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DHS OIG MANDATES REVISION ACT OF 2014

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2651

TO REPEAL CERTAIN MANDATES OF THE DEPARTMENT OF
HOMELAND SECURITY OFFICE OF INSPECTOR GENERAL



SEPTEMBER 18, 2014.—Ordered to be printed

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DHS OIG MANDATES REVISION ACT OF 2014

SEPTEMBER 18, 2014.—Ordered to be printed

Mr. CARPER, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 2651]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 2651) to repeal certain mandates of the Department of Homeland Security Office of Inspector General, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

S. 2651, the DHS OIG Mandates Revision Act, seeks to free the Department of Homeland Security's Inspector General from the requirement to perform unnecessary and duplicative congressionally mandated audits. It would do so by rescinding the statutory mandates for certain audits that the Department's Inspector General has identified as costly and duplicative. Without a congressional mandate, the Inspector General can continue to conduct these audits periodically, but at his own discretion.

II. BACKGROUND AND THE NEED FOR LEGISLATION

Congress often includes in statutes directions for Offices of Inspectors General (OIG) to perform particular audits. The average

OIG has approximately thirty percent of its workload mandated.¹ According to the Department of Homeland Security OIG (DHS–OIG), however, it faces a work load that is approximately 70 percent congressionally mandated, more than double the typical amount.²

While congressionally mandated audits can be helpful, they also reduce the amount of time, money and resources that an office can spend conducting discretionary audits. According to the DHS–OIG, discretionary audits are the agency’s “sweet spot of oversight” and provide the maximum impact.³ Specifically, the DHS IG explained that discretionary audits provide greater deterrence, more flexibility and the most value, because they allow the agency to identify opportunities for corrections *before* a crisis occurs.⁴

The DHS–OIG worked closely with congressional staff to identify several congressionally mandated audits that were costly and either duplicative of other reports conducted by other entities within the Department or otherwise unnecessary. S. 2651 repeals the reporting requirements for several of these identified audits in an effort to free the DHS–OIG from these unnecessary and burdensome tasks. Rescinding these reporting requirements enables the DHS–OIG to conduct more fruitful and necessary audits. S. 2651 does not prohibit the DHS–OIG from continuing to conduct periodic audits akin to those rescinded by the bill, but rather enables the DHS–OIG to do a better job of setting priorities and providing more efficient and effective reports that will better assist the Department and the Congress.

III. LEGISLATIVE HISTORY

Ranking Member Coburn introduced S. 2651 on July 24, 2014. The bill was referred to the Committee on Homeland Security and Governmental Affairs. Chairman Carper cosponsored the bill.

The Committee considered S. 2651 at a business meeting on July 30, 2014. Ranking Member Coburn and Chairman Carper offered a substitute manager’s amendment. The amendment preserved one of the congressionally mandated reports, *The Annual Office of National Drug and Control Policy Review*, from elimination. The amendment was adopted, by unanimous consent. Senators present were Senators Carper, Levin, Landrieu, McCaskill, Begich, Baldwin, Coburn, Johnson and Ayotte.

The Committee ordered the bill, as amended, reported favorably by voice vote on July 30, 2014. Senator Begich asked to be recorded as voting “no.” Senators present for the vote were Senators Carper, Levin, Landrieu, McCaskill, Begich, Baldwin, Coburn, Johnson and Ayotte.

¹ John Roth, Inspector General, Department of Homeland Security, statement made to Congressional staff, Department of Homeland Security, Office of the Inspector General Budget Briefing (March 11, 2014).

² Department of Homeland Security, Office of the Inspector General, *Budget Briefing Power Point, FY 2014 Projected to be Issued Reports By Origin*, pg. 7 (March 11, 2014).

³ Department of Homeland Security, Office of the Inspector General, Budget Briefing Power Point, *Audits by Origin* (March 11, 2014).

⁴ *Id.*

IV. SECTION-BY-SECTION ANALYSIS

Section 1 provides that the short Title for the Department of Homeland Security Office of Inspector General Mandates Revision Act of 2014—DHS OIG Mandates Revision Act of 2014.

Section 2 repeals the requirements for the DHS–OIG to conduct three specific audits:

1. Repeal of DHS–OIG requirement to conduct an annual evaluation of the Cargo Inspection Targeting System. The Annual Cargo Inspection Report is mandated by *The Coast Guard & Maritime Transportation Act of 2004*⁵ and requires the IG to submit a report evaluating cargo inspection tracking systems for international intermodal cargo containers. The IG audits and reviews cargo security during its normal course of business, and determines which aspects to review based on risk, referrals, and information discovered during the course of other audits.

2. Repeal of DHS–OIG requirement to conduct an annual review of Coast Guard Performance. The Annual United States Coast Guard (USCG) Mission Review is mandated by *The Homeland Security Act of 2002*⁶ and is an annual review to assess thoroughly the performance by the USCG of all its missions, with a particular emphasis on examining the non-homeland security missions. The DHS–OIG report does not include any additional information to what the USCG reports on their own, and the IG does not make any recommendations.

3. Repeal of DHS–OIG requirement to conduct an annual review of grants to states and high risk urban areas. Several of the audits identified significant problems with the states’ and territories’ management of the grant funds. However, most of the audits resulted in similar findings and recommendations. Fraud was not identified in the audits, and most of the recommendations were for ways to improve the system and not necessarily mismanagement. The DHS–OIG did identify some questioned costs, but not to the extent originally expected as the grant programs matured. For the audit reports issued in FY 2011 through 2013, estimated costs were more than \$15 million to complete and resulted in approximately \$19 million in questioned costs. However, the majority of those costs have since been allowed.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rule. The Committee agrees with the Congressional Budget Office’s statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

⁵ P.L. 108–293, Sec. 809(g).

⁶ P.L. 107–296, Sec. 888(f).

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

SEPTEMBER 15, 2014.

Hon. TOM CARPER, *Chairman,*
Committee on Homeland Security and Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2651, the DHS OIG Mandates Revision Act of 2014.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 2651—DHS OIG Mandates Revision Act of 2014

S. 2651 would eliminate three annual reports currently required of the Department of Homeland Security (DHS) Office of Inspector General. The reports include audits or evaluations of Coast Guard programs and certain DHS grants.

Based on information from DHS about anticipated spending on these reports, CBO estimates that implementing S. 2651 could lower spending by \$1 million to \$2 million annually, assuming that future DHS appropriations are reduced consistent with the bill's provisions. Enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 2651 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 2651 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in *italic*, and existing law in which no change is proposed is shown in roman):

TITLE 46—SHIPPING**CHAPTER 701—PORT SECURITY****SEC. 70101—DEFINITIONS**

46 U.S.C. 70101 note Vessel and Intermodal Security Reports

[Pub. L. 108–23, title VIII, § 809(g)–(i), (k), Aug. 9, 2004, 118 Stat. 1087, 1088, provided that:

“(g) EVALUATION OF CARGO INSPECTION TARGETING SYSTEM FOR INTERNATIONAL INTERMODAL CARGO CONTAINERS.—Within 180 days after the date of the enactment of this Act [Aug. 9, 2004] and annually thereafter, the Inspector General of the department in

which the Coast Guard is operating shall prepare a report that includes an assessment of—

“(1) the effectiveness of the current tracking system to determine whether it is adequate to prevent international intermodal containers from being used for purposes of terrorism;

“(2) the sources of information, and the quality of the information at the time of reporting, used by the system to determine whether targeting information is collected from the best and most credible sources and evaluate data sources to determine information gaps and weaknesses;

“(3) the targeting system for reporting and analyzing inspection statistics, as well as testing effectiveness;

“(4) the competence and training of employees operating the system to determine whether they are sufficiently capable to detect potential terrorist threats; and

“(5) whether the system is an effective system to detect potential acts of terrorism and whether additional steps need to be taken in order to remedy deficiencies in targeting international intermodal containers for inspection.

“(h) ACTION REPORT.—If the Inspector General of the department in which the Coast Guard is operating determines in any of the reports prepared under subsection (g) that the targeting system is insufficiently effective as a means of detecting potential acts of terrorism utilizing international intermodal containers, then the Secretary of the department in which the Coast Guard is operating shall, within 90 days, submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure [of the] House of Representatives on what actions will be taken to correct deficiencies identified in the Inspector General Report.

“(i) COMPLIANCE WITH SECURITY STANDARDS ESTABLISHED PURSUANT TO MARITIME TRANSPORTATION SECURITY PLANS.—Within 180 days after the date of the enactment of this Act [Aug. 9, 2004] and annually thereafter, the Secretary of the department in which the Coast Guard is operating shall prepare a report on compliance and steps taken to ensure compliance by ports, terminals, vessel operators, and shippers with security standards established pursuant to section 70103 of title 46, United States Code. The reports shall also include a summary of security standards established pursuant to such section during the previous year. The Secretary shall submit the reports to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

“(k) REPORT AND PLAN FORMATS.—The Secretary and the Inspector General of the department in which the Coast Guard is operating may submit any plan or report required by this section in both classified and redacted formats, if the Secretary determines that it is appropriate or necessary.”]

* * * * *

TITLE 6—DOMESTIC SECURITY

CHAPTER 1—HOMELAND SECURITY ORGANIZATION

SEC. 468—PRESERVING COAST GUARD MISSION PERFORMANCE

[(f) ANNUAL REVIEW

(1) IN GENERAL —The Inspector General of the Department shall conduct an annual review that shall assess thoroughly the performance by the Coast Guard of all missions of the Coast Guard (including non-homeland security missions and homeland security missions) with a particular emphasis on examining the non-homeland security missions.

(2) REPORT—The report under this paragraph shall be submitted to—

(A) the Committee on Governmental Affairs of the Senate;

(B) the Committee on Government Reform of the House of Representatives;

(C) the Committees on Appropriations of the Senate and the House of Representatives;

(D) the Committee on Commerce, Science, and Transportation of the Senate; and

(E) the Committee on Transportation and Infrastructure of the House of Representatives.】

* * * * *

TITLE 6—HOMELAND SECURITY ORGANIZATION

CHAPTER 1—HOMELAND SECURITY ORGANIZATION

SEC. 612—ACCOUNTABILITY

(a) AUDITS OF GRANT PROGRAMS

[(3) OFFICE OF INSPECTOR GENERAL PERFORMANCE AUDITS

(A) IN GENERAL—In order to ensure the effective and appropriate use of grants administered by the Department, the Inspector General of the Department each year shall conduct audits of a sample of States and high-risk urban areas that receive grants administered by the Department to prevent, prepare for, protect against, or respond to natural disasters, acts of terrorism, or other man-made disasters, excluding assistance provided under section 203, title IV, or title V of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5133, 5170 et seq., and 5191 et seq.).

(B) DETERMINING SAMPLES—The sample selected for audits under subparagraph (A) shall be—

(i) of an appropriate size to—

(I) assess the overall integrity of the grant programs described in subparagraph (A); and

(II) act as a deterrent to financial mismanagement; and

(ii) selected based on—

(I) the size of the grants awarded to the recipient;

(II) the past grant management performance of the recipient;

(III) concerns identified by the Administrator, including referrals from the Administrator; and

(IV) such other factors as determined by the Inspector General of the Department.

(C) COMPREHENSIVE AUDITING—During the 7-year period beginning on August 3, 2007, the Inspector General of the Department shall conduct not fewer than 1 audit of each State that receives funds under a grant under section 604 or 605 of this title.

(D) REPORT BY THE INSPECTOR GENERAL—

(i) IN GENERAL. The Inspector General of the Department shall submit to the appropriate committees of Congress an annual consolidated report regarding the audits completed during the fiscal year before the date of that report.

(ii) CONTENTS. Each report submitted under clause (i) shall describe, for the fiscal year before the date of that report—

(I) the audits conducted under subparagraph (A);

(II) the findings of the Inspector General with respect to the audits conducted under subparagraph (A);

(III) whether the funds awarded were used in accordance with the law, program guidance, and State homeland security plans and other applicable plans; and

(IV) the extent to which funds awarded enhanced the ability of a grantee to prevent, prepare for, protect against, and respond to natural disasters, acts of terrorism and other man-made disasters.

(iii) DEADLINE. For each year, the report required under clause (i) shall be submitted not later than December 31.

(E) PUBLIC AVAILABILITY ON WEBSITE—The Inspector General of the Department shall make each audit conducted under subparagraph (A) available on the website of the Inspector General, subject to redaction as the Inspector General determines necessary to protect classified and other sensitive information.

(F) PROVISION OF INFORMATION TO ADMINISTRATOR—The Inspector General of the Department shall provide to the Administrator any findings and recommendations from audits conducted under subparagraph (A).

(G) EVALUATION OF GRANTS MANAGEMENT AND OVERSIGHT—Not later than 1 year after August 3, 2007, the Inspector General of the Department shall review and evaluate the grants management and oversight practices of the Federal Emergency Management Agency, including assessment of and recommendations relating to—

(i) the skills, resources, and capabilities of the workforce; and

(ii) any additional resources and staff necessary to carry out such management and oversight.

(H) AUTHORIZATION OF APPROPRIATIONS—In addition to any other amounts authorized to be appropriated to the Inspector General of the Department, there are authorized to be appropriated to the Inspector General of the Department for audits under subparagraph (A)—

(i) \$8,500,000 for each of fiscal years 2008, 2009, and 2010; and

(ii) such sums as are necessary for fiscal year 2011, and each fiscal year thereafter.】

* * * * *

