

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 Repealed.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**

Until September 30, 2009<sup>1</sup> and subject to subsection (d), the Secretary may carry out a pilot

<sup>1</sup> So in original. Probably should be followed by a comma.

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 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 non-traditional 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) Additional requirements**

**(1) In general**

The authority of the Secretary under this section shall terminate September 30, 2009, unless before that date the Secretary—

(A) issues policy guidance detailing the appropriate use of that authority; and

(B) provides training to each employee that is authorized to exercise that authority.

**(2) Report**

The Secretary shall provide an annual report to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Homeland Security of the House of Representatives detailing the projects for which the authority granted by subsection (a) was used, the rationale for its use, the funds spent using that authority, the outcome of each project for which that authority was used, and the results of any audits of such projects.

**(e) 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; Pub. L. 110–161, div. E, title V, § 572, Dec. 26, 2007, 121 Stat. 2093; Pub. L. 110–329, div. D, title V, § 537, Sept. 30, 2008, 122 Stat. 3687.)

REFERENCES IN TEXT

Section 845 of the National Defense Authorization Act for Fiscal Year 1994, referred to in subsecs. (a)(2) and (e), is section 845 of Pub. L. 103–160, which is set out as a note under section 2371 of Title 10, Armed Forces.

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.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–329, § 537(1), substituted “Until September 30, 2009 and subject to subsection (d),” for “Until September 30, 2008,” in introductory provisions.

Subsecs. (d), (e). Pub. L. 110–329, § 537(2), (3), added subsec. (d) and redesignated former subsec. (d) as (e).

2007—Subsec. (a). Pub. L. 110–161 substituted “Until September 30, 2008” for “During the 5-year period following the effective date of this chapter” in introductory provisions.

CHANGE OF NAME

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

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

Committee on 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 I<sup>1</sup> 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.

**§ 396. Lead system integrator; financial interests**

**(a) In general**

With respect to contracts entered into after July 1, 2007, and except as provided in subsection (b), no entity performing lead system integrator functions in the acquisition of a major system by the Department of Homeland Security may have any direct financial interest in the development or construction of any individual system or element of any system of systems.

**(b) Exception**

An entity described in subsection (a) may have a direct financial interest in the development or construction of an individual system or element of a system of systems if—

(1) the Secretary of Homeland Security certifies to the Committees on Appropriations of

<sup>1</sup> So in original.

the Senate and the House of Representatives, the Committee on Homeland Security of the House of Representatives, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Commerce, Science and Transportation of the Senate that—

(A) the entity was selected by the Department of Homeland Security as a contractor to develop or construct the system or element concerned through the use of competitive procedures; and

(B) the Department took appropriate steps to prevent any organizational conflict of interest in the selection process; or

(2) the entity was selected by a subcontractor to serve as a lower-tier subcontractor, through a process over which the entity exercised no control.

**(c) Construction**

Nothing in this section shall be construed to preclude an entity described in subsection (a) from performing work necessary to integrate two or more individual systems or elements of a system of systems with each other.

**(d) Regulations update**

Not later than July 1, 2007, the Secretary of Homeland Security shall update the acquisition regulations of the Department of Homeland Security in order to specify fully in such regulations the matters with respect to lead system integrators set forth in this section. Included in such regulations shall be: (1) a precise and comprehensive definition of the term “lead system integrator”, modeled after that used by the Department of Defense; and (2) a specification of various types of contracts and fee structures that are appropriate for use by lead system integrators in the production, fielding, and sustainment of complex systems.

(Pub. L. 110-28, title VI, §6405, May 25, 2007, 121 Stat. 176.)

CODIFICATION

Section was enacted as part of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

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;

(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.

#### § 414. Homeland Security Rotation Program

##### (a)<sup>1</sup> Establishment

###### (1) In general

Not later than 180 days after October 4, 2006, the Secretary shall establish the Homeland Security Rotation Program (in this section referred to as the “Rotation Program”) for employees of the Department. The Rotation Program shall use applicable best practices, including those from the Chief Human Capital Officers Council.

###### (2) Goals

The Rotation Program established by the Secretary shall—

(A) be established in accordance with the Human Capital Strategic Plan of the Department;

(B) provide middle and senior level employees in the Department the opportunity to broaden their knowledge through exposure to other components of the Department;

(C) expand the knowledge base of the Department by providing for rotational assignments of employees to other components;

(D) build professional relationships and contacts among the employees in the Department;

(E) invigorate the workforce with exciting and professionally rewarding opportunities;

(F) incorporate Department human capital strategic plans and activities, and address critical human capital deficiencies, recruitment and retention efforts, and succession planning within the Federal workforce of the Department; and

(G) complement and incorporate (but not replace) rotational programs within the Department in effect on October 4, 2006.

##### (3) Administration

###### (A) In general

The Chief Human Capital Officer shall administer the Rotation Program.

###### (B) Responsibilities

The Chief Human Capital Officer shall—

(i) provide oversight of the establishment and implementation of the Rotation Program;

(ii) establish a framework that supports the goals of the Rotation Program and promotes cross-disciplinary rotational opportunities;

(iii) establish eligibility for employees to participate in the Rotation Program and select participants from employees who apply;

(iv) establish incentives for employees to participate in the Rotation Program, including promotions and employment preferences;

(v) ensure that the Rotation Program provides professional education and training;

(vi) ensure that the Rotation Program develops qualified employees and future leaders with broad-based experience throughout the Department;

(vii) provide for greater interaction among employees in components of the Department; and

(viii) coordinate with rotational programs within the Department in effect on October 4, 2006.

##### (4) Allowances, privileges, and benefits

All allowances, privileges, rights, seniority, and other benefits of employees participating in the Rotation Program shall be preserved.

##### (5) Reporting

Not later than 180 days after the date of the establishment of the Rotation Program, the Secretary shall submit a report on the status of the Rotation Program, including a description of the Rotation Program, the number of employees participating, and how the Rotation Program is used in succession planning and leadership development to the appropriate committees of Congress.

(Pub. L. 107-296, title VIII, §844, as added Pub. L. 109-295, title VI, §622(a), Oct. 4, 2006, 120 Stat. 1416.)

#### § 415. Homeland Security Education Program

##### (a) Establishment

The Secretary, acting through the Administrator, shall establish a graduate-level Homeland Security Education Program in the National Capital Region to provide educational opportunities to senior Federal officials and selected State and local officials with homeland security and emergency management responsibilities. The Administrator shall appoint an individual to administer the activities under this section.

##### (b) Leveraging of existing resources

To maximize efficiency and effectiveness in carrying out the Program, the Administrator shall use existing Department-reviewed Master's Degree curricula in homeland security, including curricula pending accreditation, together with associated learning materials, quality assessment tools, digital libraries, exercise systems and other educational facilities, including the National Domestic Preparedness Consortium, the National Fire Academy, and the Emergency Management Institute. The Administrator may develop additional educational programs, as appropriate.

##### (c) Student enrollment

###### (1) Sources

The student body of the Program shall include officials from Federal, State, local, and tribal governments, and from other sources designated by the Administrator.

###### (2) Enrollment priorities and selection criteria

The Administrator shall establish policies governing student enrollment priorities and selection criteria that are consistent with the mission of the Program.

<sup>1</sup> So in original. There is no subsec. (b).

**(3) Diversity**

The Administrator shall take reasonable steps to ensure that the student body represents racial, gender, and ethnic diversity.

**(d) Service commitment****(1) In general**

Before any employee selected for the Program may be assigned to participate in the program, the employee shall agree in writing—

(A) to continue in the service of the agency sponsoring the employee during the 2-year period beginning on the date on which the employee completes the program, unless the employee is involuntarily separated from the service of that agency for reasons other than a reduction in force; and

(B) to pay to the Government the amount of the additional expenses incurred by the Government in connection with the employee's education if the employee is voluntarily separated from the service to the agency before the end of the period described in subparagraph (A).

**(2) Payment of expenses****(A) Exemption**

An employee who leaves the service of the sponsoring agency to enter into the service of another agency in any branch of the Government shall not be required to make a payment under paragraph (1)(B), unless the head of the agency that sponsored the education of the employee notifies that employee before the date on which the employee enters the service of the other agency that payment is required under that paragraph.

**(B) Amount of payment**

If an employee is required to make a payment under paragraph (1)(B), the agency that sponsored the education of the employee shall determine the amount of the payment, except that such amount may not exceed the pro rata share of the expenses incurred for the time remaining in the 2-year period.

**(3) Recovery of payment**

If an employee who is required to make a payment under this subsection does not make the payment, a sum equal to the amount of the expenses incurred by the Government for the education of that employee is recoverable by the Government from the employee or his estate by—

(A) setoff against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the Government; or

(B) such other method as is provided by law<sup>1</sup> for the recovery of amounts owing to the Government.

(Pub. L. 107-296, title VIII, § 845, as added Pub. L. 109-295, title VI, § 623(a), Oct. 4, 2006, 120 Stat. 1418.)

<sup>1</sup> So in original. Probably should be "law".

## CHANGE OF NAME

The reference to the "Administrator" in text probably means the Administrator of the Federal Emergency Management Agency. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109-295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109-295, set out as a note under section 313 of this title.

## 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 section 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 au-

thorities 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.

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

**§ 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 avail-

able 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 recovery 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 customers (“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)<sup>1</sup> 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;

<sup>1</sup> So in original. No subpar. (B) has been enacted.

(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 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 Program 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) Redelelegation 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,<sup>1</sup> 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

<sup>1</sup> See References in Text note below.

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.

(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**

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) 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.

**(e) 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.

**(f) 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 De-

partment 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; Pub. L. 109–469, title I, § 103(f)(2), Dec. 29, 2006, 120 Stat. 3510.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–469, § 103(f)(2)(A), substituted “The” for “Except as provided in subsection (d) of this section, the”.

Subsecs. (d) to (g). Pub. L. 109–469, § 103(f)(2)(B), redesignated subsecs. (e) to (g) as (d) to (f), respectively, and struck out heading and text of former subsec. (d). Text read as follows: “The Director of the Office of Counter-narcotics 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.”

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.

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

**§ 469. Fees for credentialing and background investigations in transportation**

**(a) Fees**

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.

**(b) Recurrent training of aliens in operation of aircraft**

**(1) Process for reviewing threat assessments**

Notwithstanding section 44939(e) of title 49, the Secretary shall establish a process to ensure that an alien (as defined in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))) applying for recurrent training in the operation of any aircraft is properly identified and has not, since the time of any prior threat assessment conducted pursuant to section 44939(a) of such title, become a risk to aviation or national security.

**(2) Interruption of training**

If the Secretary determines, in carrying out the process established under paragraph (1), that an alien is a present risk to aviation or national security, the Secretary shall immediately notify the person providing the training of the determination and that person shall not provide the training or if such training has commenced that person shall immediately terminate the training.

**(3) Fees**

The Secretary may charge reasonable fees under subsection (a) for providing credentialing and background investigations for aliens in connection with the process for recurrent training established under paragraph (1). Such fees shall be promulgated by notice in the Federal Register.

(Pub. L. 108-90, title V, § 520, Oct. 1, 2003, 117 Stat. 1156; Pub. L. 110-329, div. D, title V, § 543, Sept. 30, 2008, 122 Stat. 3689.)

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.

AMENDMENTS

2008—Pub. L. 110-329 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

**§ 470. Disclosures regarding homeland security grants**

**(a) Definitions**

In this section:

**(1) Homeland security grant**

The term “homeland security grant” means any grant made or administered by the Department, including—

- (A) the State Homeland Security Grant Program;
- (B) the Urban Area Security Initiative Grant Program;
- (C) the Law Enforcement Terrorism Prevention Program;
- (D) the Citizen Corps; and
- (E) the Metropolitan Medical Response System.

**(2) Local government**

The term “local government” has the meaning given the term in section 101 of this title.

**(b) Required disclosures**

Each State or local government that receives a homeland security grant shall, not later than 12 months after the later of October 13, 2006, and the date of receipt of such grant, and every 12 months thereafter until all funds provided under such grant are expended, submit a report to the Secretary that contains a list of all expenditures made by such State or local government using funds from such grant.

(Pub. L. 109-347, title VII, § 702, Oct. 13, 2006, 120 Stat. 1943.)

CODIFICATION

Section was enacted as part of the Security and Accountability For Every Port Act of 2006, also known as the SAFE Port Act, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

DEFINITIONS

For definitions of “Department” and “Secretary” as used in this section, see section 901 of this title.

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 rec-

onciled 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.

REPORTS TO CONGRESS

Pub. L. 110-28, title III, May 25, 2007, 121 Stat. 139, provided in part: “That starting July 1, 2007, the Secretary of Homeland Security shall submit quarterly reports to the Committees on Appropriations of the Senate and the House of Representatives detailing the information required in House Report 110-107.”

**§ 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 redissemination 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 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. 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) Homeland security information

The term “homeland security information” has the meaning given that term in section 482(f) of this title.

#### (2) 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.

#### (3) Information sharing environment

The terms “information sharing environment” and “ISE” mean an approach that facilitates the sharing of terrorism and homeland security information, which may include any method determined necessary and appropriate for carrying out this section.

#### (4) Program manager

The term “program manager” means the program manager designated under subsection (f) of this section.

#### (5) Terrorism information

The term “terrorism information”—

(A) means all information, whether collected, produced, or distributed by intelligence, law enforcement, military, homeland security, or other activities relating to—

(i) 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;

(ii) threats posed by such groups or individuals to the United States, United States persons, or United States interests, or to those of other nations;

(iii) communications of or by such groups or individuals; or

(iv) groups or individuals reasonably believed to be assisting or associated with such groups or individuals; and

(B) includes weapons of mass destruction information.

#### (6) Weapons of mass destruction information

The term “weapons of mass destruction information” means information that could reasonably be expected to assist in the development, proliferation, or use of a weapon of mass destruction (including a chemical, biological, radiological, or nuclear weapon) that could be used by a terrorist or a terrorist organization against the United States, including informa-

tion about the location of any stockpile of nuclear materials that could be exploited for use in such a weapon that could be used by a terrorist or a terrorist organization against the United States.

**(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;

(I) incorporates strong mechanisms to enhance accountability and facilitate oversight, including audits, authentication, and access controls;

(J) integrates the information within the scope of the information sharing environment, including any such information in legacy technologies;

(K) integrates technologies, including all legacy technologies, through Internet-based services, consistent with appropriate security protocols and safeguards, to enable con-

nectivity among required users at the Federal, State, and local levels;

(L) allows the full range of analytic and operational activities without the need to centralize information within the scope of the information sharing environment;

(M) permits analysts to collaborate both independently and in a group (commonly known as “collective and noncollective collaboration”), and across multiple levels of national security information and controlled unclassified information;

(N) provides a resolution process that enables changes by authorized officials regarding rules and policies for the access, use, and retention of information within the scope of the information sharing environment; and

(O) incorporates continuous, real-time, and immutable audit capabilities, to the maximum extent practicable.

**(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 2000ee of title 42, 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 toward 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,<sup>1</sup> 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 Presi-

dent 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 until removed from service or replaced by the President (at the President's sole discretion). The program manager, in consultation with the head of any affected department or agency, shall have and exercise governmentwide authority over the sharing of information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information, by all Federal departments, agencies, and components, irrespective of the Federal department, agency, or component in which the program manager may be administratively located, except as otherwise expressly provided by law.

**(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, as appropriate, to foster the development and proper operation of the ISE;

(iii) consistent with the direction and policies issued by the President, the Director of National Intelligence, and the Director of the Office of Management and Budget, issue governmentwide procedures, guidelines, instructions, and functional standards, as appropriate, for the management, development, and proper operation of the ISE;

(iv) identify and resolve information sharing disputes between Federal departments, agencies, and components; and

(v) 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

<sup>1</sup> See References in Text note below.

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 until removed from service or 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;

(G) assist the program manager in identifying and resolving information sharing disputes between Federal departments, agencies, and components;

(H) identify appropriate personnel for assignment to the program manager to support staffing needs identified by the program manager; and

(I) 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 exper-

tise in policy, technical matters, and operational matters relating to the ISE.

**(4) Inapplicability of Federal Advisory Committee Act**

The Information Sharing Council (including any subsidiary group of the Information Sharing Council) shall not be subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App.).

**(5) Detailees**

Upon a request by the Director of National Intelligence, the departments and agencies represented on the Information Sharing Council shall detail to the program manager, on a reimbursable basis, appropriate personnel identified under paragraph (2)(H).

**(h) Performance management reports**

**(1) In general**

Not later than two years after December 17, 2004, and not later than June 30 of each year 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) Report on the information sharing environment****(1) In general**

Not later than 180 days after August 3, 2007, the President shall report to the Committee on Homeland Security and Governmental Affairs of the Senate, the Select Committee on Intelligence of the Senate, the Committee on Homeland Security of the House of Representatives, and the Permanent Select Committee on Intelligence of the House of Representatives on the feasibility of—

(A) eliminating the use of any marking or process (including “Originator Control”) intended to, or having the effect of, restricting the sharing of information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information, between and among participants in the information sharing environment, unless the President has—

(i) specifically exempted categories of information from such elimination; and

(ii) reported that exemption to the committees of Congress described in the matter preceding this subparagraph; and

(B) continuing to use Federal agency standards in effect on August 3, 2007, for the collection, sharing, and access to information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information, relating to citizens and lawful permanent residents;

(C) replacing the standards described in subparagraph (B) with a standard that would allow mission-based or threat-based permission to access or share information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information, for a particular purpose that the Federal Government, through an appropriate process established in consultation with the Privacy and

Civil Liberties Oversight Board established under section 2000ee of title 42, has determined to be lawfully permissible for a particular agency, component, or employee (commonly known as an “authorized use” standard); and

(D) the use of anonymized data by Federal departments, agencies, or components collecting, possessing, disseminating, or handling information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information, in any cases in which—

(i) the use of such information is reasonably expected to produce results materially equivalent to the use of information that is transferred or stored in a non-anonymized form; and

(ii) such use is consistent with any mission of that department, agency, or component (including any mission under a Federal statute or directive of the President) that involves the storage, retention, sharing, or exchange of personally identifiable information.

**(2) Definition**

In this subsection, the term “anonymized data” means data in which the individual to whom the data pertains is not identifiable with reasonable efforts, including information that has been encrypted or hidden through the use of other technology.

**(k) Additional positions**

The program manager is authorized to hire not more than 40 full-time employees to assist the program manager in—

(1) activities associated with the implementation of the information sharing environment, including—

(A) implementing the requirements under subsection (b)(2); and

(B) any additional implementation initiatives to enhance and expedite the creation of the information sharing environment; and

(2) identifying and resolving information sharing disputes between Federal departments, agencies, and components under subsection (f)(2)(A)(iv).

**(l) Authorization of appropriations**

There is authorized to be appropriated to carry out this section \$30,000,000 for each of fiscal years 2008 and 2009.

(Pub. L. 108-458, title I, § 1016, Dec. 17, 2004, 118 Stat. 3664; Pub. L. 110-53, title V, § 504, Aug. 3, 2007, 121 Stat. 313.)

## REFERENCES IN TEXT

Executive Order 13356, referred to in subsec. (a)(2), 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.

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.

#### AMENDMENTS

2007—Subsec. (a)(1), (2). Pub. L. 110-53, § 504(1)(A), (B), added par. (1) and redesignated former par. (1) as (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 110-53, § 504(1)(C), added par. (3) and struck out heading and text of former par. (3). Text read as follows: “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.”

Pub. L. 110-53, § 504(1)(A), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 110-53, § 504(1)(A), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 110-53, § 504(1)(D), added par. (5) and struck out heading and text of former par. (5). Text read as follows: “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.”

Pub. L. 110-53, § 504(1)(A), redesignated par. (4) as (5).

Subsec. (a)(6). Pub. L. 110-53, § 504(1)(E), added par. (6).

Subsec. (b)(2)(J) to (O). Pub. L. 110-53, § 504(2), added subpars. (J) to (O).

Subsec. (f)(1). Pub. L. 110-53, § 504(3)(A), substituted “until removed from service or replaced” for “during the two-year period beginning on the date of designation under this paragraph unless sooner removed from service and replaced” and “The program manager, in consultation with the head of any affected department or agency, shall have and exercise governmentwide authority over the sharing of information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information, by all Federal departments, agencies, and components, irrespective of the Federal department, agency, or component in which the program manager may be administratively located, except as otherwise expressly provided by law” for “The program manager shall have and exercise governmentwide authority”.

Subsec. (f)(2)(A)(ii) to (v). Pub. L. 110-53, § 504(3)(B), added cls. (ii) to (iv), redesignated former cl. (iii) as (v), and struck out former cl. (ii) which read as follows: “assist in the development of policies, procedures, guidelines, rules, and standards as appropriate to foster the development and proper operation of the ISE; and”.

Subsec. (g)(1). Pub. L. 110-53, § 504(4)(A), substituted “until removed from service or replaced” for “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”.

Subsec. (g)(2)(G) to (I). Pub. L. 110-53, § 504(4)(B), added subpars. (G) and (H) and redesignated former subpar. (G) as (I).

Subsec. (g)(4). Pub. L. 110-53, § 504(4)(C), inserted “(including any subsidiary group of the Information Sharing Council)” before “shall not be subject”.

Subsec. (g)(5). Pub. L. 110-53, § 504(4)(D), added par. (5).

Subsec. (h)(1). Pub. L. 110-53, § 504(5), substituted “and not later than June 30 of each year thereafter” for “and annually thereafter”.

Subsecs. (j) to (l). Pub. L. 110-53, § 504(6), added subsecs. (j) to (l) and struck out heading and text of former subsec. (j). Text read as follows: “There is authorized to be appropriated to carry out this section \$20,000,000 for each of fiscal years 2005 and 2006.”

#### EFFECTIVE DATE

For Determination by President that section takes effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of Title 50, War and National Defense.

Section effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 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.

#### PROCEDURES TO CLEAR INDIVIDUALS FROM TERRORIST DATABASE LISTS

Pub. L. 109-295, title V, § 556, Oct. 4, 2006, 120 Stat. 1391, provided that: “Not later than six months after the date of enactment of this Act [Oct. 4, 2006], the Secretary of Homeland Security shall establish revised procedures for expeditiously clearing individuals whose names have been mistakenly placed on a terrorist database list or who have names identical or similar to individuals on a terrorist database list. The Secretary shall advise Congress of the procedures established.”

#### 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.

ASSIGNMENT OF CERTAIN FUNCTIONS UNDER THE INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004

Memorandum of President of the United States, Nov. 14, 2006, 71 F.R. 67029, provided:

Memorandum for the Director of National Intelligence

By the authority vested in me as President by the Constitution and laws of the United States, including section 301 of title 3, United States Code, the reporting function of the President under section 1016(e) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458, 118 Stat. 3638) is hereby assigned to the Director of National Intelligence (Director).

The Director shall perform such function in a manner consistent with the President’s constitutional authority to withhold information the disclosure of which could impair foreign relations, national security, the deliberative processes of the Executive, or the performance of the Executive’s constitutional duties.

Any reference in this memorandum to the provision of any Act shall be deemed to include references to any hereafter-enacted provision of law that is the same or substantially the same as such provision.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

Memorandum of President of the United States, Apr. 10, 2007, 72 F.R. 18561, provided:

Memorandum for the Director of National Intelligence

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 301 of title 3, United States Code, the functions of the President under section 1016(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458) (the “Act”) are hereby assigned to the Director of National Intelligence (Director).

The Director shall perform such functions in a manner consistent with direction and guidance issued by the President, including (1) the Memorandum for the Heads of Executive Departments and Agencies of June 2, 2005, entitled “Strengthening Information Sharing, Access, and Integration—Organizational, Management, and Policy Development Structures for Creating the Terrorism Information Sharing Environment,” and (2) the Memorandum for the Heads of Executive Departments and Agencies of December 16, 2005, entitled “Guidelines and Requirements in Support of the Information Sharing Environment;” provided that the Director shall ensure that the official within the Office of the Director of National Intelligence previously designated as the program manager responsible for information sharing across the Federal Government pursuant to the Act shall be the assistant to the Director in carrying out the functions delegated by this memorandum.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

Memorandum of President of the United States, Sept. 8, 2007, 72 F.R. 52279, provided:

Memorandum for the Secretary of State[,] the Secretary of Defense[,] the Attorney General[,] the Secretary of Energy[,] the Secretary of Homeland Security[, and] the Director of National Intelligence

By the authority vested in me as President by the Constitution and laws of the United States, including section 301 of title 3, United States Code, the reporting functions of the President under subsections (h) and (j) of section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458), as amended by the Implementations Recommendations of the 9/11 Commission Act of 2007 (Public Law 110-53) (IRTPA), are hereby assigned to the Director of National Intelligence (Director). The Director shall consult the Secretaries of State, Defense, Energy, Homeland Security, and the Attorney General in performing such functions.

Heads of departments and agencies shall, to the extent permitted by law, furnish to the Director information that the Director requests to perform such functions, in the format and on the schedule specified by the Director.

The Director shall perform such functions in a manner consistent with the President’s constitutional authority to withhold information the disclosure of which could impair foreign relations, national security, the deliberative processes of the Executive, and the performance of the Executive’s constitutional duties.

Any reference in this memorandum to the provision of IRTPA shall be deemed to include references to any hereafter-enacted provision of law that is the same or substantially the same as such provision.

The Director is authorized and directed to publish this memorandum in the Federal Register.

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.

#### PART J—SECURE HANDLING OF AMMONIUM NITRATE

#### § 488. Definitions

In this part:

##### (1) Ammonium nitrate

The term “ammonium nitrate” means—

(A) solid ammonium nitrate that is chiefly the ammonium salt of nitric acid and contains not less than 33 percent nitrogen by weight; and

(B) any mixture containing a percentage of ammonium nitrate that is equal to or greater than the percentage determined by the Secretary under section 488a(b) of this title.

##### (2) Ammonium nitrate facility

The term “ammonium nitrate facility” means any entity that produces, sells or otherwise transfers ownership of, or provides application services for ammonium nitrate.

##### (3) Ammonium nitrate purchaser

The term “ammonium nitrate purchaser” means any person who purchases ammonium nitrate from an ammonium nitrate facility.

(Pub. L. 107-296, title VIII, §899A, as added Pub. L. 110-161, div. E, title V, §563(a), Dec. 26, 2007, 121 Stat. 2083.)

#### § 488a. Regulation of the sale and transfer of ammonium nitrate

##### (a) In general

The Secretary shall regulate the sale and transfer of ammonium nitrate by an ammonium nitrate facility in accordance with this part to prevent the misappropriation or use of ammonium nitrate in an act of terrorism.

##### (b) Ammonium nitrate mixtures

Not later than 90 days after December 26, 2007, the Secretary, in consultation with the heads of appropriate Federal departments and agencies (including the Secretary of Agriculture), shall, after notice and an opportunity for comment, establish a threshold percentage for ammonium nitrate in a substance.

##### (c) Registration of owners of ammonium nitrate facilities

###### (1) Registration

The Secretary shall establish a process by which any person that—

(A) owns an ammonium nitrate facility is required to register with the Department; and

(B) registers under subparagraph (A) is issued a registration number for purposes of this part.

**(2) Registration information**

Any person applying to register under paragraph (1) shall submit to the Secretary—

(A) the name, address, and telephone number of each ammonium nitrate facility owned by that person;

(B) the name of the person designated by that person as the point of contact for each such facility, for purposes of this part; and

(C) such other information as the Secretary may determine is appropriate.

**(d) Registration of ammonium nitrate purchasers**

**(1) Registration**

The Secretary shall establish a process by which any person that—

(A) intends to be an ammonium nitrate purchaser is required to register with the Department; and

(B) registers under subparagraph (A) is issued a registration number for purposes of this part.

**(2) Registration information**

Any person applying to register under paragraph (1) as an ammonium nitrate purchaser shall submit to the Secretary—

(A) the name, address, and telephone number of the applicant; and

(B) the intended use of ammonium nitrate to be purchased by the applicant.

**(e) Records**

**(1) Maintenance of records**

The owner of an ammonium nitrate facility shall—

(A) maintain a record of each sale or transfer of ammonium nitrate, during the two-year period beginning on the date of that sale or transfer; and

(B) include in such record the information described in paragraph (2).

**(2) Specific information required**

For each sale or transfer of ammonium nitrate, the owner of an ammonium nitrate facility shall—

(A) record the name, address, telephone number, and registration number issued under subsection (c) or (d) of each person that purchases ammonium nitrate, in a manner prescribed by the Secretary;

(B) if applicable, record the name, address, and telephone number of an agent acting on behalf of the person described in subparagraph (A), at the point of sale;

(C) record the date and quantity of ammonium nitrate sold or transferred; and

(D) verify the identity of the persons described in subparagraphs (A) and (B), as applicable, in accordance with a procedure established by the Secretary.

**(3) Protection of information**

In maintaining records in accordance with paragraph (1), the owner of an ammonium ni-

trate facility shall take reasonable actions to ensure the protection of the information included in such records.

**(f) Exemption for explosive purposes**

The Secretary may exempt from this part a person producing, selling, or purchasing ammonium nitrate exclusively for use in the production of an explosive under a license or permit issued under chapter 40 of title 18.

**(g) Consultation**

In carrying out this section, the Secretary shall consult with the Secretary of Agriculture, States, and appropriate private sector entities, to ensure that the access of agricultural producers to ammonium nitrate is not unduly burdened.

**(h) Data confidentiality**

**(1) In general**

Notwithstanding section 552 of title 5 or the USA PATRIOT ACT (Public Law 107-56; 115 Stat. 272), and except as provided in paragraph (2), the Secretary may not disclose to any person any information obtained under this part.

**(2) Exception**

The Secretary may disclose any information obtained by the Secretary under this part to—

(A) an officer or employee of the United States, or a person that has entered into a contract with the United States, who has a need to know the information to perform the duties of the officer, employee, or person; or

(B) to a State agency under section 488c of this title, under appropriate arrangements to ensure the protection of the information.

**(i) Registration procedures and check of terrorist screening database**

**(1) Registration procedures**

**(A) Generally**

The Secretary shall establish procedures to efficiently receive applications for registration numbers under this part, conduct the checks required under paragraph (2), and promptly issue or deny a registration number.

**(B) Initial six-month registration period**

The Secretary shall take steps to maximize the number of registration applications that are submitted and processed during the six-month period described in section 488e(e) of this title.

**(2) Check of terrorist screening database**

**(A) Check required**

The Secretary shall conduct a check of appropriate identifying information of any person seeking to register with the Department under subsection (c) or (d) against identifying information that appears in the terrorist screening database of the Department.

**(B) Authority to deny registration number**

If the identifying information of a person seeking to register with the Department under subsection (c) or (d) appears in the terrorist screening database of the Department, the Secretary may deny issuance of a registration number under this part.

**(3) Expedited review of applications****(A) In general**

Following the six-month period described in section 488e(e) of this title, the Secretary shall, to the extent practicable, issue or deny registration numbers under this part not later than 72 hours after the time the Secretary receives a complete registration application, unless the Secretary determines, in the interest of national security, that additional time is necessary to review an application.

**(B) Notice of application status**

In all cases, the Secretary shall notify a person seeking to register with the Department under subsection (c) or (d) of the status of the application of that person not later than 72 hours after the time the Secretary receives a complete registration application.

**(4) Expedited appeals process****(A) Requirement****(i) Appeals process**

The Secretary shall establish an expedited appeals process for persons denied a registration number under this part.

**(ii) Time period for resolution**

The Secretary shall, to the extent practicable, resolve appeals not later than 72 hours after receiving a complete request for appeal unless the Secretary determines, in the interest of national security, that additional time is necessary to resolve an appeal.

**(B) Consultation**

The Secretary, in developing the appeals process under subparagraph (A), shall consult with appropriate stakeholders.

**(C) Guidance**

The Secretary shall provide guidance regarding the procedures and information required for an appeal under subparagraph (A) to any person denied a registration number under this part.

**(5) Restrictions on use and maintenance of information****(A) In general**

Any information constituting grounds for denial of a registration number under this section shall be maintained confidentially by the Secretary and may be used only for making determinations under this section.

**(B) Sharing of information**

Notwithstanding any other provision of this part, the Secretary may share any such information with Federal, State, local, and tribal law enforcement agencies, as appropriate.

**(6) Registration information****(A) Authority to require information**

The Secretary may require a person applying for a registration number under this part to submit such information as may be necessary to carry out the requirements of this section.

**(B) Requirement to update information**

The Secretary may require persons issued a registration under this part to update registration information submitted to the Secretary under this part, as appropriate.

**(7) Re-checks against terrorist screening database****(A) Re-checks**

The Secretary shall, as appropriate, re-check persons provided a registration number pursuant to this part against the terrorist screening database of the Department, and may revoke such registration number if the Secretary determines such person may pose a threat to national security.

**(B) Notice of revocation**

The Secretary shall, as appropriate, provide prior notice to a person whose registration number is revoked under this section and such person shall have an opportunity to appeal, as provided in paragraph (4).

(Pub. L. 107-296, title VIII, §899B, as added Pub. L. 110-161, div. E, title V, §563(a), Dec. 26, 2007, 121 Stat. 2084.)

## REFERENCES IN TEXT

The USA PATRIOT ACT, referred to in subsec. (h)(1), is Pub. L. 107-56, Oct. 26, 2001, 115 Stat. 272, also known as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism 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.

**§ 488b. Inspection and auditing of records**

The Secretary shall establish a process for the periodic inspection and auditing of the records maintained by owners of ammonium nitrate facilities for the purpose of monitoring compliance with this part or for the purpose of deterring or preventing the misappropriation or use of ammonium nitrate in an act of terrorism.

(Pub. L. 107-296, title VIII, §899C, as added Pub. L. 110-161, div. E, title V, §563(a), Dec. 26, 2007, 121 Stat. 2087.)

**§ 488c. Administrative provisions****(a) Cooperative agreements**

The Secretary—

(1) may enter into a cooperative agreement with the Secretary of Agriculture, or the head of any State department of agriculture or its designee involved in agricultural regulation, in consultation with the State agency responsible for homeland security, to carry out the provisions of this part; and

(2) wherever possible, shall seek to cooperate with State agencies or their designees that oversee ammonium nitrate facility operations when seeking cooperative agreements to implement the registration and enforcement provisions of this part.

**(b) Delegation****(1) Authority**

The Secretary may delegate to a State the authority to assist the Secretary in the administration and enforcement of this part.

**(2) Delegation required**

At the request of a Governor of a State, the Secretary shall delegate to that State the authority to carry out functions under sections 488a and 488b of this title, if the Secretary determines that the State is capable of satisfactorily carrying out such functions.

**(3) Funding**

Subject to the availability of appropriations, if the Secretary delegates functions to a State under this subsection, the Secretary shall provide to that State sufficient funds to carry out the delegated functions.

**(c) Provision of guidance and notification materials to ammonium nitrate facilities****(1) Guidance**

The Secretary shall make available to each owner of an ammonium nitrate facility registered under section 488a(c)(1) of this title guidance on—

(A) the identification of suspicious ammonium nitrate purchases or transfers or attempted purchases or transfers;

(B) the appropriate course of action to be taken by the ammonium nitrate facility owner with respect to such a purchase or transfer or attempted purchase or transfer, including—

(i) exercising the right of the owner of the ammonium nitrate facility to decline sale of ammonium nitrate; and

(ii) notifying appropriate law enforcement entities; and

(C) additional subjects determined appropriate to prevent the misappropriation or use of ammonium nitrate in an act of terrorism.

**(2) Use of materials and programs**

In providing guidance under this subsection, the Secretary shall, to the extent practicable, leverage any relevant materials and programs.

**(3) Notification materials****(A) In general**

The Secretary shall make available materials suitable for posting at locations where ammonium nitrate is sold.

**(B) Design of materials**

Materials made available under subparagraph (A) shall be designed to notify prospective ammonium nitrate purchasers of—

(i) the record-keeping requirements under section 488a of this title; and

(ii) the penalties for violating such requirements.

(Pub. L. 107-296, title VIII, §899D, as added Pub. L. 110-161, div. E, title V, §563(a), Dec. 26, 2007, 121 Stat. 2087.)

**§ 488d. Theft reporting requirement**

Any person who is required to comply with section 488a(e) of this title who has knowledge of the theft or unexplained loss of ammonium nitrate shall report such theft or loss to the appropriate Federal law enforcement authorities not later than 1 calendar day of the date on which

the person becomes aware of such theft or loss. Upon receipt of such report, the relevant Federal authorities shall inform State, local, and tribal law enforcement entities, as appropriate.

(Pub. L. 107-296, title VIII, §899E, as added Pub. L. 110-161, div. E, title V, §563(a), Dec. 26, 2007, 121 Stat. 2088.)

**§ 488e. Prohibitions and penalty****(a) Prohibitions****(1) Taking possession**

No person shall purchase ammonium nitrate from an ammonium nitrate facility unless such person is registered under subsection (c) or (d) of section 488a of this title, or is an agent of a person registered under subsection (c) or (d) of that section.

**(2) Transferring possession**

An owner of an ammonium nitrate facility shall not transfer possession of ammonium nitrate from the ammonium nitrate facility to any ammonium nitrate purchaser who is not registered under subsection (c) or (d) of section 488a of this title, or to any agent acting on behalf of an ammonium nitrate purchaser when such purchaser is not registered under subsection (c) or (d) of section 488a of this title.

**(3) Other prohibitions**

No person shall—

(A) purchase ammonium nitrate without a registration number required under subsection (c) or (d) of section 488a of this title;

(B) own or operate an ammonium nitrate facility without a registration number required under section 488a(c) of this title; or

(C) fail to comply with any requirement or violate any other prohibition under this part.

**(b) Civil penalty**

A person that violates this part may be assessed a civil penalty by the Secretary of not more than \$50,000 per violation.

**(c) Penalty considerations**

In determining the amount of a civil penalty under this section, the Secretary shall consider—

(1) the nature and circumstances of the violation;

(2) with respect to the person who commits the violation, any history of prior violations, the ability to pay the penalty, and any effect the penalty is likely to have on the ability of such person to do business; and

(3) any other matter that the Secretary determines that justice requires.

**(d) Notice and opportunity for a hearing**

No civil penalty may be assessed under this part unless the person liable for the penalty has been given notice and an opportunity for a hearing on the violation for which the penalty is to be assessed in the county, parish, or incorporated city of residence of that person.

**(e) Delay in application of prohibition**

Paragraphs (1) and (2) of subsection (a) shall apply on and after the date that is 6 months

after the date that the Secretary issues a final rule implementing this part.

(Pub. L. 107-296, title VIII, §899F, as added Pub. L. 110-161, div. E, title V, §563(a), Dec. 26, 2007, 121 Stat. 2088.)

#### § 488f. Protection from civil liability

##### (a) In general

Notwithstanding any other provision of law, an owner of an ammonium nitrate facility that in good faith refuses to sell or transfer ammonium nitrate to any person, or that in good faith discloses to the Department or to appropriate law enforcement authorities an actual or attempted purchase or transfer of ammonium nitrate, based upon a reasonable belief that the person seeking purchase or transfer of ammonium nitrate may use the ammonium nitrate to create an explosive device to be employed in an act of terrorism (as defined in section 3077 of title 18), or to use ammonium nitrate for any other unlawful purpose, shall not be liable in any civil action relating to that refusal to sell ammonium nitrate or that disclosure.

##### (b) Reasonable belief

A reasonable belief that a person may use ammonium nitrate to create an explosive device to be employed in an act of terrorism under subsection (a) may not solely be based on the race, sex, national origin, creed, religion, status as a veteran, or status as a member of the Armed Forces of the United States of that person.

(Pub. L. 107-296, title VIII, §899G, as added Pub. L. 110-161, div. E, title V, §563(a), Dec. 26, 2007, 121 Stat. 2089.)

#### § 488g. Preemption of other laws

##### (a) Other Federal regulations

Except as provided in section 488f of this title, nothing in this part affects any regulation issued by any agency other than an agency of the Department.

##### (b) State law

Subject to section 488f of this title, this part preempts the laws of any State to the extent that such laws are inconsistent with this part, except that this part shall not preempt any State law that provides additional protection against the acquisition of ammonium nitrate by terrorists or the use of ammonium nitrate in explosives in acts of terrorism or for other illicit purposes, as determined by the Secretary.

(Pub. L. 107-296, title VIII, §899H, as added Pub. L. 110-161, div. E, title V, §563(a), Dec. 26, 2007, 121 Stat. 2089.)

#### § 488h. Deadlines for regulations

The Secretary—

(1) shall issue a proposed rule implementing this part not later than 6 months after December 26, 2007; and

(2) issue a final rule implementing this part not later than 1 year after December 26, 2007.

(Pub. L. 107-296, title VIII, §899I, as added Pub. L. 110-161, div. E, title V, §563(a), Dec. 26, 2007, 121 Stat. 2089.)

#### § 488i. Authorization of appropriations

There are authorized to be appropriated to the Secretary—

(1) \$2,000,000 for fiscal year 2008; and

(2) \$10,750,000 for each of fiscal years 2009 through 2012.

(Pub. L. 107-296, title VIII, §899J, as added Pub. L. 110-161, div. E, title V, §563(a), Dec. 26, 2007, 121 Stat. 2090.)

### 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 Chairman 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 to<sup>1</sup> make resulting recommendations to the President;

(2) oversee and review homeland security policies of the Federal Government and to<sup>1</sup>

<sup>1</sup> So in original. The word “to” probably should not appear.