

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

(b) Waiver

The Commissioner of U.S. Customs and Border Protection may waive the polygraph examination requirement under subsection (a)(1) for any applicant who—

- (1) is deemed suitable for employment;
- (2) holds a current, active Top Secret/Sensitive Compartmented Information Clearance;
- (3) has a current Single Scope Background Investigation;
- (4) was not granted any waivers to obtain his or her clearance; and
- (5) is a veteran (as defined in section 2108 of title 5).

(Pub. L. 111-376, § 3, Jan. 4, 2011, 124 Stat. 4104; Pub. L. 114-279, § 5, Dec. 16, 2016, 130 Stat. 1422.)

CODIFICATION

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

AMENDMENTS

2016—Pub. L. 114-279 designated existing provisions as subsec. (a), inserted heading, in par. (1) inserted “(except as provided in subsection (b))” after “Border Protection”, and added subsec. (b).

WAIVER OF CERTAIN POLYGRAPH EXAMINATION REQUIREMENTS

Pub. L. 114-328, div. A, title X, § 1049, Dec. 23, 2016, 130 Stat. 2396, provided that: “The Secretary of Homeland Security, acting through the Commissioner of U.S. Customs and Border Protection, may waive the polygraph examination requirement under section 3 of the Anti-Border Corruption Act of 2010 (Public Law 111-376) [6 U.S.C. 221] for any applicant who—

- “(1) the Commissioner determines is suitable for employment;
- “(2) holds a current, active Top Secret clearance and is able to access sensitive compartmented information;
- “(3) has a current single scope background investigation;
- “(4) was not granted any waivers to obtain the clearance; and
- “(5) is a veteran (as such term is defined in section 2108 or 2109a [probably should be ‘2108a’] of title 5, United States Code).”

FINDINGS

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

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

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

- “(A) all job applicants for law enforcement positions at U.S. Customs and Border Protection to re-

ceive a polygraph examination and a background investigation before being offered employment; and
“(B) relevant employees to receive a periodic background reinvestigation every 5 years.

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

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

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

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

§ 222. Advanced Training Center Revolving Fund

For fiscal year 2012 and thereafter, U.S. Customs and Border Protection’s Advanced Training Center is authorized to charge fees for any service and/or thing of value it provides to Federal Government or non-government entities or individuals, so long as the fees charged do not exceed the full costs associated with the service or thing of value provided: *Provided*, That notwithstanding section 3302(b) of title 31, fees collected by the Advanced Training Center are to be deposited into a separate account entitled “Advanced Training Center Revolving Fund”, and be available, without further appropriations, for necessary expenses of the Advanced Training Center program, and are to remain available until expended.

(Pub. L. 112-74, div. D, title V, § 557, Dec. 23, 2011, 125 Stat. 979.)

CODIFICATION

Section was enacted as part of the Department of Homeland Security Appropriations Act, 2012, and also as part of the Consolidated Appropriations Act, 2012, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

§ 223. Border security metrics

(a) Definitions

In this section:

(1) Appropriate congressional committees

The term “appropriate congressional committees” means—

- (A) the Committee on Homeland Security and Governmental Affairs of the Senate; and
- (B) the Committee on Homeland Security of the House of Representatives.

(2) Consequence Delivery System

The term “Consequence Delivery System” means the series of consequences applied by U.S. Border Patrol in collaboration with other Federal agencies to persons unlawfully entering the United States, in order to prevent unlawful border crossing recidivism.

(3) Got away

The term “got away” means an unlawful border crosser who—

- (A) is directly or indirectly observed making an unlawful entry into the United States;
- (B) is not apprehended; and
- (C) is not a turn back.

(4) Known maritime migrant flow

The term “known maritime migrant flow” means the sum of the number of undocumented migrants—

- (A) interdicted in the waters over which the United States has jurisdiction;
- (B) identified at sea either directly or indirectly, but not interdicted;
- (C) if not described in subparagraph (A) or (B), who were otherwise reported, with a significant degree of certainty, as having entered, or attempted to enter, the United States through the maritime border.

(5) Major violator

The term “major violator” means a person or entity that has engaged in serious criminal activities at any land, air, or sea port of entry, including the following:

- (A) Possession of illicit drugs.
- (B) Smuggling of prohibited products.
- (C) Human smuggling.
- (D) Possession of illegal weapons.
- (E) Use of fraudulent documents.
- (F) Any other offense that is serious enough to result in an arrest.

(6) Secretary

The term “the Secretary” means the Secretary of Homeland Security.

(7) Situational awareness

The term “situational awareness” means knowledge and understanding of current unlawful cross-border activity, including the following:

- (A) Threats and trends concerning illicit trafficking and unlawful crossings.
- (B) The ability to forecast future shifts in such threats and trends.
- (C) The ability to evaluate such threats and trends at a level sufficient to create actionable plans.
- (D) The operational capability to conduct persistent and integrated surveillance of the international borders of the United States.

(8) Transit zone

The term “transit zone” means the sea corridors of the western Atlantic Ocean, the Gulf of Mexico, the Caribbean Sea, and the eastern Pacific Ocean through which undocumented migrants and illicit drugs transit, either directly or indirectly, to the United States.

(9) Turn back

The term “turn back” means an unlawful border crosser who, after making an unlawful entry into the United States, responds to United States enforcement efforts by returning promptly to the country from which such crosser entered.

(10) Unlawful border crossing effectiveness rate

The term “unlawful border crossing effectiveness rate” means the percentage that results from dividing the number of apprehensions and turn backs by the sum of the number of apprehensions, estimated undetected unlawful entries, turn backs, and got aways.

(11) Unlawful entry

The term “unlawful entry” means an unlawful border crosser who enters the United

States and is not apprehended by a border security component of the Department of Homeland Security.

(b) Metrics for securing the border between ports of entry**(1) In general**

Not later than 180 days after December 23, 2016, the Secretary shall develop metrics, informed by situational awareness, to measure the effectiveness of security between ports of entry. The Secretary shall annually implement the metrics developed under this subsection, which shall include the following:

(A) Estimates, using alternative methodologies where appropriate, including recidivism data, survey data, known-flow data, and technologically-measured data, of the following:

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

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

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

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

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

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

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

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

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

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

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

(2) Metrics consultation

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

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

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

(3) Manner of collection

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

(c) Metrics for securing the border at ports of entry**(1) In general**

Not later than 180 days after December 23, 2016, the Secretary shall develop metrics, informed by situational awareness, to measure the effectiveness of security at ports of entry. The Secretary shall annually implement the metrics developed under this subsection, which shall include the following:

(A) Estimates, using alternative methodologies where appropriate, including recidivism data, survey data, and randomized secondary screening data, of the following:

(i) Total inadmissible travelers who attempt to, or successfully, enter the United States at a port of entry.

(ii) The rate of refusals and interdictions for travelers who attempt to, or successfully, enter the United States at a port of entry.

(iii) The number of unlawful entries at a port of entry.

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

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

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

(E) In consultation with the heads of the Office of National Drug Control Policy and the United States Southern Command, a cocaine seizure effectiveness rate, which is the percentage resulting from dividing the amount of cocaine seized by the Office of

Field Operations by the total estimated cocaine flow rate at ports of entry along the United States land border with Mexico and Canada.

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

(i) A wait time ratio that compares the average wait times to total commercial and private vehicular traffic volumes at each land port of entry.

(ii) An infrastructure capacity utilization rate that measures traffic volume against the physical and staffing capacity at each land port of entry.

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

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

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

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

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

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

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

(2) Metrics consultation

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

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

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

(3) Manner of collection

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

(d) Metrics for securing the maritime border**(1) In general**

Not later than 180 days after December 23, 2016, the Secretary shall develop metrics, informed by situational awareness, to measure

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

(A) Situational awareness achieved in the maritime environment.

(B) A known maritime migrant flow rate.

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

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

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

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

(2) Metrics consultation

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

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

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

(3) Manner of collection

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

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

(1) In general

Not later than 180 days after December 23, 2016, the Secretary shall develop metrics, informed by situational awareness, to measure the effectiveness of the aviation assets and op-

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

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

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

(C) A readiness rate, which compares the number of aviation missions flown by Air and Marine Operations to the number of aviation missions cancelled by Air and Marine Operations due to maintenance, operations, or other causes.

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

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

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

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

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

(2) Metrics consultation

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

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

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

(3) Manner of collection

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

(f) Data transparency

The Secretary shall—

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

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

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

(1) Metrics report

(A) Mandatory disclosures

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

(B) Permissible disclosures

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

- (i) the Center for Borders, Trade, and Immigration Research of the Centers of Excellence network of the Department of Homeland Security;
- (ii) the head of a national laboratory within the Department of Homeland Security laboratory network with prior expertise in border security; and
- (iii) a Federally Funded Research and Development Center.

(2) GAO report

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

- (A) analyzes the suitability and statistical validity of the data and methodology contained in each such report; and
- (B) includes recommendations on—
 - (i) the feasibility of other suitable metrics that may be used to measure the effectiveness of border security; and
 - (ii) improvements that need to be made to the metrics being used to measure the effectiveness of border security.

(3) State of the Border report

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

- (A) provides trends for each metric under this section for the last ten fiscal years, to the greatest extent possible;
- (B) provides selected analysis into related aspects of illegal flow rates, including undocumented migrant flows and stock estimation techniques;
- (C) provides selected analysis into related aspects of legal flow rates; and
- (D) includes any other information that the Secretary determines appropriate.

(4) Metrics update

(A) In general

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

are suitable to measure the effectiveness of border security.

(B) Congressional notification

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

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

CODIFICATION

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

PART C—MISCELLANEOUS PROVISIONS

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

(a) Transfer of agricultural import and entry inspection functions

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

(b) Covered animal and plant protection laws

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

- (1) The Act commonly known as the Virus-Serum-Toxin Act (the eighth paragraph under the heading “Bureau of Animal Industry” in the Act of March 4, 1913; 21 U.S.C. 151 et seq.).
- (2) Section 1 of the Act of August 31, 1922 (commonly known as the Honeybee Act; 7 U.S.C. 281).
- (3) Title III of the Federal Seed Act (7 U.S.C. 1581 et seq.).
- (4) The Plant Protection Act (7 U.S.C. 7701 et seq.).
- (5) The Animal Health Protection Act (sub-title E of title X of Public Law 107-171; 7 U.S.C. 8301 et seq.).
- (6) The Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.).
- (7) Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540).

(c) Exclusion of quarantine activities

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

(d) Effect of transfer

(1) Compliance with Department of Agriculture regulations

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

(2) Rulemaking coordination

The Secretary of Agriculture shall coordinate with the Secretary whenever the Secretary of Agriculture prescribes regulations, policies, or procedures for administering the