure coordination among the Federal departments and agencies participating in the ISE in the establishment, implementation, and maintenance of the ISE;

(C) identify and, as appropriate, recommend the consolidation and elimination of current programs, systems, and processes used by Federal departments and agencies to share information, and recommend, as appropriate, the redirection of existing resources to support the ISE;

(D) identify gaps, if any, between existing technologies, programs and systems used by Federal departments and agencies to share information and the parameters of the proposed information sharing environment;

(E) recommend solutions to address any gaps identified under subparagraph (D);

(F) recommend means by which the ISE can be extended to allow interchange of information between Federal departments and agencies and appropriate authorities of State and local governments; and

(G) recommend whether or not, and by which means, the ISE should be expanded so as to allow future expansion encompassing other relevant categories of information.

(3) Consultation

In performing its duties, the Information Sharing Council shall consider input from persons and entities outside the Federal Government having significant experience and expertise in policy, technical matters, and operational matters relating to the ISE.

(4) Inapplicability of Federal Advisory Committee Act

The Information Sharing Council shall not be subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App.).

(h) Performance management reports

(1) In general

Not later than two years after December 17, 2004, and annually thereafter, the President shall submit to Congress a report on the state of the ISE and of information sharing across the Federal Government.

(2) Content

Each report under this subsection shall include—

(A) a progress report on the extent to which the ISE has been implemented, including how the ISE has fared on the performance measures and whether the performance goals set in the preceding year have been met;

(B) objective system-wide performance goals for the following year;

(C) an accounting of how much was spent on the ISE in the preceding year;

(D) actions taken to ensure that procurement of and investments in systems and technology are consistent with the implementation plan for the ISE;

(E) the extent to which all terrorism watch lists are available for combined searching in real time through the ISE and whether there are consistent standards for placing individuals on, and removing individuals from, the watch lists, including the availability of processes for correcting errors;

(F) the extent to which State, tribal, and local officials are participating in the ISE;

(G) the extent to which private sector data, including information from owners and operators of critical infrastructure, is incorporated in the ISE, and the extent to which individuals and entities outside the government are receiving information through the ISE;

(H) the measures taken by the Federal government to ensure the accuracy of information in the ISE, in particular the accuracy of information about individuals;

(I) an assessment of the privacy and civil liberties protections of the ISE, including actions taken in the preceding year to implement or enforce privacy and civil liberties protections; and

(J) an assessment of the security protections used in the ISE.

(i) Agency responsibilities

The head of each department or agency that possesses or uses intelligence or terrorism information, operates a system in the ISE, or otherwise participates (or expects to participate) in the ISE shall—

(1) ensure full department or agency compliance with information sharing policies, procedures, guidelines, rules, and standards established under subsections (b) and (f) of this section;

(2) ensure the provision of adequate resources for systems and activities supporting operation of and participation in the ISE;

(3) ensure full department or agency cooperation in the development of the ISE to implement governmentwide information sharing; and

(4) submit, at the request of the President or the program manager, any reports on the implementation of the requirements of the ISE within such department or agency.

(j) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$20,000,000 for each of fiscal years 2005 and 2006.

(Pub. L. 108-458, title I, §1016, Dec. 17, 2004, 118 Stat. 3664.)

REFERENCES IN TEXT

Executive Order 13356, referred to in subsec. (a)(1), which was formerly set out as a note below, was revoked by Ex. Ord. No. 13388, set out as a note below, which established an Information Sharing Council consistent with subsec. (g) of this section.

Section 1061, referred to in subsec. (d)(2), is section 1061 of Pub. L. 108-458, which is set out as a note under section 601 of Title 5, Government Organization and Employees.

This title, referred to in subsec. (e)(10)(A), is title I of Pub. L. 108-458, Dec. 17, 2004, 118 Stat. 3643, known as the National Security Intelligence Reform Act of 2004. For complete classification of title I to the Code, see Short Title of 2004 Amendment note set out under section 401 of Title 50, War and National Defense, and Tables.

The Federal Advisory Committee Act, referred to in subsec. (g)(4), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

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

EFFECTIVE DATE

Section effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see sec-

tion 1097(a) of Pub. L. 108-458, set out as an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of Title 50, War and National Defense.

EXECUTIVE ORDER NO. 13356

Ex. Ord. No. 13356, Aug. 27, 2004, 69 F.R. 53599, which provided for strengthening the sharing of terrorism information to protect Americans, was revoked by Ex. Ord. No. 13388, §8(b), Oct. 25, 2005, 70 F.R. 62025, set out below.

EX. ORD. NO. 13388. FURTHER STRENGTHENING THE SHARING OF TERRORISM INFORMATION TO PROTECT AMERICANS

Ex. Ord. No. 13388, Oct. 25, 2005, 70 F.R. 62023, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458) [6 U.S.C. 485], and in order to further strengthen the effective conduct of United States counterterrorism activities and protect the territory, people, and interests of the United States of America, including against terrorist attacks, it is hereby ordered as follows:

SECTION 1. Policy. To the maximum extent consistent with applicable law, agencies shall, in the design and use of information systems and in the dissemination of information among agencies:

(a) give the highest priority to (i) the detection, prevention, disruption, preemption, and mitigation of the effects of terrorist activities against the territory, people, and interests of the United States of America; (ii) the interchange of terrorism information among agencies; (iii) the interchange of terrorism information between agencies and appropriate authorities of State, local, and tribal governments, and between agencies and appropriate private sector entities; and (iv) the protection of the ability of agencies to acquire additional such information; and

(b) protect the freedom, information privacy, and other legal rights of Americans in the conduct of activities implementing subsection (a).

SEC. 2. Duties of Heads of Agencies Possessing or Acquiring Terrorism Information. To implement the policy set forth in section 1 of this order, the head of each agency that possesses or acquires terrorism information:

(a) shall promptly give access to the terrorism information to the head of each other agency that has counterterrorism functions, and provide the terrorism information to each such agency, unless otherwise directed by the President, and consistent with (i) the statutory responsibilities of the agencies providing and receiving the information; (ii) any guidance issued by the Attorney General to fulfill the policy set forth in subsection 1(b) of this order; and (iii) other applicable law, including sections 102A(g) and (i) of the National Security Act of 1947 [50 U.S.C. 403-1(g), (i)], section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 [6 U.S.C. 485] (including any policies, procedures, guidelines, rules, and standards issued pursuant thereto), sections 202 and 892 of the Homeland Security Act of 2002 [6 U.S.C. 122, 482], Executive Order 12958 of April 17, 1995, as amended [50 U.S.C. 435 note], and Executive Order 13311 of July 29, 2003 [6 U.S.C. 482 note]; and

(b) shall cooperate in and facilitate production of reports based on terrorism information with contents and formats that permit dissemination that maximizes the utility of the information in protecting the territory, people, and interests of the United States.

SEC. 3. Preparing Terrorism Information for Maximum Distribution. To assist in expeditious and effective implementation by agencies of the policy set forth in section 1 of this order, the common standards for the sharing of terrorism information established pursuant to section 3 of Executive Order 13356 of August 27, 2004 [formerly set out above], shall be used, as appropriate, in carrying out section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004.

SEC. 4. Requirements for Collection of Terrorism Information Inside the United States. To assist in expeditious and effective implementation by agencies of the policy set forth in section 1 of this order, the recommendations regarding the establishment of executive branch-wide collection and sharing requirements, procedures, and guidelines for terrorism information collected within the United States made pursuant to section 4 of Executive Order 13356 [formerly set out above] shall be used, as appropriate, in carrying out section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004.

SEC. 5. Establishment and Functions of Information Sharing Council. (a) Consistent with section 1016(g) of the Intelligence Reform and Terrorism Prevention Act of 2004, there is hereby established an Information Sharing Council (Council), chaired by the Program Manager to whom section 1016 of such Act refers, and composed exclusively of designees of: the Secretaries of State, the Treasury, Defense, Commerce, Energy, and Homeland Security; the Attorney General; the Director of National Intelligence; the Director of the Central Intelligence Agency; the Director of the Office of Management and Budget; the Director of the Federal Bureau of Investigation; the Director of the National Counterterrorism Center; and such other heads of departments or agencies as the Director of National Intelligence may designate.

(b) The mission of the Council is to (i) provide advice and information concerning the establishment of an interoperable terrorism information sharing environment to facilitate automated sharing of terrorism information among appropriate agencies to implement the policy set forth in section 1 of this order; and (ii) perform the duties set forth in section 1016(g) of the Intelligence Reform and Terrorism Prevention Act of 2004.

(c) To assist in expeditious and effective implementation by agencies of the policy set forth in section 1 of this order, the plan for establishment of a proposed interoperable terrorism information sharing environment reported under section 5(c) of Executive Order 13356 [formerly set out above] shall be used, as appropriate, in carrying out section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004.

SEC. 6. Definitions. As used in this order:

(a) the term “agency” has the meaning set forth for the term “executive agency” in section 105 of title 5, United States Code, together with the Department of Homeland Security, but includes the Postal Rate Commission and the United States Postal Service and excludes the Government Accountability Office; and

(b) the term “terrorism information” has the meaning set forth for such term in section 1016(a)(4) of the Intelligence Reform and Terrorism Prevention Act of 2004.

SEC. 7. General Provisions. (a) This order:

(i) shall be implemented in a manner consistent with applicable law, including Federal law protecting the information privacy and other legal rights of Americans, and subject to the availability of appropriations;

(ii) shall be implemented in a manner consistent with the authority of the principal officers of agencies as heads of their respective agencies, including under section 199 of the Revised Statutes (22 U.S.C. 2651), section 201 of the Department of Energy Organization Act (42 U.S.C. 7131), section 103 of the National Security Act of 1947 (50 U.S.C. 403-3), section 102(a) of the Homeland Security Act of 2002 (6 U.S.C. 112(a)), and sections 301 of title 5, 113(b) and 162(b) of title 10, 1501 of title 15, 503 of title 28, and 301(b) of title 31, United States Code;

(iii) shall be implemented consistent with the Presidential Memorandum of June 2, 2005, on “Strengthening Information Sharing, Access, and Integration—Organizational, Management, and Policy Development Structures for Creating the Terrorism Information Sharing Environment;” [not set out in the Code]

(iv) shall not be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, and legislative proposals; and

(v) shall be implemented in a manner consistent with section 102A of the National Security Act of 1947 [50 U.S.C. 403-1].

(b) This order is intended only to improve the internal management of the Federal Government and is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

SEC. 8. *Amendments and Revocation.* (a) [Amended Ex. Ord. No. 13311, set out as a note under section 482 of this title.]

(b) Executive Order 13356 of August 27, 2004 [formerly set out above], is hereby revoked.

GEORGE W. BUSH.

§ 486. Limitation of liability

A person who has completed a security awareness training course approved by or operated under a cooperative agreement with the Department of Homeland Security using funds made available in fiscal year 2006 and thereafter or in any prior appropriations Acts, who is enrolled in a program recognized or acknowledged by an Information Sharing and Analysis Center, and who reports a situation, activity or incident pursuant to that program to an appropriate authority, shall not be liable for damages in any action brought in a Federal or State court which result from any act or omission unless such person is guilty of gross negligence or willful misconduct. (Pub. L. 109-90, title V, § 541, Oct. 18, 2005, 119 Stat. 2089.)

CODIFICATION

Section was enacted as part of the Department of Homeland Security Appropriations Act, 2006, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

SUBCHAPTER IX—NATIONAL HOMELAND SECURITY COUNCIL

§ 491. National Homeland Security Council

There is established within the Executive Office of the President a council to be known as the “Homeland Security Council” (in this subchapter referred to as the “Council”).

(Pub. L. 107-296, title IX, § 901, Nov. 25, 2002, 116 Stat. 2258.)

§ 492. Function

The function of the Council shall be to advise the President on homeland security matters.

(Pub. L. 107-296, title IX, § 902, Nov. 25, 2002, 116 Stat. 2258.)

§ 493. Membership

(a) Members

The members of the Council shall be the following:

- (1) The President.
- (2) The Vice President.
- (3) The Secretary of Homeland Security.
- (4) The Attorney General.
- (5) The Secretary of Defense.
- (6) Such other individuals as may be designated by the President.

(b) Attendance of Chairman of Joint Chiefs of Staff at meetings

The Chairman of the Joint Chiefs of Staff (or, in the absence of the Chairman, the Vice Chair-

man of the Joint Chiefs of Staff) may, in the role of the Chairman of the Joint Chiefs of Staff as principal military adviser to the Council and subject to the direction of the President, attend and participate in meetings of the Council.

(Pub. L. 107-296, title IX, § 903, Nov. 25, 2002, 116 Stat. 2258; Pub. L. 109-163, div. A, title IX, § 908(b), Jan. 6, 2006, 119 Stat. 3404.)

AMENDMENTS

2006—Pub. L. 109-163 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

§ 494. Other functions and activities

For the purpose of more effectively coordinating the policies and functions of the United States Government relating to homeland security, the Council shall—

(1) assess the objectives, commitments, and risks of the United States in the interest of homeland security and to¹ make resulting recommendations to the President;

(2) oversee and review homeland security policies of the Federal Government and to¹ make resulting recommendations to the President; and

(3) perform such other functions as the President may direct.

(Pub. L. 107-296, title IX, § 904, Nov. 25, 2002, 116 Stat. 2259.)

§ 495. Staff composition

The Council shall have a staff, the head of which shall be a civilian Executive Secretary, who shall be appointed by the President. The President is authorized to fix the pay of the Executive Secretary at a rate not to exceed the rate of pay payable to the Executive Secretary of the National Security Council.

(Pub. L. 107-296, title IX, § 905, Nov. 25, 2002, 116 Stat. 2259.)

§ 496. Relation to the National Security Council

The President may convene joint meetings of the Homeland Security Council and the National Security Council with participation by members of either Council or as the President may otherwise direct.

(Pub. L. 107-296, title IX, § 906, Nov. 25, 2002, 116 Stat. 2259.)

SUBCHAPTER X—CONSTRUCTION

§ 511. Information security responsibilities of certain agencies

(1) National security responsibilities

(A) Nothing in this chapter (including any amendment made by this chapter) shall supersede any authority of the Secretary of Defense, the Director of Central Intelligence, or other agency head, as authorized by law and as directed by the President, with regard to the operation, control, or management of national security systems, as defined by section 3532(3)¹ of title 44.

¹ So in original. The word “to” probably should not appear.

¹ So in original. Probably should be section “3532(b)(2)”.

(B) Omitted

(2) Atomic Energy Act of 1954

Nothing in this chapter shall supersede any requirement made by or under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.). Restricted Data or Formerly Restricted Data shall be handled, protected, classified, downgraded, and declassified in conformity with the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

(Pub. L. 107–296, title X, §1001(c), Nov. 25, 2002, 116 Stat. 2267.)

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 Tables.

The Atomic Energy Act of 1954, referred to in par. (2), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

CODIFICATION

Section is comprised of section 1001(c) of Pub. L. 107–296. Par. (1)(B) of section 1001(c) of Pub. L. 107–296 amended section 2224 of Title 10, Armed Forces.

CHANGE OF NAME

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

SHORT TITLE

For short title of title X of Pub. L. 107–296, which enacted this subchapter, as the “Federal Information Security Management Act of 2002”, see section 1001(a) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 512. Construction

Nothing in this chapter, or the amendments made by this chapter, affects the authority of the National Institute of Standards and Technology or the Department of Commerce relating to the development and promulgation of standards or guidelines under paragraphs (1) and (2) of section 278g–3(a) of title 15.

(Pub. L. 107–296, title X, §1006, Nov. 25, 2002, 116 Stat. 2273.)

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 Tables.

§ 513. Federal air marshal program

(1) Sense of Congress

It is the sense of Congress that the Federal air marshal program is critical to aviation security.

(2) Limitation on statutory construction

Nothing in this chapter, including any amendment made by this chapter, shall be construed as preventing the Under Secretary of Transportation for Security from implementing and training Federal air marshals.

(Pub. L. 107–296, title XIV, §1402(c), Nov. 25, 2002, 116 Stat. 2305.)

REFERENCES IN TEXT

This chapter, referred to in par. (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 Tables.

SUBCHAPTER XI—DEPARTMENT OF JUSTICE DIVISIONS

PART A—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

§ 521. Legal status of EOIR

(a)¹ Existence of EOIR

There is in the Department of Justice the Executive Office for Immigration Review, which shall be subject to the direction and regulation of the Attorney General under section 1103(g) of title 8.

(Pub. L. 107–296, title XI, §1101, Nov. 25, 2002, 116 Stat. 2273.)

EFFECTIVE DATE

Pub. L. 107–296, title XI, §1104, as added by Pub. L. 108–7, div. L, §105(a)(3), Feb. 20, 2003, 117 Stat. 531, provided that: “The provisions of this subtitle [subtitle A (§§1101–1104) of title XI of Pub. L. 107–296, enacting this part and amending section 1103 of Title 8, Immigration and Nationality] shall take effect on the date of the transfer of functions from the Commissioner of Immigration and Naturalization to officials of the Department of Homeland Security [functions transferred Mar. 1, 2003]”.

§ 522. Statutory construction

Nothing in this chapter, any amendment made by this chapter, or in section 1103 of title 8, shall be construed to limit judicial deference to regulations, adjudications, interpretations, orders, decisions, judgments, or any other actions of the Secretary of Homeland Security or the Attorney General.

(Pub. L. 107–296, title XI, §1103, Nov. 25, 2002, 116 Stat. 2274.)

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 Tables.

¹ So in original. No subsec. (b) has been enacted.

PART B—TRANSFER OF THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS TO THE DEPARTMENT OF JUSTICE

§ 531. Bureau of Alcohol, Tobacco, Firearms, and Explosives

(a), (b) Transferred

(c) Transfer of authorities, functions, personnel, and assets to the Department of Justice

(1) Transferred

(2) Administration and revenue collection functions

There shall be retained within the Department of the Treasury the authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms relating to the administration and enforcement of chapters 51 and 52 of title 26, sections 4181 and 4182 of title 26, and title 27.

(3) Transferred

(d) Tax and Trade Bureau

(1) Establishment

There is established within the Department of the Treasury the Tax and Trade Bureau.

(2) Administrator

The Tax and Trade Bureau shall be headed by an Administrator, who shall perform such duties as assigned by the Under Secretary for Enforcement of the Department of the Treasury. The Administrator shall occupy a career-reserved position within the Senior Executive Service.

(3) Responsibilities

The authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms that are not transferred to the Department of Justice under this section shall be retained and administered by the Tax and Trade Bureau.

(Pub. L. 107–296, title XI, § 1111, Nov. 25, 2002, 116 Stat. 2274; Pub. L. 109–162, title XI, § 1187(b), Jan. 5, 2006, 119 Stat. 3127.)

AMENDMENTS

2006—Pub. L. 109–162 transferred section catchline and subsecs. (a)–(c)(1), (3), to section 599A of Title 28, Judiciary and Judicial Procedure.

§ 532. Explosives Training and Research Facility

(a) Establishment

There is established within the Bureau an Explosives Training and Research Facility at Fort AP Hill, Fredericksburg, Virginia.

(b) Purpose

The facility established under subsection (a) of this section shall be utilized to train Federal, State, and local law enforcement officers to—

- (1) investigate bombings and explosions;
- (2) properly handle, utilize, and dispose of explosive materials and devices;
- (3) train canines on explosive detection; and
- (4) conduct research on explosives.

(c) Authorization of appropriations

(1) In general

There are authorized to be appropriated such sums as may be necessary to establish and

maintain the facility established under subsection (a) of this section.

(2) Availability of funds

Any amounts appropriated pursuant to paragraph (1) shall remain available until expended.

(Pub. L. 107–296, title XI, § 1114, Nov. 25, 2002, 116 Stat. 2280.)

§ 533. Transferred

CODIFICATION

Section, Pub. L. 107–296, title XI, § 1115, Nov. 25, 2002, 116 Stat. 2280, which related to a Personnel Management Demonstration Project, was transferred to section 599B of Title 28, Judiciary and Judicial Procedure, by Pub. L. 109–162, title XI, § 1187(b), (c)(2), Jan. 5, 2006, 119 Stat. 3127, 3128.

SUBCHAPTER XII—TRANSITION

PART A—REORGANIZATION PLAN

§ 541. Definitions

For purposes of this subchapter:

(1) The term “agency” includes any entity, organizational unit, program, or function.

(2) The term “transition period” means the 12-month period beginning on the effective date of this chapter.

(Pub. L. 107–296, title XV, § 1501, Nov. 25, 2002, 116 Stat. 2307.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in par. (2), 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.

§ 542. Reorganization plan

(a) Submission of plan

Not later than 60 days after November 25, 2002, the President shall transmit to the appropriate congressional committees a reorganization plan regarding the following:

(1) The transfer of agencies, personnel, assets, and obligations to the Department pursuant to this chapter.

(2) Any consolidation, reorganization, or streamlining of agencies transferred to the Department pursuant to this chapter.

(b) Plan elements

The plan transmitted under subsection (a) of this section shall contain, consistent with this chapter, such elements as the President deems appropriate, including the following:

(1) Identification of any functions of agencies transferred to the Department pursuant to this chapter that will not be transferred to the Department under the plan.

(2) Specification of the steps to be taken by the Secretary to organize the Department, including the delegation or assignment of functions transferred to the Department among officers of the Department in order to permit the Department to carry out the functions transferred under the plan.

(3) Specification of the funds available to each agency that will be transferred to the Department as a result of transfers under the plan.

(4) Specification of the proposed allocations within the Department of unexpended funds transferred in connection with transfers under the plan.

(5) Specification of any proposed disposition of property, facilities, contracts, records, and other assets and obligations of agencies transferred under the plan.

(6) Specification of the proposed allocations within the Department of the functions of the agencies and subdivisions that are not related directly to securing the homeland.

(c) Modification of plan

The President may, on the basis of consultations with the appropriate congressional committees, modify or revise any part of the plan until that part of the plan becomes effective in accordance with subsection (d) of this section.

(d) Effective date

(1) In general

The reorganization plan described in this section, including any modifications or revisions of the plan under subsection (d) of this section, shall become effective for an agency on the earlier of—

(A) the date specified in the plan (or the plan as modified pursuant to subsection (d) of this section), except that such date may not be earlier than 90 days after the date the President has transmitted the reorganization plan to the appropriate congressional committees pursuant to subsection (a) of this section; or

(B) the end of the transition period.

(2) Statutory construction

Nothing in this subsection may be construed to require the transfer of functions, personnel, records, balances of appropriations, or other assets of an agency on a single date.

(3) Supersedes existing law

Paragraph (1) shall apply notwithstanding section 905(b) of title 5.

(Pub. L. 107–296, title XV, §1502, Nov. 25, 2002, 116 Stat. 2308.)

REFERENCES IN TEXT

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

DEPARTMENT OF HOMELAND SECURITY

REORGANIZATION PLAN

November 25, 2002

H. Doc. No. 108–16, 108th Congress, 1st Session, provided:

INTRODUCTION

This Reorganization Plan is submitted pursuant to Section 1502 of the Department [sic] of Homeland Security Act of 2002 [6 U.S.C. 542] (“the Act”), which requires submission, not later than 60 days after enactment [Nov. 25, 2002], of a reorganization plan regarding two categories of information concerning plans for the Department of Homeland Security (“the Department” or “DHS”):

(1) The transfer of agencies, personnel, assets, and obligations to the Department pursuant to this Act [Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2135].

(2) Any consolidation, reorganization, or streamlining of agencies transferred to the Department pursuant to this Act. Section 1502(a).

Section 1502(b) of the Act identifies six elements, together with other elements “as the President deems appropriate,” as among those for discussion in the plan. Each of the elements set out in the statute is identified *verbatim* below, followed by a discussion of current plans with respect to that element.

This plan is subject to modification pursuant to Section 1502(d) of the Act, which provides that on the basis of consultations with appropriate congressional committees the President may modify or revise any part of the plan until that part of the plan becomes effective. Additional details concerning the process for establishing the Department will become available in the coming weeks and months, and the President will work closely with Congress to modify this plan consistent with the Act.

PLAN ELEMENTS

(1) Identification of any functions of agencies transferred to the Department pursuant to this Act that will not be transferred to the Department under the plan.

Except as otherwise directed in the Act, all functions of agencies that are to be transferred to the Department pursuant to the Act will be transferred to the Department under the plan. The functions of agencies being transferred to the Department which the Act directs are not to be transferred are the following:

- Pursuant to Section 201(g)(1) of the Act [6 U.S.C. 121(g)(1)], the Computer Investigations and Operations Section (“CIOS”) of the National Infrastructure Protection Center (“NIPC”) of the Federal Bureau of Investigation (“FBI”) will not transfer to the Department with the rest of NIPC. CIOS is the FBI headquarters entity responsible for managing all FBI computer intrusion field office cases (whether law enforcement or national security related).

- Pursuant to Sections 421(c) & (d) of the Act [6 U.S.C. 231(c), (d)], the regulatory responsibilities and quarantine activities relating to agricultural import and entry inspection activities of the United States Department of Agriculture (“the USDA”) Animal and Plant Health Inspection Service (“APHIS”) will remain with the USDA, as will the Secretary of Agriculture’s authority to issue regulations, policies, and procedures regarding the functions transferred pursuant to Sections 421(a) & (b) of the Act.

- Pursuant to Subtitle B of Title IV of the Act [6 U.S.C. 211 et seq.], the authorities of the Secretary of the Treasury related to Customs revenue functions, as defined in the statute, will not transfer to the Department.

- Functions under the immigration laws of the United States with respect to the care of unaccompanied alien children will not transfer from the Department of Justice to DHS, but will instead transfer to the Department of Health and Human Services pursuant to Section 462 of the Act [6 U.S.C. 279].

(2) Specification of the steps to be taken by the Secretary to organize the Department, including the delegation or assignment of functions transferred to the Department among officers of the Department in order to permit the Department to carry out the functions transferred under the plan.

A. *Steps to be taken by the Secretary to organize the Department.* The President intends that the Secretary will carry out the following actions on the dates specified. All of the following transfers shall be deemed to be made to DHS, and all offices and positions to be established and all officers and officials to be appointed or named shall be deemed to be established, appointed, or named within DHS.

January 24, 2003 (effective date of the Act pursuant to Section 4 [6 U.S.C. 101 note]):

- Establish the Office of the Secretary.
- Begin to appoint, upon confirmation by the Senate, or transfer pursuant to the transfer provisions of the Act, as many of the following officers as may be possible:

- (1) Deputy Secretary of Homeland Security
- (2) Under Secretary for Information Analysis and Infrastructure Protection
- (3) Under Secretary for Science and Technology
- (4) Under Secretary for Border and Transportation Security
- (5) Under Secretary for Emergency Preparedness and Response
- (6) Director of the Bureau of Citizenship and Immigration Services
- (7) Under Secretary for Management
- (8) Not more than 12 Assistant Secretaries
- (9) General Counsel
- (10) Inspector General
- (11) Commissioner of Customs

- Name, as soon as may be possible, officers to fill the following offices created by the Act:

- (1) Assistant Secretary for Information Analysis
- (2) Assistant Secretary for Infrastructure Protection
- (3) Privacy Officer
- (4) Director of the Secret Service
- (5) Chief Information Officer
- (6) Chief Human Capital Officer
- (7) Chief Financial Officer
- (8) Officer for Civil Rights and Civil Liberties
- (9) Director of Shared Services
- (10) Citizenship and Immigration Ombudsman
- (11) Director of the Homeland Security Advanced Research Projects Agency

- Establish, within the Office of the Secretary, the Office for State and Local Government Coordination, the Office of International Affairs, and the Office of National Capital Region Coordination.

- Establish the Homeland Security Advanced Research Projects Agency and the Acceleration Fund for Research and Development of Homeland Security Technologies.

- Establish within the Directorate of Science and Technology the Office for National Laboratories.

- Establish the Bureau of Border Security [now Bureau of Immigration and Customs Enforcement], the Bureau of Citizenship and Immigration Services, and the Director of Shared Services.

- Establish the Transportation Security Oversight Board with the Secretary of Homeland Security as its Chair.

March 1, 2003:

- Transfer the Critical Infrastructure Assurance Office (“CIAO”) of the Department of Commerce, the National Communications System (“the NCS”), the NIPC of the FBI (other than the CIOS), the National Infrastructure Simulation and Analysis Center (“NISAC”), the Energy Assurance Office (“EAO”) of the Department of Energy, and the Federal Computer Incident Response Center of the General Services Administration (“FedCIRC”).

- Transfer the Coast Guard.
- Transfer the Customs Service, the Transportation Security Administration (“the TSA”), functions of the Immigration and Naturalization Service (“the INS”), the Federal Protective Service (“the FPS”), the Office of Domestic Preparedness (“the ODP”), and the Federal Law Enforcement Training Center (“the FLETC”).

- Transfer the functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under the laws specified in Section 421(b) of the Act [6 U.S.C. 231(b)] from the Animal and Plant Health Inspection Service.

- Transfer the United States Secret Service.
- Transfer the following programs and activities to the Directorate of Science and Technology:

- The chemical and biological national security and supporting programs and activities of the nonproliferation and verification research and development program of the Department of Energy.

- The life sciences activities related to microbial pathogens of the Biological and Environmental Research Program of the Department of Energy.

- The National Bio-Weapons Defense Analysis Center of the Department of Defense.

- The nuclear smuggling programs and activities within the proliferation detection program of the nonproliferation and verification research and development program of the Department of Energy.

- The nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program of the Department of Energy and the advanced scientific computing research program and activities at Lawrence Livermore National Laboratory of the Department of Energy.

- The Environmental Measurements Laboratory of the Department of Energy.

- Transfer the Federal Emergency Management Agency (“FEMA”).

- Transfer the Integrated Hazard Information System of the National Oceanic and Atmospheric Administration, which shall be renamed “FIRESTAT.”

- Transfer the National Domestic Preparedness Office of the FBI, including the functions of the Attorney General relating thereto.

- Transfer the Domestic Emergency Support Team of the Department of Justice, including the functions of the Attorney General relating thereto.

- Transfer the Metropolitan Medical Response System of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and Assistant Secretary for Public Health Emergency Preparedness relating thereto.

- Transfer the National Disaster Medical System of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and Assistant Secretary for Public Health Emergency Preparedness relating thereto.

- Transfer the Office of Emergency Preparedness and the Strategic National Stockpile of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and Assistant Secretary for Public Health Emergency Preparedness relating thereto.

- Transfer to the Secretary the authority (in connection with an actual or threatened terrorist attack, major disaster, or other emergency in the United States) to direct the Nuclear Incident Response Team of the Department of Energy to operate as an organizational unit.

June 1, 2003:

- Transfer the Plum Island Animal Disease Center of USDA.

- Establish the Homeland Security Science and Technology Advisory Committee.

By September 30, 2003:

- Complete any incidental transfers, pursuant to Section 1516 of the Act [6 U.S.C. 556], of personnel, assets, and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by the Act.

- B. *Delegation or Assignment Among Officers of Functions Transferred to the Department.* The President intends that the Secretary will delegate or assign transferred functions within the Department as follows:

1. Information Analysis and Infrastructure Protection

- a. *Under Secretary for Information Analysis and Infrastructure Protection (“IA and IP”):* Will be responsible for oversight of functions of NIPC, NCS, CIAO, NISAC, EAO, and FedCIRC transferred by the Act, the management of the Directorate’s Information Analysis and Infrastructure Protection duties, and

the administration of the Homeland Security Advisory System.

b. *Assistant Secretary for Information Analysis:* Will oversee the following Information Analysis functions:

- Identify and assess the nature and scope of terrorist threats to the homeland; detect and identify threats of terrorism against the United States; and, understand such threats in light of actual and potential vulnerabilities of the homeland.

- In coordination with the Assistant Secretary for Infrastructure Protection, integrate relevant information, analyses, and vulnerability assessments (whether such information, analyses, or assessments are provided or produced by the Department or others) in order to identify priorities for protective and support measures by the Department, other agencies of the Federal Government, State and local government agencies and authorities, the private sector, and other entities.

- Ensure the timely and efficient access by the Department to all information necessary to discharge the responsibilities under Section 201 of the Act [6 U.S.C. 121], including obtaining such information from other agencies of the Federal Government.

- Review, analyze, and make recommendations for improvements in the policies and procedures governing the sharing of law enforcement information, intelligence information, intelligence-related information, and other information relating to homeland security within the Federal Government and between the Federal Government and State and local government agencies and authorities.

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

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

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

- Ensure that—

1. Any material received pursuant to the Act is protected from unauthorized disclosure and handled and used only for the performance of official duties; and

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

- Request additional information from other agencies of the Federal Government, State and local government agencies, and the private sector relating to threats of terrorism in the United States, or relating to other areas of responsibility assigned by the Secretary, including the entry

into cooperative agreements through the Secretary to obtain such information.

- Establish and utilize, in conjunction with the Chief Information Officer of the Department, a secure communications and information technology infrastructure, including data-mining and other advanced analytical tools, in order to access, receive, and analyze data and information in furtherance of statutory responsibilities, and to disseminate information acquired and analyzed by the Department, as appropriate.

- Ensure, in conjunction with the Chief Information Officer of the Department, that any information databases and analytical tools developed or utilized by the Department—

1. Are compatible with one another and with relevant information databases of other agencies of the Federal Government; and

2. Treat information in such databases in a manner that complies with applicable Federal law on privacy.

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

- Coordinate with elements of the intelligence community and with Federal, State, and local law enforcement agencies, and the private sector, as appropriate.

- Provide intelligence and information analysis and support to other elements of the Department.

c. *Assistant Secretary for Infrastructure Protection:* Will oversee the following Infrastructure Protection functions:

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

- In coordination with the Assistant Secretary for Information Analysis, integrate relevant information, analyses, and vulnerability assessments (whether such information, analyses, or assessments are provided or produced by the Department or others) in order to identify priorities for protective and support measures by the Department, other agencies of the Federal Government, State and local government agencies and authorities, the private sector, and other entities.

- Develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States, including power production, generation, and distribution systems, information technology and telecommunications systems (including satellites), electronic financial and property record storage and transmission systems, emergency preparedness communications systems, and the physical and technological assets that support such systems.

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

- In coordination with the Under Secretary for Emergency Preparedness and Response, provide to State and local government entities, and upon request to private entities that own or operate

critical information systems, crisis management support in response to threats to, or attacks on, critical information systems.

- Provide technical assistance, upon request, to the private sector and other government entities, in coordination with the Under Secretary for Emergency Preparedness and Response, with respect to emergency recovery plans to respond to major failures of critical information systems.
- Coordinate with other agencies of the Federal Government to provide specific warning information, and advice about appropriate protective measures and countermeasures, to State and local government agencies and authorities, the private sector, other entities, and the public.

2. Science and Technology

Under Secretary for Science and Technology: Will be responsible for performing the functions set forth in Section 302 of the Act [6 U.S.C. 182], including the following:

- Advise the Secretary regarding research and development efforts and priorities in support of the Department's missions.
- Develop, in consultation with other appropriate executive agencies, a national policy and strategic plan for identifying priorities, goals, objectives, and policies for, and coordinating the Federal Government's civilian efforts with respect to, identifying and developing countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats, including the development of comprehensive, research-based definable goals for such efforts and of annual measurable objectives and specific targets to accomplish and evaluate the goals for such efforts.
- Support the Under Secretary for Information Analysis and Infrastructure Protection by assessing and testing homeland security vulnerabilities and possible threats.
- Conduct basic and applied research, development, demonstration, testing, and evaluation activities that are relevant to any or all elements of the Department, through both intramural and extramural programs, except that such responsibility does not extend to human health-related research and development activities.
- Establish priorities for directing, funding, and conducting national research, development, test and evaluation, and procurement of technology and systems for—
 1. preventing the importation of chemical, biological, radiological, nuclear, and related weapons and material; and
 2. detecting, preventing, protecting against, and responding to terrorist attacks.
- Establish a system for transferring homeland security developments or technologies to Federal, State, and local governments, and to private sector entities.
- Enter into work agreements, joint sponsorships, contracts, or any other agreements with the Department of Energy regarding the use of the national laboratories or sites and support of the science and technology base at those facilities.
- Collaborate with the Secretary of Agriculture and the Attorney General as provided in Section 212 of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. § 8401), as amended by Section 1709(b) of the Act.
- Collaborate with the Secretary of Health and Human Services and the Attorney General in determining any new biological agents and toxins that shall be listed as “select agents” in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to Section 351A of the Public Health Service Act (42 U.S.C. § 262a).
- Support United States leadership in science and technology.

- Establish and administer the primary research and development activities of the Department, including the long-term research and development needs and capabilities for all elements of the Department.

- Coordinate and integrate all research, development, demonstration, testing, and evaluation activities of the Department.

- Coordinate with other appropriate executive agencies in developing and carrying out the science and technology agenda of the Department to reduce duplication and identify unmet needs.

- Develop and oversee the administration of guidelines for merit review of research and development projects throughout the Department, and for the dissemination of research conducted or sponsored by the Department.

3. Border and Transportation Security

The Directorate of Border and Transportation Security (“BTS”) will include the following: the Bureau of Border Security [now Bureau of Immigration and Customs Enforcement]; the Office for Domestic Preparedness; the Customs Service [now Bureau of Customs and Border Protection]; the Transportation Security Administration; FLETC; and FPS.

The BTS Directorate will also have in place the key leaders of the new Directorate to include:

a. *Under Secretary for BTS:* Will be responsible for oversight of all responsibilities set forth in Section 402 of the Act [6 U.S.C. 202], including the following:

- Prevent the entry of terrorists and the instruments of terrorism into the United States.

- Secure 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.

- Establish and administer rules, in accordance with Section 428 of the Act [6 U.S.C. 236], 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.

- Establish national immigration enforcement policies and priorities.

- Administer the customs laws of the United States, except as otherwise provided in the Act.

- Conduct the inspection and related administrative functions of the USDA transferred to the Secretary of Homeland Security under Section 421 of the Act [6 U.S.C. 231].

- In carrying out the foregoing responsibilities, ensure the speedy, orderly, and efficient flow of lawful traffic and commerce.

- Carry out the immigration enforcement functions specified under Section 441 of the Act [6 U.S.C. 251] that were vested by statute in, or performed by, the Commissioner of the INS (or any officer, employee, or component of the INS) immediately before the date on which the transfer of functions takes place.

b. *Assistant Secretary for Border Security:* Will report directly to the Under Secretary for Border and Transportation Security, and whose responsibilities will include the following:

- Establish and oversee the administration of the policies for performing such functions as are—

1. transferred to the Under Secretary for Border and Transportation Security by Section 441 of the Act and delegated to the Assistant Secretary by the Under Secretary for Border and Transportation Security; or

2. otherwise vested in the Assistant Secretary by law.

- Advise the Under Secretary for Border and Transportation Security with respect to any policy or operation of the Bureau of Border Security [now Bureau of Immigration and Customs Enforcement] that may affect the Bureau of Citizenship and Immigration.

c. *Director of the Office for Domestic Preparedness*—Will report directly to the Under Secretary for Border and Transportation Security and will have the primary responsibility within the Executive Branch of the Federal Government for the preparedness of the United States for acts of terrorism, including the following responsibilities:

- Coordinate preparedness efforts at the Federal level, and work 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.

- Coordinate or, as appropriate, consolidate communications and systems of communications relating to homeland security at all levels of government.

- Direct and supervise 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.

- Incorporate homeland security priorities into planning guidance on an agency level for the preparedness efforts of the Office for Domestic Preparedness.

- Provide agency-specific training for agents and analysts within the Department, other agencies, and State and local agencies, and international entities.

- As the lead executive branch agency for preparedness of the United States for acts of terrorism, cooperate closely with the FEMA, 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.

- Assist and support 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 Directorate.

- Supervise those elements of the Office of National Preparedness of FEMA that relate to terrorism, which shall be consolidated within the Department in the ODP established pursuant to Section 430 of the Act [6 U.S.C. 238].

4. Emergency Preparedness and Response

The Emergency Preparedness and Response Directorate will be headed by the Under Secretary for Emergency Preparedness and Response.

Under Secretary for EP&R: Will be responsible for all of those functions included within Section 502 of the Act [6 U.S.C. 312], including:

- Helping to ensure the effectiveness of emergency response providers to terrorist attacks, major disasters, and other emergencies.

- With respect to the Nuclear Incident Response Team (regardless of whether it is operating as an organizational unit of the Department pursuant to the Act):

1. Establishing standards and certifying when those standards have been met;

2. Conducting joint and other exercises and training and evaluating performance; and,

3. Providing funds to the Department of Energy and the Environmental Protection Agency, as appropriate, for homeland security planning, exercises and training, and equipment.

- Providing the Federal Government's response to terrorist attacks and major disasters, including:

1. Managing such response;

2. Directing the Domestic Emergency Support Team, the Strategic National Stockpile, the National Disaster Medical System, and (when operating as an organizational unit of the Department pursuant to the Act) the Nuclear Incident Response Team;

3. Overseeing the Metropolitan Medical Response System; and

4. Coordinating other Federal response resources in the event of a terrorist attack or major disaster.

- Aiding the recovery from terrorist attacks and major disasters;

- Building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and disasters.

- Consolidating existing Federal Government emergency response plans into a single, coordinated national response plan; and

- Developing comprehensive programs for developing interoperative communications technology, and helping to ensure that emergency response providers acquire such technology.

5. Other Officers and Functions

a. *Director of the Bureau of Citizenship and Immigration Services*: Will report directly to the Deputy Secretary; and will be responsible for the following:

- Establishing the policies for performing such functions as are transferred to the Director by Section 451 of the Act [6 U.S.C. 271] or otherwise vested in the Director by law.

- Oversight of the administration of such policies.

- Advising 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 [now Bureau of Immigration and Customs Enforcement] of the Department, including potentially conflicting policies or operations.

- Establishing national immigration services policies and priorities.

- Meeting regularly with the Ombudsman described in Section 452 of the Act [6 U.S.C. 272] to correct serious service problems identified by the Ombudsman.

- Establishing procedures requiring a formal response to any recommendations submitted in the Ombudsman's annual report to Congress within three months after its submission to Congress.

b. *Citizenship and Immigration Services Ombudsman*: Will report directly to the Deputy Secretary; and will be responsible for the following:

- Assisting individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;

- Identifying areas in which individuals and employers have problems in dealing with the Bureau of Citizenship and Immigration Services; and

- Proposing changes in the administrative practices of the Bureau of Citizenship and Immigration Services to mitigate identified problems.

(3) Specification of the funds available to each agency that will be transferred to the Department as a result of transfers under the plan.

- The attached tables [not set out in the Code] provide estimates of the funds available to the agencies and entities that will be transferred to the Department by operation of the Act. The two tables include total funding (mandatory and discretionary including fees) and discretionary funding net of fees. The tables provide the enacted levels for 2002 and 2002 supplementals, and the President's requested levels for 2003.

Because of the current state of the 2003 budget process, information concerning the funds that will be

available to each transferring agency on the date of the proposed transfers is not currently available and will not likely be available during the time period in which the President is to submit this Reorganization Plan. As additional information becomes available, it will be provided as may be required in accordance with the procedures under the Act for modification of this Plan or other applicable law.

(4) Specification of the proposed allocations within the Department of unexpended funds transferred in connection with transfers under the plan.

• The attached tables [not set out in the Code] provide estimates of the unobligated balances as of September 30, 2002, for the agencies and programs that will be transferred to the Department. The first table provides estimates of unobligated balances for the accounts that are moving to the Department in whole. The second table provides estimates of the unobligated balances in the accounts of which only a portion will be transferring to the new Department. These latter estimates, however, are of the unobligated balances for the full account, only a portion of which are associated with the activities that will be transferred to the Department. In addition, these unobligated balances are based on the Department of Treasury's estimates as of September 30, 2002, which are the latest available figures. Since October 1, 2002, Departments and agencies (except the Department of Defense) have been operating under continuing resolutions, and, as such, have been spending these balances to maintain current operations.

Authority to reallocate unexpended funds of agencies transferred under this Plan is found in H.J. Res. 124 [Pub. L. 107-294, Nov. 23, 2002, 116 Stat. 2062], the continuing resolution in effect currently and until January 11, 2003. The resolution provides authority for the Office of Management and Budget to transfer an amount not to exceed \$140,000,000 from unobligated balances of appropriations enacted before October 1, 2002 "for organizations and entities that will be transferred to the new Department and for salaries and expenses associated with the initiation of the Department." Such authority may be exercised upon providing 15 days' notice to the Appropriations Committees. We anticipate that it may be necessary to provide funding through such transfers both for transferring entities and for salaries and expenses associated with the initiation of the Department, including, for example, those associated with establishing the Office of the Secretary and other new offices provided for in the Act. Any plan to use such funding will follow the procedures required under the continuing resolution, including the provision of at least 15 days' notice to the Appropriations Committees.

(5) Specification of any proposed disposition of property, facilities, contracts, records, and other assets and obligations of agencies transferred under the plan.

• There is no intention to dispose of property, facilities, contracts, records, and other assets and obligations of agencies transferred under the plan. All of such assets and obligations will transfer with each agency pursuant to Section 1511(d)(1) of the Act [6 U.S.C. 551(d)(1)].

• Prior to and during the transition period (as defined by Section 1501(a)(2) of the Act [6 U.S.C. 541(a)(2)]), the Department may identify property, facilities, contracts, records, and other assets and obligations of agencies transferred that would be candidates for disposition due to duplication, non-use, obsolescence, and the like. If and when any such proposed dispositions are identified, we will follow provisions of the Act relating to modification of this plan or further notification of Congress.

(6) Specification of the proposed allocations within the Department of the functions of the agencies and subdivisions that are not related directly to securing the homeland.

• As agencies and subdivisions are transferred into the Department, any functions of those entities that are not directly related to securing the homeland will continue to be allocated to the agencies and subdivisions in which they are currently incorporated.

[Bureau of Border Security renamed Bureau of Immigration and Customs Enforcement, and Customs Service renamed Bureau of Customs and Border Protection, by Reorganization Plan Modification for the Department of Homeland Security, H. Doc. No. 108-32, 108th Congress, 1st Session, set out below.]

[For transfer of functions of Strategic National Stockpile to Secretary of Health and Human Services, with certain exceptions, see section 3(c)(1), (2) of Pub. L. 108-276, set out as a note under section 247d-6b of Title 42, The Public Health and Welfare.]

MESSAGE OF THE PRESIDENT

38 Weekly Compilation of Presidential Documents 2095, Dec. 2, 2002; H. Doc. No. 108-16, provided:

THE WHITE HOUSE, Washington, November 25, 2002.

Dear Mr. Speaker: (Dear Mr. President:)¹

Pursuant to section 1502 of the Homeland Security Act of 2002 [6 U.S.C. 542], I submit herewith the enclosed Reorganization Plan for the Department of Homeland Security. The Reorganization Plan provides information concerning the elements identified in section 1502(b), and is subject to modification pursuant to section 1502(d) of the Act. In accordance with section 1502(a) of the Act, please transmit this Reorganization Plan to the appropriate congressional committees.

The details of this Plan are set forth in the enclosed letter from the Director of the Office of Management and Budget. I concur with his comments and observations.

Sincerely,

GEORGE W. BUSH.

¹**Editorial note.** This is the text of identical letters addressed to the Speaker of the House of Representatives and the President of the Senate.

Enclosure.

REORGANIZATION PLAN MODIFICATION FOR THE DEPARTMENT OF HOMELAND SECURITY

January 30, 2003

H. Doc. No. 108-32, 108th Congress, 1st Session, provided:

INTRODUCTION

This Reorganization Plan Modification is submitted pursuant to the Homeland Security Act ("the Act") of 2002 [Pub. L. 107-296, Nov. 25, 2002, 116 Stat. 2135]. All elements of the Department of Homeland Security Reorganization Plan of November 25, 2002 ("the Plan") [set out above] remain as submitted except for those modifications addressed herein.

PURPOSE OF MODIFICATION

This modification of the Plan is to establish and specify organizational units within the Border and Transportation Security Directorate. This modification presents a structural change, but does not consolidate, discontinue, or diminish transferred agencies' current operations in the field.

PLAN MODIFICATIONS

(a) *Rename the "Bureau of Border Security" the "Bureau of Immigration and Customs Enforcement."* As required by the Act, this Bureau will be headed by an Assistant Secretary who will report directly to the Undersecretary for Border and Transportation Security.

This Bureau will comprise Immigration Naturalization Service (INS) interior enforcement functions, including the detention and removal program, the intelligence program, and the investigations program. At the same time, pursuant to this modification, the interior enforcement resources and missions of the Customs Service and the Federal Protective Service

will be added to this Bureau. The mission of the Bureau is:

1. To enforce the full range of immigration and customs laws within the interior of the United States; and,
2. To protect specified federal buildings.

The Assistant Secretary will:

1. Establish and oversee the administration of the policies for performing the detention and removal program, the intelligence program, and the investigation program functions as are—

(a) transferred to the Under Secretary for Border and Transportation Security by Section 441 of the Act [6 U.S.C. 251] and delegated to the Assistant Secretary by the Under Secretary for Border and Transportation Security; or

(b) otherwise vested in the Assistant Secretary by law.

2. Advise the Under Secretary for Border and Transportation Security with respect to any policy or operation of the Bureau that may affect the Bureau of Citizenship and Immigration Services established under subtitle E of the Act [probably means subtitle E of title IV of the Act, 6 U.S.C. 271 et seq.], including potentially conflicting policies and operations.

(b) *Rename the “Customs Service” the “Bureau of Customs and Border Protection.”* This Bureau will be headed by the Commissioner of Customs and will report to the Under Secretary for Border and Transportation Security.

The Bureau will contain the resources and missions relating to borders and ports of entry of the Customs Service, the INS, including the Border Patrol and the inspections program, and the agricultural inspections function of the Agricultural Quarantine Inspection program.

The Commissioner will:

1. Establish and oversee the administration of the policies for performing the Border Patrol and inspections program functions as are—

(a) transferred to the Under Secretary for Border and Transportation Security by Section 441 of the Act [6 U.S.C. 251] and delegated to the Commissioner by the Under Secretary for Border and Transportation Security; or

(b) otherwise vested in the Assistant Secretary [probably should be “Commissioner”] by law.

2. Advise the Under Secretary for Border and Transportation Security with respect to any policy or operation of the Bureau that may affect the Bureau of Citizenship and Immigration Services established under subtitle E of the Act [probably means subtitle E of title IV of the Act, 6 U.S.C. 271 et seq.], including potentially conflicting policies and operations.

IMPLEMENTATION DATE

March 1, 2003

ELEMENTS REQUIRED BY THE ACT TO BE SUBMITTED WITH MODIFIED PLAN

(1) *Identification of any functions of agencies transferred to the Department pursuant to this Act that will not be transferred to the Department under the plan.*

None.

(2) *Specification of the steps to be taken by the Secretary to organize the Department, including the delegation or assignment of functions transferred to the Department among officers of the Department in order to permit the Department to carry out the functions transferred under the plan.*
See plan modifications above.

(3) *Specification of the funds available to each agency that will be transferred to the Department as a result of transfers under the plan.*

The table attached at Tab A [not set out in the Code] provides estimates of the funds available to the agencies affected by this modification that will be transferred to the Department by operation of the Act. The table includes total funding (mandatory and discretionary including fees) and discretionary funding net of

fees. The table provides the President’s requested levels for 2003.

Because of the current state of the 2003 budget process, information concerning the funds that will be available to each transferring agency on the date of the proposed transfers is not currently available. As additional information becomes available, it will be provided as may be required in accordance with the procedures under the Act for modification of this Plan or other applicable law.

(4) *Specification of the proposed allocations within the Department of unexpended funds transferred in connection with transfers under the plan.*

The table attached at Tab B [not set out in the Code] provides updated estimates of the unobligated balances as of September 30, 2002, for the agencies affected by this modification that will be transferred to the Department. Since October 1, 2002, these agencies have been operating under continuing resolutions, and, as such, have been spending these balances to maintain current operations. As additional information becomes available, it will be provided as may be required in accordance with the procedures under the Act for modification of this Plan or other applicable law.

(5) *Specification of any proposed disposition of property, facilities, contracts, records, and other assets and obligations of agencies transferred under the plan.*

There is no intention to dispose of property, facilities, contracts, records, and other assets and obligations of agencies transferred under this modification. All such assets and obligations will transfer with each agency pursuant to Section 1511(d)(1) of the Act [6 U.S.C. 551(d)(1)].

(6) *Specification of the proposed allocations within the Department of the functions of the agencies and subdivisions that are not related directly to securing the homeland.*

The functions of the agencies affected by this modification that are not directly related to securing the homeland will continue to be performed by the bureaus formed by this planned reorganization.

MESSAGE OF THE PRESIDENT

39 Weekly Compilation of Presidential Documents 136, Feb. 3, 2003; H. Doc. No. 108–32, provided:

THE WHITE HOUSE, Washington, January 30, 2003.

Dear Mr. Speaker: (Dear Mr. President:)¹

Pursuant to section 1502 of the Homeland Security Act of 2002 [6 U.S.C. 542] (Public Law 107–296) (the “Act”), I submit herewith the enclosed Reorganization Plan Modification for the Department of Homeland Security (DHS), which represents a modification of certain aspects of the DHS Reorganization Plan [set out above] I submitted to you on November 25, 2002. The modification involves organizational units within the DHS Border and Transportation Security Directorate. The enclosed Reorganization Plan Modification provides information concerning the elements identified in section 1502(b), and is itself subject to modification pursuant to section 1502(d) of the Act. In accordance with section 1502(a) of the Act, please transmit this Reorganization Plan Modification to the appropriate congressional committees.

Sincerely,

GEORGE W. BUSH.

¹**Editorial note.** This is the text of identical letters addressed to the Speaker of the House of Representatives and the President of the Senate.

§ 543. Review of congressional committee structures

It is the sense of Congress that each House of Congress should review its committee structure in light of the reorganization of responsibilities within the executive branch by the establishment of the Department.

(Pub. L. 107–296, title XV, § 1503, Nov. 25, 2002, 116 Stat. 2309.)

PART B—TRANSITIONAL PROVISIONS

§ 551. Transitional authorities**(a) Provision of assistance by officials**

Until the transfer of an agency to the Department, any official having authority over or functions relating to the agency immediately before the effective date of this chapter shall provide to the Secretary such assistance, including the use of personnel and assets, as the Secretary may request in preparing for the transfer and integration of the agency into the Department.

(b) Services and personnel

During the transition period, upon the request of the Secretary, the head of any executive agency may, on a reimbursable basis, provide services or detail personnel to assist with the transition.

(c) Acting officials

(1) During the transition period, pending the advice and consent of the Senate to the appointment of an officer required by this chapter to be appointed by and with such advice and consent, the President may designate any officer whose appointment was required to be made by and with such advice and consent and who was such an officer immediately before the effective date of this chapter (and who continues in office) or immediately before such designation, to act in such office until the same is filled as provided in this chapter. While so acting, such officers shall receive compensation at the higher of—

(A) the rates provided by this chapter for the respective offices in which they act; or

(B) the rates provided for the offices held at the time of designation.

(2) Nothing in this chapter shall be understood to require the advice and consent of the Senate to the appointment by the President to a position in the Department of any officer whose agency is transferred to the Department pursuant to this chapter and whose duties following such transfer are germane to those performed before such transfer.

(d) Transfer of personnel, assets, obligations, and functions

Upon the transfer of an agency to the Department—

(1) the personnel, assets, and obligations held by or available in connection with the agency shall be transferred to the Secretary for appropriate allocation, subject to the approval of the Director of the Office of Management and Budget and in accordance with the provisions of section 1531(a)(2) of title 31; and

(2) the Secretary shall have all functions relating to the agency that any other official could by law exercise in relation to the agency immediately before such transfer, and shall have in addition all functions vested in the Secretary by this chapter or other law.

(e) Prohibition on use of transportation trust funds**(1) In general**

Notwithstanding any other provision of this chapter, no funds derived from the Highway

Trust Fund, Airport and Airway Trust Fund, Inland Waterway Trust Fund, or Harbor Maintenance Trust Fund, may be transferred to, made available to, or obligated by the Secretary or any other official in the Department.

(2) Limitation

This subsection shall not apply to security-related funds provided to the Federal Aviation Administration for fiscal years preceding fiscal year 2003 for (A) operations, (B) facilities and equipment, or (C) research, engineering, and development, and to any funds provided to the Coast Guard from the Sport Fish Restoration and Boating Trust Fund for boating safety programs.

(Pub. L. 107-296, title XV, § 1511, Nov. 25, 2002, 116 Stat. 2309; Pub. L. 108-7, div. L, § 103(4), Feb. 20, 2003, 117 Stat. 529; Pub. L. 109-59, title XI, § 11115(b)(2)(F), Aug. 10, 2005, 119 Stat. 1950.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsecs. (a) 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.

AMENDMENTS

2005—Subsec. (e)(2). Pub. L. 109-59 substituted “Sport Fish Restoration and Boating Trust Fund” for “Aquatic Resources Trust Fund of the Highway Trust Fund”.

2003—Subsec. (e)(2). Pub. L. 108-7 inserted before period at end “, and to any funds provided to the Coast Guard from the Aquatic Resources Trust Fund of the Highway Trust Fund for boating safety programs”.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-59, title XI, § 11115(d), Aug. 10, 2005, 119 Stat. 1950, provided that: “The amendments made by this section [amending this section and sections 9503 and 9504 of Title 26, Internal Revenue Code] shall take effect on October 1, 2005.”

§ 552. Savings provisions**(a) Completed administrative actions**

(1) Completed administrative actions of an agency shall not be affected by the enactment of this chapter or the transfer of such agency to the Department, but shall continue in effect according to their terms until amended, modified, superseded, terminated, set aside, or revoked in accordance with law by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(2) For purposes of paragraph (1), the term “completed administrative action” includes orders, determinations, rules, regulations, personnel actions, permits, agreements, grants, contracts, certificates, licenses, registrations, and privileges.

(b) Pending proceedings

Subject to the authority of the Secretary under this chapter—

(1) pending proceedings in an agency, including notices of proposed rulemaking, and applications for licenses, permits, certificates, grants, and financial assistance, shall continue notwithstanding the enactment of this chapter or the transfer of the agency to the Department, unless discontinued or modified under the same terms and conditions and to

the same extent that such discontinuance could have occurred if such enactment or transfer had not occurred; and

(2) orders issued in such proceedings, and appeals therefrom, and payments made pursuant to such orders, shall issue in the same manner and on the same terms as if this chapter had not been enacted or the agency had not been transferred, and any such orders shall continue in effect until amended, modified, superseded, terminated, set aside, or revoked by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(c) Pending civil actions

Subject to the authority of the Secretary under this chapter, pending civil actions shall continue notwithstanding the enactment of this chapter or the transfer of an agency to the Department, and in such civil actions, proceedings shall be had, appeals taken, and judgments rendered and enforced in the same manner and with the same effect as if such enactment or transfer had not occurred.

(d) References

References relating to an agency that is transferred to the Department in statutes, Executive orders, rules, regulations, directives, or delegations of authority that precede such transfer or the effective date of this chapter shall be deemed to refer, as appropriate, to the Department, to its officers, employees, or agents, or to its corresponding organizational units or functions. Statutory reporting requirements that applied in relation to such an agency immediately before the effective date of this chapter shall continue to apply following such transfer if they refer to the agency by name.

(e) Employment provisions

(1) Notwithstanding the generality of the foregoing (including subsections (a) and (d) of this section), in and for the Department the Secretary may, in regulations prescribed jointly with the Director of the Office of Personnel Management, adopt the rules, procedures, terms, and conditions, established by statute, rule, or regulation before the effective date of this chapter, relating to employment in any agency transferred to the Department pursuant to this chapter; and

(2) except as otherwise provided in this chapter, or under authority granted by this chapter, the transfer pursuant to this chapter of personnel shall not alter the terms and conditions of employment, including compensation, of any employee so transferred.

(f) Statutory reporting requirements

Any statutory reporting requirement that applied to an agency, transferred to the Department under this chapter, immediately before the effective date of this chapter shall continue to apply following that transfer if the statutory requirement refers to the agency by name.

(Pub. L. 107–296, title XV, § 1512, Nov. 25, 2002, 116 Stat. 2310.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in secs. (d), (e)(1), and (f), 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.

§ 552a. Savings provision of certain transfers made under the Homeland Security Act of 2002

The transfer of functions under subtitle B of title XI of the Homeland Security Act of 2002 (Public Law 107–296) [6 U.S.C. 531 et seq.] shall not affect any pending or completed administrative actions, including orders, determinations, rules, regulations, personnel actions, permits, agreements, grants, contracts, certificates, licenses, or registrations, in effect on the date immediately prior to the date of such transfer, or any proceeding, unless and until amended, modified, superseded, terminated, set aside, or revoked. Pending civil actions shall not be affected by such transfer of functions.

(Pub. L. 108–7, div. L, § 106, Feb. 20, 2003, 117 Stat. 531.)

REFERENCES IN TEXT

The Homeland Security Act of 2002, referred to in text, is Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2135, as amended, which is classified principally to this chapter. Subtitle B of title XI of the Act is classified principally to part B (§ 531 et seq.) of subchapter XI of 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

Section was enacted as part of the Homeland Security Act Amendments of 2003 and also as part of the Consolidated Appropriations Resolution, 2003, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

§ 553. Terminations

Except as otherwise provided in this chapter, whenever all the functions vested by law in any agency have been transferred pursuant to this chapter, each position and office the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V, of the Executive Schedule, shall terminate.

(Pub. L. 107–296, title XV, § 1513, Nov. 25, 2002, 116 Stat. 2311.)

REFERENCES IN TEXT

Levels II, III, IV, and V, of the Executive Schedule, referred to in text, are set out in sections 5313, 5314, 5315, and 5316, respectively, of Title 5, Government Organization and Employees.

§ 554. National identification system not authorized

Nothing in this chapter shall be construed to authorize the development of a national identification system or card.

(Pub. L. 107–296, title XV, § 1514, Nov. 25, 2002, 116 Stat. 2311.)

§ 555. Continuity of Inspector General oversight

Notwithstanding the transfer of an agency to the Department pursuant to this chapter, the Inspector General that exercised oversight of such agency prior to such transfer shall con-

tinue to exercise oversight of such agency during the period of time, if any, between the transfer of such agency to the Department pursuant to this chapter and the appointment of the Inspector General of the Department of Homeland Security in accordance with section 113(b) of this title.

(Pub. L. 107-296, title XV, § 1515, Nov. 25, 2002, 116 Stat. 2311.)

§ 556. Incidental transfers

The Director of the Office of Management and Budget, in consultation with the Secretary, is authorized and directed to make such additional incidental dispositions of personnel, assets, and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this chapter, as the Director may determine necessary to accomplish the purposes of this chapter.

(Pub. L. 107-296, title XV, § 1516, Nov. 25, 2002, 116 Stat. 2311.)

§ 557. Reference

With respect to any function transferred by or under this chapter (including under a reorganization plan that becomes effective under section 542 of this title) and exercised on or after the effective date of this chapter, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, other official, or component of the Department to which such function is so transferred.

(Pub. L. 107-296, title XV, § 1517, Nov. 25, 2002, 116 Stat. 2311.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in text, 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.