Oct. 7, 1978, 92 Stat. 963. Title V of the Act is classified generally to sections 2656a to 2656d of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Tables.

FINDINGS

Pub. L. 110–53, title XIX, § 1901(a), Aug. 3, 2007, 121 Stat. 505, provided that: ''Congress finds the following:

''(1) The development and implementation of technology is critical to combating terrorism and other high consequence events and implementing a comprehensive homeland security strategy.

''(2) The United States and its allies in the global war on terrorism share a common interest in facilitating research, development, testing, and evaluation of equipment, capabilities, technologies, and services that will aid in detecting, preventing, responding to, recovering from, and mitigating against acts of terrorism.

''(3) Certain United States allies in the global war on terrorism, including Israel, the United Kingdom, Canada, Australia, and Singapore have extensive experience with, and technological expertise in, homeland security.

''(4) The United States and certain of its allies in the global war on terrorism have a history of successful collaboration in developing mutually beneficial equipment, capabilities, technologies, and services in the areas of defense, agriculture, and telecommunications.

''(5) The United States and its allies in the global war on terrorism will mutually benefit from the sharing of technological expertise to combat domestic and international terrorism.

''(6) The establishment of an office to facilitate and support cooperative endeavors between and among government agencies, for-profit business entities, academic institutions, and nonprofit entities of the United States and its allies will safeguard lives and property worldwide against acts of terrorism and other high consequence events.''

TRANSPARENCY OF FUNDS

Pub. L. 110–53, title XIX, § 1902, Aug. 3, 2007, 121 Stat. 508, provided that: ''For each Federal award (as that term is defined in section 2 of the Federal Funding Accountability and Transparency Act of 2006 [Pub. L. 109–282] (31 U.S.C. 6101 note)) under this title [enacting this section and provisions set out as notes under this section] or an amendment made by this title, the Director of the Office of Management and Budget shall ensure full and timely compliance with the requirements of the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note).''

SUBCHAPTER IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

PART A—UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY

§ 201. Under Secretary for Border and Transportation Security

There shall be in the Department a Directorate of Border and Transportation Security headed by an Under Secretary for Border and Transportation Security.

(Pub. L. 107–296, title IV, § 401, Nov. 25, 2002, 116 Stat. 2177.)

§ 202. Responsibilities

The Secretary, acting through the Under Secretary for Border and Transportation Security, shall be responsible for the following:

(1) Preventing the entry of terrorists and the instruments of terrorism into the United States.

(2) Securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States, including managing and coordinating those functions transferred to the Department at ports of entry.

(3) Carrying out the immigration enforcement functions vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the date on which the transfer of functions specified under section 251 of this title takes effect.

(4) Establishing and administering rules, in accordance with section 236 of this title, governing the granting of visas or other forms of permission, including parole, to enter the United States to individuals who are not a citizen or an alien lawfully admitted for permanent residence in the United States.

(5) Establishing national immigration enforcement policies and priorities.

(6) Except as provided in part C of this subchapter, administering the customs laws of the United States.

(7) Conducting the inspection and related administrative functions of the Department of Agriculture transferred to the Secretary of Homeland Security under section 231 of this title.

(8) In carrying out the foregoing responsibilities, ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce.

(Pub. L. 107–296, title IV, § 402, Nov. 25, 2002, 116 Stat. 2177.)

REFERENCES IN TEXT

Part C of this subchapter, referred to in par. (6), was in the original ''subtitle C'', meaning subtitle C (§ 421 et seq.) of title IV of Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2182, which enacted part C (§ 231 et seq.) of this subchapter and amended sections 2279e and 2279f of Title 7, Agriculture, and sections 115, 44901, and 47106 of Title 49, Transportation. For complete classification of subtitle C to the Code, see Tables.

The customs laws of the United States, referred to in par. (6), are classified generally to Title 19, Customs Duties.

§ 203. Functions transferred

In accordance with subchapter XII of this chapter (relating to transition provisions), there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of—

(1) the United States Customs Service of the Department of the Treasury, including the functions of the Secretary of the Treasury relating thereto;

(2) the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto;

(3) the Federal Protective Service of the General Services Administration, including the functions of the Administrator of General Services relating thereto;

(4) the Federal Law Enforcement Training Center of the Department of the Treasury; and

(5) the Office for Domestic Preparedness of the Office of Justice Programs, including the

functions of the Attorney General relating thereto.

(Pub. L. 107–296, title IV, § 403, Nov. 25, 2002, 116 Stat. 2178.)

PART B—UNITED STATES CUSTOMS SERVICE

§ 211. Establishment; Commissioner of Customs

(a) Establishment

There is established in the Department the United States Customs Service, under the authority of the Under Secretary for Border and Transportation Security, which shall be vested with those functions including, but not limited to those set forth in section 215(7) of this title, and the personnel, assets, and liabilities attributable to those functions.

(b) Commissioner of Customs

(1) In general

There shall be at the head of the Customs Service a Commissioner of Customs, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Omitted

(3) Continuation in office

The individual serving as the Commissioner of Customs on the day before the effective date of this chapter may serve as the Commissioner of Customs on and after such effective date until a Commissioner of Customs is appointed under paragraph (1).

(Pub. L. 107–296, title IV, § 411, Nov. 25, 2002, 116 Stat. 2178.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (b)(3), is 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of this title.

CODIFICATION

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

CHANGE OF NAME

Customs Service, referred to in subsecs. (a) and (b)(1), changed to Bureau of Customs and Border Protection by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108–32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

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

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

(1) Retention of authority

Notwithstanding section 203(a)(1)[1] of this title, authority related to Customs revenue functions that was vested in the Secretary of the Treasury by law before the effective date of this chapter under those provisions of law set forth in paragraph (2) shall not be transferred to the Secretary by reason of this chapter, and on and after the effective date of this chapter, the Secretary of the Treasury may delegate any such authority to the Secretary at the discretion of the Secretary of the Treasury. The Secretary of the Treasury shall consult with the Secretary regarding the exercise of any such authority not delegated to the Secretary.

(2) Statutes

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

(b) Maintenance of Customs revenue functions

(1) Maintenance of functions

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

(2) Functions

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

(c) New personnel

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

(Pub. L. 107–296, title IV, § 412, Nov. 25, 2002, 116 Stat. 2179.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsecs. (a)(1) and (b), is 60 days after Nov. 25, 2002, see sec-

[1] So in original. Probably should be section "203(1)".

tion 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of this title.

This chapter, referred to in subsecs. (a)(1) and (b)(1), was in the original ''this Act'', meaning Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2135, known as the Homeland Security Act of 2002, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 101 of this title and Tables.

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

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

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

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

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

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

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

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

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

CHANGE OF NAME

Customs Service, referred to in subsec. (b), changed to Bureau of Customs and Border Protection by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108–32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

§213. Preservation of Customs funds

Notwithstanding any other provision of this chapter, no funds available to the United States Customs Service or collected under paragraphs (1) through (8) of section 58c(a) of title 19 may be transferred for use by any other agency or office in the Department.

(Pub. L. 107–296, title IV, §413, Nov. 25, 2002, 116 Stat. 2180.)

REFERENCES IN TEXT

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

CHANGE OF NAME

Customs Service, referred to in text, changed to Bureau of Customs and Border Protection by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108–32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

§214. Separate budget request for Customs

The President shall include in each budget transmitted to Congress under section 1105 of title 31 a separate budget request for the United States Customs Service.

(Pub. L. 107–296, title IV, §414, Nov. 25, 2002, 116 Stat. 2180.)

CHANGE OF NAME

Customs Service, referred to in text, changed to Bureau of Customs and Border Protection by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108–32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

LAND BORDER PROJECTS

Pub. L. 111–83, title II, Oct. 28, 2009, 123 Stat. 2148, provided in part: ''That for fiscal year 2011 and thereafter, the annual budget submission of U.S. Customs and Border Protection for 'Construction and Facilities Management' shall, in consultation with the General Services Administration, include a detailed 5-year plan for all Federal land border port of entry projects with a yearly update of total projected future funding needs delineated by land port of entry.''

Similar provisions were contained in the following prior appropriation act:

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

§215. Definition

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

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

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

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

(4) Enforcing section 1337 of title 19 and provisions relating to import quotas and the marking of imported merchandise, and provid-

ing Customs Recordations for copyrights, patents, and trademarks.

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

(6) Enforcing reciprocal trade agreements.

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

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

(Pub. L. 107–296, title IV, § 415, Nov. 25, 2002, 116 Stat. 2180.)

REFERENCES IN TEXT

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

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

§ 216. GAO report to Congress

Not later than 3 months after the effective date of this chapter, the Comptroller General of the United States shall submit to Congress a report that sets forth all trade functions performed by the executive branch, specifying each agency that performs each such function.

(Pub. L. 107–296, title IV, § 416, Nov. 25, 2002, 116 Stat. 2181.)

REFERENCES IN TEXT

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

§ 217. Allocation of resources by the Secretary

(a) In general

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

(b) Notification of Congress

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

(1) result in any significant reduction in customs revenue services, including hours of operation, provided at any office within the Department or any port of entry;

(2) eliminate or relocate any office of the Department which provides customs revenue services; or

(3) eliminate any port of entry.

(c) Definition

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

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

REFERENCES IN TEXT

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

§ 218. Reports to Congress

(a) Continuing reports

The United States Customs Service shall, on and after the effective date of this chapter, continue to submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate any report required, on the day before such the[1] effective date of this chapter, to be so submitted under any provision of law.

(b) Report on conforming amendments

Not later than 60 days after November 25, 2002, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of proposed conforming amendments to the statutes set forth under section 212(a)(2) of this title in order to determine the appropriate allocation of legal authorities described under this subsection. The Secretary of the Treasury shall also identify those authorities vested in the Secretary of the Treasury that are exercised by the Commissioner of Customs on or before the effective date of this section.

(Pub. L. 107–296, title IV, § 418, Nov. 25, 2002, 116 Stat. 2181.)

REFERENCES IN TEXT

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

CHANGE OF NAME

Customs Service, referred to in subsec. (a), changed to Bureau of Customs and Border Protection by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108–32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

[1] So in original.

§ 220. Methamphetamine and methamphetamine precursor chemicals

(a) Compliance with performance plan requirements

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

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

(1) Analysis

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

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

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

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

(2) Report

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

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

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

(3) Availability of analysis

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

(c) Definition

In this section, the term ''methamphetamine precursor chemicals'' means the chemicals ephedrine, pseudoephedrine, or phenylpropanolamine, including each of the salts, optical isomers, and salts of optical isomers of such chemicals.

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

REFERENCES IN TEXT

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

CODIFICATION

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

CHANGE OF NAME

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

DEFINITIONS

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

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

The Secretary of Homeland Security shall ensure that—

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

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

(Pub. L. 111–376, § 3, Jan. 4, 2011, 124 Stat. 4104.)

CODIFICATION

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

FINDINGS

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

[1] So in original.

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

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

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

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

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

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

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

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

PART C—MISCELLANEOUS PROVISIONS

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

(a) Transfer of agricultural import and entry inspection functions

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

(b) Covered animal and plant protection laws

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

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

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

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

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

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

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

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

(c) Exclusion of quarantine activities

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

(d) Effect of transfer

(1) Compliance with Department of Agriculture regulations

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

(2) Rulemaking coordination

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

(3) Effective administration

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

(e) Transfer agreement

(1) Agreement required; revision

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

(2) Required terms

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

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

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

(3) Cooperation and reciprocity

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

(A) Authority for the Secretary to perform functions delegated to the Animal and Plant Health Inspection Service of the Department of Agriculture regarding the protection of domestic livestock and plants, but not transferred to the Secretary pursuant to subsection (a) of this section.

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

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

(1) Transfer of funds

Out of funds collected by fees authorized under sections 136 and 136a of title 21, the Secretary of Agriculture shall transfer, from time to time in accordance with the agreement under subsection (e) of this section, to the

Secretary funds for activities carried out by the Secretary for which such fees were collected.

(2) Limitation

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

(g) Transfer of Department of Agriculture employees

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

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

REFERENCES IN TEXT

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

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

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

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

The Lacey Act Amendments of 1981, referred to in subsec. (b)(6), is Pub. L. 97–79, Nov. 16, 1981, 95 Stat. 1073, as amended, which enacted chapter 53 (§ 3371 et seq.) of Title 16, Conservation, amended section 1540 of Title 16 and section 42 of Title 18, Crimes and Criminal Procedure, repealed sections 667e and 851 to 856 of Title 16 and sections 43, 44, 3054, and 3112 of Title 18, and enacted provisions set out as notes under sections 1540 and 3371 of Title 16. For complete classification of this Act to the Code, see Short Title note set out under section 3371 of Title 16 and Tables.

CODIFICATION

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

§ 232. Functions of Administrator of General Services

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

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

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

(1) Statutory construction

Nothing in this chapter may be construed—

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

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

(2) Use of transferred amounts

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

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

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(1), was in the original ''this Act'', meaning Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2135, known as the Homeland Security Act of 2002, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 101 of this title and Tables.

CODIFICATION

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

§ 233. Functions of Transportation Security Administration

(a) Consultation with Federal Aviation Administration

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

(b) Report to Congress

Not later than 60 days after November 25, 2002, the Secretary of Transportation shall transmit

to Congress a report containing a plan for complying with the requirements of section 44901(d) of title 49.

(c) Limitations on statutory construction

(1) Grant of authority

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

(2) Obligation of AIP funds

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

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

REFERENCES IN TEXT

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

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

(a) In general

Notwithstanding any other provision of this chapter, and subject to subsection (b) of this section, the Transportation Security Administration shall be maintained as a distinct entity within the Department under the Under Secretary for Border Transportation and Security.

(b) Sunset

Subsection (a) of this section shall cease to apply 2 years after November 25, 2002.

(Pub. L. 107–296, title IV, § 424, Nov. 25, 2002, 116 Stat. 2185.)

REFERENCES IN TEXT

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

§ 235. Coordination of information and information technology

(a) Definition of affected agency

In this section, the term ''affected agency'' means—

(1) the Department;

(2) the Department of Agriculture;

(3) the Department of Health and Human Services; and

(4) any other department or agency determined to be appropriate by the Secretary.

(b) Coordination

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

(c) Report and plan

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

(1) a report on the progress made in implementing this section; and

(2) a plan to complete implementation of this section.

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

§ 236. Visa issuance

(a) Definition

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

(b) In general

Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided in subsection (c) of this section, the Secretary—

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

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

(c) Authority of the Secretary of State

(1) In general

Notwithstanding subsection (b) of this section, the Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State deems such refusal nec-

[1] So in original. Probably should be ''section''.

[2] So in original. Probably should be '' 'consular officer' ''.

essary or advisable in the foreign policy or security interests of the United States.

(2) Construction regarding authority

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

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

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

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

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

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

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

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

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

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

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

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

(L) Section 613 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1999[3] (as contained in section 101(b) of division A of Public Law 105–277) (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999); 112 Stat. 2681; H.R. 4328 (originally H.R. 4276) as amended by section 617 of Public Law 106–553.

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

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

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

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

(d) Consular officers and chiefs of missions

(1) In general

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

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

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

(2) Construction regarding delegation of authority

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

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

(1) In general

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

(2) Functions

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

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

(B) Review any such applications, either on the initiative of the employee of the Department or upon request by a consular officer or other person charged with adjudicating such applications.

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

(3) Evaluation of consular officers

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

(4) Report

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

(5) Permanent assignment; participation in terrorist lookout committee

When appropriate, employees of the Department assigned to perform functions described in paragraph (2) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee es-

[3] See References in Text note below.

tablished under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

(6) Training and hiring

(A) In general

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

(B) Use of Center

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

(7) Report

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

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

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

(8) Effective date

This subsection shall take effect on the earlier of—

(A) the date on which the President publishes notice in the Federal Register that the President has submitted a report to Congress setting forth a memorandum of understanding between the Secretary and the Secretary of State governing the implementation of this section; or

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

(f) No creation of private right of action

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

(g) Study regarding use of foreign nationals

(1) In general

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

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

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

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

(2) Report

Not later than 1 year after November 25, 2002, the Secretary shall submit a report containing the findings of the study conducted under paragraph (1) to the Committee on the Judiciary, the Committee on International Relations, and the Committee on Government Reform of the House of Representatives, and the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Government[4] Affairs of the Senate.

(h) Report

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

(i) Visa issuance program for Saudi Arabia

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

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

REFERENCES IN TEXT

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

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

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

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

CHANGE OF NAME

References to National Foreign Affairs Training Center considered to refer to George P. Shultz National Foreign Affairs Training Center, see section 1(b) of Pub. L. 107–132, set out as a note under section 4021 of this title.

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

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

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Gov-

[4] So in original. Probably should be "Governmental".

ernmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

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

(a) In general

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

(b) Prohibition

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

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

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

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

§ 238. Office for Domestic Preparedness

(a) In general

The Office for Domestic Preparedness shall be within the Directorate of Border and Transportation Security.

(b) Director

There shall be a Director of the Office for Domestic Preparedness, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director of the Office for Domestic Preparedness shall report directly to the Under Secretary for Border and Transportation Security.

(c) Responsibilities

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

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

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

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

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

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

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

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

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

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

(d) Fiscal years 2003 and 2004

During fiscal year 2003 and fiscal year 2004, the Director of the Office for Domestic Preparedness established under this section shall manage and carry out those functions of the Office for Domestic Preparedness of the Department of Justice (transferred under this section) before September 11, 2001, under the same terms, conditions, policies, and authorities, and with the required level of personnel, assets, and budget before September 11, 2001.

(Pub. L. 107–296, title IV, § 430, Nov. 25, 2002, 116 Stat. 2191; Pub. L. 108–458, title VII, § 7303(h)(2), Dec. 17, 2004, 118 Stat. 3847.)

AMENDMENTS

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

§ 239. Office of Cargo Security Policy

(a) Establishment

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

(b) Purpose

The Office shall—

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

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

(c) Director

(1) Appointment

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

(A) be appointed by the Secretary; and

(B) report to the Assistant Secretary for Policy.

(2) Responsibilities

The Director shall—

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

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

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

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

RULE OF CONSTRUCTION

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

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

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

PART D—IMMIGRATION ENFORCEMENT FUNCTIONS

§ 251. Transfer of functions to Under Secretary for Border and Transportation Security

In accordance with subchapter XII of this chapter (relating to transition provisions), there shall be transferred from the Commissioner of Immigration and Naturalization to the Under Secretary for Border and Transportation Security all functions performed under the following programs, and all personnel, assets, and liabilities pertaining to such programs, immediately before such transfer occurs:

(1) The Border Patrol program.

(2) The detention and removal program.

(3) The intelligence program.

(4) The investigations program.

(5) The inspections program.

(Pub. L. 107–296, title IV, § 441, Nov. 25, 2002, 116 Stat. 2192.)

§ 252. Establishment of Bureau of Border Security

(a) Establishment of Bureau

(1) In general

There shall be in the Department of Homeland Security a bureau to be known as the ''Bureau of Border Security''.

(2) Assistant Secretary

The head of the Bureau of Border Security shall be the Assistant Secretary of the Bureau of Border Security, who—

(A) shall report directly to the Under Secretary for Border and Transportation Security; and

(B) shall have a minimum of 5 years professional experience in law enforcement, and a minimum of 5 years of management experience.

(3) Functions

The Assistant Secretary of the Bureau of Border Security—

(A) shall establish the policies for performing such functions as are—

(i) transferred to the Under Secretary for Border and Transportation Security by section 251 of this title and delegated to the Assistant Secretary by the Under Secretary for Border and Transportation Security; or

(ii) otherwise vested in the Assistant Secretary by law;

(B) shall oversee the administration of such policies; and

(C) shall advise the Under Secretary for Border and Transportation Security with respect to any policy or operation of the Bureau of Border Security that may affect the Bureau of Citizenship and Immigration Services established under part E of this subchapter, including potentially conflicting policies or operations.

(4) Program to collect information relating to foreign students

The Assistant Secretary of the Bureau of Border Security shall be responsible for administering the program to collect information relating to nonimmigrant foreign students and other exchange program participants described in section 1372 of title 8, including the Student and Exchange Visitor Information System established under that section, and shall use such information to carry out the enforcement functions of the Bureau.

(5) Managerial rotation program

(A) In general

Not later than 1 year after the date on which the transfer of functions specified under section 251 of this title takes effect, the Assistant Secretary of the Bureau of Border Security shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, as a GS–14 or above, shall—

(i) gain some experience in all the major functions performed by such bureau; and

(ii) work in at least one local office of such bureau.

(B) Report

Not later than 2 years after the date on which the transfer of functions specified under section 251 of this title takes effect, the Secretary shall submit a report to the Congress on the implementation of such program.

(b) Chief of Policy and Strategy

(1) In general

There shall be a position of Chief of Policy and Strategy for the Bureau of Border Security.

(2) Functions

In consultation with Bureau of Border Security personnel in local offices, the Chief of Policy and Strategy shall be responsible for—

(A) making policy recommendations and performing policy research and analysis on immigration enforcement issues; and

(B) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services (established under part E of this subchapter), as appropriate.

(c) Legal advisor

There shall be a principal legal advisor to the Assistant Secretary of the Bureau of Border Security. The legal advisor shall provide specialized legal advice to the Assistant Secretary of the Bureau of Border Security and shall represent the bureau in all exclusion, deportation, and removal proceedings before the Executive Office for Immigration Review.

(Pub. L. 107–296, title IV, § 442, Nov. 25, 2002, 116 Stat. 2193.)

REFERENCES IN TEXT

Part E of this subchapter, referred to in subsecs. (a)(3)(C) and (b)(2)(B), was in the original ''subtitle E'', meaning subtitle E (§§ 451–462) of title IV of Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2195, which enacted part E (§ 271 et seq.) of this subchapter, amended sections 1356 and 1573 of Title 8, Aliens and Nationality, and enacted provisions set out as a note under section 271 of this title. For complete classification of subtitle E to the Code, see Tables.

CHANGE OF NAME

Bureau of Border Security, referred to in section catchline and text, changed to Bureau of Immigration and Customs Enforcement by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108–32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

§ 253. Professional responsibility and quality review

The Under Secretary for Border and Transportation Security shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Border Security that are not subject to investigation by the Inspector General for the Department;

(2) inspecting the operations of the Bureau of Border Security and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of the Bureau of Border Security.

(Pub. L. 107–296, title IV, § 443, Nov. 25, 2002, 116 Stat. 2194.)

CHANGE OF NAME

Bureau of Border Security, referred to in text, changed to Bureau of Immigration and Customs Enforcement by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108–32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

§ 254. Employee discipline

The Under Secretary for Border and Transportation Security may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Border Security who willfully deceives the Congress or agency leadership on any matter.

(Pub. L. 107–296, title IV, § 444, Nov. 25, 2002, 116 Stat. 2194.)

CHANGE OF NAME

Bureau of Border Security, referred to in text, changed to Bureau of Immigration and Customs Enforcement by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108–32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

§ 255. Report on improving enforcement functions

(a) In general

The Secretary, not later than 1 year after being sworn into office, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report with a plan detailing how the Bureau of Border Security, after the transfer of functions specified under section 251 of this title takes effect, will enforce comprehensively, effectively, and fairly all the enforcement provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) relating to such functions.

(b) Consultation

In carrying out subsection (a) of this section, the Secretary of Homeland Security shall consult with the Attorney General, the Secretary of State, the Director of the Federal Bureau of Investigation, the Secretary of the Treasury, the Secretary of Labor, the Commissioner of Social Security, the Director of the Executive Office for Immigration Review, and the heads of State and local law enforcement agencies to determine how to most effectively conduct enforcement operations.

(Pub. L. 107–296, title IV, § 445, Nov. 25, 2002, 116 Stat. 2194.)

REFERENCES IN TEXT

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

CHANGE OF NAME

Bureau of Border Security, referred to in subsec. (a), changed to Bureau of Immigration and Customs Enforcement by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108–32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

§ 256. Sense of Congress regarding construction of fencing near San Diego, California

It is the sense of the Congress that completing the 14-mile border fence project required to be carried out under section 102(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) should be a priority for the Secretary.

(Pub. L. 107–296, title IV, § 446, Nov. 25, 2002, 116 Stat. 2195.)

REFERENCES IN TEXT

Section 102(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, referred to in text, is section 102(b) of title I of div. C of Pub. L. 104–208, which is set out as a note under section 1103 of Title 8, Aliens and Nationality.

PART E—CITIZENSHIP AND IMMIGRATION SERVICES

§ 271. Establishment of Bureau of Citizenship and Immigration Services

(a) Establishment of Bureau

(1) In general

There shall be in the Department a bureau to be known as the ''Bureau of Citizenship and Immigration Services''.

(2) Director

The head of the Bureau of Citizenship and Immigration Services shall be the Director of the Bureau of Citizenship and Immigration Services, who—

(A) shall report directly to the Deputy Secretary;

(B) shall have a minimum of 5 years of management experience; and

(C) shall be paid at the same level as the Assistant Secretary of the Bureau of Border Security.

(3) Functions

The Director of the Bureau of Citizenship and Immigration Services—

(A) shall establish the policies for performing such functions as are transferred to the Director by this section or this chapter or otherwise vested in the Director by law;

(B) shall oversee the administration of such policies;

(C) shall advise the Deputy Secretary with respect to any policy or operation of the Bureau of Citizenship and Immigration Services that may affect the Bureau of Border Security of the Department, including potentially conflicting policies or operations;

(D) shall establish national immigration services policies and priorities;

(E) shall meet regularly with the Ombudsman described in section 272 of this title to correct serious service problems identified by the Ombudsman; and

(F) shall establish procedures requiring a formal response to any recommendations submitted in the Ombudsman's annual report to Congress within 3 months after its submission to Congress.

(4) Managerial rotation program

(A) In general

Not later than 1 year after the effective date specified in section 455,[1] the Director of the Bureau of Citizenship and Immigration Services shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, as a GS–14 or above, shall—

(i) gain some experience in all the major functions performed by such bureau; and

(ii) work in at least one field office and one service center of such bureau.

(B) Report

Not later than 2 years after the effective date specified in section 455,[1] the Secretary shall submit a report to Congress on the implementation of such program.

(5) Pilot initiatives for backlog elimination

The Director of the Bureau of Citizenship and Immigration Services is authorized to implement innovative pilot initiatives to eliminate any remaining backlog in the processing of immigration benefit applications, and to prevent any backlog in the processing of such applications from recurring, in accordance with section 1573(a) of title 8. Such initiatives may include measures such as increasing personnel, transferring personnel to focus on areas with the largest potential for backlog, and streamlining paperwork.

(b) Transfer of functions from Commissioner

In accordance with subchapter XII of this chapter (relating to transition provisions), there are transferred from the Commissioner of Immigration and Naturalization to the Director of the Bureau of Citizenship and Immigration Services the following functions, and all personnel, infrastructure, and funding provided to the Commissioner in support of such functions immediately before the effective date specified in section 455:[1]

(1) Adjudications of immigrant visa petitions.

(2) Adjudications of naturalization petitions.

(3) Adjudications of asylum and refugee applications.

(4) Adjudications performed at service centers.

(5) All other adjudications performed by the Immigration and Naturalization Service immediately before the effective date specified in section 455.[1]

(c) Chief of Policy and Strategy

(1) In general

There shall be a position of Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services.

(2) Functions

In consultation with Bureau of Citizenship and Immigration Services personnel in field offices, the Chief of Policy and Strategy shall be responsible for—

(A) making policy recommendations and performing policy research and analysis on immigration services issues; and

(B) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Border Security of the Department.

[1] See References in Text note below.

(d) Legal advisor

(1) In general

There shall be a principal legal advisor to the Director of the Bureau of Citizenship and Immigration Services.

(2) Functions

The legal advisor shall be responsible for—

(A) providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Director of the Bureau of Citizenship and Immigration Services with respect to legal matters affecting the Bureau of Citizenship and Immigration Services; and

(B) representing the Bureau of Citizenship and Immigration Services in visa petition appeal proceedings before the Executive Office for Immigration Review.

(e) Budget Officer

(1) In general

There shall be a Budget Officer for the Bureau of Citizenship and Immigration Services.

(2) Functions

(A) In general

The Budget Officer shall be responsible for—

(i) formulating and executing the budget of the Bureau of Citizenship and Immigration Services;

(ii) financial management of the Bureau of Citizenship and Immigration Services; and

(iii) collecting all payments, fines, and other debts for the Bureau of Citizenship and Immigration Services.

(f) Chief of Office of Citizenship

(1) In general

There shall be a position of Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services.

(2) Functions

The Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services shall be responsible for promoting instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens of the United States, including the development of educational materials.

(g) Office of the FBI liaison

(1) In general

There shall be an Office of the FBI Liaison in the Department of Homeland Security.

(2) Functions

The Office of the FBI Liaison shall monitor the progress of the functions of the Federal Bureau of Investigation in the naturalization process to assist in the expeditious completion of all such functions pertaining to naturalization applications filed by, or on behalf of—

(A) current or former members of the Armed Forces under section 1439 or 1440 of title 8;

(B) current spouses of United States citizens who are currently serving on active duty in the Armed Forces, who qualify for naturalization under section 1430(b) of title 8, and surviving spouses and children who qualify for naturalization under section 1430(d) of title 8; or

(C) a deceased individual who is eligible for posthumous citizenship under section 1440–1 of title 8.

(3) Authorization of appropriations

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

(Pub. L. 107–296, title IV, §451, Nov. 25, 2002, 116 Stat. 2195; Pub. L. 110–382, §2(a), Oct. 9, 2008, 122 Stat. 4087.)

AMENDMENT OF SECTION

For termination of amendment by section 4 of Pub. L. 110–382, see Termination Date of 2008 Amendment note below.

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(3)(A), was in the original ''this Act'', meaning Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2135, known as the Homeland Security Act of 2002, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 101 of this title and Tables.

For the effective date specified in section 455, referred to in subsecs. (a)(4) and (b), see Effective Date note below.

AMENDMENTS

2008—Subsec. (g). Pub. L. 110–382, §§2(a), 4, temporarily added subsec. (g). See Termination Date of 2008 Amendment note below.

CHANGE OF NAME

Bureau of Border Security, referred to in subsecs. (a)(2)(C), (3)(C), and (c)(2)(B), changed to Bureau of Immigration and Customs Enforcement by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108–32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

TERMINATION DATE OF 2008 AMENDMENT

Pub. L. 110–382, §4, Oct. 9, 2008, 122 Stat. 4089, provided that: ''This Act [amending this section and section 1439 of Title 8, Aliens and Nationality, and enacting provisions set out as notes under this section and section 1101 of Title 8] and the amendments made by this Act are repealed on the date that is 5 years after the date of the enactment of this Act [Oct. 9, 2008].''

EFFECTIVE DATE

Pub. L. 107–296, title IV, §455, Nov. 25, 2002, 116 Stat. 2200, provided that: ''Notwithstanding section 4 [enacting provisions set out as a note under section 101 of this title], sections 451 through 456 [enacting this section and sections 272 to 275 of this title], and the amendments made by such sections, shall take effect on the date on which the transfer of functions specified under section 441 [enacting section 251 of this title] takes effect.'' [For date on which transfer of functions specified under section 441 takes effect, see section 251 of this title and Department of Homeland Security Reorganization Plan, Nov. 25, 2002, set out as a note under section 542 of this title.]

RULEMAKING

Pub. L. 110–382, §2(b), Oct. 9, 2008, 122 Stat. 4087, provided that: ''Not later than 180 days after the date of the enactment of this Act [Oct. 9, 2008], the Secretary

of Homeland Security, in consultation with the Attorney General, shall promulgate rules to carry out the amendment made by subsection (a) [amending this section].''

[Pub. L. 110–382, § 4, Oct. 9, 2008, 122 Stat. 4089, provided that section 2(b) of Pub. L. 110–382, set out as a note above, is repealed 5 years after Oct. 9, 2008.]

§ 272. Citizenship and Immigration Services Ombudsman

(a) In general

Within the Department, there shall be a position of Citizenship and Immigration Services Ombudsman (in this section referred to as the ''Ombudsman''). The Ombudsman shall report directly to the Deputy Secretary. The Ombudsman shall have a background in customer service as well as immigration law.

(b) Functions

It shall be the function of the Ombudsman—

(1) to assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;

(2) to identify areas in which individuals and employers have problems in dealing with the Bureau of Citizenship and Immigration Services; and

(3) to the extent possible, to propose changes in the administrative practices of the Bureau of Citizenship and Immigration Services to mitigate problems identified under paragraph (2).

(c) Annual reports

(1) Objectives

Not later than June 30 of each calendar year, the Ombudsman shall report to the Committee on the Judiciary of the House of Representatives and the Senate on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and—

(A) shall identify the recommendations the Office of the Ombudsman has made on improving services and responsiveness of the Bureau of Citizenship and Immigration Services;

(B) shall contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems;

(C) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action has been taken and the result of such action;

(D) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action remains to be completed and the period during which each item has remained on such inventory;

(E) shall contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and shall identify any official of the Bureau of Citizenship and Immigration Services who is responsible for such inaction;

(F) shall contain recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications; and

(G) shall include such other information as the Ombudsman may deem advisable.

(2) Report to be submitted directly

Each report required under this subsection shall be provided directly to the committees described in paragraph (1) without any prior comment or amendment from the Secretary, Deputy Secretary, Director of the Bureau of Citizenship and Immigration Services, or any other officer or employee of the Department or the Office of Management and Budget.

(d) Other responsibilities

The Ombudsman—

(1) shall monitor the coverage and geographic allocation of local offices of the Ombudsman;

(2) shall develop guidance to be distributed to all officers and employees of the Bureau of Citizenship and Immigration Services outlining the criteria for referral of inquiries to local offices of the Ombudsman;

(3) shall ensure that the local telephone number for each local office of the Ombudsman is published and available to individuals and employers served by the office; and

(4) shall meet regularly with the Director of the Bureau of Citizenship and Immigration Services to identify serious service problems and to present recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers.

(e) Personnel actions

(1) In general

The Ombudsman shall have the responsibility and authority—

(A) to appoint local ombudsmen and make available at least 1 such ombudsman for each State; and

(B) to evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of the Ombudsman.

(2) Consultation

The Ombudsman may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services in carrying out the Ombudsman's responsibilities under this subsection.

(f) Responsibilities of Bureau of Citizenship and Immigration Services

The Director of the Bureau of Citizenship and Immigration Services shall establish procedures requiring a formal response to all recommendations submitted to such director by the Ombudsman within 3 months after submission to such director.

(g) Operation of local offices

(1) In general

Each local ombudsman—

(A) shall report to the Ombudsman or the delegate thereof;

(B) may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services regarding the daily operation of the local office of such ombudsman;

(C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or employer that the local offices of the Ombudsman operate independently of any other component of the Department and report directly to Congress through the Ombudsman; and

(D) at the local ombudsman's discretion, may determine not to disclose to the Bureau of Citizenship and Immigration Services contact with, or information provided by, such individual or employer.

(2) Maintenance of independent communications

Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office address, that is separate from those maintained by the Bureau of Citizenship and Immigration Services, or any component of the Bureau of Citizenship and Immigration Services.

(Pub. L. 107–296, title IV, § 452, Nov. 25, 2002, 116 Stat. 2197.)

EFFECTIVE DATE

Section effective on the date on which the transfer of functions specified under section 251 of this title takes effect, see section 455 of Pub. L. 107–296, set out as a note under section 271 of this title.

§ 273. Professional responsibility and quality review

(a) In general

The Director of the Bureau of Citizenship and Immigration Services shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Citizenship and Immigration Services that are not subject to investigation by the Inspector General for the Department;

(2) inspecting the operations of the Bureau of Citizenship and Immigration Services and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of the Bureau of Citizenship and Immigration Services.

(b) Special considerations

In providing assessments in accordance with subsection (a)(2) of this section with respect to a decision of the Bureau of Citizenship and Immigration Services, or any of its components, consideration shall be given to—

(1) the accuracy of the findings of fact and conclusions of law used in rendering the decision;

(2) any fraud or misrepresentation associated with the decision; and

(3) the efficiency with which the decision was rendered.

(Pub. L. 107–296, title IV, § 453, Nov. 25, 2002, 116 Stat. 2199.)

EFFECTIVE DATE

Section effective on the date on which the transfer of functions specified under section 251 of this title takes effect, see section 455 of Pub. L. 107–296, set out as a note under section 271 of this title.

§ 274. Employee discipline

The Director of the Bureau of Citizenship and Immigration Services may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Citizenship and Immigration Services who willfully deceives Congress or agency leadership on any matter.

(Pub. L. 107–296, title IV, § 454, Nov. 25, 2002, 116 Stat. 2200.)

EFFECTIVE DATE

Section effective on the date on which the transfer of functions specified under section 251 of this title takes effect, see section 455 of Pub. L. 107–296, set out as a note under section 271 of this title.

§ 275. Transition

(a) References

With respect to any function transferred by this part to, and exercised on or after the effective date specified in section 455[1] by, the Director of the Bureau of Citizenship and Immigration Services, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Bureau of Citizenship and Immigration Services; or

(2) to such component is deemed to refer to the Bureau of Citizenship and Immigration Services.

(b) Other transition issues

(1) Exercise of authorities

Except as otherwise provided by law, a Federal official to whom a function is transferred by this part may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in section 455.[1]

(2) Transfer and allocation of appropriations and personnel

The personnel of the Department of Justice employed in connection with the functions transferred by this part (and functions that the Secretary determines are properly related to the functions of the Bureau of Citizenship

[1] See References in Text note below.

and Immigration Services), and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this part, subject to section 1531 of title 31, shall be transferred to the Director of the Bureau of Citizenship and Immigration Services for allocation to the appropriate component of the Department. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated. The Secretary shall have the right to adjust or realign transfers of funds and personnel effected pursuant to this part for a period of 2 years after the effective date specified in section 455.[1]

(Pub. L. 107–296, title IV, § 456, Nov. 25, 2002, 116 Stat. 2200.)

REFERENCES IN TEXT

This part, referred to in text, was in the original ''this subtitle'', meaning subtitle E (§§ 451–462) of title IV of Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2195, which enacted this part, amended sections 1356 and 1573 of Title 8, Aliens and Nationality, and enacted provisions set out as a note under section 271 of this title. For complete classification of subtitle E to the Code, see Tables.

For the effective date specified in section 455, referred to in text, see section 455 of Pub. L. 107–296, set out as an Effective Date note under section 271 of this title.

CODIFICATION

In subsec. (b)(2), ''section 1531 of title 31'' substituted for ''section 202 of the Budget and Accounting Procedures Act of 1950'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

EFFECTIVE DATE

Section effective on the date on which the transfer of functions specified under section 251 of this title takes effect, see section 455 of Pub. L. 107–296, set out as a note under section 271 of this title.

§ 276. Report on improving immigration services

(a) In general

The Secretary, not later than 1 year after the effective date of this chapter, shall submit to the Committees on the Judiciary and Appropriations of the House of Representatives and of the Senate a report with a plan detailing how the Bureau of Citizenship and Immigration Services, after the transfer of functions specified in this part takes effect, will complete efficiently, fairly, and within a reasonable time, the adjudications described in paragraphs (1) through (5) of section 271(b) of this title.

(b) Contents

For each type of adjudication to be undertaken by the Director of the Bureau of Citizenship and Immigration Services, the report shall include the following:

(1) Any potential savings of resources that may be implemented without affecting the quality of the adjudication.

(2) The goal for processing time with respect to the application.

(3) Any statutory modifications with respect to the adjudication that the Secretary considers advisable.

(c) Consultation

In carrying out subsection (a) of this section, the Secretary shall consult with the Secretary of State, the Secretary of Labor, the Assistant Secretary of the Bureau of Border Security of the Department, and the Director of the Executive Office for Immigration Review to determine how to streamline and improve the process for applying for and making adjudications described in section 271(b) of this title and related processes.

(Pub. L. 107–296, title IV, § 459, Nov. 25, 2002, 116 Stat. 2201.)

REFERENCES IN TEXT

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

CHANGE OF NAME

Bureau of Border Security, referred to in subsec. (c), changed to Bureau of Immigration and Customs Enforcement by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108–32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

§ 277. Report on responding to fluctuating needs

Not later than 30 days after November 25, 2002, the Attorney General shall submit to Congress a report on changes in law, including changes in authorizations of appropriations and in appropriations, that are needed to permit the Immigration and Naturalization Service, and, after the transfer of functions specified in this part takes effect, the Bureau of Citizenship and Immigration Services of the Department, to ensure a prompt and timely response to emergent, unforeseen, or impending changes in the number of applications for immigration benefits, and otherwise to ensure the accommodation of changing immigration service needs.

(Pub. L. 107–296, title IV, § 460, Nov. 25, 2002, 116 Stat. 2201.)

§ 278. Application of Internet-based technologies

(a) Establishment of tracking system

The Secretary, not later than 1 year after the effective date of this chapter, in consultation with the Technology Advisory Committee established under subsection (c) of this section, shall establish an Internet-based system, that will permit a person, employer, immigrant, or nonimmigrant who has filings with the Secretary for any benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), access to online information about the processing status of the filing involved.

(b) Feasibility study for online filing and improved processing

(1) Online filing

The Secretary, in consultation with the Technology Advisory Committee established under subsection (c) of this section, shall conduct a feasibility study on the online filing of

the filings described in subsection (a) of this section. The study shall include a review of computerization and technology of the Immigration and Naturalization Service relating to the immigration services and processing of filings related to immigrant services. The study shall also include an estimate of the timeframe and cost and shall consider other factors in implementing such a filing system, including the feasibility of fee payment online.

(2) Report

A report on the study under this subsection shall be submitted to the Committees on the Judiciary of the House of Representatives and the Senate not later than 1 year after the effective date of this chapter.

(c) Technology Advisory Committee

(1) Establishment

The Secretary shall establish, not later than 60 days after the effective date of this chapter, an advisory committee (in this section referred to as the ''Technology Advisory Committee'') to assist the Secretary in—

(A) establishing the tracking system under subsection (a) of this section; and

(B) conducting the study under subsection (b) of this section.

The Technology Advisory Committee shall be established after consultation with the Committees on the Judiciary of the House of Representatives and the Senate.

(2) Composition

The Technology Advisory Committee shall be composed of representatives from high technology companies capable of establishing and implementing the system in an expeditious manner, and representatives of persons who may use the tracking system described in subsection (a) of this section and the online filing system described in subsection (b)(1) of this section.

(Pub. L. 107–296, title IV, § 461, Nov. 25, 2002, 116 Stat. 2202.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsecs. (a), (b)(2), and (c)(1), is 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of this title.

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

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to expiration of such 2-year period, or in the case of a committee established by Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 279. Children's affairs

(a) Transfer of functions

There are transferred to the Director of the Office of Refugee Resettlement of the Department of Health and Human Services functions under the immigration laws of the United States with respect to the care of unaccompanied alien children that were vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the effective date specified in subsection (d) of this section.

(b) Functions

(1) In general

Pursuant to the transfer made by subsection (a) of this section, the Director of the Office of Refugee Resettlement shall be responsible for—

(A) coordinating and implementing the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status, including developing a plan to be submitted to Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child, consistent with the law regarding appointment of counsel that is in effect on November 25, 2002;

(B) ensuring that the interests of the child are considered in decisions and actions relating to the care and custody of an unaccompanied alien child;

(C) making placement determinations for all unaccompanied alien children who are in Federal custody by reason of their immigration status;

(D) implementing the placement determinations;

(E) implementing policies with respect to the care and placement of unaccompanied alien children;

(F) identifying a sufficient number of qualified individuals, entities, and facilities to house unaccompanied alien children;

(G) overseeing the infrastructure and personnel of facilities in which unaccompanied alien children reside;

(H) reuniting unaccompanied alien children with a parent abroad in appropriate cases;

(I) compiling, updating, and publishing at least annually a state-by-state list of professionals or other entities qualified to provide guardian and attorney representation services for unaccompanied alien children;

(J) maintaining statistical information and other data on unaccompanied alien children for whose care and placement the Director is responsible, which shall include—

(i) biographical information, such as a child's name, gender, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the child came into Federal custody by reason of his or her immigration status;

(iii) information relating to the child's placement, removal, or release from each facility in which the child has resided;

(iv) in any case in which the child is placed in detention or released, an explanation relating to the detention or release; and

(v) the disposition of any actions in which the child is the subject;

(K) collecting and compiling statistical information from the Department of Justice, the Department of Homeland Security, and the Department of State on each department's actions relating to unaccompanied alien children; and

(L) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside, including regular follow-up visits to such facilities, placements, and other entities, to assess the continued suitability of such placements.

(2) Coordination with other entities; no release on own recognizance

In making determinations described in paragraph (1)(C), the Director of the Office of Refugee Resettlement—

(A) shall consult with appropriate juvenile justice professionals, the Director of the Bureau of Citizenship and Immigration Services, and the Assistant Secretary of the Bureau of Border Security to ensure that such determinations ensure that unaccompanied alien children described in such subparagraph—

(i) are likely to appear for all hearings or proceedings in which they are involved;

(ii) are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity; and

(iii) are placed in a setting in which they are not likely to pose a danger to themselves or others; and

(B) shall not release such children upon their own recognizance.

(3) Duties with respect to foster care

In carrying out the duties described in paragraph (1), the Director of the Office of Refugee Resettlement is encouraged to use the refugee children foster care system established pursuant to section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)) for the placement of unaccompanied alien children.

(4) Rule of construction

Nothing in paragraph (2)(B) may be construed to require that a bond be posted for an unaccompanied alien child who is released to a qualified sponsor.

(c) Rule of construction

Nothing in this section may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) from the authority of any official of the Department of Justice, the Department of Homeland Security, or the Department of State.

(d) Effective date

Notwithstanding section 4,[1] this section shall take effect on the date on which the transfer of functions specified under section 251 of this title takes effect.

(e) References

With respect to any function transferred by this section, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Office of Refugee Resettlement; or

(2) to such component is deemed to refer to the Office of Refugee Resettlement of the Department of Health and Human Services.

(f) Other transition issues

(1) Exercise of authorities

Except as otherwise provided by law, a Federal official to whom a function is transferred by this section may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in subsection (d) of this section.

(2) Savings provisions

Subsections (a), (b), and (c) of section 552 of this title shall apply to a transfer of functions under this section in the same manner as such provisions apply to a transfer of functions under this chapter to the Department of Homeland Security.

(3) Transfer and allocation of appropriations and personnel

The personnel of the Department of Justice employed in connection with the functions transferred by this section, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this section, subject to section 1531 of title 31, shall be transferred to the Director of the Office of Refugee Resettlement for allocation to the appropriate component of the Department of Health and Human Services. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated.

(g) Definitions

As used in this section—

(1) the term ''placement'' means the placement of an unaccompanied alien child in either a detention facility or an alternative to such a facility; and

(2) the term ''unaccompanied alien child'' means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained 18 years of age; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

[1] See References in Text note below.

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

(Pub. L. 107–296, title IV, § 462, Nov. 25, 2002, 116 Stat. 2202; Pub. L. 110–457, title II, § 235(f), Dec. 23, 2008, 122 Stat. 5081.)

REFERENCES IN TEXT

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

Section 4, referred to in subsec. (d), is section 4 of Pub. L. 107–296, which is set out as an Effective Date note under section 101 of this title.

This chapter, referred to in subsec. (f)(2), was in the original ''this Act'', meaning Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2135, known as the Homeland Security Act of 2002, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 101 of this title and Tables.

CODIFICATION

In subsec. (f)(3), ''section 1531 of title 31'' substituted for ''section 202 of the Budget and Accounting Procedures Act of 1950'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2008—Subsec. (b)(1)(L). Pub. L. 110–457, § 235(f)(1), substituted '', including regular follow-up visits to such facilities, placements, and other entities, to assess the continued suitability of such placements.'' for period at end.

Subsec. (b)(3). Pub. L. 110–457, § 235(f)(2)(A), substituted ''paragraph (1),'' for ''paragraph (1)(G),''.

Subsec. (b)(4). Pub. L. 110–457, § 235(f)(2)(B), added par. (4).

CHANGE OF NAME

Bureau of Border Security, referred to in subsec. (b)(2)(A), changed to Bureau of Immigration and Customs Enforcement by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108–32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

PART F—GENERAL IMMIGRATION PROVISIONS

§ 291. Abolishment of INS

(a) In general

Upon completion of all transfers from the Immigration and Naturalization Service as provided for by this chapter, the Immigration and Naturalization Service of the Department of Justice is abolished.

(b) Prohibition

The authority provided by section 542 of this title may be used to reorganize functions or organizational units within the Bureau of Border Security or the Bureau of Citizenship and Immigration Services, but may not be used to recombine the two bureaus into a single agency or otherwise to combine, join, or consolidate functions or organizational units of the two bureaus with each other.

(Pub. L. 107–296, title IV, § 471, Nov. 25, 2002, 116 Stat. 2205.)

REFERENCES IN TEXT

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

CHANGE OF NAME

Bureau of Border Security, referred to in subsec. (b), changed to Bureau of Immigration and Customs Enforcement by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108–32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

§ 292. Voluntary separation incentive payments

(a) Definitions

For purposes of this section—

(1) the term ''employee'' means an employee (as defined by section 2105 of title 5) who—

(A) has completed at least 3 years of current continuous service with 1 or more covered entities; and

(B) is serving under an appointment without time limitation,

but does not include any person under subparagraphs (A)–(G) of section 663(a)(2) of Public Law 104–208 (5 U.S.C. 5597 note);

(2) the term ''covered entity'' means—

(A) the Immigration and Naturalization Service;

(B) the Bureau of Border Security of the Department of Homeland Security; and

(C) the Bureau of Citizenship and Immigration Services of the Department of Homeland Security; and

(3) the term ''transfer date'' means the date on which the transfer of functions specified under section 251 of this title takes effect.

(b) Strategic restructuring plan

Before the Attorney General or the Secretary obligates any resources for voluntary separation incentive payments under this section, such official shall submit to the appropriate committees of Congress a strategic restructuring plan, which shall include—

(1) an organizational chart depicting the covered entities after their restructuring pursuant to this chapter;

(2) a summary description of how the authority under this section will be used to help carry out that restructuring; and

(3) the information specified in section 663(b)(2) of Public Law 104–208 (5 U.S.C. 5597 note).

As used in the preceding sentence, the ''appropriate committees of Congress'' are the Committees on Appropriations, Government Reform, and the Judiciary of the House of Representatives, and the Committees on Appropriations, Governmental Affairs, and the Judiciary of the Senate.

(c) Authority

The Attorney General and the Secretary may, to the extent necessary to help carry out their respective strategic restructuring plan described in subsection (b) of this section, make voluntary

separation incentive payments to employees. Any such payment—

(1) shall be paid to the employee, in a lump sum, after the employee has separated from service;

(2) shall be paid from appropriations or funds available for the payment of basic pay of the employee;

(3) shall be equal to the lesser of—

(A) the amount the employee would be entitled to receive under section 5595(c) of title 5; or

(B) an amount not to exceed $25,000, as determined by the Attorney General or the Secretary;

(4) may not be made except in the case of any qualifying employee who voluntarily separates (whether by retirement or resignation) before the end of—

(A) the 3-month period beginning on the date on which such payment is offered or made available to such employee; or

(B) the 3-year period beginning on November 25, 2002,

whichever occurs first;

(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and

(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595 of title 5, based on any other separation.

(d) Additional agency contributions to the retirement fund

(1) In general

In addition to any payments which it is otherwise required to make, the Department of Justice and the Department of Homeland Security shall, for each fiscal year with respect to which it makes any voluntary separation incentive payments under this section, remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund the amount required under paragraph (2).

(2) Amount required

The amount required under this paragraph shall, for any fiscal year, be the amount under subparagraph (A) or (B), whichever is greater.

(A) First method

The amount under this subparagraph shall, for any fiscal year, be equal to the minimum amount necessary to offset the additional costs to the retirement systems under title 5 (payable out of the Civil Service Retirement and Disability Fund) resulting from the voluntary separation of the employees described in paragraph (3), as determined under regulations of the Office of Personnel Management.

(B) Second method

The amount under this subparagraph shall, for any fiscal year, be equal to 45 percent of the sum total of the final basic pay of the employees described in paragraph (3).

(3) Computations to be based on separations occurring in the fiscal year involved

The employees described in this paragraph are those employees who receive a voluntary separation incentive payment under this section based on their separating from service during the fiscal year with respect to which the payment under this subsection relates.

(4) Final basic pay defined

In this subsection, the term ''final basic pay'' means, with respect to an employee, the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee's final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefor.

(e) Effect of subsequent employment with the Government

An individual who receives a voluntary separation incentive payment under this section and who, within 5 years after the date of the separation on which the payment is based, accepts any compensated employment with the Government or works for any agency of the Government through a personal services contract, shall be required to pay, prior to the individual's first day of employment, the entire amount of the incentive payment. Such payment shall be made to the covered entity from which the individual separated or, if made on or after the transfer date, to the Deputy Secretary or the Under Secretary for Border and Transportation Security (for transfer to the appropriate component of the Department of Homeland Security, if necessary).

(f) Effect on employment levels

(1) Intended effect

Voluntary separations under this section are not intended to necessarily reduce the total number of full-time equivalent positions in any covered entity.

(2) Use of voluntary separations

A covered entity may redeploy or use the full-time equivalent positions vacated by voluntary separations under this section to make other positions available to more critical locations or more critical occupations.

(Pub. L. 107–296, title IV, § 472, Nov. 25, 2002, 116 Stat. 2205.)

REFERENCES IN TEXT

Section 663 of Public Law 104–208, referred to in subsecs. (a)(1) and (b)(3), probably means Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 663], Sept. 30, 1996, 110 Stat. 3009–314, 3009–383, which is classified as a note under section 5597 of Title 5, Government Organization and Employees.

This chapter, referred to in subsec. (b)(1), was in the original ''this Act'', meaning Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2135, known as the Homeland Security Act of 2002, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 101 of this title and Tables.

CHANGE OF NAME

Bureau of Border Security, referred to in subsec. (a)(2)(B), changed to Bureau of Immigration and Cus-

toms Enforcement by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108–32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

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

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

§ 293. Authority to conduct a demonstration project relating to disciplinary action

(a) In general

The Attorney General and the Secretary may each, during a period ending not later than 5 years after November 25, 2002, conduct a demonstration project for the purpose of determining whether one or more changes in the policies or procedures relating to methods for disciplining employees would result in improved personnel management.

(b) Scope

A demonstration project under this section—

(1) may not cover any employees apart from those employed in or under a covered entity; and

(2) shall not be limited by any provision of chapter 43, 75, or 77 of title 5.

(c) Procedures

Under the demonstration project—

(1) the use of alternative means of dispute resolution (as defined in section 571 of title 5) shall be encouraged, whenever appropriate; and

(2) each covered entity under the jurisdiction of the official conducting the project shall be required to provide for the expeditious, fair, and independent review of any action to which section 4303 or subchapter II of chapter 75 of such title 5 would otherwise apply (except an action described in section 7512(5) of such title 5).

(d) Actions involving discrimination

Notwithstanding any other provision of this section, if, in the case of any matter described in section 7702(a)(1)(B) of title 5, there is no judicially reviewable action under the demonstration project within 120 days after the filing of an appeal or other formal request for review (referred to in subsection (c)(2) of this section), an employee shall be entitled to file a civil action to the same extent and in the same manner as provided in section 7702(e)(1) of such title 5 (in the matter following subparagraph (C) thereof).

(e) Certain employees

Employees shall not be included within any project under this section if such employees are—

(1) neither managers nor supervisors; and

(2) within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 71 of title 5.

Notwithstanding the preceding sentence, an aggrieved employee within a unit (referred to in paragraph (2)) may elect to participate in a complaint procedure developed under the demonstration project in lieu of any negotiated grievance procedure and any statutory procedure (as such term is used in section 7121 of such title 5).

(f) Reports

The Government Accountability Office shall prepare and submit to the Committees on Government Reform and the Judiciary of the House of Representatives and the Committees on Governmental Affairs and the Judiciary of the Senate periodic reports on any demonstration project conducted under this section, such reports to be submitted after the second and fourth years of its operation. Upon request, the Attorney General or the Secretary shall furnish such information as the Government Accountability Office may require to carry out this subsection.

(g) Definition

In this section, the term ''covered entity'' has the meaning given such term in section 292(a)(2) of this title.

(Pub. L. 107–296, title IV, § 473, Nov. 25, 2002, 116 Stat. 2208; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsec. (f). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in two places.

CHANGE OF NAME

Committee on 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.

§ 294. Sense of Congress

It is the sense of Congress that—

(1) the missions of the Bureau of Border Security and the Bureau of Citizenship and Immigration Services are equally important and, accordingly, they each should be adequately funded; and

(2) the functions transferred under this part should not, after such transfers take effect, operate at levels below those in effect prior to November 25, 2002.

(Pub. L. 107–296, title IV, § 474, Nov. 25, 2002, 116 Stat. 2209.)

CHANGE OF NAME

Bureau of Border Security, referred to in par. (1), changed to Bureau of Immigration and Customs Enforcement by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108–32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

§ 295. Director of Shared Services

(a) In general

Within the Office of Deputy Secretary, there shall be a Director of Shared Services.

(b) Functions

The Director of Shared Services shall be responsible for the coordination of resources for the Bureau of Border Security and the Bureau of Citizenship and Immigration Services, including—

(1) information resources management, including computer databases and information technology;

(2) records and file management; and

(3) forms management.

(Pub. L. 107–296, title IV, § 475, Nov. 25, 2002, 116 Stat. 2209.)

CHANGE OF NAME

Bureau of Border Security, referred to in subsec. (b), changed to Bureau of Immigration and Customs Enforcement by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108–32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

§ 296. Separation of funding

(a) In general

There shall be established separate accounts in the Treasury of the United States for appropriated funds and other deposits available for the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(b) Separate budgets

To ensure that the Bureau of Citizenship and Immigration Services and the Bureau of Border Security are funded to the extent necessary to fully carry out their respective functions, the Director of the Office of Management and Budget shall separate the budget requests for each such entity.

(c) Fees

Fees imposed for a particular service, application, or benefit shall be deposited into the account established under subsection (a) of this section that is for the bureau with jurisdiction over the function to which the fee relates.

(d) Fees not transferable

No fee may be transferred between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security for purposes not authorized by section 1356 of title 8.

(Pub. L. 107–296, title IV, § 476, Nov. 25, 2002, 116 Stat. 2209.)

CHANGE OF NAME

Bureau of Border Security, referred to in subsecs. (a), (b), and (d), changed to Bureau of Immigration and Customs Enforcement by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108–32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

§ 297. Reports and implementation plans

(a) Division of funds

The Secretary, not later than 120 days after the effective date of this chapter, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report on the proposed division and transfer of funds, including unexpended funds, appropriations, and fees, between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(b) Division of personnel

The Secretary, not later than 120 days after the effective date of this chapter, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report on the proposed division of personnel between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(c) Implementation plan

(1) In general

The Secretary, not later than 120 days after the effective date of this chapter, and every 6 months thereafter until the termination of fiscal year 2005, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate an implementation plan to carry out this chapter.

(2) Contents

The implementation plan should include details concerning the separation of the Bureau of Citizenship and Immigration Services and the Bureau of Border Security, including the following:

(A) Organizational structure, including the field structure.

(B) Chain of command.

(C) Procedures for interaction among such bureaus.

(D) Fraud detection and investigation.

(E) The processing and handling of removal proceedings, including expedited removal and applications for relief from removal.

(F) Recommendations for conforming amendments to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(G) Establishment of a transition team.

(H) Methods to phase in the costs of separating the administrative support systems of the Immigration and Naturalization Service in order to provide for separate administrative support systems for the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(d) Comptroller General studies and reports

(1) Status reports on transition

Not later than 18 months after the date on which the transfer of functions specified under section 251 of this title takes effect, and every 6 months thereafter, until full implementation of this part has been completed, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the House of Representatives and the Senate a report containing the following:

(A) A determination of whether the transfers of functions made by parts D and E of this subchapter have been completed, and if a transfer of functions has not taken place, identifying the reasons why the transfer has not taken place.

(B) If the transfers of functions made by parts D and E of this subchapter have been

completed, an identification of any issues that have arisen due to the completed transfers.

(C) An identification of any issues that may arise due to any future transfer of functions.

(2) Report on management

Not later than 4 years after the date on which the transfer of functions specified under section 251 of this title takes effect, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the House of Representatives and the Senate a report, following a study, containing the following:

(A) Determinations of whether the transfer of functions from the Immigration and Naturalization Service to the Bureau of Citizenship and Immigration Services and the Bureau of Border Security have improved, with respect to each function transferred, the following:

(i) Operations.

(ii) Management, including accountability and communication.

(iii) Financial administration.

(iv) Recordkeeping, including information management and technology.

(B) A statement of the reasons for the determinations under subparagraph (A).

(C) Any recommendations for further improvements to the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(3) Report on fees

Not later than 1 year after November 25, 2002, the Comptroller General of the United States shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report examining whether the Bureau of Citizenship and Immigration Services is likely to derive sufficient funds from fees to carry out its functions in the absence of appropriated funds.

(Pub. L. 107–296, title IV, § 477, Nov. 25, 2002, 116 Stat. 2209.)

REFERENCES IN TEXT

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

This chapter, referred to in subsec. (c)(1), was in the original ''this Act'', meaning Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2135, known as the Homeland Security Act of 2002, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 101 of this title and Tables.

The Immigration and Nationality Act, referred to in subsec. (c)(2)(F), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§ 1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

Parts D and E of this subchapter, referred to in subsec. (d)(1)(A), (B), was in the original ''subtitles D and E'', meaning subtitles D (§§ 441–446) and E (§§ 451–462) of title IV of Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2192, 2195, which enacted parts D and E of this subchapter, amended sections 1356 and 1573 of Title 8, Aliens and Nationality, and enacted provisions set out as a note under section 271 of this title. For complete classification of subtitles D and E to the Code, see Tables.

CHANGE OF NAME

Bureau of Border Security, referred to in text, changed to Bureau of Immigration and Customs Enforcement by Reorganization Plan Modification for the Department of Homeland Security, eff. Mar. 1, 2003, H. Doc. No. 108–32, 108th Congress, 1st Session, set out as a note under section 542 of this title.

§ 298. Immigration functions

(a) Annual report

(1) In general

One year after November 25, 2002, and each year thereafter, the Secretary shall submit a report to the President, to the Committees on the Judiciary and Government Reform of the House of Representatives, and to the Committees on the Judiciary and Government Affairs of the Senate, on the impact the transfers made by this part has had on immigration functions.

(2) Matter included

The report shall address the following with respect to the period covered by the report:

(A) The aggregate number of all immigration applications and petitions received, and processed, by the Department.

(B) Region-by-region statistics on the aggregate number of immigration applications and petitions filed by an alien (or filed on behalf of an alien) and denied, disaggregated by category of denial and application or petition type.

(C) The quantity of backlogged immigration applications and petitions that have been processed, the aggregate number awaiting processing, and a detailed plan for eliminating the backlog.

(D) The average processing period for immigration applications and petitions, disaggregated by application or petition type.

(E) The number and types of immigration-related grievances filed with any official of the Department of Justice, and if those grievances were resolved.

(F) Plans to address grievances and improve immigration services.

(G) Whether immigration-related fees were used consistent with legal requirements regarding such use.

(H) Whether immigration-related questions conveyed by customers to the Department (whether conveyed in person, by telephone, or by means of the Internet) were answered effectively and efficiently.

(b) Sense of Congress regarding immigration services

It is the sense of Congress that—

(1) the quality and efficiency of immigration services rendered by the Federal Government should be improved after the transfers made by this part take effect; and

(2) the Secretary should undertake efforts to guarantee that concerns regarding the quality and efficiency of immigration services are addressed after such effective date.

(Pub. L. 107–296, title IV, § 478, Nov. 25, 2002, 116 Stat. 2211.)

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.

SUBCHAPTER V—NATIONAL EMERGENCY MANAGEMENT

AMENDMENTS

2006—Pub. L. 109–295, title VI, § 611(1), Oct. 4, 2006, 120 Stat. 1395, substituted ''NATIONAL EMERGENCY MANAGEMENT'' for ''EMERGENCY PREPAREDNESS AND RESPONSE'' in subchapter heading.

§ 311. Definitions

In this subchapter—

(1) the term ''Administrator'' means the Administrator of the Agency;

(2) the term ''Agency'' means the Federal Emergency Management Agency;

(3) the term ''catastrophic incident'' means any natural disaster, act of terrorism, or other man-made disaster that results in extraordinary levels of casualties or damage or disruption severely affecting the population (including mass evacuations), infrastructure, environment, economy, national morale, or government functions in an area;

(4) the terms ''credentialed'' and ''credentialing'' mean having provided, or providing, respectively, documentation that identifies personnel and authenticates and verifies the qualifications of such personnel by ensuring that such personnel possess a minimum common level of training, experience, physical and medical fitness, and capability appropriate for a particular position in accordance with standards created under section 320 of this title;

(5) the term ''Federal coordinating officer'' means a Federal coordinating officer as described in section 5143 of title 42;

(6) the term ''interoperable'' has the meaning given the term ''interoperable communications'' under section 194(g)(1) of this title;

(7) the term ''National Incident Management System'' means a system to enable effective, efficient, and collaborative incident management;

(8) the term ''National Response Plan'' means the National Response Plan or any successor plan prepared under section 314(a)(6)[1] of this title;

(9) the term ''Regional Administrator'' means a Regional Administrator appointed under section 317 of this title;

(10) the term ''Regional Office'' means a Regional Office established under section 317 of this title;

(11) the term ''resources'' means personnel and major items of equipment, supplies, and facilities available or potentially available for responding to a natural disaster, act of terrorism, or other man-made disaster;

(12) the term ''surge capacity'' means the ability to rapidly and substantially increase the provision of search and rescue capabilities, food, water, medicine, shelter and housing, medical care, evacuation capacity, staffing (including disaster assistance employees), and other resources necessary to save lives and protect property during a catastrophic incident;

(13) the term ''tribal government'' means the government of any entity described in section 101(11)(B) of this title; and

(14) the terms ''typed'' and ''typing'' mean having evaluated, or evaluating, respectively, a resource in accordance with standards created under section 320 of this title.

(Pub. L. 107–296, title V, § 501, as added Pub. L. 109–295, title VI, § 611(10), Oct. 4, 2006, 120 Stat. 1395; amended Pub. L. 110–53, title IV, § 401(a), title V, § 502(c)(1), Aug. 3, 2007, 121 Stat. 301, 311.)

REFERENCES IN TEXT

Section 314(a)(6) of this title, referred to in par. (8), was in the original ''section 502(a)(6)'' and was translated as meaning section 502 of Pub. L. 107–296 prior to its redesignation as section 504 by Pub. L. 109–295, § 611(8), and not section 506 which was redesignated section 502 by Pub. L. 109–295, § 611(9), and is classified to section 312 of this title, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 311, Pub. L. 107–296, title V, § 501, Nov. 25, 2002, 116 Stat. 2212, provided for an Under Secretary for Emergency Preparedness and Response, prior to repeal by Pub. L. 109–295, title VI, § 611(2), Oct. 4, 2006, 120 Stat. 1395.

AMENDMENTS

2007—Pars. (4) to (12). Pub. L. 110–53, § 401(a)(1)–(4), added pars. (4) and (11) and redesignated former pars. (4) to (10) as (5) to (10) and (12), respectively. Former par. (11) redesignated (13).

Par. (13). Pub. L. 110–53, § 502(c)(1), substituted ''101(11)(B)'' for ''101(10)(B)''.

Pub. L. 110–53, § 401(a)(1), redesignated par. (11) as (13).

Par. (14). Pub. L. 110–53, § 401(a)(5)–(7), added par. (14).

CHANGE OF NAME

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.

INTERIM ACTIONS

Pub. L. 109–295, title VI, § 612(f)(1), Oct. 4, 2006, 120 Stat. 1411, provided that: ''During the period beginning on the date of enactment of this Act [Oct. 4, 2006] and ending on March 31, 2007, the Secretary [of Homeland Security], the Under Secretary for Preparedness, and the Director of the Federal Emergency Management Agency shall take such actions as are necessary to provide for the orderly implementation of any amendment under this subtitle [subtitle A (§§ 611–614) of title VI of Pub. L. 109–295, see Tables for classification] that takes effect on March 31, 2007.''

§ 312. Definition

In this subchapter, the term ''Nuclear Incident Response Team'' means a resource that includes—

[1] See References in Text note below.