

SEC. 93. This order does not create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

GEORGE W. BUSH.

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

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

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

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

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

Director, Region V, Federal Emergency Management Agency;

Director, Region VI, Federal Emergency Management Agency;

Director, Region VII, Federal Emergency Management Agency;

Director, Region VIII, Federal Emergency Management Agency; and

Director, Region X, Federal Emergency Management Agency.

SEC. 2. **Exceptions.**

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

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

GEORGE W. BUSH.

§ 112. **Secretary; functions**

(a) **Secretary**

(1) **In general**

There is a Secretary of Homeland Security, appointed by the President, by and with the advice and consent of the Senate.

(2) **Head of Department**

The Secretary is the head of the Department and shall have direction, authority, and control over it.

(3) **Functions vested in Secretary**

All functions of all officers, employees, and organizational units of the Department are vested in the Secretary.

(b) **Functions**

The Secretary—

(1) except as otherwise provided by this chapter, may delegate any of the Secretary's functions to any officer, employee, or organizational unit of the Department;

(2) shall have the authority to make contracts, grants, and cooperative agreements, and to enter into agreements with other executive agencies, as may be necessary and proper to carry out the Secretary's responsibilities under this chapter or otherwise provided by law; and

(3) shall take reasonable steps to ensure that information systems and databases of the Department are compatible with each other and with appropriate databases of other Departments.

(c) **Coordination with non-Federal entities**

With respect to homeland security, the Secretary shall coordinate through the Office of State and Local Coordination<sup>1</sup> (established under section 361 of this title) (including the provision of training and equipment) with State and local government personnel, agencies, and authorities, with the private sector, and with other entities, including by—

(1) coordinating with State and local government personnel, agencies, and authorities, and with the private sector, to ensure adequate planning, equipment, training, and exercise activities;

(2) coordinating and, as appropriate, consolidating, the Federal Government's communications and systems of communications relating to homeland security with State and local government personnel, agencies, and authorities, the private sector, other entities, and the public; and

(3) distributing or, as appropriate, coordinating the distribution of, warnings and information to State and local government personnel, agencies, and authorities and to the public.

(d) **Meetings of National Security Council**

The Secretary may, subject to the direction of the President, attend and participate in meetings of the National Security Council.

(e) **Issuance of regulations**

The issuance of regulations by the Secretary shall be governed by the provisions of chapter 5 of title 5, except as specifically provided in this chapter, in laws granting regulatory authorities that are transferred by this chapter, and in laws enacted after November 25, 2002.

(f) **Special Assistant to the Secretary**

The Secretary shall appoint a Special Assistant to the Secretary who shall be responsible for—

(1) creating and fostering strategic communications with the private sector to enhance

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

the primary mission of the Department to protect the American homeland;

(2) advising the Secretary on the impact of the Department's policies, regulations, processes, and actions on the private sector;

(3) interfacing with other relevant Federal agencies with homeland security missions to assess the impact of these agencies' actions on the private sector;

(4) creating and managing private sector advisory councils composed of representatives of industries and associations designated by the Secretary to—

(A) advise the Secretary on private sector products, applications, and solutions as they relate to homeland security challenges; and

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

(5) working with Federal laboratories, federally funded research and development centers, other federally funded organizations, academia, and the private sector to develop innovative approaches to address homeland security challenges to produce and deploy the best available technologies for homeland security missions;

(6) promoting existing public-private partnerships and developing new public-private partnerships to provide for collaboration and mutual support to address homeland security challenges;

(7) assisting in the development and promotion of private sector best practices to secure critical infrastructure;

(8) coordinating industry efforts, with respect to functions of the Department of Homeland Security, to identify private sector resources and capabilities that could be effective in supplementing Federal, State, and local government agency efforts to prevent or respond to a terrorist attack;

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

(10) consulting with the Office of State and Local Government Coordination and Preparedness on all matters of concern to the private sector, including the tourism industry.

**(g) Standards policy**

All standards activities of the Department shall be conducted in accordance with section 12(d) of the National Technology Transfer Advancement Act of 1995 (15 U.S.C. 272 note) and Office of Management and Budget Circular A-119.

(Pub. L. 107-296, title I, §102, Nov. 25, 2002, 116 Stat. 2142; Pub. L. 108-458, title VII, §7402, Dec. 17, 2004, 118 Stat. 3850.)

REFERENCES IN TEXT

Section 12(d) of the National Technology Transfer Advancement Act of 1995, referred to in subsec. (g), probably means section 12(d) of the National Technology Transfer and Advancement Act of 1995, which is section 12(d) of Pub. L. 104-113, and which is set out as a note under section 272 of Title 15, Commerce and Trade.

AMENDMENTS

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

REQUIRED COORDINATION

Pub. L. 108-458, title VII, §7405, Dec. 17, 2004, 118 Stat. 3851, provided that: "The Secretary of Homeland Security shall ensure that there is effective and ongoing coordination of Federal efforts to prevent, prepare for, and respond to acts of terrorism and other major disasters and emergencies among the divisions of the Department of Homeland Security, including the Directorate of Emergency Preparedness and Response and the Office for State and Local Government Coordination and Preparedness."

PROTECTIONS FOR HUMAN RESEARCH SUBJECTS OF THE DEPARTMENT OF HOMELAND SECURITY

Pub. L. 108-458, title VIII, §8306, Dec. 17, 2004, 118 Stat. 3869, provided that: "The Secretary of Homeland Security shall ensure that the Department of Homeland Security complies with the protections for human research subjects, as described in part 46 of title 45, Code of Federal Regulations, or in equivalent regulations as promulgated by such Secretary, with respect to research that is conducted or supported by the Department."

EX. ORD. NO. 13416. STRENGTHENING SURFACE TRANSPORTATION SECURITY

Ex. Ord. No. 13416, Dec. 5, 2006, 71 F.R. 71033, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, and to strengthen the security of the Nation's surface transportation systems and thereby enhance the protection of the people, property, and territory of the United States of America against terrorist attacks, it is hereby ordered as follows:

**SECTION 1. Policy.** The security of our Nation's surface transportation systems is a national priority, vital to our economy, and essential to the security of our Nation. Federal, State, local, and tribal governments, the private sector, and the public share responsibility for the security of surface transportation. It is the policy of the United States to protect the people, property, and territory of the United States by facilitating the implementation of a comprehensive, coordinated, and efficient security program to protect surface transportation systems within and adjacent to the United States against terrorist attacks.

**SEC. 2. Definitions.** For purposes of this order:

(a) "agencies" means those executive departments enumerated in 5 U.S.C. 101, independent establishments as defined by 5 U.S.C. 104(1), government corporations as defined by 5 U.S.C. 103(1), and the United States Postal Service;

(b) "Secretary" means the Secretary of Homeland Security;

(c) "security guideline" means any security-related guidance that the Secretary recommends, for implementation on a voluntary basis, to enhance the security of surface transportation;

(d) "security requirement" means any "regulatory action" as defined in section 3 of Executive Order 12866 of September 30, 1993, as amended (Regulatory Planning and Review), including security directives when appropriate, to implement measures to enhance the security of surface transportation;

(e) "surface transportation modes" means mass transit, commuter and long-distance passenger rail, freight rail, commercial vehicles (including intercity buses), and pipelines, and related infrastructure (including roads and highways), that are within the territory of the United States, but does not include electric grids; and

(f) "surface transportation" means any conveyance of people, goods, or commodities using one or more surface transportation modes.

**SEC. 3. Functions of the Secretary of Homeland Security.** The Secretary is the principal Federal official respon-

sible for infrastructure protection activities for surface transportation. To implement the policy set forth in section 1 of this order, the Secretary shall, consistent with the National Infrastructure Protection Plan (NIPP), in coordination with the Secretary of Transportation, and in consultation with the heads of other relevant agencies:

(a) assess the security of each surface transportation mode and evaluate the effectiveness and efficiency of current Federal Government surface transportation security initiatives;

(b) building upon current security initiatives, not later than December 31, 2006, develop a comprehensive transportation systems sector specific plan, as defined in the NIPP;

(c) not later than 90 days after the comprehensive transportation systems sector specific plan is completed, develop an annex to such plan that addresses each surface transportation mode, which shall also include, at a minimum—

(i) an identification of existing security guidelines and security requirements and any security gaps, a description of how the transportation systems sector specific plan will be implemented for such mode, and the respective roles, responsibilities, and authorities of Federal, State, local, and tribal governments and the private sector;

(ii) schedules and protocols for annual reviews of the effectiveness of surface transportation security-related information sharing mechanisms in bringing about the timely exchange of surface transportation security information among Federal, State, local, and tribal governments and the private sector, as appropriate; and

(iii) a process for assessing (A) compliance with any security guidelines and security requirements issued by the Secretary for surface transportation, and (B) the need for revision of such guidelines and requirements to ensure their continuing effectiveness;

(d) in consultation with State, local, and tribal government officials and the private sector, not later than 180 days after the date of this order, identify surface transportation modes, or components thereof, that are subject to high risk of terrorist attack, draft appropriate security guidelines or security requirements to mitigate such risks, and ensure that, prior to their issuance, draft security requirements are transmitted to the Office of Management and Budget for review in accordance with Executive Order 12866 and draft security guidelines receive appropriate interagency review;

(e) develop, implement, and lead a process, in collaboration with other agencies, State, local, and tribal governments, and the private sector, as appropriate, to coordinate research, development, testing, and evaluation of technologies (including alternative uses for commercial off-the-shelf technologies and products) relating to the protection of surface transportation, including—

(i) determining product and technology needs to inform the requirements for and prioritization of research, development, testing, and evaluation, based on the security guidelines and security requirements developed pursuant to subsection (c) of this section and evolving terrorist threats to the security of surface transportation;

(ii) collecting information on existing and planned research, development, testing, and evaluation efforts; and

(iii) not later than 180 days after the date of this order, consistent with section 313 of the Homeland Security Act of 2002, as amended (6 U.S.C. 193), establishing and making available to Federal, State, local, and tribal government entities, and private sector owners and operators of surface transportation systems, lists of available technologies and products relating to the protection of surface transportation; and

(f) use security grants authorized by law to assist in implementing security requirements and security guidelines issued pursuant to law and consistent with subsection (c) of this section.

SEC. 4. *Duties of Heads of Other Agencies.* Heads of agencies, as appropriate, shall provide such assistance

and information as the Secretary may request to implement this order.

SEC. 5. *General Provisions.* This order:

(a) shall be implemented consistent with applicable law and the authorities of agencies, or heads of agencies, vested by law, and subject to the availability of appropriations;

(b) shall not be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, and legislative proposals; and

(c) is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH.

### § 113. Other officers

#### (a) Deputy Secretary; Under Secretaries

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

(1) A Deputy Secretary of Homeland Security, who shall be the Secretary's first assistant for purposes of subchapter III of chapter 33 of title 5.

(2) An Under Secretary for Science and Technology.

(3) An Under Secretary for Border and Transportation Security.

(4) An Administrator of the Federal Emergency Management Agency.

(5) A Director of the Bureau of Citizenship and Immigration Services.

(6) An Under Secretary for Management.

(7) A Director of the Office of Counternarcotics Enforcement.

(8) Not more than 12 Assistant Secretaries.

(9) A General Counsel, who shall be the chief legal officer of the Department.

#### (b) Inspector General

There shall be in the Department an Office of Inspector General and an Inspector General at the head of such office, as provided in the Inspector General Act of 1978 (5 U.S.C. App.).

#### (c) Commandant of the Coast Guard

To assist the Secretary in the performance of the Secretary's functions, there is a Commandant of the Coast Guard, who shall be appointed as provided in section 44 of title 14 and who shall report directly to the Secretary. In addition to such duties as may be provided in this chapter and as assigned to the Commandant by the Secretary, the duties of the Commandant shall include those required by section 2 of title 14.

#### (d) Other officers

To assist the Secretary in the performance of the Secretary's functions, there are the following officers, appointed by the President:

(1) A Director of the Secret Service.

(2) A Chief Information Officer.

(3) A Chief Human Capital Officer.

(4) An Officer for Civil Rights and Civil Liberties.

(5) A Director for Domestic Nuclear Detection.

#### (e) Chief Financial Officer

There shall be in the Department a Chief Financial Officer, as provided in chapter 9 of title 31.