To establish the Department of Homeland Security, and for other purposes.
for a period to be subsequently determined by the Speaker, and in addition to the Committees on Agriculture, Appropriations, Armed Services, Energy and Commerce, Financial Services, Government Reform, Intelligence (Permanent Select), International Relations, the Judiciary, Science, Transportation and Infrastructure, and Ways and Means, for a period ending not later than July 12, 2002, in each case for consideration of such matters as fall within the jurisdiction of the committee concerned

JULY 12, 2002
The Committees on Agriculture, Appropriations, Armed Services, Energy and Commerce, Financial Services, Government Reform, Intelligence (Permanent Select), International Relations, the Judiciary, Science, Transportation and Infrastructure, and Ways and Means discharged

JULY 24, 2002
Additional sponsors: Mr. HYDE, Mr. SCHIFF, Mr. PENCE, Mr. BISHOP, and Mr. VITTER

JULY 24, 2002
Reported from the Select Committee on Homeland Security with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on June 24, 2002]

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A BILL
To establish the Department of Homeland Security, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

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

TITLE I—DEPARTMENT OF HOMELAND SECURITY

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

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

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

Subtitle B—Intelligence Analysis Center
Sec. 211. Intelligence Analysis Center
Sec. 212. Mission of the Intelligence Analysis Center.

TITLE III—SCIENCE AND TECHNOLOGY

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

TITLE IV—BORDER AND TRANSPORTATION SECURITY

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

CHAPTER 1—IMMIGRATION ENFORCEMENT

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

CHAPTER 2—CITIZENSHIP AND IMMIGRATION SERVICES

SUBCHAPTER A—TRANSFERS OF FUNCTIONS

Sec. 422. Citizenship and Immigration Services Ombudsman.
Sec. 423. Professional responsibility and quality review.
Sec. 424. Employee discipline.
Sec. 426. Preservation of Attorney General’s authority.
Sec. 427. Effective date.
Sec. 428. Transition.

SUBCHAPTER B—OTHER PROVISIONS

Sec. 431. Funding for citizenship and immigration services.
Sec. 432. Backlog elimination.
Sec. 433. Report on improving immigration services.
Sec. 434. Report on responding to fluctuating needs.
Sec. 435. Application of Internet-based technologies.
Sec. 436. Children’s affairs.

CHAPTER 3—GENERAL PROVISIONS

Sec. 441. Abolishment of INS.
Sec. 442. Voluntary separation incentive payments.
Sec. 443. Authority to conduct a demonstration project relating to disciplinary action.
Sec. 444. Sense of Congress.
Sec. 445. Reports and implementation plans.
Sec. 446. Immigration functions.

Subtitle C—United States Customs Service

Sec. 451. Establishment; Commissioner of Customs.
Sec. 452. Retention of customs revenue functions by Secretary of the Treasury.
Sec. 453. Establishment and implementation of cost accounting system; reports.
Sec. 454. Preservation of Customs funds.
Sec. 455. Separate budget request for Customs.
Sec. 456. Payment of duties and fees.
Sec. 457. Definition.
Sec. 458. GAO report to Congress.
Sec. 459. Allocation of resources by the Secretary.
Sec. 460. Reports to Congress.
Sec. 461. Customs user fees.
TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

Sec. 501. Under Secretary for Emergency Preparedness and Response.
Sec. 502. Functions transferred.
Sec. 503. Nuclear incident response.
Sec. 504. Definition.
Sec. 505. Conduct of certain public-health related activities.

TITLE VI—MANAGEMENT

Sec. 601. Under Secretary for Management.
Sec. 602. Chief Financial Officer.
Sec. 603. Chief Information Officer.
Sec. 604. Establishment of Office for Civil Rights and Civil Liberties.

TITLE VII—MISCELLANEOUS

Subtitle A—Inspector General

Sec. 701. Authority of the Secretary.

Subtitle B—United States Secret Service

Sec. 711. Functions transferred.

Subtitle C—Critical Infrastructure Information

Sec. 721. Short title.
Sec. 722. Definitions.
Sec. 723. Designation of critical infrastructure protection program.
Sec. 724. Protection of voluntarily shared critical infrastructure information.
Sec. 725. No private right of action.

Subtitle D—Acquisitions

Sec. 731. Research and development projects.
Sec. 732. Personal services.
Sec. 733. Special streamlined acquisition authority.
Sec. 734. Procurements from small businesses.

Subtitle E—Property

Sec. 741. Department headquarters.

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

Sec. 751. Short title.
Sec. 752. Administration.
Sec. 753. Litigation management.
Sec. 754. Risk management.
Sec. 755. Definitions.

Subtitle G—Other Provisions

Sec. 761. Establishment of human resources management system.
Sec. 762. Advisory committees.
Sec. 763. Reorganization; transfer of appropriations.
Sec. 764. Miscellaneous authorities.
6

Sec. 765. Military activities.
Sec. 766. Regulatory authority.
Sec. 767. Provisions regarding transfers from Department of Energy.
Sec. 768. Counternarcotics officer.
Sec. 769. Office of International Affairs.
Sec. 770. Prohibition of the terrorism information and prevention system.
Sec. 771. Review of pay and benefit plans.
Sec. 772. Role of the District of Columbia.
Sec. 773. Transfer of the Federal Law Enforcement Training Center.

TITLE VIII—TRANSITION

Subtitle A—Reorganization Plan

Sec. 801. Definitions.
Sec. 802. Reorganization plan.

Subtitle B—Transitional Provisions

Sec. 811. Transitional authorities.
Sec. 812. Savings provisions.
Sec. 813. Terminations.
Sec. 814. Incidental transfers.
Sec. 815. National identification system not authorized.
Sec. 816. Continuity of Inspector General oversight.
Sec. 817. Reference.

TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

Sec. 902. Executive Schedule.
Sec. 903. United States Secret Service.
Sec. 904. Coast Guard.
Sec. 905. Strategic National Stockpile and smallpox vaccine development.
Sec. 906. Biological agent registration; Public Health Service Act.
Sec. 907. Transfer of certain security and law enforcement functions and authorities.
Sec. 908. Transportation security regulations.
Sec. 909. Railroad security laws.
Sec. 910. Office of Science and Technology Policy.
Sec. 911. National Oceanographic Partnership Program.
Sec. 912. Chief Financial Officer.
Sec. 913. Chief Information Officer.

TITLE X—NATIONAL HOMELAND SECURITY COUNCIL

Sec. 1002. Function.
Sec. 1003. Membership.
Sec. 1004. Other functions and activities.
Sec. 1005. Homeland security budget.
Sec. 1006. Staff composition.
Sec. 1007. Relation to the National Security Council.

1 SEC. 2. DEFINITIONS.

2 In this Act, the following definitions apply:
(1) Each of the terms “American homeland” and “homeland” means the United States.

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

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

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


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

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

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

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

(10) The term “local government” means—

(A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a 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.

(11) The term “major disaster” has the meaning given in section 102(2) of the Robert T. Stafford Dis-

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

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

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

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

(A) involves an act that—

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

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

(B) appears to be intended—

(i) to intimidate or coerce a civilian population;
(ii) to influence the policy of a government by intimidation or coercion; or

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

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

SEC. 3. CONSTRUCTION; SEVERABILITY.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof, or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.
SEC. 4. EFFECTIVE DATE.

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

TITLE I—DEPARTMENT OF HOMELAND SECURITY

SEC. 101. EXECUTIVE DEPARTMENT; MISSION.

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

(b) MISSION.—

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

(A) prevent terrorist attacks within the United States;

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

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

(D) carry out all functions of entities transferred to the Department, including by acting as a focal point regarding natural and manmade crises and emergency planning;
(E) ensure that the functions of the agencies and subdivisions within the Department that are not related directly to securing the homeland are not diminished or neglected except by a specific explicit Act of Congress; and

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

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

SEC. 102. SECRETARY; FUNCTIONS.

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

(2) The Secretary is the head of the Department and shall have direction, authority, and control over it.
(3) All functions of all officers, employees, and organizational units of the Department are vested in the Secretary.

(b) FUNCTIONS.—The Secretary—

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

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

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

(c) COORDINATION WITH NON-FEDERAL ENTITIES.—The Secretary shall coordinate (including the provision of training and equipment) with State and local government personnel, agencies, and authorities, with the private sector, and with other entities, including by—

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

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

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

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

(e) ISSUANCE OF REGULATIONS.—The issuance of regulations by the Secretary shall be governed by the provisions of chapter 5 of title 5, United States Code, except as specifically provided in this Act, in laws granting regulatory authorities that are transferred by this Act, and in laws enacted after the date of enactment of this Act.

(f) SPECIAL ASSISTANT TO THE SECRETARY.—The Secretary shall appoint a Special Assistant to the Secretary who shall be responsible for—
(1) creating and fostering strategic communications with the private sector to enhance the primary mission of the Department to protect the American homeland;

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

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

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

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

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

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

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

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

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

SEC. 103. OTHER OFFICERS.

(a) DEPUTY SECRETARY; UNDER SECRETARIES.—There are the following officers, appointed by the President, by and with the advice and consent of the Senate:

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

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

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


(6) An Under Secretary for Management.

(7) Not more than four Assistant Secretaries.

(8) A Chief Financial Officer.

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

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

(d) OTHER OFFICERS.—To assist the Secretary in the performance of the Secretary’s functions, there are the following officers, appointed by the President:
(1) A General Counsel, who shall be the chief legal officer of the Department.

(2) Not more than eight Assistant Secretaries.

(3) A Director of the Secret Service.

(4) A Chief Information Officer.

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

SEC. 104. NATIONAL COUNCIL OF FIRST RESPONDERS.

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

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

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

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

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

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

(b) Establishment and Administration.—

(1) There is established within the Department of
Homeland Security a National Council of First Re-
sponders (in this section referred to as the “Council”).

(2) The President shall appoint the members of
the Council. The Council shall consist of not less than
100 members, no more than 10 of whom may be resi-
dents of the same State. Members of the Council shall
be selected from among the ranks of police, fire-
fighters, emergency medical technicians, rescue work-
ers, and hospital personnel who are employed in com-
unities, tribal governments, and political subdivi-
sions of various regions and population sizes.

(3) The Director of Homeland Security shall ap-
point a Chairman of the Council.

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

(5) Membership shall be staggered to provide
continuity.

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

(7) Members of the Council shall receive no com-
pensation for service on the Council.
(8) The Secretary shall detail a single employee from the Department of Homeland Security to the Council for the purposes of:

(A) Choosing meeting dates and locations.

(B) Coordinating travel.

(C) Other administrative functions as needed.

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

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

(2) Identify and educate the Secretary on the latest technological advances in the field of first response.

(3) Identify probable emerging threats to first responders.

(4) Identify needed improvements to first response techniques and training.

(5) Identify efficient means of communication and coordination between first responders and local, State, and Federal officials.

(6) Identify areas in which the Department can assist first responders.

(7) Evaluate the adequacy and timeliness of resources being made available to local first responders.
(d) REPORTING REQUIREMENT.—The Council shall re-
port to the Congress by October 1 of each year on how first
responders can continue to be most effectively used to meet
the ever-changing challenges of providing homeland security
for the United States.

TITLE II—INFORMATION ANAL-
YSIS AND INFRASTRUCTURE
PROTECTION

Subtitle A—Under Secretary for In-
formation Analysis and Infra-
structure Protection

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

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

(1) Conducting analysis of information, includ-
ing foreign intelligence and open source information,
lawfully collected by Federal, State and local law en-
forcement agencies and by elements of the intelligence
community with respect to threats of terrorist acts
against the United States.

(2) Integrating information, intelligence, and in-
telligence analyses to produce and disseminate infra-
structure vulnerability assessments with respect to such threats.

(3) Identifying priorities for protective and support measures by the Department, by other executive agencies, by State and local governments, by the private sector, and by other entities.

(4) Reviewing, analyzing, and recommending improvements in law, policy, and procedure for the sharing of intelligence and other information with respect to threats against the United States within the Federal Government and between the Federal Government and State and local governments.

(5) Under the direction of the Secretary, developing a comprehensive national plan to provide for the security of key resources and critical infrastructures.

(6) Coordinating with other executive agencies, State and local government personnel, agencies, and authorities, and the private sector, to provide advice on implementation of such comprehensive national plan.

(7) Supporting the intelligence and information requirements of the Department.

(8) Administering the Homeland Security Advisory System, exercising primary responsibility for
public advisories relating to terrorist threats, and (in coordination with other executive agencies) providing specific warning information to State and local government personnel, agencies, and authorities, the private sector, other entities, and the public, as well as advice about appropriate protective actions and countermeasures.

SEC. 202. FUNCTIONS TRANSFERRED.

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

(1) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section), including the functions of the Attorney General relating thereto.

(2) The National Communications System of the Department of Defense, including the functions of the Secretary of Defense relating thereto.

(3) The Critical Infrastructure Assurance Office of the Department of Commerce, including the functions of the Secretary of Commerce relating thereto.

(4) The Energy Security and Assurance Program of the Department of Energy, including the National Infrastructure Simulation and Analysis Center
and the functions of the Secretary of Energy relating thereto.

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

SEC. 203. ACCESS TO INFORMATION.

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

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

(2) regardless of whether the Secretary has made any request or entered into any cooperative arrange-
ment pursuant to paragraph (1), all executive agen-
cies promptly shall provide to the Secretary—

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

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

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

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

(3) the Secretary shall have full access and input
with respect to information from any national col-
laborative information analysis capability (as re-
ferred to in section 924 of the National Defense Au-

thorization Act for Fiscal Year 2002 (Public Law
107–107; 115 Stat. 1199)) established jointly by the
Secretary of Defense and the Director of Central In-
telligence; and

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

SEC. 204. PROCEDURES FOR SHARING INFORMATION.

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

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

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

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

SEC. 205. PRIVACY OFFICER.

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

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

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

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

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

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

SEC. 206. FEDERAL CYBERSECURITY PROGRAM.

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

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

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

(2) to provide assistance to civilian executive agencies in protecting the security of Federal critical information systems, including identification of significant risks to such systems; and
(3) to coordinate research and development for critical information systems relating to supervisory control and data acquisition systems, including, as appropriate, the establishment of a test bed.

(c) Federal Information System Security Team.—

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

(2) Team members.—The Secretary shall ensure that the team under paragraph (1) includes technical experts and auditors, computer scientists, and computer forensics analysts whose technical competence enables the team to conduct audits under such paragraph.
(3) AGENCY AGREEMENTS REGARDING AUDITS.—
Each civilian executive agency may enter into an
agreement with the team under paragraph (1) for the
conduct of audits under such paragraph of the Fed-
eral critical information systems of the agency. Such
agreement shall establish the terms of the audit and
shall include provisions to minimize the extent to
which the audit disrupts the operations of the agency.

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

(d) DEFINITION.—For purposes of this section, the
term “Federal critical information system” means an “in-
formation system” as defined in section 3502 of title 44,
United States Code, that—
(1) is, or is a component of, a key resource or
critical infrastructure;
(2) is used or operated by a civilian executive agency or by a contractor of such an agency; and
(3) does not include any national security system as defined in section 5142 of the Clinger-Cohen Act of 1996.

Subtitle B—Intelligence Analysis Center

SEC. 211. INTELLIGENCE ANALYSIS CENTER.

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

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

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

(c) Detail of Certain Personnel.—

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

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

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

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

(1) by striking “and” at the end of subparagraph (I);

(2) by redesignating subparagraph (J) as subparagraph (K); and

(3) by inserting after subparagraph (I) the following new subparagraph:

“(J) the Intelligence Analysis Center of the Department of Homeland Security; and”.

SEC. 212. MISSION OF THE INTELLIGENCE ANALYSIS CENTER.

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

(1) ANALYSIS AND PRODUCTION.—

(A) Correlating and evaluating information and intelligence related to the mission of the Department collected from all sources available.

(B) Producing all-source collaborative intelligence analysis, warnings, tactical assessments, and strategic assessments of the terrorist threat and infrastructure vulnerabilities of the United States.

(C) Providing appropriate dissemination of such assessments.
(D) Improving the lines of communication with respect to homeland security between the Federal Government and State and local public safety agencies and the private sector through the timely dissemination of information pertaining to threats of acts of terrorism against the United States.

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

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

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

(1) Domestic terrorism.

(2) International terrorism.

(3) Counterintelligence.

(4) Transnational crime.

(5) Proliferation of weapons of mass destruction.

(6) Illicit financing of terrorist activities.
(7) Cybersecurity and cybercrime.

(8) Key resources and critical infrastructures.

(c) STAFFING OF THE INTELLIGENCE ANALYSIS CENTER.—

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

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

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

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

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


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

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

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


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

TITLE III—SCIENCE AND TECHNOLOGY

SEC. 301. UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.

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

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

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

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

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

(5) coordinating with other appropriate executive agencies in developing and carrying out the science and technology agenda of the Department to reduce duplication and identify unmet needs;
(6) establishing Federal priorities for research, development, demonstration, testing, and, as appropriate, procurement and transitional operation of technology and systems—

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

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

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

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

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

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

(10) developing and overseeing the administra-
tion of guidelines for merit review of research and de-
velopment projects throughout the Department, and
for the dissemination of research conducted or spon-
sored by the Department.

SEC. 302. FUNCTIONS TRANSFERRED.

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

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

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

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

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

(C) Those aspects of the nuclear assessment
program of the international materials protec-
tion and cooperation program that are directly
related to homeland security.
(D) Such life sciences activities of the biological and environmental research program related to microbial pathogens as may be designated by the President for transfer to the Department and that are directly related to homeland security.

(E) The Environmental Measurements Laboratory.

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


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

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

SEC. 304. FEDERNALLY FUNDED RESEARCH AND DEVELOPMENT CENTER.

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

SEC. 305. MISCELLANEOUS PROVISIONS.

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

(b) CONSTRUCTION.—Nothing in this title shall be construed to preclude any Under Secretary of the Department from carrying out research, development, demonstration, or deployment activities, as long as such activities are coordinated through the Under Secretary for Science and Technology.
(c) **REGULATIONS.**—The Secretary, acting through the Under Secretary for Science and Technology, may issue necessary regulations with respect to research, development, demonstration, testing, and evaluation activities of the Department, including the conducting, funding, and reviewing of such activities.

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

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

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

(1) establish priorities for research, development, demonstration, testing, and evaluation activities conducted or supported by the Department;

(2) ensure that the priorities established under paragraph (1) reflect the acquisition needs of the Department; and

(3) assist the Under Secretary for Science and Technology in carrying out his responsibilities under section 301(4).

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

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

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

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

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

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

(i) Demonstrated expertise in the training of first responders.

(ii) Demonstrated expertise in responding to incidents involving weapons of mass destruction and biological warfare.

(iii) Demonstrated expertise in emergency medical services.

(iv) Demonstrated expertise in chemical, biological, radiological, and nuclear countermeasures.

(v) Strong affiliations with animal and plant diagnostic laboratories.

(vi) Demonstrated expertise in food safety.
(vii) Affiliation with Department of Agriculture laboratories or training centers.

(viii) Demonstrated expertise in water and wastewater operations.

(ix) Demonstrated expertise in port and waterway security.

(x) Demonstrated expertise in multi-modal transportation.

(xi) Nationally recognized programs in information security.

(xii) Nationally recognized programs in engineering.

(xiii) Demonstrated expertise in educational outreach and technical assistance.

(xiv) Demonstrated expertise in border transportation and security.

(xv) Demonstrated expertise in interdisciplinary public policy research and communication outreach regarding science, technology, and public policy.

(C) The Secretary shall have the discretion to establish such centers and to consider additional criteria as necessary to meet the evolving needs of homeland security and shall report to Congress concerning the implementation of this paragraph as necessary.
(D) There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

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

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

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

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

(B) Publish the criteria in the Federal Register.

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

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

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

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

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

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

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

**TITLE IV—BORDER AND TRANSPORTATION SECURITY**

**Subtitle A—General Provisions**

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

The Secretary, acting through the Under Secretary for Border and Transportation Security, shall be responsible for the following:

1. Preventing the entry of terrorists and the instruments of terrorism into the United States.

2. Securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States, including managing and coordinating governmental activities at ports of entry.

3. Carrying out the immigration enforcement functions vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before
the date on which the transfer of functions specified
under section 411 takes effect.

(4) Establishing and administering rules, in ac-
cordance with section 403, governing the granting of
visas or other forms of permission, including parole,
to enter the United States to individuals who are not
a citizen or an alien lawfully admitted for permanent
residence in the United States.

(5) Except as provided in subtitle C, admin-
istering the customs laws of the United States.

(6) Conducting the inspection and related ad-
ministrative functions of the Department of Agri-
culture transferred to the Secretary of Homeland Se-
curity under section 404.

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

SEC. 402. FUNCTIONS TRANSFERRED.

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

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

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

(3) The Transportation Security Administration
of the Department of Transportation, including the
functions of the Secretary of Transportation, and of
the Under Secretary of Transportation for Security,
relating thereto.

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

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

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

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

SEC. 403. VISA ISSUANCE.

(a) IN GENERAL.—Notwithstanding section 104(a) of
the Immigration and Nationality Act (8 U.S.C. 1104(a))
or any other provision of law, and except as provided in
subsection (b) of this section, the Secretary—

(1) shall be vested exclusively with all authorities
to issue regulations with respect to, administer, and
enforce the provisions of such Act, and of all other im-
migration and nationality laws, relating to the func-
tions of consular officers of the United States in con-
nection with the granting or refusal of visas, and
shall have the authority to refuse visas in accordance
with law and to develop programs of homeland secu-

rity training for consular officers (in addition to con-
sular training provided by the Secretary of State),
which authorities shall be exercised through the Sec-

retary of State, except that the Secretary shall not
have authority to alter or reverse the decision of a
consular officer to refuse a visa to an alien; and

(2) shall have authority to confer or impose upon
any officer or employee of the United States, with the
consent of the head of the executive agency under
whose jurisdiction such officer or employee is serving,
any of the functions specified in paragraph (1).

(b) AUTHORITY OF THE SECRETARY OF STATE.—

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

(2) CONSTRUCTION REGARDING AUTHORITY.—
Nothing in this section shall be construed as affecting
the authorities of the Secretary of State under the fol-
lowing provisions of law:

(A) Section 101(a)(15)(A) of the Immigra-
tion and Nationality Act (8 U.S.C.
1101(a)(15)(A)).

(B) Section 204(d)(2) of the Immigration
and Nationality Act (8 U.S.C. 1154) (as it will
take effect upon the entry into force of the Con-
vention on Protection of Children and Coopera-
tion in Respect to Inter-Country Adoption).

(C) Section 212(a)(3)(B)(vi)(II) of the Im-
migration and Nationality Act.
(D) Section 212(a)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

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

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

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

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

(I) Section 613 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999 (as contained in section 101(b) of division A of Public Law 105–277) (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; 112 Stat. 2681; H.R. 4328 (originally H.R. 4276) as amended by section 617 of Public Law 106–553).

(J) Section 801 of H.R. 3427, the Admiral James W. Nance and Meg Donovan Foreign Re-


(3) Construction regarding delegation of authority.—Nothing in this section shall be construed to affect any delegation of authority to the Secretary of State by the President pursuant to any proclamation issued under section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(c) Assignment of Homeland Security Employees to Diplomatic and Consular Posts.—

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

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

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

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

(2) PERMANENT ASSIGNMENT; PARTICIPATION IN TERRORIST LOOKOUT COMMITTEE.—When appropriate, employees of the Department of Homeland Security assigned to perform functions described in paragraph (1) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

(3) TRAINING AND HIRING.—

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

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

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

(d) No Creation of Private Right of Action.—Nothing in this section shall be construed to create or authorize a private right of action to challenge a decision of a consular officer or other United States official or employee to grant or deny a visa.

(e) Study Regarding Use of Foreign Nationals.—
(1) In general.—The Secretary of Homeland Security shall conduct a study of the role of foreign nationals in the granting or refusal of visas and other documents authorizing entry of aliens into the United States. The study shall address the following:

   (A) The proper role, if any, of foreign nationals in the process of rendering decisions on such grants and refusals.

   (B) Any security concerns involving the employment of foreign nationals.

   (C) Whether there are cost-effective alternatives to the use of foreign nationals.

(2) Report.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report containing the findings of the study conducted under paragraph (1) to the Committee on the Judiciary, the Committee on International Relations, and the Committee on Government Reform of the House of Representatives, and the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Government Affairs of the Senate.

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

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

SEC. 404. TRANSFER OF CERTAIN AGRICULTURAL INSPEC-
TION FUNCTIONS OF THE DEPARTMENT OF
AGRICULTURE.

(a) Transfer of Agricultural Import and Entry
Inspection Functions.—There shall be transferred to the
Secretary of Homeland Security the functions of the Sec-
retary of Agriculture relating to agricultural import and
entry inspection activities under the laws specified in subsection (b).

(b) COVERED ANIMAL AND PLANT PROTECTION LAWS.—The laws referred to in subsection (a) are the following:

(1) The Act commonly known as the Virus-Serum-Toxin Act (the eighth paragraph under the heading “Bureau of Animal Industry” in the Act of March 4, 1913; 21 U.S.C. 151 et seq.).

(2) Section 1 of the Act of August 31, 1922 (commonly known as the Honeybee Act; 7 U.S.C. 281).

(3) Title III of the Federal Seed Act (7 U.S.C. 1581 et seq.).

(4) The Plant Protection Act (7 U.S.C. 7701 et seq.).


(c) EXCLUSION OF QUARANTINE ACTIVITIES.—For purposes of this section, the term “functions” does not include any quarantine activities carried out under the laws specified in subsection (b).
(d) **Effect of Transfer.**

(1) **Compliance with Department of Agriculture Regulations.**—The authority transferred pursuant to subsection (a) shall be exercised by the Secretary of Homeland Security in accordance with the regulations, policies, and procedures issued by the Secretary of Agriculture regarding the administration of the laws specified in subsection (b).

(2) **Rulemaking Coordination.**—The Secretary of Agriculture shall coordinate with the Secretary of Homeland Security whenever the Secretary of Agriculture prescribes regulations, policies, or procedures for administering the laws specified in subsection (b) at the locations referred to in subsection (a).

(3) **Effective Administration.**—The Secretary of Homeland Security, in consultation with the Secretary of Agriculture, may issue such directives and guidelines as are necessary to ensure the effective use of personnel of the Department of Homeland Security to carry out the functions transferred pursuant to subsection (a).

(e) **Transfer Agreement.**

(1) **Agreement Required; Revision.**—Before the end of the transition period, as defined in section 801(2), the Secretary of Agriculture and the Secretary
of Homeland Security shall enter into an agreement to effectuate the transfer of functions required by subsection (a). The Secretary of Agriculture and the Secretary of Homeland Security may jointly revise the agreement as necessary thereafter.

(2) REQUIRED TERMS.—The agreement required by this subsection shall specifically address the following:

(A) The supervision by the Secretary of Agriculture of the training of employees of the Secretary of Homeland Security to carry out the functions transferred pursuant to subsection (a).

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

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

(A) Authority for the Secretary of Homeland Security to perform functions delegated to the Animal and Plant Health Inspection Service of the Department of Agriculture regarding the protection of domestic livestock and plants, but not transferred to the Secretary of Homeland Security pursuant to subsection (a).
(B) Authority for the Secretary of Agriculture to use employees of the Department of Homeland Security to carry out authorities delegated to the Animal and Plant Health Inspection Service regarding the protection of domestic livestock and plants.

(f) Periodic Transfer of Funds to Department of Homeland Security.—

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

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

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

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

(1) in section 501(a)—

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

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

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

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

“(e) Secretary Concerned Defined.—In this title, the term ‘Secretary concerned’ means—

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

“(2) the Secretary of Homeland Security, with respect to an animal used for purposes of official inspections by the Department of Homeland Security.”.
SEC. 405. FUNCTIONS OF ADMINISTRATOR OF GENERAL SERVICES.

(a) Operation, Maintenance, and Protection of Federal Buildings and Grounds.—Nothing in this Act may be construed to affect the functions or authorities of the Administrator of General Services with respect to the operation, maintenance, and protection of buildings and grounds owned or occupied by the Federal Government and under the jurisdiction, custody, or control of the Administrator. Except for the law enforcement and related security functions transferred under section 402(4), the Administrator shall retain all powers, functions, and authorities vested in the Administrator under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) and other provisions of law that are necessary for the operation, maintenance, and protection of such buildings and grounds.

(b) Collection of Rents and Fees; Federal Buildings Fund.—

(1) Statutory Construction.—Nothing in this Act may be construed—

(A) to direct the transfer of, or affect, the authority of the Administrator of General Services to collect rents and fees, including fees collected for protective services; or
(B) to authorize the Secretary or any other
official in the Department to obligate amounts
in the Federal Buildings Fund established by
section 210(f) of the Federal Property and Ad-
ministrative Services Act of 1949 (40 U.S.C.
490(f)).

(2) USE OF TRANSFERRED AMOUNTS.—Any
amounts transferred by the Administrator of General
Services to the Secretary out of rents and fees col-
lected by the Administrator shall be used by the Sec-
retary solely for the protection of buildings or grounds
owned or occupied by the Federal Government.

SEC. 406. FUNCTIONS OF TRANSPORTATION SECURITY AD-
MINISTRATION.

(a) Consultation With Federal Aviation Admin-
istration.—The Secretary and other officials in the De-
partment shall consult with the Administrator of the Fed-
eral Aviation Administration before taking any action that
might affect aviation safety, air carrier operations, aircraft
airworthiness, or the use of airspace. The Secretary shall
establish a liaison office within the Department for the pur-
pose of consulting with the Administrator of the Federal
Aviation Administration.

(b) Report to Congress.—Not later than 60 days
after the date of enactment of this Act, the Secretary of
Transportation shall transmit to Congress a report containing a plan for complying with the requirements of section 44901(d) of title 49, United States Code.

(c) LIMITATIONS ON STATUTORY CONSTRUCTION.—

(1) GRANT OF AUTHORITY.—Nothing in this Act may be construed to vest in the Secretary or any other official in the Department any authority over transportation security that is not vested in the Under Secretary of Transportation for Security, or in the Secretary of Transportation under chapter 449 of title 49, United States Code, on the day before the date of enactment of this Act.

(2) OBLIGATION OF AIP FUNDS.—Nothing in this Act may be construed to authorize the Secretary or any other official in the Department to obligate amounts made available under section 48103 of title 49, United States Code.

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

(a) IN GENERAL.—Notwithstanding any other provision of this Act, and subject to subsection (b), the Transportation Security Administration shall be maintained as a distinct entity within the Department under the Under Secretary for Border Transportation and Security.
(b) **SUNSET.**—Subsection (a) shall cease to apply two years after the date of enactment of this Act.

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

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

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

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

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

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

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

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

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

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

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

“(D) **Requirements for Plans.**—A plan developed and published under subparagraph (C), shall provide for, to the maximum extent practicable—

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

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

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

“(3) Purchase of explosive detection systems.—Any explosive detection system required to be purchased under paragraph (2)(A) shall be purchased by the Under Secretary.

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

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

•HR 5005 RH
SEC. 410. TRANSPORTATION SECURITY.

(a) TRANSPORTATION SECURITY OVERSIGHT BOARD.—

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

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

(A) by striking subparagraph (G);

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

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

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

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

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

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

Subtitle B—Immigration and Nationality Functions

CHAPTER 1—IMMIGRATION ENFORCEMENT

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

In accordance with title VIII, there shall be transferred from the Commissioner of Immigration and Naturalization to the Under Secretary for Border and Transportation Security all functions performed under the following programs, and all personnel, assets, and liabilities pertaining to such programs, immediately before such transfer occurs:

(1) The Border Patrol program.

(2) The detention and removal program.

(3) The intelligence program.

(4) The investigations program.

(5) The inspections program.
SEC. 412. ESTABLISHMENT OF BUREAU OF BORDER SECURITY.

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There is established in the Department of Homeland Security a bureau to be known as the “Bureau of Border Security”.

(2) ASSISTANT SECRETARY.—The head of the Bureau of Border Security shall be the Assistant Secretary of the Bureau of Border Security, who—

(A) shall report directly to the Under Secretary for Border and Transportation Security; and

(B) shall have a minimum of 10 years professional experience in law enforcement, at least 5 of which shall have been years of service in a managerial capacity.

(3) FUNCTIONS.—The Assistant Secretary of the Bureau of Border Security—

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

(i) transferred to the Under Secretary for Border and Transportation Security by section 411 and delegated to the Assistant Secretary by the Under Secretary for Border and Transportation Security; or
(ii) otherwise vested in the Assistant Secretary by law;

(B) shall oversee the administration of such policies; and

(C) shall advise the Under Secretary for Border and Transportation Security with respect to any policy or operation of the Bureau of Border Security that may affect the Bureau of Citizenship and Immigration Services of the Department of Justice established under chapter 2, including potentially conflicting policies or operations.

(4) PROGRAM TO COLLECT INFORMATION RELATING TO FOREIGN STUDENTS.—The Assistant Secretary of the Bureau of Border Security shall be responsible for administering the program to collect information relating to nonimmigrant foreign students and other exchange program participants described in section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372), including the Student and Exchange Visitor Information System established under that section, and shall use such information to carry out the enforcement functions of the Bureau.

(5) MANAGERIAL ROTATION PROGRAM.—
(A) IN GENERAL.—Not later than 1 year after the date on which the transfer of functions specified under section 411 takes effect, the Assistant Secretary of the Bureau of Border Security shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS–14 or above, shall, as a condition on further promotion—

(i) gain some experience in all the major functions performed by such bureau;

and

(ii) work in at least one local office of such bureau.

(B) REPORT.—Not later than 2 years after the date on which the transfer of functions specified under section 411 takes effect, the Secretary shall submit a report to the Congress on the implementation of such program.

(b) CHIEF OF POLICY AND STRATEGY.—

(1) IN GENERAL.—There shall be a position of Chief of Policy and Strategy for the Bureau of Border Security.
(2) FUNCTIONS.—In consultation with Bureau of Border Security personnel in local offices, the Chief of Policy and Strategy shall be responsible for—

(A) establishing national immigration enforcement policies and priorities;

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

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

(c) CITIZENSHIP AND IMMIGRATION SERVICES LIAISON.—

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

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

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

(B) records and file management; and

(C) forms management.

SEC. 413. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.

The Under Secretary for Border and Transportation Security shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Border Security that are not subject to investigation by the Inspector General for the Department;

(2) inspecting the operations of the Bureau of Border Security and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of the Bureau of Border Security.

SEC. 414. EMPLOYEE DISCIPLINE.

The Under Secretary for Border and Transportation Security may, notwithstanding any other provision of law,
impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Border Security who willfully deceives the Congress or agency leadership on any matter.

SEC. 415. REPORT ON IMPROVING ENFORCEMENT FUNCTIONS.

(a) In General.—The Secretary, not later than 1 year after being sworn into office, shall submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate a report with a plan detailing how the Bureau of Border Security, after the transfer of functions specified under section 411 takes effect, will enforce comprehensively, effectively, and fairly all the enforcement provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) relating to such functions.

(b) Consultation.—In carrying out subsection (a), the Secretary of Homeland Security shall consult with the Attorney General, the Secretary of State, the Assistant Attorney General for Citizenship and Immigration Services, the Director of the Federal Bureau of Investigation, the Secretary of the Treasury, the Secretary of Labor, the Commissioner of Social Security, the Director of the Executive Office for Immigration Review, and the heads of State and
local law enforcement agencies to determine how to most
effectively conduct enforcement operations.

CHAPTER 2—CITIZENSHIP AND

IMMIGRATION SERVICES

Subchapter A—Transfers of Functions

SEC. 421. ESTABLISHMENT OF BUREAU OF CITIZENSHIP

AND IMMIGRATION SERVICES.

(a) Establishment of Bureau.—

(1) In General.—There is established in the De-
partment of Justice a bureau to be known as the “Bu-
reau of Citizenship and Immigration Services”.

(2) Assistant Attorney General.—The head
of the Bureau of Citizenship and Immigration Serv-
ices shall be the Assistant Attorney General for Cit-
izenship and Immigration Services, who—

(A) shall report directly to the Deputy At-
torney General; and

(B) shall have a minimum of 10 years pro-
fessional experience in the rendering of adjudica-
tions on the provision of government benefits or
services, at least 5 of which shall have been years
of service in a managerial capacity or in a posi-
tion affording comparable management experi-
ence.
(3) FUNCTIONS.—The Assistant Attorney General for Citizenship and Immigration Services—

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

(B) shall oversee the administration of such policies;

(C) shall advise the Deputy Attorney General with respect to any policy or operation of the Bureau of Citizenship and Immigration Services that may affect the Bureau of Border Security of the Department of Homeland Security, including potentially conflicting policies or operations;

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

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

(A) In General.—Not later than 1 year after the effective date specified in section 427, the Assistant Attorney General for Citizenship and Immigration Services shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS–14 or above, shall, as a condition on further promotion—

(i) gain some experience in all the major functions performed by such bureau; and

(ii) work in at least one field office and one service center of such bureau.

(B) Report.—Not later than 2 years after the effective date specified in section 427, the Attorney General shall submit a report to the Congress on the implementation of such program.

(5) Pilot Initiatives for Backlog Elimination.—The Assistant Attorney General for Citizenship and Immigration Services is authorized to implement innovative pilot initiatives to eliminate any
remaining backlog in the processing of immigration benefit applications, and to prevent any backlog in the processing of such applications from recurring, in accordance with section 204(a) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)). Such initiatives may include measures such as increasing personnel, transferring personnel to focus on areas with the largest potential for backlog, and streamlining paperwork.

(b) Transfer of Functions From Commissioner.—There are transferred from the Commissioner of Immigration and Naturalization to the Assistant Attorney General for Citizenship and Immigration Services the following functions, and all personnel, infrastructure, and funding provided to the Commissioner in support of such functions immediately before the effective date specified in section 427:

(1) Adjudications of immigrant visa petitions.

(2) Adjudications of naturalization petitions.

(3) Adjudications of asylum and refugee applications.

(4) Adjudications performed at service centers.

(5) All other adjudications performed by the Immigration and Naturalization Service immediately before the effective date specified in section 427.
(c) **Chief of Policy and Strategy.**—

(1) **In General.**—There shall be a position of Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services.

(2) **Functions.**—In consultation with Bureau of Citizenship and Immigration Services personnel in field offices, the Chief of Policy and Strategy shall be responsible for—

(A) establishing national immigration services policies and priorities;

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

(C) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Border Security of the Department of Homeland Security.

(d) **General Counsel.**—

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

(2) **Functions.**—The General Counsel shall serve as the principal legal advisor to the Assistant Attorney General for Citizenship and Immigration Services. The General Counsel shall be responsible for—
(A) providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Assistant Attorney General for Citizenship and Immigration Services with respect to legal matters affecting the Bureau of Citizenship and Immigration Services; and

(B) representing the Bureau of Citizenship and Immigration Services in visa petition appeal proceedings before the Executive Office for Immigration Review and in other legal or administrative proceedings involving immigration services issues.

(e) CHIEF BUDGET OFFICER.—

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

(2) FUNCTIONS.—

(A) IN GENERAL.—The Chief Budget Officer shall be responsible for—

(i) formulating and executing the budget of the Bureau of Citizenship and Immigration Services;

(ii) financial management of the Bureau of Citizenship and Immigration Services; and
(iii) collecting all payments, fines, and other debts for the Bureau of Citizenship and Immigration Services.

(3) AUTHORITY AND FUNCTIONS OF AGENCY CHIEF FINANCIAL OFFICERS.—The Chief Budget Officer for the Bureau of Citizenship and Immigration Services shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of such bureau.

(f) CHIEF OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—

(1) IN GENERAL.—There shall be a position of Chief of Congressional, Intergovernmental, and Public Affairs for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The Chief of Congressional, Intergovernmental, and Public Affairs shall be responsible for—

(A) providing information relating to immigration services to the Congress, including information on specific cases relating to immigration services issues;

(B) serving as a liaison with other Federal agencies on immigration services issues; and
(C) responding to inquiries from the media and the general public on immigration services issues.

(g) Border Security Liaison.—

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

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

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

(B) records and file management; and

(C) forms management.

(h) Chief of Office of Citizenship.—

(1) In general.—There shall be a position of Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services.

(2) Functions.—The Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services,
tion Services shall be responsible for promoting instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens of the United States, including the development of educational materials.

SEC. 422. CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN.

(a) IN GENERAL.—Within the Department of Justice, there shall be a position of Citizenship and Immigration Services Ombudsman (in this section referred to as the “Ombudsman”). The Ombudsman shall report directly to the Deputy Attorney General. The Ombudsman shall have a background in customer service as well as immigration law.

(b) FUNCTIONS.—It shall be the function of the Ombudsman—

(1) to assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;

(2) to identify areas in which individuals and employers have problems in dealing with the Bureau of Citizenship and Immigration Services;

(3) to the extent possible, to propose changes in the administrative practices of the Bureau of Citizen-
ship and Immigration Services to mitigate problems identified under paragraph (2); and

(4) to identify potential legislative changes that may be appropriate to mitigate such problems.

(c) Annual Reports.—

(1) Objectives.—Not later than June 30 of each calendar year, the Ombudsman shall report to the Committee on the Judiciary of the United States House of Representatives and the Senate on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and—

(A) shall identify the initiatives the Office of the Ombudsman has taken on improving services and responsiveness of the Bureau of Citizenship and Immigration Services;

(B) shall contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems;

(C) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action has been taken and the result of such action;
(D) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action remains to be completed and the period during which each item has remained on such inventory;

(E) shall contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and shall identify any official of the Bureau of Citizenship and Immigration Services who is responsible for such inaction;

(F) shall contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications; and

(G) shall include such other information as the Ombudsman may deem advisable.

(2) Report to be submitted directly.—Each report required under this subsection shall be provided directly to the committees described in para-
graph (1) without any prior review or comment from
the Attorney General, Deputy Attorney General, As-
sistant Attorney General for Citizenship and Immi-
gration Services, or any other officer or employee of
the Department of Justice or the Office of Manage-
ment and Budget.

(d) OTHER RESPONSIBILITIES.—The Ombudsman—

(1) shall monitor the coverage and geographic al-
location of local offices of the Ombudsman;

(2) shall develop guidance to be distributed to all
officers and employees of the Bureau of Citizenship
and Immigration Services outlining the criteria for
referral of inquiries to local offices of the Ombuds-
man;

(3) shall ensure that the local telephone number
for each local office of the Ombudsman is published
and available to individuals and employers served by
the office; and

(4) shall meet regularly with the Assistant Attor-
ney General for Citizenship and Immigration Serv-
ices to identify serious service problems and to present
recommendations for such administrative action as
may be appropriate to resolve problems encountered
by individuals and employers.

(e) PERSONNEL ACTIONS.—
(1) In general.—The Ombudsman shall have the responsibility and authority—

(A) to appoint local ombudsmen and make available at least 1 such ombudsman for each State; and

(B) to evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of the Ombudsman.

(2) Consultation.—The Ombudsman may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services in carrying out the Ombudsman’s responsibilities under this subsection.

(f) Responsibilities of Bureau of Citizenship and Immigration Services.—The Assistant Attorney General for Citizenship and Immigration Services shall establish procedures requiring a formal response to all recommendations submitted to such Assistant Attorney General by the Ombudsman within 3 months after submission to such director.

(g) Operation of Local Offices.—

(1) In general.—Each local ombudsman—

(A) shall report to the Ombudsman or the delegate thereof;
(B) may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services regarding the daily operation of the local office of such ombudsman;

(C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or employer that the local offices of the Ombudsman operate independently of any other component of the Department of Justice and report directly to the Congress through the Ombudsman; and

(D) at the local ombudsman’s discretion, may determine not to disclose to the Bureau of Citizenship and Immigration Services contact with, or information provided by, such individual or employer.

(2) MAINTENANCE OF INDEPENDENT COMMUNICATIONS.—Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office address, that is separate from those maintained by the Bureau of Citizenship and Immigration Services, or any component of the Bureau of Citizenship and Immigration Services.
SEC. 423. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.

(a) In General.—The Assistant Attorney General for Citizenship and Immigration Services shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Citizenship and Immigration Services that are not subject to investigation by the Department of Justice Office of the Inspector General;

(2) inspecting the operations of the Bureau of Citizenship and Immigration Services and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of the Bureau of Citizenship and Immigration Services.

(b) Special Considerations.—In providing assessments in accordance with subsection (a)(2) with respect to a decision of the Bureau of Citizenship and Immigration Services, or any of its components, consideration shall be given to—

(1) the accuracy of the findings of fact and conclusions of law used in rendering the decision;

(2) any fraud or misrepresentation associated with the decision; and
(3) the efficiency with which the decision was rendered.

SEC. 424. EMPLOYEE DISCIPLINE.

The Assistant Attorney General for Citizenship and Immigration Services may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Citizenship and Immigration Services who willfully deceives the Congress or agency leadership on any matter.

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

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

“OFFICE OF IMMIGRATION STATISTICS

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

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

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

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

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

   (1) Adjudications of immigrant visa petitions.
   (2) Adjudications of naturalization petitions.
   (3) Adjudications of asylum and refugee applica-
tions.
   (4) Adjudications performed at service centers.
   (5) All other adjudications performed by the Im-
migration and Naturalization Service.

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

   (1) by striking “and” at the end of paragraph
   (22);
   (2) by striking the period at the end of para-
graph (23) and inserting “; and”; and
(3) by adding at the end the following:

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

SEC. 426. PRESERVATION OF ATTORNEY GENERAL’S AUTHORITY.

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

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

SEC. 427. EFFECTIVE DATE.

Notwithstanding section 4, this subchapter, and the amendments made by this subchapter, shall take effect on the date on which the transfer of functions specified under section 411 takes effect.
SEC. 428. TRANSITION.

(a) REFERENCES.—With respect to any function transferred by this subchapter to, and exercised on or after the effective date specified in section 427 by, the Assistant Attorney General for Citizenship and Immigration Services, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Assistant Attorney General for Citizenship and Immigration Services; or

(2) to such component is deemed to refer to the Bureau of Citizenship and Immigration Services.

(b) OTHER TRANSITION ISSUES.—

(1) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this subchapter may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in section 427.

(2) SAVINGS PROVISIONS.—Subsections (a), (b), and (c) of section 812 shall apply to a transfer of
functions under this subchapter in the same manner as such provisions apply to a transfer of functions under this Act to the Department of Homeland Security.

(3) **Transfer and Allocation of Appropriations and Personnel.**—The personnel of the Department of Justice employed in connection with the functions transferred by this subchapter (and functions that the Attorney General determines are properly related to the functions of the Bureau of Citizenship and Immigration Services), and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this subchapter, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Assistant Attorney General for Citizenship and Immigration Services for allocation to the appropriate component of the Department of Justice. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated. The Attorney
General shall have the right to adjust or realign transfers of funds and personnel effected pursuant to this subchapter for a period of 2 years after the effective date specified in section 427.

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

**Subchapter B—Other Provisions**

SEC. 431. FUNDING FOR CITIZENSHIP AND IMMIGRATION SERVICES.

(a) Establishment of Fees for Adjudication and Naturalization Services.—Section 286(m) of the Immig-
gration and Nationality Act (8 U.S.C. 1356(m)) is amend-
ed by striking “services, including the costs of similar serv-
ices provided without charge to asylum applicants or other
immigrants.” and inserting “services.”.

(b) Authorization of Appropriations for Ref-
ugee and Asylum Adjudications.—There are authorized
to be appropriated such sums as may be necessary to carry
out the provisions of sections 207 through 209 of the Immi-
gration and Nationality Act (8 U.S.C. 1157–1159). All
funds appropriated under this subsection shall be deposited
into the Immigration Examinations Fee Account estab-
lished under section 286(m) of the Immigration and Na-
tionality Act (8 U.S.C. 1356(m)) and shall remain avail-
able until expended.

SEC. 432. BACKLOG ELIMINATION.

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

SEC. 433. REPORT ON IMPROVING IMMIGRATION SERVICES.

(a) In General.—The Attorney General, not later
than 1 year after the effective date of this Act, shall submit
to the Committees on the Judiciary and Appropriations of
the United States House of Representatives and of the Senate a report with a plan detailing how the Bureau of Citizenship and Immigration Services, after the transfer of functions specified in subchapter 1 takes effect, will complete efficiently, fairly, and within a reasonable time, the adjudications described in paragraphs (1) through (5) of section 421(b).

(b) CONTENTS.—For each type of adjudication to be undertaken by the Assistant Attorney General for Citizenship and Immigration Services, the report shall include the following:

(1) Any potential savings of resources that may be implemented without affecting the quality of the adjudication.

(2) The goal for processing time with respect to the application.

(3) Any statutory modifications with respect to the adjudication that the Attorney General considers advisable.

(c) CONSULTATION.—In carrying out subsection (a), the Attorney General shall consult with the Secretary of State, the Secretary of Labor, the Assistant Secretary of the Bureau of Border Security of the Department of Homeland Security, and the Director of the Executive Office for Immigration Review to determine how to streamline and improve
the process for applying for and making adjudications de-
scribed in section 421(b) and related processes.

SEC. 434. REPORT ON RESPONDING TO FLUCTUATING
NEEDS.

Not later than 30 days after the date of the enactment
of this Act, the Attorney General shall submit to the Con-
gress a report on changes in law, including changes in au-
thorizations of appropriations and in appropriations, that
are needed to permit the Immigration and Naturalization
Service, and, after the transfer of functions specified in sub-
chapter 1 takes effect, the Bureau of Citizenship and Immi-
gration Services, to ensure a prompt and timely response
to emergent, unforeseen, or impending changes in the num-
ber of applications for immigration benefits, and otherwise
to ensure the accommodation of changing immigration serv-
ice needs.

SEC. 435. APPLICATION OF INTERNET-BASED TECH-
NOLOGIES.

(a) Establishment of Tracking System.—The At-
torney General, not later than 1 year after the effective date
of this Act, in consultation with the Technology Advisory
Committee established under subsection (c), shall establish
an Internet-based system, that will permit a person, em-
ployer, immigrant, or nonimmigrant who has filings with
the Attorney General for any benefit under the Immigration
and Nationality Act (8 U.S.C. 1101 et seq.), access to online information about the processing status of the filing involved.

(b) Feasibility Study for Online Filing and Improved Processing.—

(1) Online Filing.—The Attorney General, in consultation with the Technology Advisory Committee established under subsection (c), shall conduct a feasibility study on the online filing of the filings described in subsection (a). The study shall include a review of computerization and technology of the Immigration and Naturalization Service relating to the immigration services and processing of filings related to immigrant services. The study shall also include an estimate of the timeframe and cost and shall consider other factors in implementing such a filing system, including the feasibility of fee payment online.

(2) Report.—A report on the study under this subsection shall be submitted to the Committees on the Judiciary of the United States House of Representatives and the Senate not later than 1 year after the effective date of this Act.

(c) Technology Advisory Committee.—

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

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b).

The Technology Advisory Committee shall be established after consultation with the Committees on the Judiciary of the United States House of Representatives and the Senate.

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of representatives from high technology companies capable of establishing and implementing the system in an expeditious manner, and representatives of persons who may use the tracking system described in subsection (a) and the online filing system described in subsection (b)(1).

SEC. 436. CHILDREN’S AFFAIRS.

(a) TRANSFER OF FUNCTIONS.—There are transferred to the Director of the Office of Refugee Resettlement of the Department of Health and Human Services functions under the immigration laws of the United States with respect to the care of unaccompanied alien children that were vested by statute in, or performed by, the Commissioner of
Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the effective date specified in subsection (d).

(b) FUNCTIONS.—

(1) IN GENERAL.—Pursuant to the transfer made by subsection (a), the Director of the Office of Refugee Resettlement shall be responsible for—

(A) coordinating and implementing the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status, including developing a plan to be submitted to the Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child, consistent with the law regarding appointment of counsel that is in effect on the date of the enactment of this Act;

(B) ensuring that the interests of the child are considered in decisions and actions relating to the care and custody of an unaccompanied alien child;

(C) making placement determinations for all unaccompanied alien children who are in
Federal custody by reason of their immigration status;

(D) implementing the placement determinations;

(E) implementing policies with respect to the care and placement of unaccompanied alien children;

(F) identifying a sufficient number of qualified individuals, entities, and facilities to house unaccompanied alien children;

(G) overseeing the infrastructure and personnel of facilities in which unaccompanied alien children reside;

(H) reuniting unaccompanied alien children with a parent abroad in appropriate cases;

(I) compiling, updating, and publishing at least annually a state-by-state list of professionals or other entities qualified to provide guardian and attorney representation services for unaccompanied alien children;

(J) maintaining statistical information and other data on unaccompanied alien children for whose care and placement the Director is responsible, which shall include—
(i) biographical information, such as a child’s name, gender, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the child came into Federal custody by reason of his or her immigration status;

(iii) information relating to the child’s placement, removal, or release from each facility in which the child has resided;

(iv) in any case in which the child is placed in detention or released, an explanation relating to the detention or release; and

(v) the disposition of any actions in which the child is the subject;

(K) collecting and compiling statistical information from the Department of Justice, the Department of Homeland Security, and the Department of State on each department’s actions relating to unaccompanied alien children; and

(L) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside.

(2) COORDINATION WITH OTHER ENTITIES; NO RELEASE ON OWN RECOGNIZANCE.—In making deter-
minations described in paragraph (1)(C), the Director of the Office of Refugee Resettlement—

(A) shall consult with appropriate juvenile justice professionals, the Director of the Bureau of Citizenship and Immigration Services of the Department of Justice, and the Assistant Secretary of the Bureau of Border Security of the Department of Homeland Security to ensure that such determinations ensure that unaccompanied alien children described in such subparagraph—

(i) are likely to appear for all hearings or proceedings in which they are involved;

(ii) are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity; and

(iii) are placed in a setting in which they not likely to pose a danger to themselves or others; and

(B) shall not release such children upon their own recognizance.

(3) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in paragraph (1)(G), the Director of the Office of Refugee Resettlement is encouraged to use the refugee children foster
care system established pursuant to section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)) for the placement of unaccompanied alien children.

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) from the authority of any official of the Department of Justice, the Department of Homeland Security, or the Department of State.

(d) EFFECTIVE DATE.—Notwithstanding section 4, this section shall take effect on the date on which the transfer of functions specified under section 411 takes effect.

(e) REFERENCES.—With respect to any function transferred by this section, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Office of Refugee Resettlement; or

(2) to such component is deemed to refer to the Office of Refugee Resettlement of the Department of Health and Human Services.

(f) OTHER TRANSITION ISSUES.—
(1) Exercise of Authorities.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this section may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in subsection (d).

(2) Savings Provisions.—Subsections (a), (b), and (c) of section 812 shall apply to a transfer of functions under this section in the same manner as such provisions apply to a transfer of functions under this Act to the Department of Homeland Security.

(3) Transfer and Allocation of Appropriations and Personnel.—The personnel of the Department of Justice employed in connection with the functions transferred by this section, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this section, subject to section 202 of the Budget and Accounting
Procedures Act of 1950, shall be transferred to the Director of the Office of Refugee Resettlement for allocation to the appropriate component of the Department of Health and Human Services. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated.

(g) DEFINITIONS.—As used in this section—

(1) the term “placement” means the placement of an unaccompanied alien child in either a detention facility or an alternative to such a facility; and

(2) the term “unaccompanied alien child” means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained 18 years of age; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.
CHAPTER 3—GENERAL PROVISIONS

SEC. 441. ABOLISHMENT OF INS.
The Immigration and Naturalization Service of the Department of Justice is abolished.

SEC. 442. VOLUNTARY SEPARATION INCENTIVE PAYMENTS.

(a) DEFINITIONS.—For purposes of this section—

(1) the term “employee” means an employee (as defined by section 2105 of title 5, United States Code) who—

(A) has completed at least 3 years of current continuous service with 1 or more covered entities; and

(B) is serving under an appointment without time limitation;

but does not include any person under subparagraphs (A)–(G) of section 663(a)(2) of Public Law 104–208 (5 U.S.C. 5597 note);

(2) the term “covered entity” means—

(A) the Immigration and Naturalization Service;

(B) the Bureau of Border Security of the Department of Homeland Security; and

(C) the Bureau of Citizenship and Immigration Services of the Department of Justice; and
(3) the term “transfer date” means the date on which the transfer of functions specified under section 411 takes effect.

(b) **Strategic Restructuring Plan.**—Before the Attorney General or the Secretary obligates any resources for voluntary separation incentive payments under this section, such official shall submit to the appropriate committees of Congress a strategic restructuring plan, which shall include—

(1) an organizational chart depicting the covered entities after their restructuring pursuant to this Act;

(2) a summary description of how the authority under this section will be used to help carry out that restructuring; and

(3) the information specified in section 663(b)(2) of Public Law 104–208 (5 U.S.C. 5597 note).

As used in the preceding sentence, the “appropriate committees of Congress” are the Committees on Appropriations, Government Reform, and the Judiciary of the House of Representatives, and the Committees on Appropriations, Governmental Affairs, and the Judiciary of the Senate.

(c) **Authority.**—The Attorney General and the Secretary may, to the extent necessary to help carry out their respective strategic restructuring plan described in sub-
section (b), make voluntary separation incentive payments
to employees. Any such payment—

(1) shall be paid to the employee, in a lump
sum, after the employee has separated from service;

(2) shall be paid from appropriations or funds
available for the payment of basic pay of the em-
ployee;

(3) shall be equal to the lesser of—

(A) the amount the employee would be enti-
titled to receive under section 5595(c) of title 5,
United States Code; or

(B) an amount not to exceed $25,000, as de-
termined by the Attorney General or the Sec-
retary;

(4) may not be made except in the case of any
qualifying employee who voluntarily separates
(whether by retirement or resignation) before the end
of—

(A) the 3-month period beginning on the
date on which such payment is offered or made
available to such employee; or

(B) the 3-year period beginning on the date
of the enactment of this Act,

whichever occurs first;
(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and

(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595 of title 5, United States Code, based on any other separation.

(d) ADDITIONAL AGENCY CONTRIBUTIONS TO THE RETIREMENT FUND.—

(1) IN GENERAL.—In addition to any payments which it is otherwise required to make, the Department of Justice and the Department of Homeland Security shall, for each fiscal year with respect to which it makes any voluntary separation incentive payments under this section, remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund the amount required under paragraph (2).

(2) AMOUNT REQUIRED.—The amount required under this paragraph shall, for any fiscal year, be the amount under subparagraph (A) or (B), whichever is greater.

(A) FIRST METHOD.—The amount under this subparagraph shall, for any fiscal year, be
equal to the minimum amount necessary to offset
the additional costs to the retirement systems
under title 5, United States Code (payable out of
the Civil Service Retirement and Disability
Fund) resulting from the voluntary separation of
the employees described in paragraph (3), as de-
termined under regulations of the Office of Per-
sonnel 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 para-
graph (3).

(3) Computations to be based on separa-
tions occurring in the fiscal year involved.—
The employees described in this paragraph are those
employees who receive a voluntary separation incen-
tive payment under this section based on their sepa-
rating from service during the fiscal year with respect
to which the payment under this subsection relates.

(4) Final basic pay defined.—In this sub-
section, the term “final basic pay” means, with re-
spect to an employee, the total amount of basic pay
which would be payable for a year of service by such
employee, computed using the employee’s final rate of
basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefor.

(e) Effect of Subsequent Employment with the Government.—An individual who receives a voluntary separation incentive payment under this section and who, within 5 years after the date of the separation on which the payment is based, accepts any compensated employment with the Government or works for any agency of the Government through a personal services contract, shall be required to pay, prior to the individual’s first day of employment, the entire amount of the incentive payment. Such payment shall be made to the covered entity from which the individual separated or, if made on or after the transfer date, to the Deputy Attorney General (for transfer to the appropriate component of the Department of Justice, if necessary) or the Under Secretary for Border and Transportation Security (for transfer to the appropriate component of the Department of Homeland Security, if necessary).

(f) Effect on Employment Levels.—

(1) Intended Effect.—Voluntary separations under this section are not intended to necessarily reduce the total number of full-time equivalent positions in any covered entity.

(2) Use of Voluntary Separations.—A covered entity may redeploy or use the full-time equiva-
lent positions vacated by voluntary separations under
this section to make other positions available to more
critical locations or more critical occupations.

SEC. 443. AUTHORITY TO CONDUCT A DEMONSTRATION
PROJECT RELATING TO DISCIPLINARY AC-
TION.

(a) IN GENERAL.—The Attorney General and the Sec-
retary may each, during a period ending not later than
5 years after the date of the enactment of this Act, conduct
a demonstration project for the purpose of determining
whether one or more changes in the policies or procedures
relating to methods for disciplining employees would result
in improved personnel management.

(b) SCOPE.—A demonstration project under this
section—

(1) may not cover any employees apart from
those employed in or under a covered entity; and

(2) shall not be limited by any provision of
chapter 43, 75, or 77 of title 5, United States Code.

(c) PROCEDURES.—Under the demonstration project—

(1) the use of alternative means of dispute reso-
lution (as defined in section 571 of title 5, United
States Code) shall be encouraged, whenever appro-
priate; and
(2) each covered entity under the jurisdiction of the official conducting the project shall be required to provide for the expeditious, fair, and independent review of any action to which section 4303 or subchapter II of chapter 75 of such title 5 would otherwise apply (except an action described in section 7512(5) thereof).

(d) ACTIONS INVOLVING DISCRIMINATION.—Notwithstanding any other provision of this section, if, in the case of any matter described in section 7702(a)(1)(B) of title 5, United States Code, there is no judicially reviewable action under the demonstration project within 120 days after the filing of an appeal or other formal request for review (referred to in subsection (c)(2)), an employee shall be entitled to file a civil action to the same extent and in the same manner as provided in section 7702(e)(1) of such title 5 (in the matter following subparagraph (C) thereof).

(e) CERTAIN EMPLOYEES.—Employees shall not be included within any project under this section if such employees are—

(1) neither managers nor supervisors; and

(2) within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 71 of title 5, United States Code.
Notwithstanding the preceding sentence, an aggrieved employee within a unit (referred to in paragraph (2)) may elect to participate in a complaint procedure developed under the demonstration project in lieu of any negotiated grievance procedure and any statutory procedure (as such term is used in section 7121 of such title 5).

(f) REPORTS.—The General Accounting Office shall prepare and submit to the Committees on Government Reform and the Judiciary of the House of Representatives and the Committees on Governmental Affairs and the Judiciary of the Senate periodic reports on any demonstration project conducted under this section, such reports to be submitted after the second and fourth years of its operation. Upon request, the Attorney General or the Secretary shall furnish such information as the General Accounting Office may require to carry out this subsection.

(g) DEFINITION.—In this section, the term “covered entity” has the meaning given such term in section 442(a)(2).

SEC. 444. SENSE OF CONGRESS.

It is the sense of the Congress that—

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

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

SEC. 445. REPORTS AND IMPLEMENTATION PLANS.

(a) DIVISION OF FUNDS.—The Attorney General and the Secretary, not later than 120 days after the effective date of this Act, shall each submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate a report on the proposed division and transfer of funds, including unex- pended funds, appropriations, and fees, between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(b) DIVISION OF PERSONNEL.—The Attorney General and the Secretary, not later than 120 days after the effective date of this Act, shall each submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate a report on the proposed division of personnel between the Bureau of Citi- zenship and Immigration Services and the Bureau of Border Security.

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

(2) **CONTENTS.**—The implementation plan should include details concerning the separation of the Bureau of Citizenship and Immigration Services and the Bureau of Border Security, including the following:

(A) Organizational structure, including the field structure.

(B) Chain of command.

(C) Procedures for interaction among such bureaus.

(D) Fraud detection and investigation.

(E) The processing and handling of removal proceedings, including expedited removal and applications for relief from removal.

(F) Recommendations for conforming amendments to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).
(G) Establishment of a transition team.

(H) Methods to phase in the costs of separating the administrative support systems of the Immigration and Naturalization Service in order to provide for separate administrative support systems for the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(d) Comptroller General Studies and Reports.—

(1) Status reports on transition.—Not later than 18 months after the date on which the transfer of functions specified under section 411 takes effect, and every 6 months thereafter, until full implementation of this subtitle has been completed, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the United States House of Representatives and the Senate a report containing the following:

(A) A determination of whether the transfers of functions made by chapters 1 and 2 have been completed, and if a transfer of functions has not taken place, identifying the reasons why the transfer has not taken place.
(B) If the transfers of functions made by chapters 1 and 2 have been completed, an identification of any issues that have arisen due to the completed transfers.

(C) An identification of any issues that may arise due to any future transfer of functions.

(2) REPORT ON MANAGEMENT.—Not later than 4 years after the date on which the transfer of functions specified under section 411 takes effect, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the United States House of Representatives and the Senate a report, following a study, containing the following:

(A) Determinations of whether the transfer of functions from the Immigration and Naturalization Service to the Bureau of Citizenship and Immigration Services and the Bureau of Border Security have improved, with respect to each function transferred, the following:

(i) Operations.

(ii) Management, including accountability and communication.

(iii) Financial administration.
(iv) Recordkeeping, including information management and technology.

(B) A statement of the reasons for the determinations under subparagraph (A).

(C) Any recommendations for further improvements to the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(3) REPORT ON FEES.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report examining whether the Bureau of Citizenship and Immigration Services is likely to derive sufficient funds from fees to carry out its functions in the absence of appropriated funds.

SEC. 446. IMMIGRATION FUNCTIONS.

(a) ANNUAL REPORT.—

(1) IN GENERAL.—One year after the date of the enactment of this Act, and each year thereafter, the Attorney General shall submit a report to the President, to the Committees on the Judiciary and Government Reform of the United States House of Representatives, and to the Committees on the Judiciary
and Government Affairs of the Senate, on the impact
the transfers made by this subtitle has had on immi-

gration functions.

(2) MATTER INCLUDED.—The report shall ad-

dress the following with respect to the period covered
by the report:

(A) The aggregate number of all immigra-

tion applications and petitions received, and
processed, by the Department;

(B) Region-by-region statistics on the aggre-

gate number of immigration applications and
petitions filed by an alien (or filed on behalf of
an alien) and denied, disaggregated by category
of denial and application or petition type.

(C) The quantity of backlogged immigration
applications and petitions that have been proc-
essed, the aggregate number awaiting processing,
and a detailed plan for eliminating the backlog.

(D) The average processing period for im-
migration applications and petitions,
disaggregated by application or petition type.

(E) The number and types of immigration-
related grievances filed with any official of the
Department of Justice, and if those grievances
were resolved.
(F) Plans to address grievances and improve immigration services.

(G) Whether immigration-related fees were used consistent with legal requirements regarding such use.

(H) Whether immigration-related questions conveyed by customers to the Department of Justice (whether conveyed in person, by telephone, or by means of the Internet) were answered effectively and efficiently.

(b) Sense of the Congress Regarding Immigration Services.—It is the sense of the Congress that—

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

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

Subtitle C—United States Customs Service

SEC. 451. ESTABLISHMENT; COMMISSIONER OF CUSTOMS.

(a) Establishment.—There is established in the Department the United States Customs Service, under the au-
authority of the Under Secretary for Border and Transportation Security, which shall be vested with those functions set forth in section 457(7), and the personnel, assets, and liabilities attributable to those functions.

(b) COMMISSIONER OF CUSTOMS.—

(1) IN GENERAL.—There shall be at the head of the Customs Service a Commissioner of Customs, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) COMPENSATION.—Section 5314 of title 5, United States Code, is amended by striking “Commissioner of Customs, Department of the Treasury” and inserting “Commissioner of Customs, Department of Homeland Security.”.

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

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

(a) Retention by Secretary of the Treasury.—
(1) Retention of Authority.—Notwithstanding sections 401(5), 402(1), and 808(e)(2), authority that was vested in the Secretary of the Treasury by law before the effective date of this Act under those provisions of law set forth in paragraph (2) shall not be transferred to the Secretary by reason of this Act, and on and after the effective date of this Act, the Secretary of the Treasury may delegate any such authority to the Secretary at the discretion of the Secretary of the Treasury. The Secretary of the Treasury shall consult with the Secretary regarding the exercise of any such authority not delegated to the Secretary.

(2) Statutes.—The provisions of law referred to in paragraph (1) are the following: the Tariff Act of 1930; section 249 of the Revised Statutes of the United States (19 U.S.C. 3); section 2 of the Act of March 4, 1923 (19 U.S.C. 6); section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c); section 251 of the Revised Statutes of the United States (19 U.S.C. 66); section 1 of the Act of June 26, 1930 (19 U.S.C. 68); the Foreign Trade Zones Act (19 U.S.C. 81a et seq.); section 1 of the Act of March 2, 1911 (19 U.S.C. 198); the Trade Act of 1974; the Trade Agreements Act of 1979; the
North American Free Trade Area Implementation Act; the Uruguay Round Agreements Act; the Caribbean Basin Economic Recovery Act; the Andean Trade Preference Act; the African Growth and Opportunity Act; and any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(b) MAINTENANCE OF CUSTOMS REVENUE FUNCTIONS.—

(1) MAINTENANCE OF FUNCTIONS.—Notwithstanding any other provision of this Act, the Secretary may not consolidate, alter, discontinue, or diminish those functions described in paragraph (2) performed by the United States Customs Service (as established under section 451) on or after the effective date of this Act, reduce the staffing level, or the compensation or benefits under title 5, United States Code, of personnel attributable to such functions, or reduce the resources attributable to such functions, and the Secretary shall ensure that an appropriate management structure is implemented to carry out such functions.

(2) FUNCTIONS.—The functions referred to in paragraph (1) are those functions performed by the following personnel, and associated support staff, of
the United States Customs Service on the day before
the effective date of this Act: Import Specialists,
Entry Specialists, Drawback Specialists, National
Import Specialist, Fines and Penalties Specialists,
attorneys of the Office of Regulations and Rulings,
Customs Auditors, International Trade Specialists,
Financial Systems Specialists.

(c) NEW PERSONNEL.—The Secretary of the Treasury
is authorized to appoint up to 20 new personnel to work
with personnel of the Department in performing customs
revenue functions.

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

(a) ESTABLISHMENT AND IMPLEMENTATION.—

(1) IN GENERAL.—Not later than September 30,
2003, the Commissioner of Customs shall, in accord-
ance with the audit of the Customs Service’s fiscal
years 2000 and 1999 financial statements (as con-
tained in the report of the Office of the Inspector Gen-
eral of the Department of the Treasury issued on Feb-
uary 23, 2001), establish and implement a cost ac-
counting system for expenses incurred in the oper-
ation of the Customs Service.

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

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

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

SEC. 454. PRESERVATION OF CUSTOMS FUNDS.
Notwithstanding any other provision of this Act, no funds available to the United States Customs Service or collected under paragraphs (1) through (8) of section 13031(a)
of the Consolidated Omnibus Budget Reconciliation Act of
1985 may be transferred for use by any other agency or
office in the Department.

SEC. 455. SEPARATE BUDGET REQUEST FOR CUSTOMS.

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

SEC. 456. PAYMENT OF DUTIES AND FEES.

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

(1) in the first sentence—

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

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

and

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

SEC. 457. DEFINITION.

In this subtitle, the term “customs revenue function”
means the following:

(1) Assessing and collecting customs duties (includ-
ing antidumping and countervailing duties and
duties imposed under safeguard provisions), excise
taxes, fees, and penalties due on imported merchan-
dise, including classifying and valuing merchandise
for purposes of such assessment.

(2) Processing and denial of entry of persons,
 baggage, cargo, and mail, with respect to the assess-
ment and collection of import duties.

(3) Detecting and apprehending persons engaged
in fraudulent practices designed to circumvent the
customs laws of the United States.

(4) Enforcing section 337 of the Tariff Act of
1930 and provisions relating to import quotas and
the marking of imported merchandise, and providing
Customs Recordations for copyrights, patents, and
trademarks.

(5) Collecting accurate import data for compila-
tion of international trade statistics.
(6) Enforcing reciprocal trade agreements.

(7) Functions performed by the following personnel, and associated support staff, of the United States Customs Service on the day before the effective date of this Act: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

(8) Functions performed by the following offices, with respect to any function described in any of paragraphs (1) through (7), and associated support staff, of the United States Customs Service on the day before the effective date of this Act: the Office of Information and Technology, the Office of Laboratory Services, the Office of the Chief Counsel, the Office of Congressional Affairs, the Office of International Affairs, and the Office of Training and Development.

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

Not later than 3 months after the effective date of this Act, the Comptroller General of the United States shall submit to the Congress a report that sets forth all trade functions performed by the executive branch, specifying each agency that performs each such function.
SEC. 459. ALLOCATION OF RESOURCES BY THE SECRETARY.

(a) In General.—The Secretary shall ensure that adequate staffing is provided to assure that levels of customs revenue services provided on the day before the effective date of this Act shall continue to be provided.

(b) Notification of Congress.—The Secretary shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate at least 180 days prior to taking any action which would—

(1) result in any significant reduction in customs revenue services, including hours of operation, provided at any office within the Department or any port of entry;

(2) eliminate or relocate any office of the Department which provides customs revenue services; or

(3) eliminate any port of entry.

(c) Definition.—In this section, the term “customs revenue services” means those customs revenue functions described in paragraphs (1) through (6) and (8) of section 457.

SEC. 460. REPORTS TO CONGRESS.

The United States Customs Service shall, on and after the effective date of this Act, continue to submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate any report...
required, on the day before such the effective date of this Act, to be so submitted under any provision of law.

SEC. 461. CUSTOMS USER FEES.

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

(1) in paragraph (1), by striking subparagraph (B) and inserting the following:

“(B) amounts deposited into the Customs Commercial and Homeland Security Automation Account under paragraph (5).”;

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

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

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

“(B) There is authorized to be appropriated from the Account in fiscal years 2003 through 2005 such amounts as are available in that Account for the development, establishment, and implementation of the Automated Commer-
cial Environment computer system for the processing of merchandise that is entered or released and for other purposes related to the functions of the Department of Homeland Security. Amounts appropriated pursuant to this subparagraph are authorized to remain available until expended.

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

**TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE**

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

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

1. Helping to ensure the preparedness of emergency response providers for terrorist attacks, major disasters, and other emergencies.

2. With respect to the Nuclear Incident Response Team (regardless of whether it is operating as
an organizational unit of the Department pursuant to this title)—

(A) establishing standards and certifying when those standards have been met;

(B) conducting joint and other exercises and training and evaluating performance; and

(C) providing funds to the Department of Energy and the Environmental Protection Agency, as appropriate, for homeland security planning, exercises and training, and equipment.

(3) Providing the Federal Government’s response to terrorist attacks and major disasters, including—

(A) managing such response;

(B) directing the Domestic Emergency Support Team, the Strategic National Stockpile, the National Disaster Medical System, and (when operating as an organizational unit of the Department pursuant to this title) the Nuclear Incident Response Team;

(C) overseeing the Metropolitan Medical Response System; and

(D) coordinating other Federal response resources in the event of a terrorist attack or major disaster.
(4) Aiding the recovery from terrorist attacks and major disasters, interventions to treat the psychological consequences of terrorist attacks or major disasters and provision for training for mental health workers to allow them to respond effectively to such attacks or disasters.

(5) Building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and disasters.

(6) Consolidating existing Federal Government emergency response plans into a single, coordinated national response plan.

(7) Developing comprehensive programs for developing interoperative communications technology, and helping to ensure that emergency response providers acquire such technology.

SEC. 502. FUNCTIONS TRANSFERRED.

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

(1) Except as provided in section 402, the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, and the Inte-
grated Hazard Information System of the Department of Defense.

(2) The Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and the Assistant Secretary for Public Health Emergency Preparedness relating thereto.

(3) The Strategic National Stockpile of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services relating thereto.

SEC. 503. NUCLEAR INCIDENT RESPONSE.

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

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

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

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

SEC. 504. DEFINITION.

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

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

(2) those entities of the Environmental Protec-
tion Agency that perform radiological emergency re-
response and support functions.

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

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

(b) Evaluation of Progress.—In carrying out sub-
section (a), the Secretary of Health and Human Services
shall collaborate with the Secretary of Homeland Security
in developing specific benchmarks and outcome measure-
ments for evaluating progress toward achieving the prior-
ities and goals described in such subsection.
TITLE VI—MANAGEMENT

SEC. 601. UNDER SECRETARY FOR MANAGEMENT.

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Management, shall be responsible for the management and administration of the Department, including the following:

(1) The budget, appropriations, expenditures of funds, accounting, and finance.

(2) Procurement.

(3) Human resources and personnel.

(4) Information technology and communications systems.

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

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

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

(8) Grants and other assistance management programs.

(9) The transition and reorganization process, to ensure an efficient and orderly transfer of functions.
and personnel to the Department, including the development of a transition plan.

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

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

(b) IMMIGRATION ENFORCEMENT.—

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

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

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

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

(A) The Border Patrol program.

(B) The detention and removal program.

(C) The intelligence program.

(D) The investigations program.

(E) The inspections program.

SEC. 602. CHIEF FINANCIAL OFFICER.

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

SEC. 603. CHIEF INFORMATION OFFICER.

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

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

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

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

(2) make public through the Internet, radio, tele-
vision, or newspaper advertisements information on
the responsibilities and functions of, and how to con-
tact, the Office; and

(3) submit to the President of the Senate, the
Speaker of the House of Representatives, and the ap-
propriate committees and subcommittees of the Con-
gress on a semiannual basis a report on the imple-
mentation of this section, including the use of funds
appropriated to carry out this section, and detailing
any allegations of abuses described in paragraph (1)
and any actions taken by the Department in response
to such allegations.
TITLE VII—MISCELLANEOUS
Subtitle A—Inspector General

SEC. 701. AUTHORITY OF THE SECRETARY.

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

   (1) intelligence, counterintelligence, or counterterrorism matters;

   (2) ongoing criminal investigations or proceedings;

   (3) undercover operations;

   (4) the identity of confidential sources, including protected witnesses;

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

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

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

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

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

“SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

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

SEC. 711. FUNCTIONS TRANSFERRED.

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

Subtitle C—Critical Infrastructure Information

SEC. 721. SHORT TITLE.

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

SEC. 722. DEFINITIONS.

In this subtitle:

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

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

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

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

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

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

(4) Critical Infrastructure Protection Program.—The term “critical infrastructure protection program” means any component or bureau of a covered Federal agency that has been designated by the President or any agency head to receive critical infrastructure information.

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

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

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

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

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

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

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

(7) VOLUNTARY.—

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

(B) EXCLUSIONS.—The term “voluntary”—

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

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

(II) with respect to the submittal of critical infrastructure information, does not include any disclosure or writing that when made accompanied
the solicitation of an offer or a sale of
securities; and
(ii) does not include information or
statements submitted or relied upon as a
basis for making licensing or permitting de-
terminations, or during regulatory pro-
ceedings.

SEC. 723. DESIGNATION OF CRITICAL INFRASTRUCTURE
PROTECTION PROGRAM.

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

(1) The President.

(2) The Secretary of Homeland Security.

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

(a) Protection.—

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

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

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

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

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

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

        (ii) when disclosure of the information would be—
(I) to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee thereof or subcommittee of any such joint committee; or

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

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

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

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

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

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

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

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

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

(b) LIMITATION.—No communication of critical infrastructure information to a covered Federal agency made pursuant to this subtitle shall be considered to be an action subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App. 2).
(c) **INDEPENDENTLY OBTAINED INFORMATION.**—Nothing in this section shall be construed to limit or otherwise affect the ability of a State, local, or Federal Government entity, agency, or authority, or any third party, under applicable law, to obtain critical infrastructure information in a manner not covered by subsection (a), including any information lawfully and properly disclosed generally or broadly to the public and to use such information in any manner permitted by law.

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

(e) **PROCEDURES.**—

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

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

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

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

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

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

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

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

(1) the source of any voluntarily submitted critical infrastructure information that forms the basis for the warning; or
(2) information that is proprietary, business sensitive, relates specifically to the submitting person or entity, or is otherwise not appropriately in the public domain.

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

SEC. 725. NO PRIVATE RIGHT OF ACTION.

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

Subtitle D—Acquisitions

SEC. 731. RESEARCH AND DEVELOPMENT PROJECTS.

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

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

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

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

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

(2)(A) Under the authority of paragraph (1) and subject to the limitations of such paragraph, the Secretary may carry out prototype projects, in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal

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

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

(ii) the Secretary shall perform the functions of the Secretary of Defense under subsection (d) thereof.

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

(1) whether use of the authorities described in subsection (a) attracts 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) Definition of Nontraditional Government Contractor.—In this section, the term “nontraditional Government contractor” has the same meaning as the term “nontraditional defense contractor” as defined in section 845(e) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).

SEC. 732. PERSONAL SERVICES.

The Secretary—

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

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

SEC. 733. SPECIAL STREAMLINED ACQUISITION AUTHORITY.

(a) Authority.—(1) The Secretary may use the authorities set forth in this section with respect to any pro-
curement made during the period beginning on the effective
date of this Act and ending September 30, 2007, if the Sec-
retary determines in writing that the mission of the Depart-
ment (as described in section 101) would be seriously im-
paired without the use of such authorities.

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

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

(A) notification of such determination; and

(B) the justification for such determination.

(b) INCREASED MICRO-PURCHASE THRESHOLD FOR
CERTAIN PROCUREMENTS.—(1) The Secretary may des-
ignate certain employees of the Department to make proc-
curements described in subsection (a) for which in the ad-
ministration of section 32 of the Office of Federal Procure-
ment Policy Act (41 U.S.C. 428) the amount specified in
subsections (c), (d), and (f) of such section 32 shall be
deemed to be $5,000.
(2) The number of employees designated under paragraph (1) shall be—

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

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

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

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

(c) SIMPLIFIED ACQUISITION PROCEDURES.—(1) With respect to a procurement described in subsection (a), the Secretary may deem the simplified acquisition threshold referred to in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)) to be $175,000.
(2) Section 18(c)(1) of the Office of Federal Procurement Policy Act is amended—
(A) by striking “or” at the end of subparagraph (F);
(B) by striking the period at the end of subparagraph (G) and inserting “; or”; and
(C) by adding at the end the following new subparagraph:
“(H) the procurement is by the Secretary of Homeland Security pursuant to the special procedures provided in section 733(c) of the Homeland Security Act of 2002.”.

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

(2) The $5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)) and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall be deemed to be $7,500,000 for purposes of property or services under the authority of this subsection.
(3) Authority under a provision of law referred to in paragraph (2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for a procurement described in subsection (a).

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

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

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

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

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

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

SEC. 734. PROCUREMENTS FROM SMALL BUSINESSES.

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

Subtitle E—Property

SEC. 741. DEPARTMENT HEADQUARTERS.

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

(b) LOCATION AND CONSTRUCTION STANDARDS.—The headquarters facility shall be constructed to such standards and specifications and at such a location as the Administrator of General Services decides. In selecting a site for the headquarters facility, the Administrator shall give preference to parcels of land that are federally owned.
(c) Use of Headquarters Facility.—The Administrator of General Services shall make the headquarter facility, as well as other Government-owned or leased facilities, available to the Secretary pursuant to the Administrator’s authorities under section 210 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490 et seq.) and there is authorized to be appropriated to the Secretary such amounts as may be necessary to pay the annual charges for General Services Administration furnished space and services.

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

SEC. 751. SHORT TITLE.

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

SEC. 752. ADMINISTRATION.

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

(b) Designation of Qualified Anti-Terrorism Technologies.—The Secretary may designate anti-terrorism technologies that qualify for protection under the system of risk management set forth in this subtitle in ac-
cordance with criteria that shall include, but not be limited to, the following:

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

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

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

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

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

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

(c) REGULATIONS.—The Secretary may issue such regulations, after notice and comment in accordance with section 553 of title 5, United States, Code, as may be necessary to carry out this subtitle.
SEC. 753. LITIGATION MANAGEMENT.

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

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

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

(1) No punitive damages intended to punish or deter, exemplary damages, or other damages not intended to compensate a plaintiff for actual losses may be awarded, nor shall any party be liable for interest prior to the judgment.
(2)(A) Noneconomic damages may be awarded against a defendant only in an amount directly proportional to the percentage of responsibility of such defendant for the harm to the plaintiff, and no plaintiff may recover noneconomic damages unless the plaintiff suffered physical harm.

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

(c) COLLATERAL SOURCES.—Any recovery by a plaintiff in an action under this section shall be reduced by the amount of collateral source compensation, if any, that the plaintiff has received or is entitled to receive as a result of such acts of terrorism that result or may result in loss to the Seller.

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

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

(3) For those products reviewed and approved by the
Secretary, the Secretary will issue a certificate of conform-
ance to the Seller and place the product on an Approved

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

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

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

SEC. 754. RISK MANAGEMENT.

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

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

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

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

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

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

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

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

SEC. 755. Definitions.

For purposes of this subtitle, the following definitions apply:

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

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

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

(i) is unlawful;

(ii) causes harm to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States-flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States; and

(iii) uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.
(3) Insurance Carrier.—The term “insurance carrier” means any corporation, association, society, order, firm, company, mutual, partnership, individual aggregation of individuals, or any other legal entity that provides commercial property and casualty insurance. Such term includes any affiliates of a commercial insurance carrier.

(4) Liability Insurance.—

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

(i) loss of or damage to property of others;

(ii) ensuing loss of income or extra expense incurred because of loss of or damage to property of others;

(iii) bodily injury (including) to persons other than the insured or its employees;

or

(iv) loss resulting from debt or default of another.

(5) Loss.—The term “loss” means death, bodily injury, or loss of or damage to property, including business interruption loss.
(6) **NON-FEDERAL GOVERNMENT CUSTOMERS.**—

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

**Subtitle G—Other Provisions**

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

(a) **AUTHORITY.**—

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

“CHAPTER 97—DEPARTMENT OF HOMELAND SECURITY

“§ 9701. Establishment of human resources management system

“(a) **IN GENERAL.**—Notwithstanding any other provision of this title, the Secretary of Homeland Security may, in regulations prescribed jointly with the Director of the Office of Personnel Management, establish, and from time
to time adjust, a human resources management system for some or all of the organizational units of the Department of Homeland Security.

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

“(1) be flexible;

“(2) be contemporary;

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

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

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

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

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

“(I) providing for equal employment opportunity through affirmative action; or
“(II) providing any right or remedy available to any employee or applicant for employment in the civil service;
“(D) any other provision of this title (as described in subsection (c)); or
“(E) any rule or regulation prescribed under any provision of law referred to in any of the preceding subparagraphs of this paragraph;
“(4) ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established by law or under subsection (a) for employees engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; and
“(5) permit the use of a category rating system for evaluating applicants for positions in the competitive service.
“(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this title, as referred to in subsection (b)(3)(D), are (to the extent not otherwise specified in subparagraph (A), (B), (C), or (D) of subsection (b)(3))—
“(1) subparts A, B, E, G, and H of this part; and
“(2) chapters 41, 45, 47, 55, 57, 59, 72, 73, and 79, and this chapter.

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

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

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

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

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

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

“(e) SUNSET PROVISION.—Effective 5 years after the date of the enactment of this section, all authority to issue regulations under this section (including regulations which would modify, supersede, or terminate any regulations previously issued under this section) shall cease to be available.”.
(2) CLERICAL AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end the following:


(b) EFFECT ON PERSONNEL.—

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

(2) POSITIONS COMPENSATED IN ACCORDANCE WITH EXECUTIVE SCHEDULE.—Any person who, on the day preceding such person’s date of transfer pursuant to this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for
such previous position, for the duration of the service of such person in such new position.

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

SEC. 762. ADVISORY COMMITTEES.

The Secretary may establish, appoint members of, and use the services of, advisory committees, as the Secretary may deem necessary. An advisory committee established under this section may be exempted by the Secretary from Public Law 92–463, but the Secretary shall publish notice in the Federal Register announcing the establishment of such a committee and identifying its purpose and membership. Notwithstanding the preceding sentence, members of an advisory committee that is exempted by the Secretary under the preceding sentence who are special Government employees (as that term is defined in section 202 of title 18, United States Code) shall be eligible for certifications under subsection (b)(3) of section 208 of title 18, United States Code, for official actions taken as a member of such advisory committee.
SEC. 763. REORGANIZATION; TRANSFER OF APPROPRIATIONS.

(a) Reorganization.—

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

(A) pursuant to section 802; or

(B) after the expiration of 60 days after providing notice of such action to the appropriate congressional committees, which shall include an explanation of the rationale for the action.

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

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

(b) Transfer of Appropriations.—

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

(2) Expiration of Authority.—The authority under paragraph (1) shall expire two years after the date of enactment of this Act.

SEC. 764. MISCELLANEOUS AUTHORITIES.

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

(b) Gifts, Devises, and Bequests.—With respect to the Department, the Secretary shall have the same authorities that the Attorney General has with respect to the Department of Justice under section 524(d) of title 28, United States Code.

(c) Participation of Members of the Armed Forces.—With respect to the Department, the Secretary shall have the same authorities that the Secretary of Transportation has with respect to the Department of Transportation under section 324 of title 49, United States Code.

(d) Redelégation of Functions.—Unless otherwise provided in the delegation or by law, any function delegated under this Act may be redelegated to any subordinate.

•HR 5005 RH
SEC. 765. MILITARY ACTIVITIES.

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

SEC. 766. REGULATORY AUTHORITY.

Except as otherwise provided in this Act, this Act vests no new regulatory authority in the Secretary or any other Federal official, and transfers to the Secretary or another Federal official only such regulatory authority as exists on the date of enactment of this Act within any agency, program, or function transferred to the Department pursuant to this Act, or that on such date of enactment is exercised by another official of the executive branch with respect to such agency, program, or function. Any such transferred authority may not be exercised by an official from whom it is transferred upon transfer of such agency, program, or function to the Secretary or another Federal official pursuant to this Act. This Act may not be construed as altering or diminishing the regulatory authority of any other executive agency, except to the extent that this Act transfers such authority from the agency.
SEC. 767. PROVISIONS REGARDING TRANSFERS FROM DEPARTMENT OF ENERGY.

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

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

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

(d) Laboratory Directed Research and Development by the Department of Energy.—No funds authorized to be appropriated or otherwise made available to the Department in any fiscal year may be obligated or expended for laboratory directed research and development activities carried out by the Department of Energy unless such activities support the mission of the Department described in section 101.
(e) Department of Energy Coordination on Homeland Security Related Research.—The Secretary of Energy shall ensure that any research, development, test, and evaluation activities conducted within the Department of Energy that are directly or indirectly related to homeland security are fully coordinated with the Secretary to minimize duplication of effort and maximize the effective application of Federal budget resources.

SEC. 768. COUNTERNARCOTICS OFFICER.

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

SEC. 769. OFFICE OF INTERNATIONAL AFFAIRS.

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

(b) Duties of the Director.—The Director shall have the following duties:

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

(A) Joint research and development on countermeasures.

(B) Joint training exercises of first responders.

(C) Exchange of expertise on terrorism prevention, response, and crisis management.

(2) To identify areas for homeland security information and training exchange where the United States has a demonstrated weakness and another friendly nation or nations have a demonstrated expertise.

(3) To plan and undertake international conferences, exchange programs, and training activities.

(4) To manage international activities within the Department in coordination with other Federal officials with responsibility for counter-terrorism matters.

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

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

SEC. 771. REVIEW OF PAY AND BENEFIT PLANS.

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

SEC. 772. ROLE OF THE DISTRICT OF COLUMBIA.

The Secretary (or the Secretary’s designee) shall work in cooperation with the Mayor of the District of Columbia (or the Mayor’s designee) for the purpose of integrating the District of Columbia into the planning, coordination, and execution of the activities of the Federal Government for the enhancement of domestic preparedness against the consequences of terrorist attacks.
SEC. 773. TRANSFER OF THE FEDERAL LAW ENFORCEMENT TRAINING CENTER.

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

TITLE VIII—TRANSITION

Subtitle A—Reorganization Plan

SEC. 801. DEFINITIONS.

For purposes of this title:

(1) The term “agency” includes any entity, organizational unit, program, or function.

(2) The term “transition period” means the 12-month period beginning on the effective date of this Act.

SEC. 802. REORGANIZATION PLAN.

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

(1) The transfer of agencies, personnel, assets, and obligations to the Department pursuant to this Act.

(2) Any consolidation, reorganization, or streamlining of agencies transferred to the Department pursuant to this Act.
(b) PLAN ELEMENTS.—The plan transmitted under subsection (a) shall contain, consistent with this Act, such elements as the President deems appropriate, including the following:

(1) Identification of any functions of agencies transferred to the Department pursuant to this Act that will not be transferred to the Department under the plan.

(2) Specification of the steps to be taken by the Secretary to organize the Department, including the delegation or assignment of functions transferred to the Department among officers of the Department in order to permit the Department to carry out the functions transferred under the plan.

(3) Specification of the funds available to each agency that will be transferred to the Department as a result of transfers under the plan.

(4) Specification of the proposed allocations within the Department of unexpended funds transferred in connection with transfers under the plan.

(5) Specification of any proposed disposition of property, facilities, contracts, records, and other assets and obligations of agencies transferred under the plan.
(6) Specification of the proposed allocations within the Department of the functions of the agencies and subdivisions that are not related directly to securing the homeland.

(c) MODIFICATION OF PLAN.—The President may, on the basis of consultations with the appropriate congressional committees, modify or revise any part of the plan until that part of the plan becomes effective in accordance with subsection (d).

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The reorganization plan described in this section, including any modifications or revisions of the plan under subsection (d), shall become effective for an agency on the earlier of—

(A) the date specified in the plan (or the plan as modified pursuant to subsection (d)), except that such date may not be earlier than 90 days after the date the President has transmitted the reorganization plan to the appropriate congressional committees pursuant to subsection (a); or

(B) the end of the transition period.

(2) STATUTORY CONSTRUCTION.—Nothing in this subsection may be construed to require the transfer of
functions, personnel, records, balances of appropriations, or other assets of an agency on a single date.

(3) SUPERS ED ES EXISTING LAW.—Paragraph (1) shall apply notwithstanding section 905(b) of title 5, United States Code.

Subtitle B—Transitional Provisions

SEC. 811. TRANSITIONAL AUTHORITIES.

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

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

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

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

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

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

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

(A) the rates provided by this Act for the respective offices in which they act; or
(B) the rates provided for the offices held at the
time of designation.

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

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

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

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

Paragraph (1) shall not apply to appropriations trans-
ferred pursuant to section 763(b).
(f) Prohibition on Use of Transportation Trust Funds.—

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

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


(a) Completed Administrative Actions.—(1) Completed administrative actions of an agency shall not be affected by the enactment of this Act or the transfer of such agency to the Department, but shall continue in effect according to their terms until amended, modified, superseded, terminated, set aside, or revoked in accordance with law by an officer of the United States or a court of competent jurisdiction, or by operation of law.
(2) For purposes of paragraph (1), the term “completed administrative action” includes orders, determinations, rules, regulations, personnel actions, permits, agreements, grants, contracts, certificates, licenses, registrations, and privileges.

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

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

(2) orders issued in such proceedings, and appeals therefrom, and payments made pursuant to such orders, shall issue in the same manner and on the same terms as if this Act had not been enacted or the agency had not been transferred, and any such orders shall continue in effect until amended, modified, superseded, terminated, set aside, or revoked by an officer of the United States or a court of competent jurisdiction, or by operation of law.
(c) Pending Civil Actions.—Subject to the authority of the Secretary under this Act, pending civil actions shall continue notwithstanding the enactment of this Act or the transfer of an agency to the Department, and in such civil actions, proceedings shall be had, appeals taken, and judgments rendered and enforced in the same manner and with the same effect as if such enactment or transfer had not occurred.

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

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

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

SEC. 813. TERMINATIONS.

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

SEC. 814. INCIDENTAL TRANSFERS.

The Director of the Office of Management and Budget,
in consultation with the Secretary, is authorized and di-
rected to make such additional incidental dispositions of
personnel, assets, and obligations held, used, arising from,
available, or to be made available, in connection with the
functions transferred by this Act, as the Director may deem
necessary to accomplish the purposes of this Act.
SEC. 815. NATIONAL IDENTIFICATION SYSTEM NOT AUTHORIZED.

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

SEC. 816. CONTINUITY OF INSPECTOR GENERAL OVERSIGHT.

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

SEC. 817. REFERENCE.

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

SEC. 901. INSPECTOR GENERAL ACT OF 1978.

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

(1) by inserting “Homeland Security,” after “Transportation,” each place it appears; and

(2) by striking “; and” each place it appears in paragraph (1) and inserting “;”;

SEC. 902. EXECUTIVE SCHEDULE.

(a) In General.—Title 5, United States Code, is amended—

(1) in section 5312, by inserting “Secretary of Homeland Security.” as a new item after “Affairs.”;

(2) in section 5313, by inserting “Deputy Secretary of Homeland Security.” as a new item after “Affairs.”;

(3) in section 5314, by inserting “Under Secretaries, Department of Homeland Security.” as a new item after “Affairs.” the third place it appears;

Homeland Security.”, and “Inspector General, Department of Homeland Security.” as new items after “Affairs.” the first place it appears; and

(5) in section 5315, by striking “Commissioner of Immigration and Naturalization, Department of Justice.”.

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

SEC. 903. UNITED STATES SECRET SERVICE.

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

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

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

SEC. 904. COAST GUARD.

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

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

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

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

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

(5) Section 7045 of such title is amended—

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

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

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

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

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

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

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

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

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

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

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

•HR 5005 RH
(5) Section 542(d) of Public Law 103–337 (10 U.S.C. 1293 note) is amended by striking “of Transportation” and inserting “of Homeland Security”.

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

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


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

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

(11) The Military Selective Service Act is amended—
(A) in section 4(a) (50 U.S.C. App. 454(a)), by striking “of Transportation” in the fourth paragraph and inserting “of Homeland Security”;

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

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

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

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

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

(2) The table of sections at the beginning of chapter 17 of such title is amended by redesignating the item relating to such section as section 673a.
(f) Effective Date.—The amendments made by this section (other than subsection (e)) shall take effect on the date of transfer of the Coast Guard to the Department.

SEC. 905. STRATEGIC NATIONAL STOCKPILE AND SMALL-POX VACCINE DEVELOPMENT.

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

(1) in subsection (a)(1)—

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

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

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

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

(b) Effective Date.—The amendments made by this section shall take effect on the date of transfer of the Stra-
tegic National Stockpile of the Department of Health and Human Services to the Department.

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

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

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

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

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

“(9) The term ‘Secretary’ means the Secretary of Homeland Security, in consultation with the Secretary of Health and Human Services.”.

(b) Public Health Security and Bioterrorism Preparedness and Response Act of 2002.—Section 201(b) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188; 42 U.S.C. 262a note) is amended by striking “Secretary of Health and Human Services” and inserting “Secretary of Homeland Security”.
(c) **Effective Date.**—The amendments made by this section shall take effect on the date of transfer of the select agent registration enforcement programs and activities of the Department of Health and Human Services to the Department.

**SEC. 907. Transfer of Certain Security and Law Enforcement Functions and Authorities.**

(a) **Amendment to Property Act.**—Section 210(a)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(a)(2)) is repealed.

(b) **Law Enforcement Authority.**—The Act of June 1, 1948 (40 U.S.C. 318–318d; chapter 359; 62 Stat. 281) is amended to read as follows:

“**SECTION 1. Short Title.**

“This Act may be cited as the ‘Protection of Public Property Act’.

“**SEC. 2. Law Enforcement Authority of Secretary of Homeland Security for Protection of Public Property.**

“(a) **In General.**—The Secretary of Homeland Security (in this Act referred to as the ‘Secretary’) shall protect the buildings, grounds, and property that are owned, occupied, or secured by the Federal Government (including any agency, instrumentality, or wholly owned or mixed-ownership corporation thereof) and the persons on the property.
“(b) OFFICERS AND AGENTS.—

“(1) DESIGNATION.—The Secretary may designate employees of the Department of Homeland Security, including employees transferred to the Department from the Office of the Federal Protective Service of the General Services Administration pursuant to the Homeland Security Act of 2002, as officers and agents for duty in connection with the protection of property owned or occupied by the Federal Government and persons on the property, including duty in areas outside the property to the extent necessary to protect the property and persons on the property.

“(2) POWERS.—While engaged in the performance of official duties, an officer or agent designated under this subsection may—

“(A) enforce Federal laws and regulations for the protection of persons and property;

“(B) carry firearms;

“(C) make arrests without a warrant for any offense against the United States committed in the presence of the officer or agent or for any felony cognizable under the laws of the United States if the officer or agent has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;
“(D) serve warrants and subpoenas issued under the authority of the United States; and

“(E) conduct investigations, on and off the property in question, of offenses that may have been committed against property owned or occupied by the Federal Government or persons on the property.

“(F) carry out such other activities for the promotion of homeland security as the Secretary may prescribe.

“(c) REGULATIONS.—

“(1) IN GENERAL.—The Secretary, in consultation with the Administrator of General Services, may prescribe regulations necessary for the protection and administration of property owned or occupied by the Federal Government and persons on the property. The regulations may include reasonable penalties, within the limits prescribed in paragraph (2), for violations of the regulations. The regulations shall be posted and remain posted in a conspicuous place on the property.

“(2) PENALTIES.—A person violating a regulation prescribed under this subsection shall be fined under title 18, United States Code, imprisoned for not more than 30 days, or both.

“(d) DETAILS.—
“(1) **Requests of Agencies.**—On the request of the head of a Federal agency having charge or control of property owned or occupied by the Federal Government, the Secretary may detail officers and agents designated under this section for the protection of the property and persons on the property.

“(2) **Applicability of Regulations.**—The Secretary may—

“(A) extend to property referred to in paragraph (1) the applicability of regulations prescribed under this section and enforce the regulations as provided in this section; or

“(B) utilize the authority and regulations of the requesting agency if agreed to in writing by the agencies.

“(3) **Facilities and Services of Other Agencies.**—When the Secretary determines it to be economical and in the public interest, the Secretary may utilize the facilities and services of Federal, State, and local law enforcement agencies, with the consent of the agencies.

“(e) **Authority Outside Federal Property.**—For the protection of property owned or occupied by the Federal Government and persons on the property, the Secretary may enter into agreements with Federal agencies and with
State and local governments to obtain authority for officers and agents designated under this section to enforce Federal laws and State and local laws concurrently with other Federal law enforcement officers and with State and local law enforcement officers.

“(f) SECRETARY AND ATTORNEY GENERAL APPROVAL.—The powers granted to officers and agents designated under this section shall be exercised in accordance with guidelines approved by the Secretary and the Attorney General.

“(g) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to—

“(1) preclude or limit the authority of any Federal law enforcement agency; or

“(2) restrict the authority of the Administrator of General Services to promulgate regulations affecting property under the Administrator’s custody and control.”.

SEC. 908. TRANSPORTATION SECURITY REGULATIONS.

Title 49, United States Code, is amended—

(1) in section 114(l)(2)(B), by inserting “for a period not to exceed 30 days” after “effective”; and

(2) in section 114(l)(2)(B), by inserting “ratified or” after “unless”.

•HR 5005 RH
SEC. 909. RAILROAD SECURITY LAWS.

Title 49, United States Code, is amended—

(1) in section 20106 by inserting in the second sentence, “, including security,” after “railroad safety” and “or the Secretary of Homeland Security” after “Secretary of Transportation”; and

(2) in section 20105—

(A) by inserting “or the Secretary of Homeland Security” after “Secretary of Transportation” in subsection (a);

(B) by inserting “of Transportation or the Secretary of Homeland Security” after “issued by the Secretary” in subsection (a);

(C) by inserting “of Transportation or the Secretary of Homeland Security, as appropriate,” after “to the Secretary” in subsection (a), and after “Secretary” in subsection (b)(1)(A)(iii) and (B)(iv), the first place it appears in subsections (b)(1)(B) and (B)(iii) and (d), each place it appears in subsections (c)(1), (c)(2), (e), and (f), and the first four times it appears in subsection (b)(3);

(D) by inserting “of Transportation or the Secretary of Homeland Security, as appropriate” after “Secretary” in subsection (b)(1)(A)(ii), (b)(1)(B)(ii), the second place it appears in subsection (b)(3).
appears in subsection (b)(1)(B)(iii), and the last place it appears in subsection (b)(3);

(E) in subsection (d), by replacing “Secretary’s” with “Secretary of Transportation’s” and adding before the period at the end “or the Secretary of Homeland Security’s duties under section 114”; and

(F) in subsection (f), by adding before the period at the end “or section 114”.

SEC. 910. OFFICE OF SCIENCE AND TECHNOLOGY POLICY.

The National Science and Technology Policy, Organization, and Priorities Act of 1976 is amended—

(1) in section 204(b)(1) (42 U.S.C. 6613(b)(1)), by inserting “homeland security,” after “national security,”; and


SEC. 911. NATIONAL OCEANOGRAPHIC PARTNERSHIP PROGRAM.

Section 7902(b) of title 10, United States Code, is amended by adding at the end the following new paragraphs:

“(14) Other Federal officials the Council considers appropriate.”.

SEC. 912. CHIEF FINANCIAL OFFICER.

Section 901(b)(1) of title 31, United States Code, is amended—

(1) by redesignating subparagraphs (G) through (P) as subparagraphs (H) through (Q), respectively; and

(2) by inserting the following new subparagraph after subparagraph (F):

“(G) The Department of Homeland Security.”.

SEC. 913. CHIEF INFORMATION OFFICER.

(a) CLINGER–COHEN ACT.—(1) The provisions enacted in section 5125 of the Clinger–Cohen Act of 1996 (division E of Public Law 104–106; 110 Stat. 684) shall apply with respect to the Chief Information Officer of the Department.

(2) Section 5131(c) of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441(c)) is amended by inserting “or appointed” after “a Chief Information Officer designated”.

(b) TITLE 44.—Chapter 35 of title 44, United States Code, is amended—

(1) in section 3506(a)(2)—
(A) in subparagraph (A) by striking “subparagraph (B)” and inserting “subparagraphs (B) and (C)”; and

(B) by adding at the end the following:

“(C) The Chief Information Officer of the Department of Homeland Security shall be an individual who is appointed by the President.”;

(2) in each of subsections (a)(4) and (c)(1) of section 3506, by inserting “or appointed” after “the Chief Information Officer designated”; and

(3) in subsection (a)(3) of section 3506, by inserting “or appointed” after “The Chief Information Officer designated”.

**TITLE X—NATIONAL HOMELAND SECURITY COUNCIL**

**SEC. 1001. NATIONAL HOMELAND SECURITY COUNCIL.**

There is established within the Executive Office of the President a council to be known as the “Homeland Security Council” (in this title referred to as the “Council”).

**SEC. 1002. FUNCTION.**

The function of the Council shall be to advise the President on homeland security matters.

**SEC. 1003. MEMBERSHIP.**

The members of the Council shall be the following:

(1) The President.
(2) The Vice President.

(3) The Secretary of Homeland Security.

(4) The Attorney General.

(5) The Secretary of Health and Human Services.

(6) The Director of Central Intelligence.

(7) The Secretary of Defense.

(8) The Secretary of the Treasury.

(9) The Secretary of State.

(10) The Secretary of Energy.

(11) The Secretary of Agriculture.

(12) Such other individuals as may be designated by the President.

SEC. 1004. OTHER FUNCTIONS AND ACTIVITIES.

For the purpose of more effectively coordinating the policies and functions of the United States Government relating to homeland security, the Council shall—

(1) assess the objectives, commitments, and risks of the United States in the interest of homeland security and to make resulting recommendations to the President;

(2) oversee and review homeland security policies of the Federal Government and to make resulting recommendations to the President; and
(3) perform such other functions as the President may direct.

SEC. 1005. HOMELAND SECURITY BUDGET.

The Director of the Office of Management and Budget shall prepare for the President a Federal homeland security budget to be delivered to the Congress as part of the President’s annual budget request.

SEC. 1006. STAFF COMPOSITION.

The Council shall have a staff, the head of which shall be a civilian Executive Secretary, who shall be appointed by the President. The President is authorized to fix the pay of the Executive Secretary at a rate not to exceed the rate of pay payable to the Executive Secretary of the National Security Council.

SEC. 1007. RELATION TO THE NATIONAL SECURITY COUNCIL.

The President may convene joint meetings of the Homeland Security Council and the National Security Council with participation by members of either Council or as the President may otherwise direct.
A BILL

To establish the Department of Homeland Security, and for other purposes.

JULY 24, 2002

Reported from the Select Committee on Homeland Security with an amendment