

**Calendar No. 565**

112TH CONGRESS }  
*2d Session* }

SENATE

{ REPORT  
112-249

DEPARTMENT OF HOMELAND SECURITY  
AUTHORIZATION ACT OF 2012

---

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

TO ACCOMPANY

S. 1546

TO AUTHORIZE CERTAIN PROGRAMS OF THE DEPARTMENT OF  
HOMELAND SECURITY, AND FOR OTHER PURPOSES



DECEMBER 13, 2012.—Ordered to be printed

---

U.S. GOVERNMENT PRINTING OFFICE

29-010

WASHINGTON : 2012

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

JOSEPH I. LIEBERMAN, Connecticut, *Chairman*

CARL LEVIN, Michigan

DANIEL K. AKAKA, Hawaii

THOMAS R. CARPER, Delaware

MARK L. PRYOR, Arkansas

MARY L. LANDRIEU, Louisiana

CLAIRE McCASKILL, Missouri

JON TESTER, Montana

MARK BEGICH, Alaska

SUSAN M. COLLINS, Maine

TOM COBURN, Oklahoma

SCOTT P. BROWN, Massachusetts

JOHN McCAIN, Arizona

RON JOHNSON, Wisconsin

ROB PORTMAN, Ohio

RAND PAUL, Kentucky

JERRY MORAN, Kansas

MICHAEL L. ALEXANDER, *Staff Director*

BETH M. GROSSMAN, *Deputy Staff Director and Chief Counsel*

JEFFREY D. RATNER, *Counsel*

CHRISTIAN J. BECKNER, *Associate Staff Director for Homeland Security*

*Prevention and Protection*

JASON T. BARNOSKY, *Professional Staff Member*

BLAS NUNEZ-NETO, *Professional Staff Member*

NICHOLAS A. ROSSI, *Minority Staff Director*

MARK B. LEDUC, *Minority General Counsel*

RYAN M. KALDAHL, *Minority Director of Homeland Security Policy*

TRINA DRIESSNACK TYRER, *Chief Clerk*

## CONTENTS

---

	Page
I. Purpose and Summary .....	1
II. Background and Need for the Legislation .....	1
III. Legislative History .....	42
IV. Section-by-Section Analysis .....	45
V. Evaluation of Regulatory Impact .....	82
VI. Congressional Budget Office Cost Estimate .....	82
VII. Changes to Existing Law Made by the Bill, as Reported .....	82



## Calendar No. 565

112TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ 112-249

---

---

### DEPARTMENT OF HOMELAND SECURITY AUTHORIZATION ACT OF 2012

---

DECEMBER 13, 2012.—Ordered to be printed

---

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

### R E P O R T

[To accompany S. 1546]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1546) to authorize certain programs of the Department of Homeland Security, and for other purposes, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

#### I. PURPOSE AND SUMMARY

The Department of Homeland Security Authorization Act of 2012 authorizes certain programs of the Department of Homeland Security, including appropriations for certain infrastructure protection, border security, and preparedness assistance programs. This Act is the first Department of Homeland Security authorization bill to be reported to the Senate since the creation of the Department in the Homeland Security Act of 2002 (“HSA”) (P.L. 107-296), ten years ago in the wake of the terrorist attacks of September 11, 2001.

#### II. BACKGROUND AND NEED FOR THE LEGISLATION

Eleven years ago the nation suffered the worst attack on the homeland since the surprise assault on Pearl Harbor 60 years earlier. In the wake of the September 11, 2001 terrorist attacks, the government set out to strengthen our nation’s defenses so that we would be better prepared to prevent and respond to future attacks. Soon after, the Department of Homeland Security (“DHS”) was established in order to align U.S. government agencies with responsibility for homeland security and enhance accountability for the protection of the nation against terrorist attacks. The Department’s

creation represented a reorganization of the executive branch on a scale not experienced since the establishment of the Department of Defense half a century earlier.<sup>1</sup> The vast array of responsibilities given to the new Department, coupled with the enormity of its management and operational challenges, make it one of the largest and most complex cabinet agencies in the federal government.

Since the Department's creation, this Committee has engaged in constant oversight of DHS, its work, and its effectiveness. Over the past two years, this Committee has methodically examined key aspects of the Department in a series of eleven hearings aimed at assessing where the Department has succeeded and where it needs improvements to do so. By any measure, the creation and maturation of the Department of Homeland Security has made us safer. DHS has brought together and steadily integrated all or part of 22 disparate agencies, ensuring for the first time that there is a single department in the federal government whose primary role is protecting the nation's homeland security. Today more than 52,000 Transportation Security Administration (TSA) personnel serve on the frontlines at over 450 U.S. airports and countless rail and bus depots, protecting the safety of our transportation infrastructure. DHS now vets all passengers on flights to, from, and within the U.S. against government watchlists through the Secure Flight program. Many once disparate border operations have been consolidated and DHS has increased security at both our northern and southern borders. Since 2004, the number of Border Patrol agents along the U.S. northern and southern land borders has nearly doubled to over 21,000.<sup>2</sup> DHS has deployed substantial technological resources along both the northern and southern land borders, including surveillance equipment, as well as over 650 miles of pedestrian and vehicle fencing along the southwest border.<sup>3</sup> DHS has also dramatically increased the nation's ability to prepare for and respond to disasters, whether natural or man-made. The Federal Emergency Management Agency (FEMA) has not only enhanced the ability of State and local governments to respond to disasters but can also quickly deploy responders to disaster sites and provide substantial resources to assist those in need. Communication and coordination among federal, State and local officials has been strengthened to create a more unified network of prevention, response and recovery.

While America is stronger and more resilient as a result of these efforts, the threats to our homeland persist and continue to evolve. Al Qaeda and its affiliated and allied groups still pose a direct terrorist threat to the U.S. homeland, but this threat has become more disparate in recent years, as the ideology of violent Islamist extremism has inspired groups and individuals with no direct links to al Qaeda to engage in acts and plots of homegrown terrorism. DHS has responded by implementing programs such as the "If You See Something Say Something" campaign, increasing public awareness of indicators of terrorism, and emphasizing the importance of

---

<sup>1</sup> P.L. 107-296; 6 U.S.C. §§ 101 et seq.; see Harold C. Relyea, "Organizing for Homeland Security," *Presidential Studies Quarterly*, vol. 33, Sept. 2003, pp. 499.

<sup>2</sup> U.S. Border Patrol Fiscal Year Staffing Statistics, December 12, 2011, available at [http://www.cbp.gov/xp/cgov/border\\_security/border\\_patrol/usbp\\_statistics/](http://www.cbp.gov/xp/cgov/border_security/border_patrol/usbp_statistics/).

<sup>3</sup> Department of Homeland Security, "Secure and Manage Our Borders," July 20, 2011, available at [http://www.dhs.gov/xabout/gc\\_1240606351110.shtm#1](http://www.dhs.gov/xabout/gc_1240606351110.shtm#1).

reporting suspicious activity to law enforcement authorities.<sup>4</sup> In addition, DHS supports the work of 77 fusion centers across the nation that facilitate information sharing on a vast scale and disseminate critical homeland security information to State, local, and federal law enforcement agencies. One of the most important and telling result of these and other efforts is that there has been no successful 9/11-type attack on America by al Qaeda or its affiliates since September 11, 2001—an outcome almost no one would have predicted ten years ago.

While DHS's successes are undeniable, there have also been disappointments. Some of the Department's investments in equipment and technology have paid dividends, but others have not produced as expected or have outlived their utility. For example, the ill-conceived SBI-net program, meant to secure the nation's southern border, spent \$770 million on a network of tower-based cameras, radars, and sensors that covers only 53 miles of the border—a huge investment of taxpayer funding for a very limited payoff.<sup>5</sup> In addition, DHS decided to terminate the failed Advanced Spectroscopic Portal program, designed to strengthen the nation's defenses against a nuclear terrorist attack, after over one billion dollars was invested. The need to make better investment decisions, especially in a distressed economy, has been an important consideration in the drafting of this legislation.

Nearly eleven years after 9/11, it is appropriate to take stock of DHS's growth and make the Department a stronger and more efficient agency—one that can better take on the challenges of emerging threats and vulnerabilities. An integral part of achieving these objectives is ensuring that DHS is continually trying to become a more effective steward of taxpayer funds. To meet all these challenges, the Department will need to overcome ongoing roadblocks to integration—forging its many components into an effective whole. This bill aims to accomplish three primary objectives: (1) strengthen DHS's ability to confront these threats and vulnerabilities, (2) make DHS more efficient in addressing them, and (3) provide DHS with the structure and flexibility it needs to accomplish its mission.

### **Addressing Emerging Threats and Persistent Vulnerabilities**

Eleven years after 9/11 our enemies continue to plan attacks against the United States. Indeed, according to experts, the country now faces a larger number of threats from more diverse and diffuse sources than ever before.<sup>6</sup> Former National Counterterrorism Center Director Michael Leiter testified before this Committee in 2010 that “Al-Qa’ida’s affiliates’ and allies’ increasing ability to provide training, guidance, and support for attacks against the United States makes it more difficult to anticipate the precise nature of

<sup>4</sup> See <http://www.dhs.gov/files/reportincidents/see-something-say-something.shtm>.

<sup>5</sup> General Accountability Office (GAO) Report, *Arizona Border Surveillance Technology: More Information on Plans and Costs Is Needed before Proceeding*, GAO-12-22, November 4, 2011.

<sup>6</sup> Testimony of Federal Bureau of Investigation (FBI) Director Robert Mueller, “Nine Years After 9/11: Confronting the Terrorist Threat to the Homeland” before the U.S. Senate Committee on Homeland Security and Government Affairs, September 22, 2010. Director Mueller noted that “the level of cooperation among Al Qaeda and other terrorist groups has changed in the past year suggesting that this collaboration and resulting threat to the homeland will increase. By sharing financial resources, training, tactical and operations expertise, and recruits, these groups have been able to withstand significant counterterrorism pressure from the United States, coalition, and local government forces.”

the next Homeland attack and determine from where it might come.”<sup>7</sup> Although our ability to respond to emerging terrorist threats has improved greatly since 9/11, significant vulnerabilities remain.

In the immediate aftermath of 9/11, many believed that the United States would inevitably face another al Qaeda attack. While the ensuing decade has seen a growing number of terrorist plots against the homeland, it is a testament to the tireless work of the Department of Homeland Security, the Federal Bureau of Investigation, and the Intelligence Community as a whole—as well as, in some instances, to the fast and brave work of a number of citizens who happened to be on hand for an attempted attack—that we have managed to avoid a large-scale terrorist attack by al Qaeda or its affiliates. The reforms that have been enacted by Congress played a large role in this success as well, providing the statutory framework for many of the most important security programs that our government has in place today.

The killings of Osama Bin Laden and Anwar al Awlaki in 2011 underscored the government’s progress in dismantling al Qaeda’s and its affiliates’ senior leadership and hampering their ability to carry out attacks. But even as core al Qaeda in Afghanistan and Pakistan appears to have been weakened, other terrorist organizations, including al Qaeda’s growing network of affiliates and allies, have stepped up their determination to strike inside the United States.

Prior to 2009, al Qaeda’s regional affiliates, such as al Qaeda in the Arabian Peninsula (AQAP), al-Shabaab, and al Qaeda in the Islamic Maghreb, were primarily focused on carrying out attacks within their own countries or regions and were not focused on North America or Europe. However, the past few years have seen a disturbing trend, as these affiliates begin to look towards the West.<sup>8</sup>

Since 2009, al Qaeda and its affiliates and allies have renewed their focus on launching attacks inside the United States. National Counterterrorism Center Director Leiter testified before the Committee that the number of serious attacks in 2009 and 2010 “surpassed the number and pace of attempted attacks during any year since 9/11.”<sup>9</sup> Fortunately, these efforts have for the most part failed; had they succeeded, they could have wrought severe damage and loss. For instance, since 2009:

- Najibullah Zazi, a 24-year-old Afghani, was arrested in 2009 after buying materials to make bombs he was allegedly planning to detonate in the New York City subway. Zazi had previously attended an al Qaeda terrorist camp in Pakistan.

<sup>7</sup>Testimony of National Counterterrorism Center (NCTC) Director Michael Leiter, “Nine Years After 9/11: Confronting the Terrorist Threat to the Homeland” before the U.S. Senate Committee on Homeland Security and Government Affairs, September 22, 2010.

<sup>8</sup>Testimony of NCTC Director Matthew Olson, “Ten Years After 9/11: Are We Safer?” before the Senate Committee on Homeland Security and Governmental Affairs, September 13, 2011. Director Olson noted that “we face a much more diffuse and diversified threat, largely due to the emergence and evolution of regional affiliates who support al-Qaida core’s strategy of creating a self-sustaining global extremist movement. To varying degrees, the affiliates have increased the scope of their operations, seeking to strike some U.S. and Western targets both inside and outside of their respective regions.”

<sup>9</sup>Testimony of NCTC Director Michael Leiter, “Nine Years After 9/11: Confronting the Terrorist Threat to the Homeland” before the U.S. Senate Committee on Homeland Security and Government Affairs, September 22, 2010.



- Umar Farouk Abdulmutallab, an AQAP operative, nearly succeeded in blowing up Northwest Airlines Flight 253 with explosives hidden in his underwear on Christmas Day in 2009.

- Faisal Shahzad, a Pakistani-American who lived in the United States and was an operative of Tehrik-i Taliban Pakistan (TTP), a terrorist organization located in Pakistan that is allied with al Qaeda, attempted to explode a car bomb in Times Square on May 1, 2010.

- Al Qaeda in the Arabian Peninsula attempted in October 2010 to detonate explosives concealed within printers that were on cargo aircraft en route from the Middle East and Europe to the United States. This plot was thwarted only because of a timely tip from a foreign intelligence service.

In addition to the threats posed by al Qaeda and its affiliates and allies, there is another dimension to the terrorist threat—that of homegrown terrorism. Over the past several years, dozens of U.S. citizens with no formal ties to al Qaeda or overseas terrorist groups have tried to attack their fellow Americans, either here or abroad. In many cases, these individuals have been radicalized or inspired by violent Islamist extremist propaganda, in the form of writings, audio tapes, and videos, all readily available for viewing on the Internet. For example:

- In June 2009, Carlos Leon Bledsoe (who had changed his name to Abdulhakim Muhammad) was arrested for killing one soldier and wounding another in a shooting at the U.S. Army-Navy Career Center in Little Rock, Arkansas. Bledsoe had been radicalized by the teachings of Anwar al-Awlaki and had spent over a year in Yemen prior to the shooting.

- On November 5, 2009, U.S. Army Major Nidal Hasan opened fire at the Soldier Readiness Center at Fort Hood, killing thirteen people and wounding forty-three. Hasan had also become radicalized over time and followed the teachings of AQAP's Anwar al-Awlaki.

- In July 2011, Betim Kaziu, a U.S. citizen from Brooklyn, New York, was convicted on charges related to his attempts to join al Qaeda-linked groups. In February 2009, Kaziu and a friend traveled to Cairo, Egypt, where they planned to link up with either al-Shabaab or other terrorist organizations operating in places such as Iraq, Afghanistan, or Pakistan.

Our government's efforts to prevent attacks from al Qaeda's affiliates and allies and from homegrown terrorists have thus far largely been successful, but vulnerabilities in our homeland defenses continue to pose challenges. These vulnerabilities range from the daunting task of keeping terrorists from boarding airplanes; to challenges in sharing time-sensitive information among intelligence, law enforcement, and private sector partners; to failed technology projects that have yet to deliver adequate threat-detection capabilities; to the challenge of coordinating first responders and ensuring that our nation is resilient in the aftermath of an attack.

S. 1546 attempts to address many of these vulnerabilities and strengthen DHS's ability to confront the evolving challenges it faces today and will face in the future. In particular, the bill strengthens DHS activities aimed at preventing terrorist travel, including addressing weaknesses in our visa issuance process. It

takes steps to improve security along the southern and northern land borders. It facilitates greater information sharing within DHS and between DHS and other federal, State, and local law enforcement agencies. It improves planning and coordination for catastrophic events. And it improves the Department's ability to address chemical, biological, radiological, and nuclear threats by reforming how the Department handles complex and large-scale technology acquisitions programs.

*Preventing terrorist travel*

Preventing terrorists from attacking the United States was the impetus for creating the Department and remains a central mission of the Department, as set forth by the HSA.<sup>10</sup> The 9/11 Commission concluded that targeting terrorist travel was one of the most effective ways to address the threat posed by international terrorist groups.<sup>11</sup> Every time that would-be terrorists attempt to travel across borders and are screened by law enforcement and immigration officials, they expose themselves to identification and interdiction. Since 9/11, the U.S. has made significant improvements in its ability to identify potential terrorists as they attempt to travel to the United States, thus preventing attacks long before they have any chance of happening.

As DHS Assistant Secretary for Policy David Heyman testified before this Committee in July 2011:

Ten years ago, screening of passengers coming to the United States was limited to the Department of State visa process, if applicable, and the inspection of a person by an immigration officer at the port of entry, plus whatever processes were applied at foreign airports and by foreign governments. Provision of advance passenger information was voluntary and, even when provided by air carriers, frequently contained inaccurate or inconsistent data. There was no biometric collection for visa applicants beyond photographs, nor for aliens seeking admission to the United States. There was very limited pre-departure screening of passengers seeking to fly to the United States and there was virtually no screening of any kind for domestic flights beyond airport checkpoints. There was no advance screening of passengers seeking admission under the Visa Waiver Program (VWP) and interagency sharing of information on terrorist threats was minimal.<sup>12</sup>

Since 9/11, the nation has taken steps to address many of these vulnerabilities. The Aviation and Transportation Security Act of 2001, enacted barely two months after 9/11, requires all airlines flying to the United States to submit electronic passenger manifests that include personal identifying information and requires air-

<sup>10</sup> 6 U.S.C § 111(b)(1)(A) (“The primary mission of the Department is to . . . prevent terrorist attacks within the United States. . . .”).

<sup>11</sup> Final Report of the National Commission on Terrorist Attacks Upon the United States, July 22, 2004, p. 385. (“Recommendation: Targeting travel is at least as powerful a weapon against terrorists as targeting their money. The United States should combine terrorist travel intelligence, operations, and law enforcement in a strategy to intercept terrorists, find terrorist travel facilitators, and constrain terrorist mobility.”)

<sup>12</sup> Testimony of Assistant Secretary for Policy, DHS, David F. Heyman, “Ten Years After 9/11: Preventing Terrorist Travel” before the Senate Committee on Homeland Security and Governmental Affairs, July 13, 2011.

lines to share the Passenger Name Record (PNR) data in their ticketing systems with the U.S. government.<sup>13</sup> One year later, the Enhanced Border and Visa Security Act of 2002 incorporated a similar electronic passenger manifest requirement into our immigration laws, expressly authorizing that this vital information be used for the purposes of screening travelers attempting to enter the United States.<sup>14</sup>

The Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA)<sup>15</sup> enacted numerous provisions to inhibit terrorist travel. Most broadly, it established the Director of National Intelligence (DNI) and the National Counterterrorism Center with the mission to synthesize and coordinate terrorism-related intelligence across the government.<sup>16</sup> More specifically, the law expanded the basis for keeping foreign nationals out of the U.S. by denying visas to those who participated in the commission of acts of torture or extrajudicial killings abroad or who are members of political, social, or other groups that endorse or espouse terrorist activity. It required the deployment of biometric technology at ports of entry (a biometric entry and exit system) and consular posts abroad to detect potential terrorist indicators on travel documents; established an Office of Visa and Passport Security; directed the President to enter into agreements with other nations to share information on lost and stolen travel documents, and required the training of consular officers in the detection of terrorist travel patterns and document fraud. IRTPA further strengthened the screening system by requiring that all individuals applying for visas be subjected to in-person interviews at consular posts abroad. Lastly, IRTPA required that airline passengers (both domestic and international) be screened against the terrorist watchlist maintained by the FBI.

Additional enhancements came several years later, with passage of The Implementing Recommendations of the 9/11 Commission Act of 2007.<sup>17</sup> The 2007 law strengthened the Visa Waiver Program (VWP)—a program under which nationals of 37 countries that meet certain legal requirements are not required to obtain visas to enter the U.S.—by requiring these countries to share critical law enforcement information with the U.S. In response to this legislative mandate, DHS requires VWP countries to: (1) participate in Interpol’s Lost and Stolen Travel Document database; (2) share biometric data on criminals electronically through Preventing and Combating Serious Crime (PCSC) agreements; and (3) enter into an HSPD–6 Terrorist Watchlist agreement to exchange biographical information about known and suspected terrorists. The Act also created the Electronic System for Travel Authorization (ESTA) in order to ensure that travelers from VWP countries were screened against public safety and immigration databases prior to their travel to the United States.

As a result of this series of post-9/11 laws, the screening of potential travelers now begins when they make the decision to travel

<sup>13</sup> P.L. 107–71, § 115.

<sup>14</sup> P.L. 107–173, § 402.

<sup>15</sup> P.L. 108–458.

<sup>16</sup> Final Report of the National Commission on Terrorist Attacks Upon the United States, July 22, 2004, p. 403 (“Breaking the older mold of national government organizations, this NCTC should be a center for joint operational planning and joint intelligence, staffed by personnel from the various agencies.”).

<sup>17</sup> P.L. 110–53.

to the United States. Individuals requiring visas to travel to the United States are fingerprinted and interviewed at consular posts abroad, and their biometric and biographic information is checked against all of the U.S. government's law enforcement, immigration, and intelligence databases before visas are issued. Individuals from Visa Waiver nations must submit their biographic information into the ESTA system, which checks the same databases to ensure that the potential traveler does not have any adverse information on file.

Once an individual purchases a ticket to fly to the United States, the airlines provide Customs and Border Protection (CBP) with their Passenger Name Record data 72 hours before a plane is scheduled to depart. This data is checked against all of our law enforcement, immigration, and intelligence databases to identify any known terrorists or serious criminals. The PNR data is also run against the Automated Targeting System, which incorporates intelligence about known threats to determine which individuals should be looked at more closely. Once passengers begin to check in for their flight, the airlines transmit the passenger manifest through CBP's Advance Passenger Information System, which includes more identifying information that can be run against all of these automated systems. When travelers arrive in the United States, they are processed through the US-VISIT system which collects fingerprints of each of the traveler's ten fingers and a photograph that can be used to verify that the traveler is the same person who applied for a visa. The systems also check against the holdings of other biometric databases within the U.S. government.

None of these checks were in place prior to 9/11, and the country is much safer today as a result of this layered system. It is also a fact, however, that no system is foolproof, and further improvements are needed to address remaining vulnerabilities and evolving threats. S. 1546 attempts to address some of the vulnerabilities in DHS screening and visa security programs.

#### Improving screening programs

Terrorist groups are constantly seeking ways to counteract these significant post-9/11 security improvements. Targeting the ability of terrorists to travel is a key priority for DHS and the U.S. government, and identifying terrorists before they board an airplane bound for the United States remains the best method for securing international aviation. The Christmas Day attack in 2009, in which Umar Farouk Abdulmutallab successfully smuggled explosives onto a plane bound for the U.S., showed gaps in the coordination and integration of the Department's various screening programs.

Section 507 of this bill seeks to address the Department's lack of a central coordination point for the various programs within the component agencies that seek to identify terrorists and prevent them from gaining access to the United States by creating the Office of International Travel Security and Screening, headed by an Assistant Secretary. The new office will bring together three key travel security programs and their personnel that are currently dispersed throughout the Department: US-VISIT, the Visa Waiver Program, and the Screening Coordination Office (SCO). The goal of this targeted reorganization is to ensure these three related programs are more closely coordinated among themselves and with the

overall terrorist travel and screening efforts of the Department and to sharpen and elevate the focus on screening by putting a new Assistant Secretary in charge of improving DHS-wide screening activities.

As the roles and responsibilities of the National Protection and Program Directorate (NPPD) have continued to evolve, the current placement of US-VISIT within the directorate appears increasingly to be an ill fit. NPPD's core missions today are focused on cybersecurity and infrastructure protection, while US-VISIT's core mission is providing screening services to DHS component agencies in order to verify identity and better identify potential terrorists and serious criminals.

Placing US-VISIT within a newly formed Office of International Travel Security and Screening will better focus its efforts on interdicting terrorist travel.<sup>18</sup> A recent GAO report requested by the Committee concluded that US-VISIT had failed to implement a system to identify potential visa overstays effectively, leading to backlogs of 1.6 million potential overstays that had been identified by an automated system but had yet to be verified.<sup>19</sup> GAO also noted once again that DHS had failed to meet its statutory deadline to develop and implement a biometric exit program. Although DHS has recently made significant progress in addressing the overstay backlog, much work remains before our current systems are sufficiently reliable and effective. This realignment will provide badly needed oversight within DHS for this important program.

The VWP and the SCO are currently housed within the Office of Policy. But while both offices may have some policy functions, they have important operational roles in preventing terrorist travel and securing international aviation—which suggests that they, too, are misplaced. The VWP, in particular, has become an important tool to promote information sharing with our close foreign partners. Building on a mandate in the Implementing the Recommendations of the 9/11 Commission Act,<sup>20</sup> DHS requires that VWP nations share information about terrorists and serious criminals, including requiring that they share fingerprint information electronically through Preventing and Combating Serious Crime (PCSC) agreements. Unfortunately, GAO has reported that the VWP office, thus far, has signed PCSC agreements with only half of the 36 VWP nations and that DHS has yet to actually implement even one of these agreements.<sup>21</sup> Bringing the VWP together with US-VISIT, the entity in charge of implementing the PCSC agreements at DHS, will hopefully enable DHS to move ahead more quickly in implementing these important tools to prevent terrorist travel.

<sup>18</sup> Effectively identifying visa overstays would enable DHS to address a key vulnerability: the 9/11 Commission found that six of the 9/11 terrorists had overstayed their visas, and it recommended implementing a biometric exit system in order to better identify and apprehend dangerous individuals who overstayed their visas. Final Report of the National Commission on Terrorist Attacks Upon the United States, July 22, 2004, p. 385.

<sup>19</sup> GAO Report, "Overstay Enforcement: Additional Mechanisms for Collecting, Assessing, and Sharing Data Could Strengthen DHS's Efforts but Would Have Costs," GAO-11-411, April 15, 2011, p. 41.

<sup>20</sup> Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53).

<sup>21</sup> GAO Report, "Visa Waiver Program: DHS Has Implemented the Electronic System for Travel Authorization, but Further Steps Needed to Address Potential Program Risks," GAO-11-335, May 5, 2011, p. 21.

### Securing the visa issuing process

After the 2009 Christmas Day attack, the Committee learned that Umar Farouk Abdulmutallab's father had expressed concerns about his son's radicalization to officials at the U.S. Embassy in Abuja, Nigeria but that these concerns had not been deemed sufficient at the time to revoke Abdulmutallab's visa. Failures to connect a number of different leads regarding Abdulmutallab by the intelligence community further compounded the problem. This bill addresses some of the key vulnerabilities revealed by this and other related events.

To begin with, it addresses problems arising at visa-issuing consular posts overseas—often our first line of defense against terrorists seeking entrance to the U.S. Congress attempted to shore up the visa-issuing process in section 802 of the HSA<sup>22</sup> by creating the Visa Security Program (VSP), which places criminal investigators at select consular posts overseas as an added layer of security.

A GAO report requested by the Committee revealed a number of problems with the implementation of the VSP. GAO found that most VSP units have not developed standard operating procedures despite a number of memoranda of understanding between DHS and the Department of State. The absence of standard procedures has brought uneven implementation of the program and confusion among VSP investigators and consular officers at those consular posts.<sup>23</sup> GAO also found that VSP agents perform a number of investigative and administrative functions that do not relate to their VSP responsibilities, which can “sometimes slow or limit visa security activities, and ICE does not track this information making it unable to identify the time spent on these activities.”<sup>24</sup> Lastly, the report revealed disagreements between ICE investigators and Consular officers concerning what degree of association with terrorism was sufficient to revoke or deny a visa.<sup>25</sup>

Section 508 of the bill attempts to address some of these issues. The bill requires that DHS and the State Department institute standard operating procedures for the VSP and that they apply those procedures to all consular posts. The section also requires DHS and the State Department to review all visa issuing policies to ensure that all individuals associated with terrorism are denied visas to travel to the United States.

The GAO report also outlines the difficulty ICE has had in meeting the goals outlined in its 2007 expansion plan for the program.<sup>26</sup> ICE failed to establish nine posts identified for expansion in 2009 and 2010, and 11 of the 20 highest risk posts identified by a joint DHS/State assessment do not have VSP units. Section 508 requires DHS, in consultation with the Department of State, to develop a plan for deploying the VSP to all consular posts determined by the Secretary to be high risk. Addressing another GAO concern, this section also requires that DHS establish an electronic system for reviewing visas at all consular posts, which DHS is currently in the process of establishing.

<sup>22</sup> 6 U.S.C. § 236.

<sup>23</sup> GAO Report, “Border Security: DHS’s Visa Security Program Needs to Improve Performance Evaluation and Better Address Visa Risk Worldwide,” GAO-11-315, April 21, 2011, pp. 15–16.

<sup>24</sup> *Id.*, p. 20.

<sup>25</sup> *Id.*, p. 18.

<sup>26</sup> *Id.*, p. 24.

Finally, section 508 requires DHS and the State Department to put in place, within one year of enactment, an electronic system for notifying airlines when the U.S. government has revoked someone's visa. Before the Christmas Day attack, the only mechanism to inform the airlines was to send a letter. Today, CBP works with the Regional Carrier Liaison Groups to inform airlines when visas are denied, but there is no electronic system in place for ensuring that individuals with revoked visas do not board airplanes bound for the United States. CBP has been working with the State Department to implement an electronic system for notifying the airlines of revoked visas. This bill codifies this effort, requiring that such a system be in place within one year of enactment. The section also stipulates that existing mechanisms, such as the Advance Passenger Information System outlined above, be utilized for this purpose in order to leverage existing government resources and minimize the burden on the airlines.

#### *Securing the land border*

Securing the United States' land borders with Mexico and Canada presents significant challenges for DHS due to the borders' length, varied terrain, and daunting weather extremes. Each border presents a different challenge: the southwest border with Mexico has long been a flashpoint for illegal immigration and drug smuggling, while the northern border with Canada includes hundreds of miles of remote wilderness and mountain ranges that are very difficult to patrol. The Border Patrol is charged with preventing illegal entries across the land border between the nation's ports of entry while CBP's Office of Field Operations is charged with screening travelers and goods at the ports of entry to prevent the entry of dangerous people and goods, and at the same time facilitating commerce. This bill seeks to address several important challenges the Department faces in securing our land borders at and between the ports of entry, while upholding the nation's commitment to international travel and commerce.

#### The Southwest border

Almost 2,000 miles long and featuring rivers, mountain ranges, deserts, and major metropolitan areas adjacent to the border, the Southwest border region is home to some of the most violent and sophisticated smuggling networks in the western hemisphere. Over the past ten years, securing this border has been a major focus for Congress and DHS. Since 2001, the Border Patrol has seen its national staffing more than double, from 9,800 to over 21,000, as Congress has sought to address illegal immigration and cross border smuggling. Staffing by CBP officers at the ports of entry has also increased by 58 percent in the past decade, to 20,379 in 2011.

Major investments have also been made in using technology to secure the border, but serious questions have been raised by GAO and others concerning whether these investments have been sound.<sup>27</sup> For example, the poorly conceived and executed SBInet

<sup>27</sup>See, GAO Report, "Secure Border Initiative: Observations on Selected Aspects of SBInet Program Implementation," GAO-08-131T, Oct. 24, 2007; GAO Report, "Secure Border Initiative: SBInet Planning and Management Improvements Needed to Control Risks," GAO-07-504T, Feb. 27, 2007; GAO Report, "Secure Border Initiative: DHS Needs to Address Significant Risks

program spent \$770 million on a network of tower-based cameras, radars, sensors that link to a central common operating picture at a Border Patrol station. Although the Border Patrol appears to be content with the system that was delivered,<sup>28</sup> it only covers 53 miles of the border—a huge investment of taxpayer funding for a very limited payoff. The Committee supported the Secretary’s decision to terminate SBInet and deploy technology on a more targeted basis. But the Committee is troubled by a recent GAO report which found that DHS’s current plan for deploying technology to the border does not incorporate performance metrics and that “CBP has not documented the analysis justifying the specific types, quantities, and deployment locations of border surveillance technologies proposed in the Plan.”<sup>29</sup> This analysis raises serious concerns that CBP may be repeating some of the mistakes that resulted in the cancellation of SBInet. Section 502 of the bill requires DHS to submit a report to the Committee detailing how it makes technology allocation decisions along the border. To address GAO’s concerns, the Committee also strongly urges CBP to ensure that performance measures and deployment justifications are included in its border surveillance plans.

Violence along the Southwest border has been fueled in part by bulk cash and guns illegally smuggled outbound from the United States to Mexico. In the 1980s and 1990s, CBP (then U.S. Customs) routinely inspected shipments leaving the U.S. but saw these inspections fade in the aftermath of the 9/11 terrorist attacks, when the agency was directed to focus on mitigating threats coming into the United States. In recent years the Committee has supported the reinstatement of a vigorous outbound inspections program by CBP. Outbound inspections are now once again taking place routinely along the southwest border.<sup>30</sup> CBP is already conducting outbound operations on a risk-based basis at all land, air, and maritime ports of entry. Section 505 of this bill codifies the Outbound Inspections Program to ensure that CBP continues to conduct vigorous inspections of individuals and goods leaving the United States in the future. This section will not require additional resources to be implemented, because DHS already factors wait times into their current outbound operations, and CBP has the infrastructure and staffing currently in place along the land border to collect biographic data from people it inspects in order to register an individual’s exit from the United States.<sup>31</sup>

#### The Northern border

Although the Border Patrol’s Northern Border Strategy identifies achieving “full situational awareness” (a high probability that illegal activity will be detected) across the northern border as a key goal, GAO found in 2010 that only 1,007 of the nearly 4,000 miles

in Delivering Key Technology Investment,” GAO–08–1086, September 22, 2008; and GAO Report, “Secure Border Initiative: DHS Needs to Reconsider Its Proposed Investment in Key Technology Program,” GAO–10–340, May 5, 2010.

<sup>28</sup>Based on numerous briefings with CBP staff and a site visit to the Border Patrol’s Tucson Sector, April 1, 2010.

<sup>29</sup>GAO Report, “Arizona Border Surveillance Technology: More Information on Plans and Costs Is Needed before Proceeding,” GAO–12–22, November 4, 2011.

<sup>30</sup>Information on the history of outbound inspections and current practices is based on staff interviews with CBP and DHS officials on June 17, 2011, September 16, 2011, and September 19, 2011.

<sup>31</sup>Id.



of the northern border met this standard.<sup>32</sup> Only 32 of those miles were deemed to be under the Border Patrol's "operational control," which means that there was a high probability that the Border Patrol could detect incursions and take a law enforcement response. Given the length and remoteness of the northern border, operational control along every inch of the border is not a realistic goal. However, DHS should have a better understanding of the illegal activity taking place along the northern border. Better use of technology, including surveillance with cameras and aircraft, could help increase effective control of the border. In recent years, DHS has largely focused its attention on the deployment of new technology across the southwest border. Section 506 requires that DHS submit a plan for improving its ability to perceive activity at and between the ports of entry along the northern border. This plan must include an assessment of the assets or technologies deployed along the northern border and identify steps that will be taken to increase information sharing and coordination among all U.S. and Canadian law enforcement agencies along the border.

*Continuing to improve information sharing*

The capacity to analyze important threat information and quickly put that information in the hands of those who can prevent or respond to an attack is one of the Department's most critical missions. A number of recent cases illustrate that threats to the homeland often times originate locally, within our communities. However, the Federal government's view into local communities is limited. DHS must rely on its partners across the country—local police departments, fire departments, emergency managers, operators of critical infrastructure and the general public—to ensure that threats are detected and addressed.

These partnerships save lives. In early 2011, a shipping company in Texas and a chemical supplier located in North Carolina independently contacted authorities to report suspicious attempts to purchase large quantities of phenol, a chemical that can be used to make explosives. The chemical company relayed the suspicious activity to the local FBI office in North Carolina and the shipping company informed the police department in Lubbock, Texas. Based on these tips, the FBI opened an investigation of Khalid Aldawsari, a Saudi exchange student studying in Texas. The FBI subsequently uncovered several of Aldawsari's incendiary postings on jihadist websites and emails indicating that he intended to use the chemical components to make explosives for attacking hydroelectric dams and nuclear power plants, among other targets. Before Aldawsari could act further, the FBI picked him up and charged with him attempted use of a weapon of mass destruction. Had it not been for the expeditious exchange of information between vigilant private businesses and State and Federal law enforcement, Khalid Aldawsari might have succeeded in launching a devastating attack against sensitive infrastructure or a local community.<sup>33</sup>

<sup>32</sup> GAO Report, "Border Security: Enhanced DHS Oversight and Assessment of Interagency Coordination Is Needed for the Northern Border," GAO-11-97, Dec. 17, 2010, p. 37.

<sup>33</sup> Department of Justice, Press Release, "Texas Resident Arrested on Charge of Attempted Use of Weapon of Mass Destruction," February 24, 2011, available at <http://www.fbi.gov/dallas/press-releases/2011/dl022411.htm>.

Since the Department's inception, it has continually strengthened its ability to collect, analyze, and disseminate intelligence to its Federal partners, State, local, and tribal governments, non-profit organizations, and the private sector. The DHS Office of Intelligence and Analysis has enhanced DHS's ability to convey intelligence on threats to the homeland in a manner that is useful and relevant to State and local law enforcement officers and first responders. The Department's support for State and local fusion centers—entities that bring together State, local, and Federal intelligence—is a focal point for this information sharing. Seventy-seven fusion centers, located in various states and major urban areas, help disseminate intelligence to front-line law enforcement, public safety, fire service, emergency response, public health, critical infrastructure protection, and private sector security personnel.

The Secretary's role as the key intermediary between the Federal government and its State and local partners is one of the founding principles of the Department, enshrined in the HSA.<sup>34</sup> Over the years, this function has developed even further. In August 2010, President Obama issued Executive Order 13549, clarifying the Secretary's role as the Executive Agent (the lead Federal official) of the Classified National Security Information Program for State, Local, Tribal, and Private Sector Entities. Under the Executive Order, the Secretary is charged with managing the Classified National Security Information Program designed to safeguard and govern access to classified national security information shared by the Federal government with State, local, tribal, and private sector entities.

Section 602 of the underlying bill codifies the key concepts of the Classified National Security Information Program, as laid out in Executive Order 13549. Specifically, section 602 charges the Secretary with overseeing the program, including accreditation, inspection, and monitoring of facilities where classified information is used; processing security clearances for State, local government, Indian tribes, and private sector employees; and developing training to teach the proper safeguarding of classified information.

DHS's role as a member of the intelligence community has evolved considerably since 2002. The Department was intended at its inception to have a key role in compiling and analyzing intelligence regarding threats to the homeland. To that end, the HSA created a Directorate of Information Analysis and Infrastructure Protection with responsibility to receive, analyze, and integrate law enforcement and intelligence information.<sup>35</sup> Two years later, the Intelligence Reform and Terrorism Prevention Act amended the National Security Act of 1947 to expand the definition of the "intelligence community" to include elements of the Department of Homeland Security concerned with the analysis of foreign intelligence.<sup>36</sup> As a result, DHS became a full-fledged member of the Intelligence Community. In July 2005, DHS Secretary Michael Chertoff established an Office of Intelligence and Analysis headed by an Assistant Secretary for Information Analysis, who also

---

<sup>34</sup> P.L. 107-296, § 102(c); 6 U.S.C. § 112(c).

<sup>35</sup> P.L. 107-296, § 201; 6 U.S.C. § 121.

<sup>36</sup> P.L. 108-458, § 1073; 50 U.S.C. § 401a.

served as the Chief Intelligence Officer for the Department.<sup>37</sup> These changes were largely codified in 2007 by the Implementing Recommendations of the 9/11 Commission Act, which, among other things, formally established an Office of Intelligence & Analysis and established as its head an Under Secretary for Intelligence & Analysis (I&A) who would also serve as the Chief Intelligence Officer of the Department.

While the Department's intelligence functions have matured considerably since 2002, challenges remain. For instance, I&A must compete with more established agencies like the Central Intelligence Agency and the National Security Agency for top talent. Traditional civilian intelligence agencies have repeatedly won out in the competition for talented and experienced intelligence personnel, largely because those agencies have greater hiring flexibilities that allow them to bring on highly skilled individuals quickly and with greater flexibility on pay levels than DHS, which has had to follow traditional civil service guidelines for its intelligence hires.

The underlying bill addresses these disparate hiring systems and allows DHS to compete for talented intelligence analysts on the same playing field as other intelligence agencies. Section 603 of the bill provides the Secretary, with the concurrence of the DNI and the Director of the Office of Personnel Management (OPM), with authority to convert competitive service positions in I&A to excepted service positions and the ability to establish new positions within I&A in the excepted service if the Secretary determines those positions are necessary to carry out the intelligence functions of the Department. In addition, in order to ensure the equitable treatment of employees across the intelligence community, the Secretary, with the concurrence of either the DNI or the OPM Director, depending on the responsibilities of the employee, may authorize I&A to adopt compensation authority, performance management authority, and scholarship authority that have been authorized for another element of the intelligence community. These changes are important steps that will strengthen the Department's ability to compete for first-rate analytical talent.

#### *Responding to catastrophic events*

Although the 9/11 terrorist attacks, and particularly the desire to prevent further attacks, provided the primary impetus for creating DHS, there has always been a strong focus on response to disasters, including natural disasters, as well. Indeed, FEMA was to be at the core of the new department as originally envisioned by the Hart-Rudman Commission. The planning and resources needed for natural disasters is often similar to preparations that should take place in anticipation of a man-made attack; an all-hazards approach strengthens the nation's ability to withstand an array of challenges.

Nevertheless, planning for catastrophic events has posed a persistent challenge to DHS. In responding to disasters such as Hurricane Katrina and the Gulf oil spill, as well as in its preparedness for other significant threats—such as improvised nuclear devices

---

<sup>37</sup>Letter from Secretary Michael Chertoff to the Honorable Bart Gordon, Ranking Minority Member, Committee on Science, U.S. House of Representatives, July 13, 2005, pp. 2-3.

and cyber security—DHS has been constrained by a lack of consistent planning. This has impaired the government’s response efforts and will continue to do so if the problem is left unaddressed. Catastrophic planning is a challenge for a number of reasons. Planning for the “unthinkable” is very difficult, and the necessary expertise is in short supply. Moreover, public and private sector leaders, who often serve for relatively short tenures, have not adequately focused resources or attention on this issue. Within the public sector, no one entity is charged with overseeing planning efforts across the federal government, and agencies with regulatory authority over relevant industries may lack adequate expertise in preparedness and response—making the planning even more challenging. Finally, a number of the most significant risks are to critical infrastructure owned or controlled by private companies, which complicates government planning efforts. The 2010 Gulf of Mexico oil spill—in which an explosion on the *Deepwater Horizon* offshore drilling rig resulted in the release of approximately 200 million gallons of oil into U.S. water—provided an example of this. Cyber security risks and risks to the electrical grid raise similar issues.

To address this vulnerability, section 401 of the bill directs the President to ensure that comprehensive plans to address catastrophic events exist across the federal government. The bill requires the President to identify and prioritize the risks of different types of catastrophes, ensure that agencies are coordinating their planning for them, and review their plans. To support the President in these efforts, the bill requires the DHS Secretary to appoint an official within FEMA responsible for catastrophic incident planning. This official will lead DHS’s planning for catastrophic incidents and lead, promote, and coordinate overall federal efforts.<sup>38</sup> By identifying a federal official with overall responsibility for planning for catastrophic events, this bill ensures that someone is accountable for addressing this challenge.

DHS, and specifically FEMA, must lead the federal government in preparation for, response to, recovery from and mitigation against disasters of any kind. After witnessing the conspicuous failures in the governments’ response to Hurricane Katrina in 2005, the Committee published a report that detailed the failures at all levels of government. The Committee’s report included over 80 recommendations, one of which was to replace FEMA with a new, stronger, more robust federal response agency. To create this new FEMA, and implement other recommendations from the report, Congress passed, and President Bush signed, the Post-Katrina Emergency Management Reform Act of 2006.

Since the legislation, FEMA has made significant improvements in its response capabilities, but it continues to struggle in executing its recovery mission. For example, FEMA had many shortcomings in efficiently and effectively supporting the State and local government efforts to recover from Hurricane Katrina. Federal agencies providing assistance failed to coordinate, leaving state and local governments, along with disaster survivors, wondering where to turn for assistance. A number of provisions in this legislation seek to further enhance federal leadership and coordination for emergency response and longer-term recovery efforts.

---

<sup>38</sup>S. 1546, § 401.

For instance, Section 403 requires the FEMA Administrator to ensure the preparedness of federal agencies to respond to and support the recovery from disasters. The section also requires each federal agency with response and recovery responsibilities to designate a senior official to ensure the agency coordinates with the FEMA Administrator and is prepared to carry its responsibilities. In addition, Section 404 seeks to ensure that the federal government coordinates disaster recovery by providing the President clear authority, in the event of a catastrophic incident, to form a temporary recovery commission comprised of the heads of relevant federal agencies and sufficiently staffed to coordinate support of state and local governments. Section 405 seeks to improve FEMA's delivery of response and recover operations and programs by strengthening management of the disaster reserve workforce. It seeks to accomplish this by reducing staff turnover during disaster recovery operations and requiring the development of policies for better administration of the disaster reserve workforce.

The bill also requires FEMA to improve its management responsibilities in order to execute its mission more efficiently and competently. Section 406 requires the President to appoint a FEMA Deputy Administrator to serve as the Chief Management Officer who is required within one year to develop a strategy, in conjunction with DHS, to improve FEMA's management.

#### *Chemical, biological, radiological and nuclear terrorist threats*

The U.S. must continue to be vigilant against and prevent the exploitation of chemical, biological, radiological, or nuclear (CBRN) materials to cause mass casualties. Though this threat is not new, it has evolved as the proliferation of and access to CBRN materials has increased. DHS and other government agencies have worked to reduce our vulnerability to a CBRN attack, but more must be done to mitigate this threat. This bill strengthens DHS's ability to meet these challenges in an efficient and effective manner.

The Department's most important responsibility with respect to the CBRN threat is to keep CBRN weapons out of this country. To do that, the Department must use the combined capacity of its intelligence, law enforcement, inspection, planning, and operational agencies and must modernize and integrate information-sharing networks, deploy advanced screening, targeting and border security systems, and develop and deploy next-generation sensors and non-intrusive inspection equipment. Although the Department's front-line operational agencies are charged with preventing CBRN materials from entering the country, they depend on the Directorate of Science & Technology (S&T)—the primary DHS entity responsible for research, development, and testing of new technologies and systems—to provide them with the best technologies available to detect the presence of such materials.

DHS has invested billions of dollars to improve our ability to detect CBRN materials before they enter the country. Many of the Department's acquisitions programs have resulted in the deployment of new detection or inspection equipment and of systems that have increased the capabilities of operational agencies. In too many cases, however, large DHS investments have failed to improve the component agencies' ability to protect the nation from CBRN attacks—leaving us just as vulnerable to this growing threat as we

were before the investments were made.<sup>39</sup> Much of this work is directed by the Domestic Nuclear Detection Office at DHS, or DNDO.

DHS's inability to develop and deploy effective CBRN detection technology has frustrated the Committee. For example, in 2004 DHS launched the Advanced Spectroscopic Portal (ASP) program to develop, procure, and deploy a new generation of radiation detection sensors capable of detecting and identifying nuclear and radiological materials concealed in cargo containers. Ultimately, the Department cancelled the ASP acquisition after nearly eight years of testing and retesting showed that the ASP program could not meet the operational requirements of the Customs and Border Protection agency. In February 2008, a report by an Independent Review Team (IRT) that examined DNDO's testing and evaluation practices for the ASP program concluded that the decision to award a five-year, \$1.1 billion contract for ASP monitors was flawed from the start. The report found that the Department failed to verify that it had completed basic acquisition planning, testing and evaluation documents, including a Test and Evaluation Master Plan. Given the number of other major acquisitions or technology investments that the Department had underway at the time, the IRT recommended that DHS establish an independent entity to oversee operational testing and evaluation of such systems before they were approved for full-rate production or deployment.<sup>40</sup>

Section 703 of the bill attempts to address this IRT recommendation by creating an institutional check and balance within the Department's investment review process. It does so by codifying the position of Director of Testing and Evaluation in S&T and providing for an independent test and evaluation process. The bill also requires the Director of Testing and Evaluation to coordinate closely with the Undersecretary of Management, the Chief Procurement Office, and the Chief Information Officer. Consistent with existing Department practice under DHS Management Directive 102.1, the Director of Testing and Evaluation will serve as a member of the Acquisition Review Board; review and approve all Test and Evaluation Master Plans and Operational Test and Evaluation Plans; appoint all Operational Test Agents; and oversee all operational testing and evaluation.

S. 1546 also seeks to address the duplication of efforts between S&T and DNDO. Given the budget constraints that the Department is currently facing, it cannot sustain two separate research and development agencies that develop countermeasures to nuclear and radiological terrorist threats. Presently, S&T and DNDO have overlapping research and development authorities. S&T conducts research and development to develop next-generation chemical, biological, and explosive detection sensors and also develops countermeasures to respond to nuclear or radiological terrorist threats. DNDO conducts research and development on nuclear and radiological detection capabilities, but is also responsible for implementing the domestic portion of the Global Nuclear Detection Ar-

<sup>39</sup> GAO Report, "DHS Science and Technology: Additional Steps Needed to Ensure Test and Evaluation Requirements Are Met," GAO-11-596, June 15, 2011, p.2 ("We have previously reported on several major DHS acquisitions that were deployed before appropriate T&E was successfully completed.")

<sup>40</sup> Final Report, Independent Review of the Department of Homeland Security Domestic Nuclear Detection Office Advanced Spectroscopic Portal, Feb. 20, 2008 (FOUO), p. 94. On file with the Committee.

chitecture. Unfortunately, this has placed DNDO in competition with S&T for R&D funding and hindered Department-wide coordination of R&D investments.

Sections 701 and 705 clarify that S&T is the primary entity within DHS with authority to conduct research and development to prevent the importation of radiological and nuclear weapons. These provisions will eliminate redundant efforts and remove any confusion that might hinder S&T's ability to coordinate, integrate, and establish priorities for the Department's investments in research and technology. Under Section 705, DNDO would shed its R&D authorities but would continue as a pivotal counterterrorism agency focused on strategic planning and coordination activities that will strengthen and unify the nuclear threat prevention and detection capabilities of the Department's operational agencies.

Developing complex systems or technologies is an inherently difficult and expensive responsibility that is sometimes at odds with the mission of acquiring and deploying technologies and systems. Section 703 of the bill requires DHS to produce a five-year strategic plan to guide its research and technology development investments. The plan must include anticipated annual expenditures, annual milestones and objectives, and consideration of the needs of the operational components of the Department and State and local governments.

Lastly, the bill addresses preparedness for and response to a CBRN attack. In the event of such an attack, police, firefighters, and emergency responders will be the first line of response and will be exposed to the risks of such an event. Section 413 requires that DHS develop guidelines for the protection and safety of first responders to an explosion or release of nuclear, biological, radiological, or chemical material, and to regularly review and revise the guidelines. In addition, section 414 requires DHS to develop and disseminate plume models that map the anticipated path of fallout from a CBRN attack, enabling planning and the implementation of rapid response activities.

### **Making the Department of Homeland Security more efficient**

As with every other agency in the federal government, the Department faces a future in which pressures on the federal budget require it to make do with less. The Department and its overseers must look for opportunities to make its programs more efficient. This bill takes a number of steps in that direction, eliminating certain grant programs, closing and consolidating offices, and putting in place a number of provisions to encourage cost-savings.

#### *Grants*

FEMA administers a number of grant programs that award funding to State, local, tribal and private sector agencies for the purpose of strengthening the nation's ability to prevent, prepare for, or respond to natural disasters, terrorist attacks and other emergencies. Recipients can use their awards for several broad purposes—planning, organization, equipment, training, and exercises. Between 2002 and 2010, approximately \$34 billion was appropriated for these programs, significantly contributing to our na-

tion's readiness to prevent terrorist attacks and confront a variety of disasters.<sup>41</sup>

S. 1546 takes several steps to ensure that these grants—which have contributed immensely to the nation's security—are as effective and efficient as possible. The bill takes some immediate steps to reduce duplicative programs, eliminating the Emergency Operations Center (EOC) grant program and the Regional Catastrophic Preparedness Grant Program.<sup>42</sup> While the EOC program, which provides funds to the states for equipping, upgrading, and constructing emergency operations centers, has played a valuable role in establishing and upgrading EOCs throughout the country, the same activities can be funded through the Emergency Management Performance Grants Program. Similarly, while the Regional Catastrophic Preparedness Grant Program has encouraged State and local governments to develop coordinated regional plans, these activities can be funded through State Homeland Security Grant Program (SHSGP) and the Urban Area Security Initiative (UASI).

S. 1546 also eliminates the Over-the-Road Bus Security Grant Program, which provides funding to intercity and charter bus operators to secure facilities and train employees.<sup>43</sup> In addition, the bill also abolishes the U.S. Fire Administration's National Fire Academy Fellowship Program, which provides funding to senior firefighters to attend a three-week executive training course, and the DHS Scholars and Fellows Educational Program, which provides scholarships to students studying homeland security.<sup>44</sup> These programs have proven valuable in the past, but with an increase in homeland security programs at universities all over the country, the need for DHS to provide scholarships to encourage students to study homeland security has diminished.

The bill increases accountability for the Department's remaining preparedness grants, requiring FEMA to develop performance measures for the programs. Similar measures have been required in earlier legislation—specifically the Post-Katrina Act and the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Commission Recommendations Act).<sup>45</sup> The Post-Katrina Act requires FEMA to establish a comprehensive assessment system for evaluating overall national preparedness, stating that the system must include “clear and quantifiable performance measures, metrics, and outcomes.”<sup>46</sup> It further mandates that FEMA report annually to Congress on these measures as part of a broader yearly assessment. The 9/11 Commission Recommendations Act reiterates these requirements and also requires that states and high-risk urban areas receiving grants from FEMA conduct exercises to evaluate their progress.<sup>47</sup> In accordance with the Redundancy Elimination and Enhanced Performance for Preparedness Grants Act, FEMA has been working with the National Academy of Public

<sup>41</sup> See, Alexandra E. Jordan, “Collaborative Relationships Resulting from the Urban Area Security Initiative,” *Journal of Homeland Security and Emergency Management*, Volume 7, Issue 1 (2010); National Emergency Management Association, “The Homeland Security Grant Program: Keeping a Promise to the Nation,” July 29, 2011; and The National Urban Area Security Initiative Association, “A Report on the Effectiveness of the Urban Area Security Initiative Program,” August 2011.

<sup>42</sup> S. 1546, §§ 410 & 419.

<sup>43</sup> S. 1546, § 407.

<sup>44</sup> S. 1546, § 121.

<sup>45</sup> P.L. 109–295 & P.L. 110–53.

<sup>46</sup> P.L. 109–295, § 649; 6 U.S.C. § 749.

<sup>47</sup> P.L. 110–53.



Administration to develop performance measures for the State Homeland Security Grant Program and the Urban Areas Security Initiative.<sup>48</sup> These efforts are a positive step, but FEMA still needs to implement a comprehensive assessment system and performance measures for the other grants it administers—which this bill requires.<sup>49</sup> Additionally, section 420 of the bill lays the groundwork for consolidating grant programs in a deliberate manner, requiring DHS to report to this Committee and the House Homeland Security Committee within 180 days on the suitability, feasibility, and efficiency of consolidating grants programs.<sup>50</sup>

While it is important to look for opportunities to reduce duplication and increase accountability, it is also important to ensure the continuation of effective programs. This bill reauthorizes four preparedness grants with proven records of success: the Port Security Grant Program,<sup>51</sup> the Surface Transportation Security Grants (which include the Transit Security Grant Program, the Intercity Passenger Rail Security Grant Program, and the Freight Rail Security Grant Program),<sup>52</sup> the Metropolitan Medical Response System (MMRS),<sup>53</sup> and the Operation Stonegarden Grant Program.<sup>54</sup> The bill makes several substantive changes to the Surface Transportation Grants, ensuring that the grants address regional and system-wide risk rather than focusing on risk to particular assets. The bill requires that a Regional Transit Security Working Group review and approve grant applications and that a Federal Security Director, or another federal official familiar with the region, review and rank applications.

MMRS was created in the aftermath of the 1995 Oklahoma City bombing and most recently authorized in the Post-Katrina Act.<sup>55</sup> MMRS is unique among the preparedness grants in that it focuses on coordinating the medical system with first responders and emergency managers during mass casualty events. This bill includes several measures to improve the program, including extending MMRS to every State while limiting the total number of jurisdictions at the current level. This will broaden the reach of the program while keeping costs down.

Section 408 authorizes Operation Stonegarden grants to facilitate and enhance state, local and tribal government participation in border security efforts by funding additional patrols of our borders by local police units and operations in coordination with CBP. These local officers act as force multipliers, enabling a stronger presence along our Nation's borders. States located on the international border between the United States and Canada or the United States and Mexico, or with international water borders, are eligible for these grants.

Section 409 of the bill extends the authorization for the Emergency Management Assistance Compact (EMAC) until 2016.<sup>56</sup> EMAC is an interstate mutual aid agreement that facilitates the sharing of disaster response resources among states. Congress first

<sup>48</sup> P.L. 111-271; 6 U.S.C. § 613.

<sup>49</sup> S. 1546, § 411.

<sup>50</sup> S. 1546, § 420.

<sup>51</sup> S. 1546, § 407.

<sup>52</sup> S. 1546, § 407.

<sup>53</sup> S. 1546, § 418.

<sup>54</sup> S. 1546, § 408.

<sup>55</sup> P.L. 109-295, § 635; 6 U.S.C. § 723.

<sup>56</sup> S. 1546, § 409.

approved EMAC in 1996,<sup>57</sup> and it was reauthorized in the Post-Katrina Act.<sup>58</sup> EMAC has been a valuable tool during many disasters, including Hurricane Katrina—where it brought resources to the Gulf Coast from throughout the United States. This bill authorizes spending for the program at \$2 million per year.

*Elimination and consolidation of DHS offices*

This bill takes a number of steps to streamline DHS, eliminating and consolidating several offices. Section 208 eliminates the Office of Counternarcotics Enforcement (and associated presidential appointment), which is responsible for coordinating policy and operations within the Department for counternarcotics operations and for tracking and severing connections between illegal drug trafficking and terrorism. The Office has made progress toward fulfilling some of its responsibilities, but its policy-making functions directly overlap with those of the Office of Policy. The bill requires the Secretary to transfer the functions of the Office to another entity or individual within the Department, such as the Office of Policy.

Section 214 of the bill eliminates the authorization for the Office of Cargo Security Policy.<sup>59</sup> The SAFE Port Act authorized this office to coordinate policy development related to cargo security, but it was never established by the Department. This bill transfers the functions of this office to appropriate officials within the Office of Policy and eliminates the Department's obligation to maintain a dedicated office to carry out these functions. The bill (sections 206 and 207) also officially abolishes two offices that DHS had previously eliminated through administrative reorganization: the Office of Domestic Preparedness and the Office of State and Local Government Coordination. Finally, section 116 consolidates the Department's several youth preparedness programs into a single program. This will reduce duplicative efforts and promote the coordination of youth preparedness activities.

*Efficiency and cost-saving provisions*

The bill mandates significant changes in the way DHS obtains goods and services, thereby strengthening DHS's ability to acquire the technologies and systems it needs while keeping costs low. The bill also makes several management changes that will encourage cost-savings and requires the Department to find savings by consolidating and streamlining facilities and functions that are spread throughout the country. The key changes are detailed below.

*Enhancing DHS's acquisition functions*

In its ten years of operations, DHS has often struggled to successfully plan, execute, and oversee contracts for the goods and services it buys from the private sector. GAO considers DHS's problems in this area of such great concern that it has cited acquisition management as a significant factor in GAO's decision to put DHS transformation and implementation on its "High Risk" list.<sup>60</sup> The

<sup>57</sup> P.L. 104-321.

<sup>58</sup> P.L. 109-295, § 661.

<sup>59</sup> S. 1546, § 214.

<sup>60</sup> GAO designated the implementation and transformation of DHS as high risk in 2003. GAO last updated its high risk list in February, 2011. GAO Report, "High Risk Series: An Update," GAO-11-278, February 2011.

DHS Inspector General (IG) also views acquisition as a major management challenge of the Department.<sup>61</sup> Although GAO and the IG report that DHS has made progress in improving its acquisition functions, they both report that significant weaknesses remain.<sup>62</sup> The Committee agrees with these assessments.

The ability of DHS to ensure that acquisitions meet performance expectations while remaining on schedule and within cost is critical to the performance of DHS's missions. DHS spent over \$13 billion on contracts in FY 2010—the equivalent of roughly a quarter of the Department's enacted budget authority. The Department currently manages over 80 major acquisitions with life cycle costs exceeding \$300 million each, or hundreds of billions of dollars collectively. Acquisitions play an essential role in supporting the Department's missions of preventing terrorism, securing the borders, enforcing immigration laws, securing cyberspace, and responding to disasters. The Department's complex investments include nuclear detection equipment, passenger and baggage screening technologies, border surveillance systems, and the United States Coast Guard's fleet of surface and air assets.

Managing the Department's investments would be difficult under the best of circumstances. Threats to the homeland are constantly evolving, and the technologies that DHS uses to combat those threats must also rapidly evolve. Moreover, DHS often must develop solutions to meet unique government security needs, because often there is little or no similar demand in the private sector to drive commercial development of those solutions. Unfortunately, the Department has tried to manage its investments without either well functioning internal processes or the personnel necessary to support successful projects. The result has been an embarrassing series of design failures and cost overruns.

Several high-profile troubled contracts date to the early days of DHS—early TSA contracts for baggage screening equipment and the hiring of passenger and baggage screeners, for example.<sup>63</sup> At that time, the Department's acquisition offices were woefully understaffed and, given the urgency of the new Department's missions, many projects were launched without the up-front planning that could have prevented cost overruns, schedule slippages, and design flaws. But despite substantial progress in strengthening acquisition policies and procedures and growing the acquisition workforce, DHS still faces enormous challenges in awarding and managing its contracts.

The Deepwater program to modernize the U.S. Coast Guard's fleet of ships and aircraft is emblematic of the Department's contin-

<sup>61</sup> See, e.g., GAO Report, "Department of Homeland Security: Progress Made and Work Remaining in Implementing Homeland Security Missions 10 Years After 9/11," GAO-11-881, September 7, 2011; see also, Department of Homeland Security, Office of Inspector General, "Major Management Challenges Facing the Department of Homeland Security," OIG-11-11, November 10, 2010.

<sup>62</sup> GAO Report, "Department of Homeland Security: Progress Made and Work Remaining in Implementing Homeland Security Missions 10 Years After 9/11," GAO-11-881, September 7, 2011.

<sup>63</sup> For a discussion of cost escalation under these contracts, see Department of Homeland Security, Office of Inspector General Report, "Evaluation of TSA's Contract for the Installation and Maintenance of Explosive Detection Equipment at United States Airports," OIG-04-44, September 1, 2004 and DHS Office of Inspector General Report, "Review of the Transportation Security Administration's Management Controls Over the Screener Recruitment Program," OIG-06-18, December 1, 2005.

ued struggles to control its contracts.<sup>64</sup> Early on, the USCG placed both the management of the Deepwater program and construction responsibilities in the hands of the contractor, a joint venture between Lockheed Martin and Northrop Grumman. Without the USCG itself exerting adequate control over the program, this contracting model soon yielded waste. The contractor's retrofitting of eight small boats was so seriously flawed that the boats had to be pulled from use. Meanwhile, the need to correct design flaws in the construction of new vessels started to drive up costs for the program. In 2007, the USCG began to bring management of the program back in-house and strengthened controls over expenditures. Nonetheless, GAO reported in 2011 that the cost of the program would be at least \$29.3 billion—about \$5 billion over the Department's revised estimate in 2007 of \$24.2 billion (and over \$12 billion over the USCG's original estimate in 1998 of \$17 billion). Moreover, GAO has cautioned that additional cost growth is looming and that the program as planned is "unachievable" given current and planned funding.<sup>65</sup> While the Commandant of the Coast Guard contends that the GAO's conclusions are based on old data which fail to account for significant improvements in the Coast Guard's acquisition workforce, the program's track record provides ample reason for continued monitoring and oversight.

Deepwater is far from alone on the list of the Department's difficulties in making cost-effective investments. Other high-profile troubled acquisitions include the SBInet virtual fence and the Advanced Spectroscopic Portal radiation detection devices (whose cancellations are discussed above) and the Department's multiple failed attempts to structure a procurement to consolidate the Department's multiple financial systems.<sup>66</sup> This bill therefore includes a number of provisions to address longstanding weaknesses in DHS's acquisition functions:

*Investment Review:* Investment Review, a rigorous process to thoughtfully and systematically review significant investments before the Department agrees to make them, is essential if the Department is to carry out complex acquisitions that meet the Department's mission needs in a cost-effective manner. The Department has adopted procedures for the review of major investments by an acquisition review board composed of senior-level Department officials.<sup>67</sup> However, many projects have proceeded without full review under these procedures or have been allowed to proceed despite the lack of key planning procedures to determine precisely either what a program's needs are or how an acquisition should be planned and managed to

<sup>64</sup> For a discussion of the development of Deepwater and related GAO reports on the program, see *Report of the Committee on Commerce, Science and Transportation on S. 1194, the Coast Guard Authorization Act for Fiscal Years 2010 and 2011*, S. Rept. 111-95, 111th Congress, 1st Session.

<sup>65</sup> GAO Report, "Coast Guard: Action Needed as Approved Deepwater Program Remains Unachievable," GAO-11-743, July 28, 2011.

<sup>66</sup> DHS Office of Inspector General Report, "DHS Needs to Address Challenges to Its Financial Systems Consolidation Initiative," OIG-10-95 (revised), July 8, 2010; see also, Washington Technology, "DHS cancels \$450M financial system modernization, considers cloud instead," May 18, 2011.

<sup>67</sup> The Department's procedures for review of major acquisitions were issued in Acquisition Management Directive 102-01, interim version, in November 2008, and were finalized in January 2010 in Directive Number 102-01, Revision Number 01.

meet those needs in a cost-effective way. In examining major DHS acquisitions in 2010, GAO found that more than 40 major investments had proceeded without review, and over half the programs examined by GAO lacked the key planning documents that set operational requirements and program baselines.<sup>68</sup> Without this basic planning, it is impossible for the Department to determine what a project will really cost, how fast it can be delivered, and whether it will ultimately be useful. By creating a statutory requirement for a formal investment review process as a requirement of the HSA, section 101 of the bill establishes a Department-level acquisition review board as a linchpin for the management of DHS investments.

*Acquisition Workforce:* DHS historically has suffered from a severe shortage of seasoned experts who are trained to plan, negotiate, and oversee major contracts. The Department has made significant progress in hiring contracting officers and ensuring that acquisition professionals are certified under federal standards. The Department has also significantly increased the resources and oversight capabilities of the Office of the Chief Procurement Officer, resulting in greater department-wide discipline over procurements. Despite this progress, many programs still lack the skilled professionals needed to ensure that acquisitions meet performance expectations and avoid cost overruns. This problem, unless aggressively addressed, will become even more acute as DHS faces a wave of retirements over the next few years.<sup>69</sup> Section 102 of the bill therefore establishes in statute an Acquisition Professional Career Program, codifying an approach that has been used effectively by DHS as a means of building a cadre of trained acquisition professionals. Section 103 requires DHS to develop a long-term strategic plan for its acquisition workforce.

*Competition:* The Committee applauds the significant gains the Department has made in increasing the use of competition in its procurements. The percentage of contract dollars awarded through competition dipped below 50 percent in FY 2006, due in large part, in the Committee's view, to a lack of pre-negotiated contracts for disaster relief and recovery services, which led to an unacceptably high number of noncompetitive contracts following Hurricane Katrina. Since then, the Department has made steady progress in increasing competition, and in FY 2010 achieved its highest rate of competition ever, competing 86 percent of its contract dollars. The Inspector General has produced several reports discussing developments in the Department's competition policies and identifying weak-

<sup>68</sup> GAO Report, "Department of Homeland Security: Assessments of Selected Complex Acquisitions," GAO-10-588SP, June 30, 2010.

<sup>69</sup> The Department has reported that more than half of its procurement professionals are already eligible for retirement. DHS Office of the Chief Procurement Officer, Acquisition Human Capital Plan, March 2010, p. 13.

nesses in recordkeeping related to competition.<sup>70</sup> However, these reports have not provided a full overview of the use of competition at the Department, nor have they provided comprehensive information on components' use of the exceptions under the Competition in Contracting Act,<sup>71</sup> which allow agencies to award contracts under non-competitive procedures if justified by narrowly defined circumstances, such as an unusual or compelling urgency or the need to ensure that national security is not compromised.<sup>72</sup> The previous reports also do not give appropriate credit to the Department for its strides in increasing competition. Section 107 of the bill therefore requires the IG to produce a new report giving the Committee a broad, component-by-component overview of the use of competition, in order to help the Committee analyze how competition may be further strengthened.

*Cost Estimates:* DHS lacks sufficient analytical capability to project the true life cycle costs of its major investments. Incomplete or inaccurate cost estimates hinder both DHS and Congress in making fully informed budget decisions, weighing costs against benefits, and assessing the significance of cost increases over the life of a program. Lack of cost estimates may also signal that DHS has not clearly defined overall strategies or specific requirements for investments, as was the case with the Transformation and Systems Consolidation (TASC) program to consolidate the financial management systems of DHS components. The Committee asked for, but never received, a full life cycle cost estimate for TASC from DHS before the Department canceled the contract in May 2011. DHS estimated a five-year value of the contract at \$450 million, while the DHS IG cautioned that the full life cycle cost of the program would exceed \$1 billion.<sup>73</sup> TASC is hardly alone in this respect. In fact, in conducting its review of major DHS acquisitions, GAO found that DHS officials themselves expressed doubts about the credibility, comprehensiveness and accuracy of most program cost estimates.<sup>74</sup> The Committee is aware that DHS is working to strengthen its cost estimating capabilities through establishment of an office devoted to program accountability and risk management, funded under the Office of the Chief Procurement Officer. The Committee supports the goals of this office but is concerned that the cost analysis function of this office is not

<sup>70</sup> DHS Office of Inspector General Report, "DHS Contracts Awarded Through Other Than Full and Open Competition During Fiscal Year 2007," OIG-09-94, August 2009; DHS Office of Inspector General, "DHS Contracts Awarded Through Other Than Full and Open Competition During Fiscal Year 2008," OIG-10-71, March 2010; DHS Office of Inspector General, "DHS Contracts Awarded Through Other Than Full and Open Competition During Fiscal Year 2010," OIG-11-41, February 2011.

<sup>71</sup> 41 U.S.C. § 253.

<sup>72</sup> Circumstances justifying noncompetitive contracts and procedures for entering such contracts are laid out at 41 U.S.C. § 3303.

<sup>73</sup> Statement of James L. Taylor, Deputy Inspector General, DHS, before the Committee on Homeland Security, Subcommittee on Management, Investigations, and Oversight, U.S. House of Representatives, Oct. 29, 2009; see DHS Office of Inspector General, "DHS Needs to Address Challenges to Its Financial Systems Consolidation Initiative," OIG-10-95, June 28, 2010.

<sup>74</sup> GAO Report, "Department of Homeland Security: Assessments of Selected Complex Acquisitions," GAO-10-588SP, June 30, 2010, p. 17.

sufficiently elevated to be fully effective across the Department. Section 109 of the bill, therefore, establishes a Cost Analysis Division, which will report directly to the Under Secretary for Management and which will be charged with providing independent cost estimates of major programs.

*Innovation in Contract Management and Oversight:* The bill includes a number of provisions to encourage adoption of leading practices in acquisition. For example, section 105 of the bill requires DHS to develop policies and oversight mechanisms for the use of independent verification and validation (IV&V), which is a process for obtaining an unbiased review of a program from experts who are independent from those in the Department who develop, manage and fund the program. The requirements of section 105 result from a GAO report finding that DHS has not used the best practices for IV&V that are employed by other agencies and the private sector.<sup>75</sup> Section 106 of the bill grants a five-year extension of DHS's "Other Transaction" (OT) authority, which allows certain flexibilities in procurement procedures when acquiring cutting edge research and technology. While OT transactions represent only a small portion of DHS procurement dollars,<sup>76</sup> they have been used for a number of prototype projects deemed critical by DHS, such as technology designed to detect chemical warfare agents after a suspected or known chemical attack.<sup>77</sup> The bill also contains a provision (section 108) requiring DHS to convene a study group to examine ways in which DHS may use an "open architecture" approach to acquisition, which can yield significant cost and performance benefits.<sup>78</sup> Under an open architecture model, specifications of a project's design are public, allowing anyone to develop components, devices and programs that easily connect to the system. Compared to closed, proprietary systems, open architecture systems provide greater opportunities for companies to participate in major acquisitions.

*Transparency:* The broad scope of DHS's investments makes Congressional oversight in this area challenging. In addition, the Committee often hears complaints from the private sector that the Department's lack of forecasting of its acquisition needs makes it difficult for companies to plan long-term investments to meet those needs. Moreover, each of the Department's components handles acquisition slightly differently, creating a challenging environment for vendors and for small companies in particular, to navigate. The bill therefore contains a number of provisions that will increase the flow of information about DHS acquisitions to both Congress and the public. For example, section 101 of the bill requires quarterly reports to Congress on DHS's

<sup>75</sup> GAO Report, "Information technology: DHS Needs To Improve Its Independent Acquisition Reviews," GAO-11-581, July 28, 2011.

<sup>76</sup> According to the GAO, OT authority has been used primarily by the S&T Directorate, which has entered 50 to 60 OT agreements since 2004 with a total value of over \$570 million.

<sup>77</sup> GAO Report, "Department of Homeland Security: Improvements Could Further Enhance Ability to Acquire Innovative Technologies Using Other Transaction Authority," GAO-08-1088, September 23, 2008.

<sup>78</sup> S. 1546, § 108.

major acquisitions, and section 110 requires an annual Strategic Acquisition Plan that will be available on the DHS website. Further, section 111 tasks the Under Secretary for Management with undertaking a number of initiatives to improve the transparency of the DHS acquisition process and promote consistency in acquisition procedures across DHS.

#### Strengthening DHS's management function

Though the Department has worked to better manage itself and its resources, including by instituting the DHS Efficiency Review Initiative in 2009,<sup>79</sup> the need for improvement remains. The bill makes several targeted changes to the Department's management that will reduce costs and bring greater efficiency in both the near- and the long-term.

For example, section 210 of the bill looks to enhance and clarify the authorities of the Chief Information Officer (CIO) of the Department. This section codifies provisions from DHS Management Directive 0007.1, which set forth the governing principles for integrating and managing IT throughout the Department. It also clearly affirms that the responsibilities of the CIO, consistent with the Paperwork Reduction Act of 1995 and the Clinger-Cohen Act of 1996, include advising and assisting the Secretary and Department component heads, for all IT functions, including the IT priorities, policies, processes, standards, guidelines, and procedures of the Department.<sup>80</sup> Clarifying the CIO's responsibilities in the Department, including with regard to the component agencies, will provide the DHS CIO with greater visibility over IT purchases throughout DHS and enable him or her to better leverage the needs of the Department to achieve cost savings and avoid duplication. Further, the bill requires DHS to complete an inventory of all software licenses in order to evaluate its long-term software licensing needs and make sure they are in line with Department priorities and resources. Performing an inventory of software licenses will help reduce potential duplication and limit any wasteful spending.<sup>81</sup>

In a similar vein, FEMA has long struggled with management issues, resulting in inefficiencies and opportunities for waste, fraud, and abuse. The DHS IG, GAO, and others have released a number of reports calling attention to FEMA's deficiencies in different management areas—focusing in particular on financial, human capital, information technology, and performance management.<sup>82</sup> While FEMA has made some progress in rectifying these problems, more must be done. To that end, this bill requires that the President ap-

<sup>79</sup>DHS Efficiency Review Fact Sheet, available at <http://www.dhs.gov/about/budget/efficiency-review-fact-sheet.shtm>. The DHS Efficiency Review Initiative is a Department-wide effort to reduce costs, improve efficiency, streamline operations, and eliminate duplication.

<sup>80</sup>S. 1546, § 210.

<sup>81</sup>S. 1546, § 210.

<sup>82</sup>See Homeland Security Studies & Analysis Institute, "Federal Emergency Management Agency Workforce Baseline Assessment," March 31, 2010; National Academy of Public Administration, "FEMA's Integration of Preparedness and Development of Robust Regional Offices," October 2009; GAO Report, "National Preparedness: FEMA Has Made Progress, but Needs to Complete and Integrate Planning, Exercise, and Assessment Efforts," GAO-09-369, April 30, 2009; DHS Office of Inspector General Report, "FEMA Preparedness for the Next Catastrophic Disaster—An Update," OIG-10-123, September 2010; DHS Office of Inspector General, "Independent Auditors' Report on DHS' FY 2011 Financial Statements and Internal Control over Financial Reporting," OIG-12-07, November 2011.



point a FEMA Deputy Administrator to serve as the Chief Management Officer of that agency.<sup>83</sup> Establishing an official with overall responsibility for management will ensure that these issues receive the attention they need and strengthen overall management practices at the agency. Further, to strengthen fraud prevention efforts, the bill mandates that FEMA report for each of the next five years on the number of employees and contractors trained under its fraud prevention training program.<sup>84</sup> While this program was required in section 698 of Post-Katrina Act (6 U.S.C. § 797), FEMA has yet to adequately conduct the training.<sup>85</sup> This provision will enable Congress to more closely monitor the anti-fraud program and ensure that FEMA is meeting the requirements of the Post-Katrina Act.

#### Reducing inefficiency and redundancy

Several provisions in this legislation require the Secretary to examine avenues for eliminating redundancies and enhancing the Department's efficiency. DHS is a vast agency with multiple component entities, an environment that requires constant oversight to ensure the efficient use of resources.

DHS has personnel, operations, facilities, and significant infrastructure in every State. Though these assets fall under the Department's jurisdiction, many of them operate or act independently of one another—under the direct control of various component agencies, such as Customs and Border Protection or Immigration and Customs Enforcement. Where the Department's components operate independently of one another in the field, they often have separate facilities, distinct administrative systems, and multiple overlapping logistics and acquisitions processes. These field operations do not benefit from adequate coordination of resources and consolidation of facilities and maintain redundant functions that could be streamlined to save money.

Section 114 of this bill requires the Secretary to find substantial savings by consolidating and streamlining the Department's facilities and administrative and logistics functions that are spread throughout the country. First, this section requires the Secretary to designate areas around the country where there is a substantial physical presence of more than one component or operational entity of a component of the Department. Second, the Secretary must submit to this Committee and the House Homeland Security Committee, a report and implementation plan that examines the facilities and administrative and logistics functions of all components and operational entities of components within these designated areas and recommends consolidations in these designated areas. Finally, within two years of enactment, the Secretary is required to fully execute an implementation plan that would reduce aggregate expenditures on facilities and administrative and logistics functions in the designated areas by five percent. The Committee anticipates that this section will save the Department substantial sums by streamlining overlapping and redundant costs. Potential areas for savings include facility consolidation; operational efficiencies derived from improved planning and interoperability; and consolida-

<sup>83</sup> S. 1546, § 406.

<sup>84</sup> S. 1546, § 416.

<sup>85</sup> P.L. 109–295, § 698; 6 U.S.C. § 797.

tion of administrative and logistics functions, including engineering services, facility maintenance, janitorial services, fleet vehicle services, shipping and receiving, facility security, procurement of goods and services, mail handling, administrative support, and IT support.

Additionally, section 115 of the bill also directs DHS to conduct two studies that would improve the ability of Congress and the senior leadership of the Department to make informed decisions about potential cost savings and efficiencies across the operational components of the Department. Currently, Congress and senior decision-makers at the Department have limited insight into the cost drivers of DHS's operational activities, in part due to the way that budget requests are provided to Congress. These two studies would provide detailed information that would improve decision-making with respect to tradeoffs in a time of increasing resource constraints for the Department.

The first part of section 115 requires a report from DHS on the management and administrative activities of the Department's operational components. The FY 2012–2016 Future Year Homeland Security Program (FYHSP) report identified \$6.5 billion in management and administrative expenditures in FY 2011 for the Department's seven major operational components (Customs and Border Protection, Coast Guard, Federal Emergency Management Agency, Transportation Security Administration, Immigration and Customs Enforcement, Citizenship and Immigration Services, and the Secret Service) but provided no detailed breakdown about these expenditures. DHS has failed to provide additional detail in response to subsequent requests from the Committee. Given this situation, the bill mandates that DHS report to its primary authorizing committees within 180 days with a detailed breakdown of these costs and identify potential cost savings and efficiencies with the components' management and administrative activities.

Section 115 also requires DHS to report to its primary authorizing committees on its operational footprint and to study whether the Department is appropriately allocating its operational personnel. This study would be analogous to “force allocation” or “resource allocation” studies conducted by the Department of Defense with respect to the U.S. Armed Forces, and is intended to identify whether DHS is deploying personnel in a way that is consistent with its mission requirements and risk principles. The report requires the Secretary to recommend adjustments (either increases or decreases) to close gaps, reduce costs, and enhance efficiencies.

Section 119 also requires the Department to utilize online reporting as the default format for congressionally mandated plans and reports. Putting these publications on performance.gov will limit unnecessary printing, thereby producing cost-savings.<sup>86</sup>

### **Providing the Department of Homeland Security with structure and flexibility**

Over the years the structural foundation of DHS has begun to solidify. However, much of this structure does not exist in law. The basic foundation, laid down by the Homeland Security Act (HSA), has been shaped and reshaped by various reorganizations. This leg-

<sup>86</sup>S. 1546, § 119.

isolation preserves the Department's flexibility to fine tune its organization to meet new challenges, yet also recognizes that now, ten years after the Department's creation, solidifying the basic structure of the Department in law will help further DHS's maturation into a robust agency, one that is indispensable to safeguarding the nation from terrorists and preparing for and responding to natural disasters. To this end, the bill makes several important statutory changes that align the HSA with the current structure of the Department.

DHS was the product of one of the largest government reorganizations in the history of our nation.<sup>87</sup> The HSA merged all or part of 22 existing federal agencies into the newly created DHS. The law gave DHS the primary responsibility for protecting the nation's infrastructure; developing countermeasures 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; and coordinating homeland security activities with State and local governments and the private sector. The Department at once had to perform the many pre-existing missions of the component agencies, and also perform new homeland security missions that had not been envisioned before 2001 and which have continued to evolve in the years since.

For this reason, Congress intentionally included in the HSA broad authority and discretion for the Secretary to organize the Department. Members understood that no one could predict, before the Department stood up, exactly how to best integrate its various components into a single Department with a common culture. Successive Administrations have altered the structure of the Department, as have successive Congresses. Indeed, since the Department's establishment, various laws and administrative reorganizations have significantly reshaped the Department, so much so that the HSA, in many instances, does not reflect the actual structure and operation of today's DHS. While some of the changes made have been of great and positive import, others have been less effective. In some cases, the lack of continuity of an established structure has been disruptive. In fact, based on perceived ill-effects of continuous reorganizations on the Department's ability to operate effectively, the appropriations committees, since fiscal year 2007, have prohibited the Department from using any funds for reorganizations under section 872 of the HSA, the Secretary's reorganization authority.<sup>88</sup>

Now that the Department has matured, its component parts and disparate cultures have started to unify and its structure has begun to solidify. It is now important to recognize both the successful changes that have been made and that organizational stability has a place alongside organizational flexibility in ensuring the Department's success. In this vein, the underlying bill seeks to align the HSA with the actual structure of today's Department, while also taking care to ensure that, where necessary, the Department

<sup>87</sup> 6 U.S.C. §§ 101 et seq.; see Harold C. Relyea, "Organizing for Homeland Security," *Presidential Studies Quarterly*, vol. 33, September 2003, p. 499.

<sup>88</sup> P.L. 110-28; P.L. 110-161, § 546; U.S. Senate Committee on Appropriations Report to Accompany S. 1644, Department of Homeland Security Appropriations Act, 2008, 110 S. Rpt. 84.

has the appropriate flexibility to adjust its structure to meet new challenges.

### *Creation of the Department of Homeland Security*

As noted above, the HSA moved part or the whole of 22 existing agencies into the new Department of Homeland Security. Most notably, the HSA placed the Secret Service, the Federal Emergency Management Agency, the Customs Service, the Immigration and Naturalization Service, the Transportation Security Administration, and the U.S. Coast Guard, among others, under the auspices of the Department. The HSA created several overarching directorates to assist the new Secretary of Homeland Security in managing the new Department's disparate agencies: Information Analysis and Infrastructure Protection,<sup>89</sup> Science & Technology,<sup>90</sup> Border and Transportation Security,<sup>91</sup> Emergency Preparedness and Response,<sup>92</sup> and Management.<sup>93 94</sup> Each directorate was to be head-

<sup>89</sup>This new directorate was comprised of the National Infrastructure Protection Center of the FBI, 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 energy security and assurance activities of the Department of Energy), and the Federal Computer Incident Response Center of the General Services Administration. P.L. 107-296, § 201(g); 6 U.S.C. § 121(g).

<sup>90</sup>The new Science & Technology directorate was comprised of various Department of Energy programs, including chemical and biological national security programs, nuclear smuggling programs, nuclear assessment programs, programs related to microbial pathogens, the Environmental Measurements Laboratory, the advanced scientific computing research programs at the Lawrence Livermore National Laboratory, and the National Bio-Weapons Defense Analysis Center of the Department of Defense. P.L. 107-296, § 303; 6 U.S.C. § 183. In addition, the HSA transferred the Plum Island Animal Disease Center from the Department of Agriculture to DHS, but did not specifically put it within the Science & Technology Directorate. P.L. 107-296, § 310; 6 U.S.C. § 190.

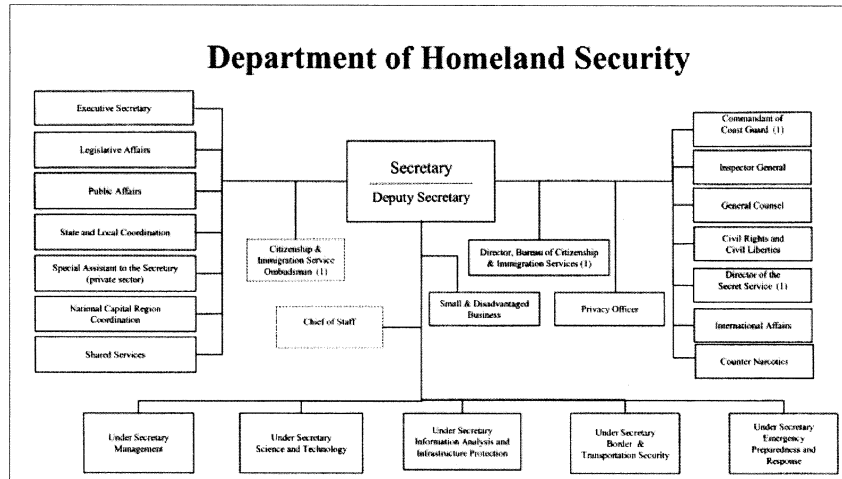
<sup>91</sup>Border and Transportation Security, which S. 1546 eliminates, was originally comprised of the U.S. Customs Service (formerly at Treasury), the Transportation Security Administration (formerly at the Department of Transportation), the Federal Protective Service (formerly at the General Services Administration), the Federal Law Enforcement Training Center (formerly at Treasury), and the Office for Domestic Preparedness (formerly at the Justice Department). P.L. 107-296, § 403; 6 U.S.C. § 203. In addition, the HSA directed the Commissioner of Immigration and Naturalization to transfer the functions and assets of the Border Patrol program, the detention and removal program, the intelligence and investigations program, and the inspections program to the Bureau of Border Security (later to be named U.S. Immigration and Customs Enforcement) under the auspices of BTS. P.L. 107-296, § 441; 6 U.S.C. § 251. Also, the HSA established within BTS, the Bureau of Citizenship and Immigration Services, comprised of the visa adjudication functions of the Immigration and Naturalization Service. P.L. 107-296, § 441(b); 6 U.S.C. § 251(b). Though not specifically designated for BTS or any particular directorate, the HSA also transferred 3,200 Department of Agriculture employees and their capabilities with respect to agricultural import and entry inspection to the Department. P.L. 107-296, § 421; 6 U.S.C. § 231.

<sup>92</sup>Emergency Preparedness & Response (EP&R) was comprised of the Federal Emergency Management Agency; the Integrated Hazard Information System of the National Oceanic and Atmospheric Administration; the National Domestic Preparedness Office of the FBI; the Domestic Emergency Support Teams of the Department of Justice; the Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System; and the Strategic National Stockpile of the Department of Health and Human Services. P.L. 107-296, § 503; 6 U.S.C. § 313. The HSA also directed that the Nuclear Incident Response Team, comprised of entities of the Department of Energy and Environmental Protection Agency that perform nuclear or radiological emergency support functions, would become an organizational unit of the Department. P.L. 107-296, § 504; 6 U.S.C. § 314.

<sup>93</sup>The HSA transferred to the Under Secretary for Management's directorate, some of the functions performed by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service. P.L. 107-296, § 701; 6 U.S.C. § 341. The HSA also created a Chief Financial Officer, a Chief Information Officer, and a Chief Human Capital Officer. P.L. 107-296, §§ 702, 703, and 704; 6 U.S.C. §§ 342, 343, and 344.

<sup>94</sup>P.L. 107-296; 6 U.S.C. §§ 101, et seq. In addition to the central directorates, the HSA also created various other entities, including the Office for Civil Rights and Civil Liberties, P.L. 107-296, § 705; 6 U.S.C. § 345; the Office for State and Local Government Coordination, P.L. 107-296, § 801; 6 U.S.C. § 361; an Office of International Affairs (P.L. 107-296, § 879; 6 U.S.C. § 459); an Office for National Capital Region Coordination, P.L. 107-296, § 882; 6 U.S.C. § 462; and transferred other entities to the Department, including the Secret Service from Treasury, P.L. 107-296, § 821; 6 U.S.C. § 381; and the US Coast Guard from the Department of Transportation. P.L. 107-296, § 1704; 10 U.S.C. § 101 note.

ed by an Under Secretary, appointed by the President by and with the advice and consent of the Senate.<sup>95</sup> Over the years, amendments to the HSA coupled with administrative reorganizations have made the actual structure of the department and the HSA virtually irreconcilable.



DHS Organization Chart as of March 2003

Due to the Department's size and the breadth and newness of its mission, the HSA gave the President and Secretary of Homeland Security significant reorganization authority. It was anticipated that evolving terrorist threats and the growing pains of a young Department would require the ability of Congress and the Executive branch to monitor closely the management and operations of DHS with a view to adjusting its structure as conditions warranted. To ensure organizational flexibility, sections of the HSA provide both the President, for a limited period of time, and the Secretary of Homeland Security with authority to reorganize the Department to a certain extent.

In addition to significant Executive Branch reorganizations of DHS, Congress has passed several major pieces of legislation that have dealt either in whole or in part with the organization of the Department, such as the Post-Katrina Emergency Management Reform Act (Post-Katrina Act), (P.L. 109-295), the Security and Accountability for Every Port Act (SAFE Port Act) (P.L. 109-347), and the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53).

#### *Initial executive reorganization under Section 1502*

While the HSA dictated certain aspects of the new Department of Homeland Security, it also gave the President some flexibility regarding when and how to launch the new Department. Section 1502 of the HSA directed the President to submit a reorganization plan within 60 days of the Act's passage that would detail the exact structure of DHS, consistent with the broad congressional outlines specified in the HSA. Upon signing the HSA into law on November

<sup>95</sup> P.L. 107-296, § 103; 6 U.S.C. § 113.

25, 2002, President Bush transmitted his section 1502 reorganization plan. This document set deadlines for the transfer of agencies, programs, and functions to the new department, and specified related agency consolidations, reorganizations, and streamlinings.<sup>96</sup> On January 30, 2003, consistent with section 1502, President Bush submitted an additional modification to his original plan. This Reorganization Plan Modification, renamed the “Bureau of Border Security” the “Bureau of Immigration and Customs Enforcement” and renamed the “Customs Service” the “Bureau of Customs and Border Protection.”<sup>97</sup>

*Reorganization under Section 872*

Though the President’s ability to reorganize the Department under section 1502 expired,<sup>98</sup> the HSA provided the Secretary of Homeland Security with substantial permanent authority to restructure the Department. Section 872 of the Act gave the Secretary authority to “allocate or reallocate functions among the officers of the Department, and may establish, consolidate, alter, or discontinue organizational units within the Department. . . .”<sup>99</sup> This authority was broad, although it did not extend to the “abolition of any agency, entity, organizational unit, program, or function established or required to be maintained by statute.”<sup>100</sup>

Section 872 reorganization authority was used extensively in the first four years of the Department’s existence to alter and reorganize the structure, functions, and responsibilities of major entities within the Department. The first Secretary of Homeland Security, Tom Ridge, initially used his reorganization authority in May 2003 to establish an Office of Security and transfer to it responsibilities given to the Under Secretary of Management by the HSA.<sup>101</sup> Both Secretary Ridge and his successor, Michael Chertoff, used section 872 authority to make major structural changes, discussed later, and to make minor alterations, such as changing the names of the United States Citizenship and Immigrations Services agency, the Immigration and Customs Enforcement agency, and the Customs and Border Protection agency;<sup>102</sup> transferring the Air and Marine Operations program from ICE to CBP;<sup>103</sup> transferring the Federal Air Marshal program and Explosives Unit from the TSA to ICE;<sup>104</sup> consolidating the Office of Domestic Preparedness, the Office of State and Local Government Coordination, and the grant award functions of the Under Secretary for Emergency Preparedness & Response and the Administrator of TSA into the Office of State and

<sup>96</sup> See, Harold C. Relyea, “Executive Branch Reorganization and Management Initiatives: A Brief Overview,” Congressional Research Service, RL33441, November 26, 2008, p. 8.

<sup>97</sup> President George W. Bush, Reorganization Plan for the Department of Homeland Security, Communication transmitted to Congress, January 7, 2003.

<sup>98</sup> P.L. 107–296, § 1502(d); 6 U.S.C. § 542(d).

<sup>99</sup> P.L. 107–296, § 872(a); 6 U.S.C. § 452(a).

<sup>100</sup> P.L. 107–296, § 872(b)(2); 6 U.S.C. § 452(b)(2).

<sup>101</sup> Letter from Secretary Tom Ridge to the Honorable Susan Collins, Chair, Governmental Affairs Committee, U.S. Senate, May 23, 2003.

<sup>102</sup> Letter from Secretary Michael Chertoff to the Honorable Michael B. Enzi, Committee on Health, Education, Labor and Pensions, U.S. Senate, January 18, 2007.

<sup>103</sup> Letter from Secretary Tom Ridge to the Honorable C.W. Young, Chairman, Committee on Appropriations, U.S. House of Representatives, September 24, 2004.

<sup>104</sup> Letter from Secretary Tom Ridge to the Honorable Richard B. Cheney, President of the Senate, September 2, 2003.

Local Government Coordination and Preparedness;<sup>105</sup> and re-titling the position of Under Secretary of Emergency Preparedness and Response as Under Secretary for Federal Emergency Management.<sup>106</sup>

*Reorganizations as the department matured*

In addition to the initial minor reorganizations, Secretary Chertoff used section 872 for several major reorganizations of the Department after 2003. In April 2005, he established DNDO to serve as the primary entity in the United States government to develop a global nuclear detection architecture and acquire and support the deployment of a domestic nuclear detection system to detect attempts to import or develop an unauthorized nuclear explosive device or radiological material.<sup>107</sup> This reorganization transferred all radiological and nuclear detection and countermeasures functions originally given to the Science & Technology Directorate to the new DNDO office.

Secretary Chertoff also embarked on “a comprehensive review of the Department’s organization, operations, and policies.”<sup>108</sup> This review, termed the Second Stage Review (2SR), involved 18 action teams reviewing all areas and functions of the Department. The review reached several significant conclusions, one of which was that a realignment of the DHS organization was required to maximize performance. In July 2005, Chertoff announced the implementation of several new structural reforms: “(1) formation of a new, department-wide policy office; (2) significant improvements in how DHS manages its intelligence and information sharing responsibilities; (3) formation of a new operations coordination office and other measures to increase operational accountability; and (4) an important consolidation effort that integrates the Department’s preparedness mission.”<sup>109</sup>

The reforms resulting from the 2SR initiative sought to forge a better integrated Department. In October 2005, Secretary Chertoff created the Office of Policy to centralize departmental policy planning and otherwise “facilitate long-term strategic planning and risk-based allocation of Department resources.”<sup>110</sup> The office, to be headed by an Assistant Secretary, also included the Office of International Affairs, the Special Assistant to the Secretary for Private Sector Coordination, the Policy Planning Office and other elements of the Border and Transportation Security Directorate, the Homeland Security Advisory Committee, and the Office of Immigration Statistics. In addition to the policy office, the reorganization plan also established a separate Office of Intelligence and Analysis,

<sup>105</sup> Letter from Secretary Tom Ridge to the Honorable Harold Rogers, Chairman, Subcommittee on Homeland Security, Committee on Appropriations, U.S. House of Representatives, January 26, 2004.

<sup>106</sup> Letter from Secretary Michael Chertoff to the Honorable John A. Boehner, Majority Leader, U.S. House of Representatives, April 4, 2006.

<sup>107</sup> Letter from Secretary Michael Chertoff to the Honorable Joseph Lieberman, Committee on Homeland Security and Government Affairs, U.S. Senate, April 13, 2005.

<sup>108</sup> Statement by Secretary of Homeland Security Michael Chertoff before the House Appropriations Homeland Security Subcommittee, March 2, 2005, available at <http://www.dhs.gov/dhspublic/display?theme=45&content=4381&print=true>; Chris Strohm, “New DHS Secretary Launches Total Review of Operations,” GovExec.com Daily Briefing, March 2, 2003, available at <http://www.Govexec.com/dailyfed/0305/030205c1.htm>.

<sup>109</sup> Secretary Michael Chertoff, U.S. Department of Homeland Security Second Stage Review Remarks, July 13, 2005, p. 6.

<sup>110</sup> Letter from Secretary Michael Chertoff to the Honorable Bart Gordon, Ranking Minority Member, Committee on Science, U.S. House of Representatives, July 13, 2005.

which the HSA had conjoined with infrastructure protection under one directorate.<sup>111</sup> The newly created Office of Intelligence and Analysis was elevated to “a stand-alone office in order to reach across the Department to manage the integration of DHS intelligence activities.”<sup>112</sup> Next, the Secretary established the Office of Operations Coordination, headed by a Director, to coordinate operations across the Department’s components.<sup>113</sup> Though the Department had originally intended the Directorate of Border and Transportation Security to execute this function, this reorganization plan transferred those responsibilities to the new office and requested that Congress eliminate the position of Under Secretary for Border and Transportation Security (BTS).<sup>114</sup>

This reorganization plan also separated preparedness functions from response and recovery and put the latter functions under a new umbrella directorate named the Directorate of Preparedness.<sup>115</sup> This directorate, which absorbed the Office of Infrastructure Protection, also included preparedness programs located in the Office of State and Local Government Coordination and Preparedness, key preparedness programs of the Emergency Preparedness and Response Directorate, a newly created Chief Medical Officer, the U.S. Fire Administration, the Office of the National Capital Region Coordination, and a unified Office of Cyber Security and Telecommunications.<sup>116</sup> Lastly, the reorganization plan elevated the Federal Law Enforcement Training Center from an element of the Bureau of Transportation Security to a free standing entity reporting to the Deputy Secretary; moved the Federal Air Marshal Service, which had previously been moved from TSA to ICE, back to TSA; merged the Office of Legislative Affairs and the intergovernmental coordination resources of the State and Local Government Coordination and Preparedness Office into a new Office of Legislative and Intergovernmental Affairs (OLIA) to be headed by an Assistant Secretary; renamed the Office of State and Local Government Coordination and Preparedness, without the elements that had been transferred to the Directorate for Preparedness, as the Office for Intergovernmental Affairs within OLIA; and returned the Office of Security to the purview of the Under Secretary for Management.<sup>117</sup>

<sup>111</sup> P.L. 107-296, §201; 6 U.S.C. § 121.

<sup>112</sup> Letter from Secretary Michael Chertoff to the Honorable Bart Gordon, Ranking Minority Member, Committee on Science, U.S. House of Representatives, July 13, 2005.

<sup>113</sup> Letter from Secretary Michael Chertoff to the Honorable Bart Gordon, Ranking Minority Member, Committee on Science, U.S. House of Representatives, July 13, 2005.

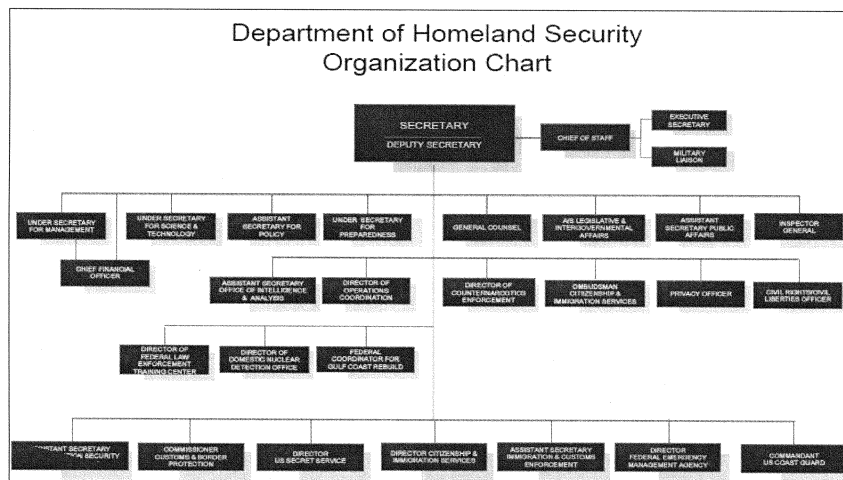
<sup>114</sup> Letter from Secretary Michael Chertoff to the Honorable Bart Gordon, Ranking Minority Member, Committee on Science, U.S. House of Representatives, July 13, 2005. This bill seeks to eliminate the position of Under Secretary for BTS.

<sup>115</sup> Letter from Secretary Michael Chertoff to the Honorable Bart Gordon, Ranking Minority Member, Committee on Science, U.S. House of Representatives, July 13, 2005. Under this reorganization, the Directorate of Information Analysis and Infrastructure Protection (IAIP) was renamed the Directorate for Preparedness, which integrated preparedness and responder-training functions into a single directorate.

<sup>116</sup> Letter from Secretary Michael Chertoff to the Honorable Bart Gordon, Ranking Minority Member, Committee on Science, U.S. House of Representatives, July 13, 2005.

<sup>117</sup> Letter from Secretary Michael Chertoff to the Honorable Bart Gordon, Ranking Minority Member, Committee on Science, U.S. House of Representatives, July 13, 2005. The Office of Security had originally reported to the Deputy Secretary of Homeland Security.





### *Additional Legislative Reforms*

Congress has also altered the Department's structures and functions over the years. In December 2004, Congress passed the Intelligence Reform and Terrorism Prevention Act (IRTPA) to implement many of the recommendations of the 9/11 Commission and reform the nation's intelligence apparatus. IRTPA had a profound structural impact on the intelligence community and made many policy changes that affected DHS. It also implemented a few structural changes within the Department. For instance, IRTPA required the establishment of the Office of Counternarcotics Enforcement (which the Act that accompanies this report eliminates) to coordinate policy and operations within the Department with respect to stopping the entry of illegal drugs into the United States.<sup>118</sup> IRTPA also established the Office of Geospatial Management within the Office of the Chief Information Officer to institute and carry out a program to provide for the efficient use of geospatial information.<sup>119</sup>

Congress made larger changes following Hurricane Katrina. The Post-Katrina Act, passed in October 2006, substantially reorganized the preparedness, response, and recovery functions of the Department in the wake of Hurricane Katrina. Most notably, the Post-Katrina Act eliminated the Under Secretary for Emergency Preparedness and Response and reconstituted the Federal Emergency Management Agency as a distinct entity within DHS.<sup>120</sup> It further sought to reunite the preparedness and response functions that had been bifurcated as a result of the 2SR reorganization. Thus, FEMA absorbed many of the entities within the former Preparedness Directorate, including the U.S. Fire Administration, the Office of Grants and Training, the Chemical Stockpile Emergency Preparedness Division, the Radiological Emergency Preparedness

<sup>118</sup> P.L. 108-458, § 7407.

<sup>119</sup> P.L. 108-458, § 8201.

<sup>120</sup> P.L. 109-295. Under the Homeland Security Act, FEMA had been part of a larger directorate.

Program, the Office of National Capital Region Coordination, and the Office of State and Local Government Coordination.<sup>121</sup>

Other components of the former Preparedness Directorate that were not absorbed into the new FEMA were instead folded into a new structure. Using his section 872 reorganization authority, the Secretary combined and renamed these vestiges of the directorate the National Protection and Programs Directorate (NPPD).<sup>122</sup> NPPD, headed by an Under Secretary appointed by the President by and with the advice and consent of the Senate, was established to strengthen risk management efforts for critical infrastructure, synchronize Department-wide doctrine for homeland security protection initiatives, and deliver grants and related preparedness programs and training activities.<sup>123</sup> This entity now contains the Office of Infrastructure Protection, the Office of Cyber Security and Communications,<sup>124</sup> the Office of Intergovernmental Programs,<sup>125</sup> and the United States Visitor and Immigrant Status Indicator Technology program.<sup>126</sup> The Post-Katrina Act also established the Office of Emergency Communications with responsibility for enhancing public safety and interoperability of emergency communications.<sup>127</sup> Through its reorganization authority, DHS located this office within NPPD as part of the Office of Cyber Security and Communications.<sup>128</sup>

The Post-Katrina Act made several other smaller changes to the Department. For instance, the bill codified the Chief Medical Officer (CMO) of the Department, a position that had been created administratively in a prior reorganization, to serve as focal point for all medical issues within Department.<sup>129</sup> In order to help fulfill the CMO's responsibilities, the Secretary used his 872 authority to create the Office of Health Affairs and put the CMO in charge of it.<sup>130</sup> Finally, the bill codified and renamed the National Operations Center to serve as the principal coordinator for real-time information awareness within the Department.<sup>131</sup>

Also in October 2006, Congress passed the Security and Accountability for Every Port Act (SAFE Port Act), which mandated sev-

<sup>121</sup> P.L. 109-295; see also, Letter from Secretary Michael Chertoff to the Honorable Bart Gordon, Ranking Member, Committee on Science, U.S. House of Representatives, July 13, 2005.

<sup>122</sup> Letter from Secretary Michael Chertoff to the Honorable Michael B. Enzi, Committee on Health, Education, Labor and Pensions, U.S. Senate, January 18, 2007.

<sup>123</sup> Letter from Secretary Michael Chertoff to the Honorable Michael B. Enzi, Committee on Health, Education, Labor and Pensions, U.S. Senate, January 18, 2007.

<sup>124</sup> This office combined the already-extant Office of Cyber Security and Communications and the Office of the Manager of the National Communications System, with the new Office of Emergency Communications. See, Letter from Secretary Michael Chertoff to the Honorable Michael B. Enzi, Committee on Health, Education, Labor and Pensions, U.S. Senate, January 18, 2007.

<sup>125</sup> An earlier reorganization had moved several employees of the State and Local Government Coordination and Preparedness Office to the Office of Legislative and Intergovernmental Affairs (OLIA) and had moved several more employees to the now extant Preparedness Directorate. This latest reorganization moved the employees who transferred to OLIA to NPPD to serve as the focal point for coordination with State and local officials and the employees who went to the Preparedness Directorate to FEMA to focus on developing preparedness and emergency management capabilities with State and local stakeholders.

<sup>126</sup> Letter from Secretary Michael Chertoff to the Honorable Michael B. Enzi, Committee on Health, Education, Labor and Pensions, U.S. Senate, January 18, 2007.

<sup>127</sup> P.L. 109-295.

<sup>128</sup> Letter from Secretary Michael Chertoff to the Honorable Michael B. Enzi, Committee on Health, Education, Labor and Pensions, U.S. Senate, January 18, 2007.

<sup>129</sup> P.L. 109-295.

<sup>130</sup> Letter from Secretary Michael Chertoff to the Honorable Michael B. Enzi, Committee on Health, Education, Labor and Pensions, U.S. Senate, January 18, 2007.

<sup>131</sup> P.L. 109-295.

eral structural alterations to the Department.<sup>132</sup> The SAFE Port Act codified the DNDO, created previously by the Secretary through his section 872 authority, as the primary entity responsible for coordinating efforts “to detect and protect against the unauthorized importation, possession, storage, transportation, development, or use of a nuclear explosive device, fissile material, or radiological material” and “to protect against attack using such devices. . .”<sup>133</sup> The SAFE Port Act also established an Office of Cargo Security Policy within the Department’s Office of Policy.<sup>134</sup> The Office of Cargo Security Policy (which is eliminated by the Act that this report accompanies) was originally intended to coordinate all Department policies relating to cargo security.<sup>135</sup> Additionally, the SAFE Ports Act established a Director of Trade Policy to advise on Department policies relating to the trade and customs revenue functions of the Department.<sup>136</sup>

In August 2007, Congress passed the Implementing Recommendations of the 9/11 Commission Act. This bill not only established many important programs within the Department, but it also made some important structural changes. For instance, section 531 of the act codified the Office of Intelligence and Analysis at the Department and codified the role of the Under Secretary of Intelligence and Analysis as the Department’s Chief Intelligence Officer.<sup>137</sup> This office had previously been created through the use of the Secretary’s section 872 authority. The bill created the National Biosurveillance Integration Center to enhance the capability of the Department to identify, characterize, localize, and track a biological event of national concern.<sup>138</sup> The bill also clarified and strengthened the Under Secretary for Management’s role as the Chief Management Officer of the Department.<sup>139</sup>

Various appropriations measures have also tweaked DHS’s structure. For instance, the Department of Homeland Security Appropriations Act for FY 2010, moved the Office of Intergovernmental Affairs from FEMA to the Office of the Secretary.<sup>140</sup> The Office of Intergovernmental Affairs had previously been shifted to FEMA by Secretary Chertoff’s January 2007 reorganization and consisted of assets and employees that were split off from an earlier realignment of the State and Local Government Coordination and Preparedness Office.

<sup>132</sup> P.L. 109–347.

<sup>133</sup> P.L. 109–347, § 501.

<sup>134</sup> P.L. 109–347, § 301.

<sup>135</sup> P.L. 109–347, § 301.

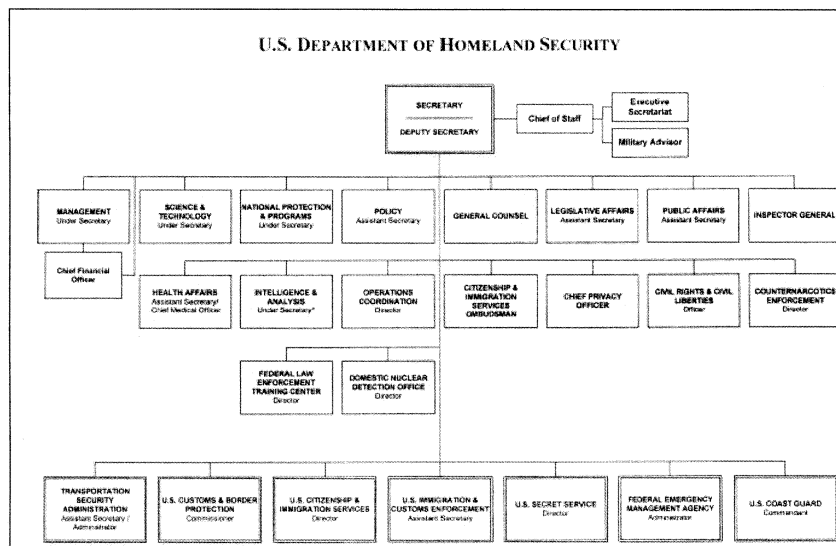
<sup>136</sup> P.L. 109–347, § 401.

<sup>137</sup> P.L. 110–53.

<sup>138</sup> P.L. 110–53, § 1101.

<sup>139</sup> P.L. 110–53.

<sup>140</sup> P.L. 111–31.



*Realigning the Homeland Security Act with DHS's current structure*

S. 1546 makes several technical amendments to the HSA that help to realign the law with the current structure of DHS. For instance, the bill eliminates the Bureau of Transportation Security which had been created by the HSA but was eliminated by Secretary Chertoff in October 2005.<sup>141</sup> The bill also changes the name of the Bureau of Border Security to U.S. Immigration and Customs Enforcement January 2003 and updates the name of the Bureau of Citizenship and Immigration Services to U.S. Citizenship and Immigration Services.<sup>142</sup> Additionally, the bill formally eliminates the former Office of Domestic Preparedness, which was eliminated in practice through the use of section 872 reorganization authority.<sup>143</sup> This bill disaggregates the responsibilities of the Office of Intelligence & Analysis and the Office of Infrastructure Protection and codifies them in separate sections of the HSA.<sup>144</sup> The bill also updates the list of officers of the Department in section 103 of the HSA to reflect the addition of the Under Secretary of Intelligence and Analysis.<sup>145</sup>

Other changes include the codification of the Office of Policy, which Secretary Chertoff created in 2005, and elevation of the head of the office from an Assistant Secretary to an Under Secretary, something the Secretary could not do administratively but that places the position at an organizational level commensurate with its responsibilities.<sup>146</sup> The bill also codifies the basic structure of the National Protection and Programs Directorate, another entity created by Secretary Chertoff, but refocuses its scope from a catch-all directorate to one focused on infrastructure protection and resil-

<sup>141</sup> S. 1546, § 216.

<sup>142</sup> S. 1546, § 216.

<sup>143</sup> S. 1546, § 206.

<sup>144</sup> S. 1546, § 301.

<sup>145</sup> S. 1546, § 604.

<sup>146</sup> S. 1546, § 201.

ience.<sup>147</sup> The bill eliminates the Office of State and Local Government Coordination which has been essentially gutted by prior reorganizations, and transfers its remaining functions involving intergovernmental relations to the Office of Intergovernmental Affairs.<sup>148</sup> The bill also updates some of the responsibilities of the Office of International Affairs, the Chief Information Officer, the Chief Medical Officer, the Domestic Nuclear Detection Office, and the Science & Technology Directorate.<sup>149</sup>

Finally, this bill ensures that the Department is afforded the structural flexibility it needs, but within a stable statutory framework. Section 872 of the HSA gives the Secretary authority to allocate or reallocate functions among officers of the Department and the ability to “establish, consolidate, alter, or discontinue organizational units within the Department.”<sup>150</sup> This bill amends section 872 to give the Secretary authority to reallocate functions and establish, consolidate, alter, or discontinue organizational units within the Department as long as the HSA or other statutes do not establish those entities or functions or require their continued existence.<sup>151</sup> This provision recognizes the Department’s need for flexibility as it matures but acknowledges that a consistent structure required by statute should set the parameters for that growth.

### III. LEGISLATIVE HISTORY

On September 13, 2011, Senators Lieberman and Collins introduced S. 1546, and the bill was referred to the Committee on Homeland Security and Governmental Affairs. The Committee considered S. 1546 at a business meeting that began on September 14, 2011, and continued on September 21, 2011. S. 1546 was ordered reported favorably by roll call vote of 9–1 with several adopted amendments:

- A Collins-McCaskill amendment requires that any savings within DHS due to programs being consolidated or terminated by this bill be returned to the Treasury rather than retained by DHS. Senators Lieberman, Levin, Akaka, Pryor, McCaskill, Begich, Collins, Coburn, McCain, and Johnson were present when the amendment was adopted by a voice vote.

- An amendment offered by Senators Collins, Portman, McCaskill, and Brown stipulates that the Secretary of DHS may not require a contractor competing for a federal contract to submit information regarding political contributions and spending in connection with the solicitation or awarding of a DHS contract. Senators Lieberman, Levin, Akaka, Carper, Pryor, Landrieu, Tester, Begich, Collins, Coburn, Brown, McCain, Johnson, Portman, and Paul were present when the amendment was adopted by a voice vote.

- A modified Akaka amendment strengthens agriculture inspection operations by requiring CBP to ensure that it has the necessary personnel, opportunities for career advancement, training, and equipment for its inspectors to perform effectively. It also establishes a bi-directional rotation program between CBP and

<sup>147</sup> S. 1546, § 301.

<sup>148</sup> S. 1546, § 207.

<sup>149</sup> S. 1546, §§ 202, 210, 203, 705 & 701.

<sup>150</sup> P.L. 107–296, § 872(a); 6 U.S.C. § 452(a). This authority did not extend to the abolition of any entity required to be maintained by the HSA and required 60 days notice to appropriate congressional committees.

<sup>151</sup> S. 1546, § 209.

USDA to ensure that the agencies responsible for operations and policy, respectively, are well coordinated. Senators Lieberman, Akaka, Carper, McCaskill, Tester, Begich, Collins, Coburn, and Paul were present when the amendment was adopted en bloc by voice vote.

- An amendment offered by Senators Akaka and Coburn stipulates that for plans and reports that DHS is required by Congress to produce, the Department must utilize online reporting as the default format. This amendment will limit the unnecessary printing of plans and reports and ensure all DHS plans and reports are available on the public website that was established by the GPR Modernization Act of 2010. Senators Lieberman, Akaka, Carper, McCaskill, Tester, Begich, Collins, Coburn, and Paul were present when the amendment was adopted en bloc by voice vote.

- A Coburn amendment, as modified, requires DHS to report to Congress within 60 days of the end of each fiscal year the amount of federal funding provided to each State and major urban area fusion center. Senators Lieberman, Akaka, Carper, Pryor, McCaskill, Begich, Collins, Coburn, McCain, Johnson, and Paul were present when the amendment was adopted by voice vote.

- A Coburn amendment adds “fusion centers” into a study by the Comptroller General of the United States, required by the bill, which will determine if there is duplication and overlap among functions of the various task forces within DHS that serve maritime Border States. The amendment was adopted by voice vote with Senators Lieberman, Levin, Akaka, Carper, Pryor, McCaskill, Collins, Coburn, McCain, Johnson, and Paul present.

- A Coburn amendment, as modified, requires GAO to examine the budget of the Office of Policy and its overlap with component policy offices. The amendment was adopted en bloc by voice vote with Senators Lieberman, Akaka, Carper, McCaskill, Tester, Begich, Collins, Coburn, and Paul present.

- A Coburn amendment requires DHS to report to Congress on the amount of travel expenses incurred by its political appointees in 2011. The amendment was adopted en bloc by voice vote with Senators Lieberman, Akaka, Carper, McCaskill, Tester, Begich, Collins, Coburn, and Paul present.

- A Coburn amendment, as modified, tasks GAO with reporting to Congress on the quality and effectiveness of DHS intelligence analysis capabilities. The amendment was adopted en bloc by voice vote with Senators Lieberman, Akaka, Carper, McCaskill, Tester, Begich, Collins, Coburn, and Paul present.

- A Coburn amendment eliminates the National Fire Academy Fellowship Program and the DHS Scholars and Fellows Educational Program. The amendment was adopted en bloc by voice vote with Senators Lieberman, Akaka, Carper, McCaskill, Tester, Begich, Collins, Coburn, and Paul present.

- A Coburn amendment requires OMB to render a decision, within 90 days of enactment, regarding the amount of unobligated funds sitting in the Customs User Fees Account. The amendment was adopted en bloc by voice vote with Senators Lieberman, Akaka, Carper, McCaskill, Tester, Begich, Collins, Coburn, and Paul present.

- An amendment offered by Senator Coburn requires that not later than one year after the date of the enactment, the Secretary

shall submit a plan to develop and implement processes to collect information about the subgrantees that receive grant funding including, at a minimum, the name of the subgrantee, the award amount, and the capability being acquired. The amendment was adopted en bloc by voice vote with Senators Lieberman, Akaka, Carper, McCaskill, Tester, Begich, Collins, Coburn, and Paul present.

- An amendment offered by Senator Coburn, as modified, requires DHS to report to Congress on the total expected costs of constructing the St. Elizabeths campus for the new DHS headquarters. The amendment was adopted en bloc by voice vote with Senators Lieberman, Akaka, Carper, McCaskill, Tester, Begich, Collins, Coburn, and Paul present.

- A Coburn amendment, as modified, requires that no later than one year after the date of enactment, the Secretary shall submit a plan to develop and implement processes that require grant recipients to provide contingency plans that include options for sustaining preparedness capabilities in the absence of federal funds. Additionally, grant recipients should identify ongoing projects that will need federal funding beyond the grant period and the amount of money needed to complete the project(s) along with options to sustain the capability should federal funds be reduced or eliminated. The amendment was adopted en bloc by voice vote with Senators Lieberman, Akaka, Carper, McCaskill, Tester, Begich, Collins, Coburn, and Paul present.

- An amendment offered by Senator Coburn eliminates the Over-the-Road Bus Transit Grant Program. The amendment was adopted by voice vote with Senators Lieberman, Levin, Akaka, Pryor, McCaskill, Tester, Collins, Coburn, Johnson, and Paul present.

- A Carper amendment requires GAO to assess the extent to which DHS has a process in place or can develop a performance metrics system to account for results achieved through the award of federal grants to DHS-supported State and major urban area fusion centers. The amendment was adopted by voice vote, with Senators Lieberman, Akaka, Carper, Pryor, Landrieu, McCaskill, Tester, Begich, Collins, McCain, Johnson, Paul, and Moran present.

- A Carper amendment, as modified, requires that the workforce staffing plan developed for CBP and ICE under section 501 of the bill include a discussion of the optimal levels of staffing necessary to promote integrity and professionalism in the workforce and to investigate allegations of misconduct. The amendment was adopted en bloc by voice vote, with Senators Lieberman, Akaka, Carper, McCaskill, Tester, Begich, Collins, Coburn, and Paul present.

- An amendment offered by Senators Brown and Carper, as modified, requires the Department of Homeland Security to obtain a clean audit and submit a report discussing its plans to implement a new financial system at the Department. The amendment was adopted by voice vote with Senators Lieberman, Akaka, Carper, Pryor, Landrieu, McCaskill, Tester, Begich, Collins, Brown, McCain, Johnson, Paul, and Moran present.

- A Pryor-Landrieu amendment, as modified, establishes an integrated National Mitigation Framework, as identified in Presidential Preparedness Directive-8 (PPD-8). The amendment was adopted by voice vote with Senators Lieberman, Levin, Akaka, Car-

per, Pryor, McCaskill, Begich, Collins, Coburn, McCain, Johnson, and Paul present.

- A McCain-Landrieu amendment, as modified, provides Border Patrol agents access to Federal lands along the southwest border for routine motorized patrols and the deployment of temporary tactical infrastructure and surveillance and detection equipment. The amendment was adopted by a roll call vote of 13–4. Senators Carper, Pryor, Landrieu, McCaskill, Begich, Collins, McCain, Johnson, and Paul were recorded as a yes vote; Senators Coburn, Brown, Portman, and Moran were recorded as yes by proxy; Senators Lieberman, Akaka, and Tester were recorded as a no vote; and Senator Levin was recorded as no by proxy.

- A McCain amendment, as modified, conditions the use of cost-plus contracts at DHS on written determination by the Acquisition Review Board (created in this bill) that a program is so complex and technically challenging that it is not practicable to use a fixed-price type contract. The amendment was adopted en bloc by voice vote with Senators Lieberman, Akaka, Carper, McCaskill, Tester, Begich, Collins, Coburn, and Paul present.

- A Landrieu amendment, as modified, requires the development of a technology and infrastructure plan for border security including land ports of entry. The amendment was adopted by voice vote with Senators Lieberman, Akaka, Carper, Pryor, Landrieu, McCaskill, Begich, Collins, McCain, Johnson, and Paul present.

- A Paul amendment, as modified and amended by a Levin second-degree amendment, requires DHS to protect all constitutional rights, including those related to First Amendment activity and lawful gun and ammunition purchases, in conducting all investigative, analytical, and other activities. It also requires that existing annual privacy training for DHS be expanded to include relevant training on First Amendment issues for managerial and operational personnel. The amendment was adopted en bloc by voice vote with Senators Lieberman, Akaka, Carper, McCaskill, Tester, Begich, Collins, Coburn, and Paul present.

- A Paul amendment, as modified, requires the DHS Inspector General to complete by December 30, 2013, an audit of each fusion center’s compliance with internal privacy and civil liberties guidelines and policies. The amendment was adopted en bloc by voice vote, with Senators Lieberman, Akaka, Carper, McCaskill, Tester, Begich, Collins, Coburn, and Paul present.

- An amendment offered by Senator Paul, as amended by a Levin second-degree amendment, ensures that DHS establishes and follows guidelines to protect Americans’ constitutional rights and civil liberties with respect to the activities described in section 213 “Countering Homegrown Violent Extremism.” The amendment was adopted by voice vote with Senators Lieberman, Levin, Akaka, Pryor, Tester, Collins, Coburn, and Paul present.

- The Levin second-degree amendment was adopted by roll call vote of 9–8, with Senators Levin, Akaka, Pryor, Tester, and Paul voting yes; Senators Landrieu, McCaskill, Begich, and McCain voting yes by proxy; Senators Lieberman, Collins, Coburn, and Johnson voting no; and Senators Carper, Brown, Portman, and Moran voting no by proxy.

- A Paul amendment, as modified, requires DHS to submit to the House and Senate Homeland Security Committees a report de-



tailoring the operational guidelines in place to ensure that DHS employees understand First Amendment protected rights and that all DHS activities are being conducted legally. The amendment was adopted en bloc by voice vote with Senators Lieberman, Akaka, Carper, McCaskill, Tester, Begich, Collins, Coburn, and Paul present.

- A Paul amendment, as modified, requires the Secretary to submit a report to Congress on the Department's use of Z Backscatter Van technology. The amendment was adopted en bloc by voice vote with Senators Lieberman, Akaka, Carper, McCaskill, Tester, Begich, Collins, Coburn, and Paul present.

- A Paul amendment, as modified, requires the newly established Office of International Travel Security and Screening to analyze and report on the number of refugees that do not apply for Permanent Legal Resident status. The amendment was adopted en bloc by voice vote with Senators Lieberman, Akaka, Carper, McCaskill, Tester, Begich, Collins, Coburn, and Paul present.

- A Paul amendment, as modified, places a hiring freeze on DHS for all non-emergency personnel, until the unemployment rate drops to 8 percent. The amendment was adopted by a roll call vote of 9–8 with Senators Tester, Collins, Coburn, Johnson, and Paul as yes votes; Senators Brown, McCain, Portman, and Moran as yes by proxy; Senators Lieberman, Levin, Akaka, Carper, Pryor, and McCaskill as no votes; and Senators Landrieu and Begich as no by proxy. Members present for the adoption of the modification were Lieberman, Levin, Akaka, Carper, Pryor, McCaskill, Tester, Collins, Coburn, Johnson, and Paul present.

- A Paul amendment, as modified, requires DHS to submit a report to Congress on the feasibility, potential for enhanced performance, and cost savings associated with the consolidation of all Department offices responsible for emergency communications and interoperability functions, or a partial consolidation of such offices. The amendment was adopted en bloc by voice vote with Senators Lieberman, Akaka, Carper, McCaskill, Tester, Begich, Collins, Coburn, and Paul present.

- A Begich-Landrieu amendment, as modified, requires DHS's Acquisition Professional Career Program to provide individuals training on acquisition policy relating to small business concerns. The amendment was adopted by voice vote with Senators Lieberman, Akaka, Carper, McCaskill, Begich, Collins, Coburn, McCain, Johnson, and Paul present.

The Committee ordered the bill, as amended, reported favorably on September 21, 2011, by a roll call vote of 9–1. Senators Lieberman, Akaka, Carper, Pryor, Landrieu, McCaskill, Tester, Begich, and Collins voted in favor of the bill while Senator Paul voted in opposition. Senators Levin, Brown, and Portman asked to be recorded in favor of the bill by proxy, while Senators Coburn, McCain, Johnson, and Moran asked to be recorded against the bill by proxy.

#### IV. SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

This section provides the bill's short title, Department of Homeland Security Authorization Act of 2012.

## TITLE I—MANAGEMENT AND EFFICIENCY

*Section 101. Department of Homeland Security investment review*

Section 101 adds new section 836 to the HSA (P.L. 107–296; 6 U.S.C. §391, et seq.) establishing in statute a review process for evaluating the progress and status of major acquisitions at critical points in the acquisition life cycle. This high-level review of major acquisitions is intended to prevent projects from moving forward when there is a high risk of failure, and to identify problems and needed modifications as early as possible.

New subsection 836(a) requires the Secretary to establish a process for the review of the Department’s acquisitions at critical points in the acquisition life cycle.

New subsection 836(b) establishes the purpose of that process as providing a consistent method to evaluate the progress and status of acquisitions, above certain threshold amounts as determined by the Secretary, at critical points in the acquisition life cycle, inform investment decisions, strengthen acquisition oversight, and improve resource management throughout the Department. New subsection 836(c) requires the Secretary to establish an Acquisition Review Board and appoint appropriate Department officials to serve on the Board, including the Director of Cost Analysis, whose position is created in section 109 of this Act. Subsection 836(c) also grants the Secretary the discretion to establish subordinate boards and councils reporting to the Acquisition Review Board.

New subsection 836(d) directs the Secretary to establish risk-based criteria for the review of investments by the Acquisition Review Board and any subordinate boards and councils, which should include dollar thresholds. While new subsection 836(d) gives the Secretary flexibility to set thresholds for different levels of review, the Committee cautions against raising current thresholds that trigger Department-level review by the Deputy Secretary or Under Secretary for Management.<sup>152</sup> Indeed, the Committee encourages the Department to ensure review by the Acquisition Review Board of any investment when the risk of failure may result in significant loss of taxpayer funds or may jeopardize the success of a program.

New section 836 of the HSA also creates two reporting requirements related to the Acquisition Review Board process. First, new paragraph 836(e)(1) requires that, not later than three business days after signature of any acquisition decision memorandum of the Acquisition Review Board, the Under Secretary for Management must give a copy of the memorandum, together with a copy of the Letter of Assessment signed by the Director of Testing and Evaluation, to this Committee and the House Homeland Security Committee.

Second, pursuant to new paragraph 836(e)(2), the Under Secretary for Management must give a quarterly report to the Congressional authorizing committees detailing the status of each acquisition subject to the Acquisition Review Board process. In addi-

<sup>152</sup>Under the Department’s current practice, the approving official for movement of acquisitions through life cycle milestones is, generally, the Deputy Secretary (or the Under Secretary for Management upon designation of the Deputy Secretary) for “Level 1” acquisitions (whose life cycle costs are at or above \$1 billion), or the Under Secretary for Management for “Level 2” acquisitions (whose life cycle costs are \$300 million or more). The approving official for “Level 3” acquisitions (whose life cycle costs are less than \$300 million) is generally the component head or, upon designation by the component head, the Component Acquisition Executive.

tion to a brief description of the investment and the status of its review by the Acquisition Review Board, the quarterly reports should contain the estimated life-cycles cost of the acquisition (as well as the basis for the estimate), an indication of whether the Acquisition Review Board has reviewed and approved key planning documents (including, among other items, a Concept of Operations, a Statement of Mission Need, and an Analysis of Alternatives), and an indication of whether a certified program manager has been assigned to the acquisition. The quarterly reports also must contain an identification of acquisitions that have not met cost, schedule or performance expectations and a description of the corrective measures implemented or planned for such acquisitions.

The Committee does not intend or expect the quarterly reports to impose an undue burden on the Department. Rather, the Committee expects the Department to satisfy the requirement by providing for each investment a concise summary containing charts and brief descriptions, preferably limited to one or two pages for each investment.

#### *Section 102. Acquisition Professional Career Program*

Since it began operations in 2003, the Department has worked to overcome a severe shortage of skilled acquisition professionals to plan, negotiate, and oversee the Department's contracts. In 2008, the Department established an Acquisition Professional Career Program to foster the recruitment, training, certification, and retention of qualified acquisition personnel.

Subsection 102(a) establishes the Acquisition Professional Career Program in statute, thereby ensuring that the Department will continue to strengthen the program.

Subsection 102(b) provides that the program will provide training in key acquisition career fields supporting the entire life cycle of acquisitions, including the positions of contract specialist, program manager, logistician, systems engineer, cost estimator, and information technology acquisition specialist. Pursuant to an amendment offered by Senator Begich, the program will include training on acquisition policy relating to small business concerns as defined under section 3 of the Small Business Act (P.L. 85-536; 15 U.S.C. § 632).

In order for participants in the program to gain a broad perspective on how acquisitions support the Department's missions, subsection 102(d) provides that to the extent practicable, the Department should strive to have participants complete, at a minimum, three rotational assignments throughout different components or offices of the Department. Individual assignments should last at least one year, unless otherwise approved by the Secretary.

In order to provide the Department flexibility in structuring the program, section 102 does not mandate a minimum number of participants in the Acquisition Professional Career Program. Rather, subsection 102(e) states that the size of the program shall be commensurate with available funding and consistent with the projected acquisition workforce needs established in the strategic plan for the Department's acquisition workforce required under section 103. The Committee supports the Department's end strength goal of 300 participants in the program, as articulated in the President's Fiscal

Year 2012 Congressional Justification for Departmental Management and Operations.

Additionally, subsection 102(f) provides that nothing in the section shall be construed to conflict with or supersede the authority vested in the Administrator for Federal Procurement Policy. The Committee expects that the Department will leverage, where appropriate, government-wide procurement training opportunities, such as those offered by the Federal Acquisition Institute.

*Section 103. Strategic plan for acquisition workforce*

Subsection 103(a) requires the Department to address its historical shortage of acquisition personnel by developing a long-term strategic plan for the recruitment, retention, and training of the Department's acquisition workforce. The subsection requires the Secretary to complete the initial plan within one year of this bill's enactment and to produce subsequent reports at least every three years thereafter.

Subsection 103(a) also requires the reports to be consistent with any requirements issued by the Administrator for Federal Procurement Policy and to include an identification of gaps in capabilities in each component, covering at a minimum, the key acquisition career fields identified for the Acquisition Professional Career Program established under section 102. The plans must also contain projections for personnel needed for each acquisition career field in each component as well as a plan and projected schedule for training the acquisition workforce.

Subsection 103(b) requires the Secretary to deliver a copy of each plan to this Committee and the House Homeland Security Committee.

*Section 104. Notification to Congress of major awards*

Section 104 requires the Secretary to notify this Committee and the House Homeland Security Committee at least three business days before either: making a contract award, other transaction agreement, or task and delivery order exceeding \$10,000,000; or announcing the intention to make such an award. The bill provides an exception to this notification in instances where the Secretary determines that compliance with the reporting requirement would pose a substantial risk to human life, health, or safety. Under such circumstances, the notification shall be made not later than five business days after such an award is made.

*Section 105. Independent verification and validation*

Section 105 promotes responsible use of independent verification and validation (IV&V) as a process for the independent evaluation of the integrity and quality of major acquisitions. IV&V is a process whereby organizations can reduce the risks inherent in system development and acquisition efforts by having a knowledgeable party who is independent of the developer determine whether the system or product meets the users' needs and fulfills its intended purpose. GAO recently reported to the Committee that, when used properly, IV&V provides an objective assessment of a project's processes, as

well as risks throughout its life cycle, and helps ensure that programs meet performance, schedule, and budget targets.<sup>153</sup>

Subsection 105(a) requires the Chief Procurement Officer of the Department, in consultation with the Chief Information Officer of the Department, to issue guidance on use of IV&V. The guidance must contain a definition of IV&V for consistent use by Department components and identify risk-based criteria to be considered by Department officials when deciding whether to employ IV&V. The guidance also must include appropriate thresholds above which acquisitions may not proceed without IV&V unless authorized to do so by the Acquisition Review Board established under section 836 of the HSA, as added by section 101. Also, the subsection requires the guidance to ensure, where reasonable and appropriate, that Federal government resources are used to perform IV&V.

Subsection 105(a) also requires the new guidance to include procedures for ensuring the managerial, financial, and technical independence of providers of IV&V from the personnel who develop, manage, and perform acquisitions, so that assessments of programs through IV&V are truly unbiased. Additionally, subsection 105(a) requires the new guidance to include methods for integrating IV&V results into program management; procedures to monitor and ensure implementation of the guidance and to take corrective actions, where necessary; and mechanisms to collect, analyze, and evaluate the effectiveness of IV&V data.

Subsection 105(b) states that the development of the guidance shall be considered an inherently governmental function to ensure that federal employees at the Department and not contractors control the policies that shape the IV&V guidance.

Subsection 105(c) creates two simple reporting requirements related to IV&V. First, it stipulates that the quarterly reports on major acquisitions required by section 836(e)(2) of the HSA, as added by section 101 of this Act, shall include an indication of whether an acquisition has been granted initial approval to proceed by the Acquisition Review Board without a plan for IV&V, and if so, an explanation of the decision not to employ IV&V. Subsection 105(c) also contains a short-term reporting requirement for the Chief Procurement Officer to report to Congress, not later than 270 days after the date of enactment of this Act, on actions the Department takes to improve the use of IV&V for the eight programs reviewed by GAO for its July 28, 2011 report.

#### *Section 106. Other transaction authority*

Section 106 provides for a long-term extension of the Department's "Other Transaction" (OT) authority, which gives the Department certain flexibilities to diverge from general procurement rules to attract nontraditional contractors to research, develop, and test innovative technologies. Section 831 of the HSA, as originally passed by Congress, granted OT authority to the Department through 2009. The authority has been extended several times on a

<sup>153</sup> GAO Report, "Information Technology: DHS Needs To Improve Its Independent Acquisition Reviews," GAO-11-581, July 28, 2011.

year-to-year basis through the appropriations process.<sup>154</sup> Section 106 amends section 831 of the HSA to provide OT authority until September 30, 2016. Additionally, in order to provide the Committee a basis on which to evaluate future requests to extend OT authority, section 106 requires GAO to conduct a review of the Department's use of the authority, to be completed at least a year before expiration of the authority, *i.e.*, not later than September 30, 2015.

*Section 107. Report on competition*

Section 107 requires the Inspector General of the Department to prepare a report analyzing the use of competition in the award of contracts by the Department under the Competition in Contracting Act (P.L. 98-369; 41 U.S.C. §§ 3301 et seq.). The section requires the report to be completed not later than 270 days from the date of enactment of this Act and to include, for each component of the Department, the total number and dollar value of new contracts for each of the last three fiscal years for which data is available, and, of that total number, the number of contracts entered into without full and open competition. The section also requires data over the same time period for contracts awarded under competition after receipt of only one offer, in order to help the Committee understand how often the Department's requirements or solicitations fail to attract bids from multiple vendors. Additionally, the section requires the Inspector General to provide a statistical analysis of the statutory exceptions used by the Department to enter contracts without full and open competition, a discussion of the trends in competition in each component, and a comparison of the Department's use of full and open competition with such use by other major contracting agencies.

*Section 108. Open architecture study*

Section 108 establishes a working group within the Department to examine potential use of an open architecture approach to acquisitions. The open architecture model promotes use of modular, interoperable systems that adhere to standards with open interfaces. Under this approach, a procuring agency publishes, to the greatest extent possible, standards for the system and its components, thereby reducing the amount of proprietary information used in the system and opening the door to all companies producing goods or services that meet the required standards. Thus, open architecture can reduce costs and increase competition.

With the goal of encouraging greater use of open architecture, subsection 108(a) requires the Under Secretary of Management, within 90 days of the bill's enactment, to establish a working group within the Department to study ways in which to use open architecture to improve performance, reduce costs, and increase opportunities for competition.

---

<sup>154</sup>The authority was extended until September 30, 2008 in the Consolidated Appropriations Act, 2008, Pub. L. 110-161, Dec. 26, 2007. It again was extended until September 30, 2009 in the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Pub. L. 110-329, September 30, 2011, and until September 30, 2010 in the Department of Homeland Security Appropriations Act of 2010, Pub. L. 111-83, Oct. 28, 2009. The authority then lapsed until the Department of Defense and Full-Year Continuing Appropriations Act, 2011, P.L. 112-10, April 15, 2011, extended it until September 30, 2011.

Subsection 108(b) requires the study to include input from the Department's Chief Procurement Officer, the Department's Chief Information Officer, the Chief Acquisition Executives of each of the Department's components, the Heads of Contracting Activity of each of the Department's components, the Director of Acquisition Support and Operations Analysis of the Science and Technology Directorate, and any other official designated by the Under Secretary for Management.

Subsection 108(c) requires that not later than 270 days after the date of enactment of this Act, the Under Secretary must submit this Committee and the House Homeland Security Committee a report assessing the current use of open architecture by the Department, making recommendations on the benefits of expanded use of open architecture, describing internal capabilities necessary for executing acquisitions under an open architecture model, and identifying, as appropriate, acquisitions for which use of open architecture would be beneficial. The subsection further directs that participants in the study should draw on lessons from the use of open architecture at the Department of Defense.

Subsection (d) defines "open architecture" as the employment of business and technical practices that yield modular, interoperable systems that adhere to standards with open interfaces, with a goal of encouraging competitive proposals from multiple qualified sources and rapid incorporation of innovative technologies into systems.

Finally, subsection (e) states that the study shall be deemed completed upon submission of the report.

#### *Section 109. Cost Analysis Division*

Section 109 adds new section 837 to the HSA (P.L. 107-296; 6 U.S.C. §§ 391 et seq.) to create a Cost Analysis Division (CAD) within the Department. New section 837(a) establishes the CAD to ensure that program cost estimates are accurate reflections of program requirements and that cost estimates increase the capability of the Department to make informed investment decisions, budget formulation, measurement of progress, and accountability. Section 837(a) also requires the CAD to report directly to the Under Secretary for Management.

New HSA section 837(b) details the duties of the CAD, which include validating program life-cycle cost estimates as part of the investment review board process established by section 101 of this Act; prescribing policies and procedures for cost estimation and cost analysis in the Department; and providing assistance, training, and oversight of the cost analysis capabilities of the components of the Department.

New HSA section 837(c)(1) establishes the position of the Director of Cost Analysis, who will head the CAD and serve as the principal advisor to the Secretary and other senior officials of the Department on cost estimation and cost analysis. New HSA section 837(c)(2) directs the Secretary to ensure that the Director of Cost Analysis promptly receives the results of all cost estimates and cost analysis conducted by components of the Department for major acquisitions and has access to other records and data necessary to carry out the duties of the CAD.

*Section 110. Strategic acquisition plan*

Section 110 adds a new section 838 to the HSA requiring the Department to annually publish on its website a publicly available strategic acquisition plan. This plan will assist the Department in saving money by causing it to determine and articulate overall goals, principles, and objectives of planned acquisitions as well as the anticipated procurement needs of the Department, with both a one-year projection and a longer-term projection, which must be at least five years. This plan will include program-level needs, any anticipated multi-year procurements, and expected major changes in ongoing or planned procurements. Lastly, the strategic plan should also include any plans for utilizing strategic sourcing through department-wide or government-wide contract vehicles (*i.e.*, obtaining better prices by pooling the government's buying power through fewer contract vehicles).

*Section 111. Transparency and innovation in acquisition*

Section 111 adds new section 839 to the HSA, requiring the Under Secretary for Management to ensure that acquisition personnel adequately communicate the acquisition needs of the Department to the private sector and nongovernmental organizations. The section also requires the Under Secretary to ensure that the Department's website includes all the necessary information on programs, policies and initiatives that encourage small businesses to participate in the acquisition process. Further, the website will have to include information to guide interactions between the Department and vendors and information on the Department's procurements. The section also charges the Under Secretary with promoting the use of consistent terminology and definitions in solicitations, contracts, grants, and other transactions where the Department interacts with the private sector in order to simplify the process for those seeking to work with the Department.

Section 111 seeks to enhance the Department's knowledge of what the private sector has to offer by encouraging the appropriate use of requests for information and other means of acquiring knowledge about the marketplace before a solicitation is issued. Also, to improve communication between the Department and the private sector, section 111 specifies that debriefings with offerors who were unsuccessful should provide adequate explanation as to why they did not receive an award. The purpose of post-award debriefings is for the contracting officer to provide information on the government's evaluation of proposals and to answer an offeror's reasonable questions about the source selection process. Debriefings can provide important information to companies to help them improve their proposals for future solicitations. The Committee is concerned, however, that debriefings too often are perfunctory and provide little useful insight to unsuccessful offerors.

*Section 112. Disaster relief procurement authorities*

Section 112 helps conform the Department's procurement authorities to that of the Federal Acquisition Regulation (FAR) and eliminates an unnecessary step in the registration process for the registry of companies who are capable of providing goods and services for disaster response and recovery. Subsection 112(a) repeals



two Department-specific procurement rules that subsequent FAR regulations have rendered obsolete: section 692 of the Post-Katrina Emergency Management Reform Act of 2006 (Post-Katrina Act) (6 U.S.C. § 792), which limits the tiers, or layers, of subcontractors who may perform the principal work of the contract; and section 695 of the Post-Katrina Act (6 U.S.C. § 794), which limits the length of noncompetitive contracts. In 2009, the FAR Council issued a government-wide rule to limit the length of contracts awarded noncompetitively under unusual and compelling circumstances to no longer than one year, unless the head of the agency determines that exceptional circumstances apply.<sup>155</sup> In 2010, the FAR adopted a final government-wide rule minimizing excessive pass-through charges by contractors from subcontractors, or from tiers of subcontractors, that add no or negligible value.<sup>156</sup>

Section 112(b) eliminates a duplicative requirement for the Administrator of the Federal Emergency Management Agency (FEMA) to verify registration information submitted by contractors wishing to be listed on the registry of contractors willing to perform disaster or emergency relief activities. Such verification is performed at the time of a contract award, and therefore the current requirement for verification at the time of registration is duplicative and wastes FEMA's resources. Section 112(b) also makes a technical change to reflect the current inclusion of the registry in the Central Contractor Registration database.

*Section 113. Special emergency procurement authority for domestic emergency operations*

Section 113 amends section 32A of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. § 1903) to provide certain special procurement authorities for domestic emergency operations. Currently, the OFPP Act authorizes special procurement authorities to support contingency operations or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attacks. These authorities include increases to the micro-purchase and simplified acquisition thresholds (which allow for simplified procedures for purchases that fall below certain dollar thresholds) and the ability to procure property and services under streamlined rules applicable to commercial items. Section 113 authorizes the use of these flexible procurement authorities to assist in the response to and recovery from natural disasters and other emergency situations. Use of the special rules is limited to instances when the Secretary, or a designee at the Chief Procurement Officer level or higher, in consultation with the Administrator of FEMA, approves use to provide support for an emergency or disaster as defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. § 5112), or when the Secretary determines federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert a threat of a catastrophe in any part of the United States.

<sup>155</sup> Federal Acquisition Regulation (FAR) Case 2007-008, 74 Fed. Reg. 52849, Oct. 14, 2009.

<sup>156</sup> FAR Case 2008-031, 75 Fed. Reg. 77745, 77747, Dec. 13, 2010.

*Section 114. Field efficiencies report and implementation plan*

This section requires the Secretary to submit, not later than 9 months after the date of enactment of this Act, a report and implementation plan to this Committee and the House Homeland Security Committee that examines the facilities and administrative and logistic functions of components or operational entities of components of the Department that are located within certain designated geographic areas. The section directs the Secretary to designate geographic areas where there is a substantial physical presence of more than one component or operational entity of a component of the Department (excluding the National Capital Region) and report on the potential for consolidation of the facilities of each component or operational entity of a component within the region and the administrative and logistics functions of each component or operational entity of a component within the region and additional ways to improve unity of effort and cost savings. Specifically, the section states that the report and implementation plan must examine the potential for consolidation of administrative and logistics functions, including engineering services, facility maintenance, janitorial services, fleet vehicle services, shipping and receiving, facility security, procurement of goods and services, mail handling, administrative support, and information technology and telecommunications services and support.

The section also requires that the report and implementation plan make a five percent reduction in the aggregate amount of expenditures on all Department facilities, administrative and logistics functions, and operational activities in the regions designated by the Secretary. Finally, the section requires that the plan must be fully implemented within two years after the date of the bill's enactment.

*Section 115. Cost savings and efficiency reviews*

Subsection (a) requires the Secretary, not later than 270 days after enactment, to submit this Committee and the House Homeland Security Committee a report that provides a detailed accounting of the management and administrative expenditures and activities of the Department's component agencies and identifies possible cost savings and efficiencies in those expenditures for each component.

Subsection (b) requires the Secretary, acting through the Under Secretary for Management, to conduct a study within 270 days after enactment that examines the size, experience level, and geographic distribution of the operational personnel of the Department and to submit to this Committee and the House Homeland Security Committee a report that details the findings of the study and recommends adjustments to close gaps in capabilities, reduce costs, and enhance efficiencies.

*Section 116. Consolidation of youth programs*

This section requires the Secretary to consolidate all youth preparedness education programs of the Department into a single program.

*Section 117. Reversion to Treasury of excess funds*

This section specifies that any budgetary savings achieved through eliminating or consolidating programs as directed by this Act, be returned to the general fund of the Treasury rather than remain in the relevant appropriations account.

*Section 118. Prohibition on collection of political information*

Section 118 adds new section 890A to the HSA to prohibit the Department from requiring contractors to submit information on political contributions or spending as part of the contracting process. The Committee believes that transparency of political contributions is a worthy goal but requiring the disclosure of political information directly to federal agencies in the context of the contracting process—rather than to the Federal Election Commission in the context of disclosure rules with general applicability—inadvertently would create the appearance that contract award decisions could be predicated on or influenced by political contributions or considerations.

New HSA subsection 890A(a) prohibits the Secretary from requiring the submission of political information related to a contractor, subcontractor, or any partner, officer director or employee of the contractor or subcontractor as part of the solicitation process, during the course of contract performance, or any time prior to final contract closeout.

New HSA subsection 890A(b) clarifies the scope of the prohibition by setting out the types of procurement actions subject to the prohibition, which include procurement of commercial items, non-commercial procurements, and task and delivery orders under indefinite delivery/indefinite quantity contracts.

New HSA subsection 890A(c) provides a rule of construction clarifying that the section shall not be construed as waiving, superseding, restricting or limiting the application of the Federal Election Campaign Act of 1971 or preventing federal regulatory or law enforcement agencies from collecting or receiving information authorized by law; or precluding the Defense Contract Audit Agency or other audit agencies from accessing information for the purpose of identifying allowable costs.

New HSA subsection 890A(d) defines the terms “contractor” and “political information.” “Political information” is defined as information relating to political spending, including any payment consisting of a contribution, expenditure, independent expenditure, or disbursement for an electioneering communication that is made by the contractor, any of its partners, officers, directors or employees, or any of its affiliates or subsidiaries to a candidate or on behalf of a candidate for election for Federal office, to a political committee, to a political party, to a third party entity with the intention or reasonable expectation that it would use the payment to make independent expenditures or electioneering communications, or that is otherwise made with respect to any election for Federal office, party affiliation, and voting history.

*Section 119. Format of plans and reports submitted to Congress*

Section 119 requires that when the Department submits statutorily mandated reports to Congress, they make the reports available online and in a searchable and machine readable format at

Performance.gov (established by the Government Performance and Results Act (GPRA) Modernization Act of 2010). The Department must also take actions to limit the unnecessary printing of plans and reports and notify the Secretary of the Senate, the Clerk of the House of Representatives, and relevant congressional committees when a report is available online. This section is consistent with the Freedom of Information Act and does not require the disclosure of information that is normally exempt under that statute.

*Section 120. Travel expenses of political appointees*

This section mandates a report no later than December 31, 2011 on the travel expenses of political appointees within the Department during fiscal year 2011, including the destination and purpose of each trip, the number of official travelers on the trip, whether government-owned transport vehicles were used, and overall costs.

*Section 121. Elimination of duplicative fellowship programs*

Subsection (a) prohibits the Secretary from providing funds to the Harvard Fire Executive Fellowship Program.

Subsection (b) terminates the Homeland Security Scholars and Fellows program.

Subsection (c) provides that grants made before the enactment of this Act will remain in force for the duration of the grant.

*Section 122. Information of subgrantees*

Subsection (a) requires the FEMA Administrator to submit within one year of enactment of this Act a plan to develop and implement processes to collect and track sub-grantee information for each of its non-disaster preparedness grants.

Subsection (b) requires that the plan require the collection and tracking of identification information on the sub-grantee, award amounts, and the capability acquired; describe how this information will be collected; and explain how FEMA will determine whether grant recipients are receiving funding from several grants programs to fully fund a single project.

*Section 123. Improving financial accountability and management*

Section 123 requires the Department to take necessary steps to successfully complete an audit of its finances by an accounting firm as required by the Chief Financial Officers Act of 1990 (P.L. 101-576). The Department of Homeland Security is one of only two federal agencies who have yet to achieve a clean audit, also known as an unqualified opinion. The Department received a qualified opinion on its financial audit for fiscal year 2011, the first time that accountants have been able to complete an audit since its inception.

Section 123(a) defines the terms “qualified opinion” and “unqualified opinion.”

Subsection (b) requires the Department to take certain steps to ensure compliance with the Department of Homeland Security Financial Accountability Act (P.L. 108-300). First, for fiscal years 2012 and 2013, the Department must take steps to ensure that the balance sheet and associated statement of custodial activity are submitted in order to obtain a qualified or unqualified opinion. Sec-

ond, for fiscal years 2014 and 2015, the Department must then take steps to ensure that the full set of consolidated financial statements of the Department are submitted in order to obtain a qualified or unqualified opinion. Finally, for fiscal year 2016 and all subsequent years, the Department must ensure that the full set of consolidated financial statements be submitted with the goal of obtaining an unqualified opinion.

Subsection (c) requires the Department's Chief Financial Officer to submit a report to Congress on the progress of meeting audit requirements no later than 270 days after enactment of the Act and annually thereafter until an unqualified opinion is submitted. This report must include the plans of the Department to obtain a qualified or unqualified opinion and describe the plans and resources dedicated to meeting the given deadlines.

Subsection (d) requires the Chief Financial Officer of the Department to submit a report not later than 270 after enactment of this Act to this Committee and the House Homeland Security Committee and the Comptroller General of the United States on the Department's plans and resources needed to modernize the Department's financial systems. The report must discuss the continued use of existing financial systems (including an assessment of the cost and feasibility of using such systems), the challenges and opportunities of implementing a new financial system and associated financial controls, and the lessons learned from prior attempts by the Department to develop a financial system like the Transformation and Systems Consolidation (TASC) program. Additionally, not later than 180 days after submission, the section directs the Comptroller General to review the Department's report and submit to this Committee and the House Homeland Security Committee a report assessing the status of the Department's financial system modernization efforts, an evaluation of the Department's report, an assessment of the plans and developments made by the Department for modernizing their financial system and any recommendations for improving their plans.

#### *Section 124. Limitation on use of cost-plus contracts*

Section 124, which was added to the bill by an amendment offered by Senator McCain, requires the Department to adopt new rules limiting, and ensuring appropriate use of, cost-reimbursement type contracts, commonly referred to as "cost-plus" contracts. Under a cost-plus contract, the government pays a contractor for all reasonable costs incurred in the performance of the contract, instead of paying a fixed price. The Committee recognizes that the Department's level of use of cost-type contracts is well below that of other major contracting agencies, including the Department of Defense.<sup>157</sup> Nonetheless, the Committee remains concerned that the Department at times has used cost-plus contracts when it could have used fixed price contracts, or has failed to convert cost-plus contracts to fixed-price contracts once requirements have been developed.

Subsection (a) lays down a general presumption against use of cost-plus contracts by requiring the Secretary, within 120 days of the date of enactment of this Act, to issue a regulation prohibiting

---

<sup>157</sup> *Id.*

the Department from entering into cost-plus contracts for the production of major systems.

Subsection (b) requires the Under Secretary of Management, in consultation with the Acquisition Review Board, to determine the appropriate contract type for the development of a major system at the time the Board approves the Department's investment in the system. Subsection (b) further allows the Under Secretary to authorize use of a cost-plus contract only upon written determination that: (1) the major system is so complex and technically challenging that it is not practicable to use a fixed-price type contract; (2) all reasonable efforts have been made to develop sufficient requirements that would allow for use of a fixed-price contract; and (3) despite these efforts, the Department cannot define requirements sufficiently to allow for use of a fixed-price contract.

Subsection (c) prohibits use of cost-plus contracts for other types of procurements (*i.e.*, procurements other than those for major systems) unless a contracting officer makes a determination in writing that a cost-plus contract is required by the level of program risk and that steps will be taken to allow for follow-on contracts to be awarded on a fixed-price basis. Use of a cost-plus contract must be approved by the head of contracting activity.

Subsection (d) ensures that, consistent with the reporting requirements of section 104, the Secretary will notify this Committee and the House Homeland Security Committee at least 3 business days before making a cost-plus award.

Subsection (e) provides definitions for the section for "major system," "development of a major system," and "production of a major system," with the intent of defining these terms for purpose of this section in a manner consistent with the Department's current definitions.

*Section 125. Safeguarding constitutionally protected activity*

This section specifies that in the course of carrying out their work, employees of the Department may not violate the constitutional rights of any individual, including rights to bear arms, of political association, to petition government, and other speech or activity protected by the Constitution. This section prohibits targeting an individual based solely on race, religion or color. This section further requires that Department employees receive annual training on privacy matters, including protected speech and activity under the Constitution.

*Section 126. Secretary guidelines for protecting constitutional rights and civil liberties*

This section specifies that within 60 days of enactment, the Secretary must submit two reports to Congress: first, a report that details the operational guidelines that Department employees shall follow to uphold the constitutional rights of citizens of the United States while carrying out their duties; and second, a report that details how the Secretary will ensure that all Departmental employees are trained to uphold constitutional rights of citizens, as well as the operational guidelines issued by the Secretary to ensure that all activities of the Department are conducted legally.

## TITLE II—STRUCTURE AND ORGANIZATION

*Section 201. Under Secretary for Policy*

This section codifies the Office of Policy, originally created administratively by Secretary Chertoff in 2005, and elevates the head of the office, currently an Assistant Secretary, to an Under Secretary position—consistent with similar positions in other large and diverse cabinet departments.

Subsection (a) amends the HSA by redesignating HSA section 601 (P.L. 107–296, § 601; 6 U.S.C. § 331) as section 890B and creates a new section 601 which establishes in the Department an Under Secretary for Policy, appointed by the President, by and with the advice and consent of the Senate. This subsection also states that the Under Secretary shall serve as the principal policy advisor to the Secretary; coordinate and provide overall direction and supervision of policy development for the Department; work with the Under Secretary for Management and the General Counsel of the Department to ensure that the development of the budget of the Department is compatible with the priorities, strategic plans, and policies established by the Secretary; conduct long-range, strategic planning; and carry out such other responsibilities as the Secretary determines appropriate.

Subsection (b) provides that the individual serving as Assistant Secretary for Policy on the date of enactment, may serve as the Under Secretary for Policy until the date on which an appointment to the position of Under Secretary for Policy is made.

Subsection (c) makes technical and conforming amendments to the HSA.

Subsection (d) requires that the Comptroller General of the United States to submit, not later than 270 days after enactment, a report on the Office of Policy and related policy efforts throughout the Department to this Committee and the House Homeland Security Committee.

*Section 202. Office of International Affairs*

This section replaces section 879 of the HSA (P.L. 107–296, § 879; 6 U.S.C. § 459) with new language that strengthens the Office of International Affairs.

New HSA subsection 879(a) tracks the current statutory language and provides for the establishment of the Office of International Affairs but diverges from the previously codified provision by elevating the head of the office, formerly “a senior official appointed by the Secretary,” to a presidentially-appointed and Senate-confirmed Assistant Secretary.

New HSA subsection 879(b) sets forth the updated responsibilities of the Assistant Secretary. This section provides that the Assistant Secretary shall (1) coordinate the Department’s various international activities; (2) develop and update an international strategic plan; (3) provide guidance to components of the Department on executing international activities and to employees of the Department who are deployed overseas; (4) identify areas for homeland security information and training exchange; and (5) track and be familiar with all of the Department’s international activities, including travel by its personnel, and all spending by the Federal

government for international assistance activities relating to homeland security.

*Section 203. Chief Medical Officer*

This section amends section 516 of the HSA (P.L. 107–296, § 516; 6 U.S.C. § 321E) to provide that the Chief Medical Officer shall also have the title of Assistant Secretary for Health Affairs—a title that the Chief Medical Officer has been given administratively. Additionally, this section adds several new items to the statutory responsibilities of the office, including ensuring that the Department’s workforce has science-based policy, standards, requirements, and metrics for occupational safety and health, providing medical expertise for the components of the Department with respect to medical and public health matters, and developing guidance for catastrophic events with human, animal, agricultural, or environmental health consequences.

*Section 204. Quadrennial Homeland Security Review*

Subsection (a) amends section 707 of the HSA (P.L. 107–296, § 707; 6 U.S.C. § 347) by changing the deadline for reporting to Congress on the next Quadrennial Homeland Security Review (QHSR) from the end of calendar year 2013 to the date in early 2014 on which the Fiscal Year 2015 budget request is delivered to Congress. This synchronizes the deadline for the QHSR to match that of the Quadrennial Defense Review (QDR). Additionally, this subsection requires the Secretary to coordinate the QHSR with the QDR and any other major strategic reviews relating to diplomacy, intelligence, or other national security issues. It also amends HSA section 707 to require the Secretary, not later than two years after a QHSR report is submitted, to submit a midterm review of implementation that describes progress made in implementing QHSR recommendations and preparations for the next QHSR.

Subsection (b) makes technical and conforming amendments to the HSA.

*Section 205. Designation of foreign terrorist organizations*

The Antiterrorism and Effective Death Penalty Act of 1996 gives the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, authority to designate a foreign group as a terrorist organization (P.L. 104–132, § 302; 8 U.S.C. § 1189). Section 205 of this bill updates the 1996 law, by requiring the Secretary of State, when designating a foreign group as a terrorist organization, also to consult with two relevant officials whose positions did not exist in 1996: the Secretary of Homeland Security and the Director of National Intelligence.

*Section 206. Office for Domestic Preparedness Termination*

Section 206 strikes section 430 of the HSA (P.L. 107–296, § 430; 6 U.S.C. § 238) and eliminates the authorization for the Office of Domestic Preparedness.

Subsection (b) permits an individual who is serving on the day before the date of enactment of this Act, under an appointment by the President, by and with the advice and consent of the Senate pursuant to section 430, to continue serving in that position.



Subsection (c) provides that if there is no incumbent, or in the event there is an incumbent, on the day after the incumbent leaves their position, the Administrator of the Federal Emergency Management Agency may perform or delegate the responsibilities that were set out in section 430.

Subsection (d) makes technical and conforming amendments to the HSA.

*Section 207. State and Local Government Coordination*

Subsection (a) of section 207 amends section 801 of the HSA (P.L. 107–296, § 801; 6 U.S.C. § 361), by eliminating the Office for State and Local Government Coordination and updating section 801 to reflect the existence of the Office of Intergovernmental Affairs within the Office of the Secretary. It also eliminates references in other sections of the HSA to the Office for State and Local Government Coordination. These changes build on an earlier shift of the Office of Intergovernmental Affairs’ budget, from FEMA to the Office of the Secretary, in the FY 2007 Department of Homeland appropriations act.<sup>158</sup> Though the Office’s budget has been shifted, an authorization to reflect this change has been lacking.

Subsection (b) of section 207 provides that the Secretary, within 30 days, must transfer to the Office of Intergovernmental Affairs any responsibility under HSA section 801 and any responsibility which had previously been transferred to an office other than the Office of Intergovernmental Affairs by the Secretary pursuant to her HSA section 872 (P.L. 107–296, § 872; 6 U.S.C. § 452) reorganization authority or by an act of Congress, to the Office of Intergovernmental Affairs.

Subsection (c) makes technical and conforming amendments to the HSA.

*Section 208. Termination of Office of Counternarcotics Enforcement*

Subsection (a) strikes section 878 of the HSA (P.L. 107–296, § 878; 6 U.S.C. § 458) which establishes the Office of Counternarcotics Enforcement. Subsection (a) provides that the Office of Counternarcotics Enforcement and the Director of the Office may continue to perform any functions of the Office or the Director until the earlier of the date on which the function is transferred or 180 days after enactment.

Subsection (b) provides that within 180 days of enactment, the Secretary shall determine whether to transfer certain responsibilities of the Office of Counternarcotics Enforcement to another appropriate official in the Department. Additionally, subsection (b) requires the Secretary to report to this Committee and the House Homeland Security Committee a notification regarding any function not transferred.

Subsection (c) makes technical and conforming amendments to the HSA.

*Section 209. Reorganization authority*

Section 209 of the Act amends section 872 of the HSA (P.L. 107–296, § 872; 6 U.S.C. § 452) to limit the Secretary’s reorganization authority. This provision maintains that the Secretary may allocate

<sup>158</sup> P.L. 109–295; Conference Committee Report 109–699, p. 114, September 28, 2006.

or reallocate functions among the officers of the Department, and may establish, consolidate, alter, or discontinue organizational units within the Department, but may not discontinue, abolish, substantially consolidate, alter, or transfer any agency, entity, organizational unit, program, or function that is established or required to be maintained by statute.

In addition, although the Secretary may not on her own derogate from statutory organizational mandates, section 209 does authorize her to do so if the President determines that because of an imminent threat to homeland security, it is necessary to transfer, reassign, or consolidate a function, power, or duty vested by law in the Department, or an officer, official, or agency thereof. If the President invokes the exception, however, the President must notify appropriate congressional committees of the transfer, reassignment, or consolidation and such transfer, assignment, or consolidation remains in effect only until the President determines that the threat to homeland security has terminated or is no longer imminent.

Finally, section 209 requires that within 30 days of any allocation, assignment, consolidation, alteration, establishment, or discontinuance under this section, the President or Secretary must publish in the Federal Register, the reason for the action taken and a list of statutory provisions affected by the reorganization.

#### *Section 210. Chief Information Officer*

Section 210 amends the statutory responsibilities of the Office of the Chief Information Officer (CIO) to reflect the current duties of the office and bring it in line with that of CIOs in other federal agencies.

Subsection 210(a) of the bill amends section 703 of the HSA (P.L. 107–296, § 703; 6 U.S.C. § 343) by adding a new subsection 703(b) to detail the responsibilities of the CIO. These responsibilities include: (1) requiring the CIO to advise and assist the Secretary, heads of the components and other senior officers in the Department on activities relating to programs and operations of IT functions at the Department; (2) establishing the Department's IT priorities and the processes, standards, guidelines and procedures for carrying out those priorities; (3) coordinating and ensuring the implementation of the IT priorities and policies within the Department; (4) taking the lead in capital planning and IT investment management; (5) coordinating with the Chief Procurement Officer on the acquisition, development, and integration of information systems; (6) reviewing and approving, with the Chief Procurement Officer, any IT acquisition over a threshold determined by the Secretary; (7) coordinating with relevant officials in the Department to ensure that the IT systems that make up and support the Department's information sharing environment meet the standards contained in section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. § 485); (8) fulfilling the requirements of 44 U.S.C. § 3506, which lays out federal agency responsibilities for information resources management, and 40 U.S.C. § 11315, which lays out the duties of agency CIOs; and (9) performing such other responsibilities as the Secretary may prescribe.

Subsection (b) achieves cost-savings by requiring the Department to determine which software licenses are necessary and which ones can be eliminated or consolidated. Specifically, this subsection re-

quires that the CIO, within 180 days of enactment of the Act and every two years thereafter, conduct a Department-wide inventory in consultation with component CIOs of all existing software licenses that are both utilized and unutilized. This inventory should also include an assessment of the needs of the Department and components for software licenses over the next two fiscal years and examine how the Department can best leverage savings on these software licenses through economies of scale. This subsection also requires the CIO to create a plan to reduce software licenses and achieve cost savings by bringing the number of software licenses in line with the defined needs of the Department within 90 days of the completion of the inventory. This also requires a general prohibition on the procurement of new software licenses unless the Department CIO deems that the purchase of new licenses or amending the number of needed licenses to be necessary. This prohibition would end when the needs of the department exceed the number of existing and unused licenses. Under this subsection, the Department is required to submit a copy of each inventory and plan to this Committee and the House Homeland Security Committee.

*Section 211. Department of Homeland Security headquarters*

Subsection (a) requires the Secretary of Homeland Security to consolidate the location of the headquarters of the Department of Homeland Security and the headquarters of the components of the Department of Homeland Security.

Subsection (b) requires the Secretary to ensure that the consolidation required in subsection (a) occurs at the East and West Campuses of St. Elizabeths Hospital in the District of Columbia. It also directs the Secretary to ensure the availability of adequate parking and infrastructure to support the Department's offices and employees.

Subsection (b) requires the Secretary to ensure that the consolidation required in subsection (a) occurs at the East and West Campuses of St. Elizabeths Hospital in the District of Columbia. It also directs the Secretary to ensure the availability of adequate parking and infrastructure to support the Department's offices and employees.

Subsection (c) requires that any Department component in the National Capital Region that does not relocate to St. Elizabeths Hospital be consolidated in as few locations within the National Capital Region as possible, although it mandates a component's inclusion in the consolidation only if there are no adverse impacts to the component's mission.

Subsection (d) requires the Secretary, in consultation with the Administrator of General Services, to submit a report within 180 days after enactment on the total costs to complete each of the three phases of construction of the consolidation project.

This subsection also requires subsequent reports 60 days after final appropriations are provided for each fiscal year that the project is funded starting with FY 2012.

Each report submitted under the subsection must include the full costs for the facility to be operational, the amount of funding expended or obligated by DHS or GSA for the most recent and all preceding fiscal years, the fiscal implications for the delay of the

project, and an estimate of cost avoidances as calculated by the most recent and each previous completion schedule.

*Section 212. Future Years Homeland Security Program*

This section amends section 874 of the HSA (P.L. 107–296, § 874; 6 U.S.C. § 454) by requiring that the Future Years Homeland Security Program, which details resource allocation plans and projections for the next five years, be submitted not later than 30 days after the date on which the President’s budget request is submitted.

*Section 213. Countering homegrown terrorism*

Section 213 directs the Department to focus resources on confronting the threat of violent extremism domestically, including domestic threats posed by the ideology identified by the 9/11 Commission as motivating Islamist terrorism.

Subsection 213(a) states the Congress’s findings regarding the threat of violent extremism, including the ideology of Islamist terrorism as identified by the 9/11 Commission.

Subsection 213(b) requires the Secretary of the Department of Homeland Security to designate an official to coordinate efforts within the Department to counter violent extremism, including extremism fueled by the ideology that gives rise to Islamist terrorism.

Subsection 213(c) requires the Secretary to provide written notification to this Committee and the House Homeland Security Committee of the designee within 15 days of appointment.

Subsection 213(d) requires the Department, within 90 days of the bill’s enactment, to provide a report to this Committee and the House Homeland Security Committee that details the Department’s strategy to counter domestic violent extremism, including the ideology of Islamist terrorism. The report must also detail the offices of the Department that have responsibilities related to countering violent extremism; the number of Department employees and funding dedicated to such activities; the metrics that are used to measure the effectiveness of the Department’s activities related to combating violent extremism in the United States; and the work of the Department to ensure that its activities in this area comply with applicable laws regarding civil rights and civil liberties.

*Section 214. Office of Cargo Security Policy*

Subsection 214(a) repeals section 431 of the HSA (P.L. 107–296, § 431; 6 U.S.C. § 239) which established the Office of Cargo Security Policy within the Office of Policy.

Subsection 214(b) transfers all functions and responsibilities of the Office of Cargo Security Policy to appropriate officials within the Office of Policy.

*Section 215. Reports on emergency communications and interoperability functions*

Subsection 215(a) requires the Secretary to submit to Congress and the Government Accountability Office (GAO) an assessment of the functions and resources of all of the Department’s emergency communications and interoperability efforts. The assessment should include an examination of each of the four major Department offices responsible for communications policies and pro-

grams—the National Communications System (NCS), the Office of Emergency Communications (OEC), the Federal Emergency Management Agency’s (FEMA) Disaster Emergency Communications Division (DEC), and the Science and Technology Directorate’s Office of Interoperability and Compatibility (OIC). This review must be completed and submitted within 90 days of enactment of this legislation.

Subsection 215(b) instructs GAO, within 90 days of receiving the Department report required by Subsection 215(a), to evaluate the report and provide to Congress its own written analysis of the feasibility and impact of partially or fully consolidating emergency communications programs within DHS. GAO’s analysis should include an assessment of the costs and benefits that would result from a consolidation of the DHS emergency communications offices.

*Section 216. Technical and conforming amendments*

Subsection 216(a) makes several technical amendments to update the HSA, to reflect the current structure of the Department. First, this section eliminates the Directorate of Border and Transportation Security and transfers most of its functions and responsibilities to the Secretary. Second, this section renames the Bureau of Border Security, U.S. Immigration and Customs Enforcement and renames the Bureau of Citizenship and Immigration Services, U.S. Citizenship and Immigration Services. Finally, this section eliminates several report requirements that have since expired.

Subsection (b) makes technical amendments to the HSA.

TITLE III—INFRASTRUCTURE PROTECTION AND RESILIENCE

*Section 301. Infrastructure Protection and Resilience Directorate*

This section codifies what is currently known as the National Protection and Programs Directorate, created administratively by Secretary Chertoff in 2007, and renames it the Infrastructure Protection and Resilience Directorate.

Subsection (a) makes several technical changes to the HSA and separates the responsibilities of the Office of Intelligence and Analysis and the Office of Infrastructure Protection, which had been grouped under one subsection in the HSA. This subsection removes infrastructure protection responsibilities from section 201 of the HSA (P.L. 107–296, § 201; 6 U.S.C. § 121), putting them in a new section of the HSA, and refocuses section 201 on the responsibilities of the Office of Intelligence and Analysis.

Subsection (b) establishes in the HSA a new Subtitle E, the Infrastructure Protection and Resilience Directorate (IPRD), and a new section 241 which sets forth the IPRD’s structure and responsibilities. It provides that an Under Secretary, appointed by the President by and with the advice and consent of the Senate, will lead IPRD, makes IPRD responsible for coordinating critical infrastructure protection and resiliency activities within the Department and ensuring that the Federal Protective Service protects federal facilities, and any other duties the Secretary prescribes. This new section 241 also lists the responsibilities of the Office of Infrastructure Protection that were moved in subsection 301(a) of the bill.

Finally, subsection (b) maintains that the individual servicing as Under Secretary for National Protection and Programs on the day before the date of enactment of the Act, may serve as the Under Secretary for Infrastructure Protection and Resilience.

*Section 302. Federal Protective Service*

This section codifies the Federal Protective Service (FPS) agency as a component of the new Infrastructure Protection and Resilience Directorate established by this act.

Subsection (a) codifies the FPS as an agency within IPRD whose Director reports to the Under Secretary for Infrastructure Protection and Resilience. It also authorizes the Secretary to assess and collect fees for the costs of providing protective services to other agencies, and requires the Director of the Office of Management and Budget to adjust fees as necessary to carry this section.

Subsection (b) makes technical and conforming amendments to the U.S. Code.

TITLE IV—PREPAREDNESS, RESPONSE, AND RECOVERY

*Section 401. Catastrophic incident planning*

Subsection (a) amends the Post-Katrina Emergency Management Reform Act of 2006 (P.L. 109–295, Oct. 4, 2006) (6 U.S.C. §§ 701, et seq.) (the Post-Katrina Act) to include a definition for the term “critical infrastructure.” It defines “critical infrastructure” to mean the same as in section 1016(e) of the USA PATRIOT Act (42 U.S.C. § 5195c(e)).

Subsection (b) amends section 653 of the Post-Katrina Act (6 U.S.C. § 753) to require the President to ensure that comprehensive plans exist to prevent, prepare for, protect against, respond to, and recover from natural disasters, acts of terrorism, and other man-made disasters, including catastrophic incidents.

Subsection (c) adds a new section to the HSA that directs the Secretary of the Department of Homeland Security to designate a senior official within FEMA to be responsible for catastrophic incident planning.

Subsection (d) makes technical and conforming amendments to the table of contents in the HSA.

*Section 402. Preparedness of individuals and communities*

Subsection (a) adds a new section 527 to the HSA to require the FEMA Administrator to enhance and promote the preparedness of individuals and communities for natural disasters, acts of terrorism, and other man-made disasters and to designate a senior official to coordinate and oversee such efforts.

Subsection (b) makes technical and conforming amendments to the table of contents of the HSA.

*Section 403. Federal response and recovery preparedness officials*

Subsection (a) amends Title V of the HSA (P.L. 107–296; 6 U.S.C. §§ 311, et seq.) to require the FEMA Administrator to ensure the preparedness of Federal agencies to respond to and support recovery from disasters, including by ensuring the development and implementation of the National Response Framework and the National Disaster Recovery Framework. The National Re-

response Framework sets out the guiding principles that enable responders to prepare for and provide a unified national response to disasters and emergencies, while the National Disaster Recovery Framework is a guide that provides a flexible structure enabling disaster recovery managers to operate in a unified and collaborative manner to support disaster-impacted States, Tribes, Territorial and local jurisdictions.

The subsection also requires the head of each Federal agency with responsibilities under the National Response Framework or the National Disaster Recovery Framework to designate a senior official to ensure preparedness for carrying out such responsibilities and for coordinating disaster response and recovery efforts.

Subsection (b) makes technical and conforming amendments to the table of contents of the HSA.

#### *Section 404. Recovery*

Subsection (a) amends section 102 of the Stafford Act's (P.L. 93-288, 102; 42 U.S.C. 5122) definition of major disaster to cover certain acts of terrorism or other man-made disasters not included under the current definition.

Subsection (b) amends section 102 of the Stafford Act (42 U.S.C. § 5122) to provide a definition for the terms "recovery", "National Disaster Recovery Framework" and "catastrophic incident."

Subsection (c) describes some recovery assistance that may be provided to assist State and local governments in recovering from disasters.

Subsection (d) adds a new section 327 to the Stafford Act to give the President authority, in the event of a catastrophic incident, to form a temporary recovery commission comprised of the heads of relevant agencies to coordinate the federal government's efforts in support of State and local governments in disaster recovery activities.

#### *Section 405. Enhancing response and recovery operations and programs*

Subsection (a) adds new section 529 to the HSA to improve the efficiency, continuity, quality, and accuracy of services performed in response and recovery operations and programs. Specifically, it seeks to improve the performance of FEMA's disaster reserve workforce by: (1) strengthening its leadership; (2) improving continuity of staffing by relying more extensively on employees deployed for longer periods of time; and (3) requiring the FEMA Administrator to develop policies and procedures for administration of response and recovery operations and programs, minimum standards and guidelines for the disaster reserve workforce, and policies and procedures for contractors that support response and recovery operations and programs.

Subsection (b) makes technical and conforming amendments to the table of contents of the HSA.

Subsection (c) amends section 306 of the Stafford Act (P.L. 93-288, § 306; 42 U.S.C. § 5149) to allow federal agencies to hire permanent seasonal employees under section 306(b) of the Stafford Act to perform services authorized under the Stafford Act.

*Section 406. Department and agency officials*

Subsection (a) amends section 514 of the HSA (P.L. 107–296, § 514; 6 U.S.C. § 321c) to require that the President appoint a FEMA Deputy Administrator to serve as the Chief Management Officer at FEMA.

Subsection (b) requires that the Chief Management Officer and the Under Secretary for Management at DHS submit to Congress a strategy within one year of the bill's enactment for improving management at FEMA.

*Section 407. Infrastructure protection assistance*

Subsection (a) authorizes \$249.5 million for the Port Security Grant Program for fiscal year 2012.

Subsection (b) authorizes \$224.5 million for the Public Transportation and Railroad Security Grant Programs, combined, in fiscal year 2012. This subsection also requires that the Secretary ensure grants under these programs are awarded on the basis of remediating risk region- or system-wide, that all applications are reviewed and approved by the local Regional Transit Security Working Group and either the local Federal Security Director or another federal official designated by the Secretary, and it also requires a report to this Committee and the House Homeland Security Committee in any year in which more than 50 percent of funds available for public transportation and railroad security grants are awarded for the purpose of securing or remediating risk to specific physical assets.

Subsection (c) repeals section 1532 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110–53, § 1532; 6 U.S.C. § 1182), which authorized the Secretary to award grants for over-the-road security.

*Section 408. Federal-State border security cooperation*

Subsection (a) adds new section 2041 to the HSA to authorize the Secretary to award Operation Stonegarden grants to States to facilitate and enhance participation by States, local government, and Indian tribes in border security efforts. The subsection requires that in allocating funds, the Administrator must consider an assessment of risk, the anticipated effectiveness of the grant, and the results of peer review evaluation of grant applications. This subsection authorizes current spending levels for the program—\$55 million through FY 2017.

Subsection (b) makes technical and conforming amendments to the table of contents of the HSA.

*Section 409. Emergency Management Assistance Compact*

This section amends section 611 of the Post-Katrina Act (P.L. 109–2956, § 611; U.S.C. § 761) to authorize \$2,000,000 per year through fiscal year 2016 for the FEMA Administrator to make grants to administer the Emergency Management Assistance Compact, an interstate mutual aid agreement that facilitates the sharing of disaster response resources among states.

*Section 410. Repeal of Emergency Operations Center Grant Program*

This section amends the Stafford Act (P.L. 93–288; 42 U.S.C. §§ 5121, et seq.) to repeal the authorization of the Emergency Oper-



ations Center Grant Program, which provides grants to states for equipping, upgrading, and constructing State and local emergency operations centers. The section further provides that grants made before the enactment of this Act will remain in force for the duration of the grant. Section 410 also states that it does not alter the Emergency Management Performance Grants Program, which allows grant funds to pay for equipping, upgrading, and constructing State and local emergency operations centers.

*Section 411. Performance measures*

This section requires the FEMA Administrator to develop and implement performance metrics for grants administered by FEMA in accordance with the comprehensive system established by section 649 of the Post-Katrina Act (P.L. 109-2956, § 649; 6 U.S.C. § 749).

*Section 412. Communications planning*

Subsection (a) amends the HSA to add a new section requiring the Secretary, in consultation with State and local governments and other relevant federal agencies to develop communications plans, including prescribed messages and message templates, to provide critical protective information to people in the event of a natural disaster, acts of terrorism, and other man-made disasters, including catastrophic incidents involving the use of weapons of mass destruction.

Subsection (b) makes technical and conforming amendments to the HSA.

*Section 413. Guidelines concerning weapons of mass destruction*

Subsection (a) amends the HSA to add a new section requiring the Secretary, in coordination with State and local governments, other relevant federal agencies, and emergency response providers and public health organizations, to develop guidelines for the protection and safety of responders to an explosion or release of nuclear, biological, radiological, or chemical material, and to regularly review and revise the guidelines.

Subsection (b) makes technical and conforming amendments to the HSA.

*Section 414. Plume modeling*

Subsection (a) amends the HSA to add a new section directing the Secretary to develop and disseminate plume models that describe the likely path of fallout from a nuclear, radiological, chemical, or biological explosion or release and which incorporate protective action guidance for use by appropriate response officials to enable rapid response activities.

Subsection (b) makes technical and conforming amendments to the table of contents in the HSA.

*Section 415. Identification of disaster management resources*

This section amends 31 U.S.C. § 1105 to require that the President include in his annual budget submission to Congress a description of resources identified to support the preparedness, response, and recovery duties of each Federal agency with respon-

sibilities under the National Response Framework and the National Disaster Recovery Framework.

*Section 416. Antifraud training*

This section amends section 698 of the Post-Katrina Act (P.L. 109–2956, § 698; 6 U.S.C. § 797) to require the FEMA Administrator to report annually for five years on the number of employees and contractors trained under the fraud prevention training program required by that section.

*Section 417. Information technology*

This section requires the FEMA Administrator to implement a policy requiring approval by FEMA’s Chief Information Officer for information technology purchases above a threshold established by the FEMA Administrator.

*Section 418. Metropolitan Medical Response System*

Subsection (a) amends section 2001 of the HSA (P.L. 107–296, § 2001; 6 U.S.C. § 601) to include a definition for the term “mass casualty incident.”

Subsection (b) authorizes the Metropolitan Medical Response System to assist State, local, and tribal governments prepare for and respond to mass casualty incidents resulting from disasters or terrorist attacks. It extends the system to all states but caps the total number of jurisdictions at the current level. It authorizes \$41,000,000 for FY 2012 through 2014.

Subsection (c) requires the FEMA Administrator and the DHS Chief Medical Official to conduct a review of the Metropolitan Medical Response System. They must submit the results of this review to this Committee and the House Homeland Security Committee within 180 days of enactment of this Act.

Subsection (d) makes technical and conforming amendments to the HSA and the Post-Katrina Act.

*Section 419. Regional Catastrophic Grant Program*

This section prohibits the FEMA Administrator from awarding grants under the Regional Catastrophic Preparedness Grant Program.

*Section 420. Report on consolidation of grant programs*

This section requires the Secretary to submit to this Committee and the House Homeland Security Committee, not later than 180 days after the date of enactment of this Act, a report on the suitability, feasibility, and efficiency of consolidating grant programs administered by the Department, other than grants awarded in conjunction with a major disaster or emergency declared under the Stafford Act.

*Section 421. Grant program contingency plans*

This section requires the FEMA Administrator to submit to Congress a plan to require recipients of non-disaster preparedness grants to provide to FEMA contingency plans that include options to sustain preparedness capabilities in the absence or reduction of Federal funds.

*Section 422. National mitigation framework*

This section amends section 504 of the HSA (P.L. 107–296, § 504; 6 U.S.C. § 314) to require the FEMA Administrator to develop and implement the National Mitigation Framework.

*Section 423. Nonemergency personnel hiring freeze*

This section requires the Secretary to temporarily freeze the number of full-time equivalent positions (FTEs) within the Department that do not involve emergency operations. Under the section, the Secretary must, within 30 days after the date of enactment, identify all positions in the Department that do not involve emergency operations. Then the Secretary is forbidden to increase the number of FTEs within the Department that do not involve emergency operations until the date on which the national unemployment rate falls to 8 percent or less.

## TITLE V—BORDER SECURITY

*Section 501. Workforce staffing plan*

This section requires certain DHS component agencies to address deficiencies in the coordination of resource allocation that have been found by the Government Accountability Office.

Subsection (a) adds new section 447 to the HSA to require U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) to develop a workforce staffing plan within one year of this bill's enactment and annually thereafter through 2017. This plan should detail the optimal level of staffing required by the agencies to carry out their responsibilities, describe the process through which staffing allocation decisions are made, link these decisions to threat analyses, and describe the coordination between CBP and ICE staffing plans to secure specific segments of the border. The Secretary must submit the workforce staffing plan to this Committee and the House Homeland Security Committee.

Subsection (b) makes a clerical amendment to the table of contents in the HSA.

*Section 502. Border technology and infrastructure plan*

Subsection (a) requires the Secretary of Homeland Security to develop a plan for deploying technology and infrastructure resources to the borders. This plan must include: a detailed assessment of the need for infrastructure and technology at or near the international borders, including at the ports of entry, the ways in which these needs will be addressed; the methods used by drug and alien smuggling organizations and countermeasures that can address those methods; benchmarks and systems for measuring the security of the borders and to assess the flow of legal commerce; and whether there are alternate ways of achieving these goals, including public-private partnerships, consultations with local officials, and opportunities for small businesses.

Subsection (b) allows the Secretary to use plans and reports already required by law to meet this requirement.

*Section 503. Surge deployment*

Subsection (a) adds new section 448 to the HSA to authorize the Commissioner of CBP to deploy existing surge teams to the ports of entry in order to respond to intelligence-related threats or to augment existing agency operations in situations where additional staffing is needed for a limited period of time.

Subsection (b) makes clerical changes to the table of contents of the HSA.

*Section 504. Enhanced training for Border Patrol agents*

Subsection (a) adds new section 449 to the HSA to require the Secretary to enhance the training provided to Border Patrol agents in the field to ensure that they are adequately prepared to deal with the specific situation at the stations they are deployed to. It requires that the training provided include station specific threat analyses and enforcement plans to ensure that Border Patrol agents understand enforcement priorities and how their deployments reflect those priorities. It also requires that agents receive training on survival skills, and on how to effectively and respectfully communicate with the public.

Subsection (b) makes clerical changes to the table of contents of the HSA.

*Section 505. Outbound inspections*

This section codifies the Department's current outbound inspections program, in which CBP engages in targeted inspections of individuals who are exiting the United States at air, land, and sea ports of entry. The purpose of this section is to ensure that CBP continues to vigorously enforce laws regarding the inspection of individuals and goods leaving the United States. CBP already conducts outbound operations on a risk-based basis at all land, air, and maritime ports of entry. It is the intent of this section to require CBP to maintain those programs, not to require the deployment of additional resources.

Subsection (a) requires that CBP institute an outbound inspections program at land, air, and maritime ports of entry.

Subsection (b) requires CBP to leverage existing resources and capabilities within the Department to ensure that risk-based outbound inspections are conducted routinely and that these inspections are conducted safely and efficiently. CBP is also required to develop a strategy to mitigate the efforts of smuggling organizations to circumvent outbound inspections, and to collect identifying information that can be used by the entry/exit system maintained by US-VISIT on individuals that are inspected through the program.

Subsection (c) requires that these outbound inspections not add significantly to wait times at the border.

*Section 506. Situational awareness of the northern border*

This section requires the Secretary of Homeland Security to develop a plan to enhance the Department's knowledge of and access to information about activity along the nearly 3,000 miles of northern border in order to address problems identified by a Government Accountability Office report requested by the Committee.

Subsection (a) defines the “northern border” as the land and maritime border between the United States and Canada, and defines “situational awareness” as the perception of activity at and between the air, land, and maritime ports of entry.

Subsection (b) requires the Secretary to submit a plan for improving situational awareness over the northern border within 180 days of enactment. The plan must include an assessment of the current assets and technologies deployed to the northern border, a description of other assets that may be needed to improve situational awareness, and an analysis of how the Department will improve information sharing and coordination among law enforcement agencies operating along the northern border.

*Section 507. Office of International Travel Security and Screening*

Subsection (a) adds new section 431 to the HSA to establish an Office of International Travel Security and Screening (ITSS), headed by an Assistant Secretary, with primary responsibility for US-VISIT, the Visa Waiver Program, and the Screening Coordination Office. The Assistant Secretary is charged with developing a strategic plan and coordinating all activities within DHS related to identifying, interdicting, and preventing terrorist travel. The ITSS is also charged with generating an annual report to Congress concerning the characteristics of individuals who overstay the terms of their admission into the United States each year.

Subsection (b) requires that the Assistant Secretary for ITSS develop a plan for fully implementing the biometric entry and exit system that section 217 of the Immigration and Nationality Act (P.L. 82-414; 8 U.S.C. § 1187) previously required and submit it to this Committee and the House Homeland Security Committee within 270 days of enactment. Additionally, the Secretary must conduct a review of this system to ensure that all entry and exit records for air and sea passengers are being accurately matched, and that biographic exit data collected by the outbound inspections program authorized by section 505 of this bill is used to generate a statistically significant picture of the situation along the border. The review is also required to determine whether visa overstay rates should be used instead of visa denial rates for the purposes of determining eligibility for the Visa Waiver Program.

Subsection (c) requires the Secretary, not later than a year after enactment of the Act, to place ITSS office within the Department.

*Section 508. Visa Security*

This section adds new section 449A to the HSA to address structural problems with and insufficient progress in implementation of the Visa Security Program (VSP), which places criminal investigators at consular posts overseas as an added layer of security in the visa issuing process. Subsection (a) amends the HSA to require DHS and the Department of State (State) to implement an electronic system to notify airlines when a traveler’s visa has been cancelled and to do so by utilizing existing DHS systems for communicating electronically with the airlines.

Subsection (b) requires DHS and State to issue standard operating procedures at all consular posts, and to implement a system for mediating visa revocation decisions. It requires DHS and State to review all visa issuing policies to ensure that all individuals as-

sociated with terrorism are denied visas, and to develop a plan for deploying visa security officers to all high-risk consular posts.

Lastly, subsection (c) requires DHS to provide adequate training for visa security officers, including training on fraud detection and day-to-day consular operations, and to ensure that visa security officers are not bypassed for promotion because of their participation in the program.

*Section 509. Report on border security task forces, drug intelligence centers, and State and major urban area fusion centers*

Subsection (a) requires that the Comptroller General conduct a study on interagency border security task forces, drug intelligence and information sharing centers, and fusion centers along the land or maritime borders, and submit the results of the study to this Committee and the House Homeland Security Committee within 270 days of enactment.

Subsection (b) requires that the report include the number and funding of these interagency forums, an evaluation of their missions and functions, and an assessment of their costs and benefits including suggestions for how they may be improved.

*Section 510. Enhanced agriculture inspection*

Subsection (a) adds new section 421A to the HSA to strengthen the agriculture inspection mission of U.S. Customs and Border Protection (CBP). It requires the Secretary, acting through the Commissioner of CBP, to establish appropriate career paths, identify training opportunities, and develop staffing retention plans for CBP Agriculture Specialists. It also requires an evaluation of the equipment support available to agriculture inspection stations and authorizes an interagency rotation program between agriculture inspection personnel of CBP and the Department of Agriculture.

Subsection (b) requires the Secretary, acting through the Commissioner of CBP, to submit to this Committee and the House Homeland Security Committee a report on the status of previous improvement action plans and on the implementation of provisions of this section. Additionally, the Secretary, acting through the Commissioner of CBP, must also submit the results of the equipment review, required under subsection (a), within 270 days of enactment of this Act.

Subsection (c) makes technical and conforming amendments to the table of contents in the HSA.

*Section 511. Report on status of unobligated balances in U.S. Customs and Border Protection Customs User Fee Account*

This section requires the Secretary of Homeland Security to submit a report to this Committee and the House Homeland Security Committee regarding the status of \$640,000,000 in unobligated balances in the Customs User Fee Account within 90 days of enactment.

*Section 512. Government Accountability Office report*

Subsection (a) requires the Comptroller General to submit, within one year of enactment, a report analyzing the effectiveness of offices within the Department that promote integrity and investigate

allegations of misconduct at CBP and ICE to this Committee and the House Homeland Security Committee.

Subsection (b) requires that this report to evaluate the Department's efforts to address corruption, including an assessment of the scope and level of activities related to corruption (e.g. investigations, arrests, etc.), and to make recommendations on how to improve the integrity and professionalism of the workforce. The report also must address integrity training efforts within the Department and the overall impact that corruption has on funding.

*Section 513. Border security on certain federal lands*

This section requires that DHS be given access to federal lands within 100 miles of the southern border with Mexico in order to conduct routine motorized patrols and erect temporary infrastructure.

Subsection (a) defines federal lands as all land under control of the Secretary of Agriculture and the Secretary of the Interior.

Subsection (b) requires that DHS be given access to these lands, and directs the Secretary of Homeland Security to ensure that security activities on federal lands protect natural and cultural resources.

Subsection (c) requires DHS to submit an annual inventory of costs incurred by federal agencies as a result of illegal border activity.

Subsection (d) clarifies that this new authority for DHS does not apply to any private or State-owned land within the boundaries of federal lands.

*Section 514. Z Backscatter Van technology report*

Subsection (a) requires the Secretary submit a report to Congress on the Department of Homeland Security's use of Z Backscatter Van technology to provide images of the inner contents of containers and vehicles, not later than one year after the date of enactment of the legislation.

Subsection (b) identifies certain elements which must be included in the report. Specifically, it requires the report to include a list of agencies or offices that use the Z Backscatter Van technology, information regarding the technology's detection capabilities, information regarding the privacy protections and privacy training used in conjunction with the equipment, and information regarding any lawsuits or complaints filed against the Department regarding the use of this section.

Finally, subsection (c) permits the Secretary to submit a classified annex to the report.

*Section 515. Refugee status report*

This section requires the Secretary to submit a report to this Committee and the House Homeland Security Committee identifying the number of refugees that applied for legal permanent resident status within one year of enactment.

## TITLE VI—INTELLIGENCE AND INFORMATION SHARING PROVISIONS

*Section 601. Authorization of intelligence activities*

Subsection (a) provides that funds authorized or made available to the Department for intelligence activities are deemed to be specifically authorized by Congress pursuant to section 504 of the National Security Act of 1947 (P.L. 80–235; 50 U.S.C. §414) which conditions the obligation of funds for intelligence activities on a specific authorization from Congress.

Subsection (b) makes clear that the authorization for the Department’s intelligence activities under this bill do not constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or the laws of the United States.

*Section 602. Classified National Security Information Program for States, Local Government, Indian Tribes, and Private Sector Entities*

Subsection 602(a) adds to the HSA a new section (210G), entitled Classified National Security Information Program for States, Local Government, Indian Tribes, and Private Sector Entities.

New HSA subsection 210G(a) provides definitions for the terms “classified information” and “Program.”

New HSA subsection 210G(b) establishes a Classified National Security Information Program for States, Local Government, Indian Tribes, and Private Sector Entities (Program) to safeguard and govern access to classified information shared by the Federal government with States, local government, Indian tribes, and private sector entities.

New HSA subsection 210G(c) describes the Secretary’s responsibilities as manager of the Program. Specifically, the Secretary is charged with overseeing Program accreditation, periodic inspection, and monitoring of all facilities where classified information is used or stored that are owned or operated by a State, local government, or Indian tribe; processing and tracking applications for security clearances for an employee of a State, local government, Indian tribe, or private entity; developing and maintaining a security profile of facilities owned or operated by a State, local government, or Indian tribe that have access to classified information; developing training for all employees of a State, local government, Indian tribe, or private entity who have been determined eligible for access to classified information; and any other responsibilities given to the Secretary by the President.

New HSA subsection 210G(d) provides that the Department, not later than December 31, 2012, and every year thereafter until December 31, 2024, shall submit to this Committee and the House Homeland Security Committee a report of the activities of the Department under Executive Order 13549, or any successor thereto, and this section. Executive Order 13549 establishes the Program that is codified by section 210G.

New HSA subsection 210G(e) provides that not later than one year after the date of enactment of this section, the Secretary, in coordination with the Secretary of Defense, the Director of National Intelligence, and the Director of the Office of Personnel Management, shall submit to this Committee and the House Homeland Se-



curity Committee a report on the activities conducted by the Federal Government to support the efficient management and verification of security clearances, including by employees of States, local governments, Indian tribes, and private sector entities.

Subsection 602(b) makes technical and conforming amendments to the HSA.

*Section 603. Flexible personnel management at the Office of Intelligence and Analysis*

This section amends the HSA by adding a new section 846, granting to the Secretary several appointment and compensation flexibilities to assist in recruiting and retaining key personnel in the Office of Intelligence and Analysis.

Under subsection (a) of new section 846, the Secretary is authorized, in coordination with the Director of the Office of Personnel Management, to convert competitive service positions (and the incumbents of such position) within the Office and to establish new positions in the excepted service classification within the Office, if the Secretary determines such converted or new excepted-service positions are necessary to carry out the intelligence functions of the Department. The Secretary would also have latitude to fix the level of basic pay for these positions, not to exceed the basic pay of level III of the Executive Schedule, and to appoint individuals to these positions without regard to competitive-hiring requirements.

Under subsection (b) of new section 846, the Secretary may allow the Office of Intelligence and Analysis to adopt compensation authority, performance management authority, and scholarship authority that has been authorized for other elements of the intelligence community, if adoption of that authority by the Office would improve the management and performance of the intelligence community overall. The Secretary's authority under this subsection may be exercised only with the concurrence of the Director of National Intelligence, or for those matters that fall under the responsibilities of OPM, may be exercised only in coordination with the Director of OPM. The Secretary must notify this Committee, the House Homeland Security Committee, and the Senate and House Select Committees on Intelligence within 60 days after any such authority takes effect at the Office of Intelligence and Analysis.

*Section 604. Under Secretary for Intelligence and Analysis technical correction*

This section amends section 103(a) of the HSA (P.L. 107-296, § 103(a); 6 U.S.C. § 113) by inserting a new paragraph that lists the Under Secretary for Intelligence and Analysis as an officer of the Department.

*Section 605. Fusion center funding report*

This section requires the Secretary to submit to this Committee and the House Homeland Security Committee, not later than 60 days after the end of fiscal year 2012 and each year thereafter through fiscal year 2016, a report detailing the amount of federal funds provided directly or indirectly to each State and major urban area fusion center during the fiscal year.

*Section 606. Report on fusion centers*

Subsection (a) requires the Comptroller General to submit, not later than 270 days after the date of enactment, a report to this Committee and the House Homeland Security Committee that evaluates the process, or feasibility of developing a process, under which the Office of Intelligence and Analysis assesses the results achieved from the award of grants that support the activities of State and major urban area fusion centers.

Subsection (b) requires that the report include a discussion of whether the Office of Intelligence and Analysis has, or could develop, a process that: (1) establishes and requires reporting relating to measurable results each State and major urban area fusion center is expected to achieve with grant funding; (2) establishes annual performance targets towards achieving those measurable results; (3) allows the office to review how State and major urban area fusion centers propose to use grant funds, evaluate the activities of State and major urban area fusion centers, and assess whether State and major urban area fusion centers are using grant funds to achieve priority capabilities; (4) establishes a means to track and measure progress towards achieving performance targets and expected results; and (5) assesses progress and results achieved by State and major urban area fusion centers and uses this information to inform decisions regarding grant funding.

*Section 607. GAO report on analytical capabilities*

This section requires the Comptroller General, not later than a year after enactment, to submit to this Committee and the House Homeland Security Committee an unclassified report on the analytical capabilities of the Department in the area of intelligence. This section requires that this report include an analysis of the reliance on contractors, a description of whether the Department develops analysts with the proper level of specialization, a description of whether there are duplicative intelligence analysis organizations within DHS and whether there are any gaps, and a description of the accuracy and usefulness of the analytical products produced by the Department.

*Section 608. Audit on privacy and civil liberties and update on privacy and civil liberties impact assessments*

Subsection (a) requires the DHS Inspector General, not later than one year after the date of enactment, to conduct an audit on the activities of the Department to ensure that State and local fusion centers take appropriate measures to protect privacy and civil liberties and to submit a report on the results of the audit to this Committee and the House Homeland Security Committee.

Subsection (b) requires the DHS Privacy Officer, not later than 180 days after enactment, to update the Privacy Impact Assessment for the State, Local, and Regional Fusion Center Initiative completed in 2008 pursuant to the Implementing Recommendations of the 9/11 Commission Act of 2007 and to submit the updated assessment to this Committee and the House Homeland Security Committee.

Subsection (c) requires the DHS Officer for Civil Liberties and Civil Rights, not later than 180 days after enactment, to update the Civil Liberties Impact Assessment for the State, Local and Re-

gional Fusion Center Initiative (completed in 2008 pursuant to the Implementing Recommendations of the 9/11 Commission Act of 2007) and to submit the updated assessment to this Committee and the House Homeland Security Committee.

TITLE VII—SCIENCE AND TECHNOLOGY PROVISIONS

*Section 701. Directorate of Science and Technology*

Section 701(a) amends section 301 of the HSA (P.L. 107–296, § 301; 6 U.S.C. § 181) to clarify that the responsibility of the Science & Technology (S&T) Directorate is to act as the principal entity in the Department responsible for research, development, testing, and evaluation of new technologies in the Department.

Section (b) amends section 302 of the HSA to restore the S&T Under Secretary’s authority to conduct research and development of technologies to counter all types of nuclear and radiological terrorist threats. This authority had been transferred to the Domestic Nuclear Detection Office by the SAFE Port Act (P.L. 109–347, § 501). This section also bolsters S&T’s ability to reconstitute an integrated, all-hazards portfolio of nuclear and radiological countermeasures research that will include the development of prevention, detection, mitigation, response and recovery capabilities; it will end the fragmentation that has prevented the Department from achieving synergies through integrating research on the most serious terrorist threats; and it will end the compartmentalization that has prevented S&T from carrying out its primary mission of strategic planning and its responsibilities for “establishing priorities” for the Department’s research and development funding.

Section (b) also clarifies the Directorate’s authority and responsibility to coordinate and conduct strategic planning within the Department for basic, advanced, and applied research and development; makes clear the Under Secretary’s responsibility to support the Department’s acquisition of systems and technologies by providing the Secretary with independent assessments; and builds on S&T’s existing capabilities by codifying its role in providing technical assistance to all Department entities for the development, testing, evaluation, and acquisition of systems and technologies.

Section (c) amends section 307 of the HSA (P.L. 107–296, § 307; 6 U.S.C. § 187) to clarify that the Homeland Security Advanced Research Projects Agency must focus its resources on high-priority research areas, including border and maritime security, cyber security, aviation security, transportation security, catastrophic response and recovery capabilities, and other important homeland security missions.

*Section 702. Director of Testing and Evaluation*

Section 702 amends section 308 of the HSA (P.L. 107–296, § 308; 6 U.S.C. § 188) by adding a new subsection (d) that codifies the existing non-statutory position of Director of Testing and Evaluation in the S&T Directorate.

New HSA subsection (d)(1) defines the term “operational testing and evaluation activity.”

New HSA subsection (d)(2) establishes the position of Director of Testing and Evaluation within the Directorate of Science & Technology.

New HSA subsection (d)(3)(A) states that the Director will serve as the principal adviser to the Under Secretary for S&T for all testing and evaluation activities in the Department.

New HSA subsection (d)(3)(B) sets forth the responsibilities, authorities, and functions of the Director. It is intended that these responsibilities, authorities, and functions will codify existing Department policy pursuant to Management Directive 102-1 and track the delegation of authority set forth in Delegation Number 10003. The Director will establish testing and evaluation policies, procedures, standards, and practices within the Department; will provide the Acquisition Review Board with independent assessments of operational testing and evaluation activities; and will serve as an internal control within the investment review process established by this bill.

New HSA subsection (d)(3)(C) also requires that the Director of Testing and Evaluation have prompt access to all testing, evaluation and acquisition records and data within the Department that the Director determines necessary to carry out the Director's functions and may designate observers to be present for all stages of operational testing and evaluation activity.

*Section 703. Five-Year research and development investment plan; technology readiness assessment process; and availability of testing facilities and equipment*

Section 703 adds three new sections to the HSA. First, new HSA section 319 requires the Secretary, acting through the Under Secretary for Science & Technology, to develop a five-year research and development investment plan to guide all expenditures by the Department for basic, advanced, or applied research and technology development activities. New section 319(c) requires the plan to set forth anticipated annual research and development expenditures for each fiscal year until 2017; establish annual milestones and objectives for those investments; and account for the operational requirements of State and local governments. Submission of the plan is required within 180 days of enactment and each year thereafter.

Second, new HSA section 320 requires the Secretary to establish a uniform, Department-wide process for evaluating and assessing the maturity and readiness level of new or established technologies and systems.

Finally, new HSA section 321 authorizes the Under Secretary for Science & Technology to make available to any person or entity, for an appropriate fee, the services of any center or testing facility owned and operated by the Department for testing of technology designed to advance the homeland security mission.

*Section 704. National Academy of Sciences report*

This section directs the Secretary to enter into an agreement with the National Research Council to produce a ten-year update of its post-9/11 report, "Making the Nation Safer: The Role of Science and Technology in Countering Terrorism."

Subsection (a) provides definitions for the "2002 report" and the "National Research Council."

Subsection (b) requires the Secretary, within 90 days of the enactment of the Act, to enter into an agreement with the National Research Council to write the report required by this section.

Subsection (c) requires that the report assess progress since the original 2002 report and make recommendations to guide the Federal government to strengthen and improve homeland security over the next decade.

Subsection (d) requires that the report be submitted to this Committee and the House Homeland Security Committee not later than one year after enactment of this Act.

Subsection (e) requires that the report must be submitted in unclassified form, but may include a classified annex.

*Section 705. Domestic Nuclear Detection Office*

This section strengthens the capacity of the Domestic Nuclear Detection Office (DNDO) to carry out its primary mission of coordinating the implementation of the domestic portion of the Global Nuclear Detection Architecture. Further, it focuses DNDO's resources on planning and coordinating nuclear detection activities across the Department; accelerating the deployment of commercially available radiation detection equipment to federal, State, and local agencies; and integrating the Department's prevention, intelligence, and law enforcement functions with its existing radiation detection capabilities.

Subsection (a) clarifies DNDO's authorities for strategic planning and interagency coordination of the Department's nuclear threat prevention and detection programs and capabilities. Paragraph (1) eliminates the duplicative requirement that DNDO also function as a second science and technology agency in the Department responsible for conducting high-risk research and development. Paragraph (3) clarifies and strengthens DNDO's authority to coordinate strategic planning and investments within the Department and with other agencies and State and local entities, to detect and prevent illegal trafficking in nuclear or radiological weapons-making materials or technology. Paragraph (4) encourages DNDO to support and enhance information sharing with State and local agencies.

Section (b) adds new section 1908 to the HSA that provides DNDO with new authority to carry out its coordinating functions within the Department and with other federal agencies by requiring DNDO to prepare a Department-wide five-year strategic plan and consolidated budget of investments to strengthen and integrate the capabilities of all agencies in the Department that carry out nuclear threat detection and prevention missions in the domestic portion of the Global Nuclear Detection Architecture. This subsection also requires the Director of DNDO to submit the plan to this Committee and the House Homeland Security Committee within 270 days of the date of enactment. Additionally, the Director is required to provide an update on the plan within two years of its initial submission.

*Section 706. Flexible personnel management at the Science and Technology Directorate*

This section provides that, in filling scientific and engineering positions in the Science and Technology Directorate requiring an advanced degree, the Secretary may make appointments without regard to competitive hiring requirements. This authority will expire on January 1, 2014.

*Section 707. Technical and conforming amendments*

This section makes certain technical and conforming amendments to the table of contents of the HSA.

## V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirement of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact.

## VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The cost estimate prepared by the Congressional Budget Office was not available for inclusion in this report. The estimate will be provided separately when it is available.

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

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1546 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**TITLE VI HOMELAND SECURITY****CHAPTER 1 HOMELAND SECURITY ORGANIZATION**

\* \* \* \* \*

**Subchapter I. Department of Homeland Security**

\* \* \* \* \*

**SEC. 112. SECRETARY; FUNCTIONS.****(a) SECRETARY.—**

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

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

(3) **FUNCTIONS VESTED IN SECRETARY.**—All functions of all officers, employees, and organizational units of the Department are vested in the Secretary.

**(b) FUNCTIONS.—The Secretary—**

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

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

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

each other and with appropriate databases of other Departments.

(c) COORDINATION WITH NON-FEDERAL ENTITIES.—With respect to homeland security, the Secretary shall coordinate through [the Office of State and Local Coordination (established under section 361 of this title)] *the Office of Intergovernmental Affairs described under section 801* (including the provision of training and equipment) with State and local government personnel, agencies, and authorities, with the private sector, and with other entities, including by—

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

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

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

(d) MEETINGS OF NATIONAL SECURITY COUNCIL.—The Secretary may, subject to the direction of the President, attend and participate in meetings of the National Security Council.

(e) ISSUANCE OF REGULATIONS.—The issuance of regulations by the Secretary shall be governed by the provisions of chapter 5 of Title 5, except as specifically provided in this chapter, in laws granting regulatory authorities that are transferred by this chapter, and in laws enacted after November 25, 2002.

(f) SPECIAL ASSISTANT TO THE SECRETARY.—The Secretary shall appoint a Special Assistant to the Secretary who shall be responsible for—

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

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

(C) advise the Secretary on private sector preparedness issues, including effective methods for—

(i) promoting voluntary preparedness standards to the private sector; and

- (ii) assisting the private sector in adopting voluntary preparedness standards;
  - (5) working with Federal laboratories, federally funded research and development centers, other federally funded organizations, academia, and the private sector to develop innovative approaches to address homeland security challenges to produce and deploy the best available technologies for homeland security missions;
  - (6) promoting existing public-private partnerships and developing new public-private partnerships to provide for collaboration and mutual support to address homeland security challenges;
  - (7) assisting in the development and promotion of private sector best practices to secure critical infrastructure;
  - (8) providing information to the private sector regarding voluntary preparedness standards and the business justification for preparedness and promoting to the private sector the adoption of voluntary preparedness standards;
  - (9) coordinating industry efforts, with respect to functions of the Department of Homeland Security, to identify private sector resources and capabilities that could be effective in supplementing Federal, State, and local government agency efforts to prevent or respond to a terrorist attack;
  - (10) coordinating with **the Directorate of Border and Transportation Security** *Commissioner, Customs and Border Protection* and the Assistant Secretary for Trade Development of the Department of Commerce on issues related to the travel and tourism industries; and
  - (11) consulting with **the Office of State and Local Government Coordination and Preparedness** *the Office of Intergovernmental Affairs* on all matters of concern to the private sector, including the tourism industry.
- (g) STANDARDS POLICY.—All standards activities of the Department shall be conducted in accordance with section 12(d) of the National Technology Transfer Advancement Act of 1995 (15 U.S.C. 272 note) and Office of Management and Budget Circular A-119.

**SEC. 113. OTHER OFFICERS**

- (a) DEPUTY SECRETARY; UNDER SECRETARIES.—There are the following officers, appointed by the President, by and with the advice and consent of the Senate:
- (1) A Deputy Secretary of Homeland Security, who shall be the Secretary's first assistant for purposes of subchapter III of chapter 33 of Title 5.
  - (2) An Under Secretary for Science and Technology.
  - (3) An **Under Secretary for Border and Transportation Security** *Under Secretary for Policy*.
  - (4) An Administrator of the Federal Emergency Management Agency.
  - (5) A Director of **the Bureau of** *U.S. Citizenship and Immigration Services*.
  - (6) An Under Secretary for Management.
  - (7) A Director of the Office of Counternarcotics Enforcement.
  - (8) An Under **Secretary** responsible for overseeing critical infrastructure protection, cybersecurity, and other related pro-



grams of the Department] *Secretary for Infrastructure Protection and Resilience.*

(9) *An Under Secretary for Intelligence and Analysis.*

~~[(9)](10)~~ Not more than 12 Assistant Secretaries.

~~[(10)](11)~~ A General Counsel, who shall be the chief legal officer of the Department.

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

(c) COMMANDANT OF THE COAST GUARD.—To assist the Secretary in the performance of the Secretary’s functions, there is a Commandant of the Coast Guard, who shall be appointed as provided in section 44 of Title 14 and who shall report directly to the Secretary. In addition to such duties as may be provided in this chapter and as assigned to the Commandant by the Secretary, the duties of the Commandant shall include those required by section 2 of Title 14.

(d) OTHER OFFICERS.—To assist the Secretary in the performance of the Secretary’s functions, there are the following officers, appointed by the President:

- (1) A Director of the Secret Service.
- (2) A Chief Information Officer.
- (3) An Officer for Civil Rights and Civil Liberties.
- (4) A Director for Domestic Nuclear Detection.

(e) CHIEF FINANCIAL OFFICER.—There shall be in the Department a Chief Financial Officer, as provided in chapter 9 of Title 31.

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

\* \* \* \* \*

**Subchapter II. Information Analysis and Infrastructure Protection**

\* \* \* \* \*

**SEC. 121. [INFORMATION AND ANALYSIS AND INFRASTRUCTURE PROTECTION] INTELLIGENCE AND ANALYSIS.**

(a) INTELLIGENCE AND ANALYSIS [AND INFRASTRUCTURE PROTECTION].—There shall be in the Department an Office of Intelligence and Analysis[ and an Office of Infrastructure Protection].

(b) UNDER SECRETARY FOR INTELLIGENCE AND ANALYSIS[ AND ASSISTANT SECRETARY FOR INFRASTRUCTURE PROTECTION].—

(1) OFFICE OF INTELLIGENCE AND ANALYSIS.—The Office of Intelligence and Analysis shall be headed by an Under Secretary for Intelligence and Analysis, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) CHIEF INTELLIGENCE OFFICER.—The Under Secretary for Intelligence and Analysis shall serve as the Chief Intelligence Officer of the Department.

~~[(3) OFFICE OF INFRASTRUCTURE PROTECTION.—The Office of Infrastructure Protection shall be headed by an Assistant Sec-~~

retary for Infrastructure Protection, who shall be appointed by the President.】

(c) DISCHARGE OF RESPONSIBILITIES.—The Secretary shall ensure that the responsibilities of the Department relating to information analysis【 and infrastructure protection】, including those described in subsection (d) of this section, are carried out through the Under Secretary for Intelligence and Analysis【 or the Assistant Secretary for Infrastructure Protection, as appropriate】.

(d) RESPONSIBILITIES OF SECRETARY RELATING TO INTELLIGENCE AND ANALYSIS【 AND INFRASTRUCTURE PROTECTION】.—The responsibilities of the Secretary relating to intelligence and analysis 【and infrastructure protection】 shall be as follows:

(1) To access, receive, and analyze law enforcement information, intelligence information, and other information from agencies of the Federal Government, State and local government agencies (including law enforcement agencies), and private sector entities, and to integrate such information, in support of the mission responsibilities of the Department and the functions of the National Counterterrorism Center established under section 119 of the National Security Act of 1947 (50 U.S.C. 404o), in order to—

(A) identify and assess the nature and scope of terrorist threats to the homeland;

(B) detect and identify threats of terrorism against the United States; and

(C) understand such threats in light of actual and potential vulnerabilities of the homeland.

【(2) To carry out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States, including the performance of risk assessments to determine the risks posed by particular types of terrorist attacks within the United States (including an assessment of the probability of success of such attacks and the feasibility and potential efficacy of various countermeasures to such attacks).】

【(3)】(2) To integrate, *in coordination with the Office of Infrastructure Protection*, relevant information, analysis, and vulnerability assessments (regardless of whether such information, analysis or assessments are provided by or produced by the Department) in order to—

(A) identify priorities for protective and support measures regarding terrorist and other threats to homeland security by the Department, other agencies of the Federal Government, State, and local government agencies and authorities, the private sector, and other entities; and

(B) prepare finished intelligence and information products in both classified and unclassified formats, as appropriate, whenever reasonably expected to be of benefit to a State, local, or tribal government (including a State, local, or tribal law enforcement agency) or a private sector entity.

【(4)】(3) To ensure, pursuant to section 122 of this title, the timely and efficient access by the Department to all information necessary to discharge the responsibilities under this sec-

tion, including obtaining such information from other agencies of the Federal Government.

[(5)](5) To develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States, including power production, generation, and distribution systems, information technology and telecommunications systems (including satellites), electronic financial and property record storage and transmission systems, emergency preparedness communications systems, and the physical and technological assets that support such systems.

[(6)](6) To recommend measures necessary to protect the key resources and critical infrastructure of the United States in coordination with other agencies of the Federal Government and in cooperation with State and local government agencies and authorities, the private sector, and other entities.]

[(7)](4) To review, analyze, and make recommendations for improvements to the policies and procedures governing the sharing of information within the scope of the information sharing environment established under section 485 of this title, including homeland security information, terrorism information, and weapons of mass destruction information, and any policies, guidelines, procedures, instructions, or standards established under that section.

[(8)](5) To disseminate, as appropriate, information analyzed by the Department within the Department, to other agencies of the Federal Government with responsibilities relating to homeland security, and to agencies of State and local governments and private sector entities with such responsibilities in order to assist in the deterrence, prevention, preemption of, or response to, terrorist attacks against the United States.

[(9)](6) To consult with the Director of National Intelligence and other appropriate intelligence, law enforcement, or other elements of the Federal Government to establish collection priorities and strategies for information, including law enforcement-related information, relating to threats of terrorism against the United States through such means as the representation of the Department in discussions regarding requirements and priorities in the collection of such information.

[(10)](7) To consult with State and local governments and private sector entities to ensure appropriate exchanges of information, including law enforcement-related information, relating to threats of terrorism against the United States.

[(11)](8) To ensure that—

(A) any material received pursuant to this chapter is protected from unauthorized disclosure and handled and used only for the performance of official duties; and

(B) any intelligence information under this chapter is shared, retained, and disseminated consistent with the authority of the Director of National Intelligence to protect intelligence sources and methods under the National Security Act of 1947 (50 U.S.C. 401 et seq.) and related procedures and, as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information.

[(12)](9) To request additional information from other agencies of the Federal Government, State and local government agencies, and the private sector relating to threats of terrorism in the United States, or relating to other areas of responsibility assigned by the Secretary, including the entry into cooperative agreements through the Secretary to obtain such information.

[(13)](10) To establish and utilize, in conjunction with the chief information officer of the Department, a secure communications and information technology infrastructure, including data-mining and other advanced analytical tools, in order to access, receive, and analyze data and information in furtherance of the responsibilities under this section, and to disseminate information acquired and analyzed by the Department, as appropriate.

[(14)](11) To ensure, in conjunction with the chief information officer of the Department, that any information databases and analytical tools developed or utilized by the Department—

(A) are compatible with one another and with relevant information databases of other agencies of the Federal Government; and

(B) treat information in such databases in a manner that complies with applicable Federal law on privacy.

[(15)](12) To coordinate training and other support to the elements and personnel of the Department, other agencies of the Federal Government, and State and local governments that provide information to the Department, or are consumers of information provided by the Department, in order to facilitate the identification and sharing of information revealed in their ordinary duties and the optimal utilization of information received from the Department.

[(16)](13) To coordinate with elements of the intelligence community and with Federal, State, and local law enforcement agencies, and the private sector, as appropriate.

[(17)](14) To provide intelligence and information analysis and support to other elements of the Department.

[(18)](15) To coordinate and enhance integration among the intelligence components of the Department, including through strategic oversight of the intelligence activities of such components.

[(19)](16) To establish the intelligence collection, processing, analysis, and dissemination priorities, policies, processes, standards, guidelines, and procedures for the intelligence components of the Department, consistent with any directions from the President and, as applicable, the Director of National Intelligence.

[(20)](17) To establish a structure and process to support the missions and goals of the intelligence components of the Department.

[(21)](18) To ensure that, whenever possible, the Department—

(A) produces and disseminates unclassified reports and analytic products based on open-source information; and

(B) produces and disseminates such reports and analytic products contemporaneously with reports or analytic products concerning the same or similar information that the

Department produced and disseminated in a classified format.

**[(22)](19)** To establish within the Office of Intelligence and Analysis an internal continuity of operations plan.

**[(23)](20)** Based on intelligence priorities set by the President, and guidance from the Secretary and, as appropriate, the Director of National Intelligence—

(A) to provide to the heads of each intelligence component of the Department guidance for developing the budget pertaining to the activities of such component; and

(B) to present to the Secretary a recommendation for a consolidated budget for the intelligence components of the Department, together with any comments from the heads of such components.

**[(24)](21)** To perform such other duties relating to such responsibilities as the Secretary may provide.

**[(25)]** To prepare and submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security in the House of Representatives, and to other appropriate congressional committees having jurisdiction over the critical infrastructure or key resources, for each sector identified in the National Infrastructure Protection Plan, a report on the comprehensive assessments carried out by the Secretary of the critical infrastructure and key resources of the United States, evaluating threat, vulnerability, and consequence, as required under this subsection. Each such report—

**[(A)]** shall contain, if applicable, actions or countermeasures recommended or taken by the Secretary or the head of another Federal agency to address issues identified in the assessments;

**[(B)]** shall be required for fiscal year 2007 and each subsequent fiscal year and shall be submitted not later than 35 days after the last day of the fiscal year covered by the report; and

**[(C)]** may be classified.]

(e) STAFF.—

(1) IN GENERAL.—The Secretary shall provide the Office of Intelligence and Analysis and the Office of Infrastructure Protection with a staff of analysts having appropriate expertise and experience to assist such offices in discharging responsibilities under this section.

(2) PRIVATE SECTOR ANALYSTS.—Analysts under this subsection may include analysts from the private sector.

(3) SECURITY CLEARANCES.—Analysts under this subsection shall possess security clearances appropriate for their work under this section.

(f) DETAIL OF PERSONNEL.—

(1) IN GENERAL.—In order to assist the Office of Intelligence and Analysis and the Office of Infrastructure Protection in discharging responsibilities under this section, personnel of the agencies referred to in paragraph (2) may be detailed to the Department for the performance of analytic functions and related duties.

(2) COVERED AGENCIES.—The agencies referred to in this paragraph are as follows:

- (A) The Department of State.
- (B) The Central Intelligence Agency.
- (C) The Federal Bureau of Investigation.
- (D) The National Security Agency.
- (E) The National Geospatial-Intelligence Agency.
- (F) The Defense Intelligence Agency.
- (G) Any other agency of the Federal Government that the President considers appropriate.

(3) COOPERATIVE AGREEMENTS.—The Secretary and the head of the agency concerned may enter into cooperative agreements for the purpose of detailing personnel under this subsection.

(4) BASIS.—The detail of personnel under this subsection may be on a reimbursable or non-reimbursable basis.

(g) FUNCTIONS TRANSFERRED.—In accordance with subchapter XII of this chapter, there shall be transferred to the Secretary, for assignment to the Office of Intelligence and Analysis and the Office of Infrastructure Protection [under this section], the functions, personnel, assets, and liabilities 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 National Infrastructure Simulation and Analysis Center of the Department of Energy and the energy security and assurance program and activities of the Department, including 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.

\* \* \* \* \*

**Subchapter III. Science and Technology in Support of Homeland Security**

\* \* \* \* \*

**[SEC. 181. UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.**

There shall be in the Department a Directorate of Science and Technology headed by an Under Secretary for Science and Technology.]

**SEC. 181. DIRECTORATE OF SCIENCE AND TECHNOLOGY.**

(a) *IN GENERAL.*—There shall be in the Department a Directorate of Science Technology headed by an Under Secretary for Science and Technology.

(b) *RESPONSIBILITIES.*—*The Directorate of Science and Technology shall serve as the primary research, development, testing, and evaluation agency in the Department.*

**SEC. 182. RESPONSIBILITIES AND AUTHORITIES OF THE UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.**

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

- (1) advising the Secretary regarding research and development efforts and priorities in support of the Department's missions;
- (2) 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, [FN1] 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;
- (3) supporting the Under Secretary for Intelligence and Analysis and the Assistant Secretary for Infrastructure Protection, by assessing and testing homeland security vulnerabilities and possible threats;
- (4) 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, except that such responsibility does not extend to human health-related research and development activities;
- (5) establishing priorities for, directing, funding, and conducting national research, development, test and evaluation, and procurement of technology and systems for—
  - (A) preventing the importation of chemical, biological, [L] radiological, nuclear, and related weapons and material; and
  - (B) detecting, preventing, protecting against, and responding to terrorist attacks;
- (6) establishing a system for transferring homeland security developments or technologies to Federal, State, local government, and private sector entities;
- (7) entering into work agreements, joint sponsorships, contracts, or any other agreements with the Department of Energy regarding the use of the national laboratories or sites and support of the science and technology base at those facilities;
- (8) collaborating with the Secretary of Agriculture and the Attorney General as provided in section 8401 of Title 7;
- (9) collaborating with the Secretary of Health and Human Services and the Attorney General in determining any new biological agents and toxins that shall be listed as "select agents" in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to section 262a of Title 42;
- (10) supporting United States leadership in science and technology;
- (11) 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;

(12) coordinating and integrating all research, development, demonstration, testing, and evaluation activities of the Department, *including conducting strategic planning and providing technical assistance for such activities within the Department;*

(13) 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; **[and]**

(14) 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**[.]; and**

*(15) supporting the acquisition of technologies and systems by the Department by providing—*

*(A) the Secretary with independent assessments; and*

*(B) technical assistance within the Department for development, testing, and evaluation;*

*(16) conducting strategic planning within the Department for basic, advanced, and applied research and development; and*

*(17) providing technical assistance within the Department for the development, testing, evaluation, and acquisition of technologies.*

\* \* \* \* \*

**SEC. 187. HOMELAND SECURITY ADVANCED RESEARCH PROJECTS AGENCY.**

(a) DEFINITIONS.—In this section:

(1) FUND.—The term “Fund” means the Acceleration Fund for Research and Development of Homeland Security Technologies established in subsection (c) of this section.

(2) HOMELAND SECURITY RESEARCH.—The term “homeland security research” means research relevant to the detection of, prevention of, protection against, response to, attribution of, and recovery from homeland security threats, particularly acts of terrorism.

(3) HSARPA.—The term “HSARPA” means the Homeland Security Advanced Research Projects Agency established in subsection (b) of this section.

(4) UNDER SECRETARY.—The term “Under Secretary” means the Under Secretary for Science and Technology.

(b) HOMELAND SECURITY ADVANCED RESEARCH PROJECTS AGENCY.—

(1) ESTABLISHMENT.—There is established the Homeland Security Advanced Research Projects Agency.

(2) DIRECTOR.—HSARPA shall be headed by a Director, who shall be appointed by the Secretary. The Director shall report to the Under Secretary.

(3) RESPONSIBILITIES.—The Director shall administer the Fund to award competitive, merit-reviewed grants, cooperative agreements or contracts to public or private entities, including businesses, federally funded research and development centers, and universities. The Director shall administer the Fund to—



(A) support basic and applied homeland security research to promote revolutionary changes in technologies that would promote homeland security;

(B) advance the development, testing and evaluation, and deployment of critical homeland security technologies *to strengthen border and maritime security, cyber security, aviation security, transportation security, catastrophic response and recovery capabilities, and other homeland security missions*; and

(C) accelerate the prototyping and deployment of technologies that would address homeland security vulnerabilities.

(4) TARGETED COMPETITIONS.—The Director may solicit proposals to address specific vulnerabilities identified by the Director.

(5) COORDINATION.—The Director shall ensure that the activities of HSARPA are coordinated with those of other relevant research agencies, and may run projects jointly with other agencies.

(6) PERSONNEL.—In hiring personnel for HSARPA, the Secretary shall have the hiring and management authorities described in section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note; Public Law 105–261). The term of appointments for employees under subsection (c)(1) of that section may not exceed 5 years before the granting of any extension under subsection (c)(2) of that section.

(7) DEMONSTRATIONS.—The Director, periodically, shall hold homeland security technology demonstrations to improve contact among technology developers, vendors and acquisition personnel.

(c) FUND.—

(1) ESTABLISHMENT.—There is established the Acceleration Fund for Research and Development of Homeland Security Technologies, which shall be administered by the Director of HSARPA.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$500,000,000 to the Fund for fiscal year 2003 and such sums as may be necessary thereafter.

(3) COAST GUARD.—Of the funds authorized to be appropriated under paragraph (2), not less than 10 percent of such funds for each fiscal year through fiscal year 2005 shall be authorized only for the Under Secretary, through joint agreement with the Commandant of the Coast Guard, to carry out research and development of improved ports, waterways and coastal security surveillance and perimeter protection capabilities for the purpose of minimizing the possibility that Coast Guard cutters, aircraft, helicopters, and personnel will be diverted from non-homeland security missions to the ports, waterways and coastal security mission.

**Subchapter IV. [Directorate of] Border and Transportation Security**

**PART A. [UNDER SECRETARY FOR] BORDER AND TRANSPORTATION SECURITY**

**[SEC. 201. UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.**

[There shall be in the Department a Directorate of Border and Transportation Security headed by an Under Secretary for Border and Transportation Security.]

**SEC. 202. [RESPONSIBILITIES] BORDER AND TRANSPORTATION RESPONSIBILITIES.**

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 those functions transferred to the Department 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 251 of this title takes effect.

(4) Establishing and administering rules, in accordance with section 236 of this title, 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) Establishing national immigration enforcement policies and priorities.

(6) Except as provided in part C of this subchapter, administering the customs laws of the United States.

(7) Conducting the inspection and related administrative functions of the Department of Agriculture transferred to the Secretary of Homeland Security under section 231 of this title.

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

\* \* \* \* \*

**PART B. UNITED STATES CUSTOMS SERVICE**

**SEC. 211. 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] Secretary, which shall be vested with those functions including, but not limited to those set forth in section 215(7) of this title, 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) OMITTED.

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

\* \* \* \* \*

**PART C. MISCELLANEOUS PROVISIONS**

\* \* \* \* \*

**SEC. 234. PRESERVATION OF TRANSPORTATION SECURITY ADMINISTRATION AS A DISTINCT ENTITY.**

(a) IN GENERAL.—Notwithstanding any other provision of this chapter, and subject to subsection (b) of this section, the Transportation Security Administration shall be maintained as a distinct entity within the Department under the [Under Secretary for Border Transportation and Security] *Secretary*.

(b) SUNSET.—Subsection (a) of this section shall cease to apply 2 years after November 25, 2002.

\* \* \* \* \*

**[SEC. 238. OFFICE FOR DOMESTIC PREPAREDNESS.**

[(a) IN GENERAL.—The Office for Domestic Preparedness shall be within the Directorate of Border and Transportation Security.

[(b) DIRECTOR.—There shall be a Director of the Office for Domestic Preparedness, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director of the Office for Domestic Preparedness shall report directly to the Under Secretary for Border and Transportation Security.

[(c) RESPONSIBILITIES.—The Office for Domestic Preparedness shall have the primary responsibility within the executive branch of Government for the preparedness of the United States for acts of terrorism, including—

[(1) coordinating preparedness efforts at the Federal level, and working with all State, local, tribal, parish, and private sector emergency response providers on all matters pertaining to combating terrorism, including training, exercises, and equipment support;

[(2) coordinating or, as appropriate, consolidating communications and systems of communications relating to homeland security at all levels of government;

[(3) directing and supervising terrorism preparedness grant programs of the Federal Government (other than those programs administered by the Department of Health and Human Services) for all emergency response providers;

[(4) incorporating the Strategy priorities into planning guidance on an agency level for the preparedness efforts of the Office for Domestic Preparedness;

[(5) providing agency-specific training for agents and analysts within the Department, other agencies, and State and local agencies and international entities;

[(6) as the lead executive branch agency for preparedness of the United States for acts of terrorism, cooperating closely with the Federal Emergency Management Agency, which shall have the primary responsibility within the executive branch to prepare for and mitigate the effects of nonterrorist-related disasters in the United States;

[(7) assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities of State, local, and tribal governments consistent with the mission and functions of the Directorate;

[(8) those elements of the Office of National Preparedness of the Federal Emergency Management Agency which relate to terrorism, which shall be consolidated within the Department in the Office for Domestic Preparedness established under this section; and

[(9) helping to ensure the acquisition of interoperable communication technology by State and local governments and emergency response providers.

[(d) FISCAL YEARS 2003 AND 2004.—During fiscal year 2003 and fiscal year 2004, the Director of the Office for Domestic Preparedness established under this section shall manage and carry out those functions of the Office for Domestic Preparedness of the Department of Justice (transferred under this section) before September 11, 2001, under the same terms, conditions, policies, and authorities, and with the required level of personnel, assets, and budget before September 11, 2001.]

\* \* \* \* \*

**[SEC. 239. OFFICE OF CARGO SECURITY POLICY.]**

[(a) ESTABLISHMENT.—There is established within the Department an Office of Cargo Security Policy (referred to in this section as the “Office”).

[(b) PURPOSE.—The Office shall—

[(1) coordinate all Department policies relating to cargo security; and

[(2) consult with stakeholders and coordinate with other Federal agencies in the establishment of standards and regulations and to promote best practices.

[(c) DIRECTOR.—

[(1) APPOINTMENT.—The Office shall be headed by a Director, who shall—

[(A) be appointed by the Secretary; and

[(B) report to the Assistant Secretary for Policy.

[(2) RESPONSIBILITIES.—The Director shall—

[(A) advise the Assistant Secretary for Policy in the development of Department-wide policies regarding cargo security;

[(B) coordinate all policies relating to cargo security among the agencies and offices within the Department relating to cargo security; and

[(C) coordinate the cargo security policies of the Department with the policies of other executive agencies.]

\* \* \* \* \*

## PART D—IMMIGRATION ENFORCEMENT FUNCTIONS

### SEC. 251. TRANSFER OF FUNCTIONS TO *SECRETARY* [UNDER *SECRETARY FOR BORDER AND TRANSPORTATION SECURITY*].

In accordance with subchapter XII of this chapter (relating to transition provisions), there shall be transferred from the Commissioner of Immigration and Naturalization to the [Under Secretary for Border and Transportation Security] *Secretary* 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. 252. [ESTABLISHMENT OF BUREAU OF BORDER SECURITY] *UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT*.

(a) [ESTABLISHMENT OF BUREAU] *U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT*.—

(1) IN GENERAL.—There shall be in the Department of Homeland Security [a bureau to be known as the “Bureau of Border Security”] *an agency to be known as “U.S. Immigration and Customs Enforcement”*.

[(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 5 years professional experience in law enforcement, and a minimum of 5 years of management experience.]

(2) *ASSISTANT SECRETARY*.—*The head of U.S. Immigration and Customs Enforcement shall be the Assistant Secretary of U.S. Immigration and Customs Enforcement, who—*

*(A) shall also have the title of Director of U.S. Immigration and Customs Enforcement; and*

*(B) shall have a minimum of—*

*(i) 5 years of professional experience in law enforcement; and*

*(ii) 5 years of management experience.*

(3) FUNCTIONS.—The Assistant Secretary of [the Bureau of Border Security] *U.S. Immigration and Customs Enforcement*—

(A) shall establish the policies for performing such functions as are—

(i) transferred to the [Under Secretary for Border and Transportation Security] *Secretary* by section 251 of this title and delegated to the Assistant Secretary of *U.S. Immigration and Customs Enforcement* by the

【Under Secretary for Border and Transportation Security】 *Secretary*; or

(ii) otherwise vested in the Assistant Secretary of *U.S. Immigration and Customs Enforcement* by law;  
 (B) shall oversee the administration of such policies; and  
 (C) shall advise the 【Under Secretary for Border and Transportation Security】 *Under Secretary for Policy* with respect to any policy or operation of 【the Bureau of Border Security】 *U.S. Immigration and Customs Enforcement* that may affect 【the Bureau of Citizenship and Immigration Services】 *U.S. Citizenship and Immigration Services* established under part E of this subchapter, including potentially conflicting policies or operations.

(4) PROGRAM TO COLLECT INFORMATION RELATING TO FOREIGN STUDENTS.—The Assistant Secretary of 【the Bureau of Border Security】 *U.S. Immigration and Customs Enforcement* shall be responsible for administering the program to collect information relating to nonimmigrant foreign students and other exchange program participants described in section 1372 of Title 8, 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】 *U.S. Immigration and Customs Enforcement*.

(5) MANAGERIAL ROTATION PROGRAM.—

(A) IN GENERAL.—Not later than 1 year after the date on which the transfer of functions specified under section 251 of this title takes effect, the Assistant Secretary of 【the Bureau of Border Security】 *U.S. Immigration and Customs Enforcement* shall design and implement a managerial rotation program under which employees of 【such bureau】 *U.S. Immigration and Customs Enforcement* holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of Title 5, as a GS-14 or above, shall—

(i) gain some experience in all the major functions performed by 【such bureau】 *U.S. Immigration and Customs Enforcement*; and

(ii) work in at least one local office of 【such bureau】 *U.S. Immigration and Customs Enforcement*.

(B) REPORT.—Not later than 2 years after the date on which the transfer of functions specified under section 251 of this title 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】 *U.S. Immigration and Customs Enforcement*.

(2) FUNCTIONS.—In consultation with 【Bureau of Border Security】 *U.S. Immigration and Customs Enforcement* personnel in local offices, the Chief of Policy and Strategy shall be responsible for—

(A) making policy recommendations and performing policy research and analysis on immigration enforcement issues; and

(B) coordinating immigration policy issues with the Chief of Policy and Strategy for [the Bureau of Citizenship and Immigration Services] *U.S. Citizenship and Immigration Services* (established under part E of this subchapter), as appropriate.

(c) LEGAL ADVISOR.—There shall be a principal legal advisor to the Assistant Secretary of [the Bureau of Border Security] *U.S. Immigration and Customs Enforcement*. The legal advisor shall provide specialized legal advice to the Assistant Secretary of [the Bureau of Border Security] *U.S. Immigration and Customs Enforcement* and shall represent [the bureau] *U.S. Immigration and Customs Enforcement* in all exclusion, deportation, and removal proceedings before the Executive Office for Immigration Review.

**SEC. 253. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW**

[The Under Secretary for Border and Transportation Security] *The Secretary* shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of [the Bureau of Border Security] *U.S. Immigration and Customs Enforcement* that are not subject to investigation by the Inspector General for the Department;

(2) inspecting the operations of [the Bureau of Border Security] *U.S. Immigration and Customs Enforcement* 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] *U.S. Immigration and Customs Enforcement*.

**SEC. 254. EMPLOYEE DISCIPLINE.**

[The Under Secretary for Border and Transportation Security] *The Secretary* 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] *U.S. Immigration and Customs Enforcement* who willfully deceives the Congress or agency leadership on any matter.

**[SEC. 255. 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 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 251 of this title 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) of this section, the Secretary of Homeland Security shall consult with the Attorney General, the Secretary of State, 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.】

\* \* \* \* \*

## PART E—CITIZENSHIP AND IMMIGRATION SERVICE

### SEC. 271. ESTABLISHMENT OF [BUREAU OF] *U.S. CITIZENSHIP AND IMMIGRATION SERVICES*.

#### (a) ESTABLISHMENT [OF BUREAU].—

(1) IN GENERAL.—There shall be in the Department [a bureau to be known as the “Bureau of] *an agency to be known as “U.S. Citizenship and Immigration Services”*.

(2) DIRECTOR.—The head of [the Bureau of Citizenship and Immigration Services] *U.S. Citizenship and Immigration Services* shall be the Director of [the Bureau of Citizenship and Immigration Services] *U.S. Citizenship and Immigration Services*, who—

(A) shall report directly to the Deputy Secretary;

(B) shall have a minimum of 5 years of management experience; and

(C) shall be paid at the same level as the Assistant Secretary of [the Bureau of Border Security] *U.S. Immigration and Customs Enforcement*.

(3) FUNCTIONS.—The Director of [the Bureau of Citizenship and Immigration Services] *U.S. Citizenship and Immigration Services*—

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

(B) shall oversee the administration of such policies;

(C) shall advise the Deputy Secretary with respect to any policy or operation of [the Bureau of Citizenship and Immigration Services] *U.S. Citizenship and Immigration Services* that may affect [the Bureau of Border Security of the Department] *U.S. Immigration and Customs Enforcement*, including potentially conflicting policies or operations;

(D) shall establish national immigration services policies and priorities;

(E) shall meet regularly with the Ombudsman described in section 272 of this title to correct serious service problems identified by the Ombudsman; and

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

#### (4) MANAGERIAL ROTATION PROGRAM.—

(A) IN GENERAL.—Not later than 1 year after the effective date specified in section 455, the Director of [the Bureau of] *U.S. Citizenship and Immigration Services* shall design and implement a managerial rotation program under which employees of [such bureau] *U.S. Citizenship and Immigration Services* holding positions involving supervisory or managerial responsibility and classified, in ac-



cordance with chapter 51 of Title 5, as a GS-14 or above, shall—

(i) gain some experience in all the major functions performed by [such bureau] *U.S. Citizenship and Immigration Services*; and

(ii) work in at least one field office and one service center of [such bureau] *U.S. Citizenship and Immigration Services*.

(B) REPORT.—Not later than 2 years after the effective date specified in section 455, the Secretary shall submit a report to Congress on the implementation of such program.

(5) PILOT INITIATIVES FOR BACKLOG ELIMINATION.—The Director of [the Bureau of] *U.S. 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 1573(a) of Title 8. 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.—In accordance with subchapter XII of this chapter (relating to transition provisions), there are transferred from the Commissioner of Immigration and Naturalization to the Director of [the Bureau of] *U.S. 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 455:

(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 455.

(c) CHIEF OF POLICY AND STRATEGY.—

(1) IN GENERAL.—There shall be a position of Chief of Policy and Strategy for [the Bureau of] *U.S. Citizenship and Immigration Services*.

(2) FUNCTIONS.—In consultation with [the Bureau of] *U.S. Citizenship and Immigration Services* personnel in field offices, the Chief of Policy and Strategy shall be responsible for—

(A) making policy recommendations and performing policy research and analysis on immigration services issues; and

(B) coordinating immigration policy issues with the Chief of Policy and Strategy for [the Bureau of] *U.S. [Border Security of the Department] Immigration and Customs Enforcement*.

(d) LEGAL ADVISOR.—

(1) IN GENERAL.—There shall be a principal legal advisor to the Director of [the Bureau of] *U.S. Citizenship and Immigration Services*.

(2) FUNCTIONS.—The legal advisor shall be responsible for—

- (A) providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Director of [the Bureau of] *U.S. Citizenship and Immigration Services* with respect to legal matters affecting [the Bureau of] *U.S. Citizenship and Immigration Services*; and
- (B) representing [the Bureau of] *U.S. Citizenship and Immigration Services* in visa petition appeal proceedings before the Executive Office for Immigration Review.
- (e) BUDGET OFFICER.—
- (1) IN GENERAL.—There shall be a Budget Officer for [the Bureau of] *U.S. Citizenship and Immigration Services*.
- (2) FUNCTIONS.—
- (A) IN GENERAL.—The Budget Officer shall be responsible for—
- (i) formulating and executing the budget of [the Bureau of] *U.S. Citizenship and Immigration Services*;
- (ii) financial management of [the Bureau of] *U.S. Citizenship and Immigration Services*; and
- (iii) collecting all payments, fines, and other debts for [the Bureau of] *U.S. Citizenship and Immigration Services*.
- (f) CHIEF OF OFFICE OF CITIZENSHIP.—
- (1) IN GENERAL.—There shall be a position of Chief of the Office of Citizenship for [the Bureau of] *U.S. Citizenship and Immigration Services*.
- (2) FUNCTIONS.—The Chief of the Office of Citizenship for [the Bureau of] *U.S. 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.
- (g) OFFICE OF THE FBI LIAISON.—
- (1) IN GENERAL.—There shall be an Office of the FBI Liaison in the Department of Homeland Security.
- (2) FUNCTIONS.—The Office of the FBI Liaison shall monitor the progress of the functions of the Federal Bureau of Investigation in the naturalization process to assist in the expeditious completion of all such functions pertaining to naturalization applications filed by, or on behalf of—
- (A) current or former members of the Armed Forces under section 1439 or 1440 of Title 8;
- (B) current spouses of United States citizens who are currently serving on active duty in the Armed Forces, who qualify for naturalization under section 1430(b) of Title 8, and surviving spouses and children who qualify for naturalization under section 1430(d) of Title 8; or
- (C) a deceased individual who is eligible for posthumous citizenship under section 1440–1 of Title 8.
- (3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

**[SEC. 271 NOTE.]**

[Notwithstanding section 4, sections 451 through 455, and the amendments made by such sections, shall take effect on the date

on which the transfer of functions specified under section 441 takes effect.】

**SEC. 272. CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN.**

(a) **IN GENERAL.**—Within the Department, 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 Secretary. 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】 *U.S. Citizenship and Immigration Services*;

(2) to identify areas in which individuals and employers have problems in dealing with 【the Bureau of】 *U.S. Citizenship and Immigration Services*; and

(3) to the extent possible, to propose changes in the administrative practices of 【the Bureau of】 *U.S. Citizenship and Immigration Services* to mitigate problems identified under paragraph (2).

(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 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 recommendations the Office of the Ombudsman has made on improving services and responsiveness of 【the Bureau of】 *U.S. 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】 *U.S. Citizenship and Immigration Services* who is responsible for such inaction;

(F) shall contain recommendations for such administrative 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 comment or amendment from the Secretary, Deputy Secretary, Director of **the Bureau of** U.S. Citizenship and Immigration Services, or any other officer or employee of the Department 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** U.S. 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 Director of **the Bureau of** U.S. 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** U.S. Citizenship and Immigration Services in carrying out the Ombudsman's responsibilities under this subsection.
- (f) RESPONSIBILITIES OF **BUREAU OF** U.S. CITIZENSHIP AND IMMIGRATION SERVICES.—The Director of **the Bureau of** U.S. Citizenship and Immigration Services shall establish procedures requiring a formal response to all recommendations submitted to such director 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** U.S. 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 compo-

ment of the Department and report directly to Congress through the Ombudsman; and

(D) at the local ombudsman's discretion, may determine not to disclose to [the Bureau of] *U.S. 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] *U.S. Citizenship and Immigration Services*, or any component of [the Bureau of] *U.S. Citizenship and Immigration Services*.

**SEC. 273. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.**

(a) IN GENERAL.—The Director of [the Bureau of] *U.S. 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] *U.S. Citizenship and Immigration Services* that are not subject to investigation by the Inspector General for the Department;

(2) inspecting the operations of [the Bureau of] *U.S. Citizenship and Immigration Services* and providing assessments of the quality of the operations of [such bureau] *U.S.* as a whole and each of its components; and

(3) providing an analysis of the management of [the Bureau of] *U.S. Citizenship and Immigration Services*.

(b) SPECIAL CONSIDERATIONS.—In providing assessments in accordance with subsection (a)(2) of this section with respect to a decision of [the Bureau of] *U.S. 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. 274. EMPLOYEE DISCIPLINE.**

The Director of [the Bureau of] *U.S. 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] *U.S. Citizenship and Immigration Services* who willfully deceives Congress or agency leadership on any matter.

**SEC. 275. TRANSITION.**

(a) REFERENCES.—With respect to any function transferred by this part to, and exercised on or after [the effective date specified in section 455] *the date on which the functions specified under section 441 were transferred* by, the Director of [the Bureau of] *U.S. 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 Director of **the Bureau of** *U.S. Citizenship and Immigration Services*; or

(2) to such component is deemed to refer to **the Bureau of** *U.S. 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 part 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 455** *the date on which the functions specified under section 441 were transferred*.

(2) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel of the Department of Justice employed in connection with the functions transferred by this part (and functions that the Secretary determines are properly related to the functions of **the Bureau of** *U.S. 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 part, subject to section 1531 of Title 31, shall be transferred to the Director of **the Bureau of** *U.S. Citizenship and Immigration Services* for allocation to the appropriate component of the Department. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated. The Secretary shall have the right to adjust or realign transfers of funds and personnel effected pursuant to this part for a period of 2 years after **the effective date specified in section 455** *the date on which the functions specified under section 441 were transferred*.

**SEC. 276. REPORT ON IMPROVING IMMIGRATION SERVICES.**

**(a) IN GENERAL.**—The Secretary, not later than 1 year after the effective date of this chapter, shall submit to the Committees on the Judiciary and Appropriations of the 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 this part takes effect, will complete efficiently, fairly, and within a reasonable time, the adjudications described in paragraphs (1) through (5) of section 271(b) of this title.

**(b) CONTENTS.**—For each type of adjudication to be undertaken by the Director of the Bureau of 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 Secretary considers advisable.

[(c) CONSULTATION.—In carrying out subsection (a) of this section, the Secretary shall consult with the Secretary of State, the Secretary of Labor, the Assistant Secretary of the Bureau of Border Security of the Department, 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 271(b) of this title and related processes.]

**[SEC. 277. REPORT ON RESPONDING TO FLUCTUATING NEEDS.**

[Not later than 30 days after November 25, 2002, the Attorney General shall submit to 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 this part takes effect, the Bureau of Citizenship and Immigration Services of the Department, 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.]

\* \* \* \* \*

**PART F—GENERAL IMMIGRATION PROVISIONS**

**[SEC. 291. ABOLISHMENT OF INS.**

[(a) IN GENERAL.—Upon completion of all transfers from the Immigration and Naturalization Service as provided for by this chapter, the Immigration and Naturalization Service of the Department of Justice is abolished.

[(b) PROHIBITION.—The authority provided by section 542 of this title may be used to reorganize functions or organizational units within the Bureau of Border Security or the Bureau of Citizenship and Immigration Services, but may not be used to recombine the two bureaus into a single agency or otherwise to combine, join, or consolidate functions or organizational units of the two bureaus with each other.]

**SEC. 292. 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) 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] *U.S. Immigration and Customs Enforcement*; and

(C) [the Bureau of Citizenship and Immigration Services of the Department of Homeland Security] *U.S. Citizenship and Immigration Services*; and

(3) the term “transfer date” means the date on which the transfer of functions specified under section 251 of this title 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 chapter;

(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) of this section, 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; 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 November 25, 2002, 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, 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 Per-



sonnel 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 (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 Secretary [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. 294. SENSE OF CONGRESS.**

It is the sense of Congress that—

(1) the missions of [the Bureau of Border Security and the Bureau of] *U.S. Immigration and Customs Enforcement and U.S. Citizenship and Immigration Services* are equally important and, accordingly, they each should be adequately funded; and

(2) the functions transferred under this part should not, after such transfers take effect, operate at levels below those in effect prior to November 25, 2002.

**SEC. 295. DIRECTOR OF SHARED SERVICES.**

(a) IN GENERAL.—Within the Office of Deputy Secretary, there shall be a Director of Shared Services.

(b) FUNCTIONS.—The Director of Shared Services shall be responsible for the coordination of resources for [the Bureau of Border Security and the Bureau of] *U.S. Immigration and Customs Enforcement and U.S. Citizenship and Immigration Services*, including—

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

(2) records and file management; and

(3) forms management.

**SEC. 296. SEPARATION OF FUNDING.**

(a) IN GENERAL.—There shall be established separate accounts in the Treasury of the United States for appropriated funds and other deposits available for [the Bureau of Citizenship and Immigration Services and the Bureau of Border Security] *U.S. Immigration and Customs Enforcement and U.S. Citizenship and Immigration Services*.

(b) SEPARATE BUDGETS.—To ensure that [the Bureau of Citizenship and Immigration Services and the Bureau of Border Security] *U.S. Immigration and Customs Enforcement and U.S. Citizenship and Immigration Services* are funded to the extent necessary to fully carry out their respective functions, the Director of the Office of Management and Budget shall separate the budget requests for each such entity.

(c) FEES.—Fees imposed for a particular service, application, or benefit shall be deposited into the account established under subsection (a) of this section that is for the bureau with jurisdiction over the function to which the fee relates.

(d) FEES NOT TRANSFERABLE.—No fee may be transferred between [the Bureau of Citizenship and Immigration Services and the Bureau of Border Security] *U.S. Immigration and Customs Enforcement and U.S. Citizenship and Immigration Services* for purposes not authorized by section 1356 of Title 8.

**SEC. 297. REPORTS AND IMPLEMENTATION PLANS.**

(a) DIVISION OF FUNDS.—The Secretary, not later than 120 days after the effective date of this chapter, shall submit to the Committees on Appropriations and the Judiciary of the 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] *U.S. Citizenship and Immigration Services and U.S. Immigration and Customs Enforcement*.

(b) DIVISION OF PERSONNEL.—The Secretary, not later than 120 days after the effective date of this chapter, shall submit to the Committees on Appropriations and the Judiciary of the 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** *U.S. Citizenship and Immigration Services and U.S. Immigration and Customs Enforcement*.

**[(c) IMPLEMENTATION PLAN.—**

**[(1) IN GENERAL.—**The Secretary, not later than 120 days after the effective date of this chapter, and every 6 months thereafter until the termination of fiscal year 2005, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate an implementation plan to carry out this chapter.

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

**[(A) A determination of whether the transfers of functions made by parts D and E of this subchapter 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 parts D and E of this subchapter 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 251 of this title takes effect, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the 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 November 25, 2002, 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.]

### **Subchapter V—National Emergency Management**

#### **SEC. 311. DEFINITIONS.**

In this subchapter—

- (1) the term “Administrator” means the Administrator of the Agency;
- (2) the term “Agency” means the Federal Emergency Management Agency;
- (3) the term “catastrophic incident” means any natural disaster, act of terrorism, or other man-made disaster that results in extraordinary levels of casualties or damage or disruption severely affecting the population (including mass evacuations), infrastructure, environment, economy, national morale, or government functions in an area;
- (4) the terms “credentialed” and “credentialing” mean having provided, or providing, respectively, documentation that identifies personnel and authenticates and verifies the qualifications of such personnel by ensuring that such personnel possess a minimum common level of training, experience, physical and medical fitness, and capability appropriate for a particular position in accordance with standards created under section 320 of this title;

(5) the term “Federal coordinating officer” means a Federal coordinating officer as described in section 5143 of Title 42;

(6) the term “interoperable” has the meaning given the term “interoperable communications” under section 194(g)(1) of this title;

(7) the term “National Incident Management System” means a system to enable effective, efficient, and collaborative incident management;

(8) the term “National Response Plan” means the National Response Plan or any successor plan prepared under section 314(a)(6) of this title;

*(9) the term “recovery” means the short- and long-term process of restoring, reshaping, and enhancing the resiliency of the physical, social, economic, and natural environments, government institutions, and the lives of affected individuals;*

[(9)](10) the term “Regional Administrator” means a Regional Administrator appointed under section 317 of this title;

[(10)](11) the term “Regional Office” means a Regional Office established under section 317 of this title;

[(11)](12) the term “resources” means personnel and major items of equipment, supplies, and facilities available or potentially available for responding to a natural disaster, act of terrorism, or other man-made disaster;

[(12)] (13) the term “surge capacity” means the ability to rapidly and substantially increase the provision of search and rescue capabilities, food, water, medicine, shelter and housing, medical care, evacuation capacity, staffing (including disaster assistance employees), and other resources necessary to save lives and protect property during a catastrophic incident;

[(13)] (14) the term “tribal government” means the government of any entity described in section 101(11)(B) of this title; and

[(14)](15) the terms “typed” and “typing” mean having evaluated, or evaluating, respectively, a resource in accordance with standards created under section 320 of this title.

\* \* \* \* \*

**SEC. 314. AUTHORITY AND RESPONSIBILITIES.**

(a) IN GENERAL.—The Administrator shall provide Federal leadership necessary to prepare for, protect against, respond to, recover from, or mitigate against a natural disaster, act of terrorism, or other man-made disaster, including—

(1) helping to ensure the effectiveness of emergency response providers to 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 subchapter)—

(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 and (when operating as an organizational unit of the Department pursuant to this subchapter) the Nuclear Incident Response Team;
  - (C) overseeing the Metropolitan Medical Response System; and
  - (D) coordinating other Federal response resources, including requiring deployment of the Strategic National Stockpile, in the event of a terrorist attack or major disaster;
- (4) aiding the recovery from terrorist attacks and major 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) helping ensure the acquisition of operable and interoperable communications capabilities by Federal, State, local, and tribal governments and emergency response providers;
- (8) assisting the President in carrying out the functions under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) and carrying out all functions and authorities given to the Administrator under that Act;
- (9) carrying out the mission of the Agency to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a risk-based, comprehensive emergency management system of—
- (A) mitigation, by taking sustained actions to reduce or eliminate long-term risks to people and property from hazards and their effects;
  - (B) preparedness, by planning, training, and building the emergency management profession to prepare effectively for, mitigate against, respond to, and recover from any hazard;
  - (C) response, by conducting emergency operations to save lives and property through positioning emergency equipment, personnel, and supplies, through evacuating potential victims, through providing food, water, shelter, and medical care to those in need, and through restoring critical public services; and
  - (D) recovery, by rebuilding communities so individuals, businesses, and governments can function on their own, return to normal life, and protect against future hazards;
- (10) increasing efficiencies, by coordinating efforts relating to preparedness, protection, response, recovery, and mitigation;

(11) helping to ensure the effectiveness of emergency response providers in responding to a natural disaster, act of terrorism, or other man-made disaster;

(12) supervising grant programs administered by the Agency;

(13) administering and ensuring the implementation of the National Response Plan, including coordinating and ensuring the readiness of each emergency support function under the National Response Plan;

(14) coordinating with the National Advisory Council established under section 318 of this title;

(15) preparing and implementing the plans and programs of the Federal Government for—

(A) continuity of operations;

(B) continuity of government; and

(C) continuity of plans;

(16) minimizing, to the extent practicable, overlapping planning and reporting requirements applicable to State, local, and tribal governments and the private sector;

(17) maintaining and operating within the Agency the National Response Coordination Center or its successor;

(18) developing a national emergency management system that is capable of preparing for, protecting against, responding to, recovering from, and mitigating against catastrophic incidents;

(19) assisting the President in carrying out the functions under the national preparedness goal and the national preparedness system and carrying out all functions and authorities of the Administrator under the national preparedness System;

(20) carrying out all authorities of the Federal Emergency Management Agency and the Directorate of Preparedness of the Department as transferred under section 315 of this title; **[and]**

*(21) develop and implement the National Mitigation Framework; and*

**[(21)](22)** otherwise carrying out the mission of the Agency as described in section 313(b) of this title.

(b) **ALL-HAZARDS APPROACH.**—In carrying out the responsibilities under this section, the Administrator shall coordinate the implementation of a risk-based, all-hazards strategy that builds those common capabilities necessary to prepare for, protect against, respond to, recover from, or mitigate against natural disasters, acts of terrorism, and other man-made disasters, while also building the unique capabilities necessary to prepare for, protect against, respond to, recover from, or mitigate against the risks of specific types of incidents that pose the greatest risk to the Nation.

\* \* \* \* \*

**SEC. 321c. DEPARTMENT AND AGENCY OFFICIALS.**

(a) **DEPUTY ADMINISTRATORS.**—

**[(The President)](1) IN GENERAL.**—*The President* may appoint, by and with the advice and consent of the Senate, not more than **[4 Deputy Administrators]** *3 Deputy Administrators* to assist the Administrator in carrying out this subchapter.

*(2) CHIEF MANAGEMENT OFFICER.*—

(A) *IN GENERAL.*—In addition to any Deputy Administrators appointed under paragraph (1), the President shall appoint 1 Deputy Administrator who shall serve as the Chief Management Officer of the Agency and advise the Administrator on matters relating to the management of the Agency, including—

(i) budgeting, appropriations, expenditures of funds, accounting, and finance;

(ii) procurement;

(iii) human resources and personnel;

(iv) information technology and communications systems;

(v) facilities, property, equipment, and other material resources;

(vi) security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources;

(vii) identification and tracking of performance measures relating to the responsibilities of the Agency;

(viii) grants and other assistance management programs;

(ix) the conduct of internal audits and management analyses of the programs and activities of the Agency;

(x) controls over waste, fraud, and abuse; and (xi) any other management duties determined appropriate by the Administrator.

(B) *CRITERIA.*—The Deputy Administrator appointed under subparagraph (A) shall have”

(i) extensive executive level leadership and management experience in the public or private sector;

(ii) strong leadership skills;

(iii) a demonstrated ability to manage large and complex organizations; and

(iv) a proven record in achieving positive operational results.

(b) **CYBERSECURITY AND COMMUNICATIONS.**—There is in the Department an Assistant Secretary for Cybersecurity and Communications.

(c) **UNITED STATES FIRE ADMINISTRATION.**—The Administrator of the United States Fire Administration shall have a rank equivalent to an assistant secretary of the Department.

\* \* \* \* \*

**SEC. 321e. CHIEF MEDICAL OFFICER.**

(a) *IN GENERAL.*—There is in the Department a Chief Medical Officer, who shall be appointed by the President, [who shall be appointed by the President. By and with the advise and consent of the Senate.] and who shall also have the title of Assistant Secretary for Health Affairs.

(b) *QUALIFICATIONS.*—The individual appointed as Chief Medical Officer shall possess a demonstrated ability in and knowledge of medicine and public health.

(c) *RESPONSIBILITIES.*—The Chief Medical Officer shall have the primary responsibility within the Department for medical issues re-



lated to natural disasters, acts of terrorism, and other man-made disasters, including—

(1) serving as the principal advisor to the Secretary and the Administrator on medical and public health issues;

(2) coordinating the biodefense activities of the Department;

(3) ensuring internal and external coordination of all medical preparedness and response activities of the Department, including training, exercises, and equipment support;

(4) serving as the Department's primary point of contact with the Department of Agriculture, the Department of Defense, the Department of Health and Human Services, the Department of Transportation, the Department of Veterans Affairs, and other Federal departments or agencies, on medical and public health issues;

(5) serving as the Department's primary point of contact for State, local, and tribal governments, the medical community, and others within and outside the Department, with respect to medical and public health matters;

(6) discharging, in coordination with the Under Secretary for Science and Technology, the responsibilities of the Department related to Project Bioshield; **[and]**

*(7) ensuring that the workforce of the Department has science-based policy, standards, requirements, and metrics for occupational safety and health;*

*(8) providing medical expertise for the components of the Department with respect to prevention, preparedness, protection, response, and recovery for medical and public health matters;*

*(9) working in conjunction with appropriate entities of the Department and other appropriate Federal agencies to develop guidance for prevention, preparedness, protection, response, and recovery from catastrophic events with human, animal, agricultural, or environmental health consequences; and*

**[(7)]** *(10) performing such other duties relating to such responsibilities as the Secretary may require.*

\* \* \* \* \*

### **Subchapter VII—Management**

#### **SEC. 341. UNDER SECRETARY FOR MANAGEMENT.**

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

(1) The budget, appropriations, expenditures of funds, accounting, and finance.

(2) Procurement.

(3) Human resources and personnel.

(4) Information technology and communications systems.

(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) Strategic management planning and annual performance planning and identification and tracking of performance measures relating to the responsibilities of the Department.

(8) Grants and other assistance management programs.

(9) The management integration and transformation process, as well as the transition process, to ensure an efficient and orderly consolidation of functions and personnel in the Department and transition, including—

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

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

(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.—

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

(A) Maintenance of all immigration statistical information of [the Bureau of Border Security and the Bureau of Citizenship and Immigration Services] *U.S. Immigration and Customs Enforcement and U.S. Citizenship and Immigration Services*. 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 251 of this title 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 such bureaus.

(2) TRANSFER OF FUNCTIONS.—In accordance with subchapter XII of this chapter, 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.
- (F) Adjudication of immigrant visa petitions.
- (G) Adjudication of naturalization petitions.
- (H) Adjudication of asylum and refugee applications.
- (I) Adjudications performed at service centers.
- (J) All other adjudications performed by the Immigration and Naturalization Service.

(c) APPOINTMENT AND EVALUATION.—The Under Secretary for Management shall—

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

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

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

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

\* \* \* \* \*

**SEC. 343. CHIEF INFORMATION OFFICER.**

(a) IN GENERAL.—The Chief Information Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

(b) RESPONSIBILITIES.—*The Chief Information Officer shall—*

(1) *advise and assist the Secretary, heads of the components of the Department, and other senior officers in carrying out the responsibilities of the Department for all activities relating to the programs and operations of the information technology functions of the Department;*

(2) *establish the information technology priorities, policies, processes, standards, guidelines, and procedures of the Department;*

(3) *coordinate and ensure implementation of information technology priorities, policies, processes, standards, guidelines, and procedures within the Department;*

(4) *be responsible for information technology capital planning and (investment management in accordance with sections 11312 and 11313 of title 40, United States Code;*

(5) *in coordination with the Chief Procurement Officer of the Department, assume responsibility for information systems acquisition, development and integration as required by section 11312 of title 40, United States Code;*

(6) *in coordination with the Chief Procurement Officer of the Department, review and approve any information technology acquisition with a total value greater than a threshold level to be determined by the Secretary;*

(7) in coordination with relevant officials of the Department, ensure that information technology systems meet the standards established under the information sharing environment, as defined in section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485);

(8) perform other responsibilities required under section 3506 of title 44, United States Code, and section 11315 of title 40, United States Code; and

(9) perform such other responsibilities as the Secretary may prescribe.

**[(b)](c) GEOSPATIAL INFORMATION FUNCTIONS.—**

**(1) DEFINITIONS.—**As used in this subsection:

**(A) GEOSPATIAL INFORMATION.—**The term “geospatial information” means graphical or digital data depicting natural or manmade physical features, phenomena, or boundaries of the earth and any information related thereto, including surveys, maps, charts, remote sensing data, and images.

**(B) GEOSPATIAL TECHNOLOGY.—**The term “geospatial technology” means any technology utilized by analysts, specialists, surveyors, photogrammetrists, hydrographers, geodesists, cartographers, architects, or engineers for the collection, storage, retrieval, or dissemination of geospatial information, including—

- (i) global satellite surveillance systems;
- (ii) global position systems;
- (iii) geographic information systems;
- (iv) mapping equipment;
- (v) geocoding technology; and
- (vi) remote sensing devices.

**(2) OFFICE OF GEOSPATIAL MANAGEMENT.—**

**(A) ESTABLISHMENT.—**The Office of Geospatial Management is established within the Office of the Chief Information Officer.

**(B) GEOSPATIAL INFORMATION OFFICER.—**

**(i) APPOINTMENT.—**The Office of Geospatial Management shall be administered by the Geospatial Information Officer, who shall be appointed by the Secretary and serve under the direction of the Chief Information Officer.

**(ii) FUNCTIONS.—**The Geospatial Information Officer shall assist the Chief Information Officer in carrying out all functions under this section and in coordinating the geospatial information needs of the Department.

**(C) COORDINATION OF GEOSPATIAL INFORMATION.—**The Chief Information Officer shall establish and carry out a program to provide for the efficient use of geospatial information, which shall include—

- (i) providing such geospatial information as may be necessary to implement the critical infrastructure protection programs;
- (ii) providing leadership and coordination in meeting the geospatial information requirements of those responsible for planning, prevention, mitigation, assess-

ment and response to emergencies, critical infrastructure protection, and other functions of the Department; and

(iii) coordinating with users of geospatial information within the Department to assure interoperability and prevent unnecessary duplication.

(D) RESPONSIBILITIES.—In carrying out this subsection, the responsibilities of the Chief Information Officer shall include—

(i) coordinating the geospatial information needs and activities of the Department;

(ii) implementing standards, as adopted by the Director of the Office of Management and Budget under the processes established under section 216 of the E-Government Act of 2002 (44 U.S.C. 3501 note), to facilitate the interoperability of geospatial information pertaining to homeland security among all users of such information within—

(I) the Department;

(II) State and local government; and

(III) the private sector;

(iii) coordinating with the Federal Geographic Data Committee and carrying out the responsibilities of the Department pursuant to Office of Management and Budget Circular A-16 and Executive Order 12906; and

(iv) making recommendations to the Secretary [and the Executive Director of the Office for State and Local Government Coordination and Preparedness] on awarding grants to—

(I) fund the creation of geospatial data; and

(II) execute information sharing agreements regarding geospatial data with State, local, and tribal governments.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection for each fiscal year.

\* \* \* \* \*

### 347. QUADRENNIAL HOMELAND SECURITY REVIEW

(a) REQUIREMENT.—

(1) QUADRENNIAL REVIEWS REQUIRED.—In [fiscal year 2009] *calendar year 2013*, and every 4 years thereafter, the Secretary shall conduct a review of the homeland security of the Nation (in this section referred to as a “quadrennial homeland security review”).

(2) SCOPE OF REVIEWS.—Each quadrennial homeland security review shall be a comprehensive examination of the homeland security strategy of the Nation, including recommendations regarding the long-term strategy and priorities of the Nation for homeland security and guidance on the programs, assets, capabilities, budget, policies, and authorities of the Department.

(3) CONSULTATION.—[The Secretary shall conduct each quadrennial homeland security review under this subsection] *In order to ensure that each quadrennial homeland security review conducted under this section is coordinated with the quadren-*

*national defense review conducted by the Secretary of Defense under section 118 of title 10, United States Code, and any other major strategic review relating to diplomacy, intelligence, or other national security issues, the Secretary shall conduct each quadrennial homeland security review in consultation with—*

(A) the heads of other Federal agencies, including the Attorney General, the Secretary of State, the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of the Treasury, the Secretary of Agriculture, and the Director of National Intelligence;

(B) key officials of the Department; and

(C) other relevant governmental and nongovernmental entities, including State, local, and tribal government officials, members of Congress, private sector representatives, academics, and other policy experts.

(4) RELATIONSHIP WITH FUTURE YEARS HOMELAND SECURITY PROGRAM.—The Secretary shall ensure that each review conducted under this section is coordinated with the Future Years Homeland Security Program required under section 454 of this title.

[(b) CONTENTS OF REVIEW.—In each quadrennial homeland security review, the Secretary shall—

[(1) delineate and update, as appropriate, the national homeland security strategy, consistent with appropriate national and Department strategies, strategic plans, and Homeland Security Presidential Directives, including the National Strategy for Homeland Security, the National Response Plan, and the Department Security Strategic Plan;

[(2) outline and prioritize the full range of the critical homeland security mission areas of the Nation;

[(3) describe the interagency cooperation, preparedness of Federal response assets, infrastructure, budget plan, and other elements of the homeland security program and policies of the Nation associated with the national homeland security strategy, required to execute successfully the full range of missions called for in the national homeland security strategy described in paragraph (1) and the homeland security mission areas outlined under paragraph (2);

[(4) identify the budget plan required to provide sufficient resources to successfully execute the full range of missions called for in the national homeland security strategy described in paragraph (1) and the homeland security mission areas outlined under paragraph (2);

[(5) include an assessment of the organizational alignment of the Department with the national homeland security strategy referred to in paragraph (1) and the homeland security mission areas outlined under paragraph (2); and

[(6) review and assess the effectiveness of the mechanisms of the Department for executing the process of turning the requirements developed in the quadrennial homeland security review into an acquisition strategy and expenditure plan within the Department.

[(c) REPORTING.—

[(1) IN GENERAL.—Not later than December 31 of the year in which a quadrennial homeland security review is conducted,

the Secretary shall submit to Congress a report regarding that quadrennial homeland security review.

【(2) CONTENTS OF REPORT.—Each report submitted under paragraph (1) shall include—

【(A) the results of the quadrennial homeland security review;

【(B) a description of the threats to the assumed or defined national homeland security interests of the Nation that were examined for the purposes of that review;

【(C) the national homeland security strategy, including a prioritized list of the critical homeland security missions of the Nation;

【(D) a description of the interagency cooperation, preparedness of Federal response assets, infrastructure, budget plan, and other elements of the homeland security program and policies of the Nation associated with the national homeland security strategy, required to execute successfully the full range of missions called for in the applicable national homeland security strategy referred to in subsection (b)(1) of this section and the homeland security mission areas outlined under subsection (b)(2) of this section;

【(E) an assessment of the organizational alignment of the Department with the applicable national homeland security strategy referred to in subsection (b)(1) of this section and the homeland security mission areas outlined under subsection (b)(2) of this section, including the Department's organizational structure, management systems, budget and accounting systems, human resources systems, procurement systems, and physical and technical infrastructure;

【(F) a discussion of the status of cooperation among Federal agencies in the effort to promote national homeland security;

【(G) a discussion of the status of cooperation between the Federal Government and State, local, and tribal governments in preventing terrorist attacks and preparing for emergency response to threats to national homeland security;

【(H) an explanation of any underlying assumptions used in conducting the review; and

【(I) any other matter the Secretary considers appropriate.

【(3) PUBLIC AVAILABILITY.—The Secretary shall, consistent with the protection of national security and other sensitive matters, make each report submitted under paragraph (1) publicly available on the Internet website of the Department.】

(b) *SCOPE OF REVIEW AND REPORT.*

(1) *IN GENERAL.*—*In each quadrennial homeland security review, the Secretary shall—*

*(A) examine the homeland security aspects of the security environment of the Nation, including existing and potential homeland security threats and challenges, and the effect of laws, Presidential directives, national strategies, and other*

*relevant guidance documents in meeting existing and potential homeland security threats and challenges;*

*(B) review the capabilities and capacities across the homeland security enterprise, and the roles of Executive agencies, States, local governments, Indian Tribes, and private entities in providing those capabilities and capacities;*

*(C) evaluate and prioritize the homeland security mission areas of the Nation and associated goals and objectives, and recommend any necessary revisions to the mission areas, goals, and objectives as appropriate;*

*(D) examine whether the capabilities and capacities across the homeland security enterprise should be adjusted based on any proposed modifications to the mission areas, goals, or objectives;*

*(E) identify additional capabilities and capacities that may be needed across the homeland security enterprise in response to potential homeland security threats and challenges, and the resources required to provide the capabilities and capacities;*

*(F) identify redundant, wasteful, or unnecessary capabilities and capacities where resources can be redirected to support capabilities and capacities identified under subparagraph (E);*

*(G) evaluate the organization, organizational structure, governance structure, and business processes (including acquisition processes) of the Department, as they relate to the ability of the Department to meet the responsibilities of the Department; and*

*(H) review any other matter the Secretary considers appropriate.*

*(2) REPORT.—During the year following the year in which a quadrennial homeland security review is conducted, and not later than the date on which the budget of the President for the next fiscal year is submitted to Congress under section 1105(a) of title 31, United States Code, the Secretary shall—*

*(A) submit to Congress a report—*

*(i) describing the process used in conducting the quadrennial homeland security review and explaining any underlying assumptions used in conducting the quadrennial homeland security review;*

*(ii) describing the findings and conclusions of the review, including findings and conclusions relating to each issue addressed under subparagraphs (A) through (H) of paragraph (1);*

*(iii) detailing any proposed revisions to the national homeland security strategy, including any proposed revisions to the homeland security missions, capabilities and capacities, goals, or objectives of the Nation;*

*(iv) describing how the conclusions under the quadrennial homeland security review are to be implemented through the Future Years Homeland Security Program under section 874;*

*(v) detailing how the conclusions under the quadrennial homeland security review will inform efforts to develop capabilities and build capacity of States, local*



*governments, Indian Tribes, and private entities, and of individuals, families, and communities;*

*(vi) providing proposed changes to the authorities, organization, governance structure, or business processes (including acquisition processes) of the Department in order to better fulfill the responsibilities of the Department; and*

*(vii) describing any other matter the Secretary considers appropriate; and*

*(B) consistent with the protection of national security and other sensitive matters, make the report required under subparagraph (A) publicly available on the website of the Department.*

*(c) MIDTERM REVIEW OF IMPLEMENTATION.—Not later than 2 years after the date on which the Secretary submits a report under subsection (b)(2)(A), the Secretary shall submit to Congress a report on—*

*(1) the implementation of the recommendations in the report, including recommended revisions to the national homeland security strategy made under subsection (b)(2)(A)(iii) and changes proposed under subsection (b)(2)(A)(vi); and*

*(2) the preparations for the next quadrennial homeland security review, including a detailed resource plan specifying the estimated budget and number of staff members that will be required for preparation of the quadrennial homeland security review.*

*(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.*

\* \* \* \* \*

**Subchapter VIII—Coordination with Non-Federal Entities; Inspector General; United States Secret Service; Coast Guard; General Provisions**

**PART A—COORDINATION WITH NON-FEDERAL ENTITIES**

**SEC. 361. [OFFICE FOR] STATE AND LOCAL GOVERNMENT COORDINATION.**

(a) **[ESTABLISHMENT] IN GENERAL.**—There is **[established]** within the Office of the Secretary the Office **[for State and Local Government Coordination]** of *Intergovernmental Affairs*, to oversee and coordinate departmental programs for and relationships with State and local governments.

(b) **RESPONSIBILITIES.**—The Office established under subsection (a) of this section shall—

(1) coordinate the activities of the Department relating to State and local government;

(2) assess, and advocate for, the resources needed by State and local government to implement the national strategy for combating terrorism;

(3) provide State and local government with regular information, research, and technical support to assist local efforts at securing the homeland; and

(4) develop a process for receiving meaningful input from State and local government to assist the development of the national strategy for combating terrorism and other homeland security activities.

\* \* \* \* \*

## PART D—ACQUISITIONS

### SEC. 391. RESEARCH AND DEVELOPMENT PROJECTS.

(a) **AUTHORITY.**—**[Until September 30, 2010]** *Until September 30, 2016*, and subject to subsection (d), the Secretary may carry out a pilot program under which the Secretary may exercise the following authorities:

(1) **IN GENERAL.**—When the Secretary carries out basic, applied, and advanced research and development projects, including the expenditure of funds for such projects, 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 (except for subsections (b) and (f)), after making a determination that the use of a contract, grant, or cooperative agreement for such project is not feasible or appropriate. The annual report required under subsection (b) of this section, 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) **PROTOTYPE PROJECTS.**—The Secretary may, under the authority of paragraph (1), 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). In applying the authorities of that section 845, subsection (c) of that section shall apply with respect to prototype projects under this paragraph, and the Secretary shall perform the functions of the Secretary of Defense under subsection (d) thereof.

(b) **REPORT.**—**[Not later than 2 years after the effective date of this Act, and annually thereafter]** *Not later than September 30, 2015*, 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 nontraditional 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) **PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.**—The Secretary may—

(1) procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109(b) of Title 5; and

(2) 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 consult-

ants (or organizations thereof), without regard to the pay limitations of such section 3109.

(d) **ADDITIONAL REQUIREMENTS.—**

(1) **IN GENERAL.—**The authority of the Secretary under this section shall terminate **[September 30, 2011]** *September 30, 2016*, unless before that date the Secretary—

(A) issues policy guidance detailing the appropriate use of that authority; and

(B) provides training to each employee that is authorized to exercise that authority.

(2) **REPORT.—**The Secretary shall provide an annual report to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Homeland Security of the House of Representatives detailing the projects for which the authority granted by subsection (a) was used, the rationale for its use, the funds spent using that authority, the outcome of each project for which that authority was used, and the results of any audits of such projects.

(e) **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).

\* \* \* \* \*

**PART H—MISCELLANEOUS PROVISIONS**

\* \* \* \* \*

**SEC. 452. REORGANIZATION.**

(a) **REORGANIZATION.—**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—**

**[(1) pursuant to section 542(b) of this title; or**

**[(2) after]** *only 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.

**[(b) LIMITATIONS.—**

**[(1) IN GENERAL.—**Authority under subsection (a)(1) of this section does not extend to the abolition of any agency, entity, organizational unit, program, or function established or required to be maintained by this chapter.

**[(2) ABOLITIONS.—**Authority under subsection (a)(2) of this section does not extend to the abolition of any agency, entity, organizational unit, program, or function established or required to be maintained by statute.]

**(b) LIMITATIONS ON OTHER REORGANIZATION AUTHORITY.—**

**(1) IN GENERAL.—***Authority under subsection (a) shall not extend to the discontinuance, abolition, substantial consolidation, alteration, or transfer of any agency, entity, organizational unit, program, or function established or required to be maintained by statute.*

(2) *EXCEPTION.*—

(A) *IN GENERAL.*—Notwithstanding paragraph (1), if the President determines it to be necessary because of an imminent threat to homeland security, a function, power, or duty vested by law in the Department, or an officer, official, or agency thereof, may be transferred, reassigned, or consolidated within the Department.

(B) *NOTICE.*—Not later than 30 days after the date on which the President makes a transfer, reassignment, or consolidation under subparagraph (A), the President shall notify the appropriate congressional committees of the transfer, reassignment, or consolidation.

(C) *DURATION.*—A transfer, reassignment, or consolidation under subparagraph (A) shall remain in effect only until the President determines that the threat to homeland security has terminated or is no longer imminent.

(c) *PUBLICATION.*—Not later than 30 days after the date on which the President or the Secretary makes a transfer, allocation, assignment, consolidation, alteration, establishment, or discontinuance under this section, the President or the Secretary shall publish in the Federal Register—

- (1) the reasons for the action taken; and
- (2) a list of each statutory provision implicated by the action.

\* \* \* \* \*

**SEC. 454. FUTURE YEARS HOMELAND SECURITY PROGRAM**

(a) *IN GENERAL.*—Each budget request submitted to Congress for the Department under section 1105 of Title 31 shall, at or about the same time, *but in any event not later than 30 days after the date on which the budget request is submitted*, be accompanied by a Future Years Homeland Security Program.

(b) *CONTENTS.*—The Future Years Homeland Security Program under subsection (a) of this section shall—

(1) include the same type of information, organizational structure, and level of detail as the future years defense program submitted to Congress by the Secretary of Defense under section 221 of Title 10;

(2) set forth the homeland security strategy of the Department, which shall be developed and updated as appropriate annually by the Secretary, that was used to develop program planning guidance for the Future Years Homeland Security Program; and

(3) include an explanation of how the resource allocations included in the Future Years Homeland Security Program correlate to the homeland security strategy set forth under paragraph (2).

(c) *EFFECTIVE DATE.*—This section shall take effect with respect to the preparation and submission of the fiscal year 2005 budget request for the Department and for any subsequent fiscal year, except that the first Future Years Homeland Security Program shall be submitted not later than 90 days after the Department's fiscal year 2005 budget request is submitted to Congress.

\* \* \* \* \*

**[SEC. 458. OFFICE OF COUNTERNARCOTICS ENFORCEMENT.**

**[(a) OFFICE.—**There is established in the Department an Office of Counternarcotics Enforcement, which shall be headed by a Director appointed by the President, by and with the advice and consent of the Senate.

**[(b) ASSIGNMENT OF PERSONNEL.—**

**[(1) IN GENERAL.—**The Secretary shall assign permanent staff to the Office, consistent with effective management of Department resources.

**[(2) LIAISONS.—**The Secretary shall designate senior employees from each appropriate subdivision of the Department that has significant counternarcotics responsibilities to act as a liaison between that subdivision and the Office of Counternarcotics Enforcement.

**[(c) LIMITATION ON CONCURRENT EMPLOYMENT.—**The Director of the Office of Counternarcotics Enforcement shall not be employed by, assigned to, or serve as the head of, any other branch of the Federal Government, any State or local government, or any subdivision of the Department other than the Office of Counternarcotics Enforcement.

**[(d) RESPONSIBILITIES.—**The Secretary shall direct the Director of the Office of Counternarcotics Enforcement—

**[(1)** to coordinate policy and operations within the Department, between the Department and other Federal departments and agencies, and between the Department and State and local agencies with respect to stopping the entry of illegal drugs into the United States;

**[(2)** to ensure the adequacy of resources within the Department for stopping the entry of illegal drugs into the United States;

**[(3)** to recommend the appropriate financial and personnel resources necessary to help the Department better fulfill its responsibility to stop the entry of illegal drugs into the United States;

**[(4)** within the Joint Terrorism Task Force construct to track and sever connections between illegal drug trafficking and terrorism; and

**[(5)** to be a representative of the Department on all task forces, committees, or other entities whose purpose is to coordinate the counternarcotics enforcement activities of the Department and other Federal, State or local agencies.

**[(e) SAVINGS CLAUSE.—**Nothing in this section shall be construed to authorize direct control of the operations conducted by the Directorate of Border and Transportation Security, the Coast Guard, or joint terrorism task forces.

**[(f) REPORTS TO CONGRESS.—**

**[(1) ANNUAL BUDGET REVIEW.—**The Director of the Office of Counternarcotics Enforcement shall, not later than 30 days after the submission by the President to Congress of any request for expenditures for the Department, submit to the Committees on Appropriations and the authorizing committees of jurisdiction of the House of Representatives and the Senate a review and evaluation of such request. The review and evaluation shall—

[(A) identify any request or subpart of any request that affects or may affect the counternarcotics activities of the Department or any of its subdivisions, or that affects the ability of the Department or any subdivision of the Department to meet its responsibility to stop the entry of illegal drugs into the United States;

[(B) describe with particularity how such requested funds would be or could be expended in furtherance of counternarcotics activities; and

[(C) compare such requests with requests for expenditures and amounts appropriated by Congress in the previous fiscal year.

[(2) EVALUATION OF COUNTERNARCOTICS ACTIVITIES.—The Director of the Office of Counternarcotics Enforcement shall, not later than February 1 of each year, submit to the Committees on Appropriations and the authorizing committees of jurisdiction of the House of Representatives and the Senate a review and evaluation of the counternarcotics activities of the Department for the previous fiscal year. The review and evaluation shall—

[(A) describe the counternarcotics activities of the Department and each subdivision of the Department (whether individually or in cooperation with other subdivisions of the Department, or in cooperation with other branches of the Federal Government or with State or local agencies), including the methods, procedures, and systems (including computer systems) for collecting, analyzing, sharing, and disseminating information concerning narcotics activity within the Department and between the Department and other Federal, State, and local agencies;

[(B) describe the results of those activities, using quantifiable data whenever possible;

[(C) state whether those activities were sufficient to meet the responsibility of the Department to stop the entry of illegal drugs into the United States, including a description of the performance measures of effectiveness that were used in making that determination; and

[(D) recommend, where appropriate, changes to those activities to improve the performance of the Department in meeting its responsibility to stop the entry of illegal drugs into the United States.

[(3) CLASSIFIED OR LAW ENFORCEMENT SENSITIVE INFORMATION.—Any content of a review and evaluation described in the reports required in this subsection that involves information classified under criteria established by an Executive order, or whose public disclosure, as determined by the Secretary, would be detrimental to the law enforcement or national security activities of the Department or any other Federal, State, or local agency, shall be presented to Congress separately from the rest of the review and evaluation.]

\* \* \* \* \*

**[SEC. 459. 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 exchange shall include the following:

[(A) Exchange of information on research and development on homeland security technologies.

[(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. 459. OFFICE OF INTERNATIONAL AFFAIRS.**

(a) *ESTABLISHMENT.*—*There is established within the Department an Office of International Affairs, which shall be headed by the Assistant Secretary for International Affairs, who shall be appointed by the President.*

(b) *RESPONSIBILITIES OF THE ASSISTANT SECRETARY.*—*The Assistant Secretary for International Affairs shall—*

(1) *coordinate international activities within the Department;*

(2) *develop and update, in consultation with all components of the Department with international activities, an international strategic plan for the Department and establish a process for managing its implementation;*

(3) *provide guidance to components of the Department on executing international activities and to employees of the Department who are deployed overseas, including—*

(A) *establishing predeployment preparedness criteria for employees and any accompanying family members;*

(B) *establishing, in coordination with the Under Secretary for Management, minimum support requirements for Department employees abroad, to ensure the employees have the proper resources and have received adequate and timely support prior to and during tours of duty;*

(C) *providing information and training on administrative support services available to overseas employees from the Department of State and other Federal agencies;*

(D) *establishing guidance on how Department attaches are expected to coordinate with other component staff and activities; and*

(E) *developing procedures and guidance for employees of the Department returning to the United States;*

(4) *identify areas for homeland security information and training exchange in which—*

(A) *the United States has a demonstrated weakness; and*

- (B) a country that is a friend or ally of the United States has a demonstrated expertise;
- (5) maintain situational awareness of—
  - (A) all international engagement and travel conducted by offices and personnel of the Department; and
  - (B) all spending by the Federal Government for international assistance activities relating to homeland security; and
- (6) perform other duties, as determined by the Secretary.

\* \* \* \* \*

**Subchapter XIV—Domestic Nuclear Detection Office**

\* \* \* \* \*

**SEC. 592. MISSION OF OFFICE.**

(a) MISSION.—The Office shall be responsible for coordinating Federal efforts to detect and protect against the unauthorized importation, possession, storage, transportation, development, or use of a nuclear explosive device, fissile material, or radiological material in the United States, and to protect against attack using such devices or materials against the people, territory, or interests of the United States and, to this end, shall—

(1) serve as the primary entity of the United States Government to further develop, acquire, and support the deployment of an enhanced domestic system to detect and report on attempts to import, possess, store, transport, develop, or use an unauthorized nuclear explosive device, fissile material, or radiological material in the United States, and improve that system over time;

(2) coordinate strategic planning and investments, within the Department and with other Federal agencies and State and local governments—

- (A) to detect and prevent illegal trafficking in nuclear weapons-making materials or technologies; and
- (B) to reduce the risk of a nuclear terrorist attack;

[(2)](3) enhance and coordinate the nuclear detection efforts of Federal, State, local, and tribal governments and the private sector to ensure a managed, coordinated response;

[(3)](4) establish, with the approval of the Secretary and in coordination with the Attorney General, the Secretary of Defense, and the Secretary of Energy, additional protocols and procedures for use within the United States to ensure that the detection of unauthorized nuclear explosive devices, fissile material, or radiological material is promptly reported to the Attorney General, the Secretary, the Secretary of Defense, the Secretary of Energy, and other appropriate officials or their respective designees for appropriate action by law enforcement, military, emergency response, or other authorities;

[(4)](5) develop, with the approval of the Secretary and in coordination with the Attorney General, the Secretary of State, the Secretary of Defense, and the Secretary of Energy, an enhanced global nuclear detection architecture with implementation under which—

- (A) the Office will be responsible for the implementation of the domestic portion of the global architecture;



(B) the Secretary of Defense will retain responsibility for implementation of Department of Defense requirements within and outside the United States; and

(C) the Secretary of State, the Secretary of Defense, and the Secretary of Energy will maintain their respective responsibilities for policy guidance and implementation of the portion of the global architecture outside the United States, which will be implemented consistent with applicable law and relevant international arrangements;

[(5)](6) ensure that the expertise necessary to accurately interpret detection data is made available in a timely manner for all technology deployed by the Office to implement the global nuclear detection architecture;

[(6)](6) conduct, support, coordinate, and encourage an aggressive, expedited, evolutionary, and transformational program of research and development to generate and improve technologies to detect and prevent the illicit entry, transport, assembly, or potential use within the United States of a nuclear explosive device or fissile or radiological material, and coordinate with the Under Secretary for Science and Technology on basic and advanced or transformational research and development efforts relevant to the mission of both organizations;]

(7) carry out a program to test and evaluate technology for detecting a nuclear explosive device and fissile or radiological material, in coordination with the Secretary of Defense and the Secretary of Energy, as appropriate, and establish performance metrics for evaluating the effectiveness of individual detectors and detection systems in detecting such devices or material—

(A) under realistic operational and environmental conditions; and

(B) against realistic adversary tactics and countermeasures;

(8) support and enhance the effective sharing and use of appropriate information generated by the intelligence community, law enforcement agencies, counterterrorism community, other [government agencies] *Federal, State, and local entities*, and foreign governments, as well as provide appropriate information to such entities;

(9) further enhance and maintain continuous awareness by analyzing information from all Office mission-related detection systems;

(10) lead the development and implementation of the national strategic five-year plan for improving the nuclear forensic and attribution capabilities of the United States required under section 1036 of the National Defense Authorization Act for Fiscal Year 2010;

(11) establish, within the Domestic Nuclear Detection Office, the National Technical Nuclear Forensics Center to provide centralized stewardship, planning, assessment, gap analysis, exercises, improvement, and integration for all Federal nuclear forensics and attribution activities—

(A) to ensure an enduring national technical nuclear forensics capability to strengthen the collective response of the United States to nuclear terrorism or other nuclear attacks; and

(B) to coordinate and implement the national strategic five-year plan referred to in paragraph (10);  
(12) establish a National Nuclear Forensics Expertise Development Program, which—

(A) is devoted to developing and maintaining a vibrant and enduring academic pathway from undergraduate to post-doctorate study in nuclear and geochemical science specialties directly relevant to technical nuclear forensics, including radiochemistry, geochemistry, nuclear physics, nuclear engineering, materials science, and analytical chemistry;

(B) shall—

(i) make available for undergraduate study student scholarships, with a duration of up to 4 years per student, which shall include, if possible, at least 1 summer internship at a national laboratory or appropriate Federal agency in the field of technical nuclear forensics during the course of the student's undergraduate career;

(ii) make available for doctoral study student fellowships, with a duration of up to 5 years per student, which shall—

(I) include, if possible, at least 2 summer internships at a national laboratory or appropriate Federal agency in the field of technical nuclear forensics during the course of the student's graduate career; and

(II) require each recipient to commit to serve for 2 years in a post-doctoral position in a technical nuclear forensics-related specialty at a national laboratory or appropriate Federal agency after graduation;

(iii) make available to faculty awards, with a duration of 3 to 5 years each, to ensure faculty and their graduate students have a sustained funding stream; and

(iv) place a particular emphasis on reinvigorating technical nuclear forensics programs while encouraging the participation of undergraduate students, graduate students, and university faculty from historically Black colleges and universities, Hispanic-serving institutions, Tribal Colleges and Universities, Asian American and Native American Pacific Islander-serving institutions, Alaska Native-serving institutions, and Hawaiian Native-serving institutions; and

(C) shall—

(i) provide for the selection of individuals to receive scholarships or fellowships under this section through a competitive process primarily on the basis of academic merit and the nuclear forensics and attribution needs of the United States Government;

(ii) provide for the setting aside of up to 10 percent of the scholarships or fellowships awarded under this section for individuals who are Federal employees to enhance the education of such employees in areas of

critical nuclear forensics and attribution needs of the United States Government, for doctoral education under the scholarship on a full-time or part-time basis;

(iii) provide that the Secretary may enter into a contractual agreement with an institution of higher education under which the amounts provided for a scholarship under this section for tuition, fees, and other authorized expenses are paid directly to the institution with respect to which such scholarship is awarded;

(iv) require scholarship recipients to maintain satisfactory academic progress; and

(v) require that—

(I) a scholarship recipient who fails to maintain a high level of academic standing, as defined by the Secretary, who is dismissed for disciplinary reasons from the educational institution such recipient is attending, or who voluntarily terminates academic training before graduation from the educational program for which the scholarship was awarded shall be liable to the United States for repayment within 1 year after the date of such default of all scholarship funds paid to such recipient and to the institution of higher education on the behalf of such recipient, provided that the repayment period may be extended by the Secretary if the Secretary determines it necessary, as established by regulation; and

(II) a scholarship recipient who, for any reason except death or disability, fails to begin or complete the post-doctoral service requirements in a technical nuclear forensics-related specialty at a national laboratory or appropriate Federal agency after completion of academic training shall be liable to the United States for an amount equal to—

(aa) the total amount of the scholarship received by such recipient under this section; and

(bb) the interest on such amounts which would be payable if at the time the scholarship was received such scholarship was a loan bearing interest at the maximum legally prevailing rate;

(13) provide an annual report to Congress on the activities carried out under paragraphs (10), (11), and (12); and

(14) perform other duties as assigned by the Secretary.

(b) DEFINITIONS.—In this section:

(1) ALASKA NATIVE-SERVING INSTITUTION.—The term “Alaska Native-serving institution” has the meaning given the term in section 1059d of Title 20.

(2) ASIAN AMERICAN AND NATIVE AMERICAN PACIFIC ISLANDER-SERVING INSTITUTION.—The term “Asian American and Native American Pacific Islander-serving institution” has the meaning given the term in section 1059g of Title 20.

(3) HAWAIIAN NATIVE-SERVING INSTITUTION.—The term “Hawaiian native-serving institution” has the meaning given the term in section 1059d of Title 20.

(4) HISPANIC-SERVING INSTITUTION.—The term “Hispanic-serving institution” has the meaning given that term in section 1101a of Title 20.

(5) HISTORICALLY BLACK COLLEGE OR UNIVERSITY.—The term “historically Black college or university” has the meaning given the term “part B institution” in section 1061(2) of Title 20.

(6) TRIBAL COLLEGE OR UNIVERSITY.—The term “Tribal College or University” has the meaning given that term in section 1059c(b) of Title 20.

\* \* \* \* \*

**SEC. 596. CONTRACTING AND GRANT MAKING AUTHORITIES.**

The Secretary, acting through the Director for Domestic Nuclear Detection, in carrying out the responsibilities under [paragraphs (6) and (7) of section 592(a)] *paragraph (7) of section 592(a)* of this title, shall—

(1) operate extramural and intramural programs and distribute funds through grants, cooperative agreements, and other transactions and contracts;

(2) ensure that activities under [paragraphs (6) and (7) of section 592(a)] *paragraph (7) of section 592(a)* of this title include investigations of radiation detection equipment in configurations suitable for deployment at seaports, which may include underwater or water surface detection equipment and detection equipment that can be mounted on cranes and straddle cars used to move shipping containers; and

(3) have the authority to establish or contract with 1 or more federally funded research and development centers to provide independent analysis of homeland security issues and carry out other responsibilities under this subchapter.

\* \* \* \* \*

**Subchapter XV—Homeland Security Grants**

**SEC. 601. DEFINITIONS.**

In this subchapter, the following definitions shall apply:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Federal Emergency Management Agency.

(2) APPROPRIATE COMMITTEES OF CONGRESS.—The term “appropriate committees of Congress” means—

(A) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(B) those committees of the House of Representatives that the Speaker of the House of Representatives determines appropriate.

(3) CRITICAL INFRASTRUCTURE SECTORS.—The term “critical infrastructure sectors” means the following sectors, in both urban and rural areas:

- (A) Agriculture and food.
- (B) Banking and finance.
- (C) Chemical industries.
- (D) Commercial facilities.

- (E) Commercial nuclear reactors, materials, and waste.
  - (F) Dams.
  - (G) The defense industrial base.
  - (H) Emergency services.
  - (I) Energy.
  - (J) Government facilities.
  - (K) Information technology.
  - (L) National monuments and icons.
  - (M) Postal and shipping.
  - (N) Public health and health care.
  - (O) Telecommunications.
  - (P) Transportation systems.
  - (Q) Water.
- (4) **DIRECTLY ELIGIBLE TRIBE.**—The term “directly eligible tribe” means—
- (A) any Indian tribe—
    - (i) that is located in the continental United States;
    - (ii) that operates a law enforcement or emergency response agency with the capacity to respond to calls for law enforcement or emergency services;
    - (iii)(I) that is located on or near an international border or a coastline bordering an ocean (including the Gulf of Mexico) or international waters;
    - (II) that is located within 10 miles of a system or asset included on the prioritized critical infrastructure list established under section 124l(a)(2) of this title or has such a system or asset within its territory;
    - (III) that is located within or contiguous to 1 of the 50 most populous metropolitan statistical areas in the United States; or
    - (IV) the jurisdiction of which includes not less than 1,000 square miles of Indian country, as that term is defined in section 1151 of Title 18; and
    - (iv) that certifies to the Secretary that a State has not provided funds under section 604 or 605 of this title to the Indian tribe or consortium of Indian tribes for the purpose for which direct funding is sought; and
  - (B) a consortium of Indian tribes, if each tribe satisfies the requirements of subparagraph (A).
- (5) **ELIGIBLE METROPOLITAN AREA.**—The term “eligible metropolitan area” means any of the 100 most populous metropolitan statistical areas in the United States.
- (6) **HIGH-RISK URBAN AREA.**—The term “high-risk urban area” means a high-risk urban area designated under section 604(b)(3)(A) of this title.
- (7) **INDIAN TRIBE.**—The term “Indian tribe” has the meaning given that term in section 450b(e) of Title 25.
- (8) **MASS CASUALTY INCIDENT.**—*The term “mass casualty incident” means any natural disaster, act of terrorism, or other man-made disaster, including a disease epidemic, that results in significant numbers of injuries or deaths and to which the response has the potential to overwhelm routine emergency medical services.*

~~[(8)](9)~~ METROPOLITAN STATISTICAL AREA.—The term “metropolitan statistical area” means a metropolitan statistical area, as defined by the Office of Management and Budget.

~~[(9)](10)~~ NATIONAL SPECIAL SECURITY EVENT.—The term “National Special Security Event” means a designated event that, by virtue of its political, economic, social, or religious significance, may be the target of terrorism or other criminal activity.

~~[(10)](11)~~ POPULATION.—The term “population” means population according to the most recent United States census population estimates available at the start of the relevant fiscal year.

~~[(11)](12)~~ POPULATION DENSITY.—The term “population density” means population divided by land area in square miles.

~~[(12)](13)~~ QUALIFIED INTELLIGENCE ANALYST.—The term “qualified intelligence analyst” means an intelligence analyst (as that term is defined in section 124h(j) of this title), including law enforcement personnel—

(A) who has successfully completed training to ensure baseline proficiency in intelligence analysis and production, as determined by the Secretary, which may include training using a curriculum developed under section 124f of this title; or

(B) whose experience ensures baseline proficiency in intelligence analysis and production equivalent to the training required under subparagraph (A), as determined by the Secretary.

~~[(13)](14)~~ TARGET CAPABILITIES.—The term “target capabilities” means the target capabilities for Federal, State, local, and tribal government preparedness for which guidelines are required to be established under section 746(a) of this title.

~~[(14)](15)~~ TRIBAL GOVERNMENT.—The term “tribal government” means the government of an Indian tribe.

\* \* \* \* \*

**PART A—GRANTS TO STATES AND HIGH-RISK URBAN AREAS**

**SEC. 603. HOMELAND SECURITY GRANT PROGRAMS.**

(a) GRANTS AUTHORIZED.—The Secretary, through the Administrator, may award grants under sections 604 and 605 of this title to State, local, and tribal governments.

(b) PROGRAMS NOT AFFECTED.—This part shall not be construed to affect any of the following Federal programs:

(1) Firefighter and other assistance programs authorized under the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 et seq.).

(2) Grants authorized under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(3) Emergency Management Performance Grants under the amendments made by title II of the Implementing Recommendations of the 9/11 Commission Act of 2007.

(4) Grants to protect critical infrastructure, including port security grants authorized under section 70107 of Title 46, and the grants authorized under Title [FN1] XIV and XV of the Im-

plementing Recommendations of the 9/11 Commission Act of 2007 [6 U.S.C. 1131 et seq., 1151 et seq.] and the amendments made by such titles.

(5) The Metropolitan Medical Response System authorized under subtitle C [section 723] of this title.

(6) The Interoperable Emergency Communications Grant Program authorized under subchapter XIII.

(7) Grant programs other than those administered by the Department.

(c) RELATIONSHIP TO OTHER LAWS.—

(1) IN GENERAL.—The grant programs authorized under sections 604 and 605 of this title shall supercede all grant programs authorized under section 3714 of Title 42.

(2) ALLOCATION.—The allocation of grants authorized under section 604 or 605 of this title shall be governed by the terms of this part and not by any other provision of law.

\* \* \* \* \*

## CHAPTER 2—NATIONAL EMERGENCY MANAGEMENT

### SEC. 701. DEFINITIONS.

In this title—

(1) the term “Administrator” means the Administrator of the Agency;

(2) the term “Agency” means the Federal Emergency Management Agency;

(3) the term “appropriate committees of Congress” means—  
(A) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(B) those committees of the House of Representatives that the Speaker of the House of Representatives determines appropriate;

(4) the term “catastrophic incident” means any natural disaster, act of terrorism, or other man-made disaster that results in extraordinary levels of casualties or damage or disruption severely affecting the population (including mass evacuations), infrastructure, environment, economy, national morale, or government functions in an area;

(5) the term “critical infrastructure” has the meaning given that term in section 1016(e) of the USA PATRIOT Act (42 U.S.C. 5195c(e));

[(5)](6) the term “Department” means the Department of Homeland Security;

[(6)](7) the terms “emergency” and “major disaster” have the meanings given the terms in section 5122 of Title 42;

[(7)](8) the term “emergency management” means the governmental function that coordinates and integrates all activities necessary to build, sustain, and improve the capability to prepare for, protect against, respond to, recover from, or mitigate against threatened or actual natural disasters, acts of terrorism, or other man-made disasters;

[(8)](9) the term “emergency response provider” has the meaning given the term in section 101 of this title;

[(9)](10) the term “Federal coordinating officer” means a Federal coordinating officer as described in section 5143 of Title 42;

[(10)](11) the term “individual with a disability” has the meaning given the term in section 12102 of Title 42;

[(11)](12) the terms “local government” and “State” have the meaning given the terms in section 101 of this title;

[(12)](13) the term “National Incident Management System” means a system to enable effective, efficient, and collaborative incident management;

[(13)](14) the term “National Response Plan” means the National Response Plan or any successor plan prepared under section 314(a)(6) of this title;

[(14)](15) the term “Secretary” means the Secretary of Homeland Security;

[(15)](16) the term “surge capacity” means the ability to rapidly and substantially increase the provision of search and rescue capabilities, food, water, medicine, shelter and housing, medical care, evacuation capacity, staffing (including disaster assistance employees), and other resources necessary to save lives and protect property during a catastrophic incident; and

[(16)](17) the term “tribal government” means the government of an Indian tribe or authorized tribal organization, or in Alaska a Native village or Alaska Regional Native Corporation.

\* \* \* \* \*

**Subchapter I—Personnel Provisions**

\* \* \* \* \*

**[SEC. 723. METROPOLITAN MEDICAL RESPONSE GRANT PROGRAM.**

[(a) IN GENERAL.—There is a Metropolitan Medical Response Program.

[(b) PURPOSES.—The program shall include each purpose of the program as it existed on June 1, 2006.

[(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the program for fiscal year 2008, an amount equal to the amount appropriated for the program for fiscal year 2007 and an additional \$30,000,000.]

\* \* \* \* \*

**Subchapter II—Comprehensive Preparedness System**

**Part A—National Preparedness System**

\* \* \* \* \*

**SEC. 753. FEDERAL PREPAREDNESS.**

(a) *DEFINITION.—In this section, the term “catastrophic incident planning” means planning to prevent, prepare for, protect against, respond to, and recover from a catastrophic incident.*

(b) *PLANNING.—In support of the national preparedness system, the President shall ensure that there are comprehensive plans to prevent, prepare for, protect against, respond to, and recover from natural disasters, acts of terrorism, and other man-made disasters, including catastrophic incidents, throughout the Federal Government.*



**[(a)](c) AGENCY RESPONSIBILITY.**—In support of the national preparedness system, the President shall ensure that each Federal agency with responsibilities under the National Response Plan—

(1) has the operational capability to meet the national preparedness goal, including—

(A) the personnel to make and communicate decisions;

(B) organizational structures that are assigned, trained, and exercised for the missions of the agency;

(C) sufficient physical resources; and

(D) the command, control, and communication channels to make, monitor, and communicate decisions;

(2) complies with the National Incident Management System, including credentialing of personnel and typing of resources likely needed to respond to a natural disaster, act of terrorism, or other man-made disaster in accordance with section 320 of this title;

(3) develops, trains, and exercises rosters of response personnel to be deployed when the agency is called upon to support a Federal response;

(4) *conducts catastrophic incident planning as required under subsection (d)(2);*

**[(4)](5)** develops deliberate operational plans, *including for catastrophic incidents*, and the corresponding capabilities, including crisis planning, to respond effectively to natural disasters, acts of terrorism, and other man-made disasters in support of the National Response Plan to ensure a coordinated Federal response; and

**[(5)](6)** regularly updates, verifies the accuracy of, and provides to the Administrator the information in the inventory required under section 751 of this title.

**(d) CATASTROPHIC INCIDENT PLANNING.**—*In carrying out subsections (b) and (c), the President shall—*

(1) *identify and prioritize risks of catastrophic incidents, including risks across all critical infrastructure sectors;*

(2) *ensure that Federal agencies coordinate to conduct comprehensive and effective catastrophic incident planning to address prioritized catastrophic risks; and*

(3) *review plans for catastrophic incidents developed by Federal agencies to ensure the effectiveness of the plans, including assessing whether—*

(A) *the assumptions underlying plans for catastrophic incidents are realistic;*

(B) *the resources identified to implement the plans are adequate for catastrophic incidents, including whether the number, skills, and training of the available workforce is sufficient to implement the plans; and*

(C) *plans for catastrophic incidents reflect coordination with governmental and nongovernmental entities that would play a significant role in the response to the catastrophic incident.*

**[(b)](e) OPERATIONAL PLANS.**—An operations plan developed under **[(a)](4)** *subsection (c)(5)* of this section shall meet the following requirements:

(1) The operations plan shall be coordinated under a unified system with a common terminology, approach, and framework.

(2) The operations plan shall be developed, in coordination with State, local, and tribal government officials, to address both regional and national risks.

(3) The operations plan shall contain, as appropriate, the following elements:

(A) Concepts of operations.

(B) Critical tasks and responsibilities.

(C) Detailed resource and personnel requirements, together with sourcing requirements.

(D) Specific provisions for the rapid integration of the resources and personnel of the agency into the overall response.

(4) The operations plan shall address, as appropriate, the following matters:

(A) Support of State, local, and tribal governments in conducting mass evacuations, including—

(i) transportation and relocation;

(ii) short- and long-term sheltering and accommodation;

(iii) provisions for populations with special needs, keeping families together, and expeditious location of missing children; and

(iv) policies and provisions for pets.

(B) The preparedness and deployment of public health and medical resources, including resources to address the needs of evacuees and populations with special needs.

(C) The coordination of interagency search and rescue operations, including land, water, and airborne search and rescue operations.

(D) The roles and responsibilities of the Senior Federal Law Enforcement Official with respect to other law enforcement entities.

(E) The protection of critical infrastructure.

(F) The coordination of maritime salvage efforts among relevant agencies.

(G) The coordination of Department of Defense and National Guard support of civilian authorities.

(H) To the extent practicable, the utilization of Department of Defense, National Air and Space Administration, National Oceanic and Atmospheric Administration, and commercial aircraft and satellite remotely sensed imagery.

(I) The coordination and integration of support from the private sector and nongovernmental organizations.

(J) The safe disposal of debris, including hazardous materials, and, when practicable, the recycling of debris.

(K) The identification of the required surge capacity.

(L) Specific provisions for the recovery of affected geographic areas.

**[(c)](f) MISSION ASSIGNMENTS.**—To expedite the provision of assistance under the National Response Plan, the President shall ensure that the Administrator, in coordination with Federal agencies with responsibilities under the National Response Plan, develops prescribed mission assignments, including logistics, communications, mass care, health services, and public safety.

**[(d)](g) CERTIFICATION.**—The President shall certify to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security and the Committee on Transportation and Infrastructure of the House of Representatives on an annual basis that each Federal agency with responsibilities under the National Response Plan complies with **[subsections (a) and (b)] subsections (c) and (e)** of this section.

**[(e)](h) CONSTRUCTION.**—Nothing in this section shall be construed to limit the authority of the Secretary of Defense with regard to—

- (1) the command, control, training, planning, equipment, exercises, or employment of Department of Defense forces; or
- (2) the allocation of Department of Defense resources.

\* \* \* \* \*

**PART B—ADDITIONAL PREPAREDNESS**

**SEC. 761. EMERGENCY MANAGEMENT ASSISTANCE COMPACT GRANTS.**

(a) **IN GENERAL.**—The Administrator may make grants to administer the Emergency Management Assistance Compact consented to by the Joint Resolution entitled “Joint Resolution granting the consent of Congress to the Emergency Management Assistance Compact” (Public Law 104–321; 110 Stat. 3877).

(b) **USES.**—A grant under this section shall be used—

- (1) to carry out recommendations identified in the Emergency Management Assistance Compact after-action reports for the 2004 and 2005 hurricane season;
- (2) to administer compact operations on behalf of all member States and territories;
- (3) to continue coordination with the Agency and appropriate Federal agencies;
- (4) to continue coordination with State, local, and tribal government entities and their respective national organizations; and
- (5) to assist State and local governments, emergency response providers, and organizations representing such providers with credentialing emergency response providers and the typing of emergency response resources.

(c) **COORDINATION.**—The Administrator shall consult with the Administrator of the Emergency Management Assistance Compact to ensure effective coordination of efforts in responding to requests for assistance.

(d) **AUTHORIZATION.**—There is authorized to be appropriated to carry out this section **[\$4,000,000 for fiscal year 2008] \$2,000,000 for each of fiscal years 2012 through 2016**. Such sums shall remain available until expended.

\* \* \* \* \*

**PART D—PREVENTION OF FRAUD, WASTE, AND ABUSE**

\* \* \* \* \*

**SEC. 796. REGISTRY OF DISASTER RESPONSE CONTRACTORS.**

(a) **DEFINITIONS.**—In this section.—

- (1) the term “registry” means the registry created under subsection (b); and

(2) the terms “small business concern”, “small business concern owned and controlled by socially and economically disadvantaged individuals”, “small business concern owned and controlled by women”, and “small business concern owned and controlled by service-disabled veterans” have the meanings given those terms under the Small Business Act (15 U.S.C. 631 et seq.).

(b) REGISTRY.—

(1) IN GENERAL.—The Administrator shall establish and maintain a registry of contractors who are willing to perform debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities.

(2) CONTENTS.—The registry shall include, for each business concern—

- (A) the name of the business concern;
- (B) the location of the business concern;
- (C) the area served by the business concern;
- (D) the type of good or service provided by the business concern;
- (E) the bonding level of the business concern; and
- (F) whether the business concern is—
  - (i) a small business concern;
  - (ii) a small business concern owned and controlled by socially and economically disadvantaged individuals;
  - (iii) a small business concern owned and controlled by women; or
  - (iv) a small business concern owned and controlled by service-disabled veterans.

(3) SOURCE OF INFORMATION.—*Information maintained in the registry shall be submitted on a voluntary basis and be kept current by the submitting business concerns.*

(A) SUBMISSION.—Information maintained in the registry shall be submitted on a voluntary basis and be kept current by the submitting business concerns.

(B) ATTESTATION.—Each business concern submitting information to the registry shall submit—
 

- (i) an attestation that the information is true; and
- (ii) documentation supporting such attestation.

(C) VERIFICATION.—The Administrator shall verify that the documentation submitted by each business concern supports the information submitted by that business concern.

(4) AVAILABILITY OF REGISTRY.—The registry shall be made generally available on the Internet site of the Agency.

(5) CONSULTATION OF REGISTRY.—As part of the acquisition planning for contracting for debris removal, distribution of supplies in a disaster, reconstruction, and other disaster or emergency relief activities, a Federal agency shall **[consult the registry]** *consult the Central Contractor Registration database maintained under subpart 4.11 of the Federal Acquisition Regulation, or any successor thereto.*

**SEC. 797. FRAUD PREVENTION TRAINING PROGRAM.**

**[The Administrator]** (a) IN GENERAL.—*The Administrator shall develop and implement a program to provide training on the pre-*

vention of waste, fraud, and abuse of Federal disaster relief assistance relating to the response to or recovery from natural disasters and acts of terrorism or other man-made disasters and ways to identify such potential waste, fraud, and abuse.

(b) *REPORTING.*—For the fiscal year in which this subsection is enacted, and each fiscal year thereafter for 5 fiscal years, the Administrator shall submit to Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security and the Committee on Transportation and Infrastructure of the House of Representatives a report identifying the number of employees of the Agency and contractors trained under the program developed under subsection (a).

\* \* \* \* \*

**CHAPTER 4—TRANSPORTATION SECURITY**

\* \* \* \* \*

**Subchapter IV—Surface Transportation Security**

\* \* \* \* \*

**Part C—Over-the-Road Bus and Trucking Security**

\* \* \* \* \*

**[SEC. 1182. OVER-THE-ROAD BUS SECURITY ASSISTANCE.**

[(a) **IN GENERAL.**—The Secretary shall establish a program for making grants to eligible private operators providing transportation by an over-the-road bus for security improvements described in subsection (b) of this section.

[(b) **USES OF FUNDS.**—A recipient of a grant received under subsection (a) of this section shall use the grant funds for one or more of the following:

[(1) Constructing and modifying terminals, garages, and facilities, including terminals and other over-the-road bus facilities owned by State or local governments, to increase their security.

[(2) Modifying over-the-road buses to increase their security.

[(3) Protecting or isolating the driver of an over-the-road bus.

[(4) Acquiring, upgrading, installing, or operating equipment, software, or accessorial services for collection, storage, or exchange of passenger and driver information through ticketing systems or other means and for information links with government agencies, for security purposes.

[(5) Installing cameras and video surveillance equipment on over-the-road buses and at terminals, garages, and over-the-road bus facilities.

[(6) Establishing and improving an emergency communications system linking drivers and over-the-road buses to the recipient's operations center or linking the operations center to law enforcement and emergency personnel.

[(7) Implementing and operating passenger screening programs for weapons and explosives.

[(8) Public awareness campaigns for enhanced over-the-road bus security.

[(9) Operating and capital costs associated with over-the-road bus security awareness, preparedness, and response training, including training under section 1184 of this title and training developed by institutions of higher education and by nonprofit employee labor organizations, for over-the-road bus employees, including frontline employees.

[(10) Chemical, biological, radiological, or explosive detection, including canine patrols for such detection.

[(11) Overtime reimbursement, including reimbursement of State, local, and tribal governments for costs, for enhanced security personnel assigned to duties related to over-the-road bus security during periods of high or severe threat levels, National Special Security Events, or other periods of heightened security as determined by the Secretary.

[(12) Live or simulated exercises, including those described in section 1183 of this title.

[(13) Operational costs to hire, train, and employ police and security officers, including canine units, assigned to full-time security or counterterrorism duties related to over-the-road bus transportation, including reimbursement of State, local, and tribal government costs for such personnel.

[(14) Development of assessments or security plans under section 1181 of this title.

[(15) Such other improvements as the Secretary considers appropriate.

[(c) DUE CONSIDERATION.—In making grants under this section, the Secretary shall prioritize grant funding based on security risks to bus passengers and the ability of a project to reduce, or enhance response to, that risk, and shall not penalize private operators of over-the-road buses that have taken measures to enhance over-the-road bus transportation security prior to September 11, 2001.

[(d) DEPARTMENT OF HOMELAND SECURITY RESPONSIBILITIES.—In carrying out the responsibilities under subsection (a) of this section, the Secretary shall—

[(1) determine the requirements for recipients of grants under this section, including application requirements;

[(2) select grant recipients;

[(3) award the funds authorized by this section based on risk, as identified by the plans required under section 1181 of this title or assessment or plan described in subsection (f)(2) of this section; and

[(4) pursuant to subsection (c) of this section, establish priorities for the use of funds for grant recipients.

[(e) DISTRIBUTION OF GRANTS.—Not later than 90 days after August 3, 2007, the Secretary and the Secretary of Transportation shall determine the most effective and efficient way to distribute grant funds to the recipients of grants determined by the Secretary under subsection (a) of this section. Subject to the determination made by the Secretaries, the Secretary may transfer funds to the Secretary of Transportation for the purposes of disbursing funds to the grant recipient.

[(f) ELIGIBILITY.—

[(1) A private operator providing transportation by an over-the-road bus is eligible for a grant under this section if the operator has completed a vulnerability assessment and developed

a security plan that the Secretary has approved under section 1181 of this title. Grant funds may only be used for permissible uses under subsection (b) of this section to further an over-the-road bus security plan.

[(2) Notwithstanding the requirements for eligibility and uses in paragraph (1), prior to the earlier of 1 year after the date of issuance of final regulations requiring vulnerability assessments and security plans under section 1181 of this title or 3 years after August 3, 2007, the Secretary may award grants under this section for over-the-road bus security improvements listed under subsection (b) of this section based upon over-the-road bus vulnerability assessments and security plans that the Secretary deems are sufficient for the purposes of this section but have not been approved by the Secretary in accordance with section 1181 of this title.

[(g) SUBJECT TO CERTAIN TERMS AND CONDITIONS.—Except as otherwise specifically provided in this section, a grant made under this section shall be subject to the terms and conditions applicable to subrecipients who provide over-the-road bus transportation under section 5311(f) of Title 49 and such other terms and conditions as are determined necessary by the Secretary.

[(h) LIMITATION ON USES OF FUNDS.—A grant made under this section may not be used to make any State or local government cost-sharing contribution under any other Federal law.

[(i) ANNUAL REPORTS.—Each recipient of a grant under this section shall report annually to the Secretary and on the use of such grant funds.

[(j) CONSULTATION.—In carrying out this section, the Secretary shall consult with over-the-road bus operators and nonprofit employee labor organizations representing over-the-road bus employees, public safety and law enforcement officials.

[(k) AUTHORIZATION.—

[(1) IN GENERAL.—From the amounts appropriated pursuant to section 114(w) of Title 49, there shall be made available to the Secretary to make grants under this section—

[(A) \$12,000,000 for fiscal year 2008;

[(B) \$25,000,000 for fiscal year 2009;

[(C) \$25,000,000 for fiscal year 2010; and

[(D) \$25,000,000 for fiscal year 2011.

[(2) PERIOD OF AVAILABILITY.—Sums appropriated to carry out this section shall remain available until expended.]

\* \* \* \* \*

**TITLE 8—ALIENS AND NATIONALITY**

\* \* \* \* \*

**CHAPTER 15—ENHANCED BORDER SECURITY AND VISA ENTRY REFORM**

\* \* \* \* \*

**Subchapter VI—Miscellaneous Provisions**

\* \* \* \* \*

**SEC. 1778. VULNERABILITY AND THREAT ASSESSMENT.**

(a) **STUDY.**—The **【Under Secretary of Homeland Security for Border and Transportation Security】** *Secretary of Homeland Security*, in consultation with the Under Secretary of Homeland Security for Science and Technology and the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection, shall study the technology, equipment, and personnel needed to address security vulnerabilities within the United States for each field of office of the Bureau of Customs and Border Protection that has responsibility for any portion of the United States borders with Canada and Mexico. The **【Under】** Secretary shall conduct follow-up studies at least once every 5 years.

(b) **REPORT TO CONGRESS.**—The **【Under】** Secretary shall submit a report to Congress on the **【Under Secretary’s findings and conclusions】** *Secretary’s findings and conclusions* from each study conducted under subsection (a) of this section together with legislative recommendations, as appropriate, for addressing any security vulnerabilities found by the study.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Department of Homeland Security **【Directorate of Border and Transportation Security】** such sums as may be necessary for fiscal years 2006 through 2011 to carry out any such recommendations from the first study conducted under subsection (a) of this section.

\* \* \* \* \*

**TITLE 31—MONEY AND FINANCE**

\* \* \* \* \*

**Subtitle II—The Budget Process**

\* \* \* \* \*

**CHAPTER 11—THE BUDGET AND FISCAL, BUDGET, AND PROGRAM INFORMATION**

\* \* \* \* \*

**SEC. 1105. BUDGET CONTENTS AND SUBMISSION TO CONGRESS.**

(a) On or after the first Monday in January but not later than the first Monday in February of each year, the President shall submit a budget of the United States Government for the following fiscal year. Each budget shall include a budget message and summary and supporting information. The President shall include in each budget the following:

- (1) information on activities and functions of the Government.
- (2) when practicable, information on costs and achievements of Government programs.
- (3) other desirable classifications of information.
- (4) a reconciliation of the summary information on expenditures with proposed appropriations.
- (5) except as provided in subsection (b) of this section, estimated expenditures and proposed appropriations the President decides are necessary to support the Government in the fiscal



year for which the budget is submitted and the 4 fiscal years after that year.

(6) estimated receipts of the Government in the fiscal year for which the budget is submitted and the 4 fiscal years after that year under—

(A) laws in effect when the budget is submitted; and

(B) proposals in the budget to increase revenues.

(7) appropriations, expenditures, and receipts of the Government in the prior fiscal year.

(8) estimated expenditures and receipts, and appropriations and proposed appropriations, of the Government for the current fiscal year.

(9) balanced statements of the—

(A) condition of the Treasury at the end of the prior fiscal year;

(B) estimated condition of the Treasury at the end of the current fiscal year; and

(C) estimated condition of the Treasury at the end of the fiscal year for which the budget is submitted if financial proposals in the budget are adopted.

(10) essential information about the debt of the Government.

(11) other financial information the President decides is desirable to explain in practicable detail the financial condition of the Government.

(12) for each proposal in the budget for legislation that would establish or expand a Government activity or function, a table showing—

(A) the amount proposed in the budget for appropriation and for expenditure because of the proposal in the fiscal year for which the budget is submitted; and

(B) the estimated appropriation required because of the proposal for each of the 4 fiscal years after that year that the proposal will be in effect.

(13) an allowance for additional estimated expenditures and proposed appropriations for the fiscal year for which the budget is submitted.

(14) an allowance for unanticipated uncontrollable expenditures for that year.

(15) a separate statement on each of the items referred to in section 301(a)(1)–(5) of the Congressional Budget Act of 1974 (2 U.S.C. 632(a)(1)–(5)).

(16) the level of tax expenditures under existing law in the tax expenditures budget (as defined in section 3(a)(3) of the Congressional Budget Act of 1974 (2 U.S.C. 622(a)(3))) for the fiscal year for which the budget is submitted, considering projected economic factors and changes in the existing levels based on proposals in the budget.

(17) information on estimates of appropriations for the fiscal year following the fiscal year for which the budget is submitted for grants, contracts, and other payments under each program for which there is an authorization of appropriations for that following fiscal year when the appropriations are authorized to be included in an appropriation law for the fiscal year before the fiscal year in which the appropriation is to be available for obligation.

(18) a comparison of the total amount of budget outlays for the prior fiscal year, estimated in the budget submitted for that year, for each major program having relatively uncontrollable outlays with the total amount of outlays for that program in that year.

(19) a comparison of the total amount of receipts for the prior fiscal year, estimated in the budget submitted for that year, with receipts received in that year, and for each major source of receipts, a comparison of the amount of receipts estimated in that budget with the amount of receipts from that source in that year.

(20) an analysis and explanation of the differences between each amount compared under clauses (18) and (19) of this subsection.

(21) a horizontal budget showing—

(A) the programs for meteorology and of the National Climate Program established under section 5 of the National Climate Program Act (15 U.S.C. 2904);

(B) specific aspects of the program of, and appropriations for, each agency; and

(C) estimated goals and financial requirements.

(22) a statement of budget authority, proposed budget authority, budget outlays, and proposed budget outlays, and descriptive information in terms of—

(A) a detailed structure of national needs that refers to the missions and programs of agencies (as defined in section 101 of this title); and

(B) the missions and basic programs.

(23) separate appropriation accounts for appropriations under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.).

(24) recommendations on the return of Government capital to the Treasury by a mixed-ownership corporation (as defined in section 9101(2) of this title) that the President decides are desirable.

(25) a separate appropriation account for appropriations for each Office of Inspector General of an establishment defined under section 11(2) of the Inspector General Act of 1978.

(26) a separate statement of the amount of appropriations requested for the Office of National Drug Control Policy and each program of the National Drug Control Program.

(27) a separate statement of the amount of appropriations requested for the Office of Federal Financial Management.

(28) beginning with fiscal year 1999, a Federal Government performance plan for the overall budget as provided for under section 1115.

(29) information about the Violent Crime Reduction Trust Fund, including a separate statement of amounts in that Trust Fund.

(30) an analysis displaying, by agency, proposed reductions in full-time equivalent positions compared to the current year's level in order to comply with section 5 of the Federal Workforce Restructuring Act of 1994.

(31) a separate statement of the amount of appropriations requested for the Chief Financial Officer in the Executive Office of the President.

(32) a statement of the levels of budget authority and outlays for each program assumed to be extended in the baseline as provided in section 257(b)(2)(A) and for excise taxes assumed to be extended under section 257(b)(2)(C) of the Balanced Budget and Emergency Deficit Control Act of 1985.

(33) a separate appropriation account for appropriations for the Council of the Inspectors General on Integrity and Efficiency, and, included in that account, a separate statement of the aggregate amount of appropriations requested for each academy maintained by the Council of the Inspectors General on Integrity and Efficiency.

(34) with respect to the amount of appropriations requested for use by the Export-Import Bank of the United States, a separate statement of the amount requested for its program budget, the amount requested for its administrative expenses, and of the amount requested for its administrative expenses, the amount requested for technology expenses.

(35)(A)(i) a detailed, separate analysis, by budget function, by agency, and by initiative area (as determined by the administration) for the prior fiscal year, the current fiscal year, the fiscal years for which the budget is submitted, and the ensuing fiscal year identifying the amounts of gross and net appropriations or obligational authority and outlays that contribute to homeland security, with separate displays for mandatory and discretionary amounts, including—

(I) summaries of the total amount of such appropriations or new obligational authority and outlays requested for homeland security;

(II) an estimate of the current service levels of homeland security spending;

(III) the most recent risk assessment and summary of homeland security needs in each initiative area (as determined by the administration); and

(IV) an estimate of user fees collected by the Federal Government on behalf of homeland security activities;

(ii) with respect to subclauses (I) through (IV) of clause (i), amounts shall be provided by account for each program, project and activity; and

(iii) an estimate of expenditures for homeland security activities by State and local governments and the private sector for the prior fiscal year and the current fiscal year.

(B) In this paragraph, consistent with the Office of Management and Budget's June 2002 "Annual Report to Congress on Combatting Terrorism", the term "homeland security" refers to those activities that detect, deter, protect against, and respond to terrorist attacks occurring within the United States and its territories.

(C) In implementing this paragraph, including determining what Federal activities or accounts constitute homeland security for purposes of budgetary classification, the Office of Management and Budget is directed to consult periodically, but at least annually, with the House and Senate Budget Commit-

tees, the House and Senate Appropriations Committees, and the Congressional Budget Office.

*(D) In implementing this paragraph, the President shall include in each budget a description of resources identified to support the preparedness, response, and recovery responsibilities of each Federal agency with responsibilities under the National Response Framework and the National Disaster Recovery Framework.*

(36) as supplementary materials, a separate analysis of the budgetary effects for all prior fiscal years, the current fiscal year, the fiscal year for which the budget is submitted, and ensuing fiscal years of the actions the Secretary of the Treasury has taken or plans to take using any authority provided in the Emergency Economic Stabilization Act of 2008, including—

(A) an estimate of the current value of all assets purchased, sold, and guaranteed under the authority provided in the Emergency Economic Stabilization Act of 2008 using methodology required by the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.) and section 5232 of Title 12;

(B) an estimate of the deficit, the debt held by the public, and the gross Federal debt using methodology required by the Federal Credit Reform Act of 1990 and section 5232 of Title 12;

(C) an estimate of the current value of all assets purchased, sold, and guaranteed under the authority provided in the Emergency Economic Stabilization Act of 2008 calculated on a cash basis;

(D) a revised estimate of the deficit, the debt held by the public, and the gross Federal debt, substituting the cash-based estimates in subparagraph (C) for the estimates calculated under subparagraph (A) pursuant to the Federal Credit Reform Act of 1990 and section 5232 of Title 12; and

(E) the portion of the deficit which can be attributed to any action taken by the Secretary using authority provided by the Emergency Economic Stabilization Act of 2008 and the extent to which the change in the deficit since the most recent estimate is due to a reestimate using the methodology required by the Federal Credit Reform Act of 1990 and section 5232 of Title 12.

(37) [FN1] information on estimates of appropriations for the fiscal year following the fiscal year for which the budget is submitted for the following medical care accounts of the Veterans Health Administration, Department of Veterans Affairs account:

(A) Medical Services.

(B) Medical Support and Compliance.

(C) Medical Facilities.

(38) a separate statement for the Crow Settlement Fund established under section 411 of the Crow Tribe Water Rights Settlement Act of 2010, which shall include the estimated amount of deposits into the Fund, obligations, and outlays from the Fund.

(37) [FN2] the list of plans and reports, as provided for under section 1125, that agencies identified for elimination or

consolidation because the plans and reports are determined outdated or duplicative of other required plans and reports.

(b) Estimated expenditures and proposed appropriations for the legislative branch and the judicial branch to be included in each budget under subsection (a)(5) of this section shall be submitted to the President before October 16 of each year and included in the budget by the President without change.

(c) The President shall recommend in the budget appropriate action to meet an estimated deficiency when the estimated receipts for the fiscal year for which the budget is submitted (under laws in effect when the budget is submitted) and the estimated amounts in the Treasury at the end of the current fiscal year available for expenditure in the fiscal year for which the budget is submitted, are less than the estimated expenditures for that year. The President shall make recommendations required by the public interest when the estimated receipts and estimated amounts in the Treasury are more than the estimated expenditures.

(d) When the President submits a budget or supporting information about a budget, the President shall include a statement on all changes about the current fiscal year that were made before the budget or information was submitted.

(e)(1) The President shall submit with materials related to each budget transmitted under subsection (a) on or after January 1, 1985, an analysis for the ensuing fiscal year that shall identify requested appropriations or new obligational authority and outlays for each major program that may be classified as a public civilian capital investment program and for each major program that may be classified as a military capital investment program, and shall contain summaries of the total amount of such appropriations or new obligational authority and outlays for public civilian capital investment programs and summaries of the total amount of such appropriations or new obligational authority and outlays for military capital investment programs. In addition, the analysis under this paragraph shall contain—

(A) an estimate of the current service levels of public civilian capital investment and of military capital investment and alternative high and low levels of such investments over a period of ten years in current dollars and over a period of five years in constant dollars;

(B) the most recent assessment analysis and summary, in a standard format, of public civilian capital investment needs in each major program area over a period of ten years;

(C) an identification and analysis of the principal policy issues that affect estimated public civilian capital investment needs for each major program; and

(D) an identification and analysis of factors that affect estimated public civilian capital investment needs for each major program, including but not limited to the following factors:

(i) economic assumptions;

(ii) engineering standards;

(iii) estimates of spending for operation and maintenance;

(iv) estimates of expenditures for similar investments by State and local governments; and

(v) estimates of demand for public services derived from such capital investments and estimates of the service capacity of such investments.

To the extent that any analysis required by this paragraph relates to any program for which Federal financial assistance is distributed under a formula prescribed by law, such analysis shall be organized by State and within each State by major metropolitan area if data are available.

(2) For purposes of this subsection, any appropriation, new obligational authority, or outlay shall be classified as a public civilian capital investment to the extent that such appropriation, authority, or outlay will be used for the construction, acquisition, or rehabilitation of any physical asset that is capable of being used to produce services or other benefits for a number of years and is not classified as a military capital investment under paragraph (3). Such assets shall include (but not be limited to)—

- (A) roadways or bridges,
- (B) airports or airway facilities,
- (C) mass transportation systems,
- (D) wastewater treatment or related facilities,
- (E) water resources projects,
- (F) hospitals,
- (G) resource recovery facilities,
- (H) public buildings,
- (I) space or communications facilities,
- (J) railroads, and
- (K) federally assisted housing.

(3) For purposes of this subsection, any appropriation, new obligational authority, or outlay shall be classified as a military capital investment to the extent that such appropriation, authority, or outlay will be used for the construction, acquisition, or rehabilitation of any physical asset that is capable of being used to produce services or other benefits for purposes of national defense and security for a number of years. Such assets shall include military bases, posts, installations, and facilities.

(4) Criteria and guidelines for use in the identification of public civilian and military capital investments, for distinguishing between public civilian and military capital investments, and for distinguishing between major and nonmajor capital investment programs shall be issued by the Director of the Office of Management and Budget after consultation with the Comptroller General and the Congressional Budget Office. The analysis submitted under this subsection shall be accompanied by an explanation of such criteria and guidelines.

(5) For purposes of this subsection—

(A) the term “construction” includes the design, planning, and erection of new structures and facilities, the expansion of existing structures and facilities, the reconstruction of a project at an existing site or adjacent to an existing site, and the installation of initial and replacement equipment for such structures and facilities;

(B) the term “acquisition” includes the addition of land, sites, equipment, structures, facilities, or rolling stock by purchase, lease-purchase, trade, or donation; and

(C) the term “rehabilitation” includes the alteration of or correction of deficiencies in an existing structure or facility so as to extend the useful life or improve the effectiveness of the structure or facility, the modernization or replacement of equipment at an existing structure or facility, and the modernization of, or replacement of parts for, rolling stock.

(f) The budget transmitted pursuant to subsection (a) for a fiscal year shall be prepared in a manner consistent with the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985 that apply to that and subsequent fiscal years.

(g)(1) The Director of the Office of Management and Budget shall establish the funding for advisory and assistance services for each department and agency as a separate object class in each budget annually submitted to the Congress under this section.

(2)(A) In paragraph (1), except as provided in subparagraph (B), the term “advisory and assistance services” means the following services when provided by nongovernmental sources:

- (i) Management and professional support services.
- (ii) Studies, analyses, and evaluations.
- (iii) Engineering and technical services.

(B) In paragraph (1), the term “advisory and assistance services” does not include the following services:

- (i) Routine automated data processing and telecommunications services unless such services are an integral part of a contract for the procurement of advisory and assistance services.
- (ii) Architectural and engineering services, as defined in section 1102 of title 40.
- (iii) Research on basic mathematics or medical, biological, physical, social, psychological, or other phenomena.

(h)(1) If there is a medicare funding warning under section 801(a)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 made in a year, the President shall submit to Congress, within the 15-day period beginning on the date of the budget submission to Congress under subsection (a) for the succeeding year, proposed legislation to respond to such warning.

(2) Paragraph (1) does not apply if, during the year in which the warning is made, legislation is enacted which eliminates excess general revenue medicare funding (as defined in section 801(c) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003) for the 7-fiscal-year reporting period, as certified by the Board of Trustees of each medicare trust fund (as defined in section 801(c)(5) of such Act) not later than 30 days after the date of the enactment of such legislation.

\* \* \* \* \*

**TITLE 41—PUBLIC CONTRACTS**

\* \* \* \* \*

**Subtitle I—Federal Procurement Policy**

\* \* \* \* \*

**Division B—Office of Federal Procurement Policy**

\* \* \* \* \*

**CHAPTER 19—SIMPLIFIED ACQUISITION PROCEDURES**

\* \* \* \* \*

**SEC. 1903. SPECIAL EMERGENCY PROCUREMENT AUTHORITY.**

(a) **APPLICABILITY.**—The authorities provided in subsections (b) and (c) apply [with respect to] *with respect to*—

(1) *a procurement of property or services by or for an executive agency that the head of the executive agency determines are to be used—*

[(1)](A) *in support of a contingency operation (as defined in section 101(a) of title 10); or*

[(2)](B) *to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the [United States.] United States; and*

*(C) a procurement of property or services by or for the Department of Homeland Security that the Secretary of Homeland Security determines are to be used in support of domestic emergency operations, in accordance with subsection (d).*

(b) **INCREASED THRESHOLDS AND LIMITATION.**—For a procurement to which this section applies under subsection (a)—

(1) the amount specified in section 1902(a), (d), and (e) of this title shall be deemed to be—

(A) \$15,000 in the case of a contract to be awarded and performed, or purchase to be made, in the United States; and

(B) \$25,000 in the case of a contract to be awarded and performed, or purchase to be made, outside the United States;

(2) the term “simplified acquisition threshold” means—

(A) \$250,000 in the case of a contract to be awarded and performed, or purchase to be made, in the United States; and

(B) \$1,000,000 in the case of a contract to be awarded and performed, or purchase to be made, outside the United States; and

(3) the \$5,000,000 limitation in sections 1901(a)(2) and 3305(a)(2) of this title and section 2304(g)(1)(B) of title 10 is deemed to be \$10,000,000.

(c) **AUTHORITY TO TREAT PROPERTY OR SERVICE AS COMMERCIAL ITEM.**—

(1) **IN GENERAL.**—The head of an executive agency carrying out a procurement of property or a service to which this section applies under [subsection (a)(2)] subsection (a)(1)(B) may treat the property or service as a commercial item for the purpose of carrying out the procurement.

(2) **CERTAIN CONTRACTS NOT EXEMPT FROM STANDARDS OR REQUIREMENTS.**—A contract in an amount of more than \$15,000,000 that is awarded on a sole source basis for an item or service treated as a commercial item under paragraph (1) is not exempt from—



(A) cost accounting standards prescribed under section 1502 of this title; or

(B) cost or pricing data requirements (commonly referred to as truth in negotiating) under chapter 35 of this title and section 2306a of title 10.

(d) DOMESTIC EMERGENCY OPERATIONS.—*The Secretary of Homeland Security, or a designee at the Chief Procurement Officer level or higher, in consultation with the Administrator, may utilize the authorities provided under paragraphs (1)(A), (2)(A), and (3) of subsection (b) in a domestic emergency operation to provide support for—*

(1) *an emergency or major disaster, as those terms are defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122); or*

(2) *any occasion or instance for which the Secretary of Homeland Security determines Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.*

\* \* \* \* \*

**TITLE 42—THE PUBLIC HEALTH AND WELFARE**

\* \* \* \* \*

**CHAPTER 68—DISASTER RELIEF**

\* \* \* \* \*

**Subchapter I—Findings, Declaration, and Definitions**

\* \* \* \* \*

**5SEC. 5122. DEFINITIONS.**

As used in this chapter—

(1) EMERGENCY.—“Emergency” means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

[(2) MAJOR DISASTER.—“Major disaster” means any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this chapter to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.]

(2) MAJOR DISASTER.—*The term “major disaster” means any natural disaster (including a pandemic), act of terrorism, or other man-made disaster, in any part of the United States,*

*which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.*

(3) “United States” means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

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

(5) “Governor” means the chief executive of any State.

(6) INDIVIDUAL WITH A DISABILITY.—The term “individual with a disability” means an individual with a disability as defined in section 12102(2) of this title.

(7) LOCAL GOVERNMENT.—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 nonprofit 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, for which an application for assistance is made by a State or political subdivision of a State.

(8) “Federal agency” means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but shall not include the American National Red Cross.

(9) PUBLIC FACILITY.—“Public facility” means the following facilities owned by a State or local government:

(A) Any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility.

(B) Any non-Federal-aid street, road, or highway.

(C) Any other public building, structure, or system, including those used for educational, recreational, or cultural purposes.

(D) Any park.

(10) PRIVATE NONPROFIT FACILITY.—

(A) IN GENERAL.—The term “private nonprofit facility” means private nonprofit educational, utility, irrigation, emergency, medical, rehabilitational, and temporary or permanent custodial care facilities (including those for the aged and disabled) and facilities on Indian reservations, as defined by the President.

(B) ADDITIONAL FACILITIES.—In addition to the facilities described in subparagraph (A), the term “private nonprofit facility” includes any private nonprofit facility that provides essential services of a governmental nature to the general public (including museums, zoos, performing arts facilities, community arts centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops, and facilities that provide health and safety services of a governmental nature), as defined by the President.

(11) RECOVERY.—The term “recovery” has the meaning given that term in section 501 of the Homeland Security Act of 2002 (6 U.S.C. 311).

(12) NATIONAL DISASTER RECOVERY FRAMEWORK.—The term “National Disaster Recovery Framework” means the National Disaster Recovery Framework developed under section 655 of the Post-Katrina Emergency Management Reform Act of 2006.

(13) CATASTROPHIC INCIDENT.—The term “catastrophic incident” has the meaning given that term in section 501 of the Homeland Security Act of 2002 (6 U.S.C. 311).

**SEC. 5149. PERFORMANCE OF SERVICES.**

(a) UTILIZATION OF SERVICES OR FACILITIES OF STATE AND LOCAL GOVERNMENT.—In carrying out the purposes of this chapter, any Federal agency is authorized to accept and utilize the services or facilities of any State or local government, or of any agency, office, or employee thereof, with the consent of such government.

(b) APPOINTMENT OF TEMPORARY PERSONNEL, EXPERTS, AND CONSULTANTS; ACQUISITION, RENTAL, OR HIRE OF EQUIPMENT, SERVICES, MATERIALS AND SUPPLIES.—In performing any services under this chapter, any Federal agency is authorized—

(1) to appoint and fix the compensation of such temporary personnel or permanent seasonal employees as may be necessary, without regard to the provisions of Title 5 governing appointments in competitive service;

(2) to employ experts and consultants in accordance with the provisions of section 3109 of such Title, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such Title relating to classification and General Schedule pay rates; and

(3) to incur obligations on behalf of the United States by contract or otherwise for the acquisition, rental, or hire of equipment, services, materials, and supplies for shipping, drayage, travel, and communications, and for the supervision and administration of such activities. Such obligations, including obligations arising out of the temporary employment of additional personnel or the employment of permanent seasonal employees (as that term is defined under section 529(a)(8) of the Homeland Security Act of 2002), may be incurred by an agency in such amount as may be made available to it by the President.

\* \* \* \* \*

**Subchapter IV—Major Disaster Assistance Programs**

\* \* \* \* \*

**SEC. 5170A. GENERAL FEDERAL ASSISTANCE.**

In any major disaster, the President may—

(1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance response or recovery efforts, including precautionary evacuations;

(2) coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments, including precautionary evacuations and recovery;

(3) provide technical and advisory assistance to affected State and local governments for—

(A) the performance of essential community services;

(B) issuance of warnings of risks and hazards;

(C) public health and safety information, including dissemination of such information;

(D) provision of health and safety measures; *and*

(E) management, control, and reduction of immediate threats to public health and safety; **[and]**

**[(F) recovery activities, including disaster impact assessments and planning;]**

(4) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance; **[and]**

(5) provide accelerated federal assistance and Federal support where necessary to save lives, prevent human suffering, or mitigate severe damage, which may be provided in the absence of a specific request and in which case the President—

(A) shall, to the fullest extent practicable, promptly notify and coordinate with officials in a State in which such assistance or support is provided; and

(B) shall not, in notifying and coordinating with a State under subparagraph (A), delay or impede the rapid deployment, use, and distribution of critical resources to victims of a major disaster**【.】**; *and*

(6) *assist State and local governments to recover from a major disaster and coordinate Federal assistance for recovery from the major disaster by—*

*(A) identifying and coordinating Federal resources, programs, and agencies to support the implementation of recovery and mitigation efforts of State and local governments;*

*(B) providing technical and other advice to State and local governments to manage, control, and mitigate hazards and risk to reduce damages from a subsequent major disaster;*

*(C) in the case of a catastrophic incident, establishing a Commission under section 327; and*

*(D) providing financial and technical assistance and advice to State and local governments affected by a major disaster to—*

*(i) assess the effects of the major disaster;*

(ii) support coordinated and comprehensive recovery planning; and  
(iii) support and facilitate implementation of recovery plans and actions.

**SEC. 410. REPEAL OF EMERGENCY OPERATIONS CENTER GRANT PROGRAM.**

\* \* \* \* \*

**42 USC 5196:**

**TITLE 42—PUBLIC HEALTH AND WELFARE**

\* \* \* \* \*

**CHAPTER 68—DISASTER RELIEF**

\* \* \* \* \*

**Subchapter IV—B—Emergency and Preparedness**

\* \* \* \* \*

**PART A—POWERS AND DUTIES**

\* \* \* \* \*

**[SEC. 5196c. GRANTS FOR CONSTRUCTION OF EMERGENCY OPERATIONS CENTERS.**

[(a) GRANTS.—The Administrator of the Federal Emergency Management Agency may make grants to States under this subchapter for equipping, upgrading, and constructing State and local emergency operations centers.

[(b) FEDERAL SHARE.—Notwithstanding any other provision of this subchapter, the Federal share of the cost of an activity carried out using amounts from grants made under this section shall not exceed 75 percent.]

**TITLE 49—TRANSPORTATION**

\* \* \* \* \*

**Subtitle VII—Aviation Programs**

\* \* \* \* \*

**PART A—AIR COMMERCE AND SAFETY**

\* \* \* \* \*

**Subpart III—Safety**

\* \* \* \* \*

**CHAPTER 449—SECURITY**

\* \* \* \* \*

**Subchapter I—Requirements**

\* \* \* \* \*

**SEC. 44903. AIR TRANSPORTATION SECURITY.**

\* \* \* \* \*

(1) AIR CHARTER PROGRAM.—

(1) IN GENERAL.—The [Under Secretary for Border and Transportation Security of the Department of] *Secretary of Homeland Security* shall implement an aviation security program for charter air carriers (as defined in section 40102(a)) with a maximum certificated takeoff weight of more than 12,500 pounds.

(2) EXEMPTION FOR ARMED FORCES CHARTERS.—

(A) IN GENERAL.—Paragraph (1) and the other requirements of this chapter do not apply to passengers and property carried by aircraft when employed to provide charter transportation to members of the armed forces.

(B) SECURITY PROCEDURES.—The Secretary of Defense, in consultation with the Secretary of Homeland Security and the Secretary of Transportation, shall establish security procedures relating to the operation of aircraft when employed to provide charter transportation to members of the armed forces to or from an airport described in section 44903(c).

(C) ARMED FORCES DEFINED.—In this paragraph, the term “armed forces” has the meaning given that term by section 101(a)(4) of title 10.

49 USC 44918(a)(2)(E):

**TITLE 49—TRANSPORTATION**

\* \* \* \* \*

**Subtitle VII—Aviation Programs**

\* \* \* \* \*

**PART A—AIR COMMERCE AND SAFETY**

\* \* \* \* \*

**Subpart III—Safety**

\* \* \* \* \*

**CHAPTER 449—SECURITY**

\* \* \* \* \*

**Subchapter I—Requirements**

\* \* \* \* \*

**SEC. 44918. CREW TRAINING.**

(a) BASIC SECURITY TRAINING.—

(1) IN GENERAL.—Each air carrier providing scheduled passenger air transportation shall carry out a training program for flight and cabin crew members to prepare the crew members for potential threat conditions.

(2) PROGRAM ELEMENTS.—An air carrier training program under this subsection shall include, at a minimum, elements that address each of the following:

(A) Recognizing suspicious activities and determining the seriousness of any occurrence.

(B) Crew communication and coordination.

(C) The proper commands to give passengers and attackers.

(D) Appropriate responses to defend oneself.

(E) Use of protective devices assigned to crew members (to the extent such devices are required by the Administrator of the Federal Aviation Administration or the [Under Secretary for Border and Transportation Security of the Department of] *Secretary of Homeland Security*).

(F) Psychology of terrorists to cope with hijacker behavior and passenger responses.

(G) Situational training exercises regarding various threat conditions.

(H) Flight deck procedures or aircraft maneuvers to defend the aircraft and cabin crew responses to such procedures and maneuvers.

(I) The proper conduct of a cabin search, including explosive device recognition.

(J) Any other subject matter considered appropriate by the Under Secretary.

(3) APPROVAL.—An air carrier training program under this subsection shall be subject to approval by the Under Secretary.

(4) MINIMUM STANDARDS.—Not later than one year after the date of enactment of the Vision 100—Century of Aviation Reauthorization Act, the Under Secretary may establish minimum standards for the training provided under this subsection and for recurrent training.

(5) EXISTING PROGRAMS.—Notwithstanding paragraphs (3) and (4), any training program of an air carrier to prepare flight and cabin crew members for potential threat conditions that was approved by the Administrator or the Under Secretary before the date of enactment of the Vision 100—Century of Aviation Reauthorization Act may continue in effect until disapproved or ordered modified by the Under Secretary.

(6) MONITORING.—The Under Secretary, in consultation with the Administrator, shall monitor air carrier training programs under this subsection and periodically shall review an air carrier's training program to ensure that the program is adequately preparing crew members for potential threat conditions. In determining when an air carrier's training program should be reviewed under this paragraph, the Under Secretary shall consider complaints from crew members. The Under Secretary shall ensure that employees responsible for monitoring the training programs have the necessary resources and knowledge.

(7) UPDATES.—The Under Secretary, in consultation with the Administrator, shall order air carriers to modify training programs under this subsection to reflect new or different security threats.

\* \* \* \* \*

**TITLE 49—TRANSPORTATION**

\* \* \* \* \*

**Subtitle VII—Aviation Programs**

\* \* \* \* \*

**PART A—AIR COMMERCE AND SAFETY**

\* \* \* \* \*

**Subpart III—Safety**

\* \* \* \* \*

**CHAPTER 449—SECURITY**

\* \* \* \* \*

**Subchapter I—Requirements**

\* \* \* \* \*

**SEC. 44923. AIRPORT SECURITY IMPROVEMENT PROJECTS.**

(a) GRANT AUTHORITY.—Subject to the requirements of this section, the **[[Under Secretary for Border and Transportation Security of the Department of]]** *Secretary of Homeland Security* shall make grants to airport sponsors—

- (1) for projects to replace baggage conveyer systems related to aviation security;
- (2) for projects to reconfigure terminal baggage areas as needed to install explosive detection systems;
- (3) for projects to enable the **[[Under Secretary]]** *Secretary of Homeland Security* to deploy explosive detection systems behind the ticket counter, in the baggage sorting area, or in line with the baggage handling system; and
- (4) for other airport security capital improvement projects.

(b) APPLICATIONS.—A sponsor seeking a grant under this section shall submit to the **[[Under Secretary]]** *Secretary of Homeland Security* an application in such form and containing such information as the Under Secretary prescribes.

(c) APPROVAL.—The **[[Under Secretary]]** *Secretary of Homeland Security*, after consultation with the Secretary of Transportation, may approve an application of a sponsor for a grant under this section only if the **[[Under Secretary]]** *Secretary of Homeland Security* determines that the project will improve security at an airport or improve the efficiency of the airport without lessening security.

(d) LETTERS OF INTENT.—

(1) ISSUANCE.—The **[[Under Secretary]]** *Secretary of Homeland Security* shall issue a letter of intent to a sponsor committing to obligate from future budget authority an amount, not more than the Federal Government’s share of the project’s cost, for an airport security improvement project (including interest costs and costs of formulating the project).

(2) SCHEDULE.—A letter of intent under this subsection shall establish a schedule under which the **[[Under Secretary]]** *Secretary of Homeland Security* will reimburse the sponsor for the Government’s share of the project’s costs, as amounts become



available, if the sponsor, after the **【Under Secretary】** *Secretary of Homeland Security* issues the letter, carries out the project without receiving amounts under this section.

(3) NOTICE TO **【UNDER】** SECRETARY.—A sponsor that has been issued a letter of intent under this subsection shall notify the **【Under Secretary】** *Secretary of Homeland Security* of the sponsor's intent to carry out a project before the project begins.

(4) NOTICE TO CONGRESS.—The **【Under Secretary】** *Secretary of Homeland Security* shall transmit to the Committees on Appropriations and Transportation and Infrastructure of the House of Representatives and the Committees on Appropriations and Commerce, Science and Transportation of the Senate a written notification at least 3 days before the issuance of a letter of intent under this section.

(5) LIMITATIONS.—A letter of intent issued under this subsection is not an obligation of the Government under section 1501 of title 31, and the letter is not deemed to be an administrative commitment for financing. An obligation or administrative commitment may be made only as amounts are provided in authorization and appropriations laws.

(6) STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to prohibit the obligation of amounts pursuant to a letter of intent under this subsection in the same fiscal year as the letter of intent is issued.

(e) FEDERAL SHARE.—

(1) IN GENERAL.—The Government's share of the cost of a project under this section shall be 90 percent for a project at a medium or large hub airport and 95 percent for a project at any other airport.

(2) EXISTING LETTERS OF INTENT.—The **【Under Secretary】** *Secretary of Homeland Security* shall revise letters of intent issued before the date of enactment of this section to reflect the cost share established in this subsection with respect to grants made after September 30, 2003.

(f) SPONSOR DEFINED.—In this section, the term "sponsor" has the meaning given that term in section 47102.

(g) APPLICABILITY OF CERTAIN REQUIREMENTS.—The requirements that apply to grants and letters of intent issued under chapter 471 (other than section 47102(3)) shall apply to grants and letters of intent issued under this section.

(h) AVIATION SECURITY CAPITAL FUND.—

(1) IN GENERAL.—There is established within the Department of Homeland Security a fund to be known as the Aviation Security Capital Fund. The first \$250,000,000 derived from fees received under section 44940(a)(1) in each of fiscal years 2004 through 2028 shall be available to be deposited in the Fund. The **【Under Secretary】** *Secretary of Homeland Security* shall impose the fee authorized by section 44940(a)(1) so as to collect at least \$250,000,000 in each of such fiscal years for deposit into the Fund. Amounts in the Fund shall be available to the **【Under Secretary】** *Secretary of Homeland Security* to make grants under this section.

(2) ALLOCATION.—Of the amount made available under paragraph (1) for a fiscal year, not less than \$200,000,000 shall be allocated to fulfill letters of intent issued under subsection (d).

- (3) DISCRETIONARY GRANTS.—Of the amount made available under paragraph (1) for a fiscal year, up to \$50,000,000 shall be used to make discretionary grants, including other transaction agreements for airport security improvement projects, with priority given to small hub airports and nonhub airports.
- (i) LEVERAGED FUNDING.—For purposes of this section, a grant under subsection (a) to an airport sponsor to service an obligation issued by or on behalf of that sponsor to fund a project described in subsection (a) shall be considered to be a grant for that project.
- (j) AUTHORIZATION OF APPROPRIATIONS.—
- (1) IN GENERAL.—In addition to amounts made available under subsection (h), there is authorized to be appropriated to carry out this section \$400,000,000 for each of fiscal years 2005, 2006, and 2007, and \$450,000,000 for each of fiscal years 2008 through 2011 [FN1] Such sums shall remain available until expended.
- (2) ALLOCATIONS.—50 percent of amounts appropriated pursuant to this subsection for a fiscal year shall be used for making allocations under subsection (h)(2) and 50 percent of such amounts shall be used for making discretionary grants under subsection (h)(3).

**49 USC 44924:**

**TITLE 49—TRANSPORTATION**

\* \* \* \* \*

**Subtitle VII—Aviation Programs**

\* \* \* \* \*

**PART A—AIR COMMERCE AND SAFETY**

\* \* \* \* \*

**Subpart III—Safety**

\* \* \* \* \*

**CHAPTER 449—SECURITY**

\* \* \* \* \*

**Subchapter I—Requirements**

\* \* \* \* \*

**SEC. 44923. REPAIR STATION SECURITY.**

(a) SECURITY REVIEW AND AUDIT.—To ensure the security of maintenance and repair work conducted on air carrier aircraft and components at foreign repair stations, the [Under Secretary for Border and Transportation Security of the Department of] *Secretary of Homeland Security*, in consultation with the Administrator of the Federal Aviation Administration, shall complete a security review and audit of foreign repair stations that are certified by the Administrator under part 145 of title 14, Code of Federal Regulations, and that work on air carrier aircraft and components. The review shall be completed not later than 6 months after the

date on which the **【Under Secretary】** *Secretary of Homeland Security* issues regulations under subsection (f).

(b) ADDRESSING SECURITY CONCERNS.—The **【Under Secretary】** *Secretary of Homeland Security* shall require a foreign repair station to address the security issues and vulnerabilities identified in a security audit conducted under subsection (a) within 90 days of providing notice to the repair station of the security issues and vulnerabilities so identified and shall notify the Administrator that a deficiency was identified in the security audit.

(c) SUSPENSIONS AND REVOCATIONS OF CERTIFICATES.—

(1) FAILURE TO CARRY OUT EFFECTIVE SECURITY MEASURES.—

If, after the 90th day on which a notice is provided to a foreign repair station under subsection (b), the **【Under Secretary】** *Secretary of Homeland Security* determines that the foreign repair station does not maintain and carry out effective security measures, the **【Under Secretary】** *Secretary of Homeland Security* shall notify the Administrator of the determination. Upon receipt of the determination, the Administrator shall suspend the certification of the repair station until such time as the **【Under Secretary】** *Secretary of Homeland Security* determines that the repair station maintains and carries out effective security measures and transmits the determination to the Administrator.

(2) IMMEDIATE SECURITY RISK.—If the **【Under Secretary】** *Secretary of Homeland Security* determines that a foreign repair station poses an immediate security risk, the **【Under Secretary】** *Secretary of Homeland Security* shall notify the Administrator of the determination. Upon receipt of the determination, the Administrator shall revoke the certification of the repair station.

(3) PROCEDURES FOR APPEALS.—The **【Under Secretary】** *Secretary of Homeland Security*, in consultation with the Administrator, shall establish procedures for appealing a revocation of a certificate under this subsection.

(d) FAILURE TO MEET AUDIT DEADLINE.—If the security audits required by subsection (a) are not completed on or before the date that is 6 months after the date on which the **【Under Secretary】** *Secretary of Homeland Security* issues regulations under subsection (f), the Administrator shall be barred from certifying any foreign repair station (other than a station that was previously certified, or is in the process of certification, by the Administration under this part) until such audits are completed for existing stations.

(e) PRIORITY FOR AUDITS.—In conducting the audits described in subsection (a), the **【Under Secretary】** *Secretary of Homeland Security* and the Administrator shall give priority to foreign repair stations located in countries identified by the Government as posing the most significant security risks.

(f) REGULATIONS.—Not later than 240 days after the date of enactment of this section, the **【Under Secretary】** *Secretary of Homeland Security*, in consultation with the Administrator, shall issue final regulations to ensure the security of foreign and domestic aircraft repair stations.

(g) REPORT TO CONGRESS.—If the **【Under Secretary】** *Secretary of Homeland Security* does not issue final regulations before the deadline specified in subsection (f), the **【Under Secretary】** *Secretary of*

*Homeland Security* shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing an explanation as to why the deadline was not met and a schedule for issuing the final regulations.

49 USC 46111:

**TITLE 49—TRANSPORTATION**

\* \* \* \* \*

**Subtitle VII—Aviation Programs**

\* \* \* \* \*

**Part A—Air Commerce and Safety**

\* \* \* \* \*

**Subpart IV—Enforcement and Penalties**

\* \* \* \* \*

**CHAPTER 461—INVESTIGATIONS AND PROCEEDINGS**

\* \* \* \* \*

**SEC. 46111. CERTIFICATE ACTIONS IN RESPONSE TO A SECURITY THREAT.**

(a) **ORDERS.**—The Administrator of Federal Aviation Administration shall issue an order amending, modifying, suspending, or revoking any part of a certificate issued under this title if the Administrator is notified by the **[[Under Secretary for Border and Transportation Security of]** *Secretary of the Department of Homeland Security* that the holder of the certificate poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety. If requested by the **[[Under Secretary]** *Secretary of Homeland Security*, the order shall be effective immediately.

(b) **HEARINGS FOR CITIZENS.**—An individual who is a citizen of the United States who is adversely affected by an order of the Administrator under subsection (a) is entitled to a hearing on the record.

(c) **HEARINGS.**—When conducting a hearing under this section, the administrative law judge shall not be bound by findings of fact or interpretations of laws and regulations of the Administrator or the **[[Under Secretary]** *Secretary of Homeland Security*.

(d) **APPEALS.**—An appeal from a decision of an administrative law judge as the result of a hearing under subsection (b) shall be made to the Transportation Security Oversight Board established by section 115. The Board shall establish a panel to review the decision. The members of this panel (1) shall not be employees of the Transportation Security Administration, (2) shall have the level of security clearance needed to review the determination made under this section, and (3) shall be given access to all relevant documents that support that determination. The panel may affirm, modify, or reverse the decision.

(e) **REVIEW.**—A person substantially affected by an action of a panel under subsection (d), or the **[[Under Secretary]** *Secretary of Homeland Security* when the **[[Under Secretary]** *Secretary of*

*Homeland Security* decides that the action of the panel under this section will have a significant adverse impact on carrying out this part, may obtain review of the order under section 46110. The **【Under Secretary】** *Secretary of Homeland Security* and the Administrator shall be made a party to the review proceedings. Findings of fact of the panel are conclusive if supported by substantial evidence.

(f) EXPLANATION OF DECISIONS.—An individual who commences an appeal under this section shall receive a written explanation of the basis for the determination or decision and all relevant documents that support that determination to the maximum extent that the national security interests of the United States and other applicable laws permit.

(g) CLASSIFIED EVIDENCE.—

(1) IN GENERAL.—The **【Under Secretary】** *Secretary of Homeland Security*, in consultation with the Administrator and the Director of Central Intelligence, shall issue regulations to establish procedures by which the **【Under Secretary】** *Secretary of Homeland Security*, as part of a hearing conducted under this section, may provide an unclassified summary of classified evidence upon which the order of the Administrator was based to the individual adversely affected by the order.

(2) REVIEW OF CLASSIFIED EVIDENCE BY ADMINISTRATIVE LAW JUDGE.—

(A) REVIEW.—As part of a hearing conducted under this section, if the order of the Administrator issued under subsection (a) is based on classified information (as defined in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.), such information may be submitted by the **【Under Secretary】** *Secretary of Homeland Security* to the reviewing administrative law judge, pursuant to appropriate security procedures, and shall be reviewed by the administrative law judge *ex parte* and *in camera*.

(B) SECURITY CLEARANCES.—Pursuant to existing procedures and requirements, the **【Under Secretary】** *Secretary of Homeland Security* shall, in coordination, as necessary, with the heads of other affected departments or agencies, ensure that administrative law judges reviewing orders of the Administrator under this section possess security clearances appropriate for their work under this section.

(3) UNCLASSIFIED SUMMARIES OF CLASSIFIED EVIDENCE.—As part of a hearing conducted under this section and upon the request of the individual adversely affected by an order of the Administrator under subsection (a), the **【Under Secretary】** *Secretary of Homeland Security* shall provide to the individual and reviewing administrative law judge, consistent with the procedures established under paragraph (1), an unclassified summary of any classified information upon which the order of the Administrator is based.