

HOMELAND SECURITY ACT OF 2002

JULY 24, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ARMEY, from the Select Committee on Homeland Security, submitted the following

R E P O R T

together with

MINORITY AND DISSENTING VIEWS

[To accompany H.R. 5005]

[Including cost estimate of the Congressional Budget Office]

The Select Committee on Homeland Security, to whom was referred the bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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## AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Homeland Security Act of 2002”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Construction; severability.
- Sec. 4. Effective date.

#### TITLE I—DEPARTMENT OF HOMELAND SECURITY

- Sec. 101. Executive department; mission.
- Sec. 102. Secretary; functions.
- Sec. 103. Other officers.
- Sec. 104. National Council of First Responders.

#### TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

##### Subtitle A—Under Secretary for Information Analysis and Infrastructure Protection

- Sec. 201. Under Secretary for Information Analysis and Infrastructure Protection.
- Sec. 202. Functions transferred.
- Sec. 203. Access to information.
- Sec. 204. Procedures for sharing information.
- Sec. 205. Privacy officer.
- Sec. 206. Federal cybersecurity program.

##### Subtitle B—Intelligence Analysis Center

- Sec. 211. Intelligence Analysis Center
- Sec. 212. Mission of the Intelligence Analysis Center.

#### TITLE III—SCIENCE AND TECHNOLOGY

- Sec. 301. Under Secretary for Science and Technology.
- Sec. 302. Functions transferred.
- Sec. 303. Conduct of certain public health-related activities.
- Sec. 304. Federally funded research and development center.
- Sec. 305. Miscellaneous provisions.
- Sec. 306. Homeland Security Science and Technology Coordination Council.
- Sec. 307. Conduct of research, development, demonstration, testing and evaluation.
- Sec. 308. Transfer of Plum Island Animal Disease Center, Department of Agriculture.

#### TITLE IV—BORDER AND TRANSPORTATION SECURITY

##### Subtitle A—General Provisions

- Sec. 401. Under Secretary for Border and Transportation Security.
- Sec. 402. Functions transferred.
- Sec. 403. Visa issuance.
- Sec. 404. Transfer of certain agricultural inspection functions of the Department of Agriculture.
- Sec. 405. Functions of Administrator of General Services.
- Sec. 406. Functions of Transportation Security Administration.
- Sec. 407. Preservation of Transportation Security Administration as a distinct entity.
- Sec. 408. Annual assessment of terrorist-related threats to public transportation.
- Sec. 409. Explosive detection systems.
- Sec. 410. Transportation security.

##### Subtitle B—Immigration and Nationality Functions

#### CHAPTER 1—IMMIGRATION ENFORCEMENT

- Sec. 411. Transfer of functions to under Secretary for Border and Transportation Security.
- Sec. 412. Establishment of Bureau of Border Security.
- Sec. 413. Professional responsibility and quality review.
- Sec. 414. Employee discipline.
- Sec. 415. Report on improving enforcement functions.

#### CHAPTER 2—CITIZENSHIP AND IMMIGRATION SERVICES

##### SUBCHAPTER A—TRANSFERS OF FUNCTIONS

- Sec. 421. Establishment of Bureau of Citizenship and Immigration Services.
- Sec. 422. Citizenship and Immigration Services Ombudsman.
- Sec. 423. Professional responsibility and quality review.
- Sec. 424. Employee discipline.
- Sec. 425. Office of Immigration Statistics within Bureau of Justice Statistics.
- Sec. 426. Preservation of Attorney General’s authority.
- Sec. 427. Effective date.
- Sec. 428. Transition.

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- Sec. 433. Report on improving immigration services.
- Sec. 434. Report on responding to fluctuating needs.
- Sec. 435. Application of Internet-based technologies.
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- Sec. 443. Authority to conduct a demonstration project relating to disciplinary action.
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**SEC. 2. DEFINITIONS.**

In this Act, the following definitions apply:

(1) Each of the terms “American homeland” and “homeland” means the United States.

(2) The term “appropriate congressional committee” means any committee of the House of Representatives or the Senate having legislative or oversight jurisdiction under the Rules of the House of Representatives or the Senate, respectively, over the matter concerned.

(3) The term “assets” includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

(4) The term “critical infrastructure” has the meaning given that term in section 1016(e) of Public Law 107–56 (42 U.S.C. 5195c(e)).

(5) The term “Department” means the Department of Homeland Security.

(6) The term “emergency response providers” includes Federal, State, and local emergency public safety, law enforcement, emergency response, emergency medical (including hospital emergency facilities), and related personnel, agencies, and authorities.

(7) The term “executive agency” means an executive agency and a military department, as defined, respectively, in sections 105 and 102 of title 5, United States Code.

(8) The term “functions” includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, and responsibilities.

(9) The term “key resources” means publicly or privately controlled resources essential to the minimal operations of the economy and government.

(10) The term “local government” means—

(A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a non-profit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(B) an Indian tribe or authorized tribal organization, or Alaska Native village or organization; and

(C) a rural community, unincorporated town or village, or other public entity.

(11) The term “major disaster” has the meaning given in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(12) The term “personnel” means officers and employees.

(13) The term “Secretary” means the Secretary of Homeland Security.

(14) The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any possession of the United States.

(15) The term “terrorism” means any activity that—

(A) involves an act that—

(i) is dangerous to human life or potentially destructive of critical infrastructure or key resources; and

(ii) is a violation of the criminal laws of the United States or of any State or other subdivision of the United States; and

(B) appears to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping.

(16) The term “United States”, when used in a geographic sense, means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, any possession of the United States, and any waters within the jurisdiction of the United States.

#### **SEC. 3. CONSTRUCTION; SEVERABILITY.**

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof, or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

#### **SEC. 4. EFFECTIVE DATE.**

This Act shall take effect thirty days after the date of enactment or, if enacted within thirty days before January 1, 2003, on January 1, 2003.

## **TITLE I—DEPARTMENT OF HOMELAND SECURITY**

#### **SEC. 101. EXECUTIVE DEPARTMENT; MISSION.**

(a) **ESTABLISHMENT.**—There is established a Department of Homeland Security, as an executive department of the United States within the meaning of title 5, United States Code.

(b) **MISSION.**—

(1) **IN GENERAL.**—The primary mission of the Department is to—

(A) prevent terrorist attacks within the United States;

(B) reduce the vulnerability of the United States to terrorism;

(C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States;

(D) carry out all functions of entities transferred to the Department, including by acting as a focal point regarding natural and manmade crises and emergency planning;

(E) ensure that the functions of the agencies and subdivisions within the Department that are not related directly to securing the homeland are not diminished or neglected except by a specific explicit Act of Congress; and

(F) ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland.

(2) **RESPONSIBILITY FOR INVESTIGATING AND PROSECUTING TERRORISM.**—Except as specifically provided by law with respect to entities transferred to the Department under this Act, primary responsibility for investigating and prosecuting acts of terrorism shall be vested not in the Department, but rather in Federal, State, and local law enforcement agencies with jurisdiction over the acts in question.

**SEC. 102. SECRETARY; FUNCTIONS.**

(a) **SECRETARY.**—(1) There is a Secretary of Homeland Security, appointed by the President, by and with the advice and consent of the Senate.

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

(3) 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 Act, 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 Act 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.**—The Secretary shall coordinate (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, United States Code, except as specifically provided in this Act, in laws granting regulatory authorities that are transferred by this Act, and in laws enacted after the date of enactment of this Act.

(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 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; and

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

(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.

**SEC. 103. 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, United States Code.

(2) An Under Secretary for Information Analysis and Infrastructure Protection.

(3) An Under Secretary for Science and Technology.

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

(5) An Under Secretary for Emergency Preparedness and Response.

(6) An Under Secretary for Management.

(7) Not more than four Assistant Secretaries.

(8) A Chief Financial Officer.

(b) **INSPECTOR GENERAL.**—There is an Inspector General, who shall be appointed as provided in section 3(a) of the Inspector General Act of 1978.

(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, United States Code, and who shall report directly to the Secretary. In addition to such duties as may be provided in this Act and as assigned to the Commandant by the Secretary, the duties of the Commandant shall include those required by section 2 of title 14, United States Code.

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

(2) Not more than eight Assistant Secretaries.

(3) A Director of the Secret Service.

(4) A Chief Information Officer.

(e) **PERFORMANCE OF SPECIFIC FUNCTIONS.**—Subject to the provisions of this Act, every officer of the Department shall perform the functions specified by law for the official's office or prescribed by the Secretary.

**SEC. 104. NATIONAL COUNCIL OF FIRST RESPONDERS.**

(a) **FINDINGS.**—The Congress finds the following:

(1) First responders are key to protecting the health and safety of our citizens against disasters.

(2) First responders are the Nation's ready reaction force of dedicated and brave people who save lives and property when catastrophe strikes.

(3) First responders have the knowledge, training, and experience to save lives, often under the most difficult conditions imaginable.

(4) First responders play an important role in helping to develop and implement advances in life saving technology.

(5) First responders are uniquely qualified to advise the Department of Homeland Security on the role of first responders in defending our Nation against terrorism.

(b) **ESTABLISHMENT AND ADMINISTRATION.**—

(1) There is established within the Department of Homeland Security a National Council of First Responders (in this section referred to as the "Council").

(2) The President shall appoint the members of the Council. The Council shall consist of not less than 100 members, no more than 10 of whom may be residents of the same State. Members of the Council shall be selected from among the ranks of police, firefighters, emergency medical technicians, rescue workers, and hospital personnel who are employed in communities, tribal governments, and political subdivisions of various regions and population sizes.

(3) The Director of Homeland Security shall appoint a Chairman of the Council.

(4) Members shall be appointed to the Council for a term of 3 years.

(5) Membership shall be staggered to provide continuity.

(6) The Council shall meet no fewer than 2 times each year.

(7) Members of the Council shall receive no compensation for service on the Council.

(8) The Secretary shall detail a single employee from the Department of Homeland Security to the Council for the purposes of:

(A) Choosing meeting dates and locations.

(B) Coordinating travel.

(C) Other administrative functions as needed.

(c) **DUTIES.**—The Council shall have the following duties:

(1) Develop a plan to disseminate information on first response best practices.

- (2) Identify and educate the Secretary on the latest technological advances in the field of first response.
  - (3) Identify probable emerging threats to first responders.
  - (4) Identify needed improvements to first response techniques and training.
  - (5) Identify efficient means of communication and coordination between first responders and local, State, and Federal officials.
  - (6) Identify areas in which the Department can assist first responders.
  - (7) Evaluate the adequacy and timeliness of resources being made available to local first responders.
- (d) **REPORTING REQUIREMENT.**—The Council shall report to the Congress by October 1 of each year on how first responders can continue to be most effectively used to meet the ever-changing challenges of providing homeland security for the United States.

## **TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION**

### **Subtitle A—Under Secretary for Information Analysis and Infrastructure Protection**

#### **SEC. 201. UNDER SECRETARY FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.**

The Secretary, acting through the Under Secretary for Information Analysis and Infrastructure Protection, shall be responsible for the following:

- (1) Conducting analysis of information, including foreign intelligence and open source information, lawfully collected by Federal, State and local law enforcement agencies and by elements of the intelligence community with respect to threats of terrorist acts against the United States.
- (2) Integrating information, intelligence, and intelligence analyses to produce and disseminate infrastructure vulnerability assessments with respect to such threats.
- (3) Identifying priorities for protective and support measures by the Department, by other executive agencies, by State and local governments, by the private sector, and by other entities.
- (4) Reviewing, analyzing, and recommending improvements in law, policy, and procedure for the sharing of intelligence and other information with respect to threats against the United States within the Federal Government and between the Federal Government and State and local governments.
- (5) Under the direction of the Secretary, developing a comprehensive national plan to provide for the security of key resources and critical infrastructures.
- (6) Coordinating with other executive agencies, State and local government personnel, agencies, and authorities, and the private sector, to provide advice on implementation of such comprehensive national plan.
- (7) Supporting the intelligence and information requirements of the Department.
- (8) Administering the Homeland Security Advisory System, exercising primary responsibility for public advisories relating to terrorist threats, and (in coordination with other executive agencies) providing specific warning information to State and local government personnel, agencies, and authorities, the private sector, other entities, and the public, as well as advice about appropriate protective actions and countermeasures.

#### **SEC. 202. FUNCTIONS TRANSFERRED.**

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the following:

- (1) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section), including the functions of the Attorney General relating thereto.
- (2) The National Communications System of the Department of Defense, including the functions of the Secretary of Defense relating thereto.
- (3) The Critical Infrastructure Assurance Office of the Department of Commerce, including the functions of the Secretary of Commerce relating thereto.
- (4) The Energy Security and Assurance Program of the Department of Energy, including the National Infrastructure Simulation and Analysis Center and the functions of the Secretary of Energy relating thereto.



(5) The Federal Computer Incident Response Center of the General Services Administration, including the functions of the Administrator of General Services relating thereto.

**SEC. 203. ACCESS TO INFORMATION.**

The Secretary shall have access to all reports, assessments, and analytical information relating to threats of terrorism in the United States and to other areas of responsibility described in section 101(b), and to all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed, that may be collected, possessed, or prepared by any executive agency, except as otherwise directed by the President. The Secretary shall also have access to other information relating to the foregoing matters that may be collected, possessed, or prepared by an executive agency, as the President may further provide. With respect to the material to which the Secretary has access under this section—

(1) the Secretary may obtain such material by request, and may enter into cooperative arrangements with other executive agencies to share such material on a regular or routine basis, including requests or arrangements involving broad categories of material;

(2) regardless of whether the Secretary has made any request or entered into any cooperative arrangement pursuant to paragraph (1), all executive agencies promptly shall provide to the Secretary—

(A) all reports, assessments, and analytical information relating to threats of terrorism in the United States and to other areas of responsibility described in section 101(b);

(B) all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed;

(C) all information relating to significant and credible threats of terrorism in the United States, whether or not such information has been analyzed, if the President has provided that the Secretary shall have access to such information; and

(D) such other material as the President may further provide;

(3) the Secretary shall have full access and input with respect to information from any national collaborative information analysis capability (as referred to in section 924 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107; 115 Stat. 1199)) established jointly by the Secretary of Defense and the Director of Central Intelligence; and

(4) the Secretary shall ensure that any material received pursuant to this section is protected from unauthorized disclosure and handled and used only for the performance of official duties, and that any intelligence information shared under this section shall be transmitted, retained, and disseminated consistent with the authority of the Director of Central Intelligence to protect intelligence sources and methods under the National Security Act and related procedures or, as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information.

**SEC. 204. PROCEDURES FOR SHARING INFORMATION.**

The Secretary shall establish procedures on the use of information shared under this title that—

(1) limit the redissemination of such information to ensure that it is not used for an unauthorized purpose;

(2) ensure the security and confidentiality of such information;

(3) protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(4) provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

**SEC. 205. PRIVACY OFFICER.**

The Secretary shall appoint a senior official in the Department to assume primary responsibility for privacy policy, including—

(1) assuring that the use of information technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information;

(2) assuring that personal information contained in Privacy Act systems of records is handled in full compliance with fair information practices as set out in the Privacy Act of 1974;

(3) evaluating legislative proposals involving collection, use, and disclosure of personal information by the Federal Government;

(4) conducting a privacy impact assessment of proposed rules of the Department or that of the Department on the privacy of personal information, including the type of personal information collected and the number of people affected; and

(5) preparing a report to Congress on an annual basis on activities of the Department that affect privacy, including complaints of privacy violations, implementation of the Privacy Act of 1974, internal controls, and other matters.

**SEC. 206. FEDERAL CYBERSECURITY PROGRAM.**

(a) **IN GENERAL.**—The Secretary, acting through the Under Secretary for Information Analysis and Infrastructure Protection, shall establish and manage a program to improve the security of Federal critical information systems, including carrying out responsibilities under paragraphs (1) and (2) of section 201 that relate to such systems.

(b) **DUTIES.**—The duties of the Secretary under subsection (a) are—

(1) to evaluate the increased use by civilian executive agencies of techniques and tools to enhance the security of Federal critical information systems, including, as appropriate, consideration of cryptography;

(2) to provide assistance to civilian executive agencies in protecting the security of Federal critical information systems, including identification of significant risks to such systems; and

(3) to coordinate research and development for critical information systems relating to supervisory control and data acquisition systems, including, as appropriate, the establishment of a test bed.

(c) **FEDERAL INFORMATION SYSTEM SECURITY TEAM.**—

(1) **IN GENERAL.**—In carrying out subsection (b)(2), the Secretary shall establish, manage, and support a Federal information system security team whose purpose is to provide technical expertise to civilian executive agencies to assist such agencies in securing Federal critical information systems by conducting information security audits of such systems, including conducting tests of the effectiveness of information security control techniques and performing logical access control tests of interconnected computer systems and networks, and related vulnerability assessment techniques.

(2) **TEAM MEMBERS.**—The Secretary shall ensure that the team under paragraph (1) includes technical experts and auditors, computer scientists, and computer forensics analysts whose technical competence enables the team to conduct audits under such paragraph.

(3) **AGENCY AGREEMENTS REGARDING AUDITS.**—Each civilian executive agency may enter into an agreement with the team under paragraph (1) for the conduct of audits under such paragraph of the Federal critical information systems of the agency. Such agreement shall establish the terms of the audit and shall include provisions to minimize the extent to which the audit disrupts the operations of the agency.

(4) **REPORTS.**—Promptly after completing an audit under paragraph (1) of a civilian executive agency, the team under such paragraph shall prepare a report summarizing the findings of the audit and making recommendations for corrective action. Such report shall be submitted to the Secretary, the head of such agency, and the Inspector General of the agency (if any), and upon request of any congressional committee with jurisdiction over such agency, to such committee.

(d) **DEFINITION.**—For purposes of this section, the term “Federal critical information system” means an “information system” as defined in section 3502 of title 44, United States Code, that—

(1) is, or is a component of, a key resource or critical infrastructure;

(2) is used or operated by a civilian executive agency or by a contractor of such an agency; and

(3) does not include any national security system as defined in section 5142 of the Clinger-Cohen Act of 1996.

## **Subtitle B—Intelligence Analysis Center**

**SEC. 211. INTELLIGENCE ANALYSIS CENTER.**

(a) **ESTABLISHMENT; NFIP AGENCY.**—(1) There is established within the Department the Intelligence Analysis Center. The Under Secretary for Information Analysis and Infrastructure Protection shall be the head of the Intelligence Analysis Center.

(2) The Intelligence Analysis Center is a program of the intelligence community for purposes of the National Foreign Intelligence Program (as defined in section 3(6) of the National Security Act of 1947 (50 U.S.C. 401a(6))).

(b) FUNCTIONS.—The Under Secretary for Information Analysis and Infrastructure Protection, through the Intelligence Analysis Center, shall carry out the duties specified in paragraphs (1), (2), (3), (6), and (7) of section 201(b).

(c) DETAIL OF CERTAIN PERSONNEL.—

(1) IN GENERAL.—The Secretary and the Director of Central Intelligence, the Secretary of Defense, the Attorney General, the Secretary of State, or the head of another agency or department as the case may be, shall enter into cooperative arrangements to provide for an appropriate number of individuals to be detailed to the Under Secretary to perform analytical functions and duties with respect to the mission of the Department from the following agencies:

- (A) The Central Intelligence Agency.
- (B) The Federal Bureau of Investigation.
- (C) The National Security Agency.
- (D) The National Imagery and Mapping Agency.
- (E) The Department of State.
- (F) The Defense Intelligence Agency.
- (G) Any other agency or department that the President determines appropriate.

(2) TERMS OF DETAIL.—Any officer or employee of the United States or a member of the Armed Forces who is detailed to the Under Secretary under paragraph (1) shall be detailed on a reimbursable basis for a period of less than two years for the performance of temporary functions as required by the Under Secretary.

(d) INCLUSION OF OFFICE OF INTELLIGENCE AS AN ELEMENT OF THE INTELLIGENCE COMMUNITY.—Section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)) is amended—

- (1) by striking “and” at the end of subparagraph (I);
- (2) by redesignating subparagraph (J) as subparagraph (K); and
- (3) by inserting after subparagraph (I) the following new subparagraph:
  - “(J) the Intelligence Analysis Center of the Department of Homeland Security; and”.

**SEC. 212. MISSION OF THE INTELLIGENCE ANALYSIS CENTER.**

(a) IN GENERAL.—The mission of the Intelligence Analysis Center is as follows:

(1) ANALYSIS AND PRODUCTION.—

- (A) Correlating and evaluating information and intelligence related to the mission of the Department collected from all sources available.
- (B) Producing all-source collaborative intelligence analysis, warnings, tactical assessments, and strategic assessments of the terrorist threat and infrastructure vulnerabilities of the United States.
- (C) Providing appropriate dissemination of such assessments.
- (D) Improving the lines of communication with respect to homeland security between the Federal Government and State and local public safety agencies and the private sector through the timely dissemination of information pertaining to threats of acts of terrorism against the United States.

(2) COORDINATION OF INFORMATION.—Coordinating with elements of the intelligence community and with Federal, State, and local law enforcement agencies, and the private sector as appropriate.

(3) ADDITIONAL DUTIES.—Performing such other functions as the Secretary may direct.

(b) STRATEGIC AND TACTICAL MISSIONS OF THE INTELLIGENCE ANALYSIS CENTER.—The Under Secretary shall conduct strategic and tactical assessments and warnings through the Intelligence Analysis Center, including research, analysis, and the production of assessments on the following as they relate to the mission of the Department:

- (1) Domestic terrorism.
- (2) International terrorism.
- (3) Counterintelligence.
- (4) Transnational crime.
- (5) Proliferation of weapons of mass destruction.
- (6) Illicit financing of terrorist activities.
- (7) Cybersecurity and cybercrime.
- (8) Key resources and critical infrastructures.

(c) STAFFING OF THE INTELLIGENCE ANALYSIS CENTER.—

(1) **FUNCTIONS TRANSFERRED.**—In accordance with title VIII, for purposes of carrying out this title, there is transferred to the Under Secretary the functions, personnel, assets, and liabilities of the following entities:

(A) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section).

(B) The Critical Infrastructure Assurance Office of the Department of Commerce.

(C) The Federal Computer Incident Response Center of the General Services Administration.

(D) The National Infrastructure Simulation and Analysis Center of the Department of Energy.

(E) The National Communications System of the Department of Defense.

(F) The intelligence element of the Coast Guard.

(G) The intelligence element of the United States Customs Service.

(H) The intelligence element of the Immigration and Naturalization Service.

(I) The intelligence element of the Transportation Security Administration.

(J) The intelligence element of the Federal Protective Service.

(2) **STRUCTURE.**—It is the sense of Congress that the Under Secretary should model the Intelligence Analysis Center on the technical, analytic approach of the Information Dominance Center of the Department of the Army to the maximum extent feasible and appropriate.

### **TITLE III—SCIENCE AND TECHNOLOGY**

#### **SEC. 301. UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.**

The Secretary, acting through the Under Secretary for Science and Technology, shall have responsibility for—

(1) developing, in consultation with other appropriate executive agencies, a national policy and strategic plan for, identifying priorities, goals, objectives and policies for, and coordinating the Federal Government's civilian efforts to identify and develop countermeasures to chemical, biological radiological, nuclear and other emerging terrorist threats, including the development of comprehensive, research-based definable goals for such efforts and development of annual measurable objectives and specific targets to accomplish and evaluate the goals for such efforts;

(2) establishing and administering the primary research and development activities of the Department, including the long-term research and development needs and capabilities for all elements of the Department;

(3) conducting basic and applied research, development, demonstration, testing, and evaluation activities that are relevant to any or all elements of the Department, through both intramural and extramural programs; provided that such responsibility does not extend to human health-related research and development activities;

(4) coordinating and integrating all research, development, demonstration, testing, and evaluation activities of the Department;

(5) coordinating with other appropriate executive agencies in developing and carrying out the science and technology agenda of the Department to reduce duplication and identify unmet needs;

(6) establishing Federal priorities for research, development, demonstration, testing, and, as appropriate, procurement and transitional operation of technology and systems—

(A) for preventing the importation of chemical, biological, radiological, and nuclear weapons and related materials;

(B) for detecting, preventing, and protecting against terrorist attacks that involve such weapons or related materials; and

(C) for interoperability of communications systems for emergency response providers;

(7) ensuring that the research, development, demonstration, testing, and evaluation activities of the Department are aligned with the Department's procurement needs;

(8) facilitating the deployment of technology that will serve to enhance homeland security, including through the establishment of a centralized Federal repository for information relating to technologies described in subparagraphs (A), (B), and (C) of paragraph (6) for dissemination to Federal, State, and local government and private sector entities, and for information for persons seeking

guidance on how to pursue proposals to develop or deploy technologies that would contribute to homeland security;

(9) providing guidance, recommendations, and technical assistance as appropriate to assist Federal, State, and local government and private sector efforts to evaluate and implement the use of technologies described in subparagraphs (A), (B), and (C) of paragraph (6); and

(10) developing and overseeing the administration of guidelines for merit review of research and development projects throughout the Department, and for the dissemination of research conducted or sponsored by the Department.

**SEC. 302. FUNCTIONS TRANSFERRED.**

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the following:

(1) The program under section 351A of the Public Health Service Act, and functions thereof, including the functions of the Secretary of Health and Human Services relating thereto, subject to the amendments made by section 906(a)(3), except that such transfer shall not occur unless the program under section 212 of the Agricultural Bioterrorism Protection Act of 2002 (subtitle B of title II of Public Law 107-188), and functions thereof, including the functions of the Secretary of Agriculture relating thereto, is transferred to the Department.

(2) Programs and activities of the Department of Energy, including the functions of the Secretary of Energy relating thereto (but not including programs and activities relating to the strategic nuclear defense posture of the United States), as follows:

(A) The programs and activities relating to chemical and biological national security, and supporting programs and activities directly related to homeland security, of the non-proliferation and verification research and development program.

(B) The programs and activities relating to nuclear smuggling, and other programs and activities directly related to homeland security, within the proliferation detection program of the non-proliferation and verification research and development program.

(C) Those aspects of the nuclear assessment program of the international materials protection and cooperation program that are directly related to homeland security.

(D) Such life sciences activities of the biological and environmental research program related to microbial pathogens as may be designated by the President for transfer to the Department and that are directly related to homeland security.

(E) The Environmental Measurements Laboratory.

(F) The advanced scientific computing research program and activities at Lawrence Livermore National Laboratory.

(3) The homeland security projects within the Chemical Biological Defense Program of the Department of Defense known as the Biological Defense Homeland Security Support Program and the Biological Counter-Terrorism Research Program.

**SEC. 303. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.**

With respect to civilian human health-related research and development activities relating to countermeasures for chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities, goals, objectives, and policies and develop a coordinated strategy for such activities in collaboration with the Secretary of Homeland Security to ensure consistency with the national policy and strategic plan developed pursuant to section 301(1).

**SEC. 304. FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER.**

The Secretary, acting through the Under Secretary for Science and Technology, shall have the authority to establish or contract with one or more federally funded research and development centers to provide independent analysis of homeland security issues, or to carry out other responsibilities under this Act, including coordinating and integrating both the extramural and intramural programs described in section 307.

**SEC. 305. MISCELLANEOUS PROVISIONS.**

(a) CLASSIFICATION.—To the greatest extent practicable, research conducted or supported by the Department shall be unclassified.

(b) CONSTRUCTION.—Nothing in this title shall be construed to preclude any Under Secretary of the Department from carrying out research, development, dem-

onstration, or deployment activities, as long as such activities are coordinated through the Under Secretary for Science and Technology.

(c) REGULATIONS.—The Secretary, acting through the Under Secretary for Science and Technology, may issue necessary regulations with respect to research, development, demonstration, testing, and evaluation activities of the Department, including the conducting, funding, and reviewing of such activities.

(d) NOTIFICATION OF PRESIDENTIAL LIFE SCIENCES DESIGNATIONS.—Not later than 60 days before effecting any transfer of Department of Energy life sciences activities pursuant to section 302(2)(D) of this Act, the President shall notify the Congress of the proposed transfer and shall include the reasons for the transfer and a description of the effect of the transfer on the activities of the Department of Energy.

**SEC. 306. HOMELAND SECURITY SCIENCE AND TECHNOLOGY COORDINATION COUNCIL.**

(a) ESTABLISHMENT AND COMPOSITION.—There is established within the Department a Homeland Security Science and Technology Coordination Council (in this section referred to as the “Coordination Council”). The Coordination Council shall be composed of all the Under Secretaries of the Department and any other Department officials designated by the Secretary, and shall be chaired by the Under Secretary for Science and Technology. The Coordination Council shall meet at the call of the chair.

(b) RESPONSIBILITIES.—The Coordination Council shall—

- (1) establish priorities for research, development, demonstration, testing, and evaluation activities conducted or supported by the Department;
- (2) ensure that the priorities established under paragraph (1) reflect the acquisition needs of the Department; and
- (3) assist the Under Secretary for Science and Technology in carrying out his responsibilities under section 301(4).

**SEC. 307. CONDUCT OF RESEARCH, DEVELOPMENT, DEMONSTRATION, TESTING AND EVALUATION.**

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall carry out the responsibilities under section 301(3) through both extramural and intramural programs.

(b) EXTRAMURAL PROGRAMS.—(1) The Secretary, acting through the Under Secretary for Science and Technology, shall operate extramural research, development, demonstration, testing, and evaluation programs so as to—

- (A) ensure that colleges, universities, private research institutes, and companies (and consortia thereof) from as many areas of the United States as practicable participate; and
- (B) distribute funds through grants, cooperative agreements, and contracts through competitions that are as open as possible.

(2)(A) The Secretary, acting through the Under Secretary for Science and Technology, shall establish within 1 year of the date of enactment of this Act a university-based center or centers for homeland security. The purpose of this center or centers shall be to establish a coordinated, university-based system to enhance the Nation’s homeland security.

(B) In selecting colleges or universities as centers for homeland security, the Secretary shall consider the following criteria:

- (i) Demonstrated expertise in the training of first responders.
- (ii) Demonstrated expertise in responding to incidents involving weapons of mass destruction and biological warfare.
- (iii) Demonstrated expertise in emergency medical services.
- (iv) Demonstrated expertise in chemical, biological, radiological, and nuclear countermeasures.
- (v) Strong affiliations with animal and plant diagnostic laboratories.
- (vi) Demonstrated expertise in food safety.
- (vii) Affiliation with Department of Agriculture laboratories or training centers.
- (viii) Demonstrated expertise in water and wastewater operations.
- (ix) Demonstrated expertise in port and waterway security.
- (x) Demonstrated expertise in multi-modal transportation.
- (xi) Nationally recognized programs in information security.
- (xii) Nationally recognized programs in engineering.
- (xiii) Demonstrated expertise in educational outreach and technical assistance.
- (xiv) Demonstrated expertise in border transportation and security.
- (xv) Demonstrated expertise in interdisciplinary public policy research and communication outreach regarding science, technology, and public policy.

(C) The Secretary shall have the discretion to establish such centers and to consider additional criteria as necessary to meet the evolving needs of homeland secu-

ity and shall report to Congress concerning the implementation of this paragraph as necessary.

(D) There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

(c) INTRAMURAL PROGRAMS.—(1) In carrying out the duties under section 301, the Secretary, acting through the Under Secretary for Science and Technology, may draw upon the expertise of any laboratory of the Federal Government, whether operated by a contractor or the Government.

(2) The Secretary, acting through the Under Secretary for Science and Technology, may establish a headquarters laboratory for the Department at any national laboratory and may establish additional laboratory units at other national laboratories.

(3) If the Secretary chooses to establish a headquarters laboratory pursuant to paragraph (2), then the Secretary shall do the following:

(A) Establish criteria for the selection of the headquarters laboratory in consultation with the National Academy of Sciences, appropriate Federal agencies, and other experts.

(B) Publish the criteria in the Federal Register.

(C) Evaluate all appropriate national laboratories against the criteria.

(D) Select a national laboratory on the basis of the criteria.

(E) Report to the appropriate congressional committees on which laboratory was selected, how the selected laboratory meets the published criteria, and what duties the headquarters laboratory shall perform.

(4) No laboratory shall begin operating as the headquarters laboratory of the Department until at least 30 days after the transmittal of the report required by paragraph (3)(E).

**SEC. 308. TRANSFER OF PLUM ISLAND ANIMAL DISEASE CENTER, DEPARTMENT OF AGRICULTURE.**

(a) TRANSFER REQUIRED.—In accordance with title VIII, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security the Plum Island Animal Disease Center of the Department of Agriculture, including the assets and liabilities of the Center.

(b) CONTINUED DEPARTMENT OF AGRICULTURE ACCESS.—Upon the transfer of the Plum Island Animal Disease Center, the Secretary of Homeland Security and the Secretary of Agriculture shall enter into an agreement to ensure Department of Agriculture access to the center for research, diagnostic, and other activities of the Department of Agriculture.

(c) NOTIFICATION.—At least 180 days before any change in the biosafety level at the facility described in subsection (a), the President shall notify the Congress of the change and describe the reasons therefor. No such change may be made until at least 180 days after the completion of the transition period defined in section 801(2).

## **TITLE IV—BORDER AND TRANSPORTATION SECURITY**

### **Subtitle A—General Provisions**

**SEC. 401. UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.**

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 governmental activities 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 411 takes effect.

(4) Establishing and administering rules, in accordance with section 403, 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) Except as provided in subtitle C, administering the customs laws of the United States.

(6) Conducting the inspection and related administrative functions of the Department of Agriculture transferred to the Secretary of Homeland Security under section 404.

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

**SEC. 402. FUNCTIONS TRANSFERRED.**

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the following:

(1) The United States Customs Service, except as provided in subtitle C.

(2) The Coast Guard of the Department of Transportation, which shall be maintained as a distinct entity within the Department, including the functions of the Secretary of Transportation relating thereto.

(3) 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.

(4) The Federal Protective Service of the General Services Administration, including the functions of the Administrator of General Services relating thereto.

(5) The Office of National Preparedness of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto.

(6) The Office for Domestic Preparedness of the Office of Justice Programs of the Department of Justice, including the functions of the Attorney General relating thereto.

(7) The National Domestic Preparedness Office of the Federal Bureau of Investigation, including the functions of the Attorney General relating thereto.

(8) The Domestic Emergency Support Teams of the Department of Justice, including the functions of the Attorney General relating thereto.

**SEC. 403. VISA ISSUANCE.**

(a) **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 (b) 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, 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).

(b) **AUTHORITY OF THE SECRETARY OF STATE.**—

(1) **IN GENERAL.**—Notwithstanding subsection (a), the Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State deems such refusal necessary or advisable in the foreign policy or security interests of the United States.

(2) **CONSTRUCTION REGARDING AUTHORITY.**—Nothing in this section 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)(vi)(II) of the Immigration and Nationality Act.

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

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

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

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



(H) Section 401 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6034; Public Law 104–114).

(I) Section 613 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999 (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).

(J) Section 801 of H.R. 3427, the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, as enacted by reference in Public Law 106–113.

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

(3) 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)).

(c) ASSIGNMENT OF HOMELAND SECURITY EMPLOYEES TO DIPLOMATIC AND CONSULAR POSTS.—

(1) IN GENERAL.—The Secretary is authorized to assign employees of the Department of Homeland Security to any diplomatic and consular posts abroad to perform the following functions:

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

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

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

(2) PERMANENT ASSIGNMENT; PARTICIPATION IN TERRORIST LOOKOUT COMMITTEE.—When appropriate, employees of the Department of Homeland Security assigned to perform functions described in paragraph (1) 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 established under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

(3) TRAINING AND HIRING.—

(A) The Secretary shall ensure that any employees of the Department of Homeland Security assigned to perform functions described in paragraph (1) shall be provided all necessary training to enable them to carry out such functions, including training in foreign languages, interview techniques, fraud detection techniques, and other skills required by such employees, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.

(B) The Secretary shall promulgate regulations within 60 days of the enactment of this Act establishing foreign language proficiency requirements for employees of the Department performing the functions described in paragraph (1) and providing that preference shall be given to individuals who meet such requirements in hiring employees for the performance of such functions.

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

(d) 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.

(e) 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 the date of the enactment of this Act, 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 Affairs of the Senate.

(f) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Director of the Office of Science and Technology Policy shall submit to the Congress a report on how the provisions of this section will affect procedures for the issuance of student visas.

(g) VISA ISSUANCE PROGRAM FOR SAUDI ARABIA.—Notwithstanding any other provision of law, after the date of the enactment of this Act all third party screening, interview waiver, or other non-interview visa issuance programs in Saudi Arabia shall be terminated. On-site personnel of the Department of Homeland Security shall review all visa applications prior to adjudication. All visa applicants in Saudi Arabia shall be interviewed unless on-site personnel of the Department of Homeland Security determine, in writing and pursuant to written guidelines issued by the Secretary of Homeland Security, that the alien is unlikely to present a risk to homeland security. The Secretary of Homeland Security shall promulgate such guidelines not later than 30 days after the date of the enactment of this Act.

**SEC. 404. 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 of Homeland Security 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 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).

(d) EFFECT OF TRANSFER.—

(1) COMPLIANCE WITH DEPARTMENT OF AGRICULTURE REGULATIONS.—The authority transferred pursuant to subsection (a) shall be exercised by the Secretary of Homeland Security 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 of Homeland Security whenever the Secretary of Agriculture prescribes regulations, policies, or procedures for administering the laws specified in subsection (b) at the locations referred to in subsection (a).

(3) EFFECTIVE ADMINISTRATION.—The Secretary of Homeland Security, 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).

(e) TRANSFER AGREEMENT.—

(1) AGREEMENT REQUIRED; REVISION.—Before the end of the transition period, as defined in section 801(2), the Secretary of Agriculture and the Secretary of Homeland Security shall enter into an agreement to effectuate the transfer of functions required by subsection (a). The Secretary of Agriculture and the Secretary of Homeland Security 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 of Homeland Security to carry out the functions transferred pursuant to subsection (a).

(B) The transfer of funds to the Secretary of Homeland Security under subsection (f).

(3) COOPERATION AND RECIPROCITY.—The Secretary of Agriculture and the Secretary of Homeland Security may include as part of the agreement the following:

(A) Authority for the Secretary of Homeland Security 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 of Homeland Security pursuant to subsection (a).

(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 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), the Secretary of Agriculture shall transfer, from time to time in accordance with the agreement under subsection (e), to the Secretary of Homeland Security funds for activities carried out by the Secretary of Homeland Security for which such fees were collected.

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

(g) TRANSFER OF DEPARTMENT OF AGRICULTURE EMPLOYEES.—During the transition period, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security not more than 3,200 full-time equivalent positions of the Department of Agriculture.

(h) PROTECTION OF INSPECTION ANIMALS.—Title V of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e, 2279f) is amended—

(1) in section 501(a)—

(A) by inserting “or the Department of Homeland Security” after “Department of Agriculture”; and

(B) by inserting “or the Secretary of Homeland Security” after “Secretary of Agriculture”;

(2) by striking “Secretary” each place it appears (other than in sections 501(a) and 501(e)) and inserting “Secretary concerned”; and

(3) by adding at the end of section 501 the following new subsection:

“(e) SECRETARY CONCERNED DEFINED.—In this title, the term ‘Secretary concerned’ means—

“(1) the Secretary of Agriculture, with respect to an animal used for purposes of official inspections by the Department of Agriculture; and

“(2) the Secretary of Homeland Security, with respect to an animal used for purposes of official inspections by the Department of Homeland Security.”.

#### SEC. 405. FUNCTIONS OF ADMINISTRATOR OF GENERAL SERVICES.

(a) OPERATION, MAINTENANCE, AND PROTECTION OF FEDERAL BUILDINGS AND GROUNDS.—Nothing in this Act 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 402(4), the Administrator shall retain all powers, functions, and authorities vested in the Administrator under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) 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 Act 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 210(f) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(f)).

(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.

**SEC. 406. 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 the date of enactment of this Act, 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, United States Code.

(c) **LIMITATIONS ON STATUTORY CONSTRUCTION.**—

(1) **GRANT OF AUTHORITY.**—Nothing in this Act 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, United States Code, on the day before the date of enactment of this Act.

(2) **OBLIGATION OF AIP FUNDS.**—Nothing in this Act 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, United States Code.

**SEC. 407. PRESERVATION OF TRANSPORTATION SECURITY ADMINISTRATION AS A DISTINCT ENTITY.**

(a) **IN GENERAL.**—Notwithstanding any other provision of this Act, and subject to subsection (b), 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) shall cease to apply two years after the date of enactment of this Act.

**SEC. 408. ANNUAL ASSESSMENT OF TERRORIST-RELATED THREATS TO PUBLIC TRANSPORTATION.**

On an annual basis, the Secretary, in consultation with the heads of other appropriate Federal departments and agencies, shall conduct an assessment of terrorist-related threats to all forms of public transportation, including public gathering areas related to public transportation.

**SEC. 409. EXPLOSIVE DETECTION SYSTEMS.**

(a) **INSTALLATION OF SYSTEMS.**—Section 44901(d) of title 49, United States Code, is amended by adding at the end the following:

“(2) **MODIFICATION OF AIRPORT TERMINAL BUILDINGS TO ACCOMMODATE EXPLOSIVE DETECTION SYSTEMS.**—

“(A) **NOTIFICATION OF AIRPORTS.**—Not later than October 1, 2002, the Under Secretary shall notify the owner or operator of each United States airport described in section 44903(c) of the number and type of explosive detection systems that will be required to be deployed at the airport in order to screen all checked baggage by explosive detection systems without imposing unreasonable delays on the passengers using the airport.

“(B) **ASSESSMENTS OF AIRPORT TERMINAL BUILDINGS.**—If the owner or operator of a United States airport described in section 44903(c) determines that the airport will not be able to make the modifications to the airport’s terminal buildings that are necessary to accommodate the explosive detection systems required under subparagraph (A) in a cost-effective manner on or before December 31, 2002, the owner or operator shall provide notice of that determination to the Under Secretary not later than November 1, 2002.

“(C) **PLANS FOR MAKING MODIFICATIONS TO AIRPORT TERMINAL BUILDINGS.**—

“(i) **IN GENERAL.**—If the owner or operator of an airport provides notice to the Under Secretary under subparagraph (B), the Under Secretary, in consultation with the owner or operator, shall develop, not later than December 1, 2002, a plan for making necessary modifications to the airport’s terminal buildings so as to deploy and fully utilize explosive detection systems to screen all checked baggage.

“(ii) **DEADLINE.**—A plan developed under this subparagraph shall include a date for executing the plan. All such plans shall be executed as expeditiously as practicable but not later than December 31, 2003.

“(iii) TRANSMISSION OF PLANS TO CONGRESS.—On the date of completion of a plan under this subparagraph, the Under Secretary shall transmit a copy of the plan to Congress. For security purposes, information contained in the plan shall not be disclosed to the public.

“(D) REQUIREMENTS FOR PLANS.—A plan developed and published under subparagraph (C), shall provide for, to the maximum extent practicable—

“(i) the deployment of explosive detection systems in the baggage sorting area or other non-public area rather than the lobby of an airport terminal building; and

“(ii) the deployment of state of the art explosive detection systems that have high throughput, low false alarm rates, and high reliability without reducing detection rates.

“(E) USE OF SCREENING METHODS OTHER THAN EDS.—Notwithstanding the deadline in paragraph (1)(A), after December 31, 2002, if explosive detection systems are not screening all checked baggage at a United States airport described in section 44903(c), such baggage shall be screened by the methods described in subsection (e) until such time as all checked baggage is screened by explosive detection systems at the airport.

“(3) PURCHASE OF EXPLOSIVE DETECTION SYSTEMS.—Any explosive detection system required to be purchased under paragraph (2)(A) shall be purchased by the Under Secretary.

“(4) EXPLOSIVE DETECTION SYSTEM DEFINED.—In this subsection, the term ‘explosive detection system’ means a device, or combination of devices, that can detect different types of explosives.”.

(b) CORRECTION OF REFERENCE.—Section 44901(e) of title 49, United States Code, is amended by striking “(b)(1)(A)” and inserting “(d)(1)(A)”.

**SEC. 410. TRANSPORTATION SECURITY.**

(a) TRANSPORTATION SECURITY OVERSIGHT BOARD.—

(1) ESTABLISHMENT.—Section 115(a) of title 49, United States Code, is amended by striking “Department of Transportation” and inserting “Department of Homeland Security”.

(2) MEMBERSHIP.—Section 115(b)(1) of title 49, United States Code, is amended—

(A) by striking subparagraph (G);

(B) by redesignating subparagraphs (A) through (F) as subparagraphs (B) through (G), respectively; and

(C) by inserting before subparagraph (B) (as so redesignated) the following:

“(A) The Secretary of Homeland Security, or the Secretary’s designee.”.

(3) CHAIRPERSON.—Section 115(b)(2) of title 49, United States Code, is amended by striking “Secretary of Transportation” and inserting “Secretary of Homeland Security”.

(b) APPROVAL OF AIP GRANT APPLICATIONS FOR SECURITY ACTIVITIES.—Section 47106 of title 49, United States Code, is amended by adding at the end the following:

“(g) CONSULTATION WITH SECRETARY OF HOMELAND SECURITY.—The Secretary shall consult with the Secretary of Homeland Security before approving an application under this subchapter for an airport development project grant for activities described in section 47102(3)(B)(ii) (relating to security equipment) or section 47102(3)(B)(x) (relating to installation of bulk explosive detection systems).”.

## **Subtitle B—Immigration and Nationality Functions**

### **CHAPTER 1—IMMIGRATION ENFORCEMENT**

**SEC. 411. TRANSFER OF FUNCTIONS TO UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.**

In accordance with title VIII, 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.

**SEC. 412. ESTABLISHMENT OF BUREAU OF BORDER SECURITY.**

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There is established 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 10 years professional experience in law enforcement, at least 5 of which shall have been years of service in a managerial capacity.

(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 411 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 of the Department of Justice established under chapter 2, 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 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372), 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 411 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, United States Code, as a GS-14 or above, shall, as a condition on further promotion—

(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 411 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) establishing national immigration enforcement policies and priorities;

(B) performing policy research and analysis on immigration enforcement issues; and

(C) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services of the Department of Justice (established under chapter 2), and the Assistant Attorney General for Citizenship and Immigration Services, as appropriate.

(c) CITIZENSHIP AND IMMIGRATION SERVICES LIAISON.—

(1) IN GENERAL.—There shall be a position of Citizenship and Immigration Services Liaison for the Bureau of Border Security.

(2) FUNCTIONS.—The Citizenship and Immigration Services Liaison shall be responsible for the appropriate allocation and coordination of resources involved in supporting shared support functions for the Bureau of Citizenship and Immigration Services of the Department of Justice (established under chapter 2) and the Bureau of Border Security, including—

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

- (B) records and file management; and
- (C) forms management.

**SEC. 413. 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.

**SEC. 414. 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.

**SEC. 415. 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 United States 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 411 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), the Secretary of Homeland Security shall consult with the Attorney General, the Secretary of State, the Assistant Attorney General for Citizenship and Immigration Services, 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.

**CHAPTER 2—CITIZENSHIP AND IMMIGRATION SERVICES****Subchapter A—Transfers of Functions****SEC. 421. ESTABLISHMENT OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.**

(a) **ESTABLISHMENT OF BUREAU.**—

(1) **IN GENERAL.**—There is established in the Department of Justice a bureau to be known as the “Bureau of Citizenship and Immigration Services”.

(2) **ASSISTANT ATTORNEY GENERAL.**—The head of the Bureau of Citizenship and Immigration Services shall be the Assistant Attorney General for Citizenship and Immigration Services, who—

(A) shall report directly to the Deputy Attorney General; and

(B) shall have a minimum of 10 years professional experience in the rendering of adjudications on the provision of government benefits or services, at least 5 of which shall have been years of service in a managerial capacity or in a position affording comparable management experience.

(3) **FUNCTIONS.**—The Assistant Attorney General for Citizenship and Immigration Services—

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

(B) shall oversee the administration of such policies;

(C) shall advise the Deputy Attorney General 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 of Homeland Security, including potentially conflicting policies or operations;

(D) shall meet regularly with the Ombudsman described in section 422 to correct serious service problems identified by the Ombudsman; and

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

(4) **MANAGERIAL ROTATION PROGRAM.**—

(A) IN GENERAL.—Not later than 1 year after the effective date specified in section 427, the Assistant Attorney General for 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, United States Code, as a GS-14 or above, shall, as a condition on further promotion—

- (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 427, the Attorney General shall submit a report to the Congress on the implementation of such program.

(5) PILOT INITIATIVES FOR BACKLOG ELIMINATION.—The Assistant Attorney General for 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 204(a) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)). 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.—There are transferred from the Commissioner of Immigration and Naturalization to the Assistant Attorney General for 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 427:

- (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 427.

(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) establishing national immigration services policies and priorities;
- (B) performing policy research and analysis on immigration services issues; and
- (C) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Border Security of the Department of Homeland Security.

(d) GENERAL COUNSEL.—

(1) IN GENERAL.—There shall be a position of General Counsel for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The General Counsel shall serve as the principal legal advisor to the Assistant Attorney General for Citizenship and Immigration Services. The General Counsel shall be responsible for—

- (A) providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Assistant Attorney General for 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 and in other legal or administrative proceedings involving immigration services issues.

(e) CHIEF BUDGET OFFICER.—

(1) IN GENERAL.—There shall be a position of Chief Budget Officer for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—

(A) IN GENERAL.—The Chief 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.
- (3) **AUTHORITY AND FUNCTIONS OF AGENCY CHIEF FINANCIAL OFFICERS.**—The Chief Budget Officer for the Bureau of Citizenship and Immigration Services shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of such bureau.
- (f) **CHIEF OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.**—
  - (1) **IN GENERAL.**—There shall be a position of Chief of Congressional, Intergovernmental, and Public Affairs for the Bureau of Citizenship and Immigration Services.
  - (2) **FUNCTIONS.**—The Chief of Congressional, Intergovernmental, and Public Affairs shall be responsible for—
    - (A) providing information relating to immigration services to the Congress, including information on specific cases relating to immigration services issues;
    - (B) serving as a liaison with other Federal agencies on immigration services issues; and
    - (C) responding to inquiries from the media and the general public on immigration services issues.
- (g) **BORDER SECURITY LIAISON.**—
  - (1) **IN GENERAL.**—There shall be a position of Border Security Liaison for the Bureau of Citizenship and Immigration Services.
  - (2) **FUNCTIONS.**—The Border Security Liaison shall be responsible for the appropriate allocation and coordination of resources involved in supporting shared support functions for the Bureau of Border Security of the Department of Homeland Security and the Bureau of Citizenship and Immigration Services, including—
    - (A) information resources management, including computer databases and information technology;
    - (B) records and file management; and
    - (C) forms management.
- (h) **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.

**SEC. 422. CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN.**

- (a) **IN GENERAL.**—Within the Department of Justice, 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 Attorney General. 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;
  - (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); and
  - (4) to identify potential legislative changes that may be appropriate to mitigate such problems.
- (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 United States 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 initiatives the Office of the Ombudsman has taken 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 and legislative 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 review or comment from the Attorney General, Deputy Attorney General, Assistant Attorney General for Citizenship and Immigration Services, or any other officer or employee of the Department of Justice 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 Assistant Attorney General for 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 Assistant Attorney General for Citizenship and Immigration Services shall establish procedures requiring a formal response to all recommendations submitted to such Assistant Attorney General 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 of Justice and report directly to the 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.

**SEC. 423. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.**

(a) IN GENERAL.—The Assistant Attorney General for 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 Department of Justice Office of the Inspector General;

(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) 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.

**SEC. 424. EMPLOYEE DISCIPLINE.**

The Assistant Attorney General for 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 the Congress or agency leadership on any matter.

**SEC. 425. OFFICE OF IMMIGRATION STATISTICS WITHIN BUREAU OF JUSTICE STATISTICS.**

(a) IN GENERAL.—Part C of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3731 et seq.) is amended by adding at the end the following:

“OFFICE OF IMMIGRATION STATISTICS

“SEC. 305. (a) There is established within the Bureau of Justice Statistics of the Department of Justice an Office of Immigration Statistics (in this section referred to as the ‘Office’), which shall be headed by a Director who shall be appointed by the Attorney General and who shall report to the Director of Justice Statistics.

“(b) The Director of the Office shall be responsible for the following:

“(1) Maintenance of all immigration statistical information of the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review. Such statistical information shall include information and statistics of the type contained in the publication entitled ‘Statistical Yearbook of the Immigration and Naturalization Service’ prepared by the Immigration and Naturalization Service (as in effect on the day prior to the effective date specified in section 427 of the Homeland Security Act of 2002), including region-by-region statistics on the aggregate number of applications and petitions filed by an alien (or filed on behalf of an alien) and denied by such offices and bureaus, and the reasons for such denials, disaggregated by category of denial and application or petition type.

“(2) Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review.

“(c) The Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review shall provide statistical information to the Office of Immigration Statistics from the operational data systems controlled by the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review, respectively, for the purpose of meeting the responsibilities of the Director.”.

(b) TRANSFER OF FUNCTIONS.—There are transferred to the Office of Immigration Statistics established under section 305 of the Omnibus Crime Control and Safe Streets Act of 1968, as added by subsection (a), the functions performed immediately before such transfer occurs by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service with respect to the following:

(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.

(c) CONFORMING AMENDMENTS.—Section 302(c) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3732(c)) is amended—

(1) by striking “and” at the end of paragraph (22);

(2) by striking the period at the end of paragraph (23) and inserting “; and”; and

(3) by adding at the end the following:

“(24) collect, maintain, compile, analyze, publish, and disseminate information and statistics involving the functions of the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review.”.

**SEC. 426. PRESERVATION OF ATTORNEY GENERAL'S AUTHORITY.**

(a) IN GENERAL.—Any function for which this subchapter vests responsibility in an official other than the Attorney General, or which is transferred by this subchapter to such an official, may, notwithstanding any provision of this subchapter, be performed by the Attorney General, or the Attorney General's delegate, in lieu of such official.

(b) REFERENCES.—In a case in which the Attorney General performs a function described in subsection (a), any reference in any other Federal law, Executive order, rule, regulation, document, or delegation of authority to the official otherwise responsible for the function is deemed to refer to the Attorney General.

**SEC. 427. EFFECTIVE DATE.**

Notwithstanding section 4, this subchapter, and the amendments made by this subchapter, shall take effect on the date on which the transfer of functions specified under section 411 takes effect.

**SEC. 428. TRANSITION.**

(a) REFERENCES.—With respect to any function transferred by this subchapter to, and exercised on or after the effective date specified in section 427 by, the Assistant Attorney General for 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 Assistant Attorney General for 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 subchapter 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 427.

(2) SAVINGS PROVISIONS.—Subsections (a), (b), and (c) of section 812 shall apply to a transfer of functions under this subchapter in the same manner as such provisions apply to a transfer of functions under this Act 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 subchapter (and functions that the Attorney General determines are properly related to the functions of the Bureau of Citizenship 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 subchapter, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Assistant Attorney General for Citizenship and Immigration Services for allocation to the appropriate component of the Department of Justice. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated. The Attorney General shall have the right to adjust or realign transfers of funds and personnel effected pursuant to this subchapter for a period of 2 years after the effective date specified in section 427.

(4) AUTHORITIES OF ATTORNEY GENERAL.—The Attorney General (or a delegate of the Attorney General), at such time or times as the Attorney General (or the delegate) shall provide, may make such determinations as may be necessary

with regard to the functions transferred by this subchapter, and may make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this subchapter. The Attorney General shall provide for such further measures and dispositions as may be necessary to effectuate the purposes of this subchapter.

### **Subchapter B—Other Provisions**

#### **SEC. 431. FUNDING FOR CITIZENSHIP AND IMMIGRATION SERVICES.**

(a) **ESTABLISHMENT OF FEES FOR ADJUDICATION AND NATURALIZATION SERVICES.**—Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking “services, including the costs of similar services provided without charge to asylum applicants or other immigrants.” and inserting “services.”.

(b) **AUTHORIZATION OF APPROPRIATIONS FOR REFUGEE AND ASYLUM ADJUDICATIONS.**—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 207 through 209 of the Immigration and Nationality Act (8 U.S.C. 1157–1159). All funds appropriated under this subsection shall be deposited into the Immigration Examinations Fee Account established under section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) and shall remain available until expended.

#### **SEC. 432. BACKLOG ELIMINATION.**

Section 204(a)(1) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)(1)) is amended by striking “not later than one year after the date of enactment of this Act;” and inserting “1 year after the date of the enactment of the Homeland Security Act of 2002;”.

#### **SEC. 433. REPORT ON IMPROVING IMMIGRATION SERVICES.**

(a) **IN GENERAL.**—The Attorney General, not later than 1 year after the effective date of this Act, shall submit to the Committees on the Judiciary and Appropriations of the United States 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 subchapter 1 takes effect, will complete efficiently, fairly, and within a reasonable time, the adjudications described in paragraphs (1) through (5) of section 421(b).

(b) **CONTENTS.**—For each type of adjudication to be undertaken by the Assistant Attorney General for 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 Attorney General considers advisable.

(c) **CONSULTATION.**—In carrying out subsection (a), the Attorney General shall consult with the Secretary of State, the Secretary of Labor, the Assistant Secretary of the Bureau of Border Security of the Department of Homeland Security, 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 421(b) and related processes.

#### **SEC. 434. REPORT ON RESPONDING TO FLUCTUATING NEEDS.**

Not later than 30 days after the date of the enactment of this Act, the Attorney General shall submit to the 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 subchapter 1 takes effect, the Bureau of Citizenship and Immigration Services, 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.

#### **SEC. 435. APPLICATION OF INTERNET-BASED TECHNOLOGIES.**

(a) **ESTABLISHMENT OF TRACKING SYSTEM.**—The Attorney General, not later than 1 year after the effective date of this Act, in consultation with the Technology Advisory Committee established under subsection (c), shall establish an Internet-based system, that will permit a person, employer, immigrant, or nonimmigrant who has filings with the Attorney General 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 Attorney General, in consultation with the Technology Advisory Committee established under subsection (c), shall conduct a feasibility study on the online filing of the filings described in subsection (a). 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 United States House of Representatives and the Senate not later than 1 year after the effective date of this Act.

## (c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—The Attorney General shall establish, not later than 60 days after the effective date of this Act, an advisory committee (in this section referred to as the “Technology Advisory Committee”) to assist the Attorney General in—

- (A) establishing the tracking system under subsection (a); and
- (B) conducting the study under subsection (b).

The Technology Advisory Committee shall be established after consultation with the Committees on the Judiciary of the United States 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) and the on-line filing system described in subsection (b)(1).

**SEC. 436. 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).

## (b) FUNCTIONS.—

(1) IN GENERAL.—Pursuant to the transfer made by subsection (a), 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 the 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 the date of the enactment of this Act;

(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.
- (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 of the Department of Justice, and the Assistant Secretary of the Bureau of Border Security of the Department of Homeland Security to ensure that 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 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)(G), 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.
- (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, this section shall take effect on the date on which the transfer of functions specified under section 411 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).
  - (2) SAVINGS PROVISIONS.—Subsections (a), (b), and (c) of section 812 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 Act 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 202 of the Budget and Accounting Procedures Act of 1950, 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
    - (ii) no parent or legal guardian in the United States is available to provide care and physical custody.

### CHAPTER 3—GENERAL PROVISIONS

#### SEC. 441. ABOLISHMENT OF INS.

The Immigration and Naturalization Service of the Department of Justice is abolished.

#### SEC. 442. 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, United States Code) 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 Justice; and
- (3) the term “transfer date” means the date on which the transfer of functions specified under section 411 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 Act;
- (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), 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, United States Code; 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 the date of the enactment of this Act,



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, United States Code, 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, United States Code (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 Attorney General (for transfer to the appropriate component of the Department of Justice, if necessary) 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.

**SEC. 443. 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 the date of the enactment of this Act, 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, United States Code.

(c) **PROCEDURES.—**Under the demonstration project—

(1) the use of alternative means of dispute resolution (as defined in section 571 of title 5, United States Code) 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) thereof).

(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, United States Code, 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)), 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, United States Code.

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 General Accounting 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 General Accounting 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 442(a)(2).

**SEC. 444. SENSE OF CONGRESS.**

It is the sense of the Congress that—

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

(2) the functions transferred under this subtitle should not, after such transfers take effect, operate at levels below those in effect prior to the enactment of this Act.

**SEC. 445. REPORTS AND IMPLEMENTATION PLANS.**

(a) **DIVISION OF FUNDS.**—The Attorney General and the Secretary, not later than 120 days after the effective date of this Act, shall each submit to the Committees on Appropriations and the Judiciary of the United States 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 Attorney General and the Secretary, not later than 120 days after the effective date of this Act, shall each submit to the Committees on Appropriations and the Judiciary of the United States 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 Attorney General and the Secretary, not later than 120 days after the effective date of this Act, and every 6 months thereafter until the termination of fiscal year 2005, shall each submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate an implementation plan to carry out this Act.

(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 411 takes effect, and every 6 months thereafter, until full implementation of this subtitle has been completed, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the United States House of Representatives and the Senate a report containing the following:

(A) A determination of whether the transfers of functions made by chapters 1 and 2 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 chapters 1 and 2 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 411 takes effect, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the United States 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 the date of the enactment of this Act, 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.

**SEC. 446. IMMIGRATION FUNCTIONS.**

(a) ANNUAL REPORT.—

(1) IN GENERAL.—One year after the date of the enactment of this Act, and each year thereafter, the Attorney General shall submit a report to the President, to the Committees on the Judiciary and Government Reform of the United States House of Representatives, and to the Committees on the Judiciary and Government Affairs of the Senate, on the impact the transfers made by this subtitle 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 of Justice (whether conveyed in person, by telephone, or by means of the Internet) were answered effectively and efficiently.

(b) SENSE OF THE CONGRESS REGARDING IMMIGRATION SERVICES.—It is the sense of the Congress that—

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

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

## Subtitle C—United States Customs Service

### SEC. 451. 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 set forth in section 457(7), 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) COMPENSATION.—Section 5314 of title 5, United States Code, is amended by striking

“Commissioner of Customs, Department of the Treasury”

and inserting

“Commissioner of Customs, Department of Homeland Security.”

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

### SEC. 452. RETENTION OF CUSTOMS REVENUE FUNCTIONS BY SECRETARY OF THE TREASURY.

(a) RETENTION BY SECRETARY OF THE TREASURY.—

(1) RETENTION OF AUTHORITY.—Notwithstanding sections 401(5), 402(1), and 808(e)(2), authority that was vested in the Secretary of the Treasury by law before the effective date of this Act under those provisions of law set forth in paragraph (2) shall not be transferred to the Secretary by reason of this Act, and on and after the effective date of this Act, 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; 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; 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; the Andean Trade Preference Act; the African Growth and Opportunity Act; 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 Act, the Secretary may not consolidate, alter, discontinue, or diminish those functions described in paragraph (2) performed by the United States Customs

Service (as established under section 451) on or after the effective date of this Act, reduce the staffing level, or the compensation or benefits under title 5, United States Code, of personnel attributable to such functions, 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 Act: 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.

**SEC. 453. ESTABLISHMENT AND IMPLEMENTATION OF COST ACCOUNTING SYSTEM; REPORTS.**

(a) **ESTABLISHMENT AND IMPLEMENTATION.**—

(1) **IN GENERAL.**—Not later than September 30, 2003, the Commissioner of Customs shall, in accordance with the audit of the Customs Service's fiscal years 2000 and 1999 financial statements (as contained in the report of the Office of the Inspector General of the Department of the Treasury issued on February 23, 2001), establish and implement a cost accounting system for expenses incurred in the operation of the Customs Service.

(2) **ADDITIONAL REQUIREMENT.**—The cost accounting system described in paragraph (1) shall provide for an identification of expenses based on the type of operation, the port at which the operation took place, the amount of time spent on the operation by personnel of the Customs Service, and an identification of expenses based on any other appropriate classification necessary to provide for an accurate and complete accounting of the expenses.

(3) **USE OF MERCHANDISE PROCESSING FEES.**—The cost accounting system described in paragraph (1) shall provide for an identification of all amounts expended pursuant to section 13031(f)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(b) **REPORTS.**—Beginning on the date of the enactment of this Act and ending on the date on which the cost accounting system described in subsection (a) is fully implemented, the Commissioner of Customs shall prepare and submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on a quarterly basis a report on the progress of implementing the cost accounting system pursuant to subsection (a).

**SEC. 454. PRESERVATION OF CUSTOMS FUNDS.**

Notwithstanding any other provision of this Act, no funds available to the United States Customs Service or collected under paragraphs (1) through (8) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 may be transferred for use by any other agency or office in the Department.

**SEC. 455. SEPARATE BUDGET REQUEST FOR CUSTOMS.**

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

**SEC. 456. PAYMENT OF DUTIES AND FEES.**

Section 505(a) of the Tariff Act of 1930 (19 U.S.C. 1505(a)) is amended—

(1) in the first sentence—

(A) by striking “Unless merchandise” and inserting “Unless the entry of merchandise is covered by an import activity summary statement, or the merchandise”; and

(B) by inserting after “by regulation” the following: “(but not to exceed 10 working days after entry or release, whichever occurs first)”; and

(2) by striking the second and third sentences and inserting the following: “If an import activity summary statement is filed, the importer of record shall deposit estimated duties and fees for entries of merchandise covered by the import activity summary statement no later than the 15th day of the month following the month in which the merchandise is entered or released, whichever occurs first.”

**SEC. 457. DEFINITION.**

In this subtitle, 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 337 of the Tariff Act of 1930 and provisions relating to import quotas and the marking of imported merchandise, and providing 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 Act: 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 Act: 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.

**SEC. 458. GAO REPORT TO CONGRESS.**

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

**SEC. 459. 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 Act 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 180 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 (8) of section 457.

**SEC. 460. REPORTS TO CONGRESS.**

The United States Customs Service shall, on and after the effective date of this Act, 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 effective date of this Act, to be so submitted under any provision of law.

**SEC. 461. CUSTOMS USER FEES.**

Section 13031(f) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—

(1) in paragraph (1), by striking subparagraph (B) and inserting the following: “(B) amounts deposited into the Customs Commercial and Homeland Security Automation Account under paragraph (5).”;

(2) in paragraph (4), by striking “(other than the excess fees determined by the Secretary under paragraph (5))”; and

(3) by striking paragraph (5) and inserting the following:

“(5)(A) There is created within the general fund of the Treasury a separate account that shall be known as the ‘Customs Commercial and Homeland Security Automation Account’. In each of fiscal years 2003, 2004, and 2005 there shall be deposited into the Account from fees collected under subsection (a)(9)(A), \$350,000,000.

“(B) There is authorized to be appropriated from the Account in fiscal years 2003 through 2005 such amounts as are available in that Account for the development, establishment, and implementation of the Automated Commercial Environment

computer system for the processing of merchandise that is entered or released and for other purposes related to the functions of the Department of Homeland Security. Amounts appropriated pursuant to this subparagraph are authorized to remain available until expended.

“(C) In adjusting the fee imposed by subsection (a)(9)(A) for fiscal year 2006, the Secretary of the Treasury shall reduce the amount estimated to be collected in fiscal year 2006 by the amount by which total fees deposited to the Account during fiscal years 2003, 2004, and 2005 exceed total appropriations from that Account.”.

## **TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE**

### **SEC. 501. UNDER SECRETARY FOR EMERGENCY PREPAREDNESS AND RESPONSE.**

The Secretary, acting through the Under Secretary for Emergency Preparedness and Response, shall be responsible for the following:

- (1) Helping to ensure the preparedness of emergency response providers for terrorist attacks, major disasters, and other emergencies.
- (2) With respect to the Nuclear Incident Response Team (regardless of whether it is operating as an organizational unit of the Department pursuant to this title)—
  - (A) establishing standards and certifying when those standards have been met;
  - (B) conducting joint and other exercises and training and evaluating performance; and
  - (C) providing funds to the Department of Energy and the Environmental Protection Agency, as appropriate, for homeland security planning, exercises and training, and equipment.
- (3) Providing the Federal Government’s response to terrorist attacks and major disasters, including—
  - (A) managing such response;
  - (B) directing the Domestic Emergency Support Team, the Strategic National Stockpile, the National Disaster Medical System, and (when operating as an organizational unit of the Department pursuant to this title) the Nuclear Incident Response Team;
  - (C) overseeing the Metropolitan Medical Response System; and
  - (D) coordinating other Federal response resources in the event of a terrorist attack or major disaster.
- (4) Aiding the recovery from terrorist attacks and major disasters, interventions to treat the psychological consequences of terrorist attacks or major disasters and provision for training for mental health workers to allow them to respond effectively to such attacks or disasters.
- (5) Building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and disasters.
- (6) Consolidating existing Federal Government emergency response plans into a single, coordinated national response plan.
- (7) Developing comprehensive programs for developing interoperative communications technology, and helping to ensure that emergency response providers acquire such technology.

### **SEC. 502. FUNCTIONS TRANSFERRED.**

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the following:

- (1) Except as provided in section 402, the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, and the Integrated Hazard Information System of the Department of Defense.
- (2) The Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and the Assistant Secretary for Public Health Emergency Preparedness relating thereto.
- (3) The Strategic National Stockpile of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services relating thereto.

**SEC. 503. NUCLEAR INCIDENT RESPONSE.**

(a) **NUCLEAR INCIDENT RESPONSE TEAM.**—At the direction of the Secretary (in connection with an actual or threatened terrorist attack, major disaster, or other emergency within the United States), the Nuclear Incident Response Team shall operate as an organizational unit of the Department. While so operating, the Nuclear Incident Response Team shall be subject to the direction, authority, and control of the Secretary.

(b) **CONSTRUCTION.**—Nothing in this title shall be understood to limit the ordinary responsibility of the Secretary of Energy and the Administrator of the Environmental Protection Agency for organizing, training, equipping, and utilizing their respective entities in the Nuclear Incident Response Team, or (subject to the provisions of this title) from exercising direction, authority, and control over them when they are not operating as a unit of the Department.

(c) **INDEMNIFICATION OF CONTRACTORS DURING TRANSITION PERIOD.**—(1) To the extent the Department of Energy has a duty under a covered contract to indemnify an element of the Nuclear Incident Response Team, the Department and the Department of Energy shall each have that duty, whether or not the Nuclear Incident Response Team is operating as an organizational element of the Department.

(2) Paragraph (1) applies only to a contract in effect on the date of the enactment of this Act, and not to any extension or renewal of such contract carried out after the date of the enactment of this Act.

**SEC. 504. DEFINITION.**

For purposes of this title, the term “Nuclear Incident Response Team” means a resource that includes—

(1) those entities of the Department of Energy that perform nuclear or radiological emergency support functions (including accident response, search response, advisory, and technical operations functions), radiation exposure functions at the medical assistance facility known as the Radiation Emergency Assistance/Training Site (REAC/TS), radiological assistance functions, and related functions; and

(2) those entities of the Environmental Protection Agency that perform radiological emergency response and support functions.

**SEC. 505. CONDUCT OF CERTAIN PUBLIC-HEALTH RELATED ACTIVITIES.**

(a) **IN GENERAL.**—With respect to all public health-related activities to improve State, local, and hospital preparedness and response to chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities and preparedness goals and further develop a coordinated strategy for such activities in collaboration with the Secretary of Homeland Security.

(b) **EVALUATION OF PROGRESS.**—In carrying out subsection (a), the Secretary of Health and Human Services shall collaborate with the Secretary of Homeland Security in developing specific benchmarks and outcome measurements for evaluating progress toward achieving the priorities and goals described in such subsection.

**TITLE VI—MANAGEMENT****SEC. 601. UNDER SECRETARY FOR MANAGEMENT.**

(a) **IN GENERAL.**—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.

(5) Facilities, property, equipment, and other material resources.

(6) Security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources.

(7) Identification and tracking of performance measures relating to the responsibilities of the Department.

(8) Grants and other assistance management programs.

(9) 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.



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

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

(b) IMMIGRATION ENFORCEMENT.—

(1) IN GENERAL.—In addition to the responsibilities described in subsection (a), the Under Secretary for Management shall be responsible for the following:

(A) Maintenance of all immigration statistical information of the Bureau of Border Security. Such statistical information shall include information and statistics of the type contained in the publication entitled “Statistical Yearbook of the Immigration and Naturalization Service” prepared by the Immigration and Naturalization Service (as in effect immediately before the date on which the transfer of functions specified under section 411 takes effect), including region-by-region statistics on the aggregate number of applications and petitions filed by an alien (or filed on behalf of an alien) and denied by such bureau, and the reasons for such denials, disaggregated by category of denial and application or petition type.

(B) Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Border Security.

(2) TRANSFER OF FUNCTIONS.—In accordance with title VIII, there shall be transferred to the Under Secretary for Management all functions performed immediately before such transfer occurs by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service with respect to the following programs:

- (A) The Border Patrol program.
- (B) The detention and removal program.
- (C) The intelligence program.
- (D) The investigations program.
- (E) The inspections program.

**SEC. 602. CHIEF FINANCIAL OFFICER.**

Notwithstanding section 902(a)(1) of title 31, United States Code, the Chief Financial Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

**SEC. 603. CHIEF INFORMATION OFFICER.**

Notwithstanding section 3506(a)(2) of title 44, United States Code, the Chief Information Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

**SEC. 604. ESTABLISHMENT OF OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES.**

The Secretary shall establish in the Department an Office for Civil Rights and Civil Liberties, the head of which shall be the Director for Civil Rights and Civil Liberties. The Director shall—

(1) review and assess information alleging abuses of civil rights, civil liberties, and racial and ethnic profiling by employees and officials of the Department;

(2) make public through the Internet, radio, television, or newspaper advertisements information on the responsibilities and functions of, and how to contact, the Office; and

(3) submit to the President of the Senate, the Speaker of the House of Representatives, and the appropriate committees and subcommittees of the Congress on a semiannual basis a report on the implementation of this section, including the use of funds appropriated to carry out this section, and detailing any allegations of abuses described in paragraph (1) and any actions taken by the Department in response to such allegations.

## TITLE VII—MISCELLANEOUS

### Subtitle A—Inspector General

**SEC. 701. AUTHORITY OF THE SECRETARY.**

(a) IN GENERAL.—Notwithstanding the last two sentences of section 3(a) of the Inspector General Act of 1978, the Inspector General shall be under the authority, direction, and control of the Secretary with respect to audits or investigations, or the issuance of subpoenas, that require access to sensitive information concerning—

- (1) intelligence, counterintelligence, or counterterrorism matters;
- (2) ongoing criminal investigations or proceedings;
- (3) undercover operations;
- (4) the identity of confidential sources, including protected witnesses;

(5) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to the protection of any person or property authorized protection by section 3056 of title 18, United States Code, section 202 of title 3 of such Code, or any provision of the Presidential Protection Assistance Act of 1976; or

(6) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to national security.

(b) PROHIBITION OF CERTAIN INVESTIGATIONS.—With respect to the information described in subsection (a), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to prevent the disclosure of any information described in subsection (a), to preserve the national security, or to prevent a significant impairment to the interests of the United States.

(c) NOTIFICATION REQUIRED.—If the Secretary exercises any power under subsection (a) or (b), the Secretary shall notify the Inspector General of the Department in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice and a written response thereto that includes (1) a statement as to whether the Inspector General agrees or disagrees with such exercise and (2) the reasons for any disagreement, to the President of the Senate and the Speaker of the House of Representatives and to appropriate committees and subcommittees of the Congress.

(d) ACCESS TO INFORMATION BY CONGRESS.—The exercise of authority by the Secretary described in subsection (b) should not be construed as limiting the right of Congress or any committee of Congress to access any information it seeks.

(e) OVERSIGHT RESPONSIBILITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting after section 8I the following:

“SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

“SEC. 8J. Notwithstanding any other provision of law, in carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of Homeland Security shall have oversight responsibility for the internal investigations performed by the Office of Internal Affairs of the United States Customs Service and the Office of Inspections of the United States Secret Service. The head of each such office shall promptly report to the Inspector General the significant activities being carried out by such office.”.

## Subtitle B—United States Secret Service

### SEC. 711. FUNCTIONS TRANSFERRED.

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the United States Secret Service, which shall be maintained as a distinct entity within the Department, including the functions of the Secretary of the Treasury relating thereto.

## Subtitle C—Critical Infrastructure Information

### SEC. 721. SHORT TITLE.

This subtitle may be cited as the “Critical Infrastructure Information Act of 2002”.

### SEC. 722. DEFINITIONS.

In this subtitle:

(1) AGENCY.—The term “agency” has the meaning given it in section 551 of title 5, United States Code.

(2) COVERED FEDERAL AGENCY.—The term “covered Federal agency” means the Department of Homeland Security.

(3) CRITICAL INFRASTRUCTURE INFORMATION.—The term “critical infrastructure information” means information not customarily in the public domain and related to the security of critical infrastructure or protected systems—

(A) actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or other similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates Federal, State, or local law,

harms interstate commerce of the United States, or threatens public health or safety;

(B) the ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk management planning, or risk audit; or

(C) any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.

(4) **CRITICAL INFRASTRUCTURE PROTECTION PROGRAM.**—The term “critical infrastructure protection program” means any component or bureau of a covered Federal agency that has been designated by the President or any agency head to receive critical infrastructure information.

(5) **INFORMATION SHARING AND ANALYSIS ORGANIZATION.**—The term “Information Sharing and Analysis Organization” means any formal or informal entity or collaboration created or employed by public or private sector organizations, for purposes of—

(A) gathering and analyzing critical infrastructure information in order to better understand security problems and interdependencies related to critical infrastructure and protected systems, so as to ensure the availability, integrity, and reliability thereof;

(B) communicating or disclosing critical infrastructure information to help prevent, detect, mitigate, or recover from the effects of a interference, compromise, or a incapacitation problem related to critical infrastructure or protected systems; and

(C) voluntarily disseminating critical infrastructure information to its members, State, local, and Federal Governments, or any other entities that may be of assistance in carrying out the purposes specified in subparagraphs (A) and (B).

(6) **PROTECTED SYSTEM.**—The term “protected system”—

(A) means any service, physical or computer-based system, process, or procedure that directly or indirectly affects the viability of a facility of critical infrastructure; and

(B) includes any physical or computer-based system, including a computer, computer system, computer or communications network, or any component hardware or element thereof, software program, processing instructions, or information or data in transmission or storage therein, irrespective of the medium of transmission or storage.

(7) **VOLUNTARY.**—

(A) **IN GENERAL.**—The term “voluntary”, in the case of any submittal of critical infrastructure information to a covered Federal agency, means the submittal thereof in the absence of such agency’s exercise of legal authority to compel access to or submission of such information and may be accomplished by a single entity or an Information Sharing and Analysis Organization on behalf of itself or its members.

(B) **EXCLUSIONS.**—The term “voluntary”—

(i) in the case of any action brought under the securities laws as is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))—

(I) does not include information or statements contained in any documents or materials filed with the Securities and Exchange Commission, or with Federal banking regulators, pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 781(I)); and

(II) with respect to the submittal of critical infrastructure information, does not include any disclosure or writing that when made accompanied the solicitation of an offer or a sale of securities; and

(ii) does not include information or statements submitted or relied upon as a basis for making licensing or permitting determinations, or during regulatory proceedings.

**SEC. 723. DESIGNATION OF CRITICAL INFRASTRUCTURE PROTECTION PROGRAM.**

A critical infrastructure protection program may be designated as such by one of the following:

- (1) The President.
- (2) The Secretary of Homeland Security.

**SEC. 724. PROTECTION OF VOLUNTARILY SHARED CRITICAL INFRASTRUCTURE INFORMATION.**

(a) PROTECTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, critical infrastructure information (including the identity of the submitting person or entity) that is voluntarily submitted to a covered Federal agency for use by that agency regarding the security of critical infrastructure and protected systems, if analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose, when accompanied by an express statement specified in paragraph (2)—

(A) shall be exempt from disclosure under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act);

(B) shall not be subject to any agency rules or judicial doctrine regarding ex parte communications with a decision making official;

(C) shall not, without the written consent of the person or entity submitting such information, be used directly by such agency, any other Federal, State, or local authority, or any third party, in any civil action arising under Federal or State law if such information is submitted in good faith;

(D) shall not, without the written consent of the person or entity submitting such information, be used or disclosed by any officer or employee of the United States for purposes other than the purposes of this subtitle, except—

(i) in furtherance of an investigation or the prosecution of a criminal act; or

(ii) when disclosure of the information would be—

(I) to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee thereof or subcommittee of any such joint committee; or

(II) to the Comptroller General, or any authorized representative of the Comptroller General, in the course of the performance of the duties of the General Accounting Office.

(E) shall not, if provided to a State or local government or government agency—

(i) be made available pursuant to any State or local law requiring disclosure of information or records;

(ii) otherwise be disclosed or distributed to any party by said State or local government or government agency without the written consent of the person or entity submitting such information; or

(iii) be used other than for the purpose of protecting critical infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act; and

(F) does not constitute a waiver of any applicable privilege or protection provided under law, such as trade secret protection.

(2) EXPRESS STATEMENT.—For purposes of paragraph (1), the term “express statement”, with respect to information or records, means—

(A) in the case of written information or records, a written marking on the information or records substantially similar to the following: “This information is voluntarily submitted to the Federal Government in expectation of protection from disclosure as provided by the provisions of the Critical Infrastructure Information Act of 2002.”; or

(B) in the case of oral information, a similar written statement submitted within a reasonable period following the oral communication.

(b) LIMITATION.—No communication of critical infrastructure information to a covered Federal agency made pursuant to this subtitle shall be considered to be an action subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App. 2).

(c) INDEPENDENTLY OBTAINED INFORMATION.—Nothing in this section shall be construed to limit or otherwise affect the ability of a State, local, or Federal Government entity, agency, or authority, or any third party, under applicable law, to obtain critical infrastructure information in a manner not covered by subsection (a), including any information lawfully and properly disclosed generally or broadly to the public and to use such information in any manner permitted by law.

(d) TREATMENT OF VOLUNTARY SUBMITTAL OF INFORMATION.—The voluntary submittal to the Government of information or records that are protected from disclosure by this subtitle shall not be construed to constitute compliance with any requirement to submit such information to a Federal agency under any other provision of law.

(e) PROCEDURES.—

(1) **IN GENERAL.**—The Secretary of the Department of Homeland Security shall, in consultation with appropriate representatives of the National Security Council and the Office of Science and Technology Policy, establish uniform procedures for the receipt, care, and storage by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government. The procedures shall be established not later than 90 days after the date of the enactment of this subtitle.

(2) **ELEMENTS.**—The procedures established under paragraph (1) shall include mechanisms regarding—

(A) the acknowledgement of receipt by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government;

(B) the maintenance of the identification of such information as voluntarily submitted to the Government for purposes of and subject to the provisions of this subtitle;

(C) the care and storage of such information; and

(D) the protection and maintenance of the confidentiality of such information so as to permit the sharing of such information within the Federal Government and with State and local governments, and the issuance of notices and warnings related to the protection of critical infrastructure and protected systems, in such manner as to protect from public disclosure the identity of the submitting person or entity, or information that is proprietary, business sensitive, relates specifically to the submitting person or entity, and is otherwise not appropriately in the public domain.

(f) **PENALTIES.**—Whoever, being an officer or employee of the United States or of any department or agency thereof, knowingly publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law, any critical infrastructure information protected from disclosure by this subtitle coming to him in the course of this employment or official duties or by reason of any examination or investigation made by, or return, report, or record made to or filed with, such department or agency or officer or employee thereof, shall be fined under title 18 of the United States Code, imprisoned not more than one year, or both, and shall be removed from office or employment.

(g) **AUTHORITY TO ISSUE WARNINGS.**—The Federal Government may provide advisories, alerts, and warnings to relevant companies, targeted sectors, other governmental entities, or the general public regarding potential threats to critical infrastructure as appropriate. In issuing a warning, the Federal Government shall take appropriate actions to protect from disclosure—

(1) the source of any voluntarily submitted critical infrastructure information that forms the basis for the warning; or

(2) information that is proprietary, business sensitive, relates specifically to the submitting person or entity, or is otherwise not appropriately in the public domain.

(h) **AUTHORITY TO DELEGATE.**—The President may delegate authority to a critical infrastructure protection program, designated under subsection (e), to enter into a voluntary agreement to promote critical infrastructure security, including with any Information Sharing and Analysis Organization, or a plan of action as otherwise defined in section 708 of the Defense Production Act of 1950 (50 U.S.C. App. 2158).

**SEC. 725. NO PRIVATE RIGHT OF ACTION.**

Nothing in this subtitle may be construed to create a private right of action for enforcement of any provision of this Act.

## **Subtitle D—Acquisitions**

**SEC. 731. RESEARCH AND DEVELOPMENT PROJECTS.**

(a) **AUTHORITY.**—During the five-year period following the effective date of this Act, the Secretary may carry out a pilot program under which the Secretary may exercise the following authorities:

(1)(A) In carrying out basic, applied, and advanced research and development projects for response to existing or emerging terrorist threats, the Secretary may exercise the same authority (subject to the same limitations and conditions) with respect to such research and projects as the Secretary of Defense may exercise under section 2371 of title 10, United States Code (except for subsections (b) and (f) of such section), after making a determination that—

(i) the use of a contract, grant, or cooperative agreement for such projects is not feasible or appropriate; and

(ii) use of other authority to waive Federal procurement laws or regulations would not be feasible or appropriate to accomplish such projects.

(B) The annual report required under subsection (h) of such section 2371, as applied to the Secretary by this paragraph, shall be submitted to the President of the Senate and the Speaker of the House of Representatives.

(2)(A) Under the authority of paragraph (1) and subject to the limitations of such paragraph, the Secretary may carry out prototype projects, in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).

(B) In applying the authorities of such section 845—

- (i) subsection (c) thereof shall apply with respect to prototype projects under this paragraph, except that in applying such subsection any reference in such subsection to the Comptroller General shall be deemed to refer to the Comptroller General and the Inspector General of the Department; and
- (ii) the Secretary shall perform the functions of the Secretary of Defense under subsection (d) thereof.

(b) REPORT.—Not later than one year after the effective date of this Act, and annually thereafter, the Comptroller General shall report to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate on—

(1) whether use of the authorities described in subsection (a) attracts non-traditional Government contractors and results in the acquisition of needed technologies; and

(2) if such authorities were to be made permanent, whether additional safeguards are needed with respect to the use of such authorities.

(c) DEFINITION OF NONTRADITIONAL GOVERNMENT CONTRACTOR.—In this section, the term “nontraditional Government contractor” has the same meaning as the term “nontraditional defense contractor” as defined in section 845(e) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).

#### SEC. 732. PERSONAL SERVICES.

The Secretary—

(1) may procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109 of title 5, United States Code; and

(2) may, whenever necessary due to an urgent homeland security need, procure temporary (not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

#### SEC. 733. SPECIAL STREAMLINED ACQUISITION AUTHORITY.

(a) AUTHORITY.—(1) The Secretary may use the authorities set forth in this section with respect to any procurement made during the period beginning on the effective date of this Act and ending September 30, 2007, if the Secretary determines in writing that the mission of the Department (as described in section 101) would be seriously impaired without the use of such authorities.

(2) The authority to make the determination described in paragraph (1) may not be delegated by the Secretary to an officer of the Department who is not appointed by the President with the advice and consent of the Senate.

(3) Not later than the date that is seven days after the date of any determination under paragraph (1), the Secretary shall submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate—

(A) notification of such determination; and

(B) the justification for such determination.

(b) INCREASED MICRO-PURCHASE THRESHOLD FOR CERTAIN PROCUREMENTS.—(1) The Secretary may designate certain employees of the Department to make procurements described in subsection (a) for which in the administration of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be \$5,000.

(2) The number of employees designated under paragraph (1) shall be—

(A) fewer than the number of employees of the Department who are authorized to make purchases without obtaining competitive quotations, pursuant to section 32(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(c));

(B) sufficient to ensure the geographic dispersal of the availability of the use of the procurement authority under such paragraph at locations reasonably considered to be potential terrorist targets; and

(C) sufficiently limited to allow for the careful monitoring of employees designated under such paragraph.

(3) Procurements made under the authority of this subsection shall be subject to review by a designated supervisor on not less than a monthly basis. The supervisor responsible for the review shall be responsible for no more than 7 employees making procurements under this subsection.

(c) SIMPLIFIED ACQUISITION PROCEDURES.—(1) With respect to a procurement described in subsection (a), the Secretary may deem the simplified acquisition threshold referred to in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)) to be \$175,000.

(2) Section 18(c)(1) of the Office of Federal Procurement Policy Act is amended—

(A) by striking “or” at the end of subparagraph (F);

(B) by striking the period at the end of subparagraph (G) and inserting “; or”; and

(C) by adding at the end the following new subparagraph:

“(H) the procurement is by the Secretary of Homeland Security pursuant to the special procedures provided in section 733(c) of the Homeland Security Act of 2002.”.

(d) APPLICATION OF CERTAIN COMMERCIAL ITEMS AUTHORITIES.—(1) With respect to a procurement described in subsection (a), the Secretary may deem any item or service to be a commercial item for the purpose of Federal procurement laws.

(2) The \$5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)) and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall be deemed to be \$7,500,000 for purposes of property or services under the authority of this subsection.

(3) Authority under a provision of law referred to in paragraph (2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for a procurement described in subsection (a).

(e) REPORT.—Not later than 180 days after the end of fiscal year 2005, the Comptroller General shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives a report on the use of the authorities provided in this section. The report shall contain the following:

(1) An assessment of the extent to which property and services acquired using authorities provided under this section contributed to the capacity of the Federal workforce to facilitate the mission of the Department as described in section 101.

(2) An assessment of the extent to which prices for property and services acquired using authorities provided under this section reflected the best value.

(3) The number of employees designated by each executive agency under subsection (b)(1).

(4) An assessment of the extent to which the Department has implemented subsections (b)(2) and (b)(3) to monitor the use of procurement authority by employees designated under subsection (b)(1).

(5) Any recommendations of the Comptroller General for improving the effectiveness of the implementation of the provisions of this section.

#### SEC. 734. PROCUREMENTS FROM SMALL BUSINESSES.

There is established in the Department an office to be known as the “Office of Small and Disadvantaged Business Utilization”. The management of such office shall be vested in the manner described in section 15(k) of the Small Business Act (15 U.S.C. 644(k)) and shall carry out the functions described in such section.

## Subtitle E—Property

#### SEC. 741. DEPARTMENT HEADQUARTERS.

(a) IN GENERAL.—Subject to the requirements of the Public Buildings Act of 1959 (40 U.S.C. 601 et seq.), the Administrator of General Services shall construct a public building to serve as the headquarters for the Department.

(b) LOCATION AND CONSTRUCTION STANDARDS.—The headquarters facility shall be constructed to such standards and specifications and at such a location as the Administrator of General Services decides. In selecting a site for the headquarters facility, the Administrator shall give preference to parcels of land that are federally owned.

(c) USE OF HEADQUARTERS FACILITY.—The Administrator of General Services shall make the headquarter facility, as well as other Government-owned or leased facilities, available to the Secretary pursuant to the Administrator’s authorities under section 210 of the Federal Property and Administrative Services Act of 1949

(40 U.S.C. 490 et seq.) and there is authorized to be appropriated to the Secretary such amounts as may be necessary to pay the annual charges for General Services Administration furnished space and services.

## **Subtitle F—Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (the SAFETY Act)**

### **SEC. 751. SHORT TITLE.**

This subtitle may be cited as the “Support Anti-terrorism by Fostering Effective Technologies Act of 2002” or the “SAFETY Act”.

### **SEC. 752. ADMINISTRATION.**

(a) **IN GENERAL.**—The Secretary shall be responsible for the administration of this subtitle.

(b) **DESIGNATION OF QUALIFIED ANTI-TERRORISM TECHNOLOGIES.**—The Secretary may designate anti-terrorism technologies that qualify for protection under the system of risk management set forth in this subtitle in accordance with criteria that shall include, but not be limited to, the following:

(1) Prior and extensive United States government use and demonstrated substantial utility and effectiveness.

(2) Availability of the technology for immediate deployment in public and private settings.

(3) Existence of extraordinarily large or extraordinarily unquantifiable potential third party liability risk exposure to the Seller or other provider of such anti-terrorism technology.

(4) Substantial likelihood that such anti-terrorism technology will not be deployed unless protections under the system of risk management provided under this subtitle are extended.

(5) Magnitude of risk exposure to the public if such anti-terrorism technology is not deployed.

(6) evaluation of all scientific studies that can be feasibly conducted in order to assess the capability of the technology to substantially reduce risks of harm.

(c) **REGULATIONS.**—The Secretary may issue such regulations, after notice and comment in accordance with section 553 of title 5, United States, Code, as may be necessary to carry out this subtitle.

### **SEC. 753. LITIGATION MANAGEMENT.**

(a) **FEDERAL CAUSE OF ACTION.**—(1) There shall exist a Federal cause of action for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against such act and such claims result or may result in loss to the Seller. The substantive law for decision in any such action shall be derived from the law, including choice of law principles, of the State in which such acts of terrorism occurred, unless such law is inconsistent with or preempted by Federal law.

(2) Such appropriate district court of the United States shall have original and exclusive jurisdiction over all actions for any claim for loss of property, personal injury, or death arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against such act and such claims result or may result in loss to the Seller.

(b) **SPECIAL RULES.**—In an action brought under this section for damages the following provisions apply:

(1) No punitive damages intended to punish or deter, exemplary damages, or other damages not intended to compensate a plaintiff for actual losses may be awarded, nor shall any party be liable for interest prior to the judgment.

(2)(A) Noneconomic damages may be awarded against a defendant only in an amount directly proportional to the percentage of responsibility of such defendant for the harm to the plaintiff, and no plaintiff may recover noneconomic damages unless the plaintiff suffered physical harm.

(B) For purposes of subparagraph (A), the term “noneconomic damages” means damages for losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and any other nonpecuniary losses.

(c) **COLLATERAL SOURCES.**—Any recovery by a plaintiff in an action under this section shall be reduced by the amount of collateral source compensation, if any, that



the plaintiff has received or is entitled to receive as a result of such acts of terrorism that result or may result in loss to the Seller.

(d) **GOVERNMENT CONTRACTOR DEFENSE.**—(1) Should a product liability lawsuit be filed for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in paragraphs (2) and (3) of this subsection, have been deployed in defense against such act and such claims result or may result in loss to the Seller, there shall be a rebuttable presumption that the government contractor defense applies in such lawsuit. This presumption shall only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology under this subsection. This presumption of the government contractor defense shall apply regardless of whether the claim against the Seller arises from a sale of the product to Federal Government or non-Federal Government customers.

(2) The Secretary will be exclusively responsible for the review and approval of anti-terrorism technology for purposes of establishing a government contractor defense in any product liability lawsuit for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in this paragraph and paragraph (3), have been deployed in defense against such act and such claims result or may result in loss to the Seller. Upon the Seller's submission to the Secretary for approval of anti-terrorism technology, the Secretary will conduct a comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended. The Seller will conduct safety and hazard analyses on such technology and will supply the Secretary with all such information.

(3) For those products reviewed and approved by the Secretary, the Secretary will issue a certificate of conformance to the Seller and place the product on an Approved Product List for Homeland Security.

(e) **EXCLUSION.**—Nothing in this section shall in any way limit the ability of any person to seek any form of recovery from any person, government, or other entity that—

(1) attempts to commit, knowingly participates in, aids and abets, or commits any act of terrorism, or any criminal act related to or resulting from such act of terrorism; or

(2) participates in a conspiracy to commit any such act of terrorism or any such criminal act.

**SEC. 754. RISK MANAGEMENT.**

(a) **IN GENERAL.**—(1) Any person or entity that sells or otherwise provides a qualified anti-terrorism technology to non-federal government customers ("Seller") shall obtain liability insurance of such types and in such amounts as shall be required in accordance with this section to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against such act.

(2) For the total claims related to one such act of terrorism, the Seller is not required to obtain liability insurance of more than the maximum amount of liability insurance reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of Seller's anti-terrorism technologies.

(3) Liability insurance obtained pursuant to this subsection shall, in addition to the Seller, protect the following, to the extent of their potential liability for involvement in the manufacture, qualification, sale, use, or operation of qualified anti-terrorism technologies deployed in defense against an act of terrorism:

(A) contractors, subcontractors, suppliers, vendors and customers of the Seller.

(B) contractors, subcontractors, suppliers, and vendors of the customer.

(4) Such liability insurance under this section shall provide coverage against third party claims arising out of, relating to, or resulting from the sale or use of anti-terrorism technologies.

(b) **RECIPROCAL WAIVER OF CLAIMS.**—The Seller shall enter into a reciprocal waiver of claims with its contractors, subcontractors, suppliers, vendors and customers, and contractors and subcontractors of the customers, involved in the manufacture, sale, use or operation of qualified anti-terrorism technologies, under which each party to the waiver agrees to be responsible for losses, including business interruption losses, that it sustains, or for losses sustained by its own employees resulting from an activity resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against such act.

(c) **EXTENT OF LIABILITY.**—Notwithstanding any other provision of law, liability for all claims against a Seller arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against such act and such claims result or may result in loss to the Seller, whether for compensatory or punitive damages or for contribution or indemnity, shall not be in an amount greater than the limits of liability insurance coverage required to be maintained by the Seller under this section.

**SEC. 755. DEFINITIONS.**

For purposes of this subtitle, the following definitions apply:

(1) **QUALIFIED ANTI-TERRORISM TECHNOLOGY.**—For purposes of this subtitle, the term “qualified anti-terrorism technology” means any product, device, or technology designed, developed, or modified for the specific purpose of preventing, detecting, identifying, or deterring acts of terrorism and limiting the harm such acts might otherwise cause, that is designated as such by the Secretary.

(2) **ACT OF TERRORISM.**—(A) The term “act of terrorism” means any act that the Secretary determines meets the requirements under subparagraph (B), as such requirements are further defined and specified by the Secretary.

(B) **REQUIREMENTS.**—An act meets the requirements of this subparagraph if the act—

- (i) is unlawful;
- (ii) causes harm to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States-flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States; and
- (iii) uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

(3) **INSURANCE CARRIER.**—The term “insurance carrier” means any corporation, association, society, order, firm, company, mutual, partnership, individual aggregation of individuals, or any other legal entity that provides commercial property and casualty insurance. Such term includes any affiliates of a commercial insurance carrier.

(4) **LIABILITY INSURANCE.**—

(A) **IN GENERAL.**—The term “liability insurance” means insurance for legal liabilities incurred by the insured resulting from—

- (i) loss of or damage to property of others;
- (ii) ensuing loss of income or extra expense incurred because of loss of or damage to property of others;
- (iii) bodily injury (including) to persons other than the insured or its employees; or
- (iv) loss resulting from debt or default of another.

(5) **LOSS.**—The term “loss” means death, bodily injury, or loss of or damage to property, including business interruption loss.

(6) **NON-FEDERAL GOVERNMENT CUSTOMERS.**—The term “non-Federal Government customers” means any customer of a Seller that is not an agency or instrumentality of the United States Government with authority under Public Law 85-804 to provide for indemnification under certain circumstances for third-party claims against its contractors, including but not limited to State and local authorities and commercial entities.

## **Subtitle G—Other Provisions**

**SEC. 761. ESTABLISHMENT OF HUMAN RESOURCES MANAGEMENT SYSTEM.**

(a) **AUTHORITY.**—

(1) **IN GENERAL.**—Subpart I of part III of title 5, United States Code, is amended by adding at the end the following:

### **“CHAPTER 97—DEPARTMENT OF HOMELAND SECURITY**

“Sec.

“9701. Establishment of human resources management system.

**“§ 9701. Establishment of human resources management system**

“(a) **IN GENERAL.**—Notwithstanding any other provision of this title, the Secretary of Homeland Security may, in regulations prescribed jointly with the Director of the

Office of Personnel Management, establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department of Homeland Security.

“(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

“(1) be flexible;

“(2) be contemporary;

“(3) not waive, modify, or otherwise affect—

“(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other non-merit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

“(B) any provision of section 2302, relating to prohibited personnel practices;

“(C)(i) any provision of law referred to in section 2302(b)(1); or

“(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1) by—

“(I) providing for equal employment opportunity through affirmative action; or

“(II) providing any right or remedy available to any employee or applicant for employment in the civil service;

“(D) any other provision of this title (as described in subsection (c)); or

“(E) any rule or regulation prescribed under any provision of law referred to in any of the preceding subparagraphs of this paragraph;

“(4) ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established by law or under subsection (a) for employees engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; and

“(5) permit the use of a category rating system for evaluating applicants for positions in the competitive service.

“(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this title, as referred to in subsection (b)(3)(D), are (to the extent not otherwise specified in subparagraph (A), (B), (C), or (D) of subsection (b)(3))—

“(1) subparts A, B, E, G, and H of this part; and

“(2) chapters 41, 45, 47, 55, 57, 59, 72, 73, and 79, and this chapter.

“(d) LIMITATIONS RELATING TO PAY.—Nothing in this section shall constitute authority—

“(1) to modify the pay of any employee who serves in—

“(A) an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or

“(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of such title 5;

“(2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of such title 5 in a year; or

“(3) to exempt any employee from the application of such section 5307.

“(e) SUNSET PROVISION.—Effective 5 years after the date of the enactment of this section, all authority to issue regulations under this section (including regulations which would modify, supersede, or terminate any regulations previously issued under this section) shall cease to be available.”

(2) CLERICAL AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end the following:

“97. Department of Homeland Security ..... 9701”.

(b) EFFECT ON PERSONNEL.—

(1) NON-SEPARATION OR NON-REDUCTION IN GRADE OR COMPENSATION OF FULL-TIME PERSONNEL AND PART-TIME PERSONNEL HOLDING PERMANENT POSITIONS.—Except as otherwise provided in this Act, the transfer pursuant to this Act of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer to the Department.

(2) POSITIONS COMPENSATED IN ACCORDANCE WITH EXECUTIVE SCHEDULE.—Any person who, on the day preceding such person’s date of transfer pursuant to this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, with-

out a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such previous position, for the duration of the service of such person in such new position.

(3) **COORDINATION RULE.**—Any exercise of authority under chapter 97 of title 5, United States Code (as amended by subsection (a)), including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

**SEC. 762. ADVISORY COMMITTEES.**

The Secretary may establish, appoint members of, and use the services of, advisory committees, as the Secretary may deem necessary. An advisory committee established under this section may be exempted by the Secretary from Public Law 92–463, but the Secretary shall publish notice in the Federal Register announcing the establishment of such a committee and identifying its purpose and membership. Notwithstanding the preceding sentence, members of an advisory committee that is exempted by the Secretary under the preceding sentence who are special Government employees (as that term is defined in section 202 of title 18, United States Code) shall be eligible for certifications under subsection (b)(3) of section 208 of title 18, United States Code, for official actions taken as a member of such advisory committee.

**SEC. 763. REORGANIZATION; TRANSFER OF APPROPRIATIONS.**

(a) **REORGANIZATION.**—

(1) **IN GENERAL.**—The Secretary may allocate or reallocate functions among the officers of the Department, and may establish, consolidate, alter, or discontinue organizational units within the Department, but only—

- (A) pursuant to section 802; or
- (B) after the expiration of 60 days after providing notice of such action to the appropriate congressional committees, which shall include an explanation of the rationale for the action.

(2) **LIMITATIONS.**—(A) Authority under paragraph (1)(A) does not extend to the abolition of any agency, entity, organizational unit, program, or function established or required to be maintained by this Act.

(B) Authority under paragraph (1)(B) does not extend to the abolition of any agency, entity, organizational unit, program, or function established or required to be maintained by statute.

(b) **TRANSFER OF APPROPRIATIONS.**—

(1) **IN GENERAL.**—Except as otherwise specifically provided by law, not to exceed two percent of any appropriation available to the Secretary in any fiscal year may be transferred between such appropriations, except that not less than 15 days' notice shall be given to the Committees on Appropriations of the Senate and House of Representatives before any such transfer is made.

(2) **EXPIRATION OF AUTHORITY.**—The authority under paragraph (1) shall expire two years after the date of enactment of this Act.

**SEC. 764. MISCELLANEOUS AUTHORITIES.**

(a) **SEAL.**—The Department shall have a seal, whose design is subject to the approval of the President.

(b) **GIFTS, DEVISES, AND BEQUESTS.**—With respect to the Department, the Secretary shall have the same authorities that the Attorney General has with respect to the Department of Justice under section 524(d) of title 28, United States Code.

(c) **PARTICIPATION OF MEMBERS OF THE ARMED FORCES.**—With respect to the Department, the Secretary shall have the same authorities that the Secretary of Transportation has with respect to the Department of Transportation under section 324 of title 49, United States Code.

(d) **REDELEGATION OF FUNCTIONS.**—Unless otherwise provided in the delegation or by law, any function delegated under this Act may be redelegated to any subordinate.

**SEC. 765. MILITARY ACTIVITIES.**

Nothing in this Act shall confer upon the Secretary any authority to engage in warfighting, the military defense of the United States, or other military activities, nor shall anything in this Act limit the existing authority of the Department of Defense or the Armed Forces to engage in warfighting, the military defense of the United States, or other military activities.

**SEC. 766. REGULATORY AUTHORITY.**

Except as otherwise provided in this Act, this Act vests no new regulatory authority in the Secretary or any other Federal official, and transfers to the Secretary or

another Federal official only such regulatory authority as exists on the date of enactment of this Act within any agency, program, or function transferred to the Department pursuant to this Act, or that on such date of enactment is exercised by another official of the executive branch with respect to such agency, program, or function. Any such transferred authority may not be exercised by an official from whom it is transferred upon transfer of such agency, program, or function to the Secretary or another Federal official pursuant to this Act. This Act may not be construed as altering or diminishing the regulatory authority of any other executive agency, except to the extent that this Act transfers such authority from the agency.

**SEC. 767. PROVISIONS REGARDING TRANSFERS FROM DEPARTMENT OF ENERGY.**

(a) **SEPARATE CONTRACTING.**—To the extent that programs or activities transferred by this Act from the Department of Energy to the Department of Homeland Security are being carried out through contracts with the operator of a national laboratory of the Department of Energy, the Secretary of Homeland Security and the Secretary of Energy shall ensure that contracts for such programs and activities between the Department of Homeland Security and such operator are separate from the contracts of the Department of Energy with such operator.

(b) **HOMELAND SECURITY CENTER.**—(1) Notwithstanding section 307, the Secretary, acting through the Under Secretary for Science and Technology, shall establish at a national security laboratory of the National Nuclear Security Administration, a center to serve as the primary location for carrying out research, development, test, and evaluation activities of the Department related to the goals described in section 301(6)(A) and (B). The Secretary shall establish, in concurrence with the Secretary of Energy, such additional centers at one or more national laboratories of the Department of Energy as the Secretary considers appropriate to serve as secondary locations for carrying out such activities.

(2) Each center established under paragraph (1) shall be composed of such facilities and assets as are required for the performance of such activities. The particular facilities and assets shall be designated and transferred by the Secretary of Energy with the concurrence of the Secretary.

(c) **REIMBURSEMENT OF COSTS.**—In the case of an activity carried out by the operator of a national laboratory of the Department of Energy but under contract with the Department of Homeland Security, the Department of Homeland Security shall reimburse the Department of Energy for costs of such activity through a method under which the Secretary of Energy waives any requirement for the Department of Homeland Security to pay administrative charges or personnel costs of the Department of Energy or its contractors in excess of the amount that the Secretary of Energy pays for an activity carried out by such contractor and paid for by the Department of Energy.

(d) **LABORATORY DIRECTED RESEARCH AND DEVELOPMENT BY THE DEPARTMENT OF ENERGY.**—No funds authorized to be appropriated or otherwise made available to the Department in any fiscal year may be obligated or expended for laboratory directed research and development activities carried out by the Department of Energy unless such activities support the mission of the Department described in section 101.

(e) **DEPARTMENT OF ENERGY COORDINATION ON HOMELAND SECURITY RELATED RESEARCH.**—The Secretary of Energy shall ensure that any research, development, test, and evaluation activities conducted within the Department of Energy that are directly or indirectly related to homeland security are fully coordinated with the Secretary to minimize duplication of effort and maximize the effective application of Federal budget resources.

**SEC. 768. COUNTERNARCOTICS OFFICER.**

The Secretary shall appoint a senior official in the Department to assume primary responsibility for coordinating policy and operations within the Department and between the Department and other Federal departments and agencies with respect to interdicting the entry of illegal drugs into the United States, and tracking and severing connections between illegal drug trafficking and terrorism.

**SEC. 769. OFFICE OF INTERNATIONAL AFFAIRS.**

(a) **ESTABLISHMENT.**—There is established within the Office of the Secretary an Office of International Affairs. The Office shall be headed by a Director, who shall be a senior official appointed by the Secretary.

(b) **DUTIES OF THE DIRECTOR.**—The Director shall have the following duties:

(1) To promote information and education exchange with nations friendly to the United States in order to promote sharing of best practices and technologies relating to homeland security. Such information exchange shall include the following:

(A) Joint research and development on countermeasures.

- (B) Joint training exercises of first responders.
- (C) Exchange of expertise on terrorism prevention, response, and crisis management.
- (2) To identify areas for homeland security information and training exchange where the United States has a demonstrated weakness and another friendly nation or nations have a demonstrated expertise.
- (3) To plan and undertake international conferences, exchange programs, and training activities.
- (4) To manage international activities within the Department in coordination with other Federal officials with responsibility for counter-terrorism matters.

**SEC. 770. PROHIBITION OF THE TERRORISM INFORMATION AND PREVENTION SYSTEM.**

Any and all activities of the Federal Government to implement the proposed component program of the Citizen Corps known as Operation TIPS (Terrorism Information and Prevention System) are hereby prohibited.

**SEC. 771. REVIEW OF PAY AND BENEFIT PLANS.**

Notwithstanding any other provision of this Act, the Secretary shall, in consultation with the Director of the Office of Personnel Management, review the pay and benefit plans of each agency whose functions are transferred under this Act to the Department and, within 90 days after the date of enactment, submit a plan to the President of the Senate and the Speaker of the House of Representatives and the appropriate committees and subcommittees of the Congress, for ensuring, to the maximum extent practicable, the elimination of disparities in pay and benefits throughout the Department, especially among law enforcement personnel, that are inconsistent with merit system principles set forth in section 2301 of title 5, United States Code.

**SEC. 772. ROLE OF THE DISTRICT OF COLUMBIA.**

The Secretary (or the Secretary's designee) shall work in cooperation with the Mayor of the District of Columbia (or the Mayor's designee) for the purpose of integrating the District of Columbia into the planning, coordination, and execution of the activities of the Federal Government for the enhancement of domestic preparedness against the consequences of terrorist attacks.

**SEC. 773. TRANSFER OF THE FEDERAL LAW ENFORCEMENT TRAINING CENTER.**

There shall be transferred to the Attorney General the functions, personnel, assets, and liabilities of the Federal Law Enforcement Training Center, including any functions of the Secretary of the Treasury relating thereto.

## **TITLE VIII—TRANSITION**

### **Subtitle A—Reorganization Plan**

**SEC. 801. DEFINITIONS.**

For purposes of this title:

- (1) The term "agency" includes any entity, organizational unit, program, or function.
- (2) The term "transition period" means the 12-month period beginning on the effective date of this Act.

**SEC. 802. REORGANIZATION PLAN.**

(a) **SUBMISSION OF PLAN.**—Not later than 60 days after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a reorganization plan regarding the following:

- (1) The transfer of agencies, personnel, assets, and obligations to the Department pursuant to this Act.
- (2) Any consolidation, reorganization, or streamlining of agencies transferred to the Department pursuant to this Act.

(b) **PLAN ELEMENTS.**—The plan transmitted under subsection (a) shall contain, consistent with this Act, such elements as the President deems appropriate, including the following:

- (1) Identification of any functions of agencies transferred to the Department pursuant to this Act that will not be transferred to the Department under the plan.
- (2) Specification of the steps to be taken by the Secretary to organize the Department, including the delegation or assignment of functions transferred to the Department among officers of the Department in order to permit the Department to carry out the functions transferred under the plan.

- (3) Specification of the funds available to each agency that will be transferred to the Department as a result of transfers under the plan.
- (4) Specification of the proposed allocations within the Department of unexpended funds transferred in connection with transfers under the plan.
- (5) Specification of any proposed disposition of property, facilities, contracts, records, and other assets and obligations of agencies transferred under the plan.
- (6) Specification of the proposed allocations within the Department of the functions of the agencies and subdivisions that are not related directly to securing the homeland.
- (c) MODIFICATION OF PLAN.—The President may, on the basis of consultations with the appropriate congressional committees, modify or revise any part of the plan until that part of the plan becomes effective in accordance with subsection (d).
- (d) EFFECTIVE DATE.—
  - (1) IN GENERAL.—The reorganization plan described in this section, including any modifications or revisions of the plan under subsection (d), shall become effective for an agency on the earlier of—
    - (A) the date specified in the plan (or the plan as modified pursuant to subsection (d)), except that such date may not be earlier than 90 days after the date the President has transmitted the reorganization plan to the appropriate congressional committees pursuant to subsection (a); or
    - (B) the end of the transition period.
  - (2) STATUTORY CONSTRUCTION.—Nothing in this subsection may be construed to require the transfer of functions, personnel, records, balances of appropriations, or other assets of an agency on a single date.
  - (3) SUPERSEDES EXISTING LAW.—Paragraph (1) shall apply notwithstanding section 905(b) of title 5, United States Code.

## Subtitle B—Transitional Provisions

### SEC. 811. TRANSITIONAL AUTHORITIES.

(a) PROVISION OF ASSISTANCE BY OFFICIALS.—Until the transfer of an agency to the Department, any official having authority over or functions relating to the agency immediately before the effective date of this Act shall provide to the Secretary such assistance, including the use of personnel and assets, as the Secretary may request in preparing for the transfer and integration of the agency into the Department.

(b) SERVICES AND PERSONNEL.—During the transition period, upon the request of the Secretary, the head of any executive agency may, on a reimbursable basis, provide services or detail personnel to assist with the transition.

(c) TRANSFER OF FUNDS.—Until the transfer of an agency to the Department, the President is authorized to transfer to the Secretary to fund the purposes authorized in this Act—

(1) for administrative expenses related to the establishment of the Department of Homeland Security, not to exceed two percent of the unobligated balance of any appropriation enacted prior to October 1, 2002, available to such agency; and

(2) for purposes for which the funds were appropriated, not to exceed three percent of the unobligated balance of any appropriation available to such agency;

except that not less than 15 days' notice shall be given to the Committees on Appropriations of the House of Representatives and the Senate before any such funds transfer is made.

(d) ACTING OFFICIALS.—(1) During the transition period, pending the advice and consent of the Senate to the appointment of an officer required by this Act to be appointed by and with such advice and consent, the President may designate any officer whose appointment was required to be made by and with such advice and consent and who was such an officer immediately before the effective date of this Act (and who continues in office) or immediately before such designation, to act in such office until the same is filled as provided in this Act. While so acting, such officers shall receive compensation at the higher of—

(A) the rates provided by this Act for the respective offices in which they act;

or

(B) the rates provided for the offices held at the time of designation.

(2) Nothing in this Act shall be understood to require the advice and consent of the Senate to the appointment by the President to a position in the Department of any officer whose agency is transferred to the Department pursuant to this Act and whose duties following such transfer are germane to those performed before such transfer.

(e) **TRANSFER OF PERSONNEL, ASSETS, OBLIGATIONS, AND FUNCTIONS.**—Upon the transfer of an agency to the Department—

(1) the personnel, assets, and obligations held by or available in connection with the agency shall be transferred to the Secretary for appropriate allocation, subject to the approval of the Director of the Office of Management and Budget and in accordance with the provisions of section 1531(a)(2) of title 31, United States Code; and

(2) the Secretary shall have all functions relating to the agency that any other official could by law exercise in relation to the agency immediately before such transfer, and shall have in addition all functions vested in the Secretary by this Act or other law.

Paragraph (1) shall not apply to appropriations transferred pursuant to section 763(b).

(f) **PROHIBITION ON USE OF TRANSPORTATION TRUST FUNDS.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of this Act, no funds derived from the Highway Trust Fund, Airport and Airway Trust Fund, Inland Waterway Trust Fund, Harbor Maintenance Trust Fund, or Oil Spill Liability Trust Fund may be transferred to, made available to, or obligated by the Secretary or any other official in the Department.

(2) **LIMITATION.**—This subsection shall not apply to security-related funds provided to the Federal Aviation Administration for fiscal years preceding fiscal year 2003 for (A) operations, (B) facilities and equipment, or (C) research, engineering, and development.

**SEC. 812. SAVINGS PROVISIONS.**

(a) **COMPLETED ADMINISTRATIVE ACTIONS.**—(1) Completed administrative actions of an agency shall not be affected by the enactment of this Act or the transfer of such agency to the Department, but shall continue in effect according to their terms until amended, modified, superseded, terminated, set aside, or revoked in accordance with law by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(2) For purposes of paragraph (1), the term “completed administrative action” includes orders, determinations, rules, regulations, personnel actions, permits, agreements, grants, contracts, certificates, licenses, registrations, and privileges.

(b) **PENDING PROCEEDINGS.**—Subject to the authority of the Secretary under this Act—

(1) pending proceedings in an agency, including notices of proposed rule-making, and applications for licenses, permits, certificates, grants, and financial assistance, shall continue notwithstanding the enactment of this Act or the transfer of the agency to the Department, unless discontinued or modified under the same terms and conditions and to the same extent that such discontinuance could have occurred if such enactment or transfer had not occurred; and

(2) orders issued in such proceedings, and appeals therefrom, and payments made pursuant to such orders, shall issue in the same manner and on the same terms as if this Act had not been enacted or the agency had not been transferred, and any such orders shall continue in effect until amended, modified, superseded, terminated, set aside, or revoked by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(c) **PENDING CIVIL ACTIONS.**—Subject to the authority of the Secretary under this Act, pending civil actions shall continue notwithstanding the enactment of this Act or the transfer of an agency to the Department, and in such civil actions, proceedings shall be had, appeals taken, and judgments rendered and enforced in the same manner and with the same effect as if such enactment or transfer had not occurred.

(d) **REFERENCES.**—References relating to an agency that is transferred to the Department in statutes, Executive orders, rules, regulations, directives, or delegations of authority that precede such transfer or the effective date of this Act shall be deemed to refer, as appropriate, to the Department, to its officers, employees, or agents, or to its corresponding organizational units or functions. Statutory reporting requirements that applied in relation to such an agency immediately before the effective date of this Act shall continue to apply following such transfer if they refer to the agency by name.

(e) **EMPLOYMENT PROVISIONS.**—(1) Notwithstanding the generality of the foregoing (including subsections (a) and (d)), in and for the Department the Secretary may, in regulations prescribed jointly with the Director of the Office of Personnel Management, adopt the rules, procedures, terms, and conditions, established by statute, rule, or regulation before the effective date of this Act, relating to employment in any agency transferred to the Department pursuant to this Act; and



(2) except as otherwise provided in this Act, or under authority granted by this Act, the transfer pursuant to this Act of personnel shall not alter the terms and conditions of employment, including compensation, of any employee so transferred.

**SEC. 813. TERMINATIONS.**

Except as otherwise provided in this Act, whenever all the functions vested by law in any agency have been transferred pursuant to this Act, each position and office the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V, of the Executive Schedule, shall terminate.

**SEC. 814. INCIDENTAL TRANSFERS.**

The Director of the Office of Management and Budget, in consultation with the Secretary, is authorized and directed to make such additional incidental dispositions of personnel, assets, and obligations held, used, arising from, available, or to be made available, in connection with the functions transferred by this Act, as the Director may deem necessary to accomplish the purposes of this Act.

**SEC. 815. NATIONAL IDENTIFICATION SYSTEM NOT AUTHORIZED.**

Nothing in this Act shall be construed to authorize the development of a national identification system or card.

**SEC. 816. CONTINUITY OF INSPECTOR GENERAL OVERSIGHT.**

Notwithstanding the transfer of an agency to the Department pursuant to this Act, the Inspector General that exercised oversight of such agency prior to such transfer shall continue to exercise oversight of such agency during the period of time, if any, between the transfer of such agency to the Department pursuant to this Act and the appointment of the Inspector General of the Department of Homeland Security in accordance with section 103(b) of this Act.

**SEC. 817. REFERENCE.**

With respect to any function transferred by or under this Act (including under a reorganization plan that becomes effective under section 802) and exercised on or after the effective date of this Act, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, other official, or component of the Department to which such function is so transferred.

## **TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS**

**SEC. 901. INSPECTOR GENERAL ACT OF 1978.**

Section 11 of the Inspector General Act of 1978 (Public Law 95–452) is amended—

- (1) by inserting “Homeland Security,” after “Transportation,” each place it appears; and
- (2) by striking “; and” each place it appears in paragraph (1) and inserting “;”;

**SEC. 902. EXECUTIVE SCHEDULE.**

(a) IN GENERAL.—Title 5, United States Code, is amended—

- (1) in section 5312, by inserting “Secretary of Homeland Security.” as a new item after “Affairs.”;
- (2) in section 5313, by inserting “Deputy Secretary of Homeland Security.” as a new item after “Affairs.”;
- (3) in section 5314, by inserting “Under Secretaries, Department of Homeland Security.” as a new item after “Affairs.” the third place it appears;
- (4) in section 5315, by inserting “Assistant Secretaries, Department of Homeland Security.”, “General Counsel, Department of Homeland Security.”, “Chief Financial Officer, Department of Homeland Security.”, “Chief Information Officer, Department of Homeland Security.”, and “Inspector General, Department of Homeland Security.” as new items after “Affairs.” the first place it appears; and
- (5) in section 5315, by striking “Commissioner of Immigration and Naturalization, Department of Justice.”.

(b) SPECIAL EFFECTIVE DATE.—Notwithstanding section 4, the amendment made by subsection (a)(5) shall take effect on the date on which the transfer of functions specified under section 411 takes effect.

**SEC. 903. UNITED STATES SECRET SERVICE.**

(a) **IN GENERAL.**—(1) The United States Code is amended in section 202 of title 3, and in section 3056 of title 18, by striking “of the Treasury”, each place it appears and inserting “of Homeland Security”.

(2) Section 208 of title 3, United States Code, is amended by striking “of Treasury” each place it appears and inserting “of Homeland Security”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of transfer of the United States Secret Service to the Department.

**SEC. 904. COAST GUARD.**

(a) **TITLE 14, U.S.C.**—Title 14, United States Code, is amended in sections 1, 3, 53, 95, 145, 516, 666, 669, 673, 673a (as redesignated by subsection (e)(1)), 674, 687, and 688 by striking “of Transportation” each place it appears and inserting “of Homeland Security”.

(b) **TITLE 10, U.S.C.**—(1) Title 10, United States Code, is amended in sections 101(9), 130b(a), 130b(c)(4), 130c(h)(1), 379, 513(d), 575(b)(2), 580(e)(6), 580a(e), 651(a), 671(c)(2), 708(a), 716(a), 717, 806(d)(2), 815(e), 888, 946(c)(1), 973(d), 978(d), 983(b)(1), 985(a), 1033(b)(1), 1033(d), 1034, 1037(c), 1044d(f), 1058(c), 1059(a), 1059(k)(1), 1073(a), 1074(c)(1), 1089(g)(2), 1090, 1091(a), 1124, 1143, 1143a(h), 1144, 1145(e), 1148, 1149, 1150(c), 1152(a), 1152(d)(1), 1153, 1175, 1212(a), 1408(h)(2), 1408(h)(8), 1463(a)(2), 1482a(b), 1510, 1552(a)(1), 1565(f), 1588(f)(4), 1589, 2002(a), 2302(1), 2306b(b), 2323(j)(2), 2376(2), 2396(b)(1), 2410a(a), 2572(a), 2575(a), 2578, 2601(b)(4), 2634(e), 2635(a), 2734(g), 2734a, 2775, 2830(b)(2), 2835, 2836, 4745(a), 5013a(a), 7361(b), 10143(b)(2), 10146(a), 10147(a), 10149(b), 10150, 10202(b), 10203(d), 10205(b), 10301(b), 12103(b), 12103(d), 12304, 12311(c), 12522(c), 12527(a)(2), 12731(b), 12731a(e), 16131(a), 16136(a), 16301(g), and 18501 by striking “of Transportation” each place it appears and inserting “of Homeland Security”.

(2) Section 801(1) of such title is amended by striking “the General Counsel of the Department of Transportation” and inserting “an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security”.

(3) Section 983(d)(2)(B) of such title is amended by striking “Department of Transportation” and inserting “Department of Homeland Security”.

(4) Section 2665(b) of such title is amended by striking “Department of Transportation” and inserting “Department in which the Coast Guard is operating”.

(5) Section 7045 of such title is amended—

(A) in subsections (a)(1) and (b), by striking “Secretaries of the Army, Air Force, and Transportation” both places it appears and inserting “Secretary of the Army, the Secretary of the Air Force, and the Secretary of Homeland Security”; and

(B) in subsection (b), by striking “Department of Transportation” and inserting “Department of Homeland Security”.

(6) Section 7361(b) of such title is amended in the subsection heading by striking “TRANSPORTATION” and inserting “HOMELAND SECURITY”.

(7) Section 12522(c) of such title is amended in the subsection heading by striking “TRANSPORTATION” and inserting “HOMELAND SECURITY”.

(c) **TITLE 37, U.S.C.**—Title 37, United States Code, is amended in sections 101(5), 204(i)(4), 301a(a)(3), 306(d), 307(c), 308(a)(1), 308(d)(2), 308(f), 308b(e), 308c(c), 308d(a), 308e(f), 308g(g), 308h(f), 308i(e), 309(d), 316(d), 323(b), 323(g)(1), 325(i), 402(d), 402a(g)(1), 403(f)(3), 403(l)(1), 403b(i)(5), 406(b)(1), 417(a), 417(b), 418(a), 703, 1001(c), 1006(f), 1007(a), and 1011(d) by striking “of Transportation” each place it appears and inserting “of Homeland Security”.

(d) **OTHER DEFENSE-RELATED LAWS.**—(1) Section 363 of Public Law 104–193 (110 Stat. 2247) is amended—

(A) in subsection (a)(1) (10 U.S.C. 113 note), by striking “of Transportation” and inserting “of Homeland Security”; and

(B) in subsection (b)(1) (10 U.S.C. 704 note), by striking “of Transportation” and inserting “of Homeland Security”.

(2) Section 721(1) of Public Law 104–201 (10 U.S.C. 1073 note) is amended by striking “of Transportation” and inserting “of Homeland Security”.

(3) Section 4463(a) of Public Law 102–484 (10 U.S.C. 1143a note) is amended by striking “after consultation with the Secretary of Transportation”.

(4) Section 4466(h) of Public Law 102–484 (10 U.S.C. 1143 note) is amended by striking “of Transportation” and inserting “of Homeland Security”.

(5) Section 542(d) of Public Law 103–337 (10 U.S.C. 1293 note) is amended by striking “of Transportation” and inserting “of Homeland Security”.

(6) Section 740 of Public Law 106–181 (10 U.S.C. 2576 note) is amended in subsections (b)(2), (c), and (d)(1) by striking “of Transportation” each place it appears and inserting “of Homeland Security”.

(7) Section 1407(b)(2) of the Defense Dependents' Education Act of 1978 (20 U.S.C. 926(b)) is amended by striking "of Transportation" both places it appears and inserting "of Homeland Security".

(8) Section 2301(5)(D) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6671(5)(D)) is amended by striking "of Transportation" and inserting "of Homeland Security".

(9) Section 2307(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6677(a)) is amended by striking "of Transportation" and inserting "of Homeland Security".

(10) Section 1034(a) of Public Law 105–85 (21 U.S.C. 1505a(a)) is amended by striking "of Transportation" and inserting "of Homeland Security".

(11) The Military Selective Service Act is amended—

(A) in section 4(a) (50 U.S.C. App. 454(a)), by striking "of Transportation" in the fourth paragraph and inserting "of Homeland Security";

(B) in section 4(b) (50 U.S.C. App. 454(b)), by striking "of Transportation" both places it appears and inserting "of Homeland Security";

(C) in section 6(d)(1) (50 U.S.C. App. 456(d)(1)), by striking "of Transportation" both places it appears and inserting "of Homeland Security";

(D) in section 9(c) (50 U.S.C. App. 459(c)), by striking "Secretaries of Army, Navy, Air Force, or Transportation" and inserting "Secretary of a military department, and the Secretary of Homeland Security with respect to the Coast Guard"; and

(E) in section 15(e) (50 U.S.C. App. 465(e)), by striking "of Transportation" both places it appears and inserting "of Homeland Security".

(e) TECHNICAL CORRECTION.—(1) Title 14, United States Code, is amended by redesignating section 673 (as added by section 309 of Public Law 104–324) as section 673a.

(2) The table of sections at the beginning of chapter 17 of such title is amended by redesignating the item relating to such section as section 673a.

(f) EFFECTIVE DATE.—The amendments made by this section (other than subsection (e)) shall take effect on the date of transfer of the Coast Guard to the Department.

**SEC. 905. STRATEGIC NATIONAL STOCKPILE AND SMALLPOX VACCINE DEVELOPMENT.**

(a) IN GENERAL.—Section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188; 42 U.S.C. 300hh–12) is amended—

(1) in subsection (a)(1)—

(A) by striking "Secretary of Health and Human Services" and inserting "Secretary of Homeland Security";

(B) by inserting "the Secretary of Health and Human Services and" between "in coordination with" and "the Secretary of Veterans Affairs"; and

(C) by inserting "of Health and Human Services" after "as are determined by the Secretary"; and

(2) in subsections (a)(2) and (b), by inserting "of Health and Human Services" after "Secretary" each place it appears.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the Strategic National Stockpile of the Department of Health and Human Services to the Department.

**SEC. 906. BIOLOGICAL AGENT REGISTRATION; PUBLIC HEALTH SERVICE ACT.**

(a) PUBLIC HEALTH SERVICE ACT.—Section 351A of the Public Health Service Act (42 U.S.C. 262a) is amended—

(1) in subsection (a)(1)(A), by inserting "(as defined in subsection (1)(9))" after "Secretary";

(2) in subsection (h)(2)(A), by inserting "Department of Homeland Security, the" before "Department of Health and Human Services"; and

(3) in subsection (l), by inserting after paragraph (8) a new paragraph as follows:

"(9) The term 'Secretary' means the Secretary of Homeland Security, in consultation with the Secretary of Health and Human Services."

(b) PUBLIC HEALTH SECURITY AND BIOTERRORISM PREPAREDNESS AND RESPONSE ACT OF 2002.—Section 201(b) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188; 42 U.S.C. 262a note) is amended by striking "Secretary of Health and Human Services" and inserting "Secretary of Homeland Security".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the select agent registration enforcement programs and activities of the Department of Health and Human Services to the Department.

**SEC. 907. TRANSFER OF CERTAIN SECURITY AND LAW ENFORCEMENT FUNCTIONS AND AUTHORITIES.**

(a) **AMENDMENT TO PROPERTY ACT.**—Section 210(a)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(a)(2)) is repealed.

(b) **LAW ENFORCEMENT AUTHORITY.**—The Act of June 1, 1948 (40 U.S.C. 318–318d; chapter 359; 62 Stat. 281) is amended to read as follows:

**“SECTION 1. SHORT TITLE.**

“This Act may be cited as the ‘Protection of Public Property Act’.

**“SEC. 2. LAW ENFORCEMENT AUTHORITY OF SECRETARY OF HOMELAND SECURITY FOR PROTECTION OF PUBLIC PROPERTY.**

“(a) **IN GENERAL.**—The Secretary of Homeland Security (in this Act referred to as the ‘Secretary’) shall protect the buildings, grounds, and property that are owned, occupied, or secured by the Federal Government (including any agency, instrumentality, or wholly owned or mixed-ownership corporation thereof) and the persons on the property.

“(b) **OFFICERS AND AGENTS.**—

“(1) **DESIGNATION.**—The Secretary may designate employees of the Department of Homeland Security, including employees transferred to the Department from the Office of the Federal Protective Service of the General Services Administration pursuant to the Homeland Security Act of 2002, as officers and agents for duty in connection with the protection of property owned or occupied by the Federal Government and persons on the property, including duty in areas outside the property to the extent necessary to protect the property and persons on the property.

“(2) **POWERS.**—While engaged in the performance of official duties, an officer or agent designated under this subsection may—

“(A) enforce Federal laws and regulations for the protection of persons and property;

“(B) carry firearms;

“(C) make arrests without a warrant for any offense against the United States committed in the presence of the officer or agent or for any felony cognizable under the laws of the United States if the officer or agent has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;

“(D) serve warrants and subpoenas issued under the authority of the United States; and

“(E) conduct investigations, on and off the property in question, of offenses that may have been committed against property owned or occupied by the Federal Government or persons on the property.

“(F) carry out such other activities for the promotion of homeland security as the Secretary may prescribe.

“(c) **REGULATIONS.**—

“(1) **IN GENERAL.**—The Secretary, in consultation with the Administrator of General Services, may prescribe regulations necessary for the protection and administration of property owned or occupied by the Federal Government and persons on the property. The regulations may include reasonable penalties, within the limits prescribed in paragraph (2), for violations of the regulations. The regulations shall be posted and remain posted in a conspicuous place on the property.

“(2) **PENALTIES.**—A person violating a regulation prescribed under this subsection shall be fined under title 18, United States Code, imprisoned for not more than 30 days, or both.

“(d) **DETAILS.**—

“(1) **REQUESTS OF AGENCIES.**—On the request of the head of a Federal agency having charge or control of property owned or occupied by the Federal Government, the Secretary may detail officers and agents designated under this section for the protection of the property and persons on the property.

“(2) **APPLICABILITY OF REGULATIONS.**—The Secretary may—

“(A) extend to property referred to in paragraph (1) the applicability of regulations prescribed under this section and enforce the regulations as provided in this section; or

“(B) utilize the authority and regulations of the requesting agency if agreed to in writing by the agencies.

“(3) **FACILITIES AND SERVICES OF OTHER AGENCIES.**—When the Secretary determines it to be economical and in the public interest, the Secretary may utilize the facilities and services of Federal, State, and local law enforcement agencies, with the consent of the agencies.

“(e) **AUTHORITY OUTSIDE FEDERAL PROPERTY.**—For the protection of property owned or occupied by the Federal Government and persons on the property, the Secretary may enter into agreements with Federal agencies and with State and local governments to obtain authority for officers and agents designated under this section to enforce Federal laws and State and local laws concurrently with other Federal law enforcement officers and with State and local law enforcement officers.

“(f) **SECRETARY AND ATTORNEY GENERAL APPROVAL.**—The powers granted to officers and agents designated under this section shall be exercised in accordance with guidelines approved by the Secretary and the Attorney General.

“(g) **LIMITATION ON STATUTORY CONSTRUCTION.**—Nothing in this section shall be construed to—

- “(1) preclude or limit the authority of any Federal law enforcement agency;
- or
- “(2) restrict the authority of the Administrator of General Services to promulgate regulations affecting property under the Administrator’s custody and control.”.

**SEC. 908. TRANSPORTATION SECURITY REGULATIONS.**

Title 49, United States Code, is amended—

- (1) in section 114(l)(2)(B), by inserting “for a period not to exceed 30 days” after “effective”; and
- (2) in section 114(l)(2)(B), by inserting “ratified or” after “unless”.

**SEC. 909. RAILROAD SECURITY LAWS.**

Title 49, United States Code, is amended—

- (1) in section 20106 by inserting in the second sentence, “, including security,” after “railroad safety” and “or the Secretary of Homeland Security” after “Secretary of Transportation”; and
- (2) in section 20105—
  - (A) by inserting “or the Secretary of Homeland Security” after “Secretary of Transportation” in subsection (a);
  - (B) by inserting “of Transportation or the Secretary of Homeland Security” after “issued by the Secretary” in subsection (a);
  - (C) by inserting “of Transportation or the Secretary of Homeland Security, as appropriate,” after “to the Secretary” in subsection (a), and after “Secretary” in subsection (b)(1)(A)(iii) and (B)(iv), the first place it appears in subsections (b)(1)(B) and (B)(iii) and (d), each place it appears in subsections (c)(1), (c)(2), (e), and (f), and the first four times it appears in subsection (b)(3);
  - (D) by inserting “of Transportation or the Secretary of Homeland Security, as appropriate” after “Secretary” in subsection (b)(1)(A)(ii), (b)(1)(B)(ii), the second place it appears in subsection (b)(1)(B)(iii), and the last place it appears in subsection (b)(3);
  - (E) in subsection (d), by replacing “Secretary’s” with “Secretary of Transportation’s” and adding before the period at the end “or the Secretary of Homeland Security’s duties under section 114”; and
  - (F) in subsection (f), by adding before the period at the end “or section 114”.

**SEC. 910. OFFICE OF SCIENCE AND TECHNOLOGY POLICY.**

The National Science and Technology Policy, Organization, and Priorities Act of 1976 is amended—

- (1) in section 204(b)(1) (42 U.S.C. 6613(b)(1)), by inserting “homeland security,” after “national security,”; and
- (2) in section 208(a)(1) (42 U.S.C. 6617(a)(1)), by inserting “the Office of Homeland Security,” after “National Security Council,”.

**SEC. 911. NATIONAL OCEANOGRAPHIC PARTNERSHIP PROGRAM.**

Section 7902(b) of title 10, United States Code, is amended by adding at the end the following new paragraphs:

- “(13) The Under Secretary for Science and Technology of the Department of Homeland Security.
- “(14) Other Federal officials the Council considers appropriate.”.

**SEC. 912. CHIEF FINANCIAL OFFICER.**

Section 901(b)(1) of title 31, United States Code, is amended—

- (1) by redesignating subparagraphs (G) through (P) as subparagraphs (H) through (Q), respectively; and
- (2) by inserting the following new subparagraph after subparagraph (F):  
“(G) The Department of Homeland Security.”.

**SEC. 913. CHIEF INFORMATION OFFICER.**

(a) CLINGER-COHEN ACT.—(1) The provisions enacted in section 5125 of the Clinger-Cohen Act of 1996 (division E of Public Law 104-106; 110 Stat. 684) shall apply with respect to the Chief Information Officer of the Department.

(2) Section 5131(c) of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441(c)) is amended by inserting “or appointed” after “a Chief Information Officer designated”.

(b) TITLE 44.—Chapter 35 of title 44, United States Code, is amended—

(1) in section 3506(a)(2)—

(A) in subparagraph (A) by striking “subparagraph (B)” and inserting “subparagraphs (B) and (C)”; and

(B) by adding at the end the following:

“(C) The Chief Information Officer of the Department of Homeland Security shall be an individual who is appointed by the President.”;

(2) in each of subsections (a)(4) and (c)(1) of section 3506, by inserting “or appointed” after “the Chief Information Officer designated”; and

(3) in subsection (a)(3) of section 3506, by inserting “or appointed” after “The Chief Information Officer designated”.

## **TITLE X—NATIONAL HOMELAND SECURITY COUNCIL**

**SEC. 1001. NATIONAL HOMELAND SECURITY COUNCIL.**

There is established within the Executive Office of the President a council to be known as the “Homeland Security Council” (in this title referred to as the “Council”).

**SEC. 1002. FUNCTION.**

The function of the Council shall be to advise the President on homeland security matters.

**SEC. 1003. MEMBERSHIP.**

The members of the Council shall be the following:

- (1) The President.
- (2) The Vice President.
- (3) The Secretary of Homeland Security.
- (4) The Attorney General.
- (5) The Secretary of Health and Human Services.
- (6) The Director of Central Intelligence.
- (7) The Secretary of Defense.
- (8) The Secretary of the Treasury.
- (9) The Secretary of State.
- (10) The Secretary of Energy.
- (11) The Secretary of Agriculture.
- (12) Such other individuals as may be designated by the President.

**SEC. 1004. OTHER FUNCTIONS AND ACTIVITIES.**

For the purpose of more effectively coordinating the policies and functions of the United States Government relating to homeland security, the Council shall—

(1) assess the objectives, commitments, and risks of the United States in the interest of homeland security and to make resulting recommendations to the President;

(2) oversee and review homeland security policies of the Federal Government and to make resulting recommendations to the President; and

(3) perform such other functions as the President may direct.

**SEC. 1005. HOMELAND SECURITY BUDGET.**

The Director of the Office of Management and Budget shall prepare for the President a Federal homeland security budget to be delivered to the Congress as part of the President’s annual budget request.

**SEC. 1006. STAFF COMPOSITION.**

The Council shall have a staff, the head of which shall be a civilian Executive Secretary, who shall be appointed by the President. The President is authorized to fix the pay of the Executive Secretary at a rate not to exceed the rate of pay payable to the Executive Secretary of the National Security Council.

**SEC. 1007. RELATION TO THE NATIONAL SECURITY COUNCIL.**

The President may convene joint meetings of the Homeland Security Council and the National Security Council with participation by members of either Council or as the President may otherwise direct.

**PURPOSE AND SUMMARY**

H.R. 5005, the Homeland Security Act of 2002, will create the Department of Homeland Security (DHS) to provide for the security of the American people, territory, and sovereignty within the United States. The Department of Homeland Security will help fulfill the Constitutional responsibility of the Federal government by providing for the common defense by uniting, under a single department those elements within the government whose primary responsibility is to secure the United States homeland. This department will have the mission of preventing terrorist attacks within the United States, reducing the United States' vulnerability to terrorism, minimizing the damages from attacks, and assisting in recovery from any attacks, should they occur.

The Department's primary responsibilities will include: analyzing information and protecting infrastructure; developing counter-measures against chemical, biological, radiological, and nuclear attacks; securing U.S. borders and transportation systems; organizing emergency preparedness and response efforts; conducting homeland security related research, development, technology, and acquisition programs; coordinating counter-terrorism activities with other Federal agencies, State and local governments, and the private sector. The Department will bring together 22 existing Federal agencies or portions of agencies under a single clear chain of command. Each of these agencies will continue to be responsible for carrying out existing and homeland security functions.

The Department of Homeland Security will have a clear and efficient organizational structure. Leading the Department will be a Secretary who is appointed by the President, with the advice and consent of the Senate. The Department will have one Deputy Secretary and a total of 5 Under Secretaries who report to the Secretary for each of the following functional areas: Information Analysis and Infrastructure Protection; Science and Technology; Border and Transportation Security; Emergency Preparedness and Response; and Management. Additionally, there will also be no more than 12 Assistant Secretaries. The Commandant of the Coast Guard and the Director of the United States Secret Service will also report directly to the Secretary. Finally, the Transportation Security Administration will be maintained as a separate entity within the Department for 2 years.

**BACKGROUND AND NEED FOR LEGISLATION**

Through out its history, the United States has always emerged victorious after grave attacks against its people, land, and sovereignty. Today the challenges are no less severe nor the consequences less significant. Terrorists and other nations who wish to harm the United States have shown their intent and ability to destroy innocent people and property on a large scale. Their power has increased exponentially with the spread of technology, including the proliferation of weapons of mass destruction. As recent events have illustrated, the Nation's democratic tradition of free

and open borders is at once its greatest strength and most easily exploitable liability.

Over the past several years, numerous experts in the government and private sector have documented the rise of terrorism along with the need to realign the Federal government to properly address the new threat. If these recommendations were not enough, recent events have also demonstrated the compelling need to create a focused organization, articulate a clear mission, and provide for direct lines of authority, responsibility, and accountability to counteract the terrorist threat. The United States needs a homeland security establishment that can help prevent catastrophic attacks, mobilize national resources for an enduring conflict, and assist in recovery efforts all the while protecting this Nation's values and liberties.

The United States began the 20th century with a Department of War and a Department of the Navy to protect the nation from foreign attack. In response to the challenges of militarism, Nazism, and communism, this organization evolved rapidly. By mid-century, the military services were unified under a Department of Defense. By the beginning of the 21st century, our military forces, operating under joint command, were able to defeat in weeks opponents who had turned back the Soviet Union at the height of its power.

No comparable evolution took place in the area of homeland security, because for most of the century there was no comparable domestic threat. Politically motivated violence was relatively rare, and when it occurred the limited methods of attack available kept its effects local and small-scale. There has been no imperative requiring the dozens of agencies charged with various aspects of homeland protection to work together closely—until now.

*The Terrorist Threat.* The events of September 11th marked the crescendo of an escalating series of terrorist attacks against U.S. interests, both domestically and abroad. In 1993, Islamic extremists exploded a truck bomb in the parking garage of the World Trade Center. In 1998, U.S. Embassies in Kenya and Tanzania were simultaneously attacked by car bombs. On October 12, 2000, the USS Cole was bombed by elements of Osama bin Laden's al Qaeda terrorist organization in Yemen, resulting in the death of 17 crew members and injuring 39 others. But the deadliest terrorist attack against U.S. interests occurred on September 11th: four commercial airliners were hijacked, turned into makeshift missiles, and rammed into the World Trade Center and the Pentagon, resulting in the loss of over 3,000 lives.

The terrorist threat is markedly different from those of the past. Following September 11th, the Nation is no longer dealing solely with hostile nation states that can be held at risk with conventional military power, but also with global terrorist organizations such as al Qaeda immune to traditional forms of deterrence. Law enforcement and anti-terrorism experts believe that numerous terrorist cells remain within the borders of the United States. For the foreseeable future, the United States will face the threat of domestic attack by enemies who will seek to strike in new and unexpected ways, perhaps with weapons vastly more deadly than those used on September 11th.

*Technologies of Destruction and Disruption.* Terrorism armed with technology presents the potential for destabilization and de-



struction on a scale unmatched in previous eras. The diffusion of knowledge and technology in today's expanding global economy makes the task of acquiring weapons of mass destruction and weapons of mass disruption easier, while the volume and velocity of modern trade makes detecting and intercepting attacks more difficult.

Technology offers terrorists increasingly powerful methods of physical destruction. Thousands have been killed when terrorists commandeered the transportation technologies of everyday life, turning trucks into bombs and airliners into guided missiles. The Japanese millennial cult Aum Shinrikyo attacked the Tokyo subway system with nerve gas, killing a dozen people and injuring 5,000. A tiny quantity of anthrax spores sent through the mail caused a number of deaths and shut down government buildings in Washington for months. An al Qaeda operative was recently arrested and charged with planning to build and deploy a "dirty bomb" intended to spread radiation over a wide area. Beyond these activities looms the threat of a nuclear device in terrorist hands.

In testimony before the Senate Select Committee on Intelligence entitled, "Worldwide Threat-Converging Dangers in a Post 9/11 World," the Director of Central Intelligence, The Honorable George J. Tenet, noted that weapons of mass destruction (WMD) including nuclear, chemical and biological weapons programs are becoming more advanced and effective as they mature. Countries of concern are also becoming more aggressive in pursuing them. Russia, China, North Korea, Iraq, Iran, India and Pakistan are known to have WMD programs. Several of these nations are also known to harbor and support terrorists. One of Tenet's highest concerns is terrorists' stated desire to use unconventional attacks against the United States. As early as 1998, Bin Laden publicly declared that acquiring unconventional weapons was "a religious duty" and may have been seeking to acquire or develop a nuclear device. According to Tenet, terrorist groups worldwide have ready access to information on chemical, biological, and even nuclear weapons via the Internet, and al Qaeda was working to acquire some of the most dangerous chemical agents and toxins. Documents recovered from Al Qaeda facilities in Afghanistan show that Bin Laden was pursuing a sophisticated biological weapons research program.

The nuclear threat is not limited to terrorists alone. As outlined in a recent National Intelligence Estimate on the subject, most Intelligence Community agencies project that by 2015 the United States most likely will face intercontinental ballistic missile threats from North Korea and Iran, and possibly from Iraq. Short- and medium-range ballistic missiles pose a significant threat now. These states, like terrorists, may not respond to traditional deterrence. Like terrorists, they pose a potential requirement for consequence management on a very large scale.

In addition to physical destruction, terrorists may also seek to develop powerful forms of cyber attack against our critical infrastructures. The United States is highly dependent on networked information systems. These systems, almost entirely run by private-sector businesses, are critical to modern financial, banking, energy, telecommunications, medical and transportation networks. Civil government, military operations, and commerce now depend upon this infrastructure. As the United States becomes increasingly de-

pendent on information technology it is also more vulnerable to cyber warfare attack by terrorists.

While there has been no “electronic Pearl Harbor,” attacks of this nature will become an increasingly viable option for terrorists as they and other foreign adversaries become more familiar with these targets, and the technologies required to attack them. The Computer Emergency Response Team (CERT), a Federally funded research and development center operated by Carnegie Mellon University in Pittsburgh, Pennsylvania, reported about 25,000 cyber incidents from 1990 to 1999. In 2000, CERT reported, the number of incidents had skyrocketed to 21,000.

*Open Borders.* Terrorists seeking to bring destructive technologies into the United States have many potential entry points. The United States is a large nation, historically protected from adversaries by two large bodies of water and friendly neighbors to the north and south. It is a nation with relatively open borders that are open to trade and the free flow of people and ideas. Such openness also brings about vulnerabilities. Every day \$8.8 billion of goods, 1.3 million people, 58,000 shipments, and 340,000 vehicles enter the United States. The Customs Service is only able to inspect 1 to 2 percent of them.

Once here, they have an excellent chance of remaining anonymous and using the freedom America affords to plan and execute their violent deeds. The Immigration and Naturalization Service (INS) was unable to track more than 3 million foreigners with expired visas and, according to press reports, had no record of six of the 19 hijackers who entered the United States legally (Washington Post, Page A16, October 7, 2001). A report by the Government Accounting Office (GAO) offered, “In several border areas, INS has multiple anti-smuggling enforcement units—they overlap in jurisdictions, operate autonomously, establish their own priorities and report to different INS offices,” (GAO Report, “Alien smuggling: Management and Operational Improvements Needed to Address Growing Problem” (GAO/GGD-00-103 p.3))

The United States must use the advantages of today’s technology, and American ingenuity to keep its borders open while preserving individual rights and liberties. Guaranteeing that homeland security is achieved within a framework of law that protects the civil liberties and privacy of the United States citizens is essential. Continued vigilance and Congressional and the public oversight will be necessary. The United States Government must improve national security without compromising established constitutional principles.

*The Need for Change.* The series of terrible attacks that culminated in the tragic events of September 11, 2001, along with growing recognition that there may be even more devastating attacks on the homeland against Americans cities, homes, businesses and the electronic networks that link them all together, compels the Nation to think anew about the way it defends itself. The President, Congress, and the private sector all agree that the current structure of the Federal government is a liability in defending this country from the changing threats to national security.

Over the past several years there have been numerous studies to assess the future security environment. Two common themes emerge in these reports: first, the United States and its citizens are

increasing vulnerable to a broadening array of threats from a variety of actors around the world; second, the government is not properly organized to protect its citizens.

The Commission on National Security/21st Century, better known as the Hart-Rudman Commission found, “[i]n the face of this threat, our nation has no coherent or integrated governmental structures.” A July 1999 report by the Commission to Assess the Organization of the Federal Government to Combat the Proliferation of Weapons of Mass Destruction concluded that:

a cardinal truth of government is that policy without proper organization is effectively no policy at all. If the Federal Government’s policy is to combat the threat posed by the spread of weapons of mass destruction, then the government must be organized to do so.

In a speech to the Nation on June 6, 2002, the President described the requirement for a new cabinet-level department. He clearly pointed out the need for a single, unified structure, noting that today numerous Federal entities across the government are charged with responsibilities having to do with homeland security. He said, “History teaches us that critical security challenges require clear lines of responsibility and the unified effort of the U.S. government.” Those “new challenges,” he said, “require new organizational structures.” The President’s proposal was sent to Congress on June 18, 2002 (H.Doc. 107-227). This proposal was subsequently introduced by request on June 24, 2002 as H.R. 5005.

The changing nature of the threats facing the United States requires a new government structure to protect against invisible enemies that can strike with a wide variety of weapons. Today, no single government agency has homeland security as its primary mission. In fact, responsibilities for homeland security are dispersed among more than 100 different government organizations. The United States needs a homeland security establishment that can help prevent catastrophic attacks, mobilize national resources for an enduring conflict, and assist in recovery efforts. A single, unified homeland security structure will improve protection against today’s threats and be flexible enough to help meet the unknown threats of the future all the while protecting the freedom and liberty upon which this nation was founded.

#### HEARINGS

The Select Committee on Homeland Security held a hearing on July 11, 2002 entitled “Transforming the Government to Protect America from Terrorism.” The following witnesses testified: The Honorable Colin Powell, Secretary of State; The Honorable Donald Rumsfeld, Secretary of Defense; The Honorable Paul H. O’Neill, Secretary of the Treasury; and The Honorable John Ashcroft, Attorney General.

The Select Committee on Homeland Security held a hearing on H.R. 5005, the Homeland Security Act of 2002 on July 15, 16 and 17, 2002. The following witnesses testified: The Honorable Tom Ridge, Assistant to the President for Homeland Security; The Honorable Ann Veneman, Secretary of Agriculture; the Honorable Norman Mineta, Secretary of Transportation; the Honorable Spencer Abraham, Secretary of Energy; the Honorable Kay Cole James, Di-

rector, Office of Personnel Management; the Honorable Mac Thornberry, Representative from the 13th District of Texas; the Honorable Jim Gibbons, Representative from the 2nd District of Nevada; the Honorable Jane Harman, Representative from the 36th District of California; the Honorable Ellen O. Tauscher, Representative from the 10th District of California; the Honorable F. James Sensenbrenner, Jr., Chairman, Committee on the Judiciary; the Honorable C.W. Bill Young, Chairman, Committee on Appropriations; the Honorable David R. Obey, Ranking Minority Member, Committee on Appropriations; the Honorable Ike Skelton, Ranking Minority Member, Committee on Armed Services, the Honorable W.J. (Billy) Tauzin, Chairman, Committee on Energy and Commerce; the Honorable John D. Dingell, Ranking Minority Member, Committee on Energy and Commerce; the Honorable Dan Burton, Chairman, Committee on Government Reform; the Honorable Henry A. Waxman, Ranking Minority Member, Committee on Government Reform; the Honorable Porter J. Goss, Chairman, Permanent Select Committee on Intelligence; the Honorable Nancy Pelosi, Ranking Minority Member, Permanent Select Committee on Intelligence; the Honorable Henry Hyde, Chairman, Committee on International Relations; the Honorable Tom Lantos, Ranking Minority Member, Committee on International Relations; the Honorable Sherwood L. Boehlert, Chairman, Committee on Science; the Honorable Ralph M. Hall, Ranking Minority Member, Committee on Science; the Honorable Don Young, Chairman, Committee on Transportation and Infrastructure; the Honorable James L. Oberstar, Ranking Minority Member, Committee on Transportation and Infrastructure; the Honorable William M. Thomas, Chairman, Committee on Ways and Means; and Mr. David A. Walker, Comptroller General of the United States, General Accounting Office.

#### COMMITTEE CONSIDERATION

The Select Committee on Homeland Security met in open session on July 19, 2002 and ordered H.R. 5005 reported to the House with a favorable recommendation, with an amendment, by a record vote of 5 yeas and 4 nays.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Armev to report the bill to the House with a favorable recommendation was agreed to by a record vote of 5 yeas and 4 nays (Record vote no. 19). The names of members voting for and against follow:

—YEAS—

Mr. Armev  
Mr. DeLay  
Mr. Watts of Oklahoma  
Ms. Pryce of Ohio  
Mr. Portman

—NAYS—

Ms. Pelosi  
Mr. Frost  
Mr. Menendez  
Ms. DeLauro

The following amendments were considered by record vote. The names of Members voting for and against follow.

An amendment offered by Ms. Pelosi to the Amendment in the Nature of a Substitute (#1B), adding at the end of the bill a new section entitled "Title XI—Office of Homeland Security," was not agreed to by a record vote of 4 yeas and 5 nays (Record vote no. 1).

—YEAS—	—NAYS—
Ms. Pelosi	Mr. Armev
Mr. Frost	Mr. DeLay
Mr. Menendez	Mr. Watts of Oklahoma
Ms. DeLauro	Ms. Pryce of Ohio
	Mr. Portman

An amendment offered by Mr. DeLay to the Amendment in the Nature of a Substituted (#1C), striking section 307(b)(2) and inserting a new paragraph (2) relating to University-based centers for Homeland security, was agreed to by a record vote of 5 yeas and 4 nays (Record vote no. 2).

—YEAS—	—NAYS—
Mr. Armev	Ms. Pelosi
Mr. DeLay	Mr. Frost
Mr. Watts of Oklahoma	Mr. Menendez
Ms. Pryce of Ohio	Ms. DeLauro
Mr. Portman	

An amendment offered by Mr. Frost to the Amendment in the Nature of a Substitute (#1D), inserting a new section 305 entitled "Homeland Security Institute", was not agreed to by a record vote of 4 yeas and 5 nays (Record vote no. 3).

—YEAS—	—NAYS—
Ms. Pelosi	Mr. Armev
Mr. Frost	Mr. DeLay
Mr. Menendez	Mr. Watts of Oklahoma
Ms. DeLauro	Ms. Pryce of Ohio
	Mr. Portman

An amendment offered by Mr. Menendez to the Amendment in the Nature of a Substitute (#1F), addressing the date of transfer of TSA Functions, was agreed to by a record vote of 6 yeas and 3 nays (Record vote no. 4)

—YEAS—	—NAYS—
Mr. Watts of Oklahoma	Mr. Armev
Ms. Pryce of Ohio	Mr. DeLay
Ms. Pelosi	Mr. Portman
Mr. Frost	
Mr. Menendez	
Ms. DeLauro	

Upon the motion of Mr. Watts of Oklahoma, the vote on amendment #1F was reconsidered and not agreed to by a record vote of 4 yeas and 5 nays (Record vote no. 11).

—YEAS—	—NAYS—
Ms. Pelosi	Mr. Armev

Mr. Frost	Mr. DeLay
Mr. Menendez	Mr. Watts of Oklahoma
Ms. DeLauro	Ms. Pryce of Ohio
	Mr. Portman

An amendment offered by Ms. DeLauro to the Amendment in the Nature of a Substitute (#1H), prohibiting contracting with corporate expatriates, was not agreed to by a record vote of 4 yeas and 5 nays (Record vote no. 5).

—YEAS—	—NAYS—
Ms. Pelosi	Mr. Armey
Mr. Frost	Mr. DeLay
Mr. Menendez	Mr. Watts of Oklahoma
Ms. DeLauro	Ms. Pryce of Ohio
	Mr. Portman

A substitute amendment by Mr. Frost to the amendment offered by Mr. Portman to the Amendment in the Nature of a Substitute (#1I1), inserting a section entitled “Human Resources Management Systems” was not agreed to by a record vote of 4 yeas and 5 nays (Record vote no. 6).

—YEAS—	—NAYS—
Ms. Pelosi	Mr. Armey
Mr. Frost	Mr. DeLay
Mr. Menendez	Mr. Watts of Oklahoma
Ms. DeLauro	Ms. Pryce of Ohio
	Mr. Portman

An amendment by Mr. Frost to the amendment offered by Mr. Portman to the Amendment in the Nature of a Substitute (#1I2) (as modified by unanimous consent), adding a new section to the amendment “Labor-Management Relations” was not agreed to by a record vote of 4 yeas and 5 nays (Record vote no. 7).

—YEAS—	—NAYS—
Ms. Pelosi	Mr. Armey
Mr. Frost	Mr. DeLay
Mr. Menendez	Mr. Watts of Oklahoma
Ms. DeLauro	Ms. Pryce of Ohio
	Mr. Portman

An amendment offered by Mr. Menendez to the Amendment in the Nature of a Substitute (#1L); striking section 204 “Procedures for sharing information” and inserting at the end of title II a new subtitle entitled “Subtitle C—Information Sharing”; was not agreed to by a record vote of 4 yeas and 4 nays (Record vote no. 8).

—YEAS—	—NAYS—
Ms. Pelosi	Mr. Armey
Mr. Frost	Mr. Watts of Oklahoma
Mr. Menendez	Ms. Pryce of Ohio
Ms. DeLauro	Mr. Portman

An amendment offered by Mr. Frost to the Amendment in the Nature of a Substitute (#1M), striking subtitle G of title VII relating to “Support Anti-terrorism by Fostering

effective Technologies Act of 2002 (the SAFETY Act)”, was not agreed to by a record vote of 4 yeas and 5 nays (Record vote no. 9).

—YEAS—

Ms. Pelosi  
Mr. Frost  
Mr. Menendez  
Ms. DeLauro

—NAYS—

Mr. Armev  
Mr. DeLay  
Mr. Watts of Oklahoma  
Ms. Pryce of Ohio  
Mr. Portman

An amendment offered by Mr. Watts to the Amendment in the Nature of a Substitute (#1N) (as modified by unanimous consent), revising section 409 entitled “Explosive Detection Systems” was agreed to by a record vote of 6 yeas and 3 nays (Record vote no. 12.)

—YEAS—

Mr. Armev  
Mr. DeLay  
Mr. Watts of Oklahoma  
Ms. Pryce of Ohio  
Mr. Portman  
Mr. Frost

—NAYS—

Ms. Pelosi  
Mr. Menendez  
Ms. DeLauro

An amendment offered by Ms. DeLauro to the Amendment in the Nature of a Substitute (#1O); striking title VII, subtitle C—Critical Infrastructure Information; was not agreed to by a record vote of 4 yeas and 5 nays (Record vote no. 13).

—YEAS—

Ms. Pelosi  
Mr. Frost  
Mr. Menendez  
Ms. DeLauro

—NAYS—

Mr. Armev  
Mr. DeLay  
Mr. Watts of Oklahoma  
Ms. Pryce of Ohio  
Mr. Portman

An amendment offered by Mr. Portman to the Amendment in the Nature of a Substitute (#1T), inserting a new title to establishing a Homeland Security Council, was agreed to by a record vote of 7 yeas and 2 nays (Record vote no. 14).

—YEAS—

Mr. Watts of Oklahoma  
Ms. Pryce of Ohio  
Mr. Portman  
Ms. Pelosi  
Mr. Frost  
Mr. Menendez  
Ms. DeLauro

—NAYS—

Mr. Armev  
Mr. DeLay

An amendment offered by Mr. Frost to the Amendment in the Nature of a Substitute (#1U), striking provisions addressing advisory committees, was not agreed to by a record vote of 4 yeas and 5 nays (Record vote no. 15).

—YEAS—

Ms. Pelosi  
 Mr. Frost  
 Mr. Menendez  
 Ms. DeLauro

—NAYS—

Mr. Armey  
 Mr. DeLay  
 Mr. Watts of Oklahoma  
 Ms. Pryce of Ohio  
 Mr. Portman

An amendment offered by Ms. DeLauro to the Amendment in the Nature of a Substitute (#1V), inserting a new section entitled “Review of Food Safety”, was not agreed to by a record vote of 3 yeas and 5 nays (Record vote no. 16).

—YEAS—

Ms. Pelosi  
 Mr. Menendez  
 Ms. DeLauro

—NAYS—

Mr. Armey  
 Mr. DeLay  
 Mr. Watts of Oklahoma  
 Ms. Pryce of Ohio  
 Mr. Portman

An amendment offered by Ms. DeLauro to the Amendment in the Nature of a Substitute (#1X), promoting the Under Secretary for Management to Deputy Secretary, was not agreed to by a record vote of 4 yeas and 5 nays (Record vote no. 17).

—YEAS—

Ms. Pelosi  
 Mr. Frost  
 Mr. Menendez  
 Ms. DeLauro

—NAYS—

Mr. Armey  
 Mr. DeLay  
 Mr. Watts of Oklahoma  
 Ms. Pryce of Ohio  
 Mr. Portman

An amendment offered by Mr. Menendez to the Amendment in the Nature of a Substitute (#1Y), adding a new section entitled “Interagency Security Committee”, was not agreed to by a record vote of 4 yeas and 5 nays (Record vote no. 18).

—YEAS—

Ms. Pelosi  
 Mr. Frost  
 Mr. Menendez  
 Ms. DeLauro

—NAYS—

Mr. Armey  
 Mr. DeLay  
 Mr. Watts of Oklahoma  
 Ms. Pryce of Ohio  
 Mr. Portman

The following motion was considered by record vote. The names of Members voting for and against follow:

A motion by Mr. Watts of Oklahoma to reconsider the vote on the amendment by Mr. Menendez to the amendment in the nature of a substitute (#1F) was agreed to by a record vote of 5 yeas and 4 nays.

—YEAS—

Mr. Armey  
 Mr. DeLay  
 Mr. Watts of Oklahoma  
 Ms. Pryce of Ohio  
 Mr. Portman

—NAYS—

Ms. Pelosi  
 Mr. Frost  
 Mr. Menendez  
 Ms. DeLauro



The Select Committee also considered the other following amendments:

An Amendment in the Nature of a Substitute to H.R. 5005 offered by Mr. Armev (#1), providing a new base text, was agreed to, as amended, by a voice vote.

An en bloc amendment offered by Mr. Armev to the amendment in the nature of a substitute (#1A), to make technical and conforming changes, was agreed to by a voice vote.

An amendment offered by Mr. Watts to the Amendment in the nature of a substitute offered by Mr. Armev (#1E), inserting a new subsection entitled "Special Assistant to the Secretary", was agreed to by a voice vote.

An amendment offered by Ms. Pryce to the amendment in the nature of a substitute (#1G), to include the coordination and integration of both extramural and intramural research and development programs among the potential duties of Federally funded research and development centers, was agreed to by a voice vote.

An amendment offered by Mr. Portman to the amendment in the nature of a substitute (#1I), inserting a new section entitled "Establishment of Human Resources Management Systems", was agreed to by a voice vote.

An amendment offered by Ms. Pelosi to the Amendment in the nature of a substitute (#1J), requiring the Secretary to integrate the government of the District of Columbia in the planning, coordination, and execution of activities to prepare against the consequences of terrorist attacks, was agreed to by a voice vote.

An amendment offered by Ms. Pelosi to the Amendment in the nature of a substitute as modified by the en bloc amendment by Mr. Armev (#1K), striking provisions relating to the scoring of expenditures and alternative financing methods, was agreed to by a voice vote.

An amendment offered by Mr. DeLay to the amendment in the nature of a substitute (#1P) striking the transfer of the El Paso Intelligence Center of the Drug Enforcement Administration, was agreed to by a voice vote.

An amendment offered by Ms. Pelosi to the amendment in the nature of a substitute (#1Q), adding a rule of construction with regard to regulatory authority not transferred by the bill, was agreed to by a voice vote.

An amendment offered by Mr. Portman to the amendment in the nature of a substitute (#1R), inserting a new section entitled "Allocation of Resources by the Secretary", was agreed to by a voice vote.

An amendment offered by Ms. Pelosi to the amendment offered by Mr. Portman to the Amendment in the nature of a substitute (#1R1), addressing customs user fees, was withdrawn.

An amendment offered by Mr. Menendez to the amendment in the nature of a substitute (#1S), ensuring that functions of agencies not directly related to the Department are not diminished, was agreed to by a voice vote.

An amendment offered by Mr. Menendez to the amendment in the nature of a substitute (#1W), adding a new section entitled "Establishment of Office for Civil Rights and Civil Liberties"; was agreed to by a voice vote.

A substitute amendment offered by Mr. Arme y to the amendment offered by Mr. Menendez to the amendment in the nature of a substitute (#1W1), requiring the inspector general of the Department of Homeland Security to designate an official to investigate complaints regarding civil rights and civil liberties, was withdrawn.

An amendment offered by Ms. Pelosi to the amendment in the nature of a substitute (#1Z), establishing a clearinghouse for technologies, was withdrawn.

An amendment offered by Ms. DeLauro to the Amendment in the nature of a substitute (#1AA), requiring the Department to classify research projects prior to granting award for such project, was withdrawn.

An amendment offered by Ms. DeLauro to the Amendment in the nature of a substitute (#1BB), adding a new section entitled "Homeland Security Science and Technology Advisory Committee", was withdrawn.

An amendment offered by Ms. DeLauro to the Amendment in the nature of a substitute (#1CC), establishing guidelines after a disaster relating to human health research, was withdrawn.

An amendment offered by Ms. DeLauro to the Amendment in the nature of a substitute (#1DD), adding a new subsection entitled "Technology Clearinghouse", was withdrawn.

An en bloc amendment offered by Ms. Pelosi to the amendment in the nature of a substitute (#1EE), to (1) ensure that the Department's Chief Financial Officer and Chief Information Officer are subject to certain other provisions of law, (2) add a new section entitled "Procurements from Small businesses", (3) add a new section entitled "Immigration Functions", (4) establish that the Commandant of the Coast Guard must report directly to the Secretary, (5) add a new section entitled "National Council of first responders", (6) add "hospital emergency facilities" to the list of "emergency response providers", and (7) establish a national policy to identify countermeasures to chemical, biological, radiological, nuclear, or other threats, was agreed to by a voice vote.

An amendment offered by Ms. Pelosi to the amendment in the nature of a substitute (#1FF), adding a new section entitled "Preservation of United States Customs Service as Distinct Entity Within the Department"; was withdrawn.

An amendment offered by Ms. Pelosi to the amendment in the nature of a substitute (#1GG), adding a new section entitled "Treatment of Minors in Custody"; was withdrawn.

An amendment offered by Ms. Pelosi to the amendment in the nature of a substitute (#1HH), adding a new title entitled "Compensation for Minors with Parents Killed in a Terrorist Attack"; was withdrawn.

## COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held hearings and made findings that are reflected in this report.

## PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The Department of Homeland Security will adhere to the following performance standards: (1) develop tools, techniques, and policies to prevent terrorist attacks within the United States; (2) reduce the vulnerability of the United States to terrorism; (3) minimize the damage and assist in the recovery from terrorist attacks that do occur within the United States; (4) conduct research, development, testing, evaluation, that result in integration and deployment of homeland security technologies and equipment within the Federal, State, local governments and the private sector; (5) develop and deploy tools and techniques to reduce the vulnerabilities of critical infrastructures within the United States; (6) develop and deploy tools that reduce the risk of attack from nuclear chemical, biological, and radiological warfare; (7) develop mechanisms, processes and procedures to protect the privacy of American citizens for those areas within the scope of the Homeland Security mission; (8) reduce the backlog for visa issuance and establishes procedures to reduce fraud within the immigration enforcement system; (9) Improve the safety and security at airports; (10) Create an integrated planning, programming, budget and accounting system that provides transparency into costs and expenditures and allows leaders to make sound managerial decisions for current and future programs; (11) create a flexible and inviting environment to recruit, manage, train and retain a world- class work force; (12) Maintain technological superiority in key homeland security capabilities; (13) Develop infrastructure and operating procedures are efficient and cost-effective.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 23, 2002.*

Hon. RICHARD K. ARMEY,  
*Chairman, Select Committee on Homeland Security,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: As you requested, the Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5005, the Homeland Security Act of 2002. If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contracts are Deborah Reis and Matthew Pickford and Matthew Schmit.

Sincerely,

ROBERT A. SUNSHINE  
(For Dan L. Crippen, Director).

Enclosure.

*H.R. 5005—Homeland Security Act of 2002*

Summary: H.R. 5005 would establish the Department of Homeland Security (DHS) to prevent terrorist attacks within the United States, reduce the United States' vulnerability to terrorism, minimize the damages from attacks that occur, and help to recover from any attacks. The new department would consist of 30 existing federal agencies or portions of agencies. Each of these agencies would continue to be responsible for carrying out its other, nonhomeland-security functions.

CBO estimates that implementing H.R. 5005 would cost about \$4.5 billion over the 2003–2007 period, assuming appropriation of the necessary amounts. This amount is in addition to projected net spending for ongoing activities of the transferred agencies—about \$19 billion in 2002, growing to \$27 billion by 2007 under CBO's baseline assumptions.

Enacting H.R. 5005 would increase direct spending from federal retirement funds by about \$1 million in 2003 and by \$5 million over the 2003–2012 period. Therefore, pay-as-you-go procedures would apply. The bill also could affect governmental receipts from import duties and from employee contributions to federal retirement funds, but CBO estimates that the amounts would be less than \$500,000 annually.

H.R. 5005 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the costs to comply with the mandates would not exceed the threshold established in that act (\$58 million in 2002, adjusted annually for inflation). The bill contains no new private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: H.R. 5005 would combine 30 existing agencies and programs to form the new department. The major components would include the following:

- The Federal Emergency Management Agency (FEMA);
- The U.S. Secret Service;
- The U.S. Customs Service;
- The U.S. Coast Guard;
- The enforcement functions of the Immigration and Naturalization Service (INS);
  - The Transportation Security Administration of the Department of Transportation;
  - The Federal Protective Service (FPS) and the Federal Computer Incident Response Center of the General Services Administration (GSA);
  - The National Infrastructure Protection Center, the National Domestic Preparedness Office, the Office for Domestic Preparedness, and the Domestic Emergency Support Teams of the Department of Justice (DOJ);
  - The Critical Infrastructure Assurance Office of the Department of Commerce;
  - The National Communications System of the Department of Defense;
  - The border offices of the Animal, Plant and Health Inspection Service and the Plum Island Animal Disease Center of the Department of Agriculture; and
  - Various programs of the Department of Energy and the Department of Health and Human Services.

The following table summarizes the estimated net budgetary impact of reorganizing these agencies and programs, including the costs of building a new headquarters facility to house the DHS, administering them within a new cabinet-level department, and implementing certain new activities authorized by the bill.

The first two lines of the table show funding for the agencies and programs to be transferred at the CBO baseline levels (that is, the 2002 appropriation adjusted for anticipated inflation in succeeding years). These figures do not include more than \$7 billion that may be provided by the 2002 Supplemental Appropriations Act for Further Recovery From and Response To Terrorist Attacks on the United States. That legislation is currently being considered by the Congress. Changes in direct spending shown in the table are from higher federal retirement costs that would occur over the 2003–2007 period as a result of the voluntary separations payments authorized by section 442. The table also shows, as a memorandum item, the estimated direct spending of federal agencies transferred to the department. CBO estimates that the amount of direct spending for these agencies' existing programs would not be affected by enactment of the bill.

The costs of this legislation fall within budget functions 050 (national defense), 250 (general science, space, and technology), 350 (agriculture), 370 (commerce and housing credit), 400 (transportation), 450 (community and regional development), 550 (health), 750 (administration of justice), and 800 (general government).

TABLE 1.—ESTIMATED BUDGETARY IMPACT OF H.R. 5005

	By fiscal year, in millions of dollars—					
	2002	2003	2004	2005	2006	2007
SPENDING SUBJECT TO APPROPRIATION						
Net spending by affected agencies under current law:						
Estimated authorization level <sup>1</sup> .....	23,283	23,958	24,584	25,220	25,870	26,546
Estimated outlays .....	18,590	20,630	21,922	23,581	24,866	25,948
Proposed changes:						
Reorganize agencies and administer new department:						
Estimated authorization level .....	0	150	250	255	260	265
Estimated outlays .....	0	120	230	254	259	264
Design, construct, and operate new federal building:						
Estimated authorization level .....	0	75	425	0	0	80
Estimated outlays .....	0	50	68	106	138	220
Intelligence analysis center:						
Estimated authorization level .....	0	30	10	10	10	10
Estimated outlays .....	0	20	20	10	10	10
Research and development program:						
Estimated authorization level .....	0	300	306	312	318	325
Estimated outlays .....	0	180	289	309	316	322
Other newly authorized activities:						
Estimated authorization level .....	0	28	29	29	29	29
Estimated outlays .....	0	28	29	29	29	29
Additional human resources costs:						
Estimated authorization level .....	0	12	16	7	7	7
Estimated outlays .....	0	12	16	7	7	7
Immigration-related costs for Department of Justice:						
Estimated authorization level .....	0	186	216	221	232	244
Estimated outlays .....	0	176	215	221	232	243
Total changes:						
Estimated authorization level .....	0	781	1,252	834	856	960
Estimated outlays .....	0	586	867	936	991	1,095
Net spending under H.R. 5005:						
Estimated authorization level .....	23,283	24,739	25,836	26,054	26,726	27,506
Estimated outlays .....	18,590	21,216	22,788	24,517	25,857	27,043
CHANGES IN DIRECT SPENDING						
Additional Federal retirement payments:						
Estimated budget authority .....	0	1	3	1	0	0
Estimated outlays .....	0	1	3	1	0	0
Memorandum						
Net direct spending by affected agencies under current law and under H.R. 5005 <sup>2</sup>						
Estimated budget authority .....	591	684	1,906	2,053	2,120	2,305
Estimated outlays .....	479	612	1,867	1,975	2,028	2,087

<sup>1</sup>The 2002 level is the amount appropriated for that year for agencies that would be combined to form the Department of Homeland Security. The estimated authorization levels for 2003 through 2007 are CBO baseline estimates that adjust the amounts appropriated for 2002 for anticipated inflation. Those amounts are net of offsetting collections credited to appropriation accounts.

<sup>2</sup>CBO estimates that the amount of direct spending by agencies that would be combined to form the new department would not be changed by enacting H.R. 5005. Authority to collect Customs user fees expires at the end 2003. CBO estimates that those fees will total \$1.3 billion in 2003.

### *Basis of estimate*

CBO estimates that implementing H.R. 5005 would cost about \$4.5 billion over the 2003–2007 period, assuming appropriation of the necessary funds. These costs are in addition to those that would be incurred by the Office of Homeland Security under current law. They include expenses to establish, house, and administer a new cabinet-level department and carry out within the department new activities and programs authorized by the bill. This estimate does not include additional funds to enhance the homeland

security functions of the agencies that would be transferred to the new department except when specifically authorized by H.R. 5005. The bill also would increase the cost of certain immigration functions conducted by the Department of Justice. For this estimate, CBO assumes that H.R. 5005 will be enacted before January 1, 2003, and that the necessary funds will be appropriated for each fiscal year. The estimated costs of implementing the bill are based on information obtained from affected federal agencies and on the administrative expenses of other federal departments.

*Consolidate affected agencies and administer the new department*

CBO estimates that establishing, housing, and administering the new department would cost about \$1.7 billion over the 2003–2007 period.

**Initial Costs to Consolidate Agencies and Fulfill Reporting Responsibilities.** CBO estimates that most of the estimated 2003 authorization level would be spent on one-time costs to hire, house, and equip key personnel (on an interim basis) to manage the new 170,000-person department. Also included here are incidental consolidation costs such as moving expenses, as well as the costs of preparing various plans and reports required of the DHS or other federal agencies.

In the next few years, the greatest costs of consolidation would be for providing and equipping interim office space for the department-level management structure specified in the bill and for a centralized administrative staff to support a new cabinet-level department. CBO estimates that initially GSA would need to renovate and furnish office space for about 300 key positions. (After 2007, we expect that these positions would be relocated to the permanent DHS headquarters, as authorized by section 741.) Additional costs to purchase computers, network equipment, and supplies in the first years following creation of the new department also would be significant. Probably the largest of these costs would be the acquisition of basic computer systems for administrative functions, such as budget and finance, as well as for information management and communications.

The balance of the estimated 2003 authorization level is for partial-year funding for salaries and other expenses of new department personnel. New positions, which CBO assumes would be filled over the first two years following enactment, would include appointees such as under secretaries and assistant secretaries, key managers such as a general counsel and an inspector general, and other departmental-level personnel to perform administrative functions such as policy development, legislative affairs, and budget and finance activities.

**Design, Construct, and Operate New Federal Building.** Section 741 would direct GSA to construct a building to serve as the headquarters of the DHS, preferably on land already in federal ownership. This section also would authorize the appropriation of whatever amounts are necessary for the DHS to pay GSA for use of the new building and other facilities. Based on information provided by GSA about recent office building projects, CBO estimates that planning and design of the new headquarters would cost \$75 million in fiscal year 2003, and that constructing the facility over the 2004–

2007 period would cost \$425 million. We estimate that furnishing, equipping, and operating the new space for part of the year would cost about \$80 million in 2007.

For this estimate, CBO assumes that the headquarters would be located on property already owned by the federal government in the Washington, D.C. area. If new land has to be acquired for a building site, costs would be higher. Moreover, this estimate is based on the assumption that GSA would construct a facility large enough to house most of the roughly 8,000 Washington-area employees of the transferred agencies, although it is possible that some employees would not move to the new headquarters.

**Ongoing Administrative Costs.** CBO estimates that it would cost about \$250 million annually to administer the DHS, including centralized leadership, coordination, and support services for a cabinet-level department. The estimated annual cost represents about 1 percent of spending for the transferred entities. This estimate is based on the assumption that a share of each combined agency or office would be transferred to the DHS from the department where it is currently located, subject to the various limitations on such transfers specified by the bill. If sufficient resources are not transferred to the new department, added annual costs could be higher. Ongoing administrative costs include those typically incurred by any federal department—policy making, resource management, budget and finance functions, and legal and investigative services. For the DHS, they would also include costs to: (1) coordinate with other existing federal agencies, new entities that would be created by H.R. 5005 (such as the National Homeland Security Council), state and local authorities, and other organizations, (2) manage newly created entities such as the Bureau of Citizenship and Immigration Services (BCIS), and (3) oversee significant new research and development initiatives.

#### *New program authorization*

H.R. 5005 would authorize the DHS to initiate several new programs that are not currently conducted by any of the agencies that would be transferred to the new department. Based on information from the Administration and on the costs of other similar efforts, CBO estimates that beginning in 2003 these new efforts would cost about \$350 million a year, subject to appropriation of the necessary amounts.

**Intelligence Analysis Center.** Section 211 would create within DHS an Intelligence Analysis Center to integrate intelligence collected by other agencies. Based on the costs of carrying out similar programs at the Federal Bureau of Investigations and the Department of the Army, CBO estimates that the new center would spend about \$20 million for information technology systems in 2003 and \$10 million a year for personnel and other expenses to analyze intelligence information. This estimate is based on the assumption that the new center would incorporate existing intelligence activities of the Coast Guard, Customs Service, INS, and Federal Protective Service.

**Research and Development Program.** Title III would authorize DHS to conduct research and development (R&D) activities related to the department's mission, especially in support of its procurement needs. CBO estimates that the cost of the department's R&D



programs would range from \$200 million to \$400 million annually, or an average of about \$300 million a year. For this estimate, we assume that spending would be of a scale similar to that at other mission-oriented R&D agencies, such as the Federal Aviation Administration, the Federal Highway Administration, the Forest Service, and the Department of Education. At this level, R&D spending would be equivalent to between 1 percent and 2 percent of the total spending estimated for the department. Our estimate of \$300 million includes about \$50 million annually for the university research centers authorized by the bill.

**Other Newly Authorized Activities.** H.R. 5005 would authorize several other smaller programs at DHS. CBO estimates that those new programs would cost about \$30 million annually.

H.R. 5005 would establish a security program including a Federal Information Security Team to improve the security of critical information systems. Based on the costs of similar programs such as the Technical Support Working Group, the Office of Science and Technology Policy, and the Special Advisor to the President for Cyber Space Security, CBO estimates that the program and team would cost about \$15 million annually.

The bill would establish within DHS a National Council of First Responders. The council would be made up of 100 local emergency personnel who would be the first to respond to a terrorist attack. Based on similar nonpaid committees and councils, CBO estimates that the council would cost approximately \$1 million annually.

The legislation would establish a National Homeland Security Council within the Executive Office of the President. Based on the costs of the National Security Council, CBO estimates that operating the council would cost approximately \$8 million annually.

H.R. 5005 would establish a privacy officer within DHS whose primary responsibility would be to monitor the collection, use, and disclosure of personal information by the department. Based on the costs of other similar offices, such as congressional relations and public affairs, CBO estimates that establishing a privacy officer and staff would cost approximately \$5 million annually.

**Additional Human Resources Costs.** Several provisions of H.R. 5005 would affect salaries and benefits of federal personnel. CBO estimates that additional costs from appropriated funds would total \$49 million over the 2003–2007 period and that additional direct spending would total \$5 million over that period.

Title IV would abolish the INS and require the Attorney General or the Secretary of Homeland Security to prepare a strategic restructuring plan showing how current INS employees would be terminated or moved to successor agencies—either the new Bureau of Border Security within DHS or the new Bureau of Citizenship and Immigration Services (BCIS) within DOJ. In order to encourage some INS workers to leave federal employment as part of this restructuring plan, section 442 would authorize the DOJ or DHS to offer voluntary separation incentives of up to \$25,000 per eligible employee. Assuming that participation in the buyout program resembles that for similar recent initiatives, CBO estimates that the cost of buyout payments would be about \$4 million in 2003 and a total of \$13 million over the 2003–2007 period. The bill would also require the agencies to pay the Civil Service Retirement and Disability Fund (CSRDF) an amount equal to at least 45 percent of

each employee's final pay. CBO estimates payments to the fund would be \$5 million in 2003 and about \$18 million over the 2003–2007 period.

Because the buyout program would cause some federal employees to retire sooner than they otherwise would have, implementing section 442 would increase mandatory retirement benefits paid from the CSRDF in the short run. CBO estimates that direct spending would increase by \$1 million in 2003 and by \$4 million over the 2003–2007 period. In later years, CSRDF outlays would be reduced by this provision because employees who retire early receive smaller annuity payments.

Section 442 would also increase spending for health benefits of federal retirees because many employees who would accept the buyouts would continue to be eligible for coverage under the Federal Employee Health Benefits (FEHB) program. CBO estimates that these additional FEHB benefits would increase direct spending by less than \$500,000 in 2003 and by \$1 million during the 2003–2007 period.

Section 761, which would create a new human resources management system for DHS, also could affect federal spending. Table 1 does not include any budgetary impact that might result from implementing the new pay and retirement provisions of this system, however, because CBO cannot predict whether (or to what extent) they would supplant—or improve upon—those currently governing the federal entities to be transferred to the new department.

Title IX would allow DHS to reclassify positions of officers and agents of the FPS by making them law enforcement officers. Based on information from the General Services Administration, CBO estimates that implementing this provision would increase the average compensation costs by \$3,800 a year for the approximately 290 current GSA employees who are eligible to become law enforcement officers. The total increase would be \$10 million over the 2003–2007 period.

Under title 5 of the U.S. Code, contributions that agencies and workers make to the Civil Service Retirement and Disability Fund are higher for workers treated as law enforcement officers than they are for regular Civil Service employees. For the estimated 290 current GSA employees who would become law enforcement officers under the bill, retirement contributions by both the agency and the workers would be higher under H.R. 5005 than they would be under current law. CBO estimates DHS contributions to the CSRDF for those employees would increase by \$1 million in 2003 and by \$8 million over the 2003–2007 period.

*Costs to continue agency functions and enhance Homeland Security mission*

As shown in Table 2, CBO estimates that budget authority for the agencies that would form DHS totals close to \$27 billion in 2002 (including both mandatory and discretionary accounts). About \$3 billion of that amount is offset through various fees and collections. Three agencies account for more than half of the 2002 funding—FEMA, the Coast Guard, and the enforcement functions transferred from the INS. Together with the Customs Service, they account for close to 80 percent of the 2002 funding.

For 2003, funding for the new department would almost certainly be higher. CBO estimates that the President's 2003 budget would provide about \$29 billion in funding for functions and agencies that the bill would transfer to the Department of Homeland Security, which is about an 8 percent increase over 2002 spending for these same functions. This figure includes both mandatory and discretionary budget authority. Receipts for those agencies also would grow to about \$5 billion.

CBO's estimate of the cost of establishing a Department of Homeland Security as specified in H.R. 5005 does not include additional funding for the affected agencies to enhance their homeland security functions, except for those added responsibilities specified in the bill. The CBO baseline funding level for those agencies in 2003 and beyond assumes adjustments to account for anticipated inflation but does not reflect the amount of additional spending that may be necessary to prevent terrorist attacks, reduce the nation's vulnerability to attacks, and recover from any attacks. CBO has not estimated how much those agencies might need to spend to enhance homeland security. Such additional spending may occur whether or not a new department is created.

Table 2.—CBO Estimates of 2002 Enacted Spending and the President's 2003 Request for Agencies and Functions Affected by H.R. 5005

[In billions of dollars]

	Discretionary Budget Authority <sup>1</sup>	Estimated Mandatory Budget Authority	Estimated Fees and Receipts <sup>2</sup>
Enacted for 2002			
Federal Emergency Management Agency .....	7.7	0.0	-0.1
Coast Guard (DOT) .....	4.4	1.0	0.0
Enforcement Activities of the Immigration and Naturalization Service (DOJ) .....	4.0	0.6	-0.6
HHS Chemical and Biological Research and Response .....	1.3	0.0	0.0
Customs Service (Treasury) .....	3.1	0.6	-1.2
Secret Service (Treasury) .....	1.0	0.2	0.0
Border Activities of the Animal and Plant Health Inspection Service (USDA) .....	0.1	0.2	0.0
Federal Protective Services (GSA) .....	0.4	0.0	0.0
Transportation Security Agency (DOT) .....	1.3	0.0	-1.3
Other affected agencies .....	1.2	0.0	0.0
<b>Total .....</b>	<b>24.5</b>	<b>2.5</b>	<b>-3.2</b>
Proposed for 2003			
Federal Emergency Management Agency .....	6.6	0.0	-0.1
Coast Guard (DOT) .....	5.0	1.0	0.0
Enforcement Activities of the Immigration and Naturalization Service (DOJ) .....	4.0	0.6	-0.6
HHS Chemical and Biological Research and Response .....	0.6	0.0	0.0
Customs Service (Treasury) .....	3.0	0.6	-1.5
Secret Service (Treasury) .....	1.0	0.2	0.0
Border Activities of the Animal and Plant Health Inspection Service (USDA) .....	0.1	0.3	0.0
Federal Protective Services (GSA) .....	0.4	0.0	0.0
Transportation Security Agency (DOT) .....	4.8	0.0	-2.7
Other affected agencies .....	1.1	0.0	0.0
<b>Total .....</b>	<b>26.5</b>	<b>2.7</b>	<b>-4.9</b>

<sup>1</sup> Does not include the Administration's proposal that federal agencies pay the full cost of benefits for their employees as such benefits accrue. Such payments would total about \$1.4 billion in 2003.

<sup>2</sup> Includes offsetting collections credited to appropriation accounts as well as offsetting receipts; excludes fees classified as revenues.

Note.—Numbers may not add up to totals due to rounding.

*DOJ immigration-related activities*

H.R. 5005 would transfer most functions of the INS to the DHS, except for functions relating to the provision of immigration services. Title IV of the bill would establish within the DOJ the Bureau of Citizenship and Immigration Services (BCIS) to administer immigration services currently performed by the INS. The bill would create several offices within the new agency, authorize the appropriation of whatever sums are necessary to adjudicate refugee and asylum claims, and allow DHS to set rules for the State Department to follow in issuing visas.

Assuming appropriation of the necessary amounts, CBO estimates that the costs for these activities would total \$1.1 billion over the 2003–2007 period, most of which would be for adjudicating refugee and asylum claims. These costs include:

- *Refugee and Asylum Adjudication.* Current law authorizes the INS to collect fees to cover the costs of adjudicating applications for immigration services, such as citizenship and employment eligibility. (Those collections and the spending of them are recorded in the budget as direct spending.) The agency is permitted to set fees at a level to recover all such costs, including the costs, of providing immigration services at no charge to certain individuals (including applicants for asylum and refugee status). Consequently, the INS charges fees that exceed the amount needed for cost recovery for some applicants in order to cover the costs of others. This practice would be prohibited by H.R. 5005. CBO expects this change would lead to approximately equal reductions in collections and direct spending.

To pay for the costs of processing asylum and refugee claims that would not be covered by fees, H.R. 5005 would authorize the appropriation of such sums as necessary. CBO estimates that implementing this provision would cost about \$180 million in 2003 and \$1 billion over the 2003–2007 period.

- *Ombudsman Program.* H.R. 5005 would require the BCIS to establish at least one local ombudsman office in each state to assist individuals and employers in resolving problems with the agency. We estimate that this service would cost about \$25 million annually, beginning in fiscal year 2004.

- *Office of Citizenship.* This new office would promote educational programs for aliens interested in becoming naturalized citizens. CBO estimates that operating the office would cost about \$1 million annually.

- *Office of Children's Services and Office of Statistics.* The bill would establish these two offices within the new BCIS. CBO estimates that additional costs to operate these offices would be less than \$1 million annually because most of the functions that they would perform are already being carried out by the INS.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Two provisions of H.R. 5005 would increase direct spending for payments made from federal retirement funds. CBO estimates that implementing the voluntary separations provisions of Title IV would increase direct spending from the CSRDF by \$4 million over the 2003–2005 period.

These additional retirements would increase mandatory spending for the FEHB program by \$1 million in 2004 and by insignificant amounts in other years. We further estimate that implementing Title IX (which would allow DHS to reclassify certain FPS employees as federal tax enforcement officers) also would increase direct spending for payments from the CSRDF (because retirement benefits are more generous for such officers), but any such increases would be less than \$500,000 a year.

Two provisions would affect government receipts. CBO estimates that reclassifying FPS employees as law enforcement officers would increase revenues from employee contributions to the CSRDF by less than \$500,000 annually.

H.R. 5005 would alter the method by which certain importers pay duties for goods. Those importers must provide import activity statements to the Secretary of the Treasury under current law. The bill would change the timing of duties paid on the goods reported on such statements. Based on information from the United States Customs Service, CBO expects that this provision would have negligible effect on revenues.

These changes are summarized in Table 3 below.

TABLE 3.—ESTIMATED EFFECTS OF H.R. 5005 ON DIRECT SPENDING AND RECEIPTS

	By fiscal year, in millions of dollars—											
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	
Changes in outlays .....	0	1	3	1	0	0	0	0	0	0	0	
Changes in receipts .....	0	0	0	0	0	0	0	0	0	0	0	

**Intergovernmental and private-sector impact:** H.R. 5005 contains intergovernmental mandates as defined in UMRA because it would require owners and operators of U.S. airports to provide notice to the Under Secretary of Homeland Security, by December 31, 2002, if they are unable to accommodate systems that detect explosives. Under current law, explosive detection systems must be installed by December 31, 2002. In addition, the bill could preempt state jurisdiction over certain liability cases. Such a preemption would be considered in intergovernmental mandate. CBO estimates that the costs to comply with those mandates would not be significant and would not exceed the threshold established in the act (\$58 million in 2002, adjusted annually for inflation). The remaining provisions of the bill contain no mandates and would impose no costs on state, local, or tribal governments. The bill contains no new private-sector mandates as defined in UMRA.

**Previous CBO estimates:** On July 9, 2002, CBO transmitted a cost estimate for H.R. 5005 as introduced on June 24, 2002. The Select Committee's version of the bill contains several different provisions that would affect the costs of establishing the DHS. Our cost estimates reflect those differences.

On June 17, 2002, CBO transmitted a cost estimate for S. 2452, the National Homeland Security and Combating Terrorism Act of 2002, as ordered reported by the Senate Committee on Governmental Affairs on May 22, 2002. While both S. 2452 and H.R. 5005 would authorize the establishment of a Department of Homeland Security, they would consolidate different agencies to form the new department and would authorize some different activities for the

new department. CBO's cost estimates for the two bills reflect those differences.

Estimate prepared by: Federal costs: Matthew Pickford, Deborah Reis, Mark Grabowicz, and Kathleen Gramp, Matthew Schmit and Ellen Hays; impact on state, local, and tribal governments: Elyse Goldman; impact on the private sector: Paige Piper/Bach.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the defense and general welfare of the United States), clause 3 (relating to the power to regulate foreign and interstate commerce), and clause 4 (relating to the laws of naturalization).

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short Title; Table of Contents*

This section establishes the short title of the bill, the "Homeland Security Act of 2002" and provides a table of contents.

##### *Section 2. Definitions*

This section defines terms used throughout the bill. The Select Committee notes that none of the definitions used in this bill are intended to apply beyond the provisions of this legislation. For instance, the term "terrorism" is not intended to supersede the definition of terrorism found elsewhere in statute or as that term is used under international law.

##### *Section 3. Construction; Severability*

This section provides that terms of the legislation are to be construed to provide the maximum effect permitted by law, unless a term is held to be invalid or unenforceable, in which case that provision is to be deemed severable from the rest of the legislation.

*Section 4. Effective Date*

This section provides that the effective date of the legislation is 30 days after the date of enactment, or January 1, 2003, if the bill is enacted within 30 days of that date.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

*Section 101. Executive Department; Mission*

This section establishes the Department of Homeland Security in the executive branch of the United States government and defines its primary missions and responsibilities. The primary missions of the department include: preventing terrorist attacks within the United States, reducing the vulnerability of the United States to terrorism at home, and minimizing the damage and assisting in the recovery from any attacks that may occur.

The Department must continue to carry out all the functions from organizations it is absorbing including acting as the focal point for natural and manmade crises and emergency planning. The Department must also continue perform non-homeland security related functions previously assigned to the organizations being transferred in a way that does not diminish or neglect those functions. While the Department promotes homeland security programs, it must also ensure those programs do not negatively impact the United States' economic security. Law enforcement functions, including responsibility for investigating and prosecuting acts of terrorism, will remain the responsibility of Federal, State, and local law enforcement agencies, except as specifically noted.

*Section 102. Secretary, Functions*

This section provides that a Secretary of Homeland Security appointed by the President and confirmed by the Senate will head the Department. The section gives full authority and control over the Department and the duties and activities performed by its personnel, and endows the Secretary with the authorities necessary to fulfill the Department's statutory mission to protect the United States. In carrying out the duties prescribed by this legislation, the Secretary will coordinate with State and local governments, agencies, authorities and with the private sector to help with planning, training, equipment and exercises as well as provide information and warnings. The Secretary will also work to consolidate the Federal Government's homeland security related communications and communications systems to better work with other parts of government and the private sector. This section also provides that the promulgation of rules and regulations will be governed by the Administrative Procedures Act, unless otherwise noted.

The bill directs the Secretary to appoint a Special Assistant to help coordinate with the private sector. The Select Committee recognizes that any comprehensive approach to providing for homeland security requires the involvement of all sectors of society, both public and private. The private sector has an important role to play and must be included in the overall security strategies designed by the Department. To facilitate a strong public-private partnership, this section creates the position of the Special Assistant for Private Sector Liaison in the office of the Secretary.

The Special Assistant will be the primary contact for private sector activities and coordination with the Department. Through Private Sector Advisory Councils, comprised of industry and associated representatives, the Department will have a forum to identify the best available technology for homeland security, develop creative solutions to the nation's homeland security challenges, and receive feedback on the impact of these measures. The Special Assistant will also maintain relationships with the national laboratories, Federally Funded Research and Development Centers, and academia engaged in homeland security efforts. The Special Assistant should identify and facilitate projects that enable the nation to realize gains from combining cutting-edge research and development with commercial sound projects to achieve the most effective and cost efficient equipment possible to address terrorist activities. The Special Assistant will also promote existing public-private partnerships such as the Secret Service's Electronic Crimes Task Force and Customs-Trade partnership Against Terrorism while promoting new partnerships to fight terrorism and supporting the development of best practices to secure the nation's critical infrastructure. The Select Committee desires that the Special Assistant be given adequate support staff and facilities to support this effort.

#### *Section 103. Other Officers*

This section creates the personnel structure that will support the Secretary in carrying out the missions and responsibilities of the Department. This section establishes a senior management team, including a Deputy Secretary, an Under Secretary for each of the four functional divisions within the Department, an Under Secretary for Management and up to 4 assistant secretaries who are subject to the advice and consent of the Senate. Additionally, the section provides for the appointment of an Inspector General and a Commandant of the Coast Guard, each subject to the advice and consent of the Senate. The General Counsel, a Director of Secret Service, a Chief Information Officer and not more than eight Assistant Secretaries will be presidential appointees not requiring Senate confirmation.

#### *Section 104. National Council of First Responders*

In addition to the Secretary's management team, the President will appoint a National Council of First Responders of not less than 100 members. The Council will include police, firefighters, emergency medical technicians, rescue workers, and hospital personnel who serve for a term of three years. Members will not be compensated for their work but will advise the Secretary on matters of importance to the first responder community including technology advances, improvements to communications, and coordination and threats to first responders. The Council will send a report to Congress annually on October 1 on the use of first responders.



## TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Subtitle A—Under Secretary for Information Analysis and  
Infrastructure Protection*Section 201. Under Secretary for Information Analysis and Infrastructure Protection*

This section creates an Under Secretary for Information Analysis and Infrastructure Protection and specifies the Under Secretary's primary responsibilities. These include: (1) receiving and analyzing law enforcement information, intelligence, and other lawfully obtained information in order to understand the nature and scope of the terrorist threat to the United States homeland; (2) integrating relevant information to produce and disseminate infrastructure vulnerabilities assessments; (3) analyzing that information to identify and prioritize the types of protective measures to be taken; (4) making recommendations for information sharing and developing a national plan that would outline recommendations to improve the security of key resources; (5) administering the Homeland Security Advisory System; (6) exercising primary responsibility for public threat advisories and providing specific warning information to State and local governments and the private sector, as well as advice about appropriate protective actions and countermeasures; and (7) making recommendations for improvements in the policies and procedures governing the sharing of law enforcement, intelligence and other information relating to homeland security within the Federal government and between the Federal government and State and local governments.

*Section 202. Functions Transferred*

This section identifies agencies and functions relevant to information analysis and infrastructure protection that are to be transferred to the Department of Homeland Security. These include the National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section); the National Communications System of the Department of Defense; the Critical Infrastructure Assurance Office of the Department of Commerce; the Energy Security and Assurance Program of the Department of Energy, including the National Infrastructure Simulation and Analysis Center; and the Federal Computer Incident Response Center of the General Services Administration.

*Section 203. Access to Information*

This section establishes the Secretary of Homeland Security's entitlement to receive intelligence and other information relating to information analysis and infrastructure protection from agencies and departments of the United States Government. Under the terms of this section, there are three broad categories of information to which the Secretary is given access. Unless the President directs otherwise, all executive agencies have an obligation to furnish appropriate information to the Secretary, even if no request has been made for them.

First, the Secretary is authorized to receive all reports, assessments and analytic information relating to terrorist threats against

the United States and to other areas within the Department's responsibilities. In this case, the Secretary does not normally receive "raw" or unprocessed intelligence data which would include, for example, recordings or verbatim transcripts of conversations.

The second category of information to which the Secretary is granted access is information concerning infrastructure or other vulnerabilities of the United States to terrorism. In this case, material may include raw data in addition to other types of data, reports, and analysis previously mentioned.

The final category of information also includes unprocessed or raw data on significant and credible threats of terrorism in the United States, but only if the President determines the Secretary may have access to such information. The Secretary will also have access to other material that the President determines is needed to fulfill the mission of the Homeland Security Department.

Additionally, the Secretary is required to have access and input to information from any national collaborative information analysis capability that may be established by the Secretary of Defense and the Director of Central Intelligence.

The section provides that the Secretary and executive agency heads will enter into agreements regarding thresholds for the automatic provision of each category of materials, but that information sharing will not be delayed pending such agreements.

In all cases, the Secretary is required to ensure that material received as outlined in this section is used only for the performance of official duties and is protected from unauthorized disclosure. The Secretary's right to receive information is also subject to the traditional authority of the intelligence and law enforcement agencies to protect sources and methods and sensitive law enforcement information.

#### *Section 204. Procedures for Sharing Information*

This section outlines procedures to ensure the proper safeguards and security for information received by the Department. The Select Committee believes that it is imperative that the constitutional and statutory privacy rights of individuals are protected. This section provides that the Secretary will take measures to prevent unauthorized use of information, ensure the security and confidentiality of information, and remove or destroy obsolete or erroneous material in a timely matter.

#### *Section 205. Privacy Officer*

This section requires the appointment of an officer to guide the Department in decisions that have an impact on privacy. This officer will also ensure the Department's compliance with the Privacy Act of 1974 and permit congressional oversight of the activities of the Department that have privacy implications.

The Privacy Officer would be responsible for assuring that all forms of technologies, in addition to information technologies, are not employed by DHS in any way that erodes citizens' privacy protections.

The Privacy Officer would also be responsible for evaluating regulatory and legislative proposals that have an impact on privacy. The Privacy Officer will report to Congress on privacy violations and conduct privacy impact assessments of proposed rules.

The Secretary will establish procedures ensuring the confidentiality and accuracy of personally identifiable information. These procedures would require the Secretary to (1) limit use and access to personally identifiable information (such as Social Security numbers) to ensure that it is not used for an unauthorized purpose; (2) ensure the security and confidentiality of such information; (3) protect the constitutional and statutory rights of any individuals who are subject of such information; and (4) provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

*Section 206. Cybersecurity Program*

This section directs the Secretary to establish and manage a program to improve the security of Federal critical information systems. It establishes three duties for the Secretary. First the Secretary is responsible for evaluating the increased use by civilian executive agencies of techniques and tools to enhance the security of Federal critical systems. Second, the Secretary is responsible for providing assistance to civilian executive agencies in protecting the security of Federal critical information systems, including identification of significant risks to such systems. Third, the Secretary is responsible for coordinating research and development to enhance the security of critical information systems, including supervisory control and data acquisition systems.

This section also establishes as part of the program to improve security of Federal critical information systems, a Federal Information System Security Team to provide technical expertise to civilian executive agencies by conducting cybersecurity audits of civilian executive agency information systems (other than national security systems) in accordance with agreements between the Secretary and the head of those agencies. This team will be comprised of computer security technical experts who will conduct tests of the effectiveness of logical access controls of interconnected computer systems and networks of civilian executive agencies and contractors, including penetration tests and other vulnerability assessment techniques on Federal critical information systems.

The Select Committee believes greater emphasis is needed on information security of Federal critical information systems, and on research and development to enhance security of the Nation's critical information systems.

Subtitle B—Intelligence Analysis Center

*Section 211. Intelligence Analysis Center*

This section establishes the Intelligence Analysis Center, headed by the Under Secretary for Information Analysis and Infrastructure Protection. The Intelligence Center is a program of the National Foreign Intelligence Program and is responsible for analyzing information, preparing and disseminating reports, working with other elements of Federal, State, and local governments and supporting the intelligence and information requirements of the Department.

Through agreements between the Secretary and other Federal departments, individuals may be temporarily assigned for a period

of less than two years to the Intelligence Analysis Center. The Secretary must reimburse the detailee's parent organization.

This section also amends section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)) by adding the Intelligence Analysis Center of the Department of Homeland Security as an element of the Intelligence Community.

*Section 212. Mission of the Intelligence Analysis Center*

This section outlines the primary mission of the Intelligence Analysis Center (Center) and denotes the functions transferred into the Center. The Center will be responsible for analyzing information and intelligence, preparing all source reports and warnings and subsequently disseminating reports and warnings on both terrorist threats and ways to better protect critical infrastructures. To perform its duties, the Center must coordinate with elements of the intelligence community as well as Federal, State and local law enforcement agencies and the private sector to both receive and share information.

The Center is also directed to prepare strategic and tactical assessments on the terrorism and infrastructure topics. These topics include: domestic terrorism, international terrorism, counterintelligence, transnational crime, proliferation of weapons of mass destruction, illicit financing of terrorist activities, cybersecurity and cybercrime, and key resources and critical infrastructures.

Staffing for the Intelligence Analysis Center will include resources and personnel from the National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section); the National Communications System of the Department of Defense; the Critical Infrastructure Assurance Office of the Department of Commerce; the National Infrastructure Simulation and Analysis Center of the Department of Energy; and the Federal Computer Incident Response Center of the General Services Administration. The intelligence elements of the following organizations will also be included: United States Customs Services, Immigration and Naturalization Service, Transportation Security Administration, and the Federal Protective Service.

This section also expresses the sense of Congress that the Undersecretary should model the Center on the technical and analytic approach of the Information Dominance Center of the Department of the Army.

It is the expectation of the Select Committee that the Secretary will from time to time consult with the President regarding the information needs of the Department, and the President may, in his discretion, direct such action as he deems appropriate following these consultations.

TITLE III—SCIENCE AND TECHNOLOGY

*Section 301. Under Secretary for Research and Development.*

This section specifies primary responsibilities of the Under Secretary for Research and Development. The Secretary will be responsible for preparing the national policy and plans for developing countermeasures to chemical, biological, radiological, nuclear and other emerging threats; administering research and development

priorities based on needs and risk assessments and subsequently conducting and managing basic and applied research, development, demonstration, testing, and evaluation activities for the Department with the exception of human health related research and development. The Department will also develop guidelines for reviewing the merits of homeland security related research.

This section provides that particular emphasis should be placed on fielding technology and systems for preventing the importation of, detecting and protecting against chemical, biological, radiological and nuclear weapons and related materials; and for improving the ability of emergency response providers to have robust and interoperable communications.

This section also provides that the Department will also establish methods to help Federal, State, and local government and private sector entities evaluate and implement homeland security technologies including, but not limited to, establishing a centralized Federal repository to help those who may wish to pursue proposals to develop or deploy homeland security technologies.

This section also directs the Secretary to assist others in evaluating and implementing homeland security related technologies.

The Select Committee believes the private sector should continue to lead the standard setting development process. Therefore, the Select Committee recommends any standard-setting functions transferred to the department should conform with the National Technology Transfer Act of 1995 and OMB circular A-119 to ensure the private sector maintains its leadership role in standard setting.

#### *Section 302. Functions Transferred*

This section identifies agencies and functions relevant to research and development that are to be transferred to the Department of Homeland Security. These include the select agent registration enforcement programs and activities of the Department of Health and Human Services, provided that a related program within the Department of Agriculture is transferred; certain relevant programs of the Department of Energy, the Environmental Measurements Laboratory, the advanced scientific computing research program and activities at Lawrence Livermore National Laboratory; the Biological Defense Homeland Security Support Program and the Biological Counter-Terrorism Research Program from the Department of Defense.

#### *Section 303. Conduct of Certain Public Health-Related Activities*

This section provides that the Secretary of Health and Human Services will continue to carry out human health related research and development. In recognition of the fact that the new Department will have important intelligence, threat, and vulnerability-related information necessary for the identification of certain research priorities, this section provides that the Secretary of Health and Human Services will set priorities, goals, and objectives in collaboration with the Secretary of the Department of Homeland Security with respect to human health-related research and development activities on countermeasures for chemical, biological, radiological, and nuclear terrorist threats.

*Section 304. Federally Funded Research and Development Center*

This section directs the Secretary to establish or contract with existing Federally Funded Research and Development Centers (FFRDC's) to obtain advice and assistance.

*Section 305. Miscellaneous Provisions*

This section outlines a variety of miscellaneous provisions dealing with the administration of the Department. In order to share information and technology on the widest scale possible with public and private sectors, this section provides that research conducted or supported by the Department will be unclassified to the greatest extent possible. Other elements within the Department may conduct research and associated activities as long as they are coordinated with the under secretary for Research and Development. The Secretary has the authority to issue regulations for the Department for research and associated matters.

This section requires the President to notify Congress not later than 60 days before transferring the Department of Energy life sciences activities into the Department, including the reasons for the transfer and the impact on the Department of Energy.

*Section 306. Homeland Security Science and Technology Coordination Council*

This section directs the establishment of a Homeland Security Science and Technology Coordination Council within the Department to assist the Secretary in establishing priorities for homeland security that begin with basic research and follow through to acquisition needs.

*Section 307. Conduct of Research, Development, Demonstration, Testing, and Evaluation*

This section directs the Secretary to fund both government and non-government organizations to conduct homeland security research, development, demonstration, testing, and evaluation programs. Specifically, the Secretary, acting through the Under Secretary for Research and Development, must ensure that as many colleges, universities, private research institutes and companies throughout the United States can compete for funds that may be available through grants, cooperative agreements, and contracts. The Secretary will also establish a university-based center for homeland security research within the academic community. Funds are authorized to carry out this program.

Similarly, the Secretary should draw upon expertise within the Federal Government's own National Laboratories. This section permits the Secretary to establish a headquarters laboratory to coordinate the Federal homeland security efforts and may add other laboratory units as needed. If the Secretary decides to establish a headquarters laboratory, then a formal process is required to document criteria and justification for selection of a specific laboratory. A report to Congress is mandated on lab selection and no laboratory may begin operating as the headquarters until at least 30 days after Congressional notification.

The Select Committee believes that contracting or other work agreements should be agile and flexible to allow maximum participation by the public and private sector.

*Section 308. Transfer of Plum Island Animal Disease Center, Department of Agriculture*

This section transfers the Plum Island Animal Disease Center from the Department of Agriculture to the Department of Homeland Security. The Plum Island Facility also performs research that is vital to the mission of the Department of Agriculture, therefore, the Secretary of Agriculture and the Department of Homeland Security will complete a formal agreement to ensure the Department of Agriculture will continue to have access to the Plum Island Facility. Additionally, this section requires the President to notify Congress at least 180 days before any change in the biosafety level at the Plum Island Animal Disease Center.

TITLE IV—BORDER AND TRANSPORTATION SECURITY

Subtitle A—General Provisions

*Section 401. Under Secretary for Border and Transportation Security*

This section outlines the primary responsibilities for the Under Secretary for Border and Transportation Security. These include: preventing the entry of terrorists and the instruments of terrorism into the United States; securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States; carrying out the immigration enforcement functions including establishment of rules governing the granting of visas and other forms of permission to enter the United States to individuals who are not citizens or lawful permanent residents; administering the customs laws of the United States, except for the collection of revenues which remains under the authority of the Secretary of Treasury; conducting agricultural related border inspections and associated administrative functions; and ensuring the speedy orderly, and efficient flow of lawful traffic and commerce in carrying out these responsibilities.

*Section 402. Functions Transferred*

This section identifies agencies and functions relevant to border and transportation security that are to be transferred to the Department of Homeland Security. These include the United States Customs Service (now in the Department of the Treasury), except that certain revenue collecting functions will remain within the Department of Treasury; the Transportation Security Administration (now in the Department of Transportation); the Federal Protective Service (now in the General Services Administration); the Office of National Preparedness (now in the Federal Emergency Management Agency); the Office of Domestic Preparedness of the Office of Justice Programs (now in the Department of Justice); the National Domestic Preparedness Office (now in the Federal Bureau of Investigation); and the Domestic Emergency Support Teams (now in the Department of Justice). The section expressly requires that the Coast Guard, be maintained as a distinct entity within the Department of Homeland Security.

*Section 403. Visa Issuance*

This section transfers to the Secretary of Homeland Security certain functions regarding the issuance and denial of visas to enter the United States. Subsection (a)(1) provides that (with certain exceptions provided in subsection (b)), the Secretary will be vested exclusively with regulatory, administrative, and enforcement authority over immigration and nationality laws relating to the functions of consular officers in connection with the granting or refusal of visas. This paragraph further provides that the visa-related authorities conferred upon the Secretary of Homeland Security will be exercised through the Secretary of State, and that the Secretary of Homeland Security does not have authority to alter or reverse a decision of a consular officer to refuse a visa.

Subsection (a)(2) provides that the Secretary of Homeland Security may confer or impose the visa-related authorities specified in paragraph (1) on any officer or employee of the United States, with the consent of the head of the agency by which that person is employed. This could include, for instance, a delegation of some or all of these authorities back to the Secretary of State.

Subsection (b)(1) provides that the Secretary of State may direct a consular officer to refuse a visa on foreign policy or security grounds. This authority is similar to the authority currently provided the Secretary of State under section 212(a)(3)(c) of the Immigration and Nationality Act. Subsection (b)(2) specifies a number of foreign policy-related authorities under the Immigration and Nationality Act which will be retained by the Secretary of State.

Subsection (c)(1) provides that the Secretary of Homeland Security is authorized to assign Homeland Security employees to diplomatic and consular posts abroad to advise consular officers on homeland security issues, to review visa applications, and to conduct investigations on threats to homeland security. Subsection (c)(2) provides that the overseas assignments described in paragraph (1) may, where appropriate, be permanent assignments, and that the Secretary of Homeland Security may direct employees on those permanent assignments participate in terrorist lookout committees at those posts.

Paragraph (3) provides that the Secretary of Homeland Security will: provide training for Homeland Security employees assigned abroad in foreign languages, country conditions, and other appropriate areas of study; establish foreign language requirements for those positions and employment preferences for persons who meet those requirements; and may use the National Foreign Affairs Training Center for the purpose of training described in subparagraph (A).

Subsection (d) provides that nothing in section 403 can be construed to create a private right of action to challenge a decision of a consular officer to grant or deny a visa. This savings clause is to ensure that the amendment provided by this section does not affect current law with respect to non-reviewability of visa decisions.

The Secretary of Homeland Security is directed to provide several reports and studies to Congress to determine the appropriate use of foreign nationals employed to issue visas and how the visa issuance process affects procedures for student visas. The United States depends heavily on foreign graduate students in many science and technology fields. The Select Committee believes that



it is important that procedures for granting student visas balance the need to improve homeland security with the benefits that are gained when talented students from other countries study in the United States.

This section also terminates a program that allowed applicants in Saudi Arabia to obtain visas from travel agents and other third parties. Now applications must be interviewed by on site personnel unless they certify an alien is unlikely to present a risk to homeland security.

*Section 404. Transfer of Certain Agricultural Inspection Functions of the Department of Agriculture*

This section transfers to the Secretary of Homeland Security the functions of the Secretary of Agriculture related to agricultural import and entry inspection activities. The Secretary is charged with carrying out inspections including pre-clearance of passengers, luggage, cargo, and their means of conveyance and enforcing existing laws and those regulations established by the Department of Agriculture.

While agricultural inspection functions, as well as those related administrative and enforcement functions, will become the responsibility of the Secretary of Homeland Security, quarantine activities and facilities will be retained by the Secretary of Agriculture. This section does not preclude the Secretary of Homeland Security from taking actions related to inspection functions, such as seizing or holding plant or animal materials entering the United States.

Because the Secretary of Agriculture retains unique expertise in the areas of animal, plant, associated products, soils or other biological materials that may present an unacceptable risk to the agriculture of the United States, this section requires the Secretary of Agriculture to continue to provide regulations, policies and procedures for administering the covered laws while the Department of Homeland Security carries out actual inspections. However, the Secretary of Homeland Security, in consultation with the Secretary of Agriculture, may issue directives and guidelines for the effective use of personnel.

This section requires the Secretary of Agriculture and the Secretary of Homeland Security to enter into an agreement to transfer functions. This agreement must address the training of employees and the transfer of funds. In addition, the agreement may include the authority for the Secretary of Homeland Security to perform functions delegated to the Animal and Plant Health Inspection Service of the Department of Agriculture (APHIS) for the protection of domestic livestock and plants as well as authority for the Secretary of Agriculture to use employees of the Department of Homeland Security to carry out APHIS functions. The Secretary of Agriculture will transfer funds collected by fee authorities to the Secretary of Homeland Security as long as the funds do not exceed the proportion of the costs incurred by the Secretary of Homeland Security in carrying out activities funded by such fees.

During the transition period, the Secretary of Agriculture will transfer to the Secretary of Homeland Security not more than 3,200 full-time equivalent positions of the Department of Agriculture. This section also makes conforming amendments to title V

of the Agricultural Risk Protection Act of 2000 related to the protection of inspection animals.

*Section 405. Functions of Administrator of General Services*

This section transfers to the Secretary only those functions of the Administrator of General Services related to law enforcement and security functions. Any amount of money transferred by the Administrator of General Services to the Secretary will be used by the Secretary solely for the protection of buildings or grounds owned or occupied by the Federal Government.

*Section 406. Functions of Transportation Security Administration*

This section requires the Secretary to establish a liaison office within the Department to 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 air space. The Secretary must submit a report to Congress that outlines a plan for complying with the requirements of section 44901(d) of title 49, United States Code. The Secretary of Homeland Security is expressly prohibited from spending any Airport Improvement Program (AIP) funds.

*Section 407. Preservation of Transportation Security Administration as a Distinct Entity*

To assist the newly created Transportation Security Administration (TSA) in transitioning to the Homeland Security Department, this section mandates that the TSA remain a distinct entity within the Department of Homeland Security for a period of two years after this legislation is enacted. The Select Committee recognizes that the TSA is being transferred to the Department at the same time it is working to meet a number of statutory deadlines as a newly created agency. The TSA has a responsibility to ensure both effective security and an efficient transportation system. Therefore, the Select Committee believes the TSA should use all reasonable measures to ensure efficiency and a viable transportation system in all modes as it fulfills its security responsibilities.

*Section 408. Annual Assessment of Terrorist-Related Threats to Public Transportation*

This section requires the Secretary, in consultation with other Federal departments and agencies, to conduct an annual assessment of terrorist-related threats to public transportation and associated areas where the public may gather.

*Section 409. Explosive Detection Systems*

This section requires the Under Secretary of Homeland Security to notify the owner or operator of each United States airport on the number and type of explosive detection systems required to screen all checked baggage without imposing an unreasonable delay on passengers. In turn, airport owners and operators will report back to the Under Secretary if they are unable to make modifications to the airport's terminal buildings to accommodate explosive detection systems with a plan for making those changes. All plans shall be executed as soon as possible, but not later than December 31, 2003.

A copy of the plan will be sent to Congress, but not disclosed to the public for security reasons.

The Under Secretary for Homeland Security will purchase explosive detection systems for airports. Explosive detection systems should have high throughput, low false alarm rates, and high reliability without reducing detection rates. These systems should be placed in non-public areas such as baggage sorting areas and to the maximum extent possible, not in airport lobbies. If airports are unable to have explosive detection systems operational by December 31, 2002, baggage will continue to be screened by other methods.

With concerns mounting about the ability of the TSA to place explosive detection systems in all airports by current statutory deadlines, the Select Committee believes that this approach balances the need for confidence in explosive detection technology with the need for rapid deployment of this technology at the Nation's airports.

*Section 410. Transportation Security*

This section amends current law to reflect the Secretary of Homeland Security has assumed responsibility for the Transportation Security Administration. Accordingly, the Secretary of Homeland Security will establish and chair a Transportation Security Oversight Board. Additionally, the Secretary of Transportation will consult with the Secretary of Homeland Security before approving airport development project grants that relate to security equipment and the installation of bulk explosive detection systems.

Subtitle B—Immigration and Nationality Functions

CHAPTER 1—IMMIGRATION ENFORCEMENT

*Section 411. Transfer of Functions to Under Secretary for Border and Transportation Security*

This section transfers the functions of (1) the Border Patrol program, (2) the detention and removal program, (3) the intelligence program, (4) the investigations program, and (5) the inspections program from the Commissioner of the Immigration and Naturalization to the Under Secretary for Border and Transportation Security, including the personnel, assets, and liabilities of those programs.

*Section 412. Establishment of Bureau of Border Security*

This section establishes the Bureau of Border Security within the Department and provides that the head of the Bureau will be the Assistant Secretary of the Bureau of Border Security, who must have at least 10 years of law enforcement experience, 5 of which must have been as a manager. The Assistant Secretary will report directly to the Under Secretary for Border and Transportation Security.

The Assistant Secretary will be responsible for the establishment and administration of policies for performing the functions transferred by section 411, and advising the Under Secretary with respect to any policy of the Bureau of Border Security that may affect or conflict with the policies and operations of the Bureau of Citizenship and Immigration Services of the Department of Justice.

The Assistant Secretary must also operate a program to collect information relating to foreign students, and a program to rotate senior managers through all of the major functions of the Bureau.

This section also creates the position of Chief of Policy and Strategy and the Citizenship and Immigration Services Liaison in the Bureau. The Chief of Policy and Strategy will establish national immigration enforcement policies and practices, perform research and analysis on immigration enforcement issues, and coordination of these policies with the Bureau of Citizenship and Immigration Services of the Department of Justice. The Citizenship and Immigration Services Liaison will be responsible for the appropriate allocation and coordination of resources involving shared support functions for the Bureau and the Bureau of Citizenship and Immigration Services of the Department of Justice.

*Section 413. Professional Responsibility and Quality Review*

This section provides that the Under Secretary for Border and Transportation Security will be responsible for conducting non-criminal investigations of allegations of improper conduct by any employee of the Bureau, unless that allegation is being investigated by the Inspector General. The Under Secretary is also responsible for inspecting and analyzing the ongoing operations and management of the Bureau.

*Section 414. Employee Discipline*

This section authorizes the Under Secretary to discipline any Bureau employee, including terminating that employee, for willfully deceiving Congress or agency leadership, subject to the policies and procedures applicable to the Federal Bureau of Investigation for similar behavior.

*Section 415. Report on Improving Enforcement Functions*

Not later than 1 year after being sworn into office, the Secretary must submit a report to the Committees on Appropriations and the Judiciary of the House and Senate detailing a plan to effectively, comprehensively, and fairly enforce the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) after the transfer of the functions pursuant to section 411. In preparing the report, the Secretary must consult with other specified Federal, State, and local officials.

## CHAPTER 2—CITIZENSHIP AND IMMIGRATION SERVICES

### Subchapter A—Transfers of Functions

*Section 421. Establishment of the Bureau of Citizenship and Immigration Services*

Subsection (a) establishes the Bureau of Citizenship and Immigration Service (BCIS) in the Justice Department. The bureau is headed by the Assistant Attorney General for Citizenship and Immigration Services, who reports directly to the Deputy Attorney General and must have at least 10 years professional experience in adjudicating Government benefits or services, at least five of which must have been years of service in a managerial capacity or in a position affording comparable management experience.

The Assistant Attorney General: (1) establishes citizenship and immigration services policies for the bureau; (2) oversees the administration of those policies and advises the Deputy Attorney General on any policy or operation of the BCIS that may affect the Bureau of Border Security of the Department of Homeland Security, including potentially conflicting policies or operations; (3) meets regularly with the Citizenship and Immigration Services Ombudsman to correct serious service problems identified by the Ombudsman; and (4) establishes procedures for a formal response to any recommendations submitted in the Ombudsman's annual report to Congress within 3 months of its submission to Congress. The Assistant Attorney General must also design and implement a program to rotate senior managers through all of the major functions of the bureau. Finally, the Assistant Attorney General is authorized to implement innovative pilot initiatives to eliminate any remaining backlog in the processing of immigration benefit applications, including increasing and transferring personnel, and streamlining paperwork.

Subsection (b) transfers from the Commissioner of the Immigration and Naturalization Service (INS) to the Assistant Attorney General of the BCIS the following functions, and all personnel, infrastructure, and funding given to the Commissioner in support of such functions prior to the abolishment of the INS: (1) adjudications of immigrant visa petitions; (2) naturalization petition adjudications; (3) asylum and refugee application adjudications; (4) service center adjudications; and (5) all other immigration benefit adjudications.

Subsection (c) establishes the position of Chief of Policy and Strategy. The Chief must (1) establish national immigration services policies and priorities; (2) perform policy research and analysis on immigration services issues; and (3) coordinate immigration services policy issues with the Chief of Policy and Strategy for the Bureau of Border Security in the Department of Homeland Security.

Subsection (d) establishes the position of General Counsel for the BCIS to provide serve as the principal legal adviser to the Assistant Attorney General, and will provide legal advice, opinions, and other help to the Assistant Attorney General, and represent the BCIS in visa petition appeal proceedings in legal or administrative proceedings involving immigration services issues.

Subsection (e) establishes the position of Chief Budget Officer for the BCIS. This officer formulates and executes the budget of the BCIS according to the needs of the service bureau. This officer will have all of the authorities and functions for the BCIS of an agency chief financial officer under section 902 of title 31, United States Code.

Subsection (f) establishes the position of Chief of Congressional, Intergovernmental, and Public Affairs in the BCIS. The Chief (1) provides citizenship and immigration services information to the Congress, including information on specific constituent cases relating to immigration services; (2) serves as a liaison with other Federal agencies on citizenship and immigration services issues; and (3) responds to inquiries from the media and general public on citizenship and immigration services issues.

Subsection (g) establishes the position of Border Security Liaison for the Bureau of Citizenship and Immigration Services. This officer will be responsible for the appropriate allocation and coordination of resources involving shared support functions for the BCIS and the Bureau of Border Security of the Department of Homeland Security.

Subsection (h) establishes the position of Chief of the Office of Citizenship in the BCIS. The Chief promotes instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens of the United States, including the development of educational materials.

*Section 422. Citizenship and Immigration Services Ombudsman*

Subsection (a) establishes the position of Citizenship and Immigration Services Ombudsman within the Department of Justice. The Ombudsman will report directly to the Deputy Attorney General and must have a background in customer service and immigration law.

The functions of the Ombudsman include: (1) assisting individuals and employers in resolving problems with the BCIS; (2) identifying areas in which individuals and employers have problems in dealing with the BCIS; (3) proposing changes in the administrative practices of the BCIS to mitigate identified problems; and (4) identifying potential legislative changes appropriate to mitigate such problems.

The Ombudsman is required to submit a report to the Judiciary Committees of the House and Senate by June 30 of each calendar year on the objectives of the Office of the Ombudsman for the fiscal year beginning in that calendar year. Those reports must contain full and substantive analysis, statistical analysis, and (1) identify the initiatives the Office has taken to improve the services and responsiveness of the BCIS; (2) contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems; (3) contain an inventory of the items described in (1) and (2) above for which action has been taken and the result of such action, for which action remains to be completed and the period in which each item has remained on such inventory, finally for which no action has been taken, including the period in which each item has remained on such inventory, the reasons for the inaction, and the identity of any BCIS official responsible for such inaction; (4) contain recommendations for appropriate administrative and legislative action 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 (5) include any other information deemed advisable by the Ombudsman. The annual report is to be provided directly to the congressional committees without prior review or comment from the Attorney General, the Assistant Attorney General for Citizenship and Immigration Services, any employee of the Justice Department, or the Office of Management and Budget. The Select Committee believes that to help improve services, it is important that Congress have an accurate, unfiltered report on serious problems with the BCIS.

The Ombudsman also monitors the coverage and geographic allocation of local Ombudsman offices; develops guidance to distribute to all BCIS officers and employees outlining the criteria for referral of inquiries to the local Ombudsman offices; ensures that each local Ombudsman office telephone number is published and available to individuals and employers served by the local office; and meets regularly with the Assistant Attorney General for Citizenship and Immigration Services to identify serious service problems and to present recommendations for appropriate administrative actions to resolve problems encountered by individuals and employers.

The Ombudsman has the responsibility and authority to appoint local ombudsmen and ensure that at least 1 ombudsman is available to each State. The Ombudsman is also authorized to evaluate and take personnel actions, including dismissal, against any employee of any local ombudsman office. In carrying out these responsibilities, the Ombudsman may consult with the appropriate BCIS supervisory personnel.

Subsection (f) requires the BCIS director to establish procedures requiring a formal, written response to all recommendations submitted to the director by the Ombudsman within 3 months of receiving the recommendations.

Each local ombudsman is required to report to the Ombudsman or delegate; may consult with the appropriate BCIS supervisory personnel regarding the daily operation of the local ombudsman office; will notify any individual or employer initially seeking assistance from the local office that the local offices operate independently of any other component of the Department of Justice and report directly to Congress through the Ombudsman; and at the local ombudsman's discretion, may determine not to disclose to the BCIS that the office has had contact with, or has had information provided by an individual or employer. Each local ombudsman office is required to maintain a phone, fax, and other electronic communication access, and a post office address that is separate from those maintained by the BCIS or any component of the BCIS.

#### *Section 423. Professional Responsibility and Quality Review*

This section provides that the Assistant Attorney General for Citizenship and Immigration Services will be responsible for conducting noncriminal investigations of allegations of improper conduct by any employee of the BCIS, unless that allegation is being investigated by the Department of Justice Inspector General. The Assistant Attorney General is also responsible for inspecting and analyzing the ongoing operations and management of the Bureau.

#### *Section 424. Employee Discipline*

This section authorizes the Assistant Attorney General for Citizenship and Immigration Services to discipline any Bureau employee, including terminating that employee, for willfully deceiving Congress or agency leadership, subject to the policies and procedures applicable to the Federal Bureau of Investigation for similar behavior, notwithstanding any other provision of law.

*Section 425. Office of Immigration Statistics within the Bureau of Justice Statistics*

This section amends the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3731 et seq.) to establish within the Justice Department's Bureau of Justice Statistics an Office of Immigration Statistics. The Office is headed by a director who is appointed by the Attorney General and reports to the Director of Justice Statistics. The director is responsible for maintaining all immigration statistical information of the Office of the BCIS and the Executive Office for Immigration Review (EOIR). The statistical information is required to include the information and immigration statistics in a publication similar to the statistical yearbook prepared by the INS and EOIR. However, the Select Committee believes that the Office of Immigration Statistics should endeavor to collect much more statistical information than the INS currently does. Too often, much of the statistical information that Congress requests from the INS is unavailable because the INS does not gather such statistics, even after the Congress has asked for similar statistics repeatedly.

The director is also responsible for establishing standards of reliability and validity for immigration statistics collected by the BCIS and EOIR.

While this new Office of Immigration Statistics maintains all immigration statistics, the BCIS and EOIR each gives the Office of Immigration Statistics statistical information from the operational data systems controlled by each respective component.

Subsection (b) transfers the functions performed by the Statistics Branch of the INS Office of Policy and Planning to this newly established Office of Immigration Statistics.

*Section 426. Preservation of Attorney General's Authority*

This section permits the Attorney General, or the Attorney General's delegate, to perform any function delegated to another official under this subchapter and provides that references in Federal law, Executive orders, rules, regulations, or other similar authorities are deemed to refer to the Attorney General.

*Section 427. Effective Date*

This section establishes the effective date for this subchapter (and amendments made thereunder), as the date on which the functions identified in section 411 are transferred.

*Section 428. Transition*

Subsection (a) ensures that references to predecessor organizations are deemed to refer to the organizations described in this subchapter. Subsection (b) governs the exercise of authorities under the law, applies certain transition rules in title VIII to the organizations created under this subchapter, addresses the transfer and allocation of appropriations and personnel, and provides incidental authorities to the Attorney General.



## Subchapter B—Other Provisions

*Section 431. Funding for Citizenship and Immigration Services*

This section amends section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) to strike references to services provided without charge to asylum applicants and authorizes such sums as may be necessary to carry out sections 207 through 209 of the Immigration and Nationality Act (8 U.S.C. 1157-1159). Funds appropriated pursuant to this authorization will be deposited into the Immigration Examinations Fee Account and will remain available until expended.

*Section 432. Backlog Elimination*

This section changes the deadline under section 204(a) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)) for the Attorney General to eliminate the backlog in the processing of immigration benefit applications to 2 years after the date of enactment of the Homeland Security Act of 2002.

*Section 433. Report on Immigration Services*

This section requires that the Attorney General report to the Committees on Appropriations and the Judiciary of the House and Senate on a plan detailing how the BCIS will complete the adjudications described in section 421(b) efficiently and fairly after the transfer of functions takes effect. The report is due not later than 1 year after the enactment of this legislation.

The report must describe for each type of adjudication to be undertaken by the Assistant Attorney General for Citizenship and Immigration Services (1) any potential savings of resources that may be implemented without affecting adjudication quality, (2) the goal for processing time, and (3) any necessary statutory modifications considered advisable by the Attorney General. In the preparation of this report, the Attorney General must consult with certain specified Federal officials.

*Section 434. Report on Responding to Fluctuating Needs*

This section requires that the Attorney General submit to Congress on changes in law (including changes in authorizations and appropriations) necessary to permit the INS and BCIS to ensure a prompt and timely response to emergent, unforeseen, or impending changes in the number of applications for immigration benefits or other changing immigration service needs. This report is due not later than 30 days after the date of enactment of this legislation.

*Section 435. Application of Internet-Based Technologies*

Subsection (a) requires the Attorney General to establish an Internet-based system that will permit individuals and employers with immigration applications filed with the Attorney General to have access to online information about the processing status of the application within 1 year from the date of enactment of this legislation. Currently, individuals and employers must spend far too much time waiting in line at, and on the phone with, the INS to learn the status of a pending application. Allowing applicants to go on-line to check the status of an application will save hours of time

and frustration in dealing with the INS' poor customer service and information officers.

Subsection (b) requires the Attorney General to conduct a feasibility study for applicants to have the ability to file applications on-line, in addition to checking the status on line. The study must include a review of computerization and technology of the INS relating to the immigration services and processing of filings related to immigrant services. The study must also include a time and cost estimate and consider other factors in implementing such a filing system, including the feasibility of fee payment on-line. The Attorney General is required to submit a report on this study to the Committees on the Judiciary for both chambers of Congress within 1 year from the date of enactment of the bill.

Subsection (c) requires the Attorney General to establish an advisory committee within 60 days from the date of enactment of this bill to assist the Attorney General in establishing the tracking system and conducting the study discussed above. The Attorney General should consult with the Judiciary Committees in establishing the Technology Advisory Committee. The advisory committee shall be composed of representatives from high technology companies capable of establishing and implementing the system expeditiously and representatives of persons who may use the tracking system and the on-line filing system described above.

#### *Section 436. Children's Affairs*

This section transfers those functions relating to the care of unaccompanied alien children that were vested by statute in or performed by the Commissioner of the INS to the Director of the Office of Refugee Resettlement within the Department of Health and Human Services. These functions include care and placement that were exercised by the INS Commissioner prior to the effective date of the bill; coordinating and implementing the law and policy for unaccompanied alien children who come into Federal custody; making placement determinations for all unaccompanied alien children in federal custody; identifying and overseeing the infrastructure and personnel of facilities that house unaccompanied alien children; annually publishing a State-by-State list of professionals or other entities qualified to provide guardian and attorney services; maintaining statistics on unaccompanied alien children; and reuniting unaccompanied alien children with a parent abroad, where appropriate.

### CHAPTER 3—GENERAL PROVISIONS

#### *Section 441. Abolishment of the INS*

This section abolishes the Immigration and Naturalization Service.

#### *Section 442. Voluntary Separation Incentive Payments*

Subsection (a) defines certain terms for purposes of this section.

Subsection (b) directs the Secretary and the Attorney General to submit a strategic restructuring plan to the appropriate committees of Congress showing how they would restructure their organizations.

Subsection (c) authorizes the Attorney General and the Secretary to make voluntary separation incentive payments to employees subject to certain restrictions.

Subsection (d) requires the Department of Justice and the Department of Homeland Security to remit to the Office of Personnel Management for deposit in the Treasury funds to be credited to the Civil Service Retirement and Disability Fund. The amount to be remitted may be calculated by one of two methods, and provides that those computations are to be calculated based upon separations occurring in a particular fiscal year.

Subsection (e) provides that any individual who receives a voluntary separation incentive payment under this section and accepts compensated employment with the Federal Government within 5 years of receiving such a payment, will be required to repay the total amount of that payment prior to starting work.

Finally, subsection (f) provides that the voluntary separations authorized by this section are not necessarily intended to reduce the total number of employees of the agencies, and clarifies that a covered agency may redeploy positions throughout the agency.

*Section 443. Authority to Conduct a Demonstration Project Relating to Disciplinary Action*

This section authorizes a 5-year demonstration project relating to disciplinary actions. It permits the Attorney General to change policies and procedures regarding methods of disciplining employees in order to improve personnel management. This would ensure discipline for both employee malfeasance and nonfeasance.

The demonstration project must encourage the use of alternative means of dispute resolution, where appropriate, and require expeditious, fair and independent review of disciplinary actions. The amendment provides needed flexibility for managing the new immigration components.

*Section 444. Sense of Congress*

This section expresses the sense of Congress that the missions of the Bureau of Border Security of the Department of Homeland Security and the BCIS are equally important and should be adequately funded, and the functions transferred should not operate at levels below those prior to the transfer.

*Section 445. Reports and Implementation Plans*

This section requires that the Attorney General and the Secretary report to Congress on (1) the transfer of funds between the BCIS and the Bureau of Border Security and (2) the proposed division of personnel between the two agencies.

This section also requires that the Attorney General and the Secretary submit to the Committees on Appropriations and the Judiciary of both the House and Senate 120 days after the enactment of this legislation, and every 6 months thereafter until the end of fiscal year 2005, an implementation plan to carry out the provisions of the legislation. This plan must include details concerning the separation of the BCIS and the Bureau of Border Security specified in the bill.

Finally, this section requires the Comptroller General to report to the aforementioned committees regarding the status of the tran-

sition, the management of the organizations, and whether the BCIS will derive sufficient funds from fees to carry out its functions in the absence of appropriated funds.

*Section 446. Immigration Functions*

This section requires the Attorney General to submit an annual report to the President and the Committees on the Judiciary and Government Reform of the House, and the Committees on the Judiciary and Government Affairs of the Senate on the impact the transfers made by this subtitle has had on immigration functions beginning 1 year after the date of enactment of this legislation. The sections specifies the matter to be included in the annual report.

This section also includes a provision expressing the sense of Congress that the quality and efficiency of immigration services should improve after the transfer, and the Attorney General should take steps to ensure that concerns regarding the quality and efficiency of immigration services are addressed after the effective date of the transfer.

Subtitle C—United States Customs Service

*Section 451. Establishment; Commissioner of Customs*

This section establishes within the Department of Homeland Security the United States Customs Service that will come under the authority of the Under Secretary of Border and Transportation Security. The Customs Service will be headed by a Commissioner of Customs who will be appointed by the President and with the advice and consent of the Senate.

This section also directs the Commissioner will be compensated at the same rate as when that position resided in the Department of Treasury and may continue to serve as the Commissioner of Customs in the Department of Homeland Security until such time as a Commissioner is appointed.

*Section 452. Retention of Customs Revenue Functions by Secretary of Treasury*

Subsection (a) directs the Secretary of the Treasury to retain revenue collecting functions as directed by law and specifies that the Secretary of Treasury may delegate any such authority to the Secretary of Homeland Security. The Secretary of the Treasury is also directed by this section to consult with the Secretary of Homeland Security regarding exercising any such authority not delegated. This section also lists the associated laws related to Customs.

The Select Committee notes that it is not unusual for the Customs Service to implement and enforce laws that by statute are intended to be implemented by entirely different departments; indeed, the Customs Service currently enforces 400 laws on behalf of 40 different agencies. The proposed changes would continue to empower the Secretary of the Treasury to promulgate regulations on a myriad of highly technical trade matters, while leaving it to the new Department of Homeland Security to implement them. In this way, the Department of the Treasury's trade expertise and macroeconomic outlook is retained to address technical trade matters.

Subsection (b) prohibits the Secretary of Homeland Security from reorganizing or decreasing the funding or staffing the Customs

Service revenue functions. The functions documented in this section include: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialists, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, and Financial System Specialists. The Select Committee believes that the revenue-oriented group established under section 451 has unique functions distinct from security functions. It is therefore appropriate to prohibit reductions to this core group and to preserve these critical trade functions.

Subsection (c) authorizes the Secretary of the Treasury to appoint up to 20 new personnel to work with the personnel of the Homeland Security Department in performing revenue functions.

*Section 453. Establishment and Implementation of Cost Accounting System; Reports*

This section requires that the Customs Service to implement a cost accounting system in order to determine and track the use of customer user fees by September 30, 2003. The system will be able to identify merchandise processing fees. The Commissioner of Customs will prepare and submit to the Committee on Ways and Means of the House and the Committee on Finance of the Senate quarterly reports on the progress of implementing such a cost accounting system.

In its recommendations to the Select Committee, the Committee on Ways and Means expressed concern regarding the Customs Service's ability to account for funds spent by the agency. For example, Customs officials assert that the organization spends a certain amount of money on commercial operations. The figure is not based upon the addition of various commercial costs from all operations within the Customs Service, such as the number of people who actually processed entries of merchandise at specific ports during a set period. Instead, the figure is based upon Customs officials' belief that a set percentage of its work is always related to commercial activities. That static percentage is based upon an ad hoc survey conducted by Customs several years ago, and is no longer available. A modern cost accounting system would allow the Customs Service to accurately identify the amount of money spent at specific locations and for specific revenue functions. Therefore, the Select Committee believes that it is appropriate to reform these procedures as the Customs Service is transferred to the Department of Homeland Security.

The Select Committee also notes that such a system would also provide compliance with the core financial system requirements of the Joint Financial Management Improvement Program (JFMIP), which is a joint and cooperative undertaking of the U.S. Department of the Treasury, the General Accounting Office, the Office of Management and Budget, and the Office of Personnel Management working in cooperation with each other and other agencies to improve financial management practices in government. That Program has statutory authorization in the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 65).

*Section 454. Preservation of Customs Funds*

This section provides that Customs fees (with the exception of the merchandise processing fee) must continue to be used for currently authorized functions. Fee receipts may not be transferred to any other agency or office in the Department.

Congress created import fees to help fund critical customs activities. Fees are paid by commercial interests in return for specific commercial services. There have long been concerns about whether Customs can adequately account for the cost of providing commercial services in return for the fees collected. See the discussion in Section 414 above. It would be inappropriate and potentially inconsistent with United States trade obligation for importers to pay fees that subsidize non-commercial functions of the new Department of Homeland Security. For these reasons, the Committee believes that fees should continue to be spent only on activities already defined in 19 U.S.C. 58c.

*Section 455. Separate Budget Request for Customs*

This section directs the President to include a separate budget request for the United States Customs Service. This recommendation is consistent with the overall approach of the Committee in assuring that the core revenue-collecting components of the Customs Service are maintained. Coupled with the cost accounting system that will record expenditures for customs revenue services, this requirement for a separate budget request will ensure that the Committee can continue to oversee that revenue is properly collected and trade is continuing appropriately.

*Section 456. Payment of Duties and Fees*

This section changes the merchandise entry process to authorize monthly billing with a prohibition against deferral of duty past a statutory deadline. This provision will modernize the Customs Service from its antiquated entry-by-entry billing method to a modern monthly billing system as it moves to the Department, with established deadlines to ensure completion.

*Section 457. Definition*

This section defines the term “customs revenue function” to include assessing and collecting all types of duties, fees, and taxes; the processing and denial of entry of persons and goods; enforcing quota, marking, and intellectual property laws; collecting trade data; enforcing trade agreements; functions of certain revenue collecting specialists; and functions of certain revenue collecting support offices.

*Section 458. GAO Report to Congress*

This section provides that the Government Accounting Office will report on all trade functions performed by the Executive Branch within 3 months of the date of enactment of this legislation.

*Section 459. Allocation of Resources by the Secretary*

This section requires the Secretary to maintain the same level of customs revenue service as before the organization was transferred to the Homeland Security Department. The Secretary is required to notify Congress if any decrement to changes or services occur.

*Section 460. Reports to Congress*

This section directs the Secretary to maintain the same reporting requirements to Congress.

*Section 461. Customs User Fees*

This section modifies section 13031(f) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)) to create a separate Treasury account known as the Customs Commercial and Homeland Security Automation Account. In each fiscal year from 2003 through 2005, \$350 million will be deposited into the account to develop and implement an Automated Commercial Environmental computer system to process the merchandise that is imported and released into the United States. After 2006 the Secretary of Treasury may adjust fees.

## TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

*Section 501. Under Secretary for Emergency Preparedness and Response*

This section specifies primary responsibilities of the Under Secretary of Emergency Preparedness and Response. These include: helping to ensure the preparedness of emergency response providers for terrorist attacks, major disasters, and other emergencies; establishing standards, conducting exercises and training, evaluating performance, and providing funds in relation to the Nuclear Incident Response Team; providing the Federal government's response to terrorist attacks and major disasters; aiding the recovery from terrorist attacks and major disasters; working with other Federal and non-Federal agencies to build a comprehensive national incident management system; consolidating existing Federal government emergency response plans into a single, coordinated national response plan; and developing comprehensive programs for developing interoperable communications technology and ensuring that emergency response providers acquire such technology. The responsibility of providing the Federal government's response to terrorist attacks and major disasters includes a number of specific functions including: coordinating the overall response, directing the Domestic Emergency Support Team, the Strategic National Stockpile, the National Disaster Medical System, and the Nuclear Incident Response Team, overseeing the Metropolitan Medical Response System and coordinating other Federal response resources.

The Select Committee emphasizes that the Under Secretary is still required to perform all non-homeland security functions transferred to the Department.

*Section 502. Functions Transferred*

This section identifies agencies and functions relevant to emergency preparedness and response that are to be transferred to the Department of Homeland Security. These include: the Federal Emergency Management Agency, except for the Office of National Preparedness which reports to the Deputy Secretary for Border and Transportation Security; the Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System of the Department of Health and Human Serv-

ices; and the Strategic National Stockpile of the Department of Health and Human Services.

The Integrated Hazard Information System (not including personnel) of the Department of Defense to the Department of Homeland Security so that the latter would have a near real-time capability to detect wild fires in North America.

*Section 503. Nuclear Incident Response*

This section authorizes the Secretary, in connection with an actual or threatened terrorist attack, major disaster, or other emergency, to call certain elements of the Department of Energy and the Environmental Protection Agency into service as an organizational unit of the Department of Homeland Security. While so operating, these elements would be subject to the direction, authority, and control of the Secretary of Homeland Security. This grant of authority to the Secretary would not limit the ordinary responsibility of the Secretary of Energy and the Administrator of the Environmental Protection Agency for organizing, training, equipping, and using the elements from their respective agencies, or from exercising ordinary direction, authority, and control over these elements. Current Department of Energy contracts that may contain an indemnification provision for elements of the Nuclear Incident Response Team will remain in effect for the duration of the contract whether the Team is operating under the direction of the Secretary of Energy or the Secretary of Homeland Security.

In adopting this section, the Select Committee does not intend to disrupt the traditional response functions of these DOE and EPA teams. Except as specifically directed by the Secretary of Homeland Security in connection with an actual or threatened terrorist attack, major disaster, or other emergency, the Administrator of the EPA and the Secretary of Energy will continue to exercise control of their respective entities in the Nuclear Incident Response Team for responding to emergencies and other incidents. For example, the radiological and emergency response team at EPA has previously responded to emergencies at Hanford Nuclear Reservation in Washington, and Los Alamos, New Mexico. Similarly, DOE's radiological assistance teams often deploy at the request of State or local officials to investigate potential radiation exposures or contamination events. The Select Committee intends that DOE and EPA to continue to exercise their responsibilities to respond to these kinds of events as in the past, without the need for direction by the Secretary of Homeland Security.

*Section 504. Definition*

This section defines the term "Nuclear Incident Response Team" for the purpose of this title to mean those entities in the Department of Energy and the Environmental Protection Agency that could be called into service as a unit of the Department of Homeland Security.

*Section 505. Conduct of Certain Public-Health Related Activities*

This section provides that, with respect to all public health-related activities to improve State, local, and hospital preparedness and response to chemical, biological, radiological and other emerging terrorist threats carried out by the Department of Health and



Human Services, the Secretary of Health and Human Services will set priorities and preparedness goals and further develop a coordinated strategy for such activities in collaboration with the Secretary of Homeland Security. Subsection (b) further provides for the collaborative development of specific benchmarks and outcome measurements for evaluating progress toward the relevant priorities and goals.

The Select Committee believes, however, that the Secretary of Health and Human Services must maintain the primary role in public health preparedness. This section leaves all operational and implementation responsibilities for such activities with the Secretary of Health and Human Services. All relevant legal authorities and functions under the Public Health Service Act and any other Act administered by the Secretary of Health and Human Services remain with that Secretary. This would include, among other items, the authority to declare public health emergencies and issue grants and contracts.

#### TITLE VI—MANAGEMENT

##### *Section 601. Under Secretary for Management*

This section specifies primary responsibilities of the Under Secretary for Management. These include: budget and fiscal matters; procurement; human resources and personnel; information technology and communications systems; facilities, property, equipment, and other material resources; security for personnel, information technology and communications systems and material resources; identification and tracking of performance measures; grants and other assistance management programs; the transition and reorganization process including development of a transition plan; the conduct of internal audits and management analysis; and other management duties that may be assigned by the Secretary.

The Under Secretary for Management is also responsible for maintenance of all immigration statistics. Accordingly, the following agencies and functions are transferred to the Under Secretary for Management: all functions performed by the Statistics Branch of the Office of Policy Planning of the Immigration and Naturalization Service with respect to the following programs: The Border Patrol program, the detention and removal program, the intelligence program, the investigations program, and the inspections program.

##### *Section 602. Chief Financial Officer*

This section establishes the position of the Chief Financial Officer who will report to the Secretary or another departmental official as directed by the Secretary.

##### *Section 603. Chief Information Officer*

This section establishes the position of the Chief Information Officer who will report to the Secretary or another departmental official as directed by the Secretary.

*Section 604. Establishment of an Office for Civil Rights and Civil Liberties*

The Select Committee believes that protecting the privacy rights of United States citizens requires additional protection and oversight to encourage the Department of Homeland Security to maintain and practice the highest standards in protecting Constitutional liberties. Accordingly, this section establishes an Office for Civil Rights and Civil Liberties. The Director of the Office will review and assess information alleging civil rights, civil liberty and racial and ethnic profiling violations by employees and offices of the Department. The Director will also report to Congress on a semi-annual basis any allegations of abuses and corrective actions taken by the Department.

TITLE VII—MISCELLANEOUS

Subtitle A—Inspector General

*Section 701. Authority of the Secretary*

This section places the Inspector General of the Department of Homeland Security under the authority of the Secretary with respect to audits or investigations, or issuance of subpoenas that require access to sensitive information concerning intelligence, counterintelligence, or counterterrorism matters; ongoing criminal investigations or proceedings; undercover operations; identity of confidential sources, including protected witnesses; other matters, the disclosure of which would, in the Secretary's judgment, threaten the protection of any person or property authorized protection by section 3056 of title XVIII, section 202 of title III, or any provision of the Protection Assistance Act of 1976; or other matters, the disclosure of which would, in the Secretary's judgment, threaten national security. This authority is similar to that given the heads of other departments which routinely handle sensitive information, such as the Departments of Defense, Justice, Treasury, and the Central Intelligence Agency.

This section also provides the Secretary may also prohibit the Inspector General from carrying out or completing any audit, investigation, or subpoena issuance initiated by the Inspector General if the Secretary determines that the prohibition is necessary to prevent the disclosure of any information described in subsection (a), to preserve the national security, or prevent impairment to U.S. interests. If the Secretary exercises any power under this section, he must notify the Inspector General in writing, stating his reasons. Within 30 days after receipt of that notice, the Inspector General must transmit a copy of the notice and his written response stating whether the Inspector General agrees or disagrees with the Secretary's action, and the reasons for any disagreement to Congress. Additionally, the right of Congress to access any information is not limited by the Secretary's authority under this section.

Section 701 further provides oversight responsibility by the Inspector General for investigations performed by the U.S. Customs Service Office of Internal Affairs, and the Secret Service Office of Inspections.

## Subtitle B—United States Secret Service

*Section 711. Secret Service Transferred*

This section transfers the functions, personnel, assets, and obligations of the Secret Service to the Secretary, to be maintained as a distinct entity within the Department. This includes the functions of the Secretary of the Treasury related thereto.

## Subtitle C—Critical Infrastructure Information

*Section 721. Short Title*

This section provides the short title of this subtitle, the “Critical Infrastructure Information Act of 2002.”

*Section 722. Definitions*

This defines the terms used in this subtitle.

*Section 723. Designation of Critical Infrastructure Protection Program*

This section provides that only the President or the Secretary of Homeland Security may designate a critical infrastructure protection program.

*Section 724. Protection of voluntarily shared critical infrastructure information*

This section exempts from disclosure under the Freedom of Information Act certain critical infrastructure information that is voluntarily submitted to a covered Federal agency regarding the security of critical infrastructure and protected systems when accompanied by a written statement identifying the material as critical infrastructure information.

This section provides that covered information will not be subject to agency rules or judicial doctrine regarding ex-parte communications, nor used directly in civil actions if that information is submitted in good faith. Further, this critical infrastructure information will not be used or disclosed by any Federal employee except to further criminal investigation or prosecution or to disclose the information to Congress or the General Accounting Office.

If the critical infrastructure information under this provision is provided to a State or local government, it may not be made available pursuant to any State or local law requiring disclosure of information or records; otherwise be disclosed by a State or local government without written consent of the entity submitting the information; or be used other than to protect critical infrastructure, or to further criminal investigation or prosecution.

Disclosure of information under this section does not constitute waiver of legal privilege or protection, such as trade secret protection. Communications of critical infrastructure information under this subtitle are not subject to the requirements of the Federal Advisory Committee Act.

Nothing in this section limits the ability of Federal, State, or local government entities, or any third party, to obtain critical infrastructure information in a manner not covered by subsection (a) of this section.

Voluntary submittal of information protected from disclosure by this subtitle does not constitute compliance with any requirement to submit such information to a Federal agency under other law. The Secretary of Homeland Security is to consult with the National Security Council and the Office of Science and Technology Policy to establish uniform procedures for the receipt, care, and storage by Federal agencies of critical infrastructure information voluntarily submitted to the government. Unauthorized disclosures of critical infrastructure information by any U.S. employee may be punished by fines, imprisonment up to one year, and removal from employment.

This section also provides the Federal Government with authority to advise, alert, and warn relevant companies, targeted sectors, other governmental entities, or the general public regarding threats to critical infrastructure. In issuing a warning, the Federal Government must protect from disclosure the source of any voluntarily submitted critical infrastructure information that forms the basis for the warning, or information that is proprietary, business sensitive, or otherwise not appropriately in the public domain.

*Section 725. No Private Right of Action*

This section clarifies that this subtitle creates no private right of action to enforce any provision of this subtitle.

The Select Committee intends that subtitle C only protect private, security-related information that is voluntarily shared with the government in order to assist in increasing homeland security. This subtitle does not protect information required under any health, safety, or environmental law.

Subtitle D—Acquisitions

*Section 731. Research and Development Projects*

This section gives the Secretary the authority to carry out a pilot program with streamlined procedures for the acquisition of goods and services that the Secretary determines are essential to the Department's mission of fighting terror. It would provide the Secretary with enhanced, but specifically defined, flexibilities while maintaining adequate safeguards. The provisions are based on procedures that are currently part of the Government's acquisition system such as micro purchases, simplified acquisition procedures, and special simplified commercial item acquisitions. The procedures are in the current version of part 13 of the government-wide Federal Acquisition Regulation. The Department is to use current government-wide authorities for its "normal" procurements.

*Section 732. Personal Services*

The Secretary may hire, on a temporary or intermittent basis, the services of experts or consultants in accordance with section 3109 of title 5, United States Code. In the case of an urgent homeland security need, the Secretary may procure such services (not to exceed one year) without regard to the pay limitations in section 3109 of title 5.

*Section. 733. Special Streamlined Acquisition Authority*

Subsection (a) expands the coverage of these streamlined procedures only after the Secretary for Homeland Security or a Senate confirmed official of the Department determines in writing that pursuant to that the terror-fighting mission of the new Department would be seriously impaired without the use of the streamlined procedures. The Secretary would further have to notify the House Government Reform and Senate Governmental Affairs Committees of the determination.

Subsection (b) raises the current \$2,500 “micro purchase” threshold for the use of government credit cards to \$5,000 for a limited number of government employees to help fight terror. The Department would be required to carefully monitor the use of these special cards.

Subsection (c) raises the current \$100,000 simplified acquisition threshold, for procurements to fight terror, to \$175,000. These simplified procedures would allow officials of the new Homeland Security Department greater discretion in selecting the most advantageous offer and do away with arbitrary “notice and wait” periods.

Subsection (d) permits the application of current streamlined commercial acquisition procedures and statutory waivers applicable to commercial items to non-commercial goods and services to help fight terror. In addition, the \$5 million ceiling on the use of streamlined commercial procedures would be raised to \$7.5 million for the purchase of these goods and services. The streamlined commercial acquisition procedures that were created under the Clinger-Cohen Act of 1996 would be applied to purchases of all items used to fight terror. In order to attract cutting edge firms to join the government market under this authority government-unique certification and audit provisions would be waived. Adequate safeguards would be maintained by restrictions against the use of sole-source contracts and a requirement that maximum practicable competition be obtained.

Subsection (e) requires the Comptroller General to submit a detailed report on the use of the authorities provided in this section to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives not later than 180 days after the end of fiscal year 2005.

*Section 734. Procurements from Small Business*

This section establishes in the Department an Office of Small and Disadvantaged Business Utilization. This office will be managed in the manner described in the Small Business Act (15 U.S.C. 644(k)).

Subtitle E—Property

*Section 741. Department Headquarters*

This section requires the Administrator of General Services to construct a public building to serve as headquarters for the Department. The project would be subject to the requirements of the Public Buildings Act of 1959.

Site selection is to give preference to land parcels that are Federally owned. The Administrator is to make the headquarters facility and other Government-owned or leased facilities available to the

Secretary pursuant to section 210 of the Federal Property and Administrative Services Act of 1949. This section authorizes appropriations to the Secretary such amount as may be necessary to pay the annual charges for General Services Administration furnished space and services.

Subtitle F—Support Anti-terrorism by Fostering Effective  
Technologies Act of 2002 (the SAFETY Act)

The Select Committee believes that technological innovation is the Nation's front-line defense against the terrorist threat. Unfortunately, the Nation's products liability system threatens to keep important new technologies from the market where they could protect our citizens. In order to ensure that these important technologies are available, the Select Committee believes that it is important to adopt a narrow set of liability protections for manufacturers of these important technologies.

*Section 751. Short Title*

This section provides the short title of this subtitle, the "Support Anti-terrorism by Fostering Effective Technology Act of 2002" or the "SAFETY Act".

*Section 752. Administration*

Subsection (a) provides that the Secretary will be responsible for the administration of this provision.

Subsection (b) provides that the Secretary may designate anti-terrorism technologies that qualify for protection under the system of risk management set forth in this provision in accordance with criteria that must include, but not be limited to, the following: (1) prior and extensive United States government use and demonstrated substantial utility and effectiveness; (2) availability of the technology for immediate deployment in public and private settings; (3) existence of extraordinarily large or extraordinarily unquantifiable potential third party liability risk exposure to the seller or other provider of such anti-terrorism technology; (4) substantial likelihood that such anti-terrorism technology will not be deployed unless protections under the system of risk management provided under this Act are extended; (5) magnitude of risk exposure to the public if such anti-terrorism technology is not deployed. (6) evaluation of all scientific studies that can be feasibly conducted in order to assess the capability of the technology to substantially reduce risks of harm.

Subsection (c) provides that the Secretary may issue such regulations, after notice and comment in accordance with section 553 of title 5, United States, Code, as may be necessary to carry out this provision.

*Section 753. Litigation Management*

Subsection (a)(1) provides that there a Federal cause of action will exist for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against such act and such claims result or may result in loss to any person or entity that sells or otherwise provides a qualified anti-terrorism technology to non-Federal government customers (the Seller). The substantive law for decision in

any such action shall be derived from the law, including choice of law principles, of the State in which such acts of terrorism occurred, unless such law is inconsistent with or preempted by Federal law.

Subsection (a)(2) provides that such appropriate district court of the United States will have original and exclusive jurisdiction over all actions for any claim for loss of property, personal injury, or death arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against such act and such claims result or may result in loss to the Seller.

Subsection (b) provides that in an action brought under this section for damages: (1) no punitive damages intended to punish or deter, exemplary damages, or other damages not intended to compensate a plaintiff for actual losses may be awarded, nor shall any party be liable for interest prior to the judgment; and (2) noneconomic damages may be awarded against a defendant only in an amount directly proportional to the percentage of responsibility of such defendant for the harm to the plaintiff, and no plaintiff may recover noneconomic damages unless the plaintiff suffered physical harm. "Noneconomic damages" means damages for losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and any other nonpecuniary losses.

Subsection (c) provides that any recovery by a plaintiff in an action under this subsection shall be reduced by the amount of collateral source compensation, if any, that the plaintiff has received or is entitled to receive as a result of such acts of terrorism that result or may result in loss to the Seller.

Subsection (d)(1) provides that, should a product liability lawsuit be filed for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in (2) and (3) of this section (e), have been deployed in defense against such act and such claims result or may result in loss to the Seller, there will be a rebuttable presumption that the government contractor defense applies in such lawsuit. This presumption will only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology under this subsection (e). This presumption of the government contractor defense will apply regardless of whether the claim against the Seller arises from a sale of the product to Federal government or non-federal government customers.

Subsection (d)(2) provides that the Secretary will be exclusively responsible for the review and approval of anti-terrorism technology for purposes of establishing a government contractor defense in any product liability lawsuit for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in (2) and (3) of this section (e), have been deployed in defense against such act and such claims result or may result in loss to the Seller. Upon Seller's submission to the Secretary for approval of anti-terrorism technology, the Secretary will conduct a comprehensive re-

view of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended. The Seller will conduct safety and hazard analyses on such technology and will supply the Secretary with all such information.

Subsection (d)(3) provides that for those products reviewed and approved by the Secretary, the Secretary will issue a certificate of conformance to the Seller and place the product on an Approved Product List for Homeland Security.

Subsection (e) provides that nothing in this section shall in any way limit the ability of any person to seek any form of recovery from any person, government, or other entity that (1) attempts to commit, knowingly participates in, aids and abets, or commits any act of terrorism, or any criminal act related to or resulting from such act of terrorism; or (2) participates in a conspiracy to commit any such act of terrorism or any such criminal act.

#### *Section 754. Risk Management*

Subsection (a)(1) provides that any Seller must obtain liability insurance of such types and in such amounts as required in accordance with this section to satisfy otherwise compensable third party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against such act.

Subsection (a)(2) provides that for the total claims related to one such act of terrorism, the Seller is not required to obtain liability insurance of more than the maximum amount of liability insurance reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of Seller's anti-terrorism technologies.

Subsection (a)(3) provides that liability insurance obtained pursuant to this subsection (a) shall, in addition to the Seller, protect the following, to the extent of their potential liability for involvement in the manufacture, qualification, sale, use or operation of qualified anti-terrorism technologies deployed in defense against an act of terrorism: contractors, subcontractors, suppliers, vendors and customers of the Seller; and contractors, subcontractors, suppliers and vendors of the customer.

Subsection (a)(4) provides that such liability insurance under this section shall provide coverage against third party claims arising out of, relating to, or resulting from the sale or use of anti-terrorism technologies.

Subsection (b) provides that the Seller must enter into a reciprocal waiver of claims with its contractors, subcontractors, suppliers, vendors and customers, and contractors and subcontractors of the customers, involved in the manufacture, sale, use or operation of qualified anti-terrorism technologies, under which each party to the waiver agrees to be responsible for losses, including business interruption losses, that it sustains, or for losses sustained by its own employees resulting from an activity resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against such act.

Subsection (c) provides that, notwithstanding any other provision of law, liability for all claims against a Seller arising out of, relating to, or resulting from an act of terrorism when qualified anti-



terrorism technologies have been deployed in defense against such act and such claims result or may result in loss to the Seller, whether for compensatory or punitive damages or for contribution or indemnity, shall not be in an amount greater than the limits of liability insurance coverage required to be maintained by the Seller under this section.

*Section 755. Definitions*

This section defines terms used in this subtitle.

Subtitle G—Other Provisions

*Section 761. Establishment of Human Resources Management System*

Section 761 adds a new “Chapter 97—Department of Homeland Security” to subpart I of part III of title 5, United States Code.

This new chapter authorizes the Secretary of Homeland Security, in regulations prescribed jointly with the Director of the Office of Personnel Management, to establish and, from time to time, adjust a human resource management system for some or all organizational units of the Department of Homeland Security. The section requires that any human resource management system established pursuant to this section be flexible, contemporary, and not waive, modify, or otherwise affect the public employment principles of merit and fitness set out in section 2301 of title 5 of the United States Code, including the principles of hiring based upon merit, fair treatment without regard to political affiliation or other non-merit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing.

This section also ensures that employees of the Department will be protected by law against the prohibited personnel practices set out section 2302 of title 5 of the United States Code by explicitly providing that any human resource management system developed under this section may not permit any employee of the Department who is engaged in any personnel action to discriminate on the basis of race, color, religion, sex, or national origin, age, handicapping condition, marital status, or political affiliation.

This section also prohibits certain other practices, by incorporating them by reference. They include: soliciting or considering any recommendation or statement with respect to any individual under consideration for any personnel action unless that statement is based on the personal knowledge or records of the person making the statement and it consists of performance ability aptitude or qualifications of such individual or an evaluation of the character, loyalty, or suitability of such individual; coercion of political activity of any person or taking any reprisal for refusal to engage in political activity; deceiving or obstructing any person’s right to compete for employment, or influencing any person to withdraw from competition for any position for the purpose of improving the chances of another.

Section 9701(b)(4) of the amendment ensures that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them. The latter provision is subject to any exclusion from coverage or limitation on negotiability established by law. In addition, this sub-

section permits the Secretary, through regulations promulgated jointly with the Director of the Office of Personnel Management, to exclude certain employees from the Federal Labor Management Relations Act if such employees are engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security. This provision, in effect, grants the Secretary authority to exclude from coverage individual employees within the Department, in addition to the President's existing authority to exclude entire agencies or subdivisions.

The following chapters of title 5 are eligible for adjustment during the Department's process of developing a human resource system under the chapter added by this section: chapter 43, Performance Appraisal; chapter 51, Classification; chapter 53, Pay Rates and Systems; chapter 71, Labor Management Relations (except as to employee rights to organize, collectively bargain and participate in union organizations as set out above); chapter 75, Adverse Actions; and chapter 77, Appeals.

Section 761 also places limitations on the authority of the Department to modify the pay of Executive Level and other highly compensated employees beyond certain limits referenced in subsection (d) of the new section 9701 of title 5.

Authority to develop new regulations to carry out the flexible human resource management system development activities authorized by this section ceases to be available 5 year after the date of enactment of this section. Regulations in effect prior to the end of 5 years after enactment would remain in force, pending further change in law.

It is the intention of the Select Committee that all interested stakeholders have the opportunity to collaborate in the development of the human resource management systems provided for in this section.

#### *Section 762. Advisory Committees*

This section authorizes the Secretary to establish, appoint, and use the services of advisory committees. The section gives the Secretary authority to exempt these advisory committees from the Federal Advisory Committee Act (Public Law 92-463), but the Secretary must announce the establishment of such a committee in the Federal Register, identifying its purpose and membership. Special government employees (within the meaning of 18 U.S.C. 202) serving on such exempt committees are eligible for certification under 18 U.S.C. 208(b)(3).

#### *Section 763. Reorganization; Transfer of Appropriations*

This section authorizes the Secretary to allocate or reallocate functions among the Department officers and to establish, consolidate, alter, or discontinue organizational units with the Department pursuant to the reorganization plan provided for in section 802 or 60 days after providing notice to the appropriate Congressional Committees. Such notice must include an explanation of the rationale for the action.

Subsection (b) of this section authorizes the Secretary to transfer not more than 2 percent of any appropriation available to the Secretary between such appropriations. Before any such transfer is made not less than 15 days notice must be given to the Committees

on Appropriations of the House and Senate. This transfer authority expires 2 years after enactment.

Any reorganization pursuant to a reorganization plan as provided in section 802 may not include the abolition of any agency or function required to be maintained as a separate entity or function by this legislation, and any reorganization pursuant to a notice to Congress 60 days in advance of the reorganization may not include the abolition of any agency or function required to be maintained as a separate entity or function by statute.

*Section 764. Miscellaneous Authorities*

Subsection (a) provides that the Department will have a seal, whose design is subject to Presidential approval.

Subsection (b) gives the Secretary the same authorities that the Attorney General has with respect to the Department of Justice with regard to gifts, devises, and bequests.

Subsection (c) gives the Secretary the same authorities that the Secretary of Transportation has with respect to the Department of Transportation with regard to participation of members of the Armed Forces.

Subsection (d) provides that any function delegated under this legislation may be redelegated to a subordinate.

*Section 765. Military Activities*

This section clarifies that nothing in this bill confers authority upon the Secretary to engage in war-fighting, military defense of the United States, or other military activities. This section further clarifies that nothing in this bill limits the authority of the Defense Department or the Armed Forces to engage in war-fighting, military defense of the United States or other military activities.

*Section 766. Regulatory Authority*

This section provides a rule of construction regarding the transfers of authority made by the legislation. Importantly, this rule of construction ensures that, with respect to regulatory authority, this legislation does not establish that authority for the Secretary, except to the extent that a function transferred to the Secretary pursuant to this bill includes that regulatory authority. This section also ensures that the legislation does not alter or diminish the regulatory authority of any other executive agency, except to the extent that this legislation transfers that authority from the agency. This section also clarifies that regulatory authority transferred to the Secretary exclusively resides with the Secretary, and the agency from which the authority was transferred can no longer exercise that authority.

*Section 767. Provisions Regarding Transfers from Department of Energy*

Section 767 provides the Secretary of Homeland Security may establish a primary center for carrying out the RDT&E activities of the Department of Homeland Security at a national laboratory of the National Nuclear Security Administration. This subsection would also provide for the establishment of secondary centers at one or more national laboratories of the Department of Energy. While the Select Committee does not specify which laboratory will

serve as this center, the committee understands that the Administration initially proposed Lawrence Livermore National Laboratory as the preferred site for this activity. Secondary centers would be established at the discretion of the Secretary of Homeland Security with the concurrence of the Secretary of Energy. It is the intent of the Select Committee to give the Secretary of Homeland Security and the Secretary of Energy the flexibility to organize and consolidate facilities and assets in a manner that is advantageous to the execution of their respective missions, consistent with the transfer of functions described in this Act. The committee expects this consolidation to occur within the existing infrastructure of the national laboratories, and for nothing in this section to be construed as authorization for new construction.

This section clarifies how the transfers of authority from the Department of Energy (DOE) to the Department of Homeland Security will occur with respect to the activities being carried out for DOE by its national laboratories. In these circumstances, the two Secretaries will ensure that the contracts between the DHS and the operators of the national laboratories are separate from the general management contracts between DOE and the operators of the national laboratories. Given that the national laboratories performing work for the Department of Homeland Security may continue to utilize DOE facilities, this section further provides that the new Department will reimburse DOE for costs relating to those activities. However, the DHS will not be required to pay administrative or personnel costs of DOE or its contractors in excess of the amount that the Secretary of Energy normally pays for an activity carried out by that contractor. Through this provision, the Select Committee intends to permit direct tasking of the national laboratories by the DHS with respect to those transferred activities.

The Select Committee wishes to convey special intent with the choice of the word “center”. The Select Committee believes that there is great value for the Department of Homeland Security in establishing and physically consolidating, within the national laboratories, a critical mass of talent and technology whose primary focus and application is homeland security. At the same time, the committee recognizes that, due to the unique nature of some facilities, it will not be possible in all cases to achieve such a consolidation.

The Select Committee believes homeland security programs should be executed under separate contracts with the Department of Homeland Security. The Select Committee believes that separate contracts will ensure proper focus on the Secretary of Homeland Security’s unique priorities and expects the Department of Homeland Security to take advantage of the unique opportunity to stand up a new organizational structure and establish a streamlined process for managing these contracts, with clearly defined responsibilities and accountability. A small headquarters organization can focus on policy, budgeting, technical objectives, and strategic planning for research and development, with responsibility for day-to-day oversight of contract activities delegated to site offices. The committee sees no need for intermediate levels of federal management; nor does it see a need for the Department of Homeland Security to generate detailed guidance for its contractors on how to conduct RDT&E activities.

The Select Committee recognizes that certain activities the Department of Homeland Security may wish to conduct at a Department of Energy national laboratory might be of limited scope or duration. In such cases, it may be more advantageous for the Department of Homeland Security to conduct those activities on a reimbursable “work-for-others” basis, rather than through a separate contract. In such a circumstance, subsection 305(c) would waive the Department of Energy “added factor” for pass through of funds from the Department of Homeland Security to the national laboratory. It would further stipulate that personnel costs charged to the program for laboratory contractors could not exceed those that the Secretary of Energy authorizes for Department of Energy programs at that same laboratory. In other words, this subsection would prevent higher personnel costs or pass through charges, as is common practice, for future work performed by the Department of Energy for the Department of Homeland Security on a work-for-others basis.

The Select Committee understands the value of laboratory-directed research and development, but believes that funds should be expended for the purpose for which they are authorized and appropriated by Congress. Section 307 would require that any laboratory-directed research and development projects undertaken at a national laboratory of the Department of Energy, with funds derived from the Department of Homeland Security, shall support the mission of the Department of Homeland Security. This section would prevent the use of Department of Homeland Security funds for self-directed research that is not relevant to homeland security.

This section would also require the Secretary of Energy to coordinate with the Secretary of Homeland Security to ensure that homeland security-related RDT&E activities undertaken by the Department of Energy are not duplicative of Department of Homeland Security efforts. Specifically, the committee cautions the Department of Energy against requesting funds in future budget submissions for functions that have been assumed by the Department of Homeland Security.

*Section 768. Counternarcotics Officer*

This section requires the Secretary to appoint a senior Department official to assume primary responsibility for coordinating policy and operations within the Department and with other Federal Departments and agencies with respect to illegal drug interdiction, and tracking and severing connections between illegal drug trafficking and terrorism.

*Section 769. Office of International Affairs*

This section establishes an Office of International Affairs headed by a director appointed by the Secretary. The office is established within the Office of Secretary. The Director’s duties are to promote information and education exchange with nations friendly to the United States to promote sharing of best practices and technologies relating to homeland security, including joint research and development on countermeasures, joint training of first responders, and expertise exchange on terrorism prevention, response, and crisis management. The Director’s duties under this section also include identifying areas for homeland security information and training ex-

change where the United States has a demonstrated weakness and another friendly nation or nations have demonstrated expertise; planning and undertaking international conferences, exchange programs, and training activities; and managing international activities within the Department in coordination with other Federal officials responsible for counter-terrorism.

*Section 770. Prohibition of the Terrorism Information and Prevention System*

This section prohibits all Federal activities to implement the proposed component program of the Citizen Corps known as Operation TIPS (Terrorism Information and Prevention System). This program was designed to recruit private citizens to report “suspicious” activities of other individuals so that these reports could be gathered and recorded in a centralized database.

*Section 771. Review of Pay and Benefit Plans*

This section requires the Secretary, with the Director of the Office of Personnel Management, to review the pay and benefit plans of each agency transferred to the Department of Homeland Security and, within 90 days of enactment, to submit a plan to Congress to eliminate disparities in pay and benefits throughout the Department, especially among law enforcement personnel. This plan must be consistent with the merit system principles at 5 U.S.C. 2301.

*Section 772. Role of the District of Columbia*

This section requires the Secretary to cooperate with the District of Columbia government to integrate the District into the planning, coordination, and execution of Federal government activities for the enhancement of domestic preparedness against the consequences of terrorists attacks.

*Section 773. Transfer of the Federal Law Enforcement Training Center*

This section transfers the Federal Law Enforcement Training Center (FLETC) to the Department of Justice from the Department of the Treasury. The FLETC was established in 1970 to provide an interagency law enforcement training program to train Federal, State, local, and foreign law enforcement entities. FLETC’s transfer to the Department of Justice assures a greater level of consistency and coordination of Federal law enforcement training procedures under the direction of the Nation’s chief law enforcement officer, the Attorney General.

TITLE VIII—TRANSITION

Subtitle A—Reorganization Plan

*Section 801. Definitions*

This section defines the terms “agency” and “transition period”.

*Section 802. Reorganization Plan*

This section directs the President to submit to the appropriate congressional committees a reorganization plan not later than 60 days after enactment of this bill. The intent of this section is to en-

sure Congress has adequate opportunity to insure that the transfer of agencies and functions is being carried out consistent with the intent of this legislation. This section also directs the plan to include the transfer of agencies, personnel, assets and obligations to the Department and any consolidation, reorganization, or streamlining of organizations transferred to the Department.

Plan elements, as specified by this section, include: identification of any functions of agencies transferred to the Department as this bill directs that will not be transferred to the Department; specific steps taken by the Secretary to organize the Department, including delegation or assignment of functions to officers of the Department; the amount of funds that will be transferred to the Department; the amount of the proposed allocations within the Department of unexpended funds transferred in connection with transfers to the Department, the proposed disposition of property, facilities, contracts, records and other assets and obligations of agencies transferred under the plan; the proposed allocations within the Department of the functions of the organizations that are not related directly to securing the homeland.

This section also allows the President, after consultation with appropriate Congressional Committees, to modify or revise any part of the plan until that portion of the plan becomes effective. The reorganization plan becomes effective for an agency on the date specified in the plan (but not earlier than 90 days after the President submits the plan to Congress) or the end of the transition plan. This section does not require transfers to occur on a single date.

#### Subtitle B—Transitional Provisions

##### *Section 811. Transitional Authorities*

This section directs officials having authority over agencies or functions that will transfer to the Department of Homeland Security to assist the Secretary during the transition and integration periods including the use of personnel and assets the Secretary may request. This section also permits the head of any executive agency, at the request of the Secretary of Homeland Security, on a reimbursable basis, to provide services or detail personnel to assist with the transition.

This bill also directs the President to transfer to the Secretary funds for two purposes. The President is authorized to transfer no more than two percent of the unobligated balance of any appropriation for an agency enacted prior to October 1, 2002 for administrative expenses related to establishing the Department until the agency transfers to the Department. The President is also authorized to transfer funds for the purposes for which they were appropriated, not to exceed three percent of the unobligated balance of any appropriation available to that agency. The Committees on Appropriations of the House and the Senate will be notified not less than 15 days before any such funds are transferred.

This section also allows the President to designate incumbents in organizations being transferred who are currently in advice and consent positions, to act in the same capacity during the transition period, until the position is filled as provided for in this legislation. These officials will be compensated at the higher of the rates provided in this bill or for the offices held at the time of designation.

All personnel, assets, and obligations of a designated agency will transfer to the Secretary, subject to the approval of the Director of the Office of Management and Budget and in accordance with section 1531(a)(2) of title 31 United States Code. The Secretary will have all the functions related to the agency being transferred and additional functions as enumerated in this bill.

This section expressly prohibits the transfer and use of funds by the Secretary of Homeland Security from the following transportation trust funds: Highway Trust Fund, Airport and Airway Trust Fund, Inland Waterway Trust Fund, Harbor Maintenance Trust Fund, or Oil Spill Liability Trust Fund. This limitation does not apply to security-related funds provided to the Federal Aviation Administration prior to fiscal year 2003 for operations, facilities and equipment, or research, engineering and development. The Select Committee believes that national security costs should be funded by the general fund, not the transportation trust funds that should be used to maintain transportation systems.

#### *Section 812. Savings Provisions*

This section directs that all orders, determinations, rules, regulations, permits, grants, loans, contracts, agreements, personnel actions, and certificates, that have been issued, made, granted, or allowed to become effective by an agency that are in effect on the date of that transfer (or become effective after such date pursuant to their terms as in effect on such effective date), will continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by, an officer of the United States, a court of competent jurisdiction, or operation of law.

This section directs that any pending proceedings in an agency including notices of proposed rulemaking, and applications for licenses, permits, certificates, grants, and financial assistance will not be affected by enactment of this legislation or the transfer of the agency to the Department unless discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this transfer had not occurred.

Subject to the authority of the Secretary as specified in this legislation, pending civil actions will not be affected by this bill or the transfer of an agency to the Department. All matters will be adjudicated in the same manner and with the same effect as if such enactment or transfer had not occurred.

All references relating to an agency that is transferred to the Department in statutes, Executive Orders, rules, regulations, directives, or delegations of authority that preceded the transfer or effective date of this bill shall continue to apply to the Department following such a transfer if they refer to the agency by name.

Additionally, the Secretary may, in regulations prescribed jointly with the Director of the Office of Personnel Management, adopt the rules, procedures, terms and conditions, established by statute, rule, or regulation before the effective date of this legislation, relating to employment in any agency transferred to the Department. Unless otherwise specified, the terms and conditions of employment, including compensation for personnel transferred to the Department will not be altered.



*Section 813. Terminations*

This section directs that once all the functions of an agency have transferred to the Department as directed by this bill, then those positions and offices that were authorized to receive compensation at level II, III, IV, or V of the Executive Schedule in the predecessor agency will terminate.

*Section 814. Incidental Transfers*

This section authorizes and directs the Director of the Office of Management and Budget, in consultation with the Secretary, to make additional incidental dispositions of personnel, assets, and obligations held, or used, or to be made available, in connection with the functions transferred by this legislation to accomplish the purposes of this bill.

*Section 815. National Identification System Not Authorized*

This section clarifies that nothing in the bill authorizes the Federal government to promote, develop or implement national standards for an identification system or card. Authority to design and issue identification cards and systems (such as drivers' licenses) will remain with the States.

*Section 816. Continuity of Inspector General Oversight*

This section directs the Inspector General that exercised oversight of an agency prior its transfer to the Department of Homeland Security to continue to provide oversight of that agency until an Inspector General is appointed for the Department.

*Section 817. Reference*

This section directs that any references to laws, functions, personnel, the reorganization plan in section 802, any officer, organization or function being transferred to the Department of Homeland Security will now be deemed to refer to the Secretary, other appropriate official or component of the Department.

## TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

*Section 901. Inspector General Act of 1978*

This section makes technical and conforming amendments to the Inspector General Act of 1978 (Public Law 95-452).

*Section 902. Executive Schedule*

This section makes technical and conforming amendments to the Executive Schedule, title 5, United States Code. In the case of the Commissioner of Immigration and Naturalization, this section will become effective when the function is transferred to the Department of Homeland Security.

*Section 903. United States Secret Service*

This section makes technical and conforming amendments to the United States Code in sections 202 and 208 of title 3 and section 3056 of title 18, United States Code.

*Section 904. Coast Guard*

This section makes technical and conforming amendments to title 14, title 10, title 37 and other defense-related laws including: Public Law 104-193 (110 Stat. 2247), Public Law 104-201 (10 U.S.C. 1073 note), Public Law 102-484 (10 U.S.C. 1143a note), Public Law 103-337 (10 U.S.C. 1293 note), Public Law 106-181 (10 U.S.C. 2576 note), the Defense Dependents' Education Act of 1978 (20 U.S.C. 926(b)), Public Law 107-110 (20 U.S.C. 6671(5)(D)), Public Law 107-110 (20 U.S.C. 6677(a)), Public Law 105-85 (21 U.S.C. 1505a(a)), The Military Selective Service Act (50 U.S.C.). This section provides that the amendments made by this section will take effect on the date of transfer of the Coast Guard to the Department of Homeland Security.

*Section 905. Strategic National Stockpile and Smallpox Vaccine Development*

This section makes technical and conforming amendments to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. The amendments made by this section take effect on the date of transfer of the Strategic National Stockpile of the Department of Health and Human Services to the Department of Homeland Security.

*Section 906. Biological Agent Registration; Public Health Service Act*

This section makes technical and conforming amendments to the Public Health Service Act and the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. The amendments made by this section take effect on the date of transfer of the select agent registration enforcement programs and the activities of the Department of Health and Human Services to the Department of Homeland Security.

*Section 907. Transfer of Certain Security and Law Enforcement Functions and Authorities*

This section repeals section 210(a)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(a)(2)) and amends the Act of June 1, 1948 (40 U.S.C. 318-318d; chapter 359; 62 Stat. 281). Section 1 of the amendment provides a short title for the amendment, the "Protection of Public Property Act". Section 2 of the amendment directs the Secretary of Homeland Security to provide security for Federally owned buildings grounds, property and the people on the property. The Secretary may use employees of the Department of Homeland Security including those transferred into the Department from the Federal Protective Service of the General Services Administration for this purpose. Employees performing security duties in an official capacity may enforce Federal laws and regulations for protecting persons and property, carry firearms, make arrests for felonies, serve warrants and subpoenas, conduct investigations as they relate to offenses that may have been committed against property owned by the Federal government or persons on the property and other duties as assigned by the Secretary that would promote homeland security. The Secretary, in consultation with the Administrator of General Services, may prescribe regulations, including fines and imprisonment for

not more than 30 days as described under title 18, United States Code, for offenses related to the protection of Federal property and personnel on that property. The Secretary may detail officers and agents under this section to support Federal agency heads upon their request and the Secretary may apply the regulations in this section to Federal property being protected. When it is economical and in the public interest, the Secretary may use the facilities and services of Federal, State, and local law enforcement agencies with their consent. The Secretary may also enter into agreements with Federal agencies, and with State and local governments to have officers and agents from the Homeland Security Department enforce Federal, State, and local laws concurrently with other law enforcement officers. The Secretary of Homeland Security and the Attorney General will set guidelines for exercising the powers granted to officers and agencies covered by this section. Nothing in this section will preclude or limit the authority of any Federal law enforcement agency or restrict the Administrator of General Services' authority to issue regulations affecting the property under the Administrator's custody and control.

*Section 908. Transportation Security Regulations*

This section makes technical and conforming amendments to portions of title 49, United States Code.

*Section 909. Railroad Security Laws*

This section makes technical and conforming amendments to portions of title 49, United States Code.

*Section 910. Office of Science and Technology Policy*

This section amends the National Science and Technology Policy, Organization, and Priorities Act by giving homeland security the same status as national security.

*Section 911. National Oceanographic Partnership Program*

This section amends section 7902(b) of title 10, United States Code, by adding the Under Secretary for Science and Technology of the Department of Homeland Security and other Federal officials to the Council.

*Section 912. Chief Financial Officer*

This section makes technical and conforming amendments to section 901(b)(1) of title 31, United States Code, by including a Chief Financial Officer for the Department of Homeland Security to ensure that the Department is subject to the Chief Financial Officer Act.

*Section 913. Chief Information Officer*

This section ensures that the Department's Chief Information Officer is subject to the Clinger-Cohen Act and allows for Presidential appointment of the Chief Information Officer.

TITLE X—NATIONAL HOMELAND SECURITY COUNCIL

*Section 1001. National Homeland Security Council*

This section establishes the Homeland Security Council within the Executive Office of the President.

*Section 1002. Function*

This section directs the Council to advise the Present on homeland security matters.

*Section 1003. Membership*

This section denotes the members of the Council including: The President, the Vice President, the Secretary of Homeland Security, the Attorney General, the Secretary of Health and Human Services, the Director of Central Intelligence, the Secretary of Defense, the Secretary of the Treasury, the Secretary of Energy, the Secretary of Agriculture and other individuals designed by the President.

*Section 1004. Other Functions and Activities*

This section directs the Council to make recommendations to the President on matters related to homeland security including objectives, commitments, risk management, policy and other issues.

*Section 1005. Homeland Security Budget*

This section requires that the President submit to Congress a homeland security budget as part of the annual budget request.

*Section 1006. Staff Composition*

This section establishes a Homeland Security Council staff, headed by a civilian Executive Secretary. The Executive Secretary’s salary may not exceed that of the Executive Secretary of the National Security Council.

*Section 1007. Relation to the National Security Council*

This section provides that the President may hold joint meetings of the Homeland Security Council and the National Security Council with membership and participation as directed by the President.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**SECTION 3 OF THE NATIONAL SECURITY ACT OF 1947**

DEFINITIONS

SEC. 3. As used in this Act:

(1) \* \* \*

\* \* \* \* \*

(4) The term “intelligence community” includes—

(A) \* \* \*

\* \* \* \* \*

(I) the Bureau of Intelligence and Research of the Department of State; [and]

(J) *the Intelligence Analysis Center of the Department of Homeland Security; and*

[(J)] (K) such other elements of any other department or agency as may be designated by the President, or designated jointly by the Director of Central Intelligence and the head of the department or agency concerned, as an element of the intelligence community.

\* \* \* \* \*

**AGRICULTURAL RISK PROTECTION ACT OF 2000**

\* \* \* \* \*

**TITLE V—INSPECTION ANIMALS**

**SEC. 501. CIVIL PENALTY.**

(a) IN GENERAL.—Any person that causes harm to, or interferes with, an animal used for the purposes of official inspections by the Department of Agriculture *or the Department of Homeland Security*, may, after notice and opportunity for a hearing on the record, be assessed a civil penalty by the Secretary of Agriculture *or the Secretary of Homeland Security* not to exceed \$10,000.

(b) FACTORS IN DETERMINING CIVIL PENALTY.—In determining the amount of a civil penalty, the Secretary *concerned* shall take into account the nature, circumstance, extent, and gravity of the offense.

(c) SETTLEMENT OF CIVIL PENALTIES.—The Secretary *concerned* may compromise, modify, or remit, with or without conditions, any civil penalty that may be assessed under this section.

(d) FINALITY OF ORDERS.—

(1) IN GENERAL.—The order of the Secretary *concerned* assessing a civil penalty shall be treated as a final order reviewable under chapter 158 of title 28, United States Code. The validity of the order of the Secretary *concerned* may not be reviewed in an action to collect the civil penalty.

\* \* \* \* \*

(e) SECRETARY CONCERNED DEFINED.—*In this title, the term “Secretary concerned” means—*

(1) *the Secretary of Agriculture, with respect to an animal used for purposes of official inspections by the Department of Agriculture; and*

(2) *the Secretary of Homeland Security, with respect to an animal used for purposes of official inspections by the Department of Homeland Security.*

**SEC. 502. SUBPOENA AUTHORITY.**

(a) IN GENERAL.—The Secretary *concerned* shall have power to subpoena the attendance and testimony of any witness, and the production of all documentary evidence relating to the enforcement

of section 501 or any matter under investigation in connection with this title.

\* \* \* \* \*

(c) ENFORCEMENT OF SUBPOENA.—In the case of disobedience to a subpoena by any person, the Secretary *concerned* may request the Attorney General to invoke the aid of any court of the United States within the jurisdiction in which the investigation is conducted, or where the person resides, is found, transacts business, is licensed to do business, or is incorporated, in requiring the attendance and testimony of any witness and the production of documentary evidence. In case of a refusal to obey a subpoena issued to any person, a court may order the person to appear before the Secretary *concerned* and give evidence concerning the matter in question or to produce documentary evidence. Any failure to obey the court's order may be punished by the court as a contempt of the court.

(d) COMPENSATION.—Witnesses summoned by the Secretary *concerned* shall be paid the same fees and mileage that are paid to witnesses in courts of the United States, and witnesses whose depositions are taken, and the persons taking the depositions shall be entitled to the same fees that are paid for similar services in the courts of the United States.

(e) PROCEDURES.—The Secretary *concerned* shall publish procedures for the issuance of subpoenas under this section. Such procedures shall include a requirement that subpoenas be reviewed for legal sufficiency and signed by the Secretary *concerned*. If the authority to sign a subpoena is delegated, the agency receiving the delegation shall seek review for legal sufficiency outside that agency.

\* \* \* \* \*

**TITLE 49, UNITED STATES CODE**

\* \* \* \* \*

**SUBTITLE I—DEPARTMENT OF TRANSPORTATION**

\* \* \* \* \*

**CHAPTER 1—ORGANIZATION**

\* \* \* \* \*

**§ 114. Transportation Security Administration**

(a) \* \* \*

\* \* \* \* \*

(1) REGULATIONS.—

(1) \* \* \*

(2) EMERGENCY PROCEDURES.—

(A) \* \* \*

(B) REVIEW BY TRANSPORTATION SECURITY OVERSIGHT BOARD.—Any regulation or security directive issued under

this paragraph shall be subject to review by the Transportation Security Oversight Board established under section 115. Any regulation or security directive issued under this paragraph shall remain effective *for a period not to exceed 30 days* unless *ratified* or disapproved by the Board or rescinded by the Under Secretary.

\* \* \* \* \*

**§ 115. Transportation Security Oversight Board**

(a) IN GENERAL.—There is established in the Department of **Transportation** *Homeland Security* a board to be known as the “Transportation Security Oversight Board”.

(b) MEMBERSHIP.—

(1) NUMBER AND APPOINTMENT.—The Board shall be composed of 7 members as follows:

(A) *The Secretary of Homeland Security, or the Secretary’s designee.*

**[(A)]** (B) The Secretary of Transportation, or the Secretary’s designee.

**[(B)]** (C) The Attorney General, or the Attorney General’s designee.

**[(C)]** (D) The Secretary of Defense, or the Secretary’s designee.

**[(D)]** (E) The Secretary of the Treasury, or the Secretary’s designee.

**[(E)]** (F) The Director of the Central Intelligence Agency, or the Director’s designee.

**[(F)]** (G) One member appointed by the President to represent the National Security Council.

**[(G)]** One member appointed by the President to represent the Office of Homeland Security.

(2) CHAIRPERSON.—The Chairperson of the Board shall be the Secretary of **Transportation** *Homeland Security*.

\* \* \* \* \*

**SUBTITLE V—RAIL PROGRAMS**

\* \* \* \* \*

**PART A—SAFETY**

**CHAPTER 201—GENERAL**

\* \* \* \* \*

**SUBCHAPTER I—GENERAL**

\* \* \* \* \*

**§ 20105. State participation**

(a) INVESTIGATIVE AND SURVEILLANCE ACTIVITIES.—The Secretary of Transportation *or the Secretary of Homeland Security* may prescribe investigative and surveillance activities necessary to enforce the safety regulations prescribed and orders issued by the Secretary of *Transportation or the Secretary of Homeland Security*

that apply to railroad equipment, facilities, rolling stock, and operations in a State. The State may participate in those activities when the safety practices for railroad equipment, facilities, rolling stock, and operations in the State are regulated by a State authority and the authority submits to the *Secretary of Transportation or the Secretary of Homeland Security, as appropriate*, an annual certification as provided in subsection (b) of this section.

(b) ANNUAL CERTIFICATION.—(1) A State authority’s annual certification must include—

(A) a certification that the authority—

(i) \* \* \*

(ii) was given a copy of each safety regulation prescribed and order issued by the *Secretary of Transportation or the Secretary of Homeland Security, as appropriate*, that applies to the equipment, facilities, rolling stock, or operations, as of the date of certification; and

(iii) is conducting the investigative and surveillance activities prescribed by the *Secretary of Transportation or the Secretary of Homeland Security, as appropriate*, under subsection (a) of this section; and

(B) a report, in the form the *Secretary of Transportation or the Secretary of Homeland Security, as appropriate*, prescribes by regulation, that includes—

(i) \* \* \*

(ii) each accident or incident reported during the prior 12 months by a railroad carrier involving a fatality, personal injury requiring hospitalization, or property damage of more than \$750 (or a higher amount prescribed by the *Secretary of Transportation or the Secretary of Homeland Security, as appropriate*), and a summary of the authority’s investigation of the cause and circumstances surrounding the accident or incident;

(iii) the record maintenance, reporting, and inspection practices conducted by the authority to aid the *Secretary of Transportation or the Secretary of Homeland Security, as appropriate*, in enforcing railroad safety regulations prescribed and orders issued by the *Secretary of Transportation or the Secretary of Homeland Security, as appropriate*, including the number of inspections made of railroad equipment, facilities, rolling stock, and operations by the authority during the prior 12 months; and

(iv) other information the *Secretary of Transportation or the Secretary of Homeland Security, as appropriate*, requires.

\* \* \* \* \*

(3) If, after receipt of an annual certification, the *Secretary of Transportation or the Secretary of Homeland Security, as appropriate*, decides the State authority is not complying satisfactorily with the investigative and surveillance activities prescribed under subsection (a) of this section, the *Secretary of Transportation or the Secretary of Homeland Security, as appropriate*, may reject any part of the certification or take other appropriate action to achieve adequate enforcement. The *Secretary of Transportation or the Secretary of Homeland Security, as appropriate*, must give the authority notice and an opportunity for a hearing before taking action



under this paragraph. When the *Secretary of Transportation or the Secretary of Homeland Security, as appropriate*, gives notice, the burden of proof is on the authority to show that it is complying satisfactorily with the investigative and surveillance activities prescribed by the *Secretary of Transportation or the Secretary of Homeland Security, as appropriate*.

(c) AGREEMENT WHEN CERTIFICATION NOT RECEIVED.—(1) If the *Secretary of Transportation or the Secretary of Homeland Security, as appropriate*, does not receive an annual certification under subsection (a) of this section related to any railroad equipment, facility, rolling stock, or operation, the *Secretary of Transportation or the Secretary of Homeland Security, as appropriate*, may make an agreement with a State authority for the authority to provide any part of the investigative and surveillance activities prescribed by the *Secretary of Transportation or the Secretary of Homeland Security, as appropriate*, as necessary to enforce the safety regulations and orders applicable to the equipment, facility, rolling stock, or operation.

(2) The *Secretary of Transportation or the Secretary of Homeland Security, as appropriate*, may terminate any part of an agreement made under this subsection on finding that the authority has not provided every part of the investigative and surveillance activities to which the agreement relates. The *Secretary of Transportation or the Secretary of Homeland Security, as appropriate*, must give the authority notice and an opportunity for a hearing before making such a finding. The finding and termination shall be published in the Federal Register and may not become effective for at least 15 days after the date of publication.

(d) AGREEMENT FOR INVESTIGATIVE AND SURVEILLANCE ACTIVITIES.—In addition to providing for State participation under this section, the *Secretary of Transportation or the Secretary of Homeland Security, as appropriate*, may make an agreement with a State to provide investigative and surveillance activities related to the [Secretary's] *Secretary of Transportation's* duties under chapters 203–213 of this title or *the Secretary of Homeland Security's duties under section 114*.

(e) PAYMENT.—On application by a State authority that has submitted a certification under subsections (a) and (b) of this section or made an agreement under subsection (c) or (d) of this section, the *Secretary of Transportation or the Secretary of Homeland Security, as appropriate*, shall pay not more than 50 percent of the cost of the personnel, equipment, and activities of the authority needed, during the next fiscal year, to carry out a safety program under the certification or agreement. However, the *Secretary of Transportation or the Secretary of Homeland Security, as appropriate*, may pay an authority only when the authority assures the *Secretary of Transportation or the Secretary of Homeland Security, as appropriate*, that it will provide the remaining cost of the safety program and that the total State money expended for the safety program, excluding grants of the United States Government, will be at least as much as the average amount expended for the fiscal years that ended June 30, 1969, and June 30, 1970.

(f) MONITORING.—The *Secretary of Transportation or the Secretary of Homeland Security, as appropriate*, may monitor State investigative and surveillance practices and carry out other inspec-

tions and investigations necessary to help enforce this chapter or section 114.

**§ 20106. National uniformity of regulation**

Laws, regulations, and orders related to railroad safety shall be nationally uniform to the extent practicable. A State may adopt or continue in force a law, regulation, or order related to railroad safety, *including security*, until the Secretary of Transportation or the Secretary of Homeland Security prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety when the law, regulation, or order—

(1) \* \* \*

\* \* \* \* \*

**SUBTITLE VII—AVIATION PROGRAMS**

\* \* \* \* \*

**PART A—AIR COMMERCE AND SAFETY**

\* \* \* \* \*

**SUBPART III—SAFETY**

\* \* \* \* \*

**CHAPTER 449—SECURITY**

\* \* \* \* \*

**SUBCHAPTER I—REQUIREMENTS**

**§ 44901. Screening passengers and property**

(a) \* \* \*

\* \* \* \* \*

(d) **EXPLOSIVE DETECTION SYSTEMS.—**

(1) \* \* \*

(2) **MODIFICATION OF AIRPORT TERMINAL BUILDINGS TO ACCOMMODATE EXPLOSIVE DETECTION SYSTEMS.—**

(A) **NOTIFICATION OF AIRPORTS.—***Not later than October 1, 2002, the Under Secretary shall notify the owner or operator of each United States airport described in section 44903(c) of the number and type of explosive detection systems that will be required to be deployed at the airport in order to screen all checked baggage by explosive detection systems without imposing unreasonable delays on the passengers using the airport.*

(B) **ASSESSMENTS OF AIRPORT TERMINAL BUILDINGS.—***If the owner or operator of a United States airport described in section 44903(c) determines that the airport will not be able to make the modifications to the airport's terminal buildings that are necessary to accommodate the explosive detection systems required under subparagraph (A) in a*

*cost-effective manner on or before December 31, 2002, the owner or operator shall provide notice of that determination to the Under Secretary not later than November 1, 2002.*

**(C) PLANS FOR MAKING MODIFICATIONS TO AIRPORT TERMINAL BUILDINGS.—**

*(i) IN GENERAL.—If the owner or operator of an airport provides notice to the Under Secretary under subparagraph (B), the Under Secretary, in consultation with the owner or operator, shall develop, not later than December 1, 2002, a plan for making necessary modifications to the airport's terminal buildings so as to deploy and fully utilize explosive detection systems to screen all checked baggage.*

*(ii) DEADLINE.—A plan developed under this subparagraph shall include a date for executing the plan. All such plans shall be executed as expeditiously as practicable but not later than December 31, 2003.*

*(iii) TRANSMISSION OF PLANS TO CONGRESS.—On the date of completion of a plan under this subparagraph, the Under Secretary shall transmit a copy of the plan to Congress. For security purposes, information contained in the plan shall not be disclosed to the public.*

**(D) REQUIREMENTS FOR PLANS.—A plan developed and published under subparagraph (C), shall provide for, to the maximum extent practicable—**

*(i) the deployment of explosive detection systems in the baggage sorting area or other non-public area rather than the lobby of an airport terminal building; and*

*(ii) the deployment of state of the art explosive detection systems that have high throughput, low false alarm rates, and high reliability without reducing detection rates.*

**(E) USE OF SCREENING METHODS OTHER THAN EDS.—Notwithstanding the deadline in paragraph (1)(A), after December 31, 2002, if explosive detection systems are not screening all checked baggage at a United States airport described in section 44903(c), such baggage shall be screened by the methods described in subsection (e) until such time as all checked baggage is screened by explosive detection systems at the airport.**

**(3) PURCHASE OF EXPLOSIVE DETECTION SYSTEMS.—Any explosive detection system required to be purchased under paragraph (2)(A) shall be purchased by the Under Secretary.**

**(4) EXPLOSIVE DETECTION SYSTEM DEFINED.—In this subsection, the term “explosive detection system” means a device, or combination of devices, that can detect different types of explosives.**

**(e) MANDATORY SCREENING WHERE EDS NOT YET AVAILABLE.—**As soon as practicable but not later than the 60th day following the date of enactment of the Aviation and Transportation Security Act and until the requirements of subsection [(b)(1)(A)] (d)(1)(A) are met, the Under Secretary shall require alternative means for screening any piece of checked baggage that is not screened by an

explosive detection system. Such alternative means may include 1 or more of the following:

(1) \* \* \*

\* \* \* \* \*

PART B—AIRPORT DEVELOPMENT AND NOISE

CHAPTER 471—AIRPORT DEVELOPMENT

\* \* \* \* \*

SUBCHAPTER I—AIRPORT IMPROVEMENT

\* \* \* \* \*

§ 47106. Project grant application approval conditioned on satisfaction of project requirements

(a) \* \* \*

\* \* \* \* \*

(g) CONSULTATION WITH SECRETARY OF HOMELAND SECURITY.—The Secretary shall consult with the Secretary of Homeland Security before approving an application under this subchapter for an airport development project grant for activities described in section 47102(3)(B)(ii) (relating to security equipment) or section 47102(3)(B)(x) (relating to installation of bulk explosive detection systems).

\* \* \* \* \*

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

\* \* \* \* \*

TITLE I—JUSTICE SYSTEM IMPROVEMENT

\* \* \* \* \*

PART C—BUREAU OF JUSTICE STATISTICS

\* \* \* \* \*

ESTABLISHMENT, DUTIES, AND FUNCTIONS

SEC. 302. (a) \* \* \*

\* \* \* \* \*

(c) The Bureau is authorized to—

(1) \* \* \*

\* \* \* \* \*

(22) ensure conformance with security and privacy requirement of section 812 and identify, analyze, and participate in the development and implementation of privacy, security and information policies which impact on Federal and State criminal justice operations and related statistical activities; [and]

(23) exercise the powers and functions set out in part H[.]; and

*(24) collect, maintain, compile, analyze, publish, and disseminate information and statistics involving the functions of the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review.*

\* \* \* \* \*

OFFICE OF IMMIGRATION STATISTICS

*SEC. 305. (a) There is established within the Bureau of Justice Statistics of the Department of Justice an Office of Immigration Statistics (in this section referred to as the "Office"), which shall be headed by a Director who shall be appointed by the Attorney General and who shall report to the Director of Justice Statistics.*

*(b) The Director of the Office shall be responsible for the following:*

*(1) Maintenance of all immigration statistical information of the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review. Such statistical information shall include information and statistics of the type contained in the publication entitled "Statistical Yearbook of the Immigration and Naturalization Service" prepared by the Immigration and Naturalization Service (as in effect on the day prior to the effective date specified in section 427 of the Homeland Security Act of 2002), including region-by-region statistics on the aggregate number of applications and petitions filed by an alien (or filed on behalf of an alien) and denied by such offices and bureaus, and the reasons for such denials, disaggregated by category of denial and application or petition type.*

*(2) Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review.*

*(c) The Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review shall provide statistical information to the Office of Immigration Statistics from the operational data systems controlled by the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review, respectively, for the purpose of meeting the responsibilities of the Director.*

\* \* \* \* \*

**SECTION 286 OF THE IMMIGRATION AND NATIONALITY ACT**

DISPOSITION OF MONEYS COLLECTED UNDER THE PROVISIONS OF THIS TITLE

SEC. 286. (a) \* \* \*

\* \* \* \* \*

*(m) Notwithstanding any other provisions of law, all adjudication fees as are designated by the Attorney General in regulations shall be deposited as offsetting receipts into a separate account entitled "Immigration Examinations Fee Account" in the Treasury of the*

United States, whether collected directly by the Attorney General or through clerks of courts: *Provided, however,* That all fees received by the Attorney General from applicants residing in the Virgin Islands of the United States and in Guam, under this subsection shall be paid over to the treasury of the Virgin Islands and to the treasury of Guam: *Provided further,* That fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such [services, including the costs of similar services provided without charge to asylum applicants or other immigrants.] *services.* Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.

\* \* \* \* \*

**SECTION 204 OF THE IMMIGRATION SERVICES AND INFRASTRUCTURE IMPROVEMENTS ACT OF 2000**

**SEC. 204. IMMIGRATION SERVICES AND INFRASTRUCTURE IMPROVEMENT ACCOUNT.**

(a) **AUTHORITY OF THE ATTORNEY GENERAL.**—The Attorney General shall take such measures as may be necessary to—

(1) reduce the backlog in the processing of immigration benefit applications, with the objective of the total elimination of the backlog not later than one year after [the date of enactment of this Act;] *1 year after the date of the enactment of the Homeland Security Act of 2002;*

\* \* \* \* \*

**TITLE 5, UNITED STATES CODE**

\* \* \* \* \*

**PART III—EMPLOYEES**

\* \* \* \* \*

**Subpart I—Miscellaneous**

95.	Personnel flexibilities relating to the Internal Revenue Service .....	9501
97.	Department of Homeland Security .....	9701

\* \* \* \* \*

**Subpart D—Pay and Allowances**

\* \* \* \* \*

**CHAPTER 53—PAY RATES AND SYSTEMS**

\* \* \* \* \*

**SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES**

\* \* \* \* \*

**§ 5312. Positions at level I**

Level I of the Executive Schedule applies to the following positions for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Secretary of State.

\* \* \* \* \*  
*Secretary of Homeland Security.*  
 \* \* \* \* \*

**§ 5313. Positions at level II**

Level II of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Secretary of Defense.

\* \* \* \* \*  
*Deputy Secretary of Homeland Security.*  
 \* \* \* \* \*

**§ 5314. Positions at level III**

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Solicitor General of the United States.

\* \* \* \* \*  
*Under Secretaries, Department of Homeland Security.*  
 \* \* \* \* \*

**【Commissioner of Customs, Department of the Treasury】**  
*Commissioner of Customs, Department of Homeland Security.*

**§ 5315. Positions at level IV**

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Administrator of General Services.

\* \* \* \* \*  
**【Commissioner of Immigration and Naturalization, Department of Justice.】**  
 \* \* \* \* \*

*Assistant Secretaries, Department of Homeland Security.*  
*General Counsel, Department of Homeland Security.*  
*Chief Financial Officer, Department of Homeland Security.*  
*Chief Information Officer, Department of Homeland Security.*  
*Inspector General, Department of Homeland Security.*

\* \* \* \* \*

## Subpart I—Miscellaneous

\* \* \* \* \*

### CHAPTER 97—DEPARTMENT OF HOMELAND SECURITY

Sec.  
9701. Establishment of human resources management system.

#### **§9701. Establishment of human resources management system**

(a) *IN GENERAL.*—Notwithstanding any other provision of this title, the Secretary of Homeland Security may, in regulations prescribed jointly with the Director of the Office of Personnel Management, establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department of Homeland Security.

(b) *SYSTEM REQUIREMENTS.*—Any system established under subsection (a) shall—

- (1) be flexible;
- (2) be contemporary;
- (3) not waive, modify, or otherwise affect—

(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other non-merit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

(B) any provision of section 2302, relating to prohibited personnel practices;

(C)(i) any provision of law referred to in section 2302(b)(1); or

(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1) by—

(I) providing for equal employment opportunity through affirmative action; or

(II) providing any right or remedy available to any employee or applicant for employment in the civil service;

(D) any other provision of this title (as described in subsection (c)); or

(E) any rule or regulation prescribed under any provision of law referred to in any of the preceding subparagraphs of this paragraph;

(4) ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established by law or under subsection (a) for employees engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; and

(5) permit the use of a category rating system for evaluating applicants for positions in the competitive service.



(c) *OTHER NONWAIVABLE PROVISIONS.*—*The other provisions of this title, as referred to in subsection (b)(3)(D), are (to the extent not otherwise specified in subparagraph (A), (B), (C), or (D) of subsection (b)(3))—*

- (1) *subparts A, B, E, G, and H of this part; and*
- (2) *chapters 41, 45, 47, 55, 57, 59, 72, 73, and 79, and this chapter.*

(d) *LIMITATIONS RELATING TO PAY.*—*Nothing in this section shall constitute authority—*

- (1) *to modify the pay of any employee who serves in—*
  - (A) *an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or*
  - (B) *a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of such title 5;*
- (2) *to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of such title 5 in a year; or*
- (3) *to exempt any employee from the application of such section 5307.*

(e) *SUNSET PROVISION.*—*Effective 5 years after the date of the enactment of this section, all authority to issue regulations under this section (including regulations which would modify, supersede, or terminate any regulations previously issued under this section) shall cease to be available.*

\* \* \* \* \*

**SECTION 505 OF THE TARIFF ACT OF 1930**

**SEC. 505. PAYMENT OF DUTIES AND FEES.**

(a) **DEPOSIT OF ESTIMATED DUTIES, FEES, AND INTEREST.**—**【Unless merchandise】** *Unless the entry of merchandise is covered by an import activity summary statement, or the merchandise is entered for warehouse or transportation, or under bond, the importer of record shall deposit with the Customs Service at the time of making entry, or at such later time as the Secretary may prescribe by regulation (but not to exceed 10 working days after entry or release, whichever occurs first), the amount of duties and fees estimated to be payable thereon. 【Such regulations may provide that estimated duties and fees shall be deposited before or at the time an import activity summary statement is filed. If an import activity summary statement is filed, the estimated duties and fees shall be deposited together with interest, at a rate determined by the Secretary, accruing from the first date of the month the statement is required to be filed until the date such statement is actually filed.】* *If an import activity summary statement is filed, the importer of record shall deposit estimated duties and fees for entries of merchandise covered by the import activity summary statement no later than the 15th day of the month following the month in which the merchandise is entered or released, whichever occurs first.*

\* \* \* \* \*

**SECTION 13031 OF THE CONSOLIDATED OMNIBUS  
BUDGET RECONCILIATION ACT OF 1985**

**SEC. 13031. FEES FOR CERTAIN CUSTOM SERVICES.**

(a) \* \* \*

\* \* \* \* \*

(f) DISPOSITION OF FEES.—(1) There is established in the general fund of the Treasury a separate account which shall be known as the “Customs User Fee Account”. Notwithstanding section 524 of the Tariff Act of 1930 (19 U.S.C. 1524), there shall be deposited as offsetting receipts into the Customs User Fee Account all fees collected under subsection (a) except—

(A) \* \* \*

[(B) the portion of such fees that is determined by the Secretary to be excess fees under paragraph (5).]

*(B) amounts deposited into the Customs Commercial and Homeland Security Automation Account under paragraph (5).*

\* \* \* \* \*

(4) At the close of fiscal year 1988 and each even-numbered fiscal year occurring thereafter, the Secretary of the Treasury shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding how the fees imposed under subsection (a) [(other than the excess fees determined by the Secretary under paragraph (5))] should be adjusted in order that the balance of the Customs User Fee Account approximates a zero balance. Before making recommendations regarding any such adjustments, the Secretary of the Treasury shall provide adequate opportunity for public comment. The recommendation shall, as precisely as possible, propose fees which reflect the actual costs to the United States Government for the commercial services provided by the United States Custom Service.

[(5) At the close of each of fiscal years 1994, 1995, 1996, and 1997, the Secretary of the Treasury shall determine the amount of the fees collected under paragraph (5)(A) of subsection (a) for that fiscal year that exceeds the amount of such fees that would have been collected for such fiscal year if the fees that were in effect on the day before the effective date of this paragraph applied to such fiscal year. The amount of the excess fees determined under the preceding sentence shall be deposited in the Customs User Fee Account and shall be available for reimbursement of inspectional costs (including passenger processing costs) not otherwise reimbursed under this section, and shall be available only to the extent provided in appropriations Acts.]

*(5)(A) There is created within the general fund of the Treasury a separate account that shall be known as the “Customs Commercial and Homeland Security Automation Account”. In each of fiscal years 2003, 2004, and 2005 there shall be deposited into the Account from fees collected under subsection (a)(9)(A), \$350,000,000.*

*(B) There is authorized to be appropriated from the Account in fiscal years 2003 through 2005 such amounts as are available in that Account for the development, establishment, and implementa-*

*tion of the Automated Commercial Environment computer system for the processing of merchandise that is entered or released and for other purposes related to the functions of the Department of Homeland Security. Amounts appropriated pursuant to this subparagraph are authorized to remain available until expended.*

*(C) In adjusting the fee imposed by subsection (a)(9)(A) for fiscal year 2006, the Secretary of the Treasury shall reduce the amount estimated to be collected in fiscal year 2006 by the amount by which total fees deposited to the Account during fiscal years 2003, 2004, and 2005 exceed total appropriations from that Account.*

\* \* \* \* \*

**INSPECTOR GENERAL ACT OF 1978**

\* \* \* \* \*

*SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY*

*SEC. 8J. Notwithstanding any other provision of law, in carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of Homeland Security shall have oversight responsibility for the internal investigations performed by the Office of Internal Affairs of the United States Customs Service and the Office of Inspections of the United States Secret Service. The head of each such office shall promptly report to the Inspector General the significant activities being carried out by such office.*

\* \* \* \* \*

DEFINITIONS

SEC. 11. As used in this Act—

(1) the term “head of the establishment” means the Secretary of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Labor, State, Transportation, *Homeland Security*, or the Treasury; the Attorney General; the Administrator of the Agency for International Development, Environmental Protection, General Services, National Aeronautics and Space, or Small Business, or Veterans’ Affairs; the Director of the Federal Emergency Management Agency, or the Office of Personnel Management; the Chairman of the Nuclear Regulatory Commission or the Railroad Retirement Board; the Chairperson of the Thrift Depositor Protection Oversight Board; the Chief Executive Officer of the Corporation for National and Community Service; the Administrator of the Community Development Financial Institutions Fund; [and] the chief executive officer of the Resolution Trust Corporation; [and] the Chairperson of the Federal Deposit Insurance Corporation; the Commissioner of Social Security, Social Security Administration; or the Board of Directors of the Tennessee Valley Authority; as the case may be;

(2) the term “establishment” means the Department of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Inte-

rior, Justice, Labor, State, Transportation, *Homeland Security*, or the Treasury; the Agency for International Development, the Community Development Financial Institutions Fund, the Environmental Protection Agency, the Federal Emergency Management Agency, the General Services Administration, the National Aeronautics and Space Administration, the Nuclear Regulatory Commission, the Office of Personnel Management, the Railroad Retirement Board, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the Small Business Administration, the Corporation for National and Community Service, or the Veterans' Administration, the Social Security Administration, or the Tennessee Valley Authority; as the case may be;

\* \* \* \* \*

**SECTION 18 OF THE OFFICE OF FEDERAL  
PROCUREMENT POLICY ACT**

**SEC. 18. PROCUREMENT NOTICE.**

(a) \* \* \*

\* \* \* \* \*

(c)(1) A notice is not required under subsection (a)(1) if—

(A) \* \* \*

\* \* \* \* \*

(F) the procurement is for utility services, other than telecommunication services, and only one source is available; **[or]**

(G) the procurement is for the services of an expert for use in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify~~].~~; or

*(H) the procurement is by the Secretary of Homeland Security pursuant to the special procedures provided in section 733(c) of the Homeland Security Act of 2002.*

\* \* \* \* \*

**TITLE 3, UNITED STATES CODE**

\* \* \* \* \*

**CHAPTER 3—PROTECTION OF THE PRESIDENT; UNITED STATES SECRET SERVICE UNIFORMED DIVISION**

\* \* \* \* \*

**§ 202. United States Secret Service Uniformed Division; establishment, control, and supervision; privileges, powers, and duties**

There is hereby created and established a permanent police force, to be known as the “United States Secret Service Uniformed Division”. Subject to the supervision of the Secretary **[of the Treasury]**

of *Homeland Security*, the United States Secret Service Uniformed Division shall perform such duties as the Director, United States Secret Service, may prescribe in connection with the protection of the following: (1) the White House in the District of Columbia; (2) any building in which Presidential offices are located; (3) the Treasury Building and grounds; (4) the President and members of his immediate family; (5) foreign diplomatic missions located in the metropolitan area of the District of Columbia; (6) the temporary official residence of the Vice President and grounds in the District of Columbia; (7) the Vice President and members of his immediate family; (8) foreign diplomatic missions located in metropolitan areas (other than the District of Columbia) in the United States where there are located twenty or more such missions headed by full-time officers, except that such protection shall be provided only (A) on the basis of extraordinary protective need, (B) upon request of the affected metropolitan area, and (C) when the extraordinary protective need arises at or in association with a visit to (i) a permanent mission to, or an observer mission invited to participate in the work of, an international organization of which the United States is a member; or (ii) an international organization of which the United States is a member, except that such protection may also be provided for motorcades and at other places associated with any such visit and may be extended at places of temporary domicile in connection with any such visit;

\* \* \* \* \*

**§ 208. Reimbursement of State and local governments**

(a) In carrying out the functions pursuant to sections 202(8) and 202(10), the Secretary [of Treasury] of *Homeland Security* may utilize, with their consent, on a reimbursable basis, the services, personnel, equipment, and facilities of State and local governments, and is authorized to reimburse such State and local governments for the utilization of such services, personnel, equipment, and facilities. The Secretary [of Treasury] of *Homeland Security* may carry out the functions pursuant to sections 202(8) and 202(10) by contract. The authority of this subsection may be transferred by the President to the Secretary of State. In carrying out any duty under sections 202(8) and 202(10), the Secretary of State is authorized to utilize any authority available to the Secretary under title II of the State Department Basic Authorities Act of 1956.

\* \* \* \* \*

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**SECTION 3056 OF TITLE 18, UNITED STATES CODE**

**§ 3056. Powers, authorities, and duties of United States Secret Service**

(a) Under the direction of the Secretary [of the Treasury] of *Homeland Security*, the United States Secret Service is authorized to protect the following persons:

(1) \* \* \*

\* \* \* \* \*

*Provided*, That the Secretary [of the Treasury] of *Homeland Security* shall have the authority to direct the Secret Service to provide

temporary protection for any of these individuals at any time if the Secretary **【of the Treasury】** of *Homeland Security* or designee determines that information or conditions warrant such protection.

\* \* \* \* \*

(7) Major Presidential and Vice Presidential candidates and, within 120 days of the general Presidential election, the spouses of such candidates. As used in this paragraph, the term “major Presidential and Vice Presidential candidates” means those individuals identified as such by the Secretary **【of the Treasury】** of *Homeland Security* after consultation with an advisory committee consisting of the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority and minority leaders of the Senate, and one additional member selected by the other members of the committee.

The protection authorized in paragraphs (2) through (7) may be declined.

(b) Under the direction of the Secretary **【of the Treasury】** of *Homeland Security*, the Secret Service is authorized to detect and arrest any person who violates—

(1) \* \* \*

\* \* \* \* \*

(3) any of the laws of the United States relating to electronic fund transfer frauds, access device frauds, false identification documents or devices, and any fraud or other criminal or unlawful activity in or against any federally insured financial institution; except that the authority conferred by this paragraph shall be exercised subject to the agreement of the Attorney General and the Secretary **【of the Treasury】** of *Homeland Security* and shall not affect the authority of any other Federal law enforcement agency with respect to those laws.

(c)(1) Under the direction of the Secretary **【of the Treasury】** of *Homeland Security*, officers and agents of the Secret Service are authorized to—

(A) \* \* \*

\* \* \* \* \*

(E) pay expenses for unforeseen emergencies of a confidential nature under the direction of the Secretary **【of the Treasury】** of *Homeland Security* and accounted for solely on the Secretary’s certificate; and

\* \* \* \* \*

(e)(1) When directed by the President, the United States Secret Service is authorized to participate, under the direction of the Secretary **【of the Treasury】** of *Homeland Security*, in the planning, coordination, and implementation of security operations at special events of national significance, as determined by the President.

\* \* \* \* \*

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**TITLE 14, UNITED STATES CODE**

\* \* \* \* \*

**CHAPTER 1—ESTABLISHMENT AND DUTIES**

\* \* \* \* \*

**§ 1. Establishment of Coast Guard**

The Coast Guard as established January 28, 1915, shall be a military service and a branch of the armed forces of the United States at all times. The Coast Guard shall be a service in the Department **[of Transportation]** of *Homeland Security*, except when operating as a service in the Navy.

\* \* \* \* \*

**§ 3. Relationship to Navy Department**

Upon the declaration of war or when the President directs, the Coast Guard shall operate as a service in the Navy, and shall so continue until the President, by Executive order, transfers the Coast Guard back to the Department **[of Transportation]** of *Homeland Security*. While operating as a service in the Navy, the Coast Guard shall be subject to the orders of the Secretary of the Navy who may order changes in Coast Guard operations to render them uniform, to the extent he deems advisable, with Navy operations.

\* \* \* \* \*

**CHAPTER 3—COMPOSITION AND ORGANIZATION**

\* \* \* \* \*

**§ 53. Office of the Coast Guard Reserve; Director**

(a) \* \* \*

(b) APPOINTMENT.—The President, by and with the advice and consent of the Senate, shall appoint the Director of the Coast Guard Reserve, from officers of the Coast Guard who—

- (1) have had at least 10 years of commissioned service;
- (2) are in a grade above captain; and
- (3) have been recommended by the Secretary **[of Transportation]** of *Homeland Security*.

(c) TERM.—(1) The Director of the Coast Guard Reserve holds office for a term determined by the President, normally two years, but not more than four years. An officer may be removed from the position of Director for cause at any time.

(2) The Director of the Coast Guard Reserve, while so serving, holds a grade above Captain, without vacating the officer's permanent grade.

(d) BUDGET.—The Director of the Coast Guard Reserve is the official within the executive part of the Coast Guard who, subject to the authority, direction, and control of the Secretary **[of Transportation]** of *Homeland Security* and the Commandant, is responsible for preparation, justification, and execution of the personnel, operation and maintenance, and construction budgets for the Coast Guard Reserve. As such, the Director of the Coast Guard Reserve is the director and functional manager of appropriations made for the Coast Guard Reserve in those areas.

(e) ANNUAL REPORT.—The Director of the Coast Guard Reserve shall submit to the Secretary **[of Transportation]** of *Homeland Security* and the Secretary of Defense an annual report on the state

of the Coast Guard Reserve and the ability of the Coast Guard Reserve to meet its missions. The report shall be prepared in conjunction with the Commandant and may be submitted in classified and unclassified versions.

\* \* \* \* \*

**CHAPTER 5—FUNCTIONS AND POWERS**

\* \* \* \* \*

**§ 95. Special agents of the Coast Guard Investigative Service law enforcement authority**

(a) \* \* \*

\* \* \* \* \*

(c) The authority provided under subsection (a) shall be exercised in accordance with guidelines prescribed by the Commandant and approved by the Attorney General and any other applicable guidelines prescribed by the Secretary [of Transportation] of *Homeland Security* or the Attorney General.

\* \* \* \* \*

**CHAPTER 7—COOPERATION WITH OTHER AGENCIES**

\* \* \* \* \*

**§ 145. Navy Department**

(a) \* \* \*

\* \* \* \* \*

(c) When the Coast Guard is operating in the Department [of Transportation] of *Homeland Security*, the Secretary shall provide for such peacetime training and planning of reserve strength and facilities as is necessary to insure an organized, manned, and equipped Coast Guard when it is required for wartime operation in the Navy. To this end, the Secretary of the Navy for the Navy, and the Secretary [of Transportation] of *Homeland Security*, for the Coast Guard, may from time to time exchange such information, make available to each other such personnel, vessels, facilities, and equipment, and agree to undertake such assignments and functions for each other as they may agree are necessary and advisable.

\* \* \* \* \*

**CHAPTER 13—PAY, ALLOWANCES, AWARDS, AND OTHER RIGHTS AND BENEFITS**

\* \* \* \* \*

**§ 516. Presentation of United States flag upon retirement**

(a) PRESENTATION OF FLAG.—Upon the release of a member of the Coast Guard from active duty for retirement, the Secretary [of Transportation] of *Homeland Security* shall present a United States flag to the member.

\* \* \* \* \*



**CHAPTER 17—ADMINISTRATION**

*	*	*	*	*	*	*
Sec.						
631.	Delegation of powers by the Secretary.					
*	*	*	*	*	*	*
<b>[673]</b>	<b>673a.</b> Small boat station rescue capability.					
*	*	*	*	*	*	*

**§ 666. Local hire**

(a) Notwithstanding any other law, each contract awarded by the Coast Guard for construction or services to be performed in whole or in part in a State that has an unemployment rate in excess of the national average rate of unemployment (as determined by the Secretary of Labor) shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract in that State, individuals who are local residents and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills. The Secretary **[of Transportation]** of *Homeland Security* may waive the requirements of this subsection in the interest of national security or economic efficiency.

*	*	*	*	*	*	*
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**§ 669. Telephone installation and charges**

Under regulations prescribed by the Secretary, amounts appropriated to the Department **[of Transportation]** of *Homeland Security* are available to install, repair, and maintain telephone wiring in residences owned or leased by the United States Government and, if necessary for national defense purposes in other private residences.

*	*	*	*	*	*	*
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**§ 673. Designation, powers, and accountability of deputy disbursing officials**

(a)(1) \* \* \*

*	*	*	*	*	*	*
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(3) A disbursing official may make a designation under paragraph (1) only with the approval of the Secretary **[of Transportation]** of *Homeland Security* (when the Coast Guard is not operating as a service in the Navy).

*	*	*	*	*	*	*
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**[§ 673] § 673a. Small boat station rescue capability**

The Secretary **[of Transportation]** of *Homeland Security* shall ensure that each Coast Guard small boat station (including a seasonally operated station) maintains, within the area of responsibility for the station, at least 1 vessel that is fully capable of performing offshore rescue operations, taking into consideration prevailing weather, marine conditions, and depositional geologic features such as sand bars.

**§ 674. Small boat station closures**

(a) CLOSURES.—The Secretary [of Transportation] of *Homeland Security* may not close a Coast Guard multimission small boat station or subunit unless the Secretary—

(1) \* \* \*

\* \* \* \* \*

**CHAPTER 18—COAST GUARD HOUSING AUTHORITIES**

\* \* \* \* \*

**§ 687. Coast Guard Housing Fund**

(a) \* \* \*

(b) CREDITS TO FUND.—There shall be credited to the Fund the following:

(1) \* \* \*

(2) Subject to subsection (e), any amounts that the Secretary transfers, in such amounts as provided in appropriation Acts, to that Fund from amounts authorized and appropriated to the Department [of Transportation] of *Homeland Security* or Coast Guard for the acquisition or construction of military family housing or unaccompanied housing.

\* \* \* \* \*

**§ 688. Reports**

The Secretary shall include each year in the materials the Secretary submits to the Congress in support of the budget submitted by the President pursuant to section 1105 of title 31, the following:

(1) \* \* \*

\* \* \* \* \*

(4) A description of the objectives of the Department [of Transportation] of *Homeland Security* for providing military family housing and military unaccompanied housing for members of the Coast Guard.

\* \* \* \* \*

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**TITLE 10, UNITED STATES CODE**

\* \* \* \* \*

**Subtitle A—General Military Law**

\* \* \* \* \*

**PART I—ORGANIZATION AND GENERAL MILITARY POWERS**

\* \* \* \* \*

**CHAPTER 1—DEFINITIONS**

\* \* \* \* \*

§ 101. Definitions

(a) IN GENERAL.—The following definitions apply in this title:

(1) \* \* \*

\* \* \* \* \*

(9) The term “Secretary concerned” means—

(A) \* \* \*

\* \* \* \* \*

(D) the Secretary [of Transportation] of *Homeland Security*, with respect to matters concerning the Coast Guard when it is not operating as a service in the Department of the Navy.

\* \* \* \* \*

CHAPTER 3—GENERAL POWERS AND FUNCTIONS

\* \* \* \* \*

§ 130b. Personnel in overseas, sensitive, or routinely deployable units: nondisclosure of personally identifying information

(a) EXEMPTION FROM DISCLOSURE.—The Secretary of Defense and, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary [of Transportation] of *Homeland Security* may, notwithstanding section 552 of title 5, authorize to be withheld from disclosure to the public personally identifying information regarding—

(1) \* \* \*

\* \* \* \* \*

(c) DEFINITIONS.—In this section:

(1) \* \* \*

\* \* \* \* \*

(4) The term “sensitive unit” means a unit that is primarily involved in training for the conduct of, or conducting, special activities or classified missions, including—

(A) \* \* \*

\* \* \* \* \*

(C) any other unit that is designated as a sensitive unit by the Secretary of Defense or, in the case of the Coast Guard when it is not operating as a service in the Navy, by the Secretary [of Transportation] of *Homeland Security*.

\* \* \* \* \*

§ 130c. Nondisclosure of information: certain sensitive information of foreign governments and international organizations

(a) \* \* \*

\* \* \* \* \*

(h) DEFINITIONS.—In this section:

(1) The term “national security official concerned” means the following:

(A) \* \* \*

(B) The Secretary [of Transportation] of *Homeland Security*, with respect to information of concern to the Coast Guard, as determined by the Secretary, but only while the Coast Guard is not operating as a service in the Navy.

\* \* \* \* \*

**CHAPTER 18—MILITARY SUPPORT FOR CIVILIAN LAW ENFORCEMENT AGENCIES**

\* \* \* \* \*

**§ 379. Assignment of Coast Guard personnel to naval vessels for law enforcement purposes**

(a) The Secretary of Defense and the Secretary [of Transportation] of *Homeland Security* shall provide that there be assigned on board every appropriate surface naval vessel at sea in a drug-interdiction area members of the Coast Guard who are trained in law enforcement and have powers of the Coast Guard under title 14, including the power to make arrests and to carry out searches and seizures.

(b) Members of the Coast Guard assigned to duty on board naval vessels under this section shall perform such law enforcement functions (including drug-interdiction functions)—

(1) as may be agreed upon by the Secretary of Defense and the Secretary [of Transportation] of *Homeland Security*; and

(2) as are otherwise within the jurisdiction of the Coast Guard.

(c) No fewer than 500 active duty personnel of the Coast Guard shall be assigned each fiscal year to duty under this section. However, if at any time the Secretary [of Transportation] of *Homeland Security*, after consultation with the Secretary of Defense, determines that there are insufficient naval vessels available for purposes of this section, such personnel may be assigned other duty involving enforcement of laws listed in section 374(b)(4)(A) of this title.

\* \* \* \* \*

**PART II—PERSONNEL**

\* \* \* \* \*

**CHAPTER 31—ENLISTMENTS**

\* \* \* \* \*

**§ 513. Enlistments: Delayed Entry Program**

(a) \* \* \*

\* \* \* \* \*

(d) This section shall be carried out under regulations to be prescribed by the Secretary of Defense or the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy.

\* \* \* \* \*

**CHAPTER 33A—APPOINTMENT, PROMOTION, AND INVOLUNTARY SEPARATION AND RETIREMENT FOR MEMBERS ON THE WARRANT OFFICER ACTIVE-DUTY LIST**

\* \* \* \* \*

**§ 575. Recommendations for promotion by selection boards**

(a) \* \* \*

(b)(1) \* \* \*

(2) The number of officers recommended for promotion from below the promotion zone may not exceed 10 percent of the total number recommended, except that the Secretary of Defense and the Secretary [of Transportation] of *Homeland Security*, when the Coast Guard is not operating as a service in the Navy, may authorize such percentage to be increased to not more than 15 percent. If the number determined under this subsection with respect to a promotion zone within a grade (or grade and competitive category) is less than one, the board may recommend one such officer for promotion from below the zone within that grade (or grade and competitive category).

\* \* \* \* \*

**§ 580. Regular warrant officers twice failing of selection for promotion: involuntary retirement or separation**

(a) \* \* \*

\* \* \* \* \*

(e)(1) \* \* \*

\* \* \* \* \*

(6) The Secretary of Defense and the Secretary [of Transportation] of *Homeland Security*, when the Coast Guard is not operating as a service in the Navy, shall prescribe regulations for the administration of this subsection.

**§ 580a. Enhanced authority for selective early discharges**

(a) \* \* \*

\* \* \* \* \*

(e) This section applies to the Secretary [of Transportation] of *Homeland Security* in the same manner and to the same extent as it applies to the Secretary of Defense. The Commandant of the Coast Guard shall take the action set forth in subsection (b) with respect to regular warrant officers of the Coast Guard.

\* \* \* \* \*

**CHAPTER 37—GENERAL SERVICE REQUIREMENTS**

\* \* \* \* \*

**§ 651. Members: required service**

(a) Each person who becomes a member of an armed force, other than a person deferred under the next to the last sentence of section 6(d)(1) of the Military Selective Service Act (50 U.S.C. App. 456(d)(1)) shall serve in the armed forces for a total initial period

of not less than six years nor more than eight years, as provided in regulations prescribed by the Secretary of Defense for the armed forces under his jurisdiction and by the Secretary [of Transportation] of *Homeland Security* for the Coast Guard when it is not operating as a service in the Navy, unless such person is sooner discharged under such regulations because of personal hardship. Any part of such service that is not active duty or that is active duty for training shall be performed in a reserve component.

\* \* \* \* \*

**CHAPTER 39—ACTIVE DUTY**

\* \* \* \* \*

**§ 671. Members not to be assigned outside United States before completing training**

(a) \* \* \*

\* \* \* \* \*

(c)(1) \* \* \*

(2) The Secretary of Defense, and the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations for the purposes of paragraph (1). The regulations prescribed by the Secretary of Defense shall apply uniformly to the military departments.

\* \* \* \* \*

**CHAPTER 40—LEAVE**

\* \* \* \* \*

**§ 708. Educational leave of absence**

(a) Under such regulations as the Secretary of Defense may prescribe after consultation with the Secretary [of Transportation] of *Homeland Security* and subject to subsection (b), the Secretary concerned may grant to any eligible member (as defined in subsection (e)) a leave of absence for a period of not to exceed two years for the purposes of permitting the member to pursue a program of education.

\* \* \* \* \*

**CHAPTER 41—SPECIAL APPOINTMENTS, ASSIGNMENTS, DETAILS, AND DUTIES**

\* \* \* \* \*

**§ 716. Commissioned officers: transfers among the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service**

(a) Notwithstanding any other provision of law, the President, within authorized strengths and with the consent of the officer involved, may transfer any commissioned officer of a uniformed service from his uniformed service to, and appoint him in, another uniformed service. The Secretary of Defense, the Secretary [of Transportation] of *Homeland Security*, the Secretary of Commerce, and

the Secretary of Health and Human Services shall jointly establish, by regulations approved by the President, policies and procedures for such transfers and appointments.

\* \* \* \* \*

**§ 717. Members of the armed forces: participation in international sports**

(a) The Secretary of Defense, or the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy, may permit members of the armed forces under his jurisdiction to train for, attend, and participate in—

(1) \* \* \*

\* \* \* \* \*

(b) Subject to subsections (c) and (d), the Secretary of Defense or the Secretary [of Transportation] of *Homeland Security*, as the case may be, may spend such funds, and acquire and use such supplies, as he determines to be necessary to provide for—

(1) \* \* \*

\* \* \* \* \*

(d) Appropriations available to the Department of Defense or to the Department [of Transportation] of *Homeland Security*, as the case may be, may be used to carry out this section.

\* \* \* \* \*

**CHAPTER 47—UNIFORM CODE OF MILITARY JUSTICE**

\* \* \* \* \*

**SUBCHAPTER I—GENERAL PROVISIONS**

\* \* \* \* \*

**§ 801. Article 1. Definitions**

In this chapter:

(1) The term “Judge Advocate General” means, severally, the Judge Advocates General of the Army, Navy, and Air Force and, except when the Coast Guard is operating as a service in the Navy, [the General Counsel of the Department of Transportation] *an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security.*

\* \* \* \* \*

**§ 806. Art. 6. Judge advocates and legal officers**

(a) \* \* \*

\* \* \* \* \*

(d)(1) \* \* \*

(2) The Secretary of Defense, and the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations providing that reimbursement may be a condition of as-

sistance by judge advocates assigned or detailed under section 973(b)(2)(B) of this title.

\* \* \* \* \*

SUBCHAPTER III—NON—JUDICIAL PUNISHMENT

\* \* \* \* \*

**§ 815. Art. 15. Commanding officer’s non-judicial punishment**

(a) \* \* \*

\* \* \* \* \*

(e) A person punished under this article who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d) by the officer who imposed the punishment. Before acting on an appeal from a punishment of—

(1) \* \* \*

\* \* \* \* \*

the authority who is to act on the appeal shall refer the case to a judge advocate or a lawyer of the Department [of Transportation] of *Homeland Security* for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (b).

\* \* \* \* \*

SUBCHAPTER X—PUNITIVE ARTICLES

\* \* \* \* \*

**§ 888. Art. 88. Contempt toward officials**

Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary [of Transportation] of *Homeland Security*, or the Governor or legislature of any State, Territory, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct.

\* \* \* \* \*

SUBCHAPTER XII—UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

\* \* \* \* \*

**§ 946. Art. 146. Code committee**

(a) \* \* \*

\* \* \* \* \*

(c) REPORTS.—(1) After each such survey, the committee shall submit a report—



(A) \* \* \*

(B) to the Secretary of Defense, the Secretaries of the military departments, and the Secretary [of Transportation] of Homeland Security.

\* \* \* \* \*

**CHAPTER 49—MISCELLANEOUS PROHIBITIONS AND PENALTIES**

\* \* \* \* \*

**§ 973. Duties: officers on active duty; performance of civil functions restricted**

(a) \* \* \*

\* \* \* \* \*

(d) The Secretary of Defense, and the Secretary [of Transportation] of Homeland Security with respect to the Coast Guard when it is not operating in the Navy, shall prescribe regulations to implement this section.

\* \* \* \* \*

**§ 978. Drug and alcohol abuse and dependency: testing of new entrants**

(a) \* \* \*

\* \* \* \* \*

(d) The testing and evaluation required by subsection (a) shall be carried out under regulations prescribed by the Secretary of Defense in consultation with the Secretary [of Transportation] of Homeland Security. Those regulations shall apply uniformly throughout the armed forces.

\* \* \* \* \*

**§ 983. Institutions of higher education that prevent ROTC access or military recruiting on campus: denial of grants and contracts from Department of Defense, Department of Education, and certain other departments and agencies**

(a) \* \* \*

(b) DENIAL OF FUNDS FOR PREVENTING MILITARY RECRUITING ON CAMPUS.—No funds described in subsection (d)(2) may be provided by contract or by grant (including a grant of funds to be available for student aid) to an institution of higher education (including any subelement of such institution) if the Secretary of Defense determines that that institution (or any subelement of that institution) has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents—

(1) the Secretary of a military department or Secretary [of Transportation] of Homeland Security from gaining entry to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting; or

\* \* \* \* \*

(d) COVERED FUNDS.—(1) \* \* \*

(2) The limitation established in subsection (b) applies to the following:

(A) Funds described in paragraph (1).

(B) Any funds made available for the Department [of Transportation] of Homeland Security.

\* \* \* \* \*

**§ 985. Persons convicted of capital crimes: denial of certain burial-related benefits**

(a) PROHIBITION OF PERFORMANCE OF MILITARY HONORS.—The Secretary of a military department and the Secretary [of Transportation] of Homeland Security, with respect to the Coast Guard when it is not operating as a service in the Navy, may not provide military honors at the funeral or burial of a person who has been convicted of a capital offense under Federal or State law for which the person was sentenced to death or life imprisonment without parole.

\* \* \* \* \*

**CHAPTER 53—MISCELLANEOUS RIGHTS AND BENEFITS**

\* \* \* \* \*

**§ 1033. Participation in management of specified non-Federal entities: authorized activities**

(a) \* \* \*

(b) DESIGNATED ENTITIES.—(1) The Secretary of Defense, and the Secretary [of Transportation] of Homeland Security in the case of the Coast Guard when it is not operating as a service in the Navy, shall designate those entities for which authorization under subsection (a) may be provided. The list of entities so designated may not be revised more frequently than semiannually. In making such designations, the Secretary shall designate each military welfare society and may designate any other entity described in paragraph (3). No other entities may be designated.

\* \* \* \* \*

(d) REGULATIONS.—The Secretary of Defense, and the Secretary [of Transportation] of Homeland Security in the case of the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section.

**§ 1034. Protected communications; prohibition of retaliatory personnel actions**

(a) \* \* \*

\* \* \* \* \*

(c) INSPECTOR GENERAL INVESTIGATION OF ALLEGATIONS OF PROHIBITED PERSONNEL ACTIONS.—(1) \* \* \*

\* \* \* \* \*

(5) The Inspector General of the Department of Defense, or the Inspector General of the Department [of Transportation] of Homeland Security (in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy), shall ensure that the Inspector General conducting the investigation of

an allegation under this subsection is outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.

\* \* \* \* \*

(e) REPORTS ON INVESTIGATIONS.—(1) After completion of an investigation under subsection (c) or (d) or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(3)(E), the Inspector General conducting the investigation shall submit a report on the results of the investigation to the Secretary of Defense (or to the Secretary [of Transportation] of *Homeland Security* in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) and shall transmit a copy of the report on the results of the investigation to the member of the armed forces who made the allegation investigated. The report shall be transmitted to the Secretary, and the copy of the report shall be transmitted to the member, not later than 30 days after the completion of the investigation or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(3)(E).

\* \* \* \* \*

(3) If, in the course of an investigation of an allegation under this section, the Inspector General determines that it is not possible to submit the report required by paragraph (1) within 180 days after the date of receipt of the allegation being investigated, the Inspector General shall provide to the Secretary of Defense (or to the Secretary [of Transportation] of *Homeland Security* in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) and to the member making the allegation a notice—

(A) \* \* \*

\* \* \* \* \*

(h) REGULATIONS.—The Secretary of Defense, and the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section.

(i) DEFINITIONS.—In this section:

(1) \* \* \*

(2) The term “Inspector General” means any of the following:

(A) The Inspector General of the Department of Defense.

(B) The Inspector General of the Department [of Transportation] of *Homeland Security*, in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy.

\* \* \* \* \*

**§ 1037. Counsel before foreign judicial tribunals and administrative agencies; court costs and bail**

(a) \* \* \*

\* \* \* \* \*

(c) Appropriations available to the military department concerned or the Department [of Transportation] of *Homeland Security*, as the case may be, for the pay of persons under its jurisdiction may be used to carry out this section.

\* \* \* \* \*

**§ 1044d. Military testamentary instruments: requirement for recognition by States**

(a) \* \* \*

\* \* \* \* \*

(f) REGULATIONS.—Regulations for the purposes of this section shall be prescribed jointly by the Secretary of Defense and by the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Department of the Navy.

\* \* \* \* \*

**§ 1058. Responsibilities of military law enforcement officials at scenes of domestic violence**

(a) \* \* \*

\* \* \* \* \*

(c) REGULATIONS.—The Secretary of Defense, and the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe by regulation the definition of “domestic violence” for purposes of this section and such other regulations as may be necessary for purposes of this section.

\* \* \* \* \*

**§ 1059. Dependents of members separated for dependent abuse: transitional compensation; commissary and exchange benefits**

(a) AUTHORITY TO PAY COMPENSATION.—The Secretary of Defense, with respect to the armed forces (other than the Coast Guard when it is not operating as a service in the Navy), and the Secretary [of Transportation] of *Homeland Security*, with respect to the Coast Guard when it is not operating as a service in the Navy, may each establish a program to pay monthly transitional compensation in accordance with this section to dependents or former dependents of a member of the armed forces described in subsection (b). Upon establishment of such a program, the program shall apply in the case of each such member described in subsection (b) who is under the jurisdiction of the Secretary establishing the program.

\* \* \* \* \*

(k) REGULATIONS.—(1) The Secretary of Defense shall prescribe regulations to carry out this section with respect to the armed forces (other than the Coast Guard when it is not operating as a service in the Navy). The Secretary [of Transportation] of *Homeland Security* shall prescribe regulations to carry out this section

with respect to the Coast Guard when it is not operating as a service in the Navy.

\* \* \* \* \*

**CHAPTER 55—MEDICAL AND DENTAL CARE**

\* \* \* \* \*

**§ 1073. Administration of this chapter**

(a) RESPONSIBLE OFFICIALS.—Except as otherwise provided in this chapter, the Secretary of Defense shall administer this chapter for the armed forces under his jurisdiction, the Secretary [of Transportation] of *Homeland Security* shall administer this chapter for the Coast Guard when the Coast Guard is not operating as a service in the Navy, and the Secretary of Health and Human Services shall administer this chapter for the National Oceanic and Atmospheric Administration and the Public Health Service. This chapter shall be administered consistent with the Assisted Suicide Funding Restriction Act of 1997 (42 U.S.C. 14401 et seq.).

\* \* \* \* \*

**§ 1074. Medical and dental care for members and certain former members**

(a) \* \* \*

\* \* \* \* \*

(c)(1) Funds appropriated to a military department, the Department [of Transportation] of *Homeland Security* (with respect to the Coast Guard when it is not operating as a service in the Navy), or the Department of Health and Human Services (with respect to the National Oceanic and Atmospheric Administration and the Public Health Service) may be used to provide medical and dental care to persons entitled to such care by law or regulations, including the provision of such care (other than elective private treatment) in private facilities for members of the armed forces. If a private facility or health care provider providing care under this subsection is a health care provider under the Civilian Health and Medical Program of the Uniformed Services, the Secretary of Defense, after consultation with the other administering Secretaries, may by regulation require the private facility or health care provider to provide such care in accordance with the same payment rules (subject to any modifications considered appropriate by the Secretary) as apply under that program.

\* \* \* \* \*

**§ 1089. Defense of certain suits arising out of medical malpractice**

(a) \* \* \*

\* \* \* \* \*

(g) In this section, the term “head of the agency concerned” means—

- (1) the Director of Central Intelligence, in the case of an employee of the Central Intelligence Agency;

(2) the Secretary **[of Transportation]** *of Homeland Security*, in the case of a member or employee of the Coast Guard when it is not operating as a service in the Navy;

\* \* \* \* \*

**§ 1090. Identifying and treating drug and alcohol dependence**

The Secretary of Defense, and the Secretary **[of Transportation]** *of Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations, implement procedures using each practical and available method, and provide necessary facilities to identify, treat, and rehabilitate members of the armed forces who are dependent on drugs or alcohol.

**§ 1091. Personal services contracts**

(a) **AUTHORITY.**—(1) The Secretary of Defense, with respect to medical treatment facilities of the Department of Defense, and the Secretary **[of Transportation]** *of Homeland Security*, with respect to medical treatment facilities of the Coast Guard when the Coast Guard is not operating as a service in the Navy, may enter into personal services contracts to carry out health care responsibilities in such facilities, as determined to be necessary by the Secretary. The authority provided in this subsection is in addition to any other contract authorities of the Secretary, including authorities relating to the management of such facilities and the administration of this chapter.

(2) The Secretary of Defense, and the Secretary **[of Transportation]** *of Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy, may also enter into personal services contracts to carry out other health care responsibilities of the Secretary (such as the provision of medical screening examinations at Military Entrance Processing Stations) at locations outside medical treatment facilities, as determined necessary pursuant to regulations prescribed by the Secretary. The Secretary may not enter into a contract under this paragraph after December 31, 2002.

\* \* \* \* \*

**CHAPTER 57—DECORATIONS AND AWARDS**

\* \* \* \* \*

**§ 1124. Cash awards for disclosures, suggestions, inventions, and scientific achievements**

(a) The Secretary of Defense, or the Secretary **[of Transportation]** *of Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy, may authorize the payment of a cash award to, and incur necessary expense for the honorary recognition of, a member of the armed forces under his jurisdiction who by his disclosure, suggestion, invention, or scientific achievement contributes to the efficiency, economy, or other improvement of operations or programs relating to the armed forces.

(b) Whenever the President considers it desirable, the Secretary of Defense, and the Secretary **[of Transportation]** of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy, are authorized to pay a cash award to, and incur necessary expense for the honorary recognition of, a member of the armed forces who by his disclosure, suggestion, invention, or scientific achievement contributes to the efficiency, economy, or other improvement of operations of the Government of the United States. Such award is in addition to any other award made to that member under subsection (a).

\* \* \* \* \*

(g) Awards under this section shall be made under regulations to be prescribed by the Secretary of Defense, or by the Secretary **[of Transportation]** of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy.

\* \* \* \* \*

**CHAPTER 58—BENEFITS AND SERVICES FOR MEMBERS BEING SEPARATED OR RECENTLY SEPARATED**

\* \* \* \* \*

**§ 1143. Employment assistance**

(a) **EMPLOYMENT SKILLS VERIFICATION.**—The Secretary of Defense and the Secretary **[of Transportation]** of *Homeland Security* with respect to the Coast Guard shall provide to members of the armed forces who are discharged or released from active duty a certification or verification of any job skills and experience acquired while on active duty that may have application to employment in the civilian sector. The preceding sentence shall be carried out in conjunction with the Secretary of Labor.

(b) **EMPLOYMENT ASSISTANCE CENTERS.**—The Secretary of Defense shall establish permanent employment assistance centers at appropriate military installations. The Secretary **[of Transportation]** of *Homeland Security* shall establish permanent employment assistance centers at appropriate Coast Guard installations.

(c) **INFORMATION TO CIVILIAN ENTITIES.**—For the purpose of assisting members covered by subsection (a) and their spouses in locating civilian employment and training opportunities, the Secretary of Defense and the Secretary **[of Transportation]** of *Homeland Security* shall establish and implement procedures to release to civilian employers, organizations, State employment agencies, and other appropriate entities the names (and other pertinent information) of such members and their spouses. Such names may be released for such purpose only with the consent of such members and spouses.

(d) **EMPLOYMENT PREFERENCE BY NONAPPROPRIATED FUND INSTRUMENTALITIES.**—The Secretary of Defense shall take such steps as necessary to provide that members of Army, Navy, Air Force, or Marine Corps who are involuntarily separated, and the dependents of such members, shall be provided a preference in hiring by non-appropriated fund instrumentalities of the Department. Such preference shall be administered in the same manner as the preference for military spouses provided under section 1784(a)(2) of this title, except that a preference under that section shall have

priority over a preference under this subsection. A person may receive a preference in hiring under this subsection only once. The Secretary **【of Transportation】** of *Homeland Security* shall provide the same preference in hiring to involuntarily separated members of the Coast Guard, and the dependents of such members, in Coast Guard nonappropriated fund instrumentalities.

**§ 1143a. Encouragement of postseparation public and community service**

(a) \* \* \*

\* \* \* \* \*

(h) COAST GUARD.—This section shall apply to the Coast Guard in the same manner and to the same extent as it applies to the Department of Defense. The Secretary **【of Transportation】** of *Homeland Security* shall implement the requirements of this section for the Coast Guard.

\* \* \* \* \*

**§ 1144. Employment assistance, job training assistance, and other transitional services: Department of Labor**

(a) IN GENERAL.—(1) The Secretary of Labor, in conjunction with the Secretary of Defense, the Secretary **【of Transportation】** of *Homeland Security*, and the Secretary of Veterans Affairs, shall establish and maintain a program to furnish counseling, assistance in identifying employment and training opportunities, help in obtaining such employment and training, and other related information and services to members of the armed forces under the jurisdiction of the Secretary concerned who are being separated from active duty and the spouses of such members. Such services shall be provided to a member within the time periods provided under paragraph (3) of section 1142(a) of this title, except that the Secretary concerned shall not provide preseparation counseling to a member described in paragraph (4)(A) of such section.

(2) The Secretary of Defense, the Secretary **【of Transportation】** of *Homeland Security*, and the Secretary of Veterans Affairs shall cooperate with the Secretary of Labor in establishing and maintaining the program under this section.

(3) The Secretaries referred to in paragraph (1) shall enter into a detailed agreement to carry out this section.

(b) ELEMENTS OF PROGRAM.—In establishing and carrying out a program under this section, the Secretary of Labor shall do the following:

(1) \* \* \*

\* \* \* \* \*

(4) Inform such members that the Department of Defense and the Department **【of Transportation】** of *Homeland Security* are required under section 1143(a) of this title to provide proper certification or verification of job skills and experience acquired while on active duty that may have application to employment in the civilian sector for use in seeking civilian employment and in obtaining job search skills.

\* \* \* \* \*



(c) PARTICIPATION.—The Secretary of Defense and the Secretary **[of Transportation]** of *Homeland Security* shall encourage and otherwise promote maximum participation by members of the armed forces eligible for assistance under the program carried out under this section.

(d) USE OF PERSONNEL AND ORGANIZATIONS.—In carrying out the program established under this section, the Secretaries may—

(1) \* \* \*

(2) use military and civilian personnel of the Department of Defense and the Department **[of Transportation]** of *Homeland Security*;

\* \* \* \* \*

**§ 1145. Health benefits**

(a) \* \* \*

\* \* \* \* \*

(e) COAST GUARD.—The Secretary **[of Transportation]** of *Homeland Security* shall implement this section for the Coast Guard.

\* \* \* \* \*

**§ 1148. Relocation assistance for personnel overseas**

The Secretary of Defense and the Secretary **[of Transportation]** of *Homeland Security* shall develop a program specifically to assist members of the armed forces stationed overseas who are preparing for discharge or release from active duty, and the dependents of such members, in readjusting to civilian life. The program shall focus on the special needs and requirements of such members and dependents due to their overseas locations and shall include, to the maximum extent possible, computerized job relocation assistance and job search information.

**§ 1149. Excess leave and permissive temporary duty**

Under regulations prescribed by the Secretary of Defense or the Secretary **[of Transportation]** of *Homeland Security* with respect to the Coast Guard, the Secretary concerned shall grant a member of the armed forces who is to be involuntarily separated such excess leave (for a period not in excess of 30 days), or such permissive temporary duty (for a period not in excess of 10 days), as the member requires in order to facilitate the member's carrying out necessary relocation activities (such as job search and residence search activities), unless to do so would interfere with military missions.

**§ 1150. Affiliation with Guard and Reserve units: waiver of certain limitations**

(a) \* \* \*

\* \* \* \* \*

(c) COAST GUARD.—This section shall apply to the Coast Guard in the same manner and to the same extent as it applies to the Department of Defense. The Secretary **[of Transportation]** of *Homeland Security* shall prescribe regulations to implement this section for the Coast Guard.

\* \* \* \* \*

**§ 1152. Assistance to eligible members and former members to obtain employment with law enforcement agencies**

(a) PLACEMENT PROGRAM.—The Secretary of Defense, and the Secretary **【of Transportation】** of *Homeland Security* with respect to the Coast Guard, may enter into an agreement with the Attorney General to establish or participate in a program to assist eligible members and former members of the armed forces to obtain employment as law enforcement officers with eligible law enforcement agencies following the discharge or release of such members or former members from active duty. Eligible law enforcement agencies shall consist of State law enforcement agencies, local law enforcement agencies, and Indian tribes that perform law enforcement functions (as determined by the Secretary of the Interior).

\* \* \* \* \*

(d) GRANTS TO FACILITATE EMPLOYMENT.—(1) The Secretary of Defense, and the Secretary **【of Transportation】** of *Homeland Security* with respect to the Coast Guard, may provide funds to the Attorney General for grants under this section to reimburse participating eligible law enforcement agencies for costs, including salary and fringe benefits, of employing members or former members pursuant to a program referred to in subsection (a).

\* \* \* \* \*

**§ 1153. Assistance to separated members to obtain employment with health care providers**

(a) PLACEMENT PROGRAM.—The Secretary of Defense, and the Secretary **【of Transportation】** of *Homeland Security* with respect to the Coast Guard, may establish a program to assist eligible members of the armed forces to obtain employment with health care providers upon their discharge or release from active duty.

\* \* \* \* \*

(c) SELECTION OF PARTICIPANTS.—(1) The Secretary of Defense, and the Secretary **【of Transportation】** of *Homeland Security* with respect to the Coast Guard, shall select members to participate in the program established under subsection (a) on the basis of applications submitted to the Secretary concerned not later than one year after the date of the discharge or release of the members from active duty or, in the case of an applicant becoming educationally qualified for teacher placement assistance in accordance with subsection (b)(2), not later than one year after the date on which the applicant becomes educationally qualified. An application shall be in such form and contain such information as the Secretaries may require.

(2) The Secretary of Defense, and the Secretary **【of Transportation】** of *Homeland Security* with respect to the Coast Guard, may not select a member to participate in the program unless the Secretary concerned has sufficient appropriations for the placement program available at the time of the selection to satisfy the obligations to be incurred by the United States under subsection (d) with respect to that member.

\* \* \* \* \*

(d) GRANTS TO FACILITATE EMPLOYMENT.—(1) The Secretary of Defense and the Secretary **【of Transportation】** of *Homeland Security* may enter into an agreement with a health care provider to assist eligible members selected under subsection (c) to obtain suitable employment with the health care provider. Under such an agreement, a health care provider shall agree to employ a participant in the program on a full-time basis for at least five years.

\* \* \* \* \*

(e) AGREEMENTS WITH STATES.—(1) In addition to the agreements referred to in subsection (d)(1), the Secretary of Defense, and the Secretary **【of Transportation】** of *Homeland Security* with respect to the Coast Guard, may enter into an agreement directly with a State to allow the State to arrange the placement of participants in the program with health care providers. Paragraphs (2) through (5) of subsection (d) shall apply with respect to any placement made through such an agreement.

\* \* \* \* \*

**CHAPTER 59—SEPARATION**

\* \* \* \* \*

**§ 1175. Voluntary separation incentive**

(a)(1) Consistent with this section and the availability of appropriations for this purpose, the Secretary of Defense and the Secretary **【of Transportation】** of *Homeland Security* may provide a financial incentive to members of the armed forces described in subsection (b) for voluntary appointment, enlistment, or transfer to a reserve component, requested and approved under subsection (c).

(2)(A) \* \* \*

(B) If, before the expiration of the period otherwise applicable under subparagraph (A) to a member receiving a financial incentive under this section, the member is separated from a reserve component or is transferred to the Retired Reserve, the period for payment of a financial incentive to the member under this section shall terminate on the date of the separation or transfer unless—

(i) \* \* \*

(ii) the separation or transfer is required by reason of the failure of selection for promotion or the medical disqualification of the member, except in a case in which the Secretary of Defense or the Secretary **【of Transportation】** of *Homeland Security* determines that the basis for the separation or transfer is a result of a deliberate action taken by the member with the intent to avoid retention in the Ready Reserve or Standby Reserve; or

\* \* \* \* \*

(b) The Secretary of Defense and the Secretary **【of Transportation】** of *Homeland Security* may provide the incentive to a member of the armed forces if the member—

(1) \* \* \*

\* \* \* \* \*

(g) Subject to subsection (h), payments under this provision shall be paid from appropriations available to the Department of Defense

and the Department [of Transportation] of Homeland Security for the Coast Guard.

\* \* \* \* \*  
(i) The Secretary of Defense and the Secretary [of Transportation] of Homeland Security may issue such regulations as may be necessary to carry out this section.

\* \* \* \* \*  
**CHAPTER 61—RETIREMENT OR SEPARATION FOR PHYSICAL DISABILITY**

\* \* \* \* \*  
**§ 1212. Disability severance pay**

(a) Upon separation from his armed force under section 1203 or 1206 of this title, a member is entitled to disability severance pay computed by multiplying (1) his years of service, but not more than 12, computed under section 1208 of this title, by (2) the highest of the following amounts:

(A) \* \* \*

(B) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in any temporary grade or rank higher than that described in clause (A), in which he served satisfactorily as determined by the Secretary of the military department or the Secretary [of Transportation] of Homeland Security, as the case may be, having jurisdiction over the armed force from which he is separated.

\* \* \* \* \*

**CHAPTER 71—COMPUTATION OF RETIRED PAY**

\* \* \* \* \*

**§ 1408. Payment of retired or retainer pay in compliance with court orders**

(a) \* \* \*

\* \* \* \* \*

(h) **BENEFITS FOR DEPENDENTS WHO ARE VICTIMS OF ABUSE BY MEMBERS LOSING RIGHT TO RETIRED PAY.**—(1) \* \* \*

(2) A spouse or former spouse of a member or former member of the armed forces is eligible to receive payment under this subsection if—

(A) the member or former member, while a member of the armed forces and after becoming eligible to be retired from the armed forces on the basis of years of service, has eligibility to receive retired pay terminated as a result of misconduct while a member involving abuse of a spouse or dependent child (as defined in regulations prescribed by the Secretary of Defense or, for the Coast Guard when it is not operating as a service

in the Navy, by the Secretary [of Transportation] of *Homeland Security*); and

\* \* \* \* \*

(8) Payments in accordance with this subsection shall be made out of funds in the Department of Defense Military Retirement Fund established by section 1461 of this title or, in the case of the Coast Guard, out of funds appropriated to the Department [of Transportation] of *Homeland Security* for payment of retired pay for the Coast Guard.

\* \* \* \* \*

**CHAPTER 74—DEPARTMENT OF DEFENSE MILITARY RETIREMENT FUND**

\* \* \* \* \*

**§ 1463. Payments from the Fund**

(a) There shall be paid from the Fund—

(1) \* \* \*

(2) retired pay payable under chapter 1223 of this title to former members of the armed forces (other than retired pay payable by the Secretary [of Transportation] of *Homeland Security*);

\* \* \* \* \*

**CHAPTER 75—DECEASED PERSONNEL**

\* \* \* \* \*

**SUBCHAPTER II—DEATH BENEFITS**

\* \* \* \* \*

**§ 1482a. Expenses incident to death: civilian employees serving with an armed force**

(a) \* \* \*

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations to implement this section. The Secretary [of Transportation] of *Homeland Security* shall prescribe regulations to implement this section with regard to civilian employees of the Department [of Transportation] of *Homeland Security*. Regulations under this subsection shall be uniform to the extent possible and shall provide for the Secretary’s consideration of the conditions and circumstances surrounding the death of an employee and the nature of the employee’s service with the armed force.

\* \* \* \* \*

**CHAPTER 76—MISSING PERSONS**

\* \* \* \* \*

**§ 1510. Applicability to Coast Guard**

(a) DESIGNATED OFFICER TO HAVE RESPONSIBILITY.—The Secretary [of Transportation] of *Homeland Security* shall designate an officer of the Department [of Transportation] of *Home-*

*land Security* to have responsibility within the Department **[of Transportation]** *of Homeland Security* for matters relating to missing persons who are members of the Coast Guard.

(b) PROCEDURES.—The Secretary **[of Transportation]** *of Homeland Security* shall prescribe procedures for the determination of the status of persons described in section 1501(c) of this title who are members of the Coast Guard and for the collection, analysis, review, and update of information on such persons. To the maximum extent practicable, the procedures prescribed under this section shall be similar to the procedures prescribed by the Secretary of Defense under section 1501(b) of this title.

\* \* \* \* \*

**CHAPTER 79—CORRECTION OF MILITARY RECORDS**

\* \* \* \* \*

**§ 1552. Correction of military records: claims incident thereto**

(a)(1) The Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice. Except as provided in paragraph (2), such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that military department. The Secretary **[of Transportation]** *of Homeland Security* may in the same manner correct any military record of the Coast Guard.

\* \* \* \* \*

**CHAPTER 80—MISCELLANEOUS INVESTIGATION REQUIREMENTS AND OTHER DUTIES**

\* \* \* \* \*

**§ 1565. DNA identification information: collection from certain offenders; use**

(a) \* \* \*

\* \* \* \* \*

(f) REGULATIONS.—This section shall be carried out under regulations prescribed by the Secretary of Defense, in consultation with the Secretary **[of Transportation]** *of Homeland Security* and the Attorney General. Those regulations shall apply, to the extent practicable, uniformly throughout the armed forces.

\* \* \* \* \*

**CHAPTER 81—CIVILIAN EMPLOYEES**

\* \* \* \* \*

**§ 1588. Authority to accept certain voluntary services**

(a) \* \* \*

\* \* \* \* \*

(f) AUTHORITY TO INSTALL EQUIPMENT.—(1) \* \* \*

\* \* \* \* \*

(4) The Secretary of Defense and, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary [of Transportation] of *Homeland Security* shall prescribe regulations to carry out this subsection.

\* \* \* \* \*

**§ 1589. Participation in management of specified non-Federal entities: authorized activities**

(a) AUTHORIZATION.—(1) \* \* \*

(2) Paragraph (1) applies to any employee of the Department of Defense or, in the case of the Coast Guard when not operating as a service in the Navy, of the Department [of Transportation] of *Homeland Security*. For purposes of this section, the term “employee” includes a civilian officer.

(b) DESIGNATED ENTITIES.—The Secretary of Defense, and the Secretary [of Transportation] of *Homeland Security* in the case of the Coast Guard when it is not operating as a service in the Navy, shall designate those entities for which authorization under subsection (a) may be provided. The list of entities so designated may not be revised more frequently than semiannually. In making such designations, the Secretary shall designate each military welfare society named in paragraph (2) of section 1033(b) of this title and may designate any other entity described in paragraph (3) of such section. No other entities may be designated.

\* \* \* \* \*

(e) REGULATIONS.—The Secretary of Defense, and the Secretary [of Transportation] of *Homeland Security* in the case of the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section.

\* \* \* \* \*

**PART III—TRAINING AND EDUCATION**

\* \* \* \* \*

**CHAPTER 101—TRAINING GENERALLY**

\* \* \* \* \*

**§ 2002. Dependents of members of armed forces: language training**

(a) Notwithstanding section 701(b) of the Foreign Service Act of 1980 (22 U.S.C. 4021(b)) or any other provision of law, and under regulations to be prescribed by the Secretary of Defense or, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary [of Transportation] of *Homeland Security*, language training may be provided in—  
(1) \* \* \*

\* \* \* \* \*

**PART IV—SERVICE, SUPPLY, AND  
PROCUREMENT**

\* \* \* \* \*

**CHAPTER 137—PROCUREMENT GENERALLY**

\* \* \* \* \*

**§ 2302. Definitions**

In this chapter:

(1) The term “head of an agency” means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary [of Transportation] of *Homeland Security*, and the Administrator of the National Aeronautics and Space Administration.

\* \* \* \* \*

**§ 2306b. Multiyear contracts: acquisition of property**

(a) \* \* \*

(b) REGULATIONS.—(1) \* \* \*

(2)(A) \* \* \*

(B) The Secretary [of Transportation] of *Homeland Security* shall prescribe the regulations applicable to the Coast Guard, except that the regulations prescribed by the Secretary of Defense shall apply to the Coast Guard when it is operating as a service in the Navy.

\* \* \* \* \*

**§ 2323. Contract goal for small disadvantaged businesses and certain institutions of higher education**

(a) \* \* \*

\* \* \* \* \*

(j) DEFINITIONS.—In this section:

(1) \* \* \*

(2) The term “head of an agency” means the Secretary of Defense, the Secretary [of Transportation] of *Homeland Security*, and the Administrator of the National Aeronautics and Space Administration.

\* \* \* \* \*

**CHAPTER 140—PROCUREMENT OF COMMERCIAL ITEMS**

\* \* \* \* \*

**§ 2376. Definitions**

In this chapter:

(1) \* \* \*

(2) The term “head of an agency” means the Secretary of Defense, the Secretary [of Transportation] of *Homeland Security*, and the Administrator of the National Aeronautics and Space Administration.

\* \* \* \* \*



**CHAPTER 141—MISCELLANEOUS PROCUREMENT PROVISIONS**

\* \* \* \* \*

**§ 2396. Advances for payments for compliance with foreign laws, rent in foreign countries, tuition, public utility services, and pay and supplies of armed forces of friendly foreign countries**

(a) \* \* \*

(b)(1) Under regulations prescribed by the Secretary of Defense, or by the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard when it is not operating as a service of the Navy, an officer of an armed force of the United States accountable for public money may advance amounts to a disbursing official of a friendly foreign country or members of an armed force of a friendly foreign country for—

(A) \* \* \*

\* \* \* \* \*

**§ 2410a. Severable service contracts for periods crossing fiscal years**

(a) **AUTHORITY.**—The Secretary of Defense, the Secretary of a military department, or the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy, may enter into a contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

\* \* \* \* \*

**CHAPTER 153—EXCHANGE OF MATERIAL AND DISPOSAL OF OBSOLETE, SURPLUS, OR UNCLAIMED PROPERTY**

\* \* \* \* \*

**§ 2572. Documents, historical artifacts, and condemned or obsolete combat materiel: loan, gift, or exchange**

(a) The Secretary concerned may lend or give items described in subsection (c) that are not needed by the military department concerned (or by the Coast Guard, in the case of the Secretary [of Transportation] of *Homeland Security*), to any of the following:

(1) \* \* \*

\* \* \* \* \*

**§ 2575. Disposition of unclaimed property**

(a) The Secretary of any military department, and the Secretary [of Transportation] of *Homeland Security*, under such regulations as they may respectively prescribe, may each by public or private sale or otherwise, dispose of all lost, abandoned, or unclaimed personal property that comes into the custody or control of the Secretary's department, other than property subject to section 4712, 6522, or 9712 of this title or subject to subsection (c). However, property may not be disposed of until diligent effort has been made

to find the owner (or the heirs, next of kin, or legal representative of the owner. The diligent effort to find the owner (or the heirs, next of kin, or legal representative of the owner) shall begin, to the maximum extent practicable, not later than seven days after the date on which the property comes into the custody or control of the Secretary. The period for which that effort is continued may not exceed 45 days. If the owner (or the heirs, next of kin, or legal representative of the owner is determined but not found, the property may not be disposed of until the expiration of 45 days after the date when notice, giving the time and place of the intended sale or other disposition, has been sent by certified or registered mail to that person at his last known address. When diligent effort to determine the owner (or the heirs, next of kin, or legal representative of the owner is unsuccessful, the property may be disposed of without delay, except that if it has a fair market value of more than \$300, the Secretary may not dispose of the property until 45 days after the date it is received at a storage point designated by the Secretary.

\* \* \* \* \*

**§ 2578. Vessels: transfer between departments**

A vessel under the jurisdiction of a military department may be transferred or otherwise made available without reimbursement to another military department or to the Department [of Transportation] of Homeland Security, and a vessel under the jurisdiction of the Department [of Transportation] of Homeland Security may be transferred or otherwise made available without reimbursement to a military department. Any such transfer may be made only upon the request of the Secretary of the military department concerned or the Secretary [of Transportation] of Homeland Security, as the case may be, and with the approval of the Secretary of the department having jurisdiction of the vessel.

\* \* \* \* \*

**CHAPTER 155—ACCEPTANCE OF GIFTS AND SERVICES**

\* \* \* \* \*

**§ 2601. General gift funds**

(a) \* \* \*

(b) Gifts and bequests of money, and the proceeds of the sale of property, received under subsection (a) shall be deposited in the Treasury in the fund called—

(1) \* \* \*

\* \* \* \* \*

(4) “Coast Guard General Gift Fund”, in the case of deposits of the Secretary [of Transportation] of Homeland Security.

\* \* \* \* \*

**CHAPTER 157—TRANSPORTATION**

\* \* \* \* \*

**§ 2634. Motor vehicles: transportation or storage for members on change of permanent station or extended deployment**

(a) \* \* \*

\* \* \* \* \*

(e) The Secretary of Defense (and the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy) may prescribe regulations limiting those leased motor vehicles that may be transported pursuant to this section based upon the length of the lease and other terms and conditions of the lease that the Secretary considers appropriate.

\* \* \* \* \*

**§ 2635. Medical emergency helicopter transportation assistance and limitation of individual liability**

(a) The Secretary of Defense is authorized to assist the Department of Health and Human Services and the Department [of Transportation] of *Homeland Security* in providing medical emergency helicopter transportation services to civilians. Any resources provided under this section shall be under such terms and conditions, including reimbursement, as the Secretary of Defense deems appropriate and shall be subject to the following specific limitations:

(1) \* \* \*

\* \* \* \* \*

**CHAPTER 159—REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NONEXCESS PROPERTY**

\* \* \* \* \*

**§ 2665. Sale of certain interests in land; logs**

(a) \* \* \*

(b) The President, through an executive department, may sell to any person or foreign government any forest products produced on land owned or leased by a military department or the Department [of Transportation] *in which the Coast Guard is operating*.

\* \* \* \* \*

**CHAPTER 163—MILITARY CLAIMS**

\* \* \* \* \*

**§ 2734. Property loss; personal injury or death: incident to noncombat activities of the armed forces; foreign countries**

(a) \* \* \*

\* \* \* \* \*

(g) Payment of claims against the Coast Guard arising while it is operating as a service in the Department [of Transportation] of

*Homeland Security* shall be made out of the appropriation for the operating expenses of the Coast Guard.

\* \* \* \* \*

**§ 2734a. Property loss; personal injury or death: incident to noncombat activities of armed forces in foreign countries; international agreements**

(a) When the United States is a party to an international agreement which provides for the settlement or adjudication and cost sharing of claims against the United States arising out of the acts or omissions of a member or civilian employee of an armed force of the United States done in the performance of official duty, or arising out of any other act, omission, or occurrence for which an armed force of the United States is legally responsible under the law of another party to the international agreement, and causing damage in the territory of such party, the Secretary of Defense or the Secretary [of Transportation] of *Homeland Security* or their designees may—

(1) \* \* \*

\* \* \* \* \*

(c) A reimbursement or payment under this section shall be made by the Secretary of Defense out of appropriations as provided in section 2732 of this title except that payment of claims against the Coast Guard arising while it is operating as a service of the Department [of Transportation] of *Homeland Security* shall be made out of the appropriations for the operating expenses of the Coast Guard. The appropriations referred to in this subsection may be used to buy foreign currencies required for the reimbursement or payment.

(d) Upon the request of the Secretary [of Transportation] of *Homeland Security* or his designee, any payments made relating to claims arising from the activities of the Coast Guard and covered by subsection (a) may be reimbursed or paid to the foreign country concerned by the authorized representative of the Department of Defense out of appropriations as provided in section 2732 of this title, subject to reimbursement from the Department [of Transportation] of *Homeland Security*.

\* \* \* \* \*

**CHAPTER 165—ACCOUNTABILITY AND RESPONSIBILITY**

\* \* \* \* \*

**§ 2775. Liability of members assigned to military housing**

(a)(1) A member of the armed forces shall be liable to the United States for damage to any family housing unit or unaccompanied personal housing unit, or damage to or loss of any equipment or furnishings of any family housing unit or unaccompanied personnel housing unit, assigned to or provided such member if (as determined under regulations prescribed by the Secretary of Defense or the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy) the damage or loss was caused by the abuse or neg-

ligence of the member (or a dependent of the member) or of a guest of the member (or a dependent of the member).

(2) A member of the armed forces—

(A) \* \* \*

(B) who fails to clean satisfactorily that housing unit (as determined under regulations prescribed by the Secretary of Defense or the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy) upon termination of the assignment or provision of that housing unit.

shall be liable to the United States for the cost of cleaning made necessary as a result of that failure.

(b) The Secretary of Defense, and the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy, may establish limitations on liability under this section, including (in the case of liability under subsection (a)(1)) different limitations based upon the degree of abuse or negligence involved, and may compromise or waive a claim of the United States under this section.

\* \* \* \* \*

(e) The Secretary of Defense, and the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section. Such regulations shall include—

(1) \* \* \*

\* \* \* \* \*

**CHAPTER 169—MILITARY CONSTRUCTION AND MILITARY FAMILY HOUSING**

\* \* \* \* \*

**SUBCHAPTER II—MILITARY FAMILY HOUSING**

\* \* \* \* \*

**§ 2830. Occupancy of substandard family housing units**

(a) \* \* \*

(b)(1) \* \* \*

(2) The authority to enter into leases under paragraph (1) shall be exercised—

(A) \* \* \*

(B) in the case of a lease by the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy, subject to regulations prescribed by that Secretary.

\* \* \* \* \*

**§ 2835. Long-term leasing of military family housing to be constructed**

(a) BUILD AND LEASE AUTHORIZED.—Subject to subsection (b), the Secretary of a military department, or the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard, may enter into a contract for the lease of family housing units to be con-

structed or rehabilitated to residential use near a military installation within the United States under the Secretary's jurisdiction at which there is a shortage of family housing. Housing units leased under this section shall be assigned, without rental charge, as family housing to members of the armed forces who are eligible for assignment to military family housing.

(b) SUBMISSION AND AUTHORIZATION OF PROPOSED LEASE CONTRACTS.—(1) The Secretary of a military department, or the Secretary **[of Transportation]** of *Homeland Security* with respect to the Coast Guard, may enter into a lease contract under subsection (a) for such military housing as is authorized by law for the purposes of this section.

(2) The budget material submitted to Congress by the Secretary of Defense, and the Secretary **[of Transportation]** of *Homeland Security* with respect to the Coast Guard, in connection with the budget submitted pursuant to section 1105 of title 31 for each fiscal year shall include materials that identify the military housing projects for which lease contracts are proposed to be entered into under subsection (a) in such fiscal year.

(c) COMPETITIVE PROCESS.—Each contract under subsection (a) shall be awarded through the use of publicly advertised, competitively bid, or competitively negotiated, contracting procedures as provided in chapter 137 of this title. In accordance with such procedures, the Secretary of a military department, or the Secretary **[of Transportation]** of *Homeland Security*, as the case may be, shall solicit bids or proposals for a contract for the lease of military housing authorized in accordance with subsection (b)(1). Such a contract may provide for the contractor of the housing facilities to operate and maintain such housing facilities during the term of the lease.

(d) CONDITIONS ON OBLIGATION OF FUNDS.—A lease contract entered into for a military housing project under subsection (a) shall include the following provisions:

(1) \* \* \*

\* \* \* \* \*

(4) A requirement that housing units constructed pursuant to the contract shall be constructed—

(A) \* \* \*

(B) to Department **[of Transportation]** of *Homeland Security* specifications, in the case of a contract for the Coast Guard.

\* \* \* \* \*

(g) NOTICE AND WAIT REQUIREMENTS.—A contract may not be entered into for the lease of housing facilities under this section until—

(1) the Secretary of Defense, or the Secretary **[of Transportation]** of *Homeland Security* with respect to the Coast Guard, submits to the appropriate committees of Congress, in writing, an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed contract is cost-effective when compared with alternative means of furnishing the same housing facilities; and

\* \* \* \* \*

**§ 2836. Military housing rental guarantee program**

(a) **AUTHORITY.**—Subject to subsection (b), the Secretary of a military department, or the Secretary **[of Transportation]** of *Homeland Security* with respect to the Coast Guard, may enter into an agreement to assure the occupancy of rental housing to be constructed or rehabilitated to residential use by a private developer or by a State or local housing authority on private land, on land owned by a State or local government, or on land owned by the United States, if the housing is to be located on or near a new military installation or an existing military installation that has a shortage of housing to meet the requirements of eligible members of the armed forces (with or without accompanying dependents). The authority provided under this subsection shall be exercised under uniform regulations prescribed by the Secretary of Defense.

(b) **SUBMISSION AND AUTHORIZATION OF PROPOSED AGREEMENTS.**—(1) The Secretary of a military department, or the Secretary **[of Transportation]** of *Homeland Security* with respect to the Coast Guard, may enter into agreements pursuant to subsection (a) for such military housing rental guaranty projects as are authorized by law.

(2) The budget material submitted to Congress by the Secretary of Defense, and the Secretary **[of Transportation]** of *Homeland Security* with respect to the Coast Guard, in connection with the budget submitted pursuant to section 1105 of title 31 for each fiscal year shall include materials that identify the military housing rental guaranty projects for which agreements are proposed to be entered into under subsection (a) in that fiscal year.

(c) **CONTENT OF AGREEMENT.**—An agreement under subsection (a)—

(1) \* \* \*

\* \* \* \* \*

(4) shall require that the housing units be constructed—

(A) \* \* \*

(B) in the case of an agreement for the Coast Guard, to Department **[of Transportation]** of *Homeland Security* specifications;

\* \* \* \* \*

(11) shall include a provision authorizing the Secretary of the military department concerned, or the Secretary **[of Transportation]** of *Homeland Security* with respect to the Coast Guard, to take such action as the Secretary considers appropriate to protect the interests of the United States, including rendering the agreement null and void if, in the opinion of the Secretary, the owner of the housing fails to maintain a satisfactory level of operation and maintenance;

\* \* \* \* \*

(e) **COMPETITIVE PROCESS.**—An agreement under subsection (a) shall be made through the use of publicly advertised, competitively bid, or competitively negotiated, contracting procedures as provided in chapter 137 of this title. In accordance with such procedures, the Secretary of a military department, or the Secretary **[of Transportation]** of *Homeland Security*, as the case may be, shall solicit bids or proposals for a guaranty agreement for each military housing

rental guaranty project authorized in accordance with subsection (b).

(f) NOTICE AND WAIT REQUIREMENTS.—An agreement may not be entered into under subsection (a) until—

(1) the Secretary of Defense, or the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard, submits to the appropriate committees of Congress, in writing, an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed agreement is cost effective when compared with alternative means of furnishing the same housing facilities; and

\* \* \* \* \*

**Subtitle B—Army**

\* \* \* \* \*

**PART IV—SERVICE, SUPPLY, AND PROCUREMENT**

\* \* \* \* \*

**CHAPTER 447—TRANSPORTATION**

\* \* \* \* \*

**§ 4745. Civilian passengers and commercial cargoes: transports in trans-Atlantic service**

(a) Whenever space is unavailable on commercial lines and is available (1) on vessels operated by Army transport agencies, or (2) within bulk space allocations made to the Department of the Army on vessels operated by any transport agency of the Department of Defense, civilian passengers and commercial cargo may, in the discretion of the Secretary of the Army and the Secretary [of Transportation] of *Homeland Security*, be transported on those vessels. Rates for transportation under this section may not be less than those charged by commercial lines for the same kinds of service.

\* \* \* \* \*

**Subtitle C—Navy and Marine Corps**

\* \* \* \* \*

**PART I—ORGANIZATION**

\* \* \* \* \*

**CHAPTER 503—DEPARTMENT OF THE NAVY**

\* \* \* \* \*



**§ 5013a. Secretary of the Navy: powers with respect to Coast Guard**

(a) Whenever the Coast Guard operates as a service in the Navy under section 3 of title 14, the Secretary of the Navy has the same powers and duties with respect to the Coast Guard as the Secretary [of Transportation] of *Homeland Security* has when the Coast Guard is not so operating.

\* \* \* \* \*

**PART III—EDUCATION AND TRAINING**

\* \* \* \* \*

**CHAPTER 605—UNITED STATES NAVAL POSTGRADUATE SCHOOL**

\* \* \* \* \*

**§ 7045. Officers of the other armed forces; enlisted members: admission**

(a)(1) The Secretary of the Navy may permit officers of the Army, Air Force, and Coast Guard to receive instruction at the Naval Postgraduate School. The numbers and grades of such officers shall be as agreed upon by the Secretary of the Navy with the [Secretaries of the Army, Air Force, and Transportation] *Secretary of the Army, the Secretary of the Air Force, and the Secretary of Homeland Security*, respectively.

\* \* \* \* \*

(b) The Department of the Army, the Department of the Air Force, and the Department [of Transportation] of *Homeland Security* shall bear the cost of the instruction received by officers detailed for that instruction by the [Secretaries of the Army, Air Force, and Transportation] *Secretary of the Army, the Secretary of the Air Force, and the Secretary of Homeland Security*, respectively. In the case of an enlisted member permitted to receive instruction at the Postgraduate School, the Secretary of the Navy shall charge that member only for such costs and fees as the Secretary considers appropriate (taking into consideration the admission of enlisted members on a space-available basis).

\* \* \* \* \*

**PART IV—GENERAL ADMINISTRATION**

\* \* \* \* \*

**CHAPTER 637—SALVAGE FACILITIES**

\* \* \* \* \*

**§ 7361. Authority to provide for necessary salvage facilities**

(a) \* \* \*

(b) COORDINATION WITH SECRETARY OF [TRANSPORTATION] *HOMELAND SECURITY*.—The Secretary shall submit to the Secretary [of Transportation] of *Homeland Security* for comment each pro-

posed contract for salvage facilities that affects the interests of the Department of Transportation.

\* \* \* \* \*

**CHAPTER 665—NATIONAL OCEANOGRAPHIC PARTNERSHIP PROGRAM**

\* \* \* \* \*

**§ 7902. National Ocean Research Leadership Council**

(a) \* \* \*

(b) MEMBERSHIP.—The Council is composed of the following members:

(1) \* \* \*

\* \* \* \* \*

(13) *The Under Secretary for Science and Technology of the Department of Homeland Security.*

(14) *Other Federal officials the Council considers appropriate.*

\* \* \* \* \*

**Subtitle E—Reserve Components**

\* \* \* \* \*

**PART I—ORGANIZATION AND ADMINISTRATION**

\* \* \* \* \*

**CHAPTER 1005—ELEMENTS OF RESERVE COMPONENTS**

\* \* \* \* \*

**§ 10143. Ready Reserve: Selected Reserve**

(a) \* \* \*

(b) The organization and unit structure of the Selected Reserve shall be approved—

(1) \* \* \*

(2) in the case of the Coast Guard Reserve, by the Secretary **of Transportation** of *Homeland Security* upon the recommendation of the Commandant of the Coast Guard.

\* \* \* \* \*

**§ 10146. Ready Reserve: transfer from**

(a) Subject to subsection (c) and under regulations prescribed by the Secretary of Defense, or by the Secretary **of Transportation** of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy, a member in the Ready Reserve may be transferred to the Standby Reserve.

\* \* \* \* \*

**§ 10147. Ready Reserve: training requirements**

(a) Except as specifically provided in regulations to be prescribed by the Secretary of Defense, or by the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy, each person who is enlisted, inducted, or appointed in an armed force, and who becomes a member of the Ready Reserve under any provision of law except section 513 or 10145(b) of this title, shall be required, while in the Ready Reserve, to—

(1) \* \* \*

\* \* \* \* \*

**§ 10149. Ready Reserve: continuous screening**

(a) \* \* \*

(b) Under regulations to be prescribed by the Secretary of Defense, and by the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy, a member of the Ready Reserve who is designated as a member not to be retained in the Ready Reserve as a result of screening under subsection (a) shall, as appropriate, be—

(1) \* \* \*

\* \* \* \* \*

**§ 10150. Ready Reserve: transfer back from Standby Reserve**

Under regulations to be prescribed by the Secretary of Defense, and by the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy, a member of the Standby Reserve who has not completed his required period of service in the Ready Reserve may be transferred to the Ready Reserve when the reason for his transfer to the Standby Reserve no longer exists.

\* \* \* \* \*

**CHAPTER 1007—ADMINISTRATION OF RESERVE COMPONENTS**

\* \* \* \* \*

**§ 10202. Regulations**

(a) \* \* \*

(b) The Secretary [of Transportation] of *Homeland Security*, with the concurrence of the Secretary of the Navy, shall prescribe such regulations as the Secretary considers necessary to carry out all provisions of law relating to the reserve components insofar as they relate to the Coast Guard, except when the Coast Guard is operating as a service in the Navy.

\* \* \* \* \*

**§ 10203. Reserve affairs: designation of general or flag officer of each armed force**

(a) \* \* \*

\* \* \* \* \*

(d) The Secretary [of Transportation] of *Homeland Security* may designate a flag officer of the Coast Guard to be directly responsible for reserve affairs to the Commandant of the Coast Guard.

\* \* \* \* \*

**§ 10205. Members of Ready Reserve: requirement of notification of change of status**

(a) \* \* \*

(b) This section shall be administered under regulations prescribed by the Secretary of Defense and by the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy.

\* \* \* \* \*

**CHAPTER 1009—RESERVE FORCES POLICY BOARDS AND COMMITTEES**

\* \* \* \* \*

**§ 10301. Reserve Forces Policy Board**

(a) \* \* \*

(b) Whenever the Coast Guard is not operating as a service in the Navy, the Secretary [of Transportation] of *Homeland Security* may designate two officers of the Coast Guard, Regular or Reserve, to serve as voting members of the Board.

\* \* \* \* \*

**PART II—PERSONNEL GENERALLY**

\* \* \* \* \*

**CHAPTER 1203—ENLISTED MEMBERS**

\* \* \* \* \*

**§ 12103. Reserve components: terms**

(a) \* \* \*

(b) Under regulations to be prescribed by the Secretary of Defense, and by the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy, a person who is qualified for enlistment for active duty in an armed force, and who is not under orders to report for induction into an armed force under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), may be enlisted as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve, for a term of not less than six years nor more than eight years. Each person enlisted under this subsection shall serve—

(1) \* \* \*

\* \* \* \* \*

(d) Under regulations to be prescribed by the Secretary of Defense, or the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy, a non-prior-service person who is qualified for in-

duction for active duty in an armed force and who is not under orders to report for induction into an armed force under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), except as provided in section 6(c)(2)(A)(ii) and (iii) of such Act, may be enlisted in the Army National Guard or the Air National Guard, or as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve, for a term of not less than six years nor more than eight years. Each person enlisted under this subsection shall perform an initial period of active duty for training of not less than twelve weeks to commence insofar as practicable within 270 days after the date of that enlistment.

\* \* \* \* \*

**CHAPTER 1209—ACTIVE DUTY**

\* \* \* \* \*

**§ 12304. Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency**

(a) **AUTHORITY.**—Notwithstanding the provisions of section 12302(a) or any other provision of law, when the President determines that it is necessary to augment the active forces for any operational mission or that it is necessary to provide assistance referred to in subsection (b), he may authorize the Secretary of Defense and the Secretary **[of Transportation]** of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy, without the consent of the members concerned, to order any unit, and any member not assigned to a unit organized to serve as a unit of the Selected Reserve (as defined in section 10143(a) of this title), or any member in the Individual Ready Reserve mobilization category and designated as essential under regulations prescribed by the Secretary concerned, under their respective jurisdictions, to active duty (other than for training) for not more than 270 days.

\* \* \* \* \*

(e) **POLICIES AND PROCEDURES.**—The Secretary of Defense and the Secretary **[of Transportation]** of *Homeland Security* shall prescribe such policies and procedures for the armed forces under their respective jurisdictions as they consider necessary to carry out this section.

(f) **NOTIFICATION OF CONGRESS.**—Whenever the President authorizes the Secretary of Defense or the Secretary **[of Transportation]** of *Homeland Security* to order any unit or member of the Selected Reserve or Individual Ready Reserve to active duty, under the authority of subsection (a), he shall, within 24 hours after exercising such authority, submit to Congress a report, in writing, setting forth the circumstances necessitating the action taken under this section and describing the anticipated use of these units or members.

\* \* \* \* \*

§ 12311. Active duty agreements

(a) \* \* \*

\* \* \* \* \*

(c) Agreements made under subsection (a) shall be uniform so far as practicable, and are subject to such standards and policies as may be prescribed by the Secretary of Defense for the armed forces under his jurisdiction or by the Secretary [of Transportation] of Homeland Security for the Coast Guard when the Coast Guard is not operating as a service in the Navy.

\* \* \* \* \*

CHAPTER 1214—READY RESERVE MOBILIZATION INCOME INSURANCE

\* \* \* \* \*

§ 12522. Establishment of insurance program

(a) \* \* \*

\* \* \* \* \*

(c) AGREEMENT WITH SECRETARY OF [TRANSPORTATION] HOMELAND SECURITY.—The Secretary and the Secretary [of Transportation] of Homeland Security shall enter into an agreement with respect to the administration of the insurance program for the Coast Guard Reserve.

\* \* \* \* \*

CHAPTER 1214—READY RESERVE MOBILIZATION INCOME INSURANCE

\* \* \* \* \*

§ 12527. Payment of premiums

(a) METHODS OF PAYMENT.—(1) \* \* \*

(2) The Secretary of Defense, in consultation with the Secretary [of Transportation] of Homeland Security, shall prescribe regulations which specify the procedures for payment of premiums by members of the Individual Ready Reserve and other members who do not receive pay on a monthly basis.

\* \* \* \* \*

CHAPTER 1223—RETIRED PAY FOR NON-REGULAR SERVICE

\* \* \* \* \*

§ 12731. Age and service requirements

(a) \* \* \*

(b) Application for retired pay under this section must be made to the Secretary of the military department, or the Secretary [of Transportation] of Homeland Security, as the case may be, having jurisdiction at the time of application over the armed force in which the applicant is serving or last served.

\* \* \* \* \*

**§ 12731a. Temporary special retirement qualification authority**

(a) \* \* \*

\* \* \* \* \*

(e) REGULATIONS.—The authority provided in this section shall be subject to regulations prescribed by the Secretary of Defense and by the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard.

\* \* \* \* \*

**PART IV—TRAINING FOR RESERVE COMPONENTS AND EDUCATIONAL ASSISTANCE PROGRAMS**

\* \* \* \* \*

**CHAPTER 1606—EDUCATIONAL ASSISTANCE FOR MEMBERS OF THE SELECTED RESERVE**

\* \* \* \* \*

**§ 16131. Educational assistance program: establishment; amount**

(a) To encourage membership in units of the Selected Reserve of the Ready Reserve, the Secretary of each military department, under regulations prescribed by the Secretary of Defense, and the Secretary [of Transportation] of *Homeland Security*, under regulations prescribed by the Secretary with respect to the Coast Guard when it is not operating as a service in the Navy, shall establish and maintain a program to provide educational assistance to members of the Selected Reserve of the Ready Reserve of the armed forces under the jurisdiction of the Secretary concerned who agree to remain members of the Selected Reserve for a period of not less than six years.

\* \* \* \* \*

**§ 16136. Administration of program**

(a) Educational assistance under this chapter shall be provided through the Department of Veterans Affairs, under agreements to be entered into by the Secretary of Defense, and by the Secretary [of Transportation] of *Homeland Security*, with the Secretary of Veterans Affairs. Such agreements shall include administrative procedures to ensure the prompt and timely transfer of funds from the Secretary concerned to the Department of Veterans Affairs for the making of payments under this chapter.

\* \* \* \* \*

**CHAPTER 1609—EDUCATION LOAN REPAYMENT PROGRAMS**

\* \* \* \* \*

**§ 16301. Education loan repayment program: enlisted members of Selected Reserve with critical specialties**

(a) \* \* \*

\* \* \* \* \*

(g) The Secretary [of Transportation] of *Homeland Security* may repay loans described in subsection (a)(1) and otherwise administer this section in the case of members of the Selected Reserve of the Coast Guard Reserve when the Coast Guard is not operating as a service in the Navy.

\* \* \* \* \*

**PART V—SERVICE, SUPPLY, AND PROCUREMENT**

\* \* \* \* \*

**CHAPTER 1805—MISCELLANEOUS PROVISIONS**

\* \* \* \* \*

**§ 18501. Reserve components: personnel and logistic support by military departments**

The Secretary concerned is responsible for providing the personnel, equipment, facilities, and other general logistic support necessary to enable units and Reserves in the Ready Reserve of the reserve components under his jurisdiction to satisfy the training requirements and mobilization readiness requirements for those units and Reserves as recommended by the Secretary concerned and by the Chairman of the Joint Chiefs of Staff and approved by the Secretary of Defense, and as recommended by the Commandant of the Coast Guard and approved by the Secretary [of Transportation] of *Homeland Security* when the Coast Guard is not operated as a service of the Navy.

\* \* \* \* \*

---

**TITLE 37, UNITED STATES CODE**

\* \* \* \* \*

**CHAPTER 1—DEFINITIONS**

\* \* \* \* \*

**§ 101. Definitions**

In addition to the definitions in sections 1–5 of title 1, the following definitions apply in this title:

(1) \* \* \*

\* \* \* \* \*

(5) The term “Secretary concerned” means—

(A) \* \* \*

\* \* \* \* \*



(D) the Secretary **[of Transportation]** of *Homeland Security*, with respect to matters concerning the Coast Guard when it is not operating as a service in the Navy;

\* \* \* \* \*

**CHAPTER 3—BASIC PAY**

\* \* \* \* \*

**§ 204. Entitlement**

(a) \* \* \*

\* \* \* \* \*

(i)(1) \* \* \*

\* \* \* \* \*

(4) Regulations with respect to procedures for paying pay and allowances under subsections (g) and (h) shall be prescribed—

(A) \* \* \*

(B) by the Secretary **[of Transportation]** of *Homeland Security* for the Coast Guard when the Coast Guard is not operating as a service in the Navy.

\* \* \* \* \*

**CHAPTER 5—SPECIAL AND INCENTIVE PAYS**

\* \* \* \* \*

**§ 301a. Incentive pay: aviation career**

(a)(1) \* \* \*

\* \* \* \* \*

(3) Under regulations prescribed by the Secretary of Defense, the Secretary **[of Transportation]** of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy, or the Secretary of Commerce and the Secretary of Health and Human Services with respect to members under their respective jurisdiction, an officer (except a flight surgeon or other medical officer) who is entitled to basic pay, holds an aeronautical rating or designation, and is qualified for aviation service under regulations prescribed by the Secretary concerned, is entitled to continuous monthly incentive pay in the amount set forth in subsection (b) that is applicable to him. A flight surgeon or other medical officer who is entitled to basic pay, holds an aeronautical rating or designation, and is qualified for aviation service under regulations prescribed by the Secretary concerned, is not entitled to continuous monthly incentive pay but is entitled to monthly incentive pay in the amounts set forth in subsection (b) for the frequent and regular performance of operational flying duty.

\* \* \* \* \*

**§ 306. Special pay: officers holding positions of unusual responsibility and of critical nature**

(a) \* \* \*

\* \* \* \* \*

(d) This section shall be administered under regulations prescribed by the Secretary of Defense for the armed forces under his jurisdiction, and by the Secretary [of Transportation] of *Homeland Security* for the Coast Guard when the Coast Guard is not operating as a service in the Navy.

\* \* \* \* \*

**§ 307. Special pay: special duty assignment pay for enlisted members**

(a) \* \* \*

\* \* \* \* \*

(c) This section shall be administered under regulations prescribed by the Secretary of Defense for the armed forces under his jurisdiction and by the Secretary [of Transportation] of *Homeland Security* for the Coast Guard when the Coast Guard is not operating as a service in the Navy.

\* \* \* \* \*

**§ 308. Special pay: reenlistment bonus**

(a)(1) A member of a uniformed service who—

(A) \* \* \*

(B) is qualified in a military skill designated as critical by the Secretary of Defense, or by the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy;

\* \* \* \* \*

(d)(1) \* \* \*

(2) If a refund is not required under paragraph (1) in the case of a member who fails to complete a term of enlistment, the Secretary of Defense with respect to the armed forces under the Secretary's jurisdiction, and the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy, may decline to make any payment to a bonus installment under this section that is due to be paid to the member after the date on which the member fails to complete the term of enlistment for which the bonus is being paid. The Secretary of Defense and the Secretary [of Transportation] of *Homeland Security* may prescribe the circumstances under which bonus installments may be terminated under this paragraph.

\* \* \* \* \*

(f) This section shall be administered under regulations prescribed by the Secretary of Defense for the armed forces under his jurisdiction, and by the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy.

\* \* \* \* \*

**§ 308b. Special pay: reenlistment bonus for members of the Selected Reserve**

(a) \* \* \*

\* \* \* \* \*

(e) REGULATIONS.—This section shall be administered under regulations prescribed by the Secretary of Defense for the armed forces under his jurisdiction and by the Secretary [of Transportation] of Homeland Security for the Coast Guard when it is not operating as a service in the Navy.

\* \* \* \* \*

**§ 308c. Special pay: bonus for enlistment in the Selected Reserve**

(a) \* \* \*

\* \* \* \* \*

(c) This section shall be administered under regulations prescribed by the Secretary of Defense for the armed forces under his jurisdiction and by the Secretary [of Transportation] of Homeland Security for the Coast Guard when it is not operating as a service in the Navy.

\* \* \* \* \*

**§ 308d. Special pay: enlisted members of the Selected Reserve assigned to certain high priority units**

(a) Under regulations prescribed by the Secretary of Defense, or the Secretary [of Transportation] of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, an enlisted member who is assigned to a high priority unit of the Selected Reserve of the Ready Reserve of an armed force, as designated under subsection (b), and who performs inactive duty for training for compensation under section 206 of this title with such unit may be paid compensation, in addition to the compensation to which the member is otherwise entitled, in an amount not to exceed \$10 for each regular period of instruction, or period of appropriate duty, at which the member is engaged for at least four hours, including any such instruction or duty performed on a Sunday or holiday.

\* \* \* \* \*

**§ 308e. Special pay: bonus for reserve affiliation agreement**

(a) \* \* \*

\* \* \* \* \*

(f) This section shall be administered under regulations prescribed by the Secretary of Defense for the armed forces under the jurisdiction of the Secretary of Defense and by the Secretary [of Transportation] of Homeland Security for the Coast Guard when the Coast Guard is not operating as a service in the Navy.

\* \* \* \* \*

**§ 308g. Special pay: bonus for enlistment in elements of the Ready Reserve other than the Selected Reserve**

(a) \* \* \*

\* \* \* \* \*

(g) This section shall be administered under regulations prescribed by the Secretary of Defense for the armed forces under his

jurisdiction and by the Secretary **[of Transportation]** of *Homeland Security* for the Coast Guard when it is not operating as a service in the Navy.

\* \* \* \* \*

**§ 308h. Special pay: bonus for reenlistment, enlistment, or voluntary extension of enlistment in elements of the Ready Reserve other than the Selected Reserve**

(a) \* \* \*

\* \* \* \* \*

(f) REGULATIONS.—(1) This section shall be administered under regulations to be prescribed by the Secretary of Defense for the armed forces under his jurisdiction and by the Secretary **[of Transportation]** of *Homeland Security* for the Coast Guard when it is not operating as a service in the Navy.

\* \* \* \* \*

**§ 308i. Special pay: prior service enlistment bonus**

(a) \* \* \*

\* \* \* \* \*

(e) REGULATIONS.—This section shall be administered under regulations prescribed by the Secretary of Defense for the armed forces under his jurisdiction and by the Secretary **[of Transportation]** of *Homeland Security* for the Coast Guard when the Coast Guard is not operating as a service in the Navy.

\* \* \* \* \*

**§ 309. Special pay: enlistment bonus**

(a) \* \* \*

\* \* \* \* \*

(d) REGULATIONS.—This section shall be administered under regulations prescribed by the Secretary of Defense for the armed forces under the jurisdiction of the Secretary of Defense and by the Secretary **[of Transportation]** of *Homeland Security* for the Coast Guard when the Coast Guard is not operating as a service in the Navy.

\* \* \* \* \*

**§ 316. Special pay: foreign language proficiency pay**

(a) \* \* \*

\* \* \* \* \*

(d) This section shall be administered under regulations prescribed by the Secretary of Defense for the armed forces under the jurisdiction of the Secretary, by the Secretary **[of Transportation]** of *Homeland Security* for the Coast Guard when the Coast Guard is not operating as a service in the Navy, by the Secretary of Health and Human Services for the Commissioned Corps of the Public Health Service, and by the Secretary of Commerce for the National Oceanic and Atmospheric Administration.

\* \* \* \* \*

**§ 323. Special pay: retention incentives for members qualified in a critical military skill**

(a) \* \* \*

(b) DESIGNATION OF CRITICAL SKILLS.—(1) A designated critical military skill referred to in subsection (a) is a military skill designated as critical by the Secretary of Defense, or by the Secretary **【of Transportation】** of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy.

(2) The Secretary of Defense, and the Secretary **【of Transportation】** of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy, shall notify Congress, in advance, of each military skill to be designated by the Secretary as critical for purposes of this section. The notice shall be submitted at least 90 days before any bonus with regard to that critical skill is offered under subsection (a) and shall include a discussion of the necessity for the bonus, the amount and method of payment of the bonus, and the retention results that the bonus is expected to achieve.

\* \* \* \* \*

(g) REPAYMENT OF BONUS.—(1) If an officer who has entered into a written agreement under subsection (a) fails to complete the total period of active duty specified in the agreement, or an enlisted member who voluntarily or because of misconduct does not complete the term of enlistment for which a bonus was paid under this section, the Secretary of Defense, and the Secretary **【of Transportation】** of *Homeland Security* with respect to members of the Coast Guard when it is not operating as a service in the Navy, may require the member to repay the United States, on a pro rata basis and to the extent that the Secretary determines conditions and circumstances warrant, all sums paid under this section.

\* \* \* \* \*

**§ 325. Incentive bonus: savings plan for education expenses and other contingencies**

(a) \* \* \*

\* \* \* \* \*

(i) REGULATIONS.—This section shall be administered under regulations prescribed by the Secretary of Defense for the armed forces under his jurisdiction and by the Secretary **【of Transportation】** of *Homeland Security* for the Coast Guard when the Coast Guard is not operating as a service in the Navy.

\* \* \* \* \*

**CHAPTER 7—ALLOWANCES**

\* \* \* \* \*

**§ 402. Basic allowance for subsistence**

(a) \* \* \*

\* \* \* \* \*

(d) SPECIAL RULE FOR MEMBERS AUTHORIZED TO MESS SEPARATELY.—(1) In areas prescribed by the Secretary of Defense, and the Secretary **【of Transportation】** of *Homeland Security* with re-

spect to the Coast Guard when it is not operating as a service in the Navy, an enlisted member described in paragraph (2) is entitled to not more than the pro rata allowance in effect under paragraph (1) or (2) of subsection (b) for each meal the member buys from a source other than a messing facility of the United States.

\* \* \* \* \*

**§ 402a. Supplemental subsistence allowance for low-income members with dependents**

(a) \* \* \*

\* \* \* \* \*

(g) DEFINITIONS.—In this section:

(1) The term “Secretary concerned” means—

(A) the Secretary of Defense; and

(B) the Secretary **【of Transportation】** of *Homeland Security*, with respect to the Coast Guard when it is not operating as a service in the Navy.

\* \* \* \* \*

**§ 403. Basic allowance for housing**

(a) \* \* \*

\* \* \* \* \*

(f) INELIGIBILITY DURING INITIAL FIELD DUTY OR SEA DUTY.—(1) \* \* \*

\* \* \* \* \*

(3) The Secretary of Defense, and the Secretary **【of Transportation】** of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, shall prescribe regulations defining the terms “field duty” and “sea duty” for purposes of this section.

\* \* \* \* \*

(1) TEMPORARY CONTINUATION OF ALLOWANCE FOR DEPENDENTS OF MEMBERS DYING ON ACTIVE DUTY.—(1) The Secretary of Defense, or the Secretary **【of Transportation】** of *Homeland Security* in the case of the Coast Guard when not operating as a service in the Navy, may allow the dependents of a member of the armed forces who dies on active duty and whose dependents are occupying family housing provided by the Department of Defense, or by the Department **【of Transportation】** of *Homeland Security* in the case of the Coast Guard, other than on a rental basis on the date of the member’s death to continue to occupy such housing without charge for a period of 180 days.

\* \* \* \* \*

**§ 403b. Cost-of-living allowance in the continental United States**

(a) \* \* \*

\* \* \* \* \*

(i) OTHER DEFINITIONS.—In this section:

(1) \* \* \*

\* \* \* \* \*

(5) The term “administering Secretaries” means the following:

(A) \* \* \*

(B) The Secretary [of Transportation] of *Homeland Security*, with respect to the Coast Guard when it is not operating as a service in the Navy.

\* \* \* \* \*

**§ 406. Travel and transportation allowances: dependents; baggage and household effects**

(a) \* \* \*

(b)(1)(A) \* \* \*

\* \* \* \* \*

(E) Under regulations prescribed by the Secretary of Defense, or the Secretary [of Transportation] of *Homeland Security* for the Coast Guard when it is not operating as a service in the Navy, cadets at the United States Military Academy, the United States Air Force Academy, and the United States Coast Guard Academy, and midshipmen at the United States Naval Academy shall be entitled, in connection with temporary or permanent station change, to transportation of baggage and household effects as provided in subparagraph (A). The weight allowance for cadets and midshipmen is 350 pounds.

(F) A member entitled to transportation of baggage and household effects under subparagraph (A) may, as an alternative to the provision of transportation, be paid reimbursement or, at the member’s request, a monetary allowance in advance for the cost of transportation of the baggage and household effects. The monetary allowance may be paid only if the amount of the allowance does not exceed the cost that would be incurred by the Government under subparagraph (A) for the transportation of the baggage and household effects. Appropriations available to the Department of Defense, the Department [of Transportation] of *Homeland Security*, and the Department of Health and Human Services for providing transportation of baggage or household effects of members of the uniformed services shall be available to pay a reimbursement or monetary allowance under this subparagraph. The Secretary concerned may prescribe the manner in which the risk of liability for damage, destruction, or loss of baggage or household effects arranged, packed, crated, or loaded by a member is allocated among the member, the United States, and any contractor when a reimbursement or monetary allowance is elected under this subparagraph.

\* \* \* \* \*

**§ 417. Uniform allowance: officers; general provisions**

(a) Subject to standards, policies, and procedures prescribed by the Secretary of Defense, the Secretary of each military department may prescribe regulations that he considers necessary to carry out sections 415(a)–(c) and 416 of this title within his department. The Secretary [of Transportation] of *Homeland Security*, with the con-

currence of the Secretary of the Navy, may prescribe regulations that he considers necessary to carry out those sections for the Coast Guard when it is not operating as a service in the Navy. As far as practicable, regulations for all reserve components shall be uniform.

(b) Under regulations approved by the Secretary of Defense, or by the Secretary [of Transportation] of *Homeland Security* with respect to the Coast Guard when it is not operating as a service in the Navy, and subject to section 415(a)–(c) or 416 of this title, a reserve officer of an armed force who has received a uniform and equipment allowance under section 415(a)–(c) or 416 of this title, may, if a different uniform is required, be paid a uniform and equipment reimbursement upon transfer to, or appointment in, another reserve component.

\* \* \* \* \*

**§ 418. Clothing allowance: enlisted members**

(a) The Secretary of Defense and the Secretary [of Transportation] of *Homeland Security*, with respect to the Coast Guard when it is not operating as a service in the Navy, may prescribe the quantity and kind of clothing to be furnished annually to an enlisted member of the armed forces or the National Guard, and may prescribe the amount of a cash allowance to be paid to such a member if clothing is not so furnished to him.

\* \* \* \* \*

**CHAPTER 13—ALLOTMENTS AND ASSIGNMENTS OF PAY**

\* \* \* \* \*

**§ 703. Allotments: members of Coast Guard**

Members of the Coast Guard may, under regulations prescribed by the Secretary [of Transportation] of *Homeland Security*, make allotments from their pay and allowances.

\* \* \* \* \*

**CHAPTER 19—ADMINISTRATION**

\* \* \* \* \*

**§ 1001. Regulations relating to pay and allowances**

(a) \* \* \*

\* \* \* \* \*

(c) The Secretary of Defense, the Secretary [of Transportation] of *Homeland Security*, the Secretary of Commerce, or the Secretary of Health and Human Services, may obtain from the Comptroller General an advisory opinion with respect to a proposed regulation especially affecting a department under the Secretary’s jurisdiction.

\* \* \* \* \*

**§ 1006. Advance payments**

(a) \* \* \*

\* \* \* \* \*



(f) Under regulations prescribed by the Secretary **【of Transportation】** of *Homeland Security*, an advance of pay of not more than three months' pay may be made to an officer of the Coast Guard who is ordered to sea duty or to or from shore duty beyond the seas. In addition, the Commandant of the Coast Guard may direct such advances as he considers necessary and proper to members of the Coast Guard stationed at distant stations where the pay and emoluments to which they are entitled cannot be paid regularly.

\* \* \* \* \*

**§ 1007. Deductions from pay**

(a) The pay of an officer of an armed force may be withheld, under section 5512 of title 5, only for an indebtedness to the United States admitted by the officer or shown by the judgment of a court, or upon a special order issued in the discretion of the Secretary of Defense (or the Secretary **【of Transportation】** of *Homeland Security*, in the case of a disbursing official of the Coast Guard when the Coast Guard is not operating as a service in the Navy), or upon the denial of relief of an officer pursuant to section 3527 of title 31.

\* \* \* \* \*

**§ 1011. Mess operation: reimbursement of expenses**

(a) \* \* \*

\* \* \* \* \*

(d) When the Coast Guard is not operating as a service in the Navy, the Secretary **【of Transportation】** of *Homeland Security* shall establish rates for meals sold at Coast Guard dining facilities, provide for reimbursement of operating expenses and food costs to the appropriations concerned, and reduce the rates for such meals when the Secretary determines that it is in the best interest of the United States to do so.

\* \* \* \* \*

**SECTION 363 OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996**

(Public Law 104-193)

**SEC. 363. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS OF MEMBERS OF THE ARMED FORCES.**

(a) AVAILABILITY OF LOCATOR INFORMATION.—

(1) MAINTENANCE OF ADDRESS INFORMATION.—The Secretary of Defense shall establish a centralized personnel locator service that includes the address of each member of the Armed Forces under the jurisdiction of the Secretary. Upon request of the Secretary **【of Transportation】** of *Homeland Security*, addresses for members of the Coast Guard shall be included in the centralized personnel locator service.

\* \* \* \* \*

(b) FACILITATING GRANTING OF LEAVE FOR ATTENDANCE AT HEARINGS.—

(1) REGULATIONS.—The Secretary of each military department, and the Secretary **【of Transportation】** of *Homeland Se-*

*curity* with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to facilitate the granting of leave to a member of the Armed Forces under the jurisdiction of that Secretary in a case in which—  
(A) \* \* \*

\* \* \* \* \*

**SECTION 721 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1997**

(Public Law 104–201)

**SEC. 721. DEFINITIONS.**

In this subtitle:

(1) The term “administering Secretaries” means the Secretary of Defense, the Secretary [of Transportation] of *Homeland Security*, and the Secretary of Health and Human Services.

\* \* \* \* \*

**NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993**

(Public Law 102–484)

\* \* \* \* \*

**DIVISION D—DEFENSE CONVERSION, REINVESTMENT, AND TRANSITION ASSISTANCE**

\* \* \* \* \*

**TITLE XLIV—PERSONNEL ADJUSTMENT, EDUCATION, AND TRAINING PROGRAMS**

\* \* \* \* \*

**Subtitle F—Job Training and Employment and Educational Opportunities**

\* \* \* \* \*

**SEC. 4463. PROGRAM OF EDUCATIONAL LEAVE RELATING TO CONTINUING PUBLIC AND COMMUNITY SERVICE.**

(a) PROGRAM.—Under regulations prescribed by the Secretary of Defense [after consultation with the Secretary of Transportation] and subject to subsections (b) and (c), the Secretary concerned may grant to an eligible member of the Armed Forces a leave of absence for a period not to exceed one year for the purpose of permitting the member to pursue a program of education or training (including an internship) for the development of skills that are relevant to the performance of public and community service. A program of

education or training referred to in the preceding sentence includes any such program that is offered by the Department of Defense or by any civilian educational or training institution.

\* \* \* \* \*

**SEC. 4466. PARTICIPATION OF DISCHARGED MILITARY PERSONNEL IN UPWARD BOUND PROJECTS TO PREPARE FOR COLLEGE.**

(a) \* \* \*

\* \* \* \* \*

(h) APPLICATION TO COAST GUARD.—The Secretary [of Transportation] of *Homeland Security* may implement the provisions of this section for the Coast Guard in the same manner and to the same extent as such section applies to the Department of Defense.

\* \* \* \* \*

---

**SECTION 542 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1995**

(Public Law 103–337)

**SEC. 542. COAST GUARD FORCE REDUCTION TRANSITION BENEFITS.**

(a) \* \* \*

\* \* \* \* \*

(d) TEMPORARY EARLY RETIREMENT AUTHORITY.—Section 4403 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2702; 10 U.S.C. 1293 note) shall apply to the Coast Guard in the same manner and to the same extent as that provision applies to the Department of Defense. The Secretary [of Transportation] of *Homeland Security* shall implement the provisions of that section with respect to the Coast Guard and apply the applicable provisions of title 14, United States Code, relating to retirement of Coast Guard personnel.

\* \* \* \* \*

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**SECTION 740 OF THE WENDELL H. FORD AVIATION INVESTMENT AND REFORM ACT FOR THE 21ST CENTURY**

(Public Law 106–181)

**SEC. 740. AUTHORITY TO SELL AIRCRAFT AND AIRCRAFT PARTS FOR USE IN RESPONDING TO OIL SPILLS.**

(a) \* \* \*

(b) CONDITIONS OF SALE.—Aircraft and aircraft parts sold under subsection (a)—

(1) \* \* \*

(2) may not be flown outside of or removed from the United States except for the purpose of fulfilling an international agreement to assist in oil spill dispersing efforts, for immediate response efforts for an oil spill outside United States waters that has the potential to threaten United States waters, or for other purposes that are jointly approved by the Secretary of Defense and the Secretary [of Transportation] of *Homeland Security*.

(c) CERTIFICATION OF PERSONS AND ENTITIES.—The Secretary of Defense may sell aircraft and aircraft parts to a person or entity under subsection (a) only if the Secretary **【of Transportation】** of *Homeland Security* certifies to the Secretary of Defense, in writing, before the sale, that the person or entity is capable of meeting the terms and conditions of a contract to deliver oil spill dispersants by air, and that the overall system to be employed by that person or entity for the delivery and application of oil spill dispersants has been sufficiently tested to ensure that the person or entity is capable of being included in an oil spill response plan that has been approved by the Secretary of the Department in which the Coast Guard is operating.

(d) REGULATIONS.—

(1) ISSUANCE.—As soon as practicable after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Secretary **【of Transportation】** of *Homeland Security* and the Administrator of General Services, shall prescribe regulations relating to the sale of aircraft and aircraft parts under this section.

\* \* \* \* \*

---

**SECTION 1407 OF THE DEFENSE DEPENDENTS'  
EDUCATION ACT OF 1978**

SCHOOL SYSTEM FOR DEPENDENTS IN OVERSEAS AREAS

SEC. 1407. (a) \* \* \*

(b) TUITION AND ASSISTANCE WHEN SCHOOLS UNAVAILABLE.—(1)  
\* \* \*

(2)(A) The Secretary of Defense, and the Secretary **【of Transportation】** of *Homeland Security* with respect to the Coast Guard when it is not operating as a service of the Navy, may provide financial assistance to sponsors of dependents in overseas areas where schools operated by the Secretary of Defense under subsection (a) are not reasonably available in order to assist the sponsors to defray the costs incurred by the sponsors for the attendance of the dependents at schools in such areas other than schools operated by the Secretary of Defense.

(B) The Secretary of Defense and the Secretary **【of Transportation】** of *Homeland Security* shall each prescribe regulations relating to the availability of financial assistance under subparagraph (A). Such regulations shall, to the maximum extent practicable, be consistent with Department of State regulations relating to the availability of financial assistance for the education of dependents of Department of State personnel overseas.

\* \* \* \* \*

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TITLE II OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

TITLE II—PREPARING, TRAINING, AND RECRUITING HIGH QUALITY TEACHERS AND PRINCIPALS

\* \* \* \* \*

PART C—INNOVATION FOR TEACHER QUALITY

Subpart 1—Transitions to Teaching

CHAPTER A—TROOPS-TO-TEACHERS PROGRAM

SEC. 2301. DEFINITIONS.

In this chapter:

(1) \* \* \*

\* \* \* \* \*

(5) SECRETARY CONCERNED.—The term “Secretary concerned” means—

(A) \* \* \*

\* \* \* \* \*

(D) the Secretary [of Transportation] of *Homeland Security*, with respect to matters concerning the Coast Guard Reserve.

\* \* \* \* \*

SEC. 2307. REPORTING REQUIREMENTS.

(a) REPORT REQUIRED.—Not later than March 31, 2006, the Secretary (in consultation with the Secretary of Defense and the Secretary [of Transportation] of *Homeland Security*) and the Comptroller General of the United States shall submit to Congress a report on the effectiveness of the Program in the recruitment and retention of qualified personnel by local educational agencies and public charter schools.

\* \* \* \* \*

SECTION 1034 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1998

(Public Law 105–85)

SEC. 1034. ANNUAL REPORT ON DEVELOPMENT AND DEPLOYMENT OF NARCOTICS DETECTION TECHNOLOGIES.

(a) REPORT REQUIREMENT.—Not later than December 1st of each year, the Director of the Office of National Drug Control Policy shall submit to Congress and the President a report on the development and deployment of narcotics detection technologies by Federal agencies. Each such report shall be prepared in consultation with the Secretary of Defense, the Secretary of State, the Secretary [of

Transportation] of *Homeland Security*, and the Secretary of the Treasury.

\* \* \* \* \*

## MILITARY SELECTIVE SERVICE ACT

### TITLE I

\* \* \* \* \*

#### TRAINING AND SERVICE

SEC. 4. (a) Except as otherwise provided in this title, every person required to register pursuant to section 3 of this title who is between the ages of eighteen years and six months and twenty-six years, at the time fixed for his registration, or who attains the age of eighteen years and six months after having been required to register pursuant to section 3 of this title, or who is otherwise liable as provided in section 6(h) of this title, shall be liable for training and service in the Armed Forces of the United States: *Provided*, That each registrant shall be immediately liable for classification and examination, and shall, as soon as practicable following his registration, be so classified and examined, both physically and mentally, in order to determine his availability for induction for training and service in the Armed Forces: *Provided further*, That, notwithstanding any other provision of law, any registrant who has failed or refused to report for induction shall continue to remain liable for induction and when available shall be immediately inducted. The President is authorized, from time to time, whether or not a state of war exists, to select and induct into the Armed Forces of the United States for training and service in the manner provided in this title (including but not limited to selection and induction by age group or age groups) such number of persons as may be required to provide and maintain the strength of the Armed Forces.

\* \* \* \* \*

No persons shall be inducted for such training and service until adequate provision shall have been made for such shelter, sanitary facilities, water supplies, heating and lighting arrangements, medical care, and hospital accommodations for such persons as may be determined by the Secretary of Defense or the Secretary [of Transportation] of *Homeland Security* to be essential to the public and personal health.

\* \* \* \* \*

(b) Each person inducted into the Armed Forces under the provisions of subsection (a) of this section shall serve on active training and service for a period of twenty-four consecutive months, unless sooner released, transferred, or discharged in accordance with procedures prescribed by the Secretary of Defense (or the Secretary [of Transportation] of *Homeland Security* with respect to the United States Coast Guard) or as otherwise prescribed by subsection (d) of section 4 of this title. The Secretaries of the Army, Navy, and Air Force, with the approval of the Secretary of Defense (and the Secretary [of Transportation] of *Homeland Security* with

respect to the United States Coast Guard), may provide, by regulations which shall be as nearly uniform as practicable, for the release from training and service in the armed forces prior to serving the periods required by this subsection of individuals who volunteered for and are accepted into organized units of the Army National Guard and Air National Guard and other reserve components.

\* \* \* \* \*

DEFERMENT AND EXEMPTIONS

SEC. 6. (a) \* \* \*

\* \* \* \* \*

(d)(1) Within such numbers as may be prescribed by the Secretary of Defense, any person who (A) has been or may hereafter be selected for enrollment or continuance in the senior division, Reserve Officers' Training Corps, or the Air Reserve Officers' Training Corps, or the Naval Reserve Officers' Training Corps, or the naval and Marine Corps officer candidate training program established by the Act of August 13, 1946 (60 Stat. 1057), as amended, or the Reserve officers' candidate program of the Navy, or the platoon leaders' class of the Marine Corps, or the officer recruitment programs of the Coast Guard and the Coast Guard Reserve, or appointed an ensign, United States Naval Reserve, while undergoing professional training; (B) agrees, in writing, to accept a commission, if tendered, and to serve, subject to order of the Secretary of the military department having jurisdiction over him (or the Secretary [of Transportation] of *Homeland Security* with respect to the United States Coast Guard), not less than two years on active duty after receipt of a commission; and (C) agrees to remain a member of a regular or reserve component until the eighth anniversary of the receipt of a commission in accordance with his obligation under the first sentence of section 651 of title 10, United States Code, or until the sixth anniversary of the receipt of a commission in accordance with his obligation under the second sentence of section 651 of title 10, United States Code, shall be deferred from induction under this title until after completion or termination of the course of instruction and so long as he continues in a regular or reserve status upon being commissioned, but shall not be exempt from registration. Such persons, except those persons who have previously completed an initial period of military training or an equivalent period of active military training and service, shall be required while enrolled in such programs to complete a period of training equal (as determined under regulation approved by the Secretary of Defense or the Secretary [of Transportation] of *Homeland Security* with respect to the United States Coast Guard) in duration and type of training to an initial period of military training. There shall be added to the obligated active commissioned service of any person who has agreed to perform such obligatory service in return for financial assistance while attending a civilian college under any such training program a period of not to exceed one year. Except as provided in paragraph (5), upon the successful completion by any person of the required course of instruction under any program listed in clause (A) of the first sentence of this paragraph, such person shall be tendered a commission in the appropriate reserve compo-

ment of the Armed Forces if he is otherwise qualified for such appointment. If, at the time of, or subsequent to, such appointment, the armed force in which such person is commissioned does not require his service on active duty in fulfillment of the obligation undertaken by him in compliance with clause (B) of the first sentence of this paragraph, such person, shall be ordered to active duty for training with such armed force in the grade in which he was commissioned for a period of active duty for training of not more than six months (not including duty performed under section 10147 of title 10, United States Code), as determined by the Secretary of the military department concerned to be necessary to qualify such person for a mobilization assignment. Upon being commissioned and assigned to a reserve component, such person shall be required to serve therein, or in a reserve component of any other armed force in which he is later appointed, until the eighth anniversary of the receipt of such commission pursuant to the provisions of this section. So long as such person performs satisfactory service, as determined under regulations prescribed by the Secretary of Defense, he shall be deferred from training and service under the provisions of this Act. If such person fails to perform satisfactory service, and such failure is not excused under regulations prescribed by the Secretary of Defense, his commission may be revoked by the Secretary of the military department concerned.

\* \* \* \* \*

SEPARATION FROM SERVICE; REEMPLOYMENT RIGHTS

SEC. 9. (a) \* \* \*

\* \* \* \* \*

(c) The [Secretaries of Army, Navy, Air Force, or Transportation] *Secretary of a military department, and the Secretary of Homeland Security with respect to the Coast Guard*, shall furnish to the Selective Service System hereafter established a report of separation for each person separated from active duty.

\* \* \* \* \*

NOTICE OF TITLE; VOLUNTARY ENLISTMENTS

SEC. 15. (a) \* \* \*

\* \* \* \* \*

(e) In order to assist the Armed Forces in recruiting individuals for voluntary service in the Armed Forces, the Director shall, upon the request of the Secretary of Defense or the Secretary [of Transportation] *of Homeland Security*, furnish to the Secretary the names and addresses of individuals registered under this Act. Names and addresses furnished pursuant to the preceding sentence may be used by the Secretary of Defense or Secretary [of Transportation] *of Homeland Security* only for recruiting purposes.

\* \* \* \* \*





**PUBLIC HEALTH SECURITY AND BIOTERRORISM  
PREPAREDNESS AND RESPONSE ACT OF 2002**

\* \* \* \* \*

**TITLE I—NATIONAL PREPAREDNESS  
FOR BIOTERRORISM AND OTHER  
PUBLIC HEALTH EMERGENCIES**

\* \* \* \* \*

**Subtitle B—Strategic National Stockpile;  
Development of Priority Countermeasures**

**SEC. 121. STRATEGIC NATIONAL STOCKPILE.**

(a) STRATEGIC NATIONAL STOCKPILE.—

(1) IN GENERAL.—The [Secretary of Health and Human Services] *Secretary of Homeland Security* (referred to in this section as the “Secretary”), in coordination with *the Secretary of Health and Human Services* and the Secretary of Veterans Affairs, shall maintain a stockpile or stockpiles of drugs, vaccines and other biological products, medical devices, and other supplies in such numbers, types, and amounts as are determined by the *Secretary of Health and Human Services* to be appropriate and practicable, taking into account other available sources, to provide for the emergency health security of the United States, including the emergency health security of children and other vulnerable populations, in the event of a bioterrorist attack or other public health emergency.

\* \* \* \* \*

(2) PROCEDURES.—The *Secretary of Health and Human Services*, in managing the stockpile under paragraph (1), shall—

(A) \* \* \*

\* \* \* \* \*

(b) SMALLPOX VACCINE DEVELOPMENT.—

(1) IN GENERAL.—The *Secretary of Health and Human Services* shall award contracts, enter into cooperative agreements, or carry out such other activities as may reasonably be required in order to ensure that the stockpile under subsection (a) includes an amount of vaccine against smallpox as determined by the *Secretary of Health and Human Services* to be sufficient to meet the health security needs of the United States.

\* \* \* \* \*

# TITLE II—ENHANCING CONTROLS ON DANGEROUS BIOLOGICAL AGENTS AND TOXINS

## Subtitle A—Department of Health and Human Services

### SEC. 201. REGULATION OF CERTAIN BIOLOGICAL AGENTS AND TOXINS.

(a) \* \* \*

(b) REPORT TO CONGRESS.—Not later than one year after the date of the enactment of this Act, the [Secretary of Health and Human Services] *Secretary of Homeland Security*, after consultation with other appropriate Federal agencies, shall submit to the Congress a report that—

(1) \* \* \*

\* \* \* \* \*

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### SECTION 351A OF THE PUBLIC HEALTH SERVICE ACT

#### SEC. 351A. ENHANCED CONTROL OF DANGEROUS BIOLOGICAL AGENTS AND TOXINS.

(a) REGULATORY CONTROL OF CERTAIN BIOLOGICAL AGENTS AND TOXINS.—

(1) LIST OF BIOLOGICAL AGENTS AND TOXINS.—

(A) IN GENERAL.—The Secretary (*as defined in subsection (1)(9)*) shall by regulation establish and maintain a list of each biological agent and each toxin that has the potential to pose a severe threat to public health and safety.

\* \* \* \* \*

(h) DISCLOSURE OF INFORMATION.—

(1) \* \* \*

(2) COVERED AGENCIES.—For purposes of paragraph (1) only, the Federal agencies specified in this paragraph are the following:

(A) The *Department of Homeland Security*, the Department of Health and Human Services, the Department of Justice, the Department of Agriculture, and the Department of Transportation.

\* \* \* \* \*

(l) DEFINITIONS.—For purposes of this section:

(1) \* \* \*

\* \* \* \* \*

(9) The term “Secretary” means the *Secretary of Homeland Security*, in consultation with the *Secretary of Health and Human Services*.

\* \* \* \* \*

**SECTION 210 OF THE FEDERAL PROPERTY AND  
ADMINISTRATIVE SERVICES ACT OF 1949**

**SEC. 210. OPERATION OF BUILDINGS AND RELATED ACTIVITIES**

(a) Whenever and to the extent that the Administrator has been or hereafter may be authorized by any provision of law other than this subsection to maintain, operate, and protect any building, property, or grounds situated in or outside the District of Columbia, including the construction, repair, preservation, demolition, furnishing, and equipment thereof, he is authorized in the discharge of the duties so conferred upon him—

(1) \* \* \*

[(2) to furnish arms and ammunition for the protection force maintained by the General Services Administration;]

\* \* \* \* \*

**ACT OF JUNE 1, 1948**

AN ACT to authorize the Federal Works Administrator or officials of the Federal Works Agency duly authorized by him to appoint special policemen for duty upon Federal property under the jurisdiction of the Federal Works Agency, and for other purposes.

**[SECTION 1. SPECIAL POLICE.**

[(a) APPOINTMENT.—The Administrator of General Services, or officials of the General Services Administration duly authorized by the Administrator, may appoint uniformed guards of such Administration as special policemen without additional compensation for duty in connection with the policing of all buildings and areas owned or occupied by the United States and under the charge and control of the Administrator.

[(b) POWERS.—Special policemen appointed under this section shall have the same powers as sheriffs and constables upon property referred to in subsection (a) to enforce the laws enacted for the protection of persons and property, and to prevent breaches of the peace, to suppress affrays or unlawful assemblies, and to enforce any rules and regulations promulgated by the Administrator of General Services or such duly authorized officials of the General Services Administration for the property under their jurisdiction; except that the jurisdiction and policing powers of such special policemen shall not extend to the service of civil process.

[SEC. 2. The Administrator of General Services or officials of the General Services Administration duly authorized by him are hereby authorized to make all needful rules and regulations for the government of the property under their charge and control, and to annex to such rules and regulations such reasonable penalties, within the limits prescribed in section 4 of this Act, as will insure their enforcement: *Provided*, That such rules and regulations shall be posted and kept posted in a conspicuous place on such property.

[SEC. 3. Upon the application of the head of any department or agency of the United States having property of the United States under its administration and control, the Administrator of General Services or officials of the General Services Administration duly authorized by him are authorized to detail any such special policemen for the protection of such property and if he deems it desirable, to extend to such property the applicability of any such regu-

lations and to enforce the same as herein set forth; and the Administrator of General Services or official of the General Services Administration duly authorized by him, whenever it is deemed economical and in the public interest, may utilize the facilities and services of existing Federal law-enforcement agencies, and, with the consent of any State or local agency, the facilities and services of such State or local law-enforcement agencies.

【SEC. 4. (a) Except as provided in subsection (b), whoever violates any rule or regulation promulgated pursuant to section 2 of this Act shall be fined not more than \$50 or imprisoned not more than thirty days, or both.

【(b)(1) Whoever violates any military traffic regulation shall be fined an amount not to exceed the amount of the maximum fine for a like or similar offense under the criminal or civil law of the State, territory, possession, or district where the military installation in which the violation occurred is located, or imprisoned for not more than 30 days, or both.

【(2) For purposes of this subsection, the term “military traffic regulation” means a rule or regulation for the control of vehicular or pedestrian traffic on military installations that is promulgated by the Secretary of Defense, or the designee of the Secretary, under the authority delegated pursuant to section 2.

【SEC. 5. Officials or employees of the General Services Administration who have been duly authorized to perform investigative functions may be empowered by the Administrator of General Services, or officials of General Services Administration duly authorized by him, to act as nonuniformed special policemen in order to protect property under the charge and control of the General Services Administration and to carry firearms, whether on Federal property or in travel status. Such officials or employees who are empowered to act as nonuniformed special policemen shall have, while on real property under the charge and control of the General Services Administration, the power to enforce Federal laws for the protection of persons and property and the power to enforce rules and regulations made and published for such purposes by the Administrator or duly authorized officials of the General Services Administration. Any such special policeman may make arrests without warrant for any offense committed upon such property if he has reasonable ground to believe (1) the offense constitutes a felony under the laws of the United States, and (2) that the person to be arrested is guilty of that offense.】

**SECTION 1. SHORT TITLE.**

*This Act may be cited as the “Protection of Public Property Act”.*

**SEC. 2. LAW ENFORCEMENT AUTHORITY OF SECRETARY OF HOMELAND SECURITY FOR PROTECTION OF PUBLIC PROPERTY.**

(a) *IN GENERAL.*—*The Secretary of Homeland Security (in this Act referred to as the Secretary)* shall protect the buildings, grounds, and property that are owned, occupied, or secured by the Federal Government (including any agency, instrumentality, or wholly owned or mixed-ownership corporation thereof) and the persons on the property.

(b) *OFFICERS AND AGENTS.*—

(1) *DESIGNATION.*—*The Secretary may designate employees of the Department of Homeland Security, including employees*

transferred to the Department from the Office of the Federal Protective Service of the General Services Administration pursuant to the Homeland Security Act of 2002, as officers and agents for duty in connection with the protection of property owned or occupied by the Federal Government and persons on the property, including duty in areas outside the property to the extent necessary to protect the property and persons on the property.

(2) *POWERS.*—While engaged in the performance of official duties, an officer or agent designated under this subsection may—

(A) enforce Federal laws and regulations for the protection of persons and property;

(B) carry firearms;

(C) make arrests without a warrant for any offense against the United States committed in the presence of the officer or agent or for any felony cognizable under the laws of the United States if the officer or agent has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;

(D) serve warrants and subpoenas issued under the authority of the United States; and

(E) conduct investigations, on and off the property in question, of offenses that may have been committed against property owned or occupied by the Federal Government or persons on the property.

(F) carry out such other activities for the promotion of homeland security as the Secretary may prescribe.

(c) *REGULATIONS.*—

(1) *IN GENERAL.*—The Secretary, in consultation with the Administrator of General Services, may prescribe regulations necessary for the protection and administration of property owned or occupied by the Federal Government and persons on the property. The regulations may include reasonable penalties, within the limits prescribed in paragraph (2), for violations of the regulations. The regulations shall be posted and remain posted in a conspicuous place on the property.

(2) *PENALTIES.*—A person violating a regulation prescribed under this subsection shall be fined under title 18, United States Code, imprisoned for not more than 30 days, or both.

(d) *DETAILS.*—

(1) *REQUESTS OF AGENCIES.*—On the request of the head of a Federal agency having charge or control of property owned or occupied by the Federal Government, the Secretary may detail officers and agents designated under this section for the protection of the property and persons on the property.

(2) *APPLICABILITY OF REGULATIONS.*—The Secretary may—

(A) extend to property referred to in paragraph (1) the applicability of regulations prescribed under this section and enforce the regulations as provided in this section; or

(B) utilize the authority and regulations of the requesting agency if agreed to in writing by the agencies.

(3) *FACILITIES AND SERVICES OF OTHER AGENCIES.*—When the Secretary determines it to be economical and in the public interest, the Secretary may utilize the facilities and services of Fed-

*eral, State, and local law enforcement agencies, with the consent of the agencies.*

*(e) AUTHORITY OUTSIDE FEDERAL PROPERTY.—For the protection of property owned or occupied by the Federal Government and persons on the property, the Secretary may enter into agreements with Federal agencies and with State and local governments to obtain authority for officers and agents designated under this section to enforce Federal laws and State and local laws concurrently with other Federal law enforcement officers and with State and local law enforcement officers.*

*(f) SECRETARY AND ATTORNEY GENERAL APPROVAL.—The powers granted to officers and agents designated under this section shall be exercised in accordance with guidelines approved by the Secretary and the Attorney General.*

*(g) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to—*

*(1) preclude or limit the authority of any Federal law enforcement agency; or*

*(2) restrict the authority of the Administrator of General Services to promulgate regulations affecting property under the Administrator's custody and control.*

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**NATIONAL SCIENCE AND TECHNOLOGY POLICY,  
ORGANIZATION, AND PRIORITIES ACT OF 1976**

\* \* \* \* \*

**TITLE II—OFFICE OF SCIENCE AND TECHNOLOGY POLICY**

\* \* \* \* \*

**FUNCTIONS**

SEC. 204. (a) \* \* \*

(b) In addition to such other functions and activities as the President may assign, the Director shall—

(1) advise the President of scientific and technological considerations involved in areas of national concern including, but not limited to, the economy, national security, *homeland security*, health, foreign relations, the environment, and the technological recovery and use of resources;

\* \* \* \* \*

**COORDINATION WITH OTHER ORGANIZATIONS**

SEC. 208. (a) In exercising his functions under this Act, the Director shall—

(1) work in close consultation and cooperation with the Domestic Council, the National Security Council, *the Office of Homeland Security*, the Council on Environmental Quality, the Council of Economic Advisers, the Office of Management and Budget, the National Science Board, and the Federal departments and agencies;

\* \* \* \* \*

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**SECTION 901 OF TITLE 31, UNITED STATES CODE**

**§ 901. Establishment of agency Chief Financial Officers**

(a) \* \* \*

(b)(1) The agencies referred to in subsection (a)(1) are the following:

(A) \* \* \*

\* \* \* \* \*

*(G) The Department of Homeland Security.*

[(G)] *(H) The Department of Housing and Urban Development.*

[(H)] *(I) The Department of the Interior.*

[(I)] *(J) The Department of Justice.*

[(J)] *(K) The Department of Labor.*

[(K)] *(L) The Department of State.*

[(L)] *(M) The Department of Transportation.*

[(M)] *(N) The Department of the Treasury.*

[(N)] *(O) The Department of Veterans Affairs.*

[(O)] *(P) The Environmental Protection Agency.*

[(P)] *(Q) The National Aeronautics and Space Administration.*

\* \* \* \* \*

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**SECTION 5131 OF THE CLINGER-COHEN ACT OF 1996**

**SEC. 5131. RESPONSIBILITIES REGARDING EFFICIENCY, SECURITY, AND PRIVACY OF FEDERAL COMPUTER SYSTEMS.**

(a) \* \* \*

\* \* \* \* \*

(c) WAIVER OF STANDARDS.—The standards determined under subsection (a) to be compulsory and binding may be waived by the Secretary of Commerce in writing upon a determination that compliance would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or cause a major adverse financial impact on the operator which is not offset by Government-wide savings. The Secretary may delegate to the head of one or more Federal agencies authority to waive such standards to the extent to which the Secretary determines such action to be necessary and desirable to allow for timely and effective implementation of Federal computer system standards. The head of such agency may redelegate such authority only to a Chief Information Officer designated *or appointed* pursuant to section 3506 of title 44, United States Code. Notice of each such waiver and delegation shall be transmitted promptly to Congress and shall be published promptly in the Federal Register.

\* \* \* \* \*

CHAPTER 35 OF TITLE 44, UNITED STATES CODE

CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY

\* \* \* \* \*

SUBCHAPTER I—FEDERAL INFORMATION POLICY

\* \* \* \* \*

§ 3506. Federal agency responsibilities

(a)(1) \* \* \*

(2)(A) Except as provided under [subparagraph (B)] subparagraphs (B) and (C), the head of each agency shall designate a Chief Information Officer who shall report directly to such agency head to carry out the responsibilities of the agency under this subchapter.

\* \* \* \* \*

(C) The Chief Information Officer of the Department of Homeland Security shall be an individual who is appointed by the President.

(3) The Chief Information Officer designated or appointed under paragraph (2) shall head an office responsible for ensuring agency compliance with and prompt, efficient, and effective implementation of the information policies and information resources management responsibilities established under this subchapter, including the reduction of information collection burdens on the public. The Chief Information Officer and employees of such office shall be selected with special attention to the professional qualifications required to administer the functions described under this subchapter.

(4) Each agency program official shall be responsible and accountable for information resources assigned to and supporting the programs under such official. In consultation with the Chief Information Officer designated or appointed under paragraph (2) and the agency Chief Financial Officer (or comparable official), each agency program official shall define program information needs and develop strategies, systems, and capabilities to meet those needs.

\* \* \* \* \*

(c) With respect to the collection of information and the control of paperwork, each agency shall—

(1) establish a process within the office headed by the Chief Information Officer designated or appointed under subsection (a), that is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved under this subchapter, to—

(A) \* \* \*

\* \* \* \* \*



## MINORITY VIEWS

We are united with the President and with our Republican colleagues in our determination to win the war against terrorism. We have a responsibility to the victims and survivors of the terrorist attacks on our soil and to all Americans to reduce the risk of further attacks. We believe that our government must be reorganized to meet that goal.

The most important responsibility of our government is to protect and defend our citizens, in their daily lives and in their basic freedoms. Any proposal upon which Congress acts must be measured against a simple test: Do the actions we take make the American people safer? Regrettably, we do not believe that the bill passed by the House Select Committee on Homeland Security sufficiently meets that test.

Rather than developing a streamlined, agile government department capable of making maximum use of new information technologies, the Select Committee's legislation in its present form would create a huge, costly, and inefficient 1950s style government bureaucracy that will likely take years before it functions properly. The proposed department's size, cost, and speed will not make it the best instrument to fight terrorism.

The majority on the Select Committee has included provisions that may actually make us less safe. By retaining the President's plan to dismantle civil service protections, they have virtually guaranteed that the new department will not have the best possible workforce. The majority's bill also provides overly broad exemptions from "good government" laws that do not obstruct the war on terrorism but do protect our tradition of open, accountable government. Finally, the Select Committee's bill gratuitously protects irresponsible corporations, including those that incorporate offshore to avoid paying their share of the war on terrorism and those who knowingly make faulty products.

These shortages could have been addressed if the Select Committee had adhered to the bipartisan work product of the standing committees of jurisdiction. The Select Committee was established to reconcile the work of twelve separate Congressional committees. These committees represent an enormous reservoir of expertise on all facets of the federal government. The Members who serve on them, on both sides of the aisle, have dedicated years to learning about the government agencies for which they are responsible. These committees worked in a bipartisan way to analyze and make reasoned changes to the President's proposed legislation. Unfortunately, the Chairman's mark did not reflect the committees' actions. The bill considered and passed by the Select Committee did not include many sound and sensible provisions passed by the committees with expertise. At the same time, the Select Committee added a number of flawed and controversial provisions which were

neither proposed by the President nor considered by the committees of jurisdiction to the legislation.

#### TRANSITION ISSUES

Establishing any department of the magnitude the President has proposed would take a significant amount of time. David Walker, Comptroller General of the United States, testified before the Select Committee on July 17 that, "The experiences of organizations that have undertaken transformational change efforts along the lines that will be necessary for the new department to be fully effective suggest that this process can take up to 5 to 10 years to provide meaningful and sustainable results." During this extended period, the new department will experience growing pains at a time when we do not have the luxury of a less than fully functioning organization. Our country could become more vulnerable, not less. As will be noted later, Democratic Members offered an amendment to improve management of the department and to reduce this time, but the majority rejected it.

The President has said that his proposal, because it rearranges existing agencies, will not increase the size of government. He has further stated that, for the same reason, it will be budget neutral. He neglects, however, the inherent cost of such a large transition.

The Chairman and Ranking Member of the Government Reform Committee wrote to the Congressional Budget Office (CBO) to request an estimate of the cost of the President's proposal. The CBO found that the combination of mundane transfer matters, such as providing and equipping office space, and the agency's new responsibilities would make the costs of the new department significant. According to the CBO's analysis, "implementing H.R. 5005 would cost about \$3 billion over the 2003-2007 period." This amount is only for transition costs and does not include all the necessary funds to carry out the homeland security functions of the agencies transferred into the new Department. For example, the \$3 billion will not cover the costs of bringing the new Department up to date technologically. These technological upgrades are essential.

#### GOOD GOVERNMENT—CIVIL SERVICE PROTECTIONS

There is no conflict between the security of the American people and the hard-won job protections of working people. Unfortunately, the majority on the Select Committee has weighed down this bill with controversial language that would undermine civil service protections for 170,000 dedicated workers. These provisions could compromise the effectiveness of the Department's efforts to ensure homeland security.

Some Republican leaders have long wanted to gut America's civil service system, but it is shameful that they would try to use homeland security as an excuse to do it. The civil service system protects Americans against a 'spoils' system that would allow politicians to reward their friends and supporters with important government jobs. It is crucial that the Department of Homeland Security be staffed by professionals—not by the political cronies of whichever party happens to hold the White House.

The majority adopted an amendment that they labeled a compromise between the Administration's original proposal and current law. Yet, the Committee on Government Reform, the committee with primary jurisdiction over creating this new department, voted unanimously to continue current civil service protections for the workers who would be transferred. The majority on the select committee rejected this bipartisan recommendation and instead approved a proposal that will deny these dedicated public servants the rights they have enjoyed.

When they are transferred to the new DHS, their jobs may not change, but by virtue of that address change, these employees will no longer be entitled to a number of important protections, including the guarantee that their pay will not be reduced. The majority gives the Secretary the right to waive the right to appeal disciplinary actions to the Merit System Protection Board (MSPB), essentially eliminating their guarantee of due process when disciplined by management. The majority also allows the Secretary to waive the employee classification system and seeks to abandon the General Schedule (GS) pay system, the senior executive pay system, the prevailing rate pay system, locality pay, and the system of annual cost-of-living adjustments.

Finally, the majority would waive the requirements of current law that give federal employees hard-earned collective bargaining rights. We agree that the President should have the authority, as he does under current law, to exclude from union membership those select workers who have direct national security responsibilities. But the majority is insisting on the wholesale abrogation of the rights of workers—the very same public servants the President has gone out of his way to praise for their patriotism and dedication to duty—simply because they have been moved from one department in the federal government to another.

In contesting the majority's apparent partisan attack on worker protections, the minority offered two common-sense, bipartisan amendments to the majority's proposal. The first was an amendment that Democrats and Republicans on the Government Reform Committee had agreed to unanimously. Our amendment would have ensured that federal employees in the new Department of Homeland Security have basic title 5 protections and would have:

- Given the Secretary the authority to harmonize pay schedules;
- Allowed the Secretary to suspend or remove Department employees in the interest of national or homeland security;
- Guaranteed that federal employees transferred to the new agency will not have their pay reduced;
- Prevented the employment system of the Transportation Security Administration, which includes few of the protections of title 5, from being applied to new hires outside of the Transportation Security Administration;
- Strengthened whistleblower protections by giving whistleblowers across the government the right to sue for lost wages, as well as compensatory and punitive damages.

Despite the unanimous, bipartisan support this amendment earned in the Government Reform Committee, the majority on the Select Committee rejected it on a straight party-line vote (5–4).

The second amendment offered by the Select Committee minority also passed out of the Government Reform Committee with bipartisan support (on a 21–19 vote). Authored by Rep. Morella of Maryland, this amendment would ensure that workers’ collective bargaining rights could not be waived unless their functions change when they move into the new Department. The Morella amendment would ensure that if employees’ jobs did not change, then they would not lose their current protections. Additionally, the amendment would ensure that only the President—not the Secretary or any other official—has the authority to deny union representation to employees based on national security. Unfortunately, the Select Committee majority rejected this bipartisan amendment on a straight party-line vote (5-4).

The combination of these ill-advised assaults on our time-tested civil service system will undermine the quality of the new department’s workforce—not an auspicious start to securing the homeland.

#### GOOD GOVERNMENT—FREEDOM OF INFORMATION ACT (FOIA)

We have serious concerns regarding the bill’s provisions relating to the Freedom of Information Act (FOIA). FOIA was designed to preserve openness and accountability in government. In recognition that there is a need to protect some sensitive information, FOIA already contains exemptions from disclosure for national security information (exemption 1), sensitive law enforcement information (exemption 7), or confidential business information (exemption 4). New exemptions to its provisions are not necessary and are a retreat from openness in government.

H.R. 5005, however, would broaden the FOIA exemption, defining “critical infrastructure” in such broad terms that it would even cover corporations seeking liability protection. For example, an energy company could hide from the public information about a leak at its nuclear power plant simply by submitting information, unsolicited, to the DHS.

H.R. 5005 would also preempt state disclosure laws, stating that information submitted under this section “shall not, if provided to a state or local government or government agency—(I) be made available pursuant to any state or local law requiring disclosure of information or records.”

The United States has a strong tradition of open and accountable government, and we must not sacrifice those basic principles as we secure our homeland. This provision would threaten that tradition and needlessly curtail the public’s right to health and safety information. It should be removed from the bill.

#### GOOD GOVERNMENT—FEDERAL ADVISORY COMMISSION ACT

We are disappointed and concerned that the majority chose to exempt the proposed department from the requirements of the Federal Advisory Committee Act (FACA). FACA is one of the central mechanisms to assure that advice to the government is balanced and made in an open manner. FACA takes that advice out of the backroom and into the sunshine.

FACA requires that any committee formed to provide advice to the federal government, and which consists of members who are

not federal employees, follow certain rules in order to promote good-government values such as openness, accountability, and a balance of viewpoints. Generally, FACA requires that such committees announce their meetings, hold their meetings in public, take minutes of the meetings, and provide the opportunity for divergent viewpoints to be represented.

FACA already contains protections for sensitive information. It already exempts information that relates to national security issues or information that is classified. As a result, many agencies with homeland security missions, such as the Department of Justice, the Federal Bureau of Investigation, and the Department of Defense, currently operate under FACA without difficulty. There is an established waiver process, and FACA provides for closed meetings when necessary for national security and privacy.

The minority offered an amendment to apply FACA to the new department. It was defeated on a party-line vote.

#### GOOD GOVERNMENT—DEPUTY SECRETARY FOR MANAGEMENT

A reorganization of this magnitude requires strong management if we are to meet our homeland security goals. This is the largest government reorganization of our time, bringing in 170,000 employees from disparate agencies to work under the guidance of one secretary. The General Accounting Office (GAO) has said that the experiences of organizations undergoing radical change like this one show that it could be five to ten years before the new department becomes fully effective. That is too long for the American people to wait.

In his testimony before the Select Committee on Homeland Security on July 17, GAO Comptroller General David Walker said, “it is important for Congress to give serious consideration to creating a deputy secretary for management/chief operating officer (COO) position within the department to provide the sustained management attention essential for addressing key infrastructure and stewardship issues while helping to facilitate the transition and transformation process.”

We believe the Select Committee should have heeded the GAO’s advice and elevated the undersecretary for management to a deputy secretary position. We believe this would make the transition smoother and faster so the department can place its entire focus on protecting our homeland. We offered such an amendment, but it was defeated on a party-line vote.

#### COMPLETE IMMUNITY FOR DEFECTIVE ANTI-TERRORISM DEVICES

We are also particularly troubled that the majority has chosen to use the creation of the new Department of Homeland Security as a vehicle to institute broad changes to our tort laws. Under the majority’s plan, knowingly shipping tainted anthrax vaccine to our soldiers in harm’s way in Afghanistan would not be a cause for legal action. A soldier’s widow would not be able to sue the company that created the vaccine even if it had known the product was defective.

In what was supposed to be a bipartisan process, the majority presented Democratic Members one day prior to the markup with a new Subtitle G of Title VII, entitled the Support Anti-Terrorism

by Fostering Effective Technologies Act (the SAFETY Act). This provision would protect manufacturers of defective anti-terrorism products from legal liability. As written, the SAFETY Act would bar access to state courts, eliminate punitive damages, cap liability, extend a form of immunity to sellers of potentially defective products, eliminate joint liability, and limit all forms of liability to the limits of “reasonably priced” insurance. Under current law, the heads of designated departments or agencies already have the discretionary power to provide contractors with government indemnity when there are “unusually hazardous or nuclear risks.”

In short, this provision severely restricts the ability of claimants to recover for their injuries and fails to provide for any alternative form of compensation or indemnification. The provision was not reported from any of the committees with jurisdiction over the creation of the new Department of Homeland Security. We offered an amendment to strike it from the bill, but the amendment was rejected on a party-line vote.

In addition, the mechanism established in the SAFETY Act differs substantially from past attempts to limit seller liability in emergency circumstances. For example, the Air Transportation Safety and System Act, enacted after September 11, imposed limits of liability and established an exclusively federal cause of action but also established an alternative victim’s compensation fund. In another example, the Swine Flu Act of 1976 shielded manufacturers of the Swine Flu vaccine from liability, but preserved the right of victims to sue the federal government under the Federal Tort Claims Act. We believe the country, and its citizens, would be better served by a more judicious extension of indemnification rather than the blanket exemption from liability on the part of a manufacturer of anti-terrorism technology or services.

#### CORPORATE EXPATRIATES

We are deeply disappointed that the Committee did not include an amendment offered by Congresswoman DeLauro that would have prohibited the Department of Homeland Security from entering into contracts with so-called “corporate expatriates.” A similar provision was passed unanimously by the Ways and Means Committee but was removed in the chairman’s mark.

Corporate expatriates receive \$2 billion a year in government procurement contracts. Their principal equity market is the United States and they depend on our Armed Services to protect their physical assets, yet they incorporate on paper in another country to avoid their fiduciary responsibility to America. Already, these companies are lining up to receive contracts from the DHS. The Department of Homeland Security should not reward these companies for putting profits over patriotism by awarding them new government contracts.

#### INFORMATION SHARING

The events and factors that led to the terrorist attacks of September 11th regrettably involved failures among federal agencies and between the federal agencies and state and local authorities to share critical information related to the threat of terrorism. We

learned as much—and much more—from FBI agent Colleen Rowley, who courageously testified in detail about shortcomings in the FBI's handling of the case of the so-called 20th hijacker, Zacarias Moussaoui.

The amendment presented by Rep. Menendez closely tracks, with minor modifications, the proposal of Reps. Chambliss and Harman in the Information Security Act of 2002—a bill that passed the House a month ago. The amendment, which failed by a 5–4 party-line vote, would have required the President to prescribe and implement procedures for federal agencies to share information both among themselves, and between them and state and local governments. The amendment would ensure that critical threat information would be shared, thus addressing the key and most glaring shortcoming of our Federal Government leading up to the events of September 11th.

#### CONCLUSION

We are disappointed that the majority missed an historic opportunity to approve a homeland security bill worthy of the American people. We want a strong bipartisan bill to create a new Department of Homeland Security that would make the American people safer while respecting its workforce and maximizing the advances of technology.

Unfortunately, the majority opposed initiatives to reduce risk and respond to terrorists' attacks. They attempted to postpone indefinitely the deadline for deployment of explosive detection devices at our nation's airports. They rejected the imperative of information-sharing. They defended the expatriate companies who have chosen profits over patriotism, rejecting an amendment that would have prevented these companies who avoid paying taxes from receiving government contracts to fight terrorism. They turned back the clock on civil service protection for workers and also voted to grant unprecedented liability protections for those who manufacture defective anti-terrorism devices.

We remain committed to a strong, effective Department of Homeland Security and hope that these issues and other concerns will be successfully addressed during consideration on the House floor.

NANCY PELOSI.  
MARTIN FROST.  
ROBERT MENENDEZ.  
ROSA L. DELAURO.

## DISSENTING VIEWS

In a bill to improve homeland security, the majority has inserted a provision that will do the exact opposite. We strongly object to Section 409 of the reported bill, which extends for one year the December 31, 2002 deadline for the Transportation Security Administration (TSA) to use certified explosive detection equipment to screen all checked baggage on airlines. We can think of no good reason why this provision was inserted. The Department of Transportation has said this extension is not necessary. Secretary of Transportation Mineta has repeatedly promised to meet the original deadline. The Administration did not ask for an extension.

An extension at this time will halt the current program and substantially delay the installation of equipment that could be in place in the next few months. Screening airline baggage by explosive detection equipment is the only effective way to prevent a suicide bomber from bringing down an aircraft.

Section 409 does not belong in this bill. This is a bill to create a new Department, not to change the rules governing the component agencies. On baggage screening, the committee of jurisdiction, the Transportation and Infrastructure Committee, is holding hearings this week on the status of TSA's installation of explosive detection equipment. This issue should be explored and dealt with by the Transportation Committee, the Committee with specific expertise in these issues.

The December 31, 2002 deadline was imposed in the Aviation and Transportation Security Act that we passed last November by a vote of 410 to 9. In the debates on the bill, Members on both sides of the aisle strongly supported a deadline for installation of explosive detection equipment and criticized the Senate bill because it did not have a deadline.

It has been suggested that delay is needed to await the development of new technology. In reality, none of the new technology currently being evaluated is likely to be certified in time for installation by December 31, 2003, the new deadline established by the Select Committee.

We already have certified equipment that can detect explosives that can destroy an airplane. Awaiting even better technology starts us down a dangerous path. It is reminiscent of the Federal Aviation Administration's (FAA) failure in the 1980s to require the installation of collision avoidance equipment (TCAS II), because the equipment gave only vertical directions for evasive action. FAA was awaiting the development of TCAS III, which would also give horizontal directions. While FAA delayed installation of the existing technology, there were three tragic midair collisions that could have been prevented by TCAS II, resulting in the loss of hundreds of lives. After the last of these crashes over Cerritos, California, we passed legislation to require the installation of TCAS II.



It is difficult to see why the Majority has decided to include in a bill to enhance security a provision which will detract from security. The deadline was necessary to ensure the security of our aviation system when it passed the House 410-9, and it still is.

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