

the Internal Revenue Service, and shall be open to public inspection, except that the conduct, filing, and availability of the audit shall be consistent with the protection of intelligence sources and methods, of sensitive law enforcement information, and of other sensitive national security information.

(8) Each Johnny Micheal Spann Patriot Trust shall make distributions to beneficiaries described in paragraph (1) at least once every calendar year, beginning not later than 12 months after the formation of such Trust, and all funds and donations received and earnings not placed in a private foundation dedicated to such beneficiaries must be distributed within 36 months after the end of the fiscal year in which such funds, donations, and earnings are received.

(9)(A) When determining the amount of a distribution to any beneficiary described in paragraph (1), a Johnny Micheal Spann Patriot Trust should take into account the amount of any collateral source compensation that the beneficiary has received or is entitled to receive as a result of the death of an individual described in paragraph (1).

(B) Collateral source compensation includes all compensation from collateral sources, including life insurance, pension funds, death benefit programs, and payments by Federal, State, or local governments related to the death of an individual described in paragraph (1).

**(d) Treatment of Johnny Micheal Spann Patriot Trusts**

Each Johnny Micheal Spann Patriot Trust shall refrain from conducting the activities described in clauses (i) and (ii) of section 30101(20)(A) of title 52 so that a general solicitation of funds by an individual described in paragraph (1) of section 30125(e) of title 52 will be permissible if such solicitation meets the requirements of paragraph (4)(A) of such section.

**(e) Notification of Trust beneficiaries**

Notwithstanding any other provision of law, and in a manner consistent with the protection of intelligence sources and methods and sensitive law enforcement information, and other sensitive national security information, the Secretary of Defense, the Director of the Federal Bureau of Investigation, or the Director of Central Intelligence, or their designees, as applicable, may forward information received from an executor, administrator, or other legal representative of the estate of a decedent described in subparagraph (A), (B), (C), or (D) of subsection (c)(1), to a Johnny Micheal Spann Patriot Trust on how to contact individuals eligible for a distribution under subsection (c)(1) for the purpose of providing assistance from such Trust: *Provided*, That, neither forwarding nor failing to forward any information under this subsection shall create any cause of action against any Federal department, agency, officer, agent, or employee.

**(f) Regulations**

Not later than 90 days after November 25, 2002, the Secretary of Defense, in coordination with the Attorney General, the Director of the Fed-

eral Bureau of Investigation, and the Director of Central Intelligence, shall prescribe regulations to carry out this section.

(Pub. L. 107–296, title VI, § 601, Nov. 25, 2002, 116 Stat. 2215.)

**Editorial Notes**

REFERENCES IN TEXT

The Authorization for Use of Military Force, referred to in subsec. (c)(1), is Pub. L. 107–40, Sept. 18, 2001, 115 Stat. 224, which is set out as a note under section 1541 of Title 50, War and National Defense.

**Statutory Notes and Related Subsidiaries**

CHANGE OF NAME

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

SUBCHAPTER VII—MANAGEMENT

**§ 341. Under Secretary for Management**

**(a) In general**

The Under Secretary for Management shall serve as the Chief Management Officer and principal advisor to the Secretary on matters related to the management of the Department, including management integration and transformation in support of homeland security operations and programs. The Secretary, acting through the Under Secretary for Management, shall be responsible for the management and administration of the Department, including the following:

- (1) The budget, appropriations, expenditures of funds, accounting, and finance.
- (2) Procurement.
- (3) Human resources and personnel.
- (4) Information technology and communications systems, including policies and directives to achieve and maintain interoperable communications among the components of the Department.
- (5) Facilities, property, equipment, vehicle fleets (under subsection (c)), and other material resources.
- (6) Security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources.
- (7) Strategic management planning and annual performance planning and identification and tracking of performance measures relating to the responsibilities of the Department.
- (8) Grants and other assistance management programs.
- (9) The management integration and transformation within each functional management discipline of the Department, including information technology, financial management, acquisition management, and human capital

management, to ensure an efficient and orderly consolidation of functions and personnel in the Department, including—

(A) the development of centralized data sources and connectivity of information systems to the greatest extent practicable to enhance program visibility, transparency, and operational effectiveness and coordination;

(B) the development of standardized and automated management information to manage and oversee programs and make informed decisions to improve the efficiency of the Department;

(C) the development of effective program management and regular oversight mechanisms, including clear roles and processes for program governance, sharing of best practices, and access to timely, reliable, and evaluated data on all acquisitions and investments; and

(D) the overall supervision, including the conduct of internal audits and management analyses, of the programs and activities of the Department, including establishment of oversight procedures to ensure a full and effective review of the efforts by components of the Department to implement policies and procedures of the Department for management integration and transformation.

(10) The development of a transition and succession plan, before December 1 of each year in which a Presidential election is held, to guide the transition of Department functions to a new Presidential administration, and making such plan available to the next Secretary and Under Secretary for Management and to the congressional homeland security committees.

(11) Reporting to the Government Accountability Office every six months to demonstrate measurable, sustainable progress made in implementing the corrective action plans of the Department to address the designation of the management functions of the Department on the bi-annual high risk list of the Government Accountability Office, until the Comptroller General of the United States submits to the appropriate congressional committees written notification of removal of the high-risk designation.

(12) The conduct of internal audits and management analyses of the programs and activities of the Department.

(13) Any other management duties that the Secretary may designate.

**(b) Waivers for conducting business with suspended or debarred contractors**

Not later than five days after the date on which the Chief Procurement Officer or Chief Financial Officer of the Department issues a waiver of the requirement that an agency not engage in business with a contractor or other recipient of funds listed as a party suspended or debarred from receiving contracts, grants, or other types of Federal assistance in the System for Award Management maintained by the General Services Administration, or any successor thereto, the Under Secretary for Management shall submit to the congressional homeland security committees and the Inspector General of the De-

partment notice of the waiver and an explanation of the finding by the Under Secretary that a compelling reason exists for the waiver.

**(c) Vehicle fleets**

**(1) In general**

In carrying out responsibilities regarding vehicle fleets pursuant to subsection (a)(5), the Under Secretary for Management shall be responsible for overseeing and managing vehicle fleets throughout the Department. The Under Secretary shall also be responsible for the following:

(A) Ensuring that components are in compliance with Federal law, Federal regulations, executive branch guidance, and Department policy (including associated guidance) relating to fleet management and use of vehicles from home to work.

(B) Developing and distributing a standardized vehicle allocation methodology and fleet management plan for components to use to determine optimal fleet size in accordance with paragraph (4).

(C) Ensuring that components formally document fleet management decisions.

(D) Approving component fleet management plans, vehicle leases, and vehicle acquisitions.

**(2) Component responsibilities**

**(A) In general**

Component heads—

(i) shall—

(I) comply with Federal law, Federal regulations, executive branch guidance, and Department policy (including associated guidance) relating to fleet management and use of vehicles from home to work;

(II) ensure that data related to fleet management is accurate and reliable;

(III) use such data to develop a vehicle allocation tool derived by using the standardized vehicle allocation methodology provided by the Under Secretary for Management to determine the optimal fleet size for the next fiscal year and a fleet management plan; and

(IV) use vehicle allocation methodologies and fleet management plans to develop annual requests for funding to support vehicle fleets pursuant to paragraph (6); and

(ii) may not, except as provided in subparagraph (B), lease or acquire new vehicles or replace existing vehicles without prior approval from the Under Secretary for Management pursuant to paragraph (5)(B).

**(B) Exception regarding certain leasing and acquisitions**

If exigent circumstances warrant such, a component head may lease or acquire a new vehicle or replace an existing vehicle without prior approval from the Under Secretary for Management. If under such exigent circumstances a component head so leases, acquires, or replaces a vehicle, such component head shall provide to the Under Sec-

retary an explanation of such circumstances.

**(3) Ongoing oversight**

**(A) Quarterly monitoring**

In accordance with paragraph (4), the Under Secretary for Management shall collect, on a quarterly basis, information regarding component vehicle fleets, including information on fleet size, composition, cost, and vehicle utilization.

**(B) Automated information**

The Under Secretary for Management shall seek to achieve a capability to collect, on a quarterly basis, automated information regarding component vehicle fleets, including the number of trips, miles driven, hours and days used, and the associated costs of such mileage for leased vehicles.

**(C) Monitoring**

The Under Secretary for Management shall track and monitor component information provided pursuant to subparagraph (A) and, as appropriate, subparagraph (B), to ensure that component vehicle fleets are the optimal fleet size and cost effective. The Under Secretary shall use such information to inform the annual component fleet analyses referred to in paragraph (4).

**(4) Annual review of component fleet analyses**

**(A) In general**

To determine the optimal fleet size and associated resources needed for each fiscal year beginning with fiscal year 2018, component heads shall annually submit to the Under Secretary for Management a vehicle allocation tool and fleet management plan using information described in paragraph (3)(A). Such tools and plans may be submitted in classified form if a component head determines that such is necessary to protect operations or mission requirements.

**(B) Vehicle allocation tool**

Component heads shall develop a vehicle allocation tool in accordance with subclause (III) of paragraph (2)(A)(i) that includes an analysis of the following:

- (i) Vehicle utilization data, including the number of trips, miles driven, hours and days used, and the associated costs of such mileage for leased vehicles, in accordance with such paragraph.
- (ii) The role of vehicle fleets in supporting mission requirements for each component.
- (iii) Any other information determined relevant by such component heads.

**(C) Fleet management plans**

Component heads shall use information described in subparagraph (B) to develop a fleet management plan for each such component. Such fleet management plans shall include the following:

- (i) A plan for how each such component may achieve optimal fleet size determined by the vehicle allocation tool required under such subparagraph, including the

elimination of excess vehicles in accordance with paragraph (5), if applicable.

(ii) A cost benefit analysis supporting such plan.

(iii) A schedule each such component will follow to obtain optimal fleet size.

(iv) Any other information determined relevant by component heads.

**(D) Review**

The Under Secretary for Management shall review and make a determination on the results of each component's vehicle allocation tool and fleet management plan under this paragraph to ensure each such component's vehicle fleets are the optimal fleet size and that components are in compliance with applicable Federal law, Federal regulations, executive branch guidance, and Department policy (including associated guidance) pursuant to paragraph (2) relating to fleet management and use of vehicles from home to work. The Under Secretary shall use such tools and plans when reviewing annual component requests for vehicle fleet funding in accordance with paragraph (6).

**(5) Guidance to develop fleet management plans**

The Under Secretary for Management shall provide guidance, pursuant to paragraph (1)(B) on how component heads may achieve optimal fleet size in accordance with paragraph (4), including processes for the following:

- (A) Leasing or acquiring additional vehicles or replacing existing vehicles, if determined necessary.
- (B) Disposing of excess vehicles that the Under Secretary determines should not be reallocated under subparagraph (C).
- (C) Reallocating excess vehicles to other components that may need temporary or long-term use of additional vehicles.

**(6) Annual review of vehicle fleet funding requests**

As part of the annual budget process, the Under Secretary for Management shall review and make determinations regarding annual component requests for funding for vehicle fleets. If component heads have not taken steps in furtherance of achieving optimal fleet size in the prior fiscal year pursuant to paragraphs (4) and (5), the Under Secretary shall provide rescission recommendations to the Committee on Appropriations and the Committee on Homeland Security of the House of Representatives and the Committee on Appropriations and the Committee on Homeland Security and Governmental Affairs of the Senate regarding such component vehicle fleets.

**(7) Accountability for vehicle fleet management**

**(A) Prohibition on certain new vehicle leases and acquisitions**

The Under Secretary for Management and component heads may not approve in any fiscal year beginning with fiscal year 2019 a vehicle lease, acquisition, or replacement request if such component heads did not com-

ply in the prior fiscal year with paragraph (4).

**(B) Prohibition on certain performance compensation**

No Department official with vehicle fleet management responsibilities may receive annual performance compensation in pay in any fiscal year beginning with fiscal year 2019 if such official did not comply in the prior fiscal year with paragraph (4).

**(C) Prohibition on certain car services**

Notwithstanding any other provision of law, no senior executive service official of the Department whose office has a vehicle fleet may receive access to a car service in any fiscal year beginning with fiscal year 2019 if such official did not comply in the prior fiscal year with paragraph (4).

**(8) Motor pool**

**(A) In general**

The Under Secretary for Management may determine the feasibility of operating a vehicle motor pool to permit components to share vehicles as necessary to support mission requirements to reduce the number of excess vehicles in the Department.

**(B) Requirements**

The determination of feasibility of operating a vehicle motor pool under subparagraph (A) shall—

- (i) include—
  - (I) regions in the United States in which multiple components with vehicle fleets are located in proximity to one another, or a significant number of employees with authorization to use vehicles are located; and
  - (II) law enforcement vehicles;
- (ii) cover the National Capital Region; and
- (iii) take into account different mission requirements.

**(C) Report**

The Secretary shall include in the Department's next annual performance report required under current law the results of the determination under this paragraph.

**(9) Definitions**

In this subsection:

**(A) Component head**

The term “component head” means the head of any component of the Department with a vehicle fleet.

**(B) Excess vehicle**

The term “excess vehicle” means any vehicle that is not essential to support mission requirements of a component.

**(C) Optimal fleet size**

The term “optimal fleet size” means, with respect to a particular component, the appropriate number of vehicles to support mission requirements of such component.

**(D) Vehicle fleet**

The term “vehicle fleet” means all owned, commercially leased, or Government-leased

vehicles of the Department or of a component of the Department, as the case may be, including vehicles used for law enforcement and other purposes.

**(d) Appointment and evaluation**

The Under Secretary for Management shall—

(1) be appointed by the President, by and with the advice and consent of the Senate, from among persons who have—

- (A) extensive executive level leadership and management experience in the public or private sector;
- (B) strong leadership skills;
- (C) a demonstrated ability to manage large and complex organizations; and
- (D) a proven record in achieving positive operational results;

(2) enter into an annual performance agreement with the Secretary that shall set forth measurable individual and organizational goals; and

(3) be subject to an annual performance evaluation by the Secretary, who shall determine as part of each such evaluation whether the Under Secretary for Management has made satisfactory progress toward achieving the goals set out in the performance agreement required under paragraph (2).

**(e)<sup>1</sup> System for Award Management consultation**

The Under Secretary for Management shall require that all Department contracting and grant officials consult the System for Award Management (or successor system) as maintained by the General Services Administration prior to awarding a contract or grant or entering into other transactions to ascertain whether the selected contractor is excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

**(e)<sup>1</sup> Interoperable communications defined**

In this section, the term “interoperable communications” has the meaning given that term in section 194(g) of this title.

(Pub. L. 107-296, title VII, §701, Nov. 25, 2002, 116 Stat. 2218; Pub. L. 110-53, title XXIV, §2405(a), (b), Aug. 3, 2007, 121 Stat. 548; Pub. L. 114-29, §3, July 6, 2015, 129 Stat. 421; Pub. L. 114-328, div. A, title XIX, §1903(b), Dec. 23, 2016, 130 Stat. 2673; Pub. L. 115-38, §2, June 6, 2017, 131 Stat. 855.)

**Editorial Notes**

AMENDMENTS

2017—Subsec. (a)(5). Pub. L. 115-38, §2(1), inserted “vehicle fleets (under subsection (c)),” after “equipment,”.

Subsecs. (c) to (e). Pub. L. 115-38, §2(2), (3), added subsec. (c), redesignated former subsec. (c) as (d), and redesignated former subsec. (d), relating to System for Award Management consultation, as (e).

2016—Subsec. (a)(9) to (13). Pub. L. 114-328, §1903(b)(1), added pars. (9) to (11), redesignated former pars. (10) and (11) as (12) and (13), respectively, and struck out former par. (9). Prior to amendment, text of par. (9) read as follows: “The management integration and transformation process, as well as the transition process, to ensure an efficient and orderly consolidation of

<sup>1</sup> So in original. There are two subsecs. (e).

functions and personnel in the Department and transition, including—

“(A) the development of a management integration strategy for the Department, and

“(B) before December 1 of any year in which a Presidential election is held, the development of a transition and succession plan, to be made available to the incoming Secretary and Under Secretary for Management, to guide the transition of management functions to a new Administration.”

Subsec. (b). Pub. L. 114-328, §1903(b)(2), added subsec. (b) and struck out former subsec. (b) which related to maintenance of immigration statistics by the Under Secretary for Management and transfer of certain functions of the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service to the Under Secretary for Management.

Subsecs. (d), (e). Pub. L. 114-328, §1903(b)(3), (4), added subsec. (d) and redesignated former subsec. (d), defining interoperable communications, as (e).

2015—Subsec. (a)(4). Pub. L. 114-29, §3(1), inserted before period at end “, including policies and directives to achieve and maintain interoperable communications among the components of the Department”.

Subsec. (d). Pub. L. 114-29, §3(2), added subsec. (d).

2007—Subsec. (a). Pub. L. 110-53, §2405(a)(1), inserted in introductory provisions “The Under Secretary for Management shall serve as the Chief Management Officer and principal advisor to the Secretary on matters related to the management of the Department, including management integration and transformation in support of homeland security operations and programs.”

Subsec. (a)(7). Pub. L. 110-53, §2405(a)(2), added par. (7) and struck out former par. (7) which read as follows: “Identification and tracking of performance measures relating to the responsibilities of the Department.”

Subsec. (a)(9). Pub. L. 110-53, §2405(a)(3), added par. (9) and struck out former par. (9) which read as follows: “The transition and reorganization process, to ensure an efficient and orderly transfer of functions and personnel to the Department, including the development of a transition plan.”

Subsec. (c). Pub. L. 110-53, §2405(b), added subsec. (c).

#### Statutory Notes and Related Subsidiaries

##### DEADLINE FOR APPOINTMENT; INCUMBENT

Pub. L. 110-53, title XXIV, §2405(c), Aug. 3, 2007, 121 Stat. 549, provided that:

“(1) DEADLINE FOR APPOINTMENT.—Not later than 90 days after the date of the enactment of this Act [Aug. 3, 2007], the Secretary of Homeland Security shall name an individual who meets the qualifications of section 701 of the Homeland Security Act (6 U.S.C. 341), as amended by subsections (a) and (b), to serve as the Under Secretary of Homeland Security for Management. The Secretary may submit the name of the individual who serves in the position of Under Secretary of Homeland Security for Management on the date of enactment of this Act together with a statement that informs the Congress that the individual meets the qualifications of such section as so amended.

“(2) INCUMBENT.—The incumbent serving as Under Secretary of Homeland Security for Management on November 4, 2008, is authorized to continue serving in that position until a successor is confirmed, to ensure continuity in the management functions of the Department.”

#### § 342. Chief Financial Officer

##### (a) In general

The Chief Financial Officer shall perform functions as specified in chapter 9 of title 31 and, with respect to all such functions and other responsibilities that may be assigned to the Chief Financial Officer from time to time, shall also report to the Under Secretary for Management.

#### (b) Program analysis and evaluation function

##### (1) Establishment of Office of Program Analysis and Evaluation

Not later than 90 days after October 16, 2004, the Secretary shall establish an Office of Program Analysis and Evaluation within the Department (in this section referred to as the “Office”).

##### (2) Responsibilities

The Office shall perform the following functions:

(A) Analyze and evaluate plans, programs, and budgets of the Department in relation to United States homeland security objectives, projected threats, vulnerability assessments, estimated costs, resource constraints, and the most recent homeland security strategy developed pursuant to section 454(b)(2) of this title.

(B) Develop and perform analyses and evaluations of alternative plans, programs, personnel levels, and budget submissions for the Department in relation to United States homeland security objectives, projected threats, vulnerability assessments, estimated costs, resource constraints, and the most recent homeland security strategy developed pursuant to section 454(b)(2) of this title.

(C) Establish policies for, and oversee the integration of, the planning, programming, and budgeting system of the Department.

(D) Review and ensure that the Department meets performance-based budget requirements established by the Office of Management and Budget.

(E) Provide guidance for, and oversee the development of, the Future Years Homeland Security Program of the Department, as specified under section 454 of this title.

(F) Ensure that the costs of Department programs, including classified programs, are presented accurately and completely.

(G) Oversee the preparation of the annual performance plan for the Department and the program and performance section of the annual report on program performance for the Department, consistent with sections 1115 and 1116, respectively, of title 31.

(H) Provide leadership in developing and promoting improved analytical tools and methods for analyzing homeland security planning and the allocation of resources.

(I) Any other responsibilities delegated by the Secretary consistent with an effective program analysis and evaluation function.

##### (3) Director of Program Analysis and Evaluation

There shall be a Director of Program Analysis and Evaluation, who—

(A) shall be a principal staff assistant to the Chief Financial Officer of the Department for program analysis and evaluation; and

(B) shall report to an official no lower than the Chief Financial Officer.

##### (4) Reorganization

###### (A) In general

The Secretary may allocate or reallocate the functions of the Office, or discontinue