

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide a substitute.

IN THE SENATE OF THE UNITED STATES—107th Cong., 2d Sess.

H.R. 5005

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

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. LIEBERMAN

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Homeland
5 Security and Combating Terrorism Act of 2002”.

6 **SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF**
7 **CONTENTS.**

8 (a) DIVISIONS.—This Act is organized into 3 divi-
9 sions as follows:

10 (1) Division A—National Homeland Security
11 and Combating Terrorism.

1 (2) Division B—Immigration Reform, Account-
2 ability, and Security Enhancement Act of 2002.

3 (3) Division C—Federal Workforce Improve-
4 ment.

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

Sec. 1. Short title.

Sec. 2. Organization of Act into divisions; table of contents.

DIVISION A—NATIONAL HOMELAND SECURITY AND COMBATING
TERRORISM

Sec. 100. Definitions.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Subtitle A—Establishment of the Department of Homeland Security

Sec. 101. Establishment of the Department of Homeland Security.

Sec. 102. Secretary of Homeland Security.

Sec. 103. Deputy Secretary of Homeland Security.

Sec. 104. Under Secretary for Management.

Sec. 105. Assistant Secretaries.

Sec. 106. Inspector General.

Sec. 107. Chief Financial Officer.

Sec. 108. Chief Information Officer.

Sec. 109. General Counsel.

Sec. 110. Civil Rights Officer.

Sec. 111. Privacy Officer.

Sec. 112. Chief Human Capital Officer.

Sec. 113. Office of International Affairs.

Sec. 114. Executive Schedule positions.

Subtitle B—Establishment of Directorates and Offices

Sec. 131. Directorate of Border and Transportation Protection.

Sec. 132. Directorate of Intelligence.

Sec. 133. Directorate of Critical Infrastructure Protection.

Sec. 134. Directorate of Emergency Preparedness and Response.

Sec. 135. Directorate of Science and Technology.

Sec. 136. Directorate of Immigration Affairs.

Sec. 137. Office for State and Local Government Coordination.

Sec. 138. United States Secret Service.

Sec. 139. Border Coordination Working Group.

Sec. 140. Executive Schedule positions.

Subtitle C—National Emergency Preparedness Enhancement

Sec. 151. Short title.

Sec. 152. Preparedness information and education.

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- Sec. 153. Pilot program.
- Sec. 154. Designation of National Emergency Preparedness Week.

Subtitle D—Miscellaneous Provisions

- Sec. 161. National Bio-Weapons Defense Analysis Center.
- Sec. 162. Review of food safety.
- Sec. 163. Exchange of employees between agencies and State or local governments.
- Sec. 164. Whistleblower protection for Federal employees who are airport security screeners.
- Sec. 165. Whistleblower protection for certain airport employees.
- Sec. 166. Bioterrorism preparedness and response division.
- Sec. 167. Coordination with the Department of Health and Human Services under the Public Health Service Act.
- Sec. 168. Rail security enhancements.
- Sec. 169. Grants for firefighting personnel.
- Sec. 170. Review of transportation security enhancements.
- Sec. 171. Interoperability of information systems.
- Sec. 172. Extension of customs user fees.

Subtitle E—Transition Provisions

- Sec. 181. Definitions.
- Sec. 182. Transfer of agencies.
- Sec. 183. Transitional authorities.
- Sec. 184. Incidental transfers and transfer of related functions.
- Sec. 185. Implementation progress reports and legislative recommendations.
- Sec. 186. Transfer and allocation.
- Sec. 187. Savings provisions.
- Sec. 188. Transition plan.
- Sec. 189. Use of appropriated funds.

Subtitle F—Administrative Provisions

- Sec. 191. Reorganizations and delegations.
- Sec. 192. Reporting requirements.
- Sec. 193. Environmental protection, safety, and health requirements.
- Sec. 194. Labor standards.
- Sec. 195. Procurement of temporary and intermittent services.
- Sec. 196. Preserving non-homeland security mission performance.
- Sec. 197. Future Years Homeland Security Program.
- Sec. 198. Protection of voluntarily furnished confidential information.
- Sec. 199. Authorization of appropriations.

TITLE II—NATIONAL OFFICE FOR COMBATING TERRORISM

- Sec. 201. National Office for Combating Terrorism.
- Sec. 202. Funding for Strategy programs and activities.

TITLE III—NATIONAL STRATEGY FOR COMBATING TERRORISM
AND THE HOMELAND SECURITY RESPONSE

- Sec. 301. Strategy.
- Sec. 302. Management guidance for Strategy implementation.
- Sec. 303. National Combating Terrorism Strategy Panel.

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TITLE IV—LAW ENFORCEMENT POWERS OF INSPECTOR
GENERAL AGENTS

Sec. 401. Law enforcement powers of Inspector General agents.

TITLE V—FEDERAL EMERGENCY PROCUREMENT FLEXIBILITY

Subtitle A—Temporary Flexibility for Certain Procurements

Sec. 501. Definition.

Sec. 502. Procurements for defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack.

Sec. 503. Increased simplified acquisition threshold for procurements in support of humanitarian or peacekeeping operations or contingency operations.

Sec. 504. Increased micro-purchase threshold for certain procurements.

Sec. 505. Application of certain commercial items authorities to certain procurements.

Sec. 506. Use of streamlined procedures.

Sec. 507. Review and report by Comptroller General.

Subtitle B—Other Matters

Sec. 511. Identification of new entrants into the Federal marketplace.

TITLE VI—EFFECTIVE DATE

Sec. 601. Effective date.

DIVISION B—IMMIGRATION REFORM, ACCOUNTABILITY, AND
SECURITY ENHANCEMENT ACT OF 2002

Sec. 1001. Short title.

Sec. 1002. Definitions.

TITLE XI—DIRECTORATE OF IMMIGRATION AFFAIRS

Subtitle A—Organization

Sec. 1101. Abolition of INS.

Sec. 1102. Establishment of Directorate of Immigration Affairs.

Sec. 1103. Under Secretary of Homeland Security for Immigration Affairs.

Sec. 1104. Bureau of Immigration Services.

Sec. 1105. Bureau of Enforcement and Border Affairs.

Sec. 1106. Office of the Ombudsman within the Directorate.

Sec. 1107. Office of Immigration Statistics within the Directorate.

Sec. 1108. Clerical amendments.

Subtitle B—Transition Provisions

Sec. 1111. Transfer of functions.

Sec. 1112. Transfer of personnel and other resources.

Sec. 1113. Determinations with respect to functions and resources.

Sec. 1114. Delegation and reservation of functions.

Sec. 1115. Allocation of personnel and other resources.

Sec. 1116. Savings provisions.

Sec. 1117. Interim service of the Commissioner of Immigration and Naturalization.

Sec. 1118. Executive Office for Immigration Review authorities not affected.

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- Sec. 1119. Other authorities not affected.
- Sec. 1120. Transition funding.

Subtitle C—Miscellaneous Provisions

- Sec. 1121. Funding adjudication and naturalization services.
- Sec. 1122. Application of Internet-based technologies.
- Sec. 1123. Alternatives to detention of asylum seekers.

Subtitle D—Effective Date

- Sec. 1131. Effective date.

TITLE XII—UNACCOMPANIED ALIEN CHILD PROTECTION

- Sec. 1201. Short title.
- Sec. 1202. Definitions.

Subtitle A—Structural Changes

- Sec. 1211. Responsibilities of the Office of Refugee Resettlement with respect to unaccompanied alien children.
- Sec. 1212. Establishment of interagency task force on unaccompanied alien children.
- Sec. 1213. Transition provisions.
- Sec. 1214. Effective date.

Subtitle B—Custody, Release, Family Reunification, and Detention

- Sec. 1221. Procedures when encountering unaccompanied alien children.
- Sec. 1222. Family reunification for unaccompanied alien children with relatives in the United States.
- Sec. 1223. Appropriate conditions for detention of unaccompanied alien children.
- Sec. 1224. Repatriated unaccompanied alien children.
- Sec. 1225. Establishing the age of an unaccompanied alien child.
- Sec. 1226. Effective date.

Subtitle C—Access by Unaccompanied Alien Children to Guardians Ad Litem and Counsel

- Sec. 1231. Right of unaccompanied alien children to guardians ad litem.
- Sec. 1232. Right of unaccompanied alien children to counsel.
- Sec. 1233. Effective date; applicability.

Subtitle D—Strengthening Policies for Permanent Protection of Alien Children

- Sec. 1241. Special immigrant juvenile visa.
- Sec. 1242. Training for officials and certain private parties who come into contact with unaccompanied alien children.
- Sec. 1243. Effective date.

Subtitle E—Children Refugee and Asylum Seekers

- Sec. 1251. Guidelines for children's asylum claims.
- Sec. 1252. Unaccompanied refugee children.

Subtitle F—Authorization of Appropriations

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Sec. 1261. Authorization of appropriations.

TITLE XIII—AGENCY FOR IMMIGRATION HEARINGS AND APPEALS

Subtitle A—Structure and Function

- Sec. 1301. Establishment.
- Sec. 1302. Director of the Agency.
- Sec. 1303. Board of Immigration Appeals.
- Sec. 1304. Chief Immigration Judge.
- Sec. 1305. Chief Administrative Hearing Officer.
- Sec. 1306. Removal of Judges.
- Sec. 1307. Authorization of appropriations.

Subtitle B—Transfer of Functions and Savings Provisions

Sec. 1311. Transition provisions.

Subtitle C—Effective Date

Sec. 1321. Effective date.

DIVISION C—FEDERAL WORKFORCE IMPROVEMENT

TITLE XXI—CHIEF HUMAN CAPITAL OFFICERS

- Sec. 2101. Short title.
- Sec. 2102. Agency Chief Human Capital Officers.
- Sec. 2103. Chief Human Capital Officers Council.
- Sec. 2104. Strategic Human Capital Management.
- Sec. 2105. Effective date.

TITLE XXII—REFORMS RELATING TO FEDERAL HUMAN CAPITAL
MANAGEMENT

- Sec. 2201. Inclusion of agency human capital strategic planning in performance plans and program performance reports.
- Sec. 2202. Reform of the competitive service hiring process.
- Sec. 2203. Permanent extension, revision, and expansion of authorities for use of voluntary separation incentive pay and voluntary early retirement.
- Sec. 2204. Student volunteer transit subsidy.

TITLE XXIII—REFORMS RELATING TO THE SENIOR EXECUTIVE
SERVICE

- Sec. 2301. Repeal of recertification requirements of senior executives.
- Sec. 2302. Adjustment of limitation on total annual compensation.

TITLE XXIV—ACADEMIC TRAINING

- Sec. 2401. Academic training.
- Sec. 2402. Modifications to National Security Education Program.
- Sec. 2403. Compensatory time off for travel.

1 **DIVISION A—NATIONAL HOME-**
2 **LAND SECURITY AND COM-**
3 **BATING TERRORISM**

4 **SEC. 100. DEFINITIONS.**

5 Unless the context clearly indicates otherwise, the fol-
6 lowing shall apply for purposes of this division:

7 (1) AGENCY.—Except for purposes of subtitle E
8 of title I, the term “agency”—

9 (A) means—

10 (i) an Executive agency as defined
11 under section 105 of title 5, United States
12 Code;

13 (ii) a military department as defined
14 under section 102 of title 5, United States
15 Code;

16 (iii) the United States Postal Service;

17 and

18 (B) does not include the General Account-
19 ing Office.

20 (2) ASSETS.—The term “assets” includes con-
21 tracts, facilities, property, records, unobligated or
22 unexpended balances of appropriations, and other
23 funds or resources (other than personnel).

1 (3) DIRECTOR.—The term “Director” means
2 the Director of the National Office for Combating
3 Terrorism.

4 (4) DEPARTMENT.—The term “Department”
5 means the Department of Homeland Security estab-
6 lished under title I.

7 (5) ENTERPRISE ARCHITECTURE.—The term
8 “enterprise architecture”—

9 (A) means—

10 (i) a strategic information asset base,
11 which defines the mission;

12 (ii) the information necessary to per-
13 form the mission;

14 (iii) the technologies necessary to per-
15 form the mission; and

16 (iv) the transitional processes for im-
17 plementing new technologies in response to
18 changing mission needs; and

19 (B) includes—

20 (i) a baseline architecture;

21 (ii) a target architecture; and

22 (iii) a sequencing plan.

23 (6) FEDERAL TERRORISM PREVENTION AND
24 RESPONSE AGENCY.—The term “Federal terrorism
25 prevention and response agency” means any Federal

1 department or agency charged under the Strategy
2 with responsibilities for carrying out the Strategy.

3 (7) FUNCTIONS.—The term “functions” in-
4 cludes authorities, powers, rights, privileges, immu-
5 nities, programs, projects, activities, duties, respon-
6 sibilities, and obligations.

7 (8) HOMELAND.—The term “homeland” means
8 the United States, in a geographic sense.

9 (9) LOCAL GOVERNMENT.—The term “local
10 government” has the meaning given under section
11 102(6) of the Robert T. Stafford Disaster Relief and
12 Emergency Assistance Act (Public Law 93–288).

13 (10) OFFICE.—The term “Office” means the
14 National Office for Combating Terrorism established
15 under title II.

16 (11) PERSONNEL.—The term “personnel”
17 means officers and employees.

18 (12) RISK ANALYSIS AND RISK MANAGE-
19 MENT.—The term “risk analysis and risk manage-
20 ment” means the assessment, analysis, management,
21 mitigation, and communication of homeland security
22 threats, vulnerabilities, criticalities, and risks.

23 (13) SECRETARY.—The term “Secretary”
24 means the Secretary of Homeland Security.

1 (14) STRATEGY.—The term “Strategy” means
2 the National Strategy for Combating Terrorism and
3 the Homeland Security Response developed under
4 this division.

5 (15) UNITED STATES.—The term “United
6 States”, when used in a geographic sense, means
7 any State (within the meaning of section 102(4) of
8 the Robert T. Stafford Disaster Relief and Emer-
9 gency Assistance Act (Public Law 93–288)), any
10 possession of the United States, and any waters
11 within the jurisdiction of the United States.

12 **TITLE I—DEPARTMENT OF**
13 **HOMELAND SECURITY**

14 **Subtitle A—Establishment of the**
15 **Department of Homeland Security**

16 **SEC. 101. ESTABLISHMENT OF THE DEPARTMENT OF**
17 **HOMELAND SECURITY.**

18 (a) IN GENERAL.—There is established the Depart-
19 ment of National Homeland Security.

20 (b) EXECUTIVE DEPARTMENT.—Section 101 of title
21 5, United States Code, is amended by adding at the end
22 the following:

23 “The Department of Homeland Security.”.

24 (c) MISSION OF DEPARTMENT.—

1 (1) HOMELAND SECURITY.—The mission of the
2 Department is to—

3 (A) promote homeland security, particu-
4 larly with regard to terrorism;

5 (B) prevent terrorist attacks or other
6 homeland threats within the United States;

7 (C) reduce the vulnerability of the United
8 States to terrorism, natural disasters, and other
9 homeland threats; and

10 (D) minimize the damage, and assist in
11 the recovery, from terrorist attacks or other
12 natural or man-made crises that occur within
13 the United States.

14 (2) OTHER MISSIONS.—The Department shall
15 be responsible for carrying out the other functions,
16 and promoting the other missions, of entities trans-
17 ferred to the Department as provided by law.

18 (d) SEAL.—The Secretary shall procure a proper
19 seal, with such suitable inscriptions and devices as the
20 President shall approve. This seal, to be known as the offi-
21 cial seal of the Department of Homeland Security, shall
22 be kept and used to verify official documents, under such
23 rules and regulations as the Secretary may prescribe. Ju-
24 dicial notice shall be taken of the seal.

1 **SEC. 102. SECRETARY OF HOMELAND SECURITY.**

2 (a) IN GENERAL.—The Secretary of Homeland Secu-
3 rity shall be the head of the Department. The Secretary
4 shall be appointed by the President, by and with the advice
5 and consent of the Senate.

6 (b) RESPONSIBILITIES.—The responsibilities of the
7 Secretary shall be the following:

8 (1) To develop policies, goals, objectives, prior-
9 ities, and plans for the United States for the pro-
10 motion of homeland security, particularly with re-
11 gard to terrorism.

12 (2) To administer, carry out, and promote the
13 other established missions of the entities transferred
14 to the Department.

15 (3) To develop, with the Director, a comprehen-
16 sive strategy for combating terrorism and the home-
17 land security response in accordance with title III.

18 (4) To advise the Director on the development
19 of a comprehensive annual budget for programs and
20 activities under the Strategy, and have the responsi-
21 bility for budget recommendations relating to border
22 and transportation security, critical infrastructure
23 protection, emergency preparedness and response,
24 science and technology promotion related to home-
25 land security, and Federal support for State and
26 local activities.

1 (5) To plan, coordinate, and integrate those
2 Federal Government activities relating to border and
3 transportation security, critical infrastructure pro-
4 tection, all-hazards emergency preparedness, re-
5 sponse, recovery, and mitigation.

6 (6) To serve as a national focal point to analyze
7 all information available to the United States related
8 to threats of terrorism and other homeland threats.

9 (7) To establish and manage a comprehensive
10 risk analysis and risk management program that di-
11 rects and coordinates the supporting risk analysis
12 and risk management activities of the Directorates
13 and ensures coordination with entities outside the
14 Department engaged in such activities.

15 (8) To identify and promote key scientific and
16 technological advances that will enhance homeland
17 security.

18 (9) To include, as appropriate, State and local
19 governments and other entities in the full range of
20 activities undertaken by the Department to promote
21 homeland security, including—

22 (A) providing State and local government
23 personnel, agencies, and authorities, with ap-
24 propriate intelligence information, including

1 warnings, regarding threats posed by terrorism
2 in a timely and secure manner;

3 (B) facilitating efforts by State and local
4 law enforcement and other officials to assist in
5 the collection and dissemination of intelligence
6 information and to provide information to the
7 Department, and other agencies, in a timely
8 and secure manner;

9 (C) coordinating with State, regional, and
10 local government personnel, agencies, and au-
11 thorities and, as appropriate, with the private
12 sector, other entities, and the public, to ensure
13 adequate planning, team work, coordination, in-
14 formation sharing, equipment, training, and ex-
15 ercise activities;

16 (D) consulting State and local govern-
17 ments, and other entities as appropriate, in de-
18 veloping the Strategy under title III; and

19 (E) systematically identifying and remov-
20 ing obstacles to developing effective partner-
21 ships between the Department, other agencies,
22 and State, regional, and local government per-
23 sonnel, agencies, and authorities, the private
24 sector, other entities, and the public to secure
25 the homeland.

1 (10)(A) To consult and coordinate with the Sec-
2 retary of Defense and the governors of the several
3 States regarding integration of the United States
4 military, including the National Guard, into all as-
5 pects of the Strategy and its implementation, includ-
6 ing detection, prevention, protection, response, and
7 recovery.

8 (B) To consult and coordinate with the Sec-
9 retary of Defense and make recommendations con-
10 cerning organizational structure, equipment, and po-
11 sitioning of military assets determined critical to
12 executing the Strategy.

13 (C) To consult and coordinate with the Sec-
14 retary of Defense regarding the training of per-
15 sonnel to respond to terrorist attacks involving
16 chemical or biological agents.

17 (11) To seek to ensure effective day-to-day co-
18 ordination of homeland security operations, and es-
19 tablish effective mechanisms for such coordination,
20 among the elements constituting the Department
21 and with other involved and affected Federal, State,
22 and local departments and agencies.

23 (12) To administer the Homeland Security Ad-
24 visory System, exercising primary responsibility for
25 public threat advisories, and (in coordination with

1 other agencies) providing specific warning informa-
2 tion to State and local government personnel, agen-
3 cies and authorities, the private sector, other enti-
4 ties, and the public, and advice about appropriate
5 protective actions and countermeasures.

6 (13) To conduct exercise and training programs
7 for employees of the Department and other involved
8 agencies, and establish effective command and con-
9 trol procedures for the full range of potential contin-
10 gencies regarding United States homeland security,
11 including contingencies that require the substantial
12 support of military assets.

13 (14) To annually review, update, and amend
14 the Federal response plan for homeland security and
15 emergency preparedness with regard to terrorism
16 and other manmade and natural disasters.

17 (15) To direct the acquisition and management
18 of all of the information resources of the Depart-
19 ment, including communications resources.

20 (16) To endeavor to make the information tech-
21 nology systems of the Department, including com-
22 munications systems, effective, efficient, secure, and
23 appropriately interoperable.

24 (17) In furtherance of paragraph (16), to over-
25 see and ensure the development and implementation

1 of an enterprise architecture for Department-wide
2 information technology, with timetables for imple-
3 mentation.

4 (18) As the Secretary considers necessary, to
5 oversee and ensure the development and implemen-
6 tation of updated versions of the enterprise architec-
7 ture under paragraph (17).

8 (19) To report to Congress on the development
9 and implementation of the enterprise architecture
10 under paragraph (17) in—

11 (A) each implementation progress report
12 required under section 185; and

13 (B) each biennial report required under
14 section 192(b).

15 (c) VISA ISSUANCE BY THE SECRETARY.—

16 (1) DEFINITION.—In this subsection, the term
17 “consular officer” has the meaning given that term
18 under section 101(a)(9) of the Immigration and Na-
19 tionality Act (8 U.S.C. 1101(a)(9)).

20 (2) IN GENERAL.—Notwithstanding section
21 104(a) of the Immigration and Nationality Act (8
22 U.S.C. 1104(a)) or any other provision of law, and
23 except as provided under paragraph (3), the
24 Secretary—

1 (A) shall be vested exclusively with all au-
2 thorities to issue regulations with respect to,
3 administer, and enforce the provisions of such
4 Act, and of all other immigration and nation-
5 ality laws, relating to the functions of consular
6 officers of the United States in connection with
7 the granting or refusal of visas, which authori-
8 ties shall be exercised through the Secretary of
9 State, except that the Secretary shall not have
10 authority to alter or reverse the decision of a
11 consular officer to refuse a visa to an alien; and

12 (B)(i) may delegate in whole or part the
13 authority under subparagraph (A) to the Sec-
14 retary of State; and

15 (ii) shall have authority to confer or im-
16 pose upon any officer or employee of the United
17 States, with the consent of the head of the exec-
18 utive agency under whose jurisdiction such offi-
19 cer or employee is serving, any of the functions
20 specified in subparagraph (A).

21 (3) AUTHORITY OF THE SECRETARY OF
22 STATE.—

23 (A) IN GENERAL.—The Secretary of State
24 may direct a consular officer to refuse a visa to
25 an alien if the Secretary of State considers such

1 refusal necessary or advisable in the foreign
2 policy or security interests of the United States.

3 (B) STATUTORY CONSTRUCTION.—Nothing
4 in this subsection shall be construed as affect-
5 ing the authorities of the Secretary of State
6 under the following provisions of law:

7 (i) Section 101(a)(15)(A) of the Im-
8 migration and Nationality Act (8 U.S.C.
9 1101(15)(A)).

10 (ii) Section 212(a)(3)(B)(i)(IV)(bb) of
11 the Immigration and Nationality Act (8
12 U.S.C. 1182(a)(3)(B)(i)(IV)(bb)).

13 (iii) Section 212(a)(3)(B)(i)(VI) of
14 the Immigration and Nationality Act (8
15 U.S.C. 1182(a)(3)(B)(i)(VI)).

16 (iv) Section 212(a)(3)(B)(vi)(II) of
17 the Immigration and Nationality Act (8
18 U.S.C. 1182 (a)(3)(B)(vi)(II)).

19 (v) Section 212(a)(3)(C) of the Immi-
20 gration and Nationality Act (8 U.S.C.
21 1182(a)(3)(C)).

22 (vi) Section 212(a)(10)(C) of the Im-
23 migration and Nationality Act (8 U.S.C.
24 1182(a)(10)(C)).

1 (vii) Section 212(f) of the Immigra-
2 tion and Nationality Act (8 U.S.C.
3 1182(f)).

4 (viii) Section 219(a) of the Immigra-
5 tion and Nationality Act (8 U.S.C.
6 1189(a)).

7 (ix) Section 237(a)(4)(C) of the Immi-
8 gration and Nationality Act (8 U.S.C.
9 1227(a)(4)(C)).

10 (x) Section 104 of the Cuban Liberty
11 and Democratic Solidarity (LIBERTAD)
12 Act of 1996 (22 U.S.C. 6034).

13 (xi) Section 616 of the Departments
14 of Commerce, Justice, and State, the Judi-
15 ciary, and Related Agencies Appropriations
16 Act, 1999 (Public Law 105-277).

17 (xii) Section 103(f) of the Chemical
18 Weapons Convention Implementation Act
19 of 1998 (112 Stat. 2681-865).

20 (xiii) Section 801 of the Admiral
21 James W. Nance and Meg Donovan For-
22 eign Relations Authorization Act, Fiscal
23 Years 2002 and 2001 (113 Stat. 1501A-
24 468).

1 (xiv) Section 568 of the Foreign Op-
2 erations, Export Financing, and Related
3 Programs Appropriations Act, 2002 (Pub-
4 lic Law 107–115).

5 (xv) Section 51 of the State Depart-
6 ment Basic Authorities Act of 1956 (22
7 U.S.C. 2723).

8 (xvi) Section 204(d)(2) of the Immi-
9 gration and Nationality Act (8 U.S.C.
10 1154) (as it will take effect upon the entry
11 into force of the Convention on Protection
12 of Children and Cooperation in Respect to
13 Inter-Country Adoption).

14 (4) CONSULAR OFFICERS AND CHIEFS OF MIS-
15 SIONS.—Nothing in this subsection may be con-
16 strued to alter or affect—

17 (A) the employment status of consular offi-
18 cers as employees of the Department of State;
19 or

20 (B) the authority of a chief of mission
21 under section 207 of the Foreign Service Act of
22 1980 (22 U.S.C. 3927).

23 (5) ASSIGNMENT OF HOMELAND SECURITY EM-
24 PLOYEES TO DIPLOMATIC AND CONSULAR POSTS.—

1 (A) IN GENERAL.—The Secretary is au-
2 thorized to assign employees of the Department
3 to diplomatic and consular posts abroad to per-
4 form the following functions:

5 (i) Provide expert advice to consular
6 officers regarding specific security threats
7 relating to the adjudication of individual
8 visa applications or classes of applications.

9 (ii) Review any such applications, ei-
10 ther on the initiative of the employee of the
11 Department or upon request by a consular
12 officer or other person charged with adju-
13 dicating such applications.

14 (iii) Conduct investigations with re-
15 spect to matters under the jurisdiction of
16 the Secretary.

17 (B) PERMANENT ASSIGNMENT; PARTICIPA-
18 TION IN TERRORIST LOOKOUT COMMITTEE.—
19 When appropriate, employees of the Depart-
20 ment assigned to perform functions described in
21 subparagraph (A) may be assigned permanently
22 to overseas diplomatic or consular posts with
23 country-specific or regional responsibility. If the
24 Secretary so directs, any such employee, when
25 present at an overseas post, shall participate in

1 the terrorist lookout committee established
2 under section 304 of the Enhanced Border Se-
3 curity and Visa Entry Reform Act of 2002 (8
4 U.S.C. 1733).

5 (C) TRAINING AND HIRING.—

6 (i) IN GENERAL.—The Secretary shall
7 ensure that any employees of the Depart-
8 ment assigned to perform functions de-
9 scribed under subparagraph (A) and, as
10 appropriate, consular officers, shall be pro-
11 vided all necessary training to enable them
12 to carry out such functions, including
13 training in foreign languages, in conditions
14 in the particular country where each em-
15 ployee is assigned, and in other appro-
16 priate areas of study.

17 (ii) FOREIGN LANGUAGE PRO-
18 FICIENCY.—Before assigning employees of
19 the Department to perform the functions
20 described under subparagraph (A), the
21 Secretary shall promulgate regulations es-
22 tablishing foreign language proficiency re-
23 quirements for employees of the Depart-
24 ment performing the functions described
25 under subparagraph (A) and providing

1 that preference shall be given to individ-
2 uals who meet such requirements in hiring
3 employees for the performance of such
4 functions.

5 (iii) USE OF CENTER.—The Secretary
6 is authorized to use the National Foreign
7 Affairs Training Center, on a reimbursable
8 basis, to obtain the training described in
9 clause (i).

10 (6) REPORT.—Not later than 1 year after the
11 date of enactment of this Act, the Secretary and the
12 Secretary of State shall submit to Congress—

13 (A) a report on the implementation of this
14 subsection; and

15 (B) any legislative proposals necessary to
16 further the objectives of this subsection.

17 (7) EFFECTIVE DATE.—This subsection shall
18 take effect on the earlier of—

19 (A) the date on which the President pub-
20 lishes notice in the Federal Register that the
21 President has submitted a report to Congress
22 setting forth a memorandum of understanding
23 between the Secretary and the Secretary of
24 State governing the implementation of this sec-
25 tion; or

1 (B) the date occurring 1 year after the
2 date of enactment of this Act.

3 (d) MEMBERSHIP ON THE NATIONAL SECURITY
4 COUNCIL.—Section 101(a) of the National Security Act
5 of 1947 (50 U.S.C. 402(a)) is amended in the fourth sen-
6 tence by striking paragraphs (5), (6), and (7) and insert-
7 ing the following:

8 “(5) the Secretary of Homeland Security; and

9 “(6) each Secretary or Under Secretary of such
10 other executive department, or of a military depart-
11 ment, as the President shall designate.”.

12 **SEC. 103. DEPUTY SECRETARY OF HOMELAND SECURITY.**

13 (a) IN GENERAL.—There shall be in the Department
14 a Deputy Secretary of Homeland Security, who shall be
15 appointed by the President, by and with the advice and
16 consent of the Senate.

17 (b) RESPONSIBILITIES.—The Deputy Secretary of
18 Homeland Security shall—

19 (1) assist the Secretary in the administration
20 and operations of the Department;

21 (2) perform such responsibilities as the Sec-
22 retary shall prescribe; and

23 (3) act as the Secretary during the absence or
24 disability of the Secretary or in the event of a va-
25 cancy in the office of the Secretary.

1 **SEC. 104. UNDER SECRETARY FOR MANAGEMENT.**

2 (a) IN GENERAL.—There shall be in the Department
3 an Under Secretary for Management, who shall be ap-
4 pointed by the President, by and with the advice and con-
5 sent of the Senate.

6 (b) RESPONSIBILITIES.—The Under Secretary for
7 Management shall report to the Secretary, who may assign
8 to the Under Secretary such functions related to the man-
9 agement and administration of the Department as the
10 Secretary may prescribe, including—

11 (1) the budget, appropriations, expenditures of
12 funds, accounting, and finance;

13 (2) procurement;

14 (3) human resources and personnel;

15 (4) information technology and communications
16 systems;

17 (5) facilities, property, equipment, and other
18 material resources;

19 (6) security for personnel, information tech-
20 nology and communications systems, facilities, prop-
21 erty, equipment, and other material resources; and

22 (7) identification and tracking of performance
23 measures relating to the responsibilities of the De-
24 partment.

1 **SEC. 105. ASSISTANT SECRETARIES.**

2 (a) IN GENERAL.—There shall be in the Department
3 not more than 5 Assistant Secretaries (not including the
4 2 Assistant Secretaries appointed under division B), each
5 of whom shall be appointed by the President, by and with
6 the advice and consent of the Senate.

7 (b) RESPONSIBILITIES.—

8 (1) IN GENERAL.—Whenever the President sub-
9 mits the name of an individual to the Senate for
10 confirmation as an Assistant Secretary under this
11 section, the President shall describe the general re-
12 sponsibilities that such appointee will exercise upon
13 taking office.

14 (2) ASSIGNMENT.—Subject to paragraph (1),
15 the Secretary shall assign to each Assistant Sec-
16 retary such functions as the Secretary considers ap-
17 propriate.

18 **SEC. 106. INSPECTOR GENERAL.**

19 (a) IN GENERAL.—There shall be in the Department
20 an Inspector General. The Inspector General and the Of-
21 fice of Inspector General shall be subject to the Inspector
22 General Act of 1978 (5 U.S.C. App.).

23 (b) ESTABLISHMENT.—Section 11 of the Inspector
24 General Act of 1978 (5 U.S.C. App.) is amended—

25 (1) in paragraph (1), by inserting “Homeland
26 Security,” after “Health and Human Services,”; and

1 (2) in paragraph (2), by inserting “Homeland
2 Security,” after “Health and Human Services,”.

3 (c) REVIEW OF THE DEPARTMENT OF HOMELAND
4 SECURITY.—The Inspector General shall designate 1 offi-
5 cial who shall—

6 (1) review information and receive complaints
7 alleging abuses of civil rights and civil liberties by
8 employees and officials of the Department;

9 (2) publicize, through the Internet, radio, tele-
10 vision, and newspaper advertisements—

11 (A) information on the responsibilities and
12 functions of the official; and

13 (B) instructions on how to contact the offi-
14 cial; and

15 (3) on a semi-annual basis, submit to Congress,
16 for referral to the appropriate committee or commit-
17 tees, a report—

18 (A) describing the implementation of this
19 subsection;

20 (B) detailing any civil rights abuses under
21 paragraph (1); and

22 (C) accounting for the expenditure of
23 funds to carry out this subsection.

24 (d) ADDITIONAL PROVISIONS WITH RESPECT TO
25 THE INSPECTOR GENERAL OF THE DEPARTMENT OF

1 HOMELAND SECURITY.—The Inspector General Act of
2 1978 (5 U.S.C. App.) is amended—

3 (1) by redesignating section 8I as section 8J;

4 and

5 (2) by inserting after section 8H the following:

6 SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF

7 HOMELAND SECURITY

8 “SEC. 8I. (a)(1) Notwithstanding the last 2 sentences
9 of section 3(a), the Inspector General of the Department
10 of Homeland Security (in this section referred to as the
11 “Inspector General”) shall be under the authority, direc-
12 tion, and control of the Secretary of Homeland Security
13 (in this section referred to as the “Secretary”) with re-
14 spect to audits or investigations, or the issuance of sub-
15 poenas, which require access to sensitive information
16 concerning—

17 “(A) intelligence or counterintelligence matters;

18 “(B) ongoing criminal investigations or pro-
19 ceedings;

20 “(C) undercover operations;

21 “(D) the identity of confidential sources, includ-
22 ing protected witnesses;

23 “(E) other matters the disclosure of which
24 would constitute a serious threat to the protection of
25 any person or property authorized protection by—

1 “(i) section 3056 of title 18, United States
2 Code;

3 “(ii) section 202 of title 3, United States
4 Code; or

5 “(iii) any provision of the Presidential Pro-
6 tection Assistance Act of 1976 (18 U.S.C. 3056
7 note); or

8 “(F) other matters the disclosure of which
9 would constitute a serious threat to national secu-
10 rity.

11 “(2) With respect to the information described under
12 paragraph (1), the Secretary may prohibit the Inspector
13 General from carrying out or completing any audit or in-
14 vestigation, or from issuing any subpoena, after such In-
15 specter General has decided to initiate, carry out, or com-
16 plete such audit or investigation or to issue such subpoena,
17 if the Secretary determines that such prohibition is nec-
18 essary to—

19 “(A) prevent the disclosure of any information
20 described under paragraph (1);

21 “(B) preserve the national security; or

22 “(C) prevent significant impairment to the na-
23 tional interests of the United States.

24 “(3) If the Secretary exercises any power under para-
25 graph (1) or (2), the Secretary shall notify the Inspector

1 General in writing (appropriately classified, if necessary)
2 within 7 calendar days stating the reasons for such exer-
3 cise. Within 30 days after receipt of any such notice, the
4 Inspector General shall transmit a copy of such notice, to-
5 gether with such comments concerning the exercise of such
6 power as the Inspector General considers appropriate,
7 to—

8 “(A) the President of the Senate;

9 “(B) the Speaker of the House of Representa-
10 tives;

11 “(C) the Committee on Governmental Affairs of
12 the Senate;

13 “(D) the Committee on Government Reform of
14 the House of Representatives; and

15 “(E) other appropriate committees or sub-
16 committees of Congress.

17 “(b)(1) In carrying out the duties and responsibilities
18 under this Act, the Inspector General shall have oversight
19 responsibility for the internal investigations and audits
20 performed by any other office performing internal inves-
21 tigatory or audit functions in any subdivision of the De-
22 partment of Homeland Security.

23 “(2) The head of each other office described under
24 paragraph (1) shall promptly report to the Inspector Gen-

1 eral the significant activities being carried out by such of-
2 fice.

3 “(3) Notwithstanding paragraphs (1) and (2), the In-
4 spector General may initiate, conduct, and supervise such
5 audits and investigations in the Department (including in
6 any subdivision referred to in paragraph (1)) as the In-
7 spector General considers appropriate.

8 “(4) If the Inspector General initiates an audit or in-
9 vestigation under paragraph (3) concerning a subdivision
10 referred to in paragraph (1), the Inspector General may
11 provide the head of the other office performing internal
12 investigatory or audit functions in the subdivision with
13 written notice that the Inspector General has initiated
14 such an audit or investigation. If the Inspector General
15 issues such a notice, no other audit or investigation shall
16 be initiated into the matter under audit or investigation
17 by the Inspector General, and any other audit or investiga-
18 tion of such matter shall cease.

19 “(c) Any report required to be transmitted by the
20 Secretary to the appropriate committees or subcommittees
21 of Congress under section 5(d) shall also be transmitted,
22 within the 7-day period specified under that subsection,
23 to—

24 “(1) the President of the Senate;

1 “(2) the Speaker of the House of Representa-
2 tives;

3 “(3) the Committee on Governmental Affairs of
4 the Senate; and

5 “(4) the Committee on Government Reform of
6 the House of Representatives.”.

7 (e) TECHNICAL AND CONFORMING AMENDMENTS.—
8 The Inspector General Act of 1978 (5 U.S.C. appendix)
9 is amended—

10 (1) in section 4(b), by striking “8F” each place
11 it appears and inserting “8G”; and

12 (2) in section 8J (as redesignated by subsection
13 (c)(1)), by striking “or 8H” and inserting “, 8H, or
14 8I”.”

15 **SEC. 107. CHIEF FINANCIAL OFFICER.**

16 (a) IN GENERAL.—There shall be in the Department
17 a Chief Financial Officer, who shall be appointed or des-
18 ignated in the manner prescribed under section 901(a)(1)
19 of title 31, United States Code.

20 (b) ESTABLISHMENT.—Section 901(b)(1) of title 31,
21 United States Code, is amended—

22 (1) by redesignating subparagraphs (G)
23 through (P) as subparagraphs (H) through (Q), re-
24 spectively; and

1 (2) by inserting after subparagraph (F) the fol-
2 lowing:

3 “(G) The Department of Homeland Security.”.

4 **SEC. 108. CHIEF INFORMATION OFFICER.**

5 (a) IN GENERAL.—There shall be in the Department
6 a Chief Information Officer, who shall be designated in
7 the manner prescribed under section 3506(a)(2)(A) of title
8 44, United States Code.

9 (b) RESPONSIBILITIES.—The Chief Information Offi-
10 cer shall assist the Secretary with Department-wide infor-
11 mation resources management and perform those duties
12 prescribed by law for chief information officers of agen-
13 cies.

14 **SEC. 109. GENERAL COUNSEL.**

15 (a) IN GENERAL.—There shall be in the Department
16 a General Counsel, who shall be appointed by the Presi-
17 dent, by and with the advice and consent of the Senate.

18 (b) RESPONSIBILITIES.—The General Counsel
19 shall—

20 (1) serve as the chief legal officer of the De-
21 partment;

22 (2) provide legal assistance to the Secretary
23 concerning the programs and policies of the Depart-
24 ment; and

1 (3) advise and assist the Secretary in carrying
2 out the responsibilities under section 102(b).

3 **SEC. 110. CIVIL RIGHTS OFFICER.**

4 (a) IN GENERAL.—There shall be in the Department
5 a Civil Rights Officer, who shall be appointed by the Presi-
6 dent, by and with the advice and consent of the Senate.

7 (b) RESPONSIBILITIES.—The Civil Rights Officer
8 shall be responsible for—

9 (1) ensuring compliance with all civil rights and
10 related laws and regulations applicable to Depart-
11 ment employees and participants in Department pro-
12 grams;

13 (2) coordinating administration of all civil
14 rights and related laws and regulations within the
15 Department for Department employees and partici-
16 pants in Department programs;

17 (3) assisting the Secretary, directorates, and of-
18 fices with the development and implementation of
19 policies and procedures that ensure that civil rights
20 considerations are appropriately incorporated and
21 implemented in Department programs and activities;

22 (4) overseeing compliance with statutory and
23 constitutional requirements related to the civil rights
24 of individuals affected by the programs and activities
25 of the Department; and

1 (5) notifying the Inspector General of any mat-
2 ter that, in the opinion of the Civil Rights Officer,
3 warrants further investigation.

4 **SEC. 111. PRIVACY OFFICER.**

5 (a) IN GENERAL.—There shall be in the Department
6 a Privacy Officer, who shall be appointed by the Secretary.

7 (b) RESPONSIBILITIES.—The Privacy Officer shall—

8 (1) oversee compliance with section 552a of title
9 5, United States Code (commonly referred to as the
10 Privacy Act of 1974) and all other applicable laws
11 relating to the privacy of personal information;

12 (2) assist the Secretary, directorates, and of-
13 fices with the development and implementation of
14 policies and procedures that ensure that—

15 (A) privacy considerations and safeguards
16 are appropriately incorporated and implemented
17 in Department programs and activities; and

18 (B) any information received by the De-
19 partment is used or disclosed in a manner that
20 minimizes the risk of harm to individuals from
21 the inappropriate disclosure or use of such ma-
22 terials;

23 (3) assist Department personnel with the prepa-
24 ration of privacy impact assessments when required

1 by law or considered appropriate by the Secretary;
2 and

3 (4) notify the Inspector General of any matter
4 that, in the opinion of the Privacy Officer, warrants
5 further investigation.

6 **SEC. 112. CHIEF HUMAN CAPITAL OFFICER.**

7 (a) IN GENERAL.—The Secretary shall appoint or
8 designate a Chief Human Capital Officer, who shall—

9 (1) advise and assist the Secretary and other
10 officers of the Department in ensuring that the
11 workforce of the Department has the necessary skills
12 and training, and that the recruitment and retention
13 policies of the Department allow the Department to
14 attract and retain a highly qualified workforce, in
15 accordance with all applicable laws and require-
16 ments, to enable the Department to achieve its mis-
17 sions;

18 (2) oversee the implementation of the laws,
19 rules and regulations of the President and the Office
20 of Personnel Management governing the civil service
21 within the Department; and

22 (3) advise and assist the Secretary in planning
23 and reporting under the Government Performance
24 and Results Act of 1993 (including the amendments
25 made by that Act), with respect to the human cap-

1 ital resources and needs of the Department for
2 achieving the plans and goals of the Department.

3 (b) RESPONSIBILITIES.—The responsibilities of the
4 Chief Human Capital Officer shall include—

5 (1) setting the workforce development strategy
6 of the Department;

7 (2) assessing workforce characteristics and fu-
8 ture needs based on the mission and strategic plan
9 of the Department;

10 (3) aligning the human resources policies and
11 programs of the Department with organization mis-
12 sion, strategic goals, and performance outcomes;

13 (4) developing and advocating a culture of con-
14 tinuous learning to attract and retain employees
15 with superior abilities;

16 (5) identifying best practices and benchmarking
17 studies;

18 (6) applying methods for measuring intellectual
19 capital and identifying links of that capital to orga-
20 nizational performance and growth; and

21 (7) providing employee training and profes-
22 sional development.

23 **SEC. 113. OFFICE OF INTERNATIONAL AFFAIRS.**

24 (a) ESTABLISHMENT.—There is established within
25 the Office of the Secretary, an Office of International Af-

1 fairs. The Office shall be headed by a Director who shall
2 be appointed by the Secretary.

3 (b) RESPONSIBILITIES OF THE DIRECTOR.—The Di-
4 rector shall have the following responsibilities:

5 (1) To promote information and education ex-
6 change with foreign nations in order to promote
7 sharing of best practices and technologies relating to
8 homeland security. Such information exchange shall
9 include—

10 (A) joint research and development on
11 countermeasures;

12 (B) joint training exercises of first re-
13 sponders; and

14 (C) exchange of expertise on terrorism pre-
15 vention, response, and crisis management.

16 (2) To identify areas for homeland security in-
17 formation and training exchange.

18 (3) To plan and undertake international con-
19 ferences, exchange programs, and training activities.

20 (4) To manage activities under this section and
21 other international activities within the Department
22 in consultation with the Department of State and
23 other relevant Federal officials.

24 (5) To initially concentrate on fostering co-
25 operation with countries that are already highly fo-

1 cused on homeland security issues and that have
2 demonstrated the capability for fruitful cooperation
3 with the United States in the area of
4 counterterrorism.

5 **SEC. 114. EXECUTIVE SCHEDULE POSITIONS.**

6 (a) EXECUTIVE SCHEDULE LEVEL I POSITION.—

7 Section 5312 of title 5, United States Code, is amended
8 by adding at the end the following:

9 “Secretary of Homeland Security.”.

10 (b) EXECUTIVE SCHEDULE LEVEL II POSITION.—

11 Section 5313 of title 5, United States Code, is amended
12 by adding at the end the following:

13 “Deputy Secretary of Homeland Security.”.

14 (c) EXECUTIVE SCHEDULE LEVEL III POSITION.—

15 Section 5314 of title 5, United States Code, is amended
16 by adding at the end the following:

17 “Under Secretary for Management, Department
18 of Homeland Security.”.

19 (d) EXECUTIVE SCHEDULE LEVEL IV POSITIONS.—

20 Section 5315 of title 5, United States Code, is amended
21 by adding at the end the following:

22 “Assistant Secretaries of Homeland Security
23 (5).

24 “Inspector General, Department of Homeland
25 Security.

1 “Chief Financial Officer, Department of Home-
2 land Security.

3 “Chief Information Officer, Department of
4 Homeland Security.

5 “General Counsel, Department of Homeland
6 Security.”.

7 **Subtitle B—Establishment of**
8 **Directorates and Offices**

9 **SEC. 131. DIRECTORATE OF BORDER AND TRANSPOR-**
10 **TATION PROTECTION.**

11 (a) ESTABLISHMENT.—

12 (1) DIRECTORATE.—There is established within
13 the Department the Directorate of Border and
14 Transportation Protection.

15 (2) UNDER SECRETARY.—There shall be an
16 Under Secretary for Border and Transportation,
17 who shall be appointed by the President, by and
18 with the advice and consent of the Senate.

19 (b) RESPONSIBILITIES.—The Directorate of Border
20 and Transportation Protection shall be responsible for the
21 following:

22 (1) Securing the borders, territorial waters,
23 ports, terminals, waterways and air, land (including
24 rail), and sea transportation systems of the United

1 States, including coordinating governmental activi-
2 ties at ports of entry.

3 (2) Receiving and providing relevant intelligence
4 on threats of terrorism and other homeland threats.

5 (3) Administering, carrying out, and promoting
6 other established missions of the entities transferred
7 to the Directorate.

8 (4) Using intelligence from the Directorate of
9 Intelligence and other Federal intelligence organiza-
10 tions under section 132(a)(1)(B) to establish inspec-
11 tion priorities to identify products, including agri-
12 culture and livestock, and other goods imported from
13 suspect locations recognized by the intelligence com-
14 munity as having terrorist activities, unusual human
15 health or agriculture disease outbreaks, or harboring
16 terrorists.

17 (5) Providing agency-specific training for
18 agents and analysts within the Department, other
19 agencies, and State and local agencies and inter-
20 national entities that have established partnerships
21 with the Federal Law Enforcement Training Center.

22 (6) Assisting and supporting the Secretary, in
23 coordination with other Directorates and entities
24 outside the Department, in conducting appropriate
25 risk analysis and risk management activities con-

1 sistent with the mission and functions of the Direc-
2 torate.

3 (7) Performing such other duties as assigned by
4 the Secretary.

5 (c) TRANSFER OF AUTHORITIES, FUNCTIONS, PER-
6 SONNEL, AND ASSETS TO THE DEPARTMENT.—Except as
7 provided under subsection (d), the authorities, functions,
8 personnel, and assets of the following entities are trans-
9 ferred to the Department:

10 (1) The United States Customs Service, which
11 shall be maintained as a distinct entity within the
12 Department.

13 (2) The United States Coast Guard, which shall
14 be maintained as a distinct entity within the Depart-
15 ment.

16 (3) The Animal and Plant Health Inspection
17 Service of the Department of Agriculture, that por-
18 tion of which administers laws relating to agricul-
19 tural quarantine inspections at points of entry.

20 (4) The Transportation Security Administration
21 of the Department of Transportation.

22 (5) The Federal Law Enforcement Training
23 Center of the Department of the Treasury.

24 (d) EXERCISE OF CUSTOMS REVENUE AUTHOR-
25 ITY.—

1 (1) IN GENERAL.—

2 (A) AUTHORITIES NOT TRANSFERRED.—

3 Notwithstanding subsection (c), authority that
4 was vested in the Secretary of the Treasury by
5 law to issue regulations related to customs rev-
6 enue functions before the effective date of this
7 section under the provisions of law set forth
8 under paragraph (2) shall not be transferred to
9 the Secretary by reason of this Act. The Sec-
10 retary of the Treasury, with the concurrence of
11 the Secretary, shall exercise this authority. The
12 Commissioner of Customs is authorized to en-
13 gage in activities to develop and support the
14 issuance of the regulations described in this
15 paragraph. The Secretary shall be responsible
16 for the implementation and enforcement of reg-
17 ulations issued under this section.

18 (B) REPORT.—Not later than 60 days
19 after the date of enactment of this Act, the Sec-
20 retary of the Treasury shall submit a report to
21 the Committee on Finance of the Senate and
22 the Committee on Ways and Means of the
23 House of Representatives of proposed con-
24 forming amendments to the statutes set forth
25 under paragraph (2) in order to determine the

1 appropriate allocation of legal authorities de-
2 scribed under this subsection. The Secretary of
3 the Treasury shall also identify those authori-
4 ties vested in the Secretary of the Treasury
5 that are exercised by the Commissioner of Cus-
6 toms on or before the effective date of this sec-
7 tion.

8 (C) LIABILITY.—Neither the Secretary of
9 the Treasury nor the Department of the Treas-
10 ury shall be liable for or named in any legal ac-
11 tion concerning the implementation and en-
12 forcement of regulations issued under this para-
13 graph on or after the date on which the United
14 States Customs Service is transferred under
15 this division.

16 (2) APPLICABLE LAWS.—The provisions of law
17 referred to under paragraph (1) are those sections
18 of the following statutes that relate to customs rev-
19 enue functions:

20 (A) The Tariff Act of 1930 (19 U.S.C.
21 1304 et seq.).

22 (B) Section 249 of the Revised Statutes of
23 the United States (19 U.S.C. 3).

24 (C) Section 2 of the Act of March 4, 1923
25 (19 U.S.C. 6).

1 (D) Section 13031 of the Consolidated
2 Omnibus Budget Reconciliation Act of 1985
3 (19 U.S.C. 58c).

4 (E) Section 251 of the Revised Statutes of
5 the United States (19 U.S.C. 66).

6 (F) Section 1 of the Act of June 26, 1930
7 (19 U.S.C. 68).

8 (G) The Foreign Trade Zones Act (19
9 U.S.C. 81a et seq.).

10 (H) Section 1 of the Act of March 2, 1911
11 (19 U.S.C. 198).

12 (I) The Trade Act of 1974 (19 U.S.C.
13 2101 et seq.).

14 (J) The Trade Agreements Act of 1979
15 (19 U.S.C. 2502 et seq.).

16 (K) The North American Free Trade
17 Agreement Implementation Act (19 U.S.C.
18 3301 et seq.).

19 (L) The Uruguay Round Agreements Act
20 (19 U.S.C. 3501 et seq.).

21 (M) The Caribbean Basin Economic Re-
22 covery Act (19 U.S.C. 2701 et seq.).

23 (N) The Andean Trade Preference Act (19
24 U.S.C. 3201 et seq.).

1 (O) The African Growth and Opportunity
2 Act (19 U.S.C. 3701 et seq.).

3 (P) Any other provision of law vesting cus-
4 toms revenue functions in the Secretary of the
5 Treasury.

6 (3) DEFINITION OF CUSTOMS REVENUE FUNC-
7 TIONS.—In this subsection, the term “customs rev-
8 enue functions” means—

9 (A) assessing, collecting, and refunding du-
10 ties (including any special duties), excise taxes,
11 fees, and any liquidated damages or penalties
12 due on imported merchandise, including
13 classifying and valuing merchandise and the
14 procedures for “entry” as that term is defined
15 in the United States Customs laws;

16 (B) administering section 337 of the Tariff
17 Act of 1930 and provisions relating to import
18 quotas and the marking of imported merchan-
19 dise, and providing Customs Recordations for
20 copyrights, patents, and trademarks;

21 (C) collecting accurate import data for
22 compilation of international trade statistics; and

23 (D) administering reciprocal trade agree-
24 ments and trade preference legislation.

1 (e) PRESERVING COAST GUARD MISSION PERFORM-
2 ANCE.—

3 (1) DEFINITIONS.—In this subsection:

4 (A) NON-HOMELAND SECURITY MIS-
5 SIONS.—The term “non-homeland security mis-
6 sions” means the following missions of the
7 Coast Guard:

8 (i) Marine safety.

9 (ii) Search and rescue.

10 (iii) Aids to navigation.

11 (iv) Living marine resources (fisheries
12 law enforcement).

13 (v) Marine environmental protection.

14 (vi) Ice operations.

15 (B) HOMELAND SECURITY MISSIONS.—The
16 term “homeland security missions” means the
17 following missions of the Coast Guard:

18 (i) Ports, waterways and coastal secu-
19 rity.

20 (ii) Drug interdiction.

21 (iii) Migrant interdiction.

22 (iv) Defense readiness.

23 (v) Other law enforcement.

24 (2) MAINTENANCE OF STATUS OF FUNCTIONS
25 AND ASSETS.—Notwithstanding any other provision

1 of this Act, the authorities, functions, assets, organi-
2 zational structure, units, personnel, and non-home-
3 land security missions of the Coast Guard shall be
4 maintained intact and without reduction after the
5 transfer of the Coast Guard to the Department, ex-
6 cept as specified in subsequent Acts.

7 (3) CERTAIN TRANSFERS PROHIBITED.—None
8 of the missions, functions, personnel, and assets (in-
9 cluding for purposes of this subsection ships, air-
10 craft, helicopters, and vehicles) of the Coast Guard
11 may be transferred to the operational control of, or
12 diverted to the principal and continuing use of, any
13 other organization, unit, or entity of the Depart-
14 ment.

15 (4) CHANGES TO NON-HOMELAND SECURITY
16 MISSIONS.—

17 (A) PROHIBITION.—The Secretary may
18 not make any substantial or significant change
19 to any of the non-homeland security missions of
20 the Coast Guard, or to the capabilities of the
21 Coast Guard to carry out each of the non-home-
22 land security missions, without the prior ap-
23 proval of Congress as expressed in a subsequent
24 Act.

1 (B) WAIVER.—The President may waive
2 the restrictions under subparagraph (A) for a
3 period of not to exceed 90 days upon a declara-
4 tion and certification by the President to Con-
5 gress that a clear, compelling, and immediate
6 state of national emergency exists that justifies
7 such a waiver. A certification under this para-
8 graph shall include a detailed justification for
9 the declaration and certification, including the
10 reasons and specific information that dem-
11 onstrate that the Nation and the Coast Guard
12 cannot respond effectively to the national emer-
13 gency if the restrictions under subparagraph
14 (A) are not waived.

15 (5) ANNUAL REVIEW.—

16 (A) IN GENERAL.—The Inspector General
17 of the Department shall conduct an annual re-
18 view that shall assess thoroughly the perform-
19 ance by the Coast Guard of all missions of the
20 Coast Guard (including non-homeland security
21 missions and homeland security missions) with
22 a particular emphasis on examining the non-
23 homeland security missions.

1 (B) REPORT.—The report under this para-
2 graph shall be submitted not later than March
3 1 of each year to—

4 (i) the Committee on Governmental
5 Affairs of the Senate;

6 (ii) the Committee on Government Re-
7 form of the House of Representatives;

8 (iii) the Committees on Appropria-
9 tions of the Senate and the House of Rep-
10 resentatives;

11 (iv) the Committee on Commerce,
12 Science, and Transportation of the Senate;
13 and

14 (v) the Committee on Transportation
15 and Infrastructure of the House of Rep-
16 resentatives.

17 (6) DIRECT REPORTING TO SECRETARY.—Upon
18 the transfer of the Coast Guard to the Department,
19 the Commandant shall report directly to the Sec-
20 retary without being required to report through any
21 other official of the Department.

22 (7) OPERATION AS A SERVICE IN THE NAVY.—
23 None of the conditions and restrictions in this sub-
24 section shall apply when the Coast Guard operates

1 as a service in the Navy under section 3 of title 14,
2 United States Code.

3 **SEC. 132. DIRECTORATE OF INTELLIGENCE.**

4 (a) ESTABLISHMENT.—

5 (1) DIRECTORATE.—

6 (A) IN GENERAL.—There is established a
7 Directorate of Intelligence which shall serve as
8 a national-level focal point for information
9 available to the United States Government re-
10 lating to the plans, intentions, and capabilities
11 of terrorists and terrorist organizations for the
12 purpose of supporting the mission of the De-
13 partment.

14 (B) SUPPORT TO DIRECTORATE.—The Di-
15 rectorate of Intelligence shall communicate, co-
16 ordinate, and cooperate with—

17 (i) the Federal Bureau of Investiga-
18 tion;

19 (ii) the intelligence community, as de-
20 fined under section 3 of the National Secu-
21 rity Act of 1947 (50 U.S.C. 401a), includ-
22 ing the Office of the Director of Central
23 Intelligence, the National Intelligence
24 Council, the Central Intelligence Agency,
25 the National Security Agency, the Defense

1 Intelligence Agency, the National Imagery
2 and Mapping Agency, the National Recon-
3 naissance Office, and the Bureau of Intel-
4 ligence and Research of the Department of
5 State; and

6 (iii) other agencies or entities, includ-
7 ing those within the Department, as deter-
8 mined by the Secretary.

9 (C) INFORMATION ON INTERNATIONAL
10 TERRORISM.—

11 (i) DEFINITIONS.—In this subpara-
12 graph, the terms “foreign intelligence” and
13 “counterintelligence” shall have the mean-
14 ing given those terms in section 3 of the
15 National Security Act of 1947 (50 U.S.C.
16 401a).

17 (ii) PROVISION OF INFORMATION TO
18 COUNTERTERRORIST CENTER.—In order to
19 ensure that the Secretary is provided with
20 appropriate analytical products, assess-
21 ments, and warnings relating to threats of
22 terrorism against the United States and
23 other threats to homeland security, the Di-
24 rector of Central Intelligence (as head of
25 the intelligence community with respect to

1 foreign intelligence and counterintel-
2 ligence), the Attorney General, and the
3 heads of other agencies of the Federal
4 Government shall ensure that all intel-
5 ligence and other information relating to
6 international terrorism is provided to the
7 Director of Central Intelligence's
8 Counterterrorist Center.

9 (iii) ANALYSIS OF INFORMATION.—
10 The Director of Central Intelligence shall
11 ensure the analysis by the Counterterrorist
12 Center of all intelligence and other infor-
13 mation provided the Counterterrorist Cen-
14 ter under clause (ii).

15 (iv) ANALYSIS OF FOREIGN INTEL-
16 LIGENCE.—The Counterterrorist Center
17 shall have primary responsibility for the
18 analysis of foreign intelligence relating to
19 international terrorism.

20 (2) UNDER SECRETARY.—There shall be an
21 Under Secretary for Intelligence who shall be ap-
22 pointed by the President, by and with the advice and
23 consent of the Senate.

24 (b) RESPONSIBILITIES.—The Directorate of Intel-
25 ligence shall be responsible for the following:

1 (1)(A) Receiving and analyzing law enforcement
2 and other information from agencies of the United
3 States Government, State and local government
4 agencies (including law enforcement agencies), and
5 private sector entities, and fusing such information
6 and analysis with analytical products, assessments,
7 and warnings concerning foreign intelligence from
8 the Director of Central Intelligence's
9 Counterterrorist Center in order to—

10 (i) identify and assess the nature and
11 scope of threats to the homeland; and

12 (ii) detect and identify threats of terrorism
13 against the United States and other threats to
14 homeland security.

15 (B) Nothing in this paragraph shall be con-
16 strued to prohibit the Directorate from conducting
17 supplemental analysis of foreign intelligence relating
18 to threats of terrorism against the United States
19 and other threats to homeland security.

20 (2) Ensuring timely and efficient access by the
21 Directorate to—

22 (A) information from agencies described
23 under subsection (a)(1)(B), State and local gov-
24 ernments, local law enforcement and intel-
25 ligence agencies, private sector entities; and

1 (B) open source information.

2 (3) Representing the Department in procedures
3 to establish requirements and priorities in the collec-
4 tion of national intelligence for purposes of the pro-
5 vision to the executive branch under section 103 of
6 the National Security Act of 1947 (50 U.S.C. 403-
7 3) of national intelligence relating to foreign ter-
8 rorist threats to the homeland.

9 (4) Consulting with the Attorney General or the
10 designees of the Attorney General, and other offi-
11 cials of the United States Government to establish
12 overall collection priorities and strategies for infor-
13 mation, including law enforcement information, re-
14 lating to domestic threats, such as terrorism, to the
15 homeland.

16 (5) Disseminating information to the Direc-
17 torate of Critical Infrastructure Protection, the
18 agencies described under subsection (a)(1)(B), State
19 and local governments, local law enforcement and in-
20 telligence agencies, and private sector entities to as-
21 sist in the deterrence, prevention, preemption, and
22 response to threats of terrorism against the United
23 States and other threats to homeland security.

24 (6) Establishing and utilizing, in conjunction
25 with the Chief Information Officer of the Depart-

1 ment and the appropriate officers of the agencies de-
2 scribed under subsection (a)(1)(B), a secure commu-
3 nications and information technology infrastructure,
4 and advanced analytical tools, to carry out the mis-
5 sion of the Directorate.

6 (7) Developing, in conjunction with the Chief
7 Information Officer of the Department and appro-
8 priate officers of the agencies described under sub-
9 section (a)(1)(B), appropriate software, hardware,
10 and other information technology, and security and
11 formatting protocols, to ensure that Federal Govern-
12 ment databases and information technology systems
13 containing information relevant to terrorist threats,
14 and other threats against the United States, are—

15 (A) compatible with the secure communica-
16 tions and information technology infrastructure
17 referred to under paragraph (6); and

18 (B) comply with Federal laws concerning
19 privacy and the prevention of unauthorized dis-
20 closure.

21 (8) Ensuring, in conjunction with the Director
22 of Central Intelligence and the Attorney General,
23 that all material received by the Department is pro-
24 tected against unauthorized disclosure and is utilized
25 by the Department only in the course and for the

1 purpose of fulfillment of official duties, and is trans-
2 mitted, retained, handled, and disseminated con-
3 sistent with—

4 (A) the authority of the Director of Cen-
5 tral Intelligence to protect intelligence sources
6 and methods from unauthorized disclosure
7 under the National Security Act of 1947 (50
8 U.S.C. 401 et seq.) and related procedures; or

9 (B) as appropriate, similar authorities of
10 the Attorney General concerning sensitive law
11 enforcement information, and the privacy inter-
12 ests of United States persons as defined under
13 section 101 of the Foreign Intelligence Surveil-
14 lance Act of 1978 (50 U.S.C. 1801).

15 (9) Providing, through the Secretary, to the ap-
16 propriate law enforcement or intelligence agency, in-
17 formation and analysis relating to threats.

18 (10) Coordinating, or where appropriate pro-
19 viding, training and other support as necessary to
20 providers of information to the Department, or con-
21 sumers of information from the Department, to
22 allow such providers or consumers to identify and
23 share intelligence information revealed in their ordi-
24 nary duties or utilize information received from the
25 Department, including training and support under

1 section 908 of the USA PATRIOT Act of 2001
2 (Public Law 107–56).

3 (11) Reviewing, analyzing, and making rec-
4 ommendations through the Secretary for improve-
5 ments in the policies and procedures governing the
6 sharing of law enforcement, intelligence, and other
7 information relating to threats of terrorism against
8 the United States and other threats to homeland se-
9 curity within the United States Government and be-
10 tween the United States Government and State and
11 local governments, local law enforcement and intel-
12 ligence agencies, and private sector entities.

13 (12) Assisting and supporting the Secretary, in
14 coordination with other Directorates and entities
15 outside the Department, in conducting appropriate
16 risk analysis and risk management activities con-
17 sistent with the mission and functions of the Direc-
18 torate.

19 (13) Performing other related and appropriate
20 duties as assigned by the Secretary.

21 (c) ACCESS TO INFORMATION.—

22 (1) IN GENERAL.—Unless otherwise directed by
23 the President, the Secretary shall have access to,
24 and United States Government agencies shall pro-
25 vide, all reports, assessments, analytical information,

1 and information, including unevaluated intelligence,
2 relating to the plans, intentions, capabilities, and ac-
3 tivities of terrorists and terrorist organizations, and
4 to other areas of responsibility as described in this
5 division, that may be collected, possessed, or pre-
6 pared, by any other United States Government agen-
7 cy.

8 (2) ADDITIONAL INFORMATION.—As the Presi-
9 dent may further provide, the Secretary shall receive
10 additional information requested by the Secretary
11 from the agencies described under subsection
12 (a)(1)(B).

13 (3) OBTAINING INFORMATION.—All information
14 shall be provided to the Secretary consistent with
15 the requirements of subsection (b)(8), unless other-
16 wise determined by the President.

17 (4) COOPERATIVE ARRANGEMENTS.—The Sec-
18 retary may enter into cooperative arrangements with
19 agencies described under subsection (a)(1)(B) to
20 share material on a regular or routine basis, includ-
21 ing arrangements involving broad categories of ma-
22 terial, and regardless of whether the Secretary has
23 entered into any such cooperative arrangement, all
24 agencies described under subsection (a)(1)(B) shall
25 promptly provide information under this subsection.

1 (d) AUTHORIZATION TO SHARE LAW ENFORCEMENT
2 INFORMATION.—The Secretary shall be deemed to be a
3 Federal law enforcement, intelligence, protective, national
4 defense, or national security official for purposes of infor-
5 mation sharing provisions of—

6 (1) section 203(d) of the USA PATRIOT Act
7 of 2001 (Public Law 107–56);

8 (2) section 2517(6) of title 18, United States
9 Code; and

10 (3) rule 6(e)(3)(C) of the Federal Rules of
11 Criminal Procedure.

12 (e) ADDITIONAL RISK ANALYSIS AND RISK MANAGE-
13 MENT RESPONSIBILITIES.—The Under Secretary for In-
14 telligence shall, in coordination with the Office of Risk
15 Analysis and Assessment in the Directorate of Science and
16 Technology, be responsible for—

17 (1) developing analysis concerning the means
18 and methods terrorists might employ to exploit
19 vulnerabilities in the homeland security infrastruc-
20 ture;

21 (2) supporting experiments, tests, and inspec-
22 tions to identify weaknesses in homeland defenses;

23 (3) developing countersurveillance techniques to
24 prevent attacks;

1 (4) conducting risk assessments to determine
2 the risk posed by specific kinds of terrorist attacks,
3 the probability of successful attacks, and the feasi-
4 bility of specific countermeasures.

5 (f) MANAGEMENT AND STAFFING.—

6 (1) IN GENERAL.—The Directorate of Intel-
7 ligence shall be staffed, in part, by analysts as re-
8 quested by the Secretary and assigned by the agen-
9 cies described under subsection (a)(1)(B). The ana-
10 lysts shall be assigned by reimbursable detail for pe-
11 riods as determined necessary by the Secretary in
12 conjunction with the head of the assigning agency.
13 No such detail may be undertaken without the con-
14 sent of the assigning agency.

15 (2) EMPLOYEES ASSIGNED WITHIN DEPART-
16 MENT.—The Secretary may assign employees of the
17 Department by reimbursable detail to the Direc-
18 torate.

19 (3) SERVICE AS FACTOR FOR SELECTION.—The
20 President, or the designee of the President, shall
21 prescribe regulations to provide that service de-
22 scribed under paragraph (1) or (2), or service by
23 employees within the Directorate, shall be considered
24 a positive factor for selection to positions of greater

1 authority within all agencies described under sub-
2 section (a)(1)(B).

3 (4) PERSONNEL SECURITY STANDARDS.—The
4 employment of personnel in the Directorate shall be
5 in accordance with such personnel security standards
6 for access to classified information and intelligence
7 as the Secretary, in conjunction with the Director of
8 Central Intelligence, shall establish for this sub-
9 section.

10 (5) PERFORMANCE EVALUATION.—The Sec-
11 retary shall evaluate the performance of all per-
12 sonnel detailed to the Directorate, or delegate such
13 responsibility to the Under Secretary for Intel-
14 ligence.

15 (g) INTELLIGENCE COMMUNITY.—Those portions of
16 the Directorate of Intelligence under subsection (b)(1),
17 and the intelligence-related components of agencies trans-
18 ferred by this division to the Department, including the
19 United States Coast Guard, shall be—

20 (1) considered to be part of the United States
21 intelligence community within the meaning of section
22 3 of the National Security Act of 1947 (50 U.S.C.
23 401a); and

24 (2) for budgetary purposes, within the National
25 Foreign Intelligence Program.

1 **SEC. 133. DIRECTORATE OF CRITICAL INFRASTRUCTURE**
2 **PROTECTION.**

3 (a) ESTABLISHMENT.—

4 (1) DIRECTORATE.—There is established within
5 the Department the Directorate of Critical Infra-
6 structure Protection.

7 (2) UNDER SECRETARY.—There shall be an
8 Under Secretary for Critical Infrastructure Protec-
9 tion, who shall be appointed by the President, by
10 and with the advice and consent of the Senate.

11 (b) RESPONSIBILITIES.—The Directorate of Critical
12 Infrastructure Protection shall be responsible for the fol-
13 lowing:

14 (1) Receiving relevant intelligence from the Di-
15 rectorate of Intelligence, law enforcement informa-
16 tion, and other information in order to comprehen-
17 sively assess the vulnerabilities of the key resources
18 and critical infrastructures in the United States.

19 (2) Integrating relevant information, intel-
20 ligence analysis, and vulnerability assessments
21 (whether such information, analyses, or assessments
22 are provided by the Department or others) to iden-
23 tify priorities and support protective measures by
24 the Department, by other agencies, by State and
25 local government personnel, agencies, and authori-
26 ties, by the private sector, and by other entities, to

1 protect the key resources and critical infrastructures
2 in the United States.

3 (3) As part of the Strategy, developing a com-
4 prehensive national plan for securing the key re-
5 sources and critical infrastructure in the United
6 States.

7 (4) Assisting and supporting the Secretary, in
8 coordination with other Directorates and entities
9 outside the Department, in conducting appropriate
10 risk analysis and risk management activities con-
11 sistent with the mission and functions of the Direc-
12 torate. This shall include, in coordination with the
13 Office of Risk Analysis and Assessment in the Direc-
14 torate of Science and Technology, establishing proce-
15 dures, mechanisms, or units for the purpose of uti-
16 lizing intelligence to identify vulnerabilities and pro-
17 tective measures in—

18 (A) public health infrastructure;

19 (B) food and water storage, production
20 and distribution;

21 (C) commerce systems, including banking
22 and finance;

23 (D) energy systems, including electric
24 power and oil and gas production and storage;

1 (E) transportation systems, including pipe-
2 lines;

3 (F) information and communication sys-
4 tems;

5 (G) continuity of government services; and

6 (H) other systems or facilities the destruc-
7 tion or disruption of which could cause substan-
8 tial harm to health, safety, property, or the en-
9 vironment.

10 (5) Enhancing the sharing of information re-
11 garding cyber security and physical security of the
12 United States, developing appropriate security
13 standards, tracking vulnerabilities, proposing im-
14 proved risk management policies, and delineating the
15 roles of various Government agencies in preventing,
16 defending, and recovering from attacks.

17 (6) Acting as the Critical Information Tech-
18 nology, Assurance, and Security Officer of the De-
19 partment and assuming the responsibilities carried
20 out by the Critical Infrastructure Assurance Office
21 and the National Infrastructure Protection Center
22 before the effective date of this division.

23 (7) Coordinating the activities of the Informa-
24 tion Sharing and Analysis Centers to share informa-
25 tion, between the public and private sectors, on

1 threats, vulnerabilities, individual incidents, and pri-
2 vacy issues regarding homeland security.

3 (8) Working closely with the Department of
4 State on cyber security issues with respect to inter-
5 national bodies and coordinating with appropriate
6 agencies in helping to establish cyber security policy,
7 standards, and enforcement mechanisms.

8 (9) Establishing the necessary organizational
9 structure within the Directorate to provide leader-
10 ship and focus on both cyber security and physical
11 security, and ensuring the maintenance of a nucleus
12 of cyber security and physical security experts within
13 the United States Government.

14 (10) Performing such other duties as assigned
15 by the Secretary.

16 (c) TRANSFER OF AUTHORITIES, FUNCTIONS, PER-
17 SONNEL, AND ASSETS TO THE DEPARTMENT.—The au-
18 thorities, functions, personnel, and assets of the following
19 entities are transferred to the Department:

20 (1) The Critical Infrastructure Assurance Of-
21 fice of the Department of Commerce.

22 (2) The National Infrastructure Protection
23 Center of the Federal Bureau of Investigation (other
24 than the Computer Investigations and Operations
25 Section).

1 (3) The National Communications System of
2 the Department of Defense.

3 (4) The Computer Security Division of the Na-
4 tional Institute of Standards and Technology of the
5 Department of Commerce.

6 (5) The National Infrastructure Simulation and
7 Analysis Center of the Department of Energy.

8 (6) The Federal Computer Incident Response
9 Center of the General Services Administration.

10 (7) The Energy Security and Assurance Pro-
11 gram of the Department of Energy.

12 (8) The Federal Protective Service of the Gen-
13 eral Services Administration.

14 **SEC. 134. DIRECTORATE OF EMERGENCY PREPAREDNESS**
15 **AND RESPONSE.**

16 (a) ESTABLISHMENT.—

17 (1) DIRECTORATE.—There is established within
18 the Department the Directorate of Emergency Pre-
19 paredness and Response.

20 (2) UNDER SECRETARY.—There shall be an
21 Under Secretary for Emergency Preparedness and
22 Response, who shall be appointed by the President,
23 by and with the advice and consent of the Senate.

1 (b) RESPONSIBILITIES.—The Directorate of Emer-
2 gency Preparedness and Response shall be responsible for
3 the following:

4 (1) Carrying out all emergency preparedness
5 and response activities carried out by the Federal
6 Emergency Management Agency before the effective
7 date of this division.

8 (2) Assuming the responsibilities carried out by
9 the National Domestic Preparedness Office before
10 the effective date of this division.

11 (3) Organizing and training local entities to re-
12 spond to emergencies and providing State and local
13 authorities with equipment for detection, protection,
14 and decontamination in an emergency involving
15 weapons of mass destruction.

16 (4) Overseeing Federal, State, and local emer-
17 gency preparedness training and exercise programs
18 in keeping with intelligence estimates and providing
19 a single staff for Federal assistance for any emer-
20 gency, including emergencies caused by natural dis-
21 asters, manmade accidents, human or agricultural
22 health emergencies, or terrorist attacks.

23 (5) Creating a National Crisis Action Center to
24 act as the focal point for—

25 (A) monitoring emergencies;

1 (B) notifying affected agencies and State
2 and local governments; and

3 (C) coordinating Federal support for State
4 and local governments and the private sector in
5 crises.

6 (6) Managing and updating the Federal re-
7 sponse plan to ensure the appropriate integration of
8 operational activities of the Department of Defense,
9 the National Guard, and other agencies, to respond
10 to acts of terrorism and other disasters.

11 (7) Coordinating activities among private sector
12 entities, including entities within the medical com-
13 munity, and animal health and plant disease com-
14 munities, with respect to recovery, consequence man-
15 agement, and planning for continuity of services.

16 (8) Developing and managing a single response
17 system for national incidents in coordination with all
18 appropriate agencies.

19 (9) Coordinating with other agencies necessary
20 to carry out the functions of the Office of Emer-
21 gency Preparedness.

22 (10) Collaborating with, and transferring funds
23 to, the Centers for Disease Control and Prevention
24 or other agencies for administration of the Strategic

1 National Stockpile transferred under subsection
2 (c)(5).

3 (11) Consulting with the Under Secretary for
4 Science and Technology, Secretary of Agriculture,
5 and the Director of the Centers for Disease Control
6 and Prevention in establishing and updating the list
7 of potential threat agents or toxins relating to the
8 functions of the Select Agent Registration Program
9 transferred under subsection (c)(6).

10 (12) Developing a plan to address the interface
11 of medical informatics and the medical response to
12 terrorism that address—

13 (A) standards for interoperability;

14 (B) real-time data collection;

15 (C) ease of use for health care providers;

16 (D) epidemiological surveillance of disease
17 outbreaks in human health and agriculture;

18 (E) integration of telemedicine networks
19 and standards;

20 (F) patient confidentiality; and

21 (G) other topics pertinent to the mission of
22 the Department.

23 (13) Activate and coordinate the operations of
24 the National Disaster Medical System as defined
25 under section 102 of the Public Health Security and

1 Bioterrorism Preparedness and Response Act of
2 2002 (Public Law 107–188).

3 (14) Assisting and supporting the Secretary, in
4 coordination with other Directorates and entities
5 outside the Department, in conducting appropriate
6 risk analysis and risk management activities con-
7 sistent with the mission and functions of the Direc-
8 torate.

9 (15) Performing such other duties as assigned
10 by the Secretary.

11 (c) TRANSFER OF AUTHORITIES, FUNCTIONS, PER-
12 SONNEL, AND ASSETS TO THE DEPARTMENT.—The au-
13 thorities, functions, personnel, and assets of the following
14 entities are transferred to the Department:

15 (1) The Federal Emergency Management Agen-
16 cy, the 10 regional offices of which shall be main-
17 tained and strengthened by the Department, which
18 shall be maintained as a distinct entity within the
19 Department.

20 (2) The National Office of Domestic Prepared-
21 ness of the Federal Bureau of Investigation of the
22 Department of Justice.

23 (3) The Office of Domestic Preparedness of the
24 Department of Justice.

1 (4) The Office of Emergency Preparedness
2 within the Office of the Assistant Secretary for Pub-
3 lic Health Emergency Preparedness of the Depart-
4 ment of Health and Human Services, including—

5 (A) the Noble Training Center;

6 (B) the Metropolitan Medical Response
7 System;

8 (C) the Department of Health and Human
9 Services component of the National Disaster
10 Medical System;

11 (D) the Disaster Medical Assistance
12 Teams, the Veterinary Medical Assistance
13 Teams, and the Disaster Mortuary Operational
14 Response Teams;

15 (E) the special events response; and

16 (F) the citizen preparedness programs.

17 (5) The Strategic National Stockpile of the De-
18 partment of Health and Human Services including
19 all functions and assets under sections 121 and 127
20 of the Public Health Security and Bioterrorism Pre-
21 paredness and Response Act of 2002 (Public Law
22 107–188).

23 (6) The functions of the Select Agent Registra-
24 tion Program of the Department of Health and
25 Human Services and the United States Department

1 of Agriculture, including all functions of the Sec-
2 retary of Health and Human Services and the Sec-
3 retary of Agriculture under sections 201 through
4 221 of the Public Health Security and Bioterrorism
5 Preparedness and Response Act of 2002 (Public
6 Law 107–188).

7 (d) APPOINTMENT AS UNDER SECRETARY AND DI-
8 RECTOR.—

9 (1) IN GENERAL.—An individual may serve as
10 both the Under Secretary for Emergency Prepared-
11 ness and Response and the Director of the Federal
12 Emergency Management Agency if appointed by the
13 President, by and with the advice and consent of the
14 Senate, to each office.

15 (2) PAY.—Nothing in paragraph (1) shall be
16 construed to authorize an individual appointed to
17 both positions to receive pay at a rate of pay in ex-
18 cess of the rate of pay payable for the position to
19 which the higher rate of pay applies.

20 (e) REPORT.—Not later than 1 year after the date
21 of enactment of this Act, the Under Secretary for Emer-
22 gency Preparedness and Response shall submit a report
23 to Congress on the status of a national medical
24 informatics system and an agricultural disease surveil-
25 lance system, and the capacity of such systems to meet

1 the goals under subsection (b)(12) in responding to a ter-
2 rorist attack.

3 **SEC. 135. DIRECTORATE OF SCIENCE AND TECHNOLOGY.**

4 (a) PURPOSE.—The purpose of this section is to es-
5 tablish a Directorate of Science and Technology that will
6 support the mission of the Department and the direc-
7 torates of the Department by—

8 (1) establishing, funding, managing, and sup-
9 porting research, development, demonstration, test-
10 ing, and evaluation activities to meet national home-
11 land security needs and objectives;

12 (2) setting national research and development
13 goals and priorities pursuant to the mission of the
14 Department, and developing strategies and policies
15 in furtherance of such goals and priorities;

16 (3) coordinating and collaborating with other
17 Federal departments and agencies, and State, local,
18 academic, and private sector entities, to advance the
19 research and development agenda of the Depart-
20 ment;

21 (4) advising the Secretary on all scientific and
22 technical matters relevant to homeland security; and

23 (5) facilitating the transfer and deployment of
24 technologies that will serve to enhance homeland se-
25 curity goals.

1 (b) DEFINITIONS.—In this section:

2 (1) COUNCIL.—The term “Council” means the
3 Homeland Security Science and Technology Council
4 established under this section.

5 (2) FUND.—The term “Fund” means the Ac-
6 celeration Fund for Research and Development of
7 Homeland Security Technologies established under
8 this section.

9 (3) HOMELAND SECURITY RESEARCH AND DE-
10 VELOPMENT.—The term “homeland security re-
11 search and development” means research and devel-
12 opment applicable to the detection of, prevention of,
13 protection against, response to, and recovery from
14 homeland security threats, particularly acts of ter-
15 rorism.

16 (4) OSTP.—The term “OSTP” means the Of-
17 fice of Science and Technology Policy.

18 (5) SARPA.—The term “SARPA” means the
19 Security Advanced Research Projects Agency estab-
20 lished under this section.

21 (6) TECHNOLOGY ROADMAP.—The term “tech-
22 nology roadmap” means a plan or framework in
23 which goals, priorities, and milestones for desired fu-
24 ture technological capabilities and functions are es-
25 tablished, and research and development alternatives

1 or means for achieving those goals, priorities, and
2 milestones are identified and analyzed in order to
3 guide decisions on resource allocation and invest-
4 ments.

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

8 (c) DIRECTORATE OF SCIENCE AND TECHNOLOGY.—

9 (1) ESTABLISHMENT.—There is established a
10 Directorate of Science and Technology within the
11 Department.

12 (2) UNDER SECRETARY.—There shall be an
13 Under Secretary for Science and Technology, who
14 shall be appointed by the President, by and with the
15 advice and consent of the Senate. The principal re-
16 sponsibility of the Under Secretary shall be to effec-
17 tively and efficiently carry out the purposes of the
18 Directorate of Science and Technology under sub-
19 section (a). In addition, the Under Secretary shall
20 undertake the following activities in furtherance of
21 such purposes:

22 (A) Coordinating with the OSTP, the Of-
23 fice, and other appropriate entities in devel-
24 oping and executing the research and develop-
25 ment agenda of the Department.

1 (B) Developing a technology roadmap that
2 shall be updated biannually for achieving tech-
3 nological goals relevant to homeland security
4 needs.

5 (C) Instituting mechanisms to promote, fa-
6 cilitate, and expedite the transfer and deploy-
7 ment of technologies relevant to homeland secu-
8 rity needs, including dual-use capabilities.

9 (D) Assisting the Secretary and the Direc-
10 tor of OSTP to ensure that science and tech-
11 nology priorities are clearly reflected and con-
12 sidered in the Strategy developed under title
13 III.

14 (E) Establishing mechanisms for the shar-
15 ing and dissemination of key homeland security
16 research and technology developments and op-
17 portunities with appropriate Federal, State,
18 local, and private sector entities.

19 (F) Establishing, in coordination with the
20 Under Secretary for Critical Infrastructure
21 Protection and the Under Secretary for Emer-
22 gency Preparedness and Response and relevant
23 programs under their direction, a National
24 Emergency Technology Guard, comprised of
25 teams of volunteers with expertise in relevant

1 areas of science and technology, to assist local
2 communities in responding to and recovering
3 from emergency contingencies requiring special-
4 ized scientific and technical capabilities. In car-
5 rying out this responsibility, the Under Sec-
6 retary shall establish and manage a database of
7 National Emergency Technology Guard volun-
8 teers, and prescribe procedures for organizing,
9 certifying, mobilizing, and deploying National
10 Emergency Technology Guard teams.

11 (G) Chairing the Working Group estab-
12 lished under section 108 of the Public Health
13 Security and Bioterrorism Preparedness and
14 Response Act of 2002 (Public Law 107–188).

15 (H) Assisting the Secretary in developing
16 the Strategy for Countermeasure Research de-
17 scribed under subsection (k).

18 (I) Assisting the Secretary and acting on
19 behalf of the Secretary in contracting with,
20 commissioning, or establishing federally funded
21 research and development centers determined
22 useful and appropriate by the Secretary for the
23 purpose of providing the Department with inde-
24 pendent analysis and support.

1 (J) Assisting the Secretary and acting on
2 behalf of the Secretary in entering into joint
3 sponsorship agreements with the Department of
4 Energy regarding the use of the national lab-
5 oratories or sites.

6 (K) Assisting and supporting the Sec-
7 retary, in coordination with other Directorates
8 and entities outside the Department, in con-
9 ducting appropriate risk analysis and risk man-
10 agement activities consistent with the mission
11 and functions of the Directorate.

12 (L) Carrying out other appropriate activi-
13 ties as directed by the Secretary.

14 (3) RESEARCH AND DEVELOPMENT-RELATED
15 AUTHORITIES.—The Secretary shall exercise the fol-
16 lowing authorities relating to the research, develop-
17 ment, testing, and evaluation activities of the Direc-
18 torate of Science and Technology:

19 (A) With respect to research and develop-
20 ment expenditures under this section, the au-
21 thority (subject to the same limitations and
22 conditions) as the Secretary of Defense may ex-
23 ercise under section 2371 of title 10, United
24 States Code (except for subsections (b) and (f)),
25 for a period of 5 years beginning on the date

1 of enactment of this Act. Competitive, merit-
2 based selection procedures shall be used for the
3 selection of projects and participants for trans-
4 actions entered into under the authority of this
5 paragraph. The annual report required under
6 subsection (h) of such section, as applied to the
7 Secretary by this subparagraph, shall—

8 (i) be submitted to the President of
9 the Senate, the Speaker of the House of
10 Representatives, the Committee on Govern-
11 mental Affairs of the Senate, the Com-
12 mittee on Government Reform of the
13 House of Representatives, the Committee
14 on Appropriations of the Senate, and the
15 Committee on Appropriations of the House
16 of Representatives; and

17 (ii) report on other transactions en-
18 tered into under subparagraph (B).

19 (B) Authority to carry out prototype
20 projects in accordance with the requirements
21 and conditions provided for carrying out proto-
22 type projects under section 845 of the National
23 Defense Authorization Act for Fiscal Year 1994
24 (Public Law 103–160), for a period of 5 years
25 beginning on the date of enactment of this Act.

1 In applying the authorities of such section 845,
2 subsection (c) of that section shall apply with
3 respect to prototype projects under this para-
4 graph, and the Secretary shall perform the
5 functions of the Secretary of Defense under
6 subsection (d) of that section. Competitive,
7 merit-based selection procedures shall be used
8 for the selection of projects and participants for
9 transactions entered into under the authority of
10 this paragraph.

11 (C) In hiring personnel to assist in re-
12 search, development, testing, and evaluation ac-
13 tivities within the Directorate of Science and
14 Technology, the authority to exercise the per-
15 sonnel hiring and management authorities de-
16 scribed in section 1101 of the Strom Thurmond
17 National Defense Authorization Act for Fiscal
18 Year 1999 (5 U.S.C. 3104 note; Public Law
19 105–261), with the stipulation that the Sec-
20 retary shall exercise such authority for a period
21 of 7 years commencing on the date of enact-
22 ment of this Act, that a maximum of 100 per-
23 sons may be hired under such authority, and
24 that the term of appointment for employees
25 under subsection (c)(1) of that section may not

1 exceed 5 years before the granting of any exten-
2 sions under subsection (c)(2) of that section.

3 (D) With respect to such research, develop-
4 ment, testing, and evaluation responsibilities
5 under this section (except as provided in sub-
6 paragraph (E)) as the Secretary may elect to
7 carry out through agencies other than the De-
8 partment (under agreements with their respec-
9 tive heads), the Secretary may transfer funds to
10 such heads. Of the funds authorized to be ap-
11 propriated under subsection (d)(4) for the
12 Fund, not less than 10 percent of such funds
13 for each fiscal year through 2005 shall be au-
14 thorized only for the Under Secretary, through
15 joint agreement with the Commandant of the
16 Coast Guard, to carry out research and develop-
17 ment of improved ports, waterways, and coastal
18 security surveillance and perimeter protection
19 capabilities for the purpose of minimizing the
20 possibility that Coast Guard cutters, aircraft,
21 helicopters, and personnel will be diverted from
22 non-homeland security missions to the ports,
23 waterways, and coastal security mission.

24 (E) The Secretary may carry out human
25 health biodefense-related biological, biomedical,

1 and infectious disease research and development
2 (including vaccine research and development) in
3 collaboration with the Secretary of Health and
4 Human Services. Research supported by fund-
5 ing appropriated to the National Institutes of
6 Health for bioterrorism research and related fa-
7 cilities development shall be conducted through
8 the National Institutes of Health under joint
9 strategic prioritization agreements between the
10 Secretary and the Secretary of Health and
11 Human Services. The Secretary shall have the
12 authority to establish general research prior-
13 ities, which shall be embodied in the joint stra-
14 tegic prioritization agreements with the Sec-
15 retary of Health and Human Services. The spe-
16 cific scientific research agenda to implement
17 agreements under this subparagraph shall be
18 developed by the Secretary of Health and
19 Human Services, who shall consult the Sec-
20 retary to ensure that the agreements conform
21 with homeland security priorities. All research
22 programs established under those agreements
23 shall be managed and awarded by the Director
24 of the National Institutes of Health consistent
25 with those agreements. The Secretary may

1 transfer funds to the Department of Health and
2 Human Services in connection with those agree-
3 ments.

4 (d) ACCELERATION FUND.—

5 (1) ESTABLISHMENT.—There is established an
6 Acceleration Fund to support research and develop-
7 ment of technologies relevant to homeland security.

8 (2) FUNCTION.—The Fund shall be used to
9 stimulate and support research and development
10 projects selected by SARPA under subsection (f),
11 and to facilitate the rapid transfer of research and
12 technology derived from such projects.

13 (3) RECIPIENTS.—Fund monies may be made
14 available through grants, contracts, cooperative
15 agreements, and other transactions under subsection
16 (c)(3) (A) and (B) to—

17 (A) public sector entities, including Fed-
18 eral, State, or local entities;

19 (B) private sector entities, including cor-
20 porations, partnerships, or individuals; and

21 (C) other nongovernmental entities, includ-
22 ing universities, federally funded research and
23 development centers, and other academic or re-
24 search institutions.

1 (4) AUTHORIZATION OF APPROPRIATIONS.—

2 There are authorized to be appropriated
3 \$200,000,000 for the Fund for fiscal year 2003, and
4 such sums as are necessary in subsequent fiscal
5 years.

6 (e) SCIENCE AND TECHNOLOGY COUNCIL.—

7 (1) ESTABLISHMENT.—There is established the
8 Homeland Security Science and Technology Council
9 within the Directorate of Science and Technology.
10 The Under Secretary shall chair the Council and
11 have the authority to convene meetings. At the dis-
12 cretion of the Under Secretary and the Director of
13 OSTP, the Council may be constituted as a sub-
14 committee of the National Science and Technology
15 Council.

16 (2) COMPOSITION.—The Council shall be com-
17 posed of the following:

18 (A) Senior research and development offi-
19 cials representing agencies engaged in research
20 and development relevant to homeland security
21 and combating terrorism needs. Each represent-
22 ative shall be appointed by the head of the rep-
23 resentative's respective agency with the advice
24 and consent of the Under Secretary.

1 (B) The Director of SARPA and other ap-
2 propriate officials within the Department.

3 (C) The Director of the OSTP and other
4 senior officials of the Executive Office of the
5 President as designated by the President.

6 (3) RESPONSIBILITIES.—The Council shall—

7 (A) provide the Under Secretary with rec-
8 ommendations on priorities and strategies, in-
9 cluding those related to funding and portfolio
10 management, for homeland security research
11 and development;

12 (B) facilitate effective coordination and
13 communication among agencies, other entities
14 of the Federal Government, and entities in the
15 private sector and academia, with respect to the
16 conduct of research and development related to
17 homeland security;

18 (C) recommend specific technology areas
19 for which the Fund and other research and de-
20 velopment resources shall be used, among other
21 things, to rapidly transition homeland security
22 research and development into deployed tech-
23 nology and reduce identified homeland security
24 vulnerabilities;

1 (D) assist and advise the Under Secretary
2 in developing the technology roadmap referred
3 to under subsection (c)(2)(B); and

4 (E) perform other appropriate activities as
5 directed by the Under Secretary.

6 (4) ADVISORY PANEL.—The Under Secretary
7 may establish an advisory panel consisting of rep-
8 resentatives from industry, academia, and other non-
9 Federal entities to advise and support the Council.

10 (5) WORKING GROUPS.—At the discretion of
11 the Under Secretary, the Council may establish
12 working groups in specific homeland security areas
13 consisting of individuals with relevant expertise in
14 each articulated area. Working groups established
15 for bioterrorism and public health-related research
16 shall be fully coordinated with the Working Group
17 established under section 108 of the Public Health
18 Security and Bioterrorism Preparedness and Re-
19 sponse Act of 2002 (Public Law 107–188).

20 (f) SECURITY ADVANCED RESEARCH PROJECTS
21 AGENCY.—

22 (1) ESTABLISHMENT.—There is established the
23 Security Advanced Research Projects Agency within
24 the Directorate of Science and Technology.

25 (2) RESPONSIBILITIES.—SARPA shall—

1 (A) undertake and stimulate basic and ap-
2 plied research and development, leverage exist-
3 ing research and development, and accelerate
4 the transition and deployment of technologies
5 that will serve to enhance homeland defense;

6 (B) identify, fund, develop, and transition
7 high-risk, high-payoff homeland security re-
8 search and development opportunities that—

9 (i) may lie outside the purview or ca-
10 pabilities of the existing Federal agencies;

11 and

12 (ii) emphasize revolutionary rather
13 than evolutionary or incremental advances;

14 (C) provide selected projects with single or
15 multiyear funding, and require such projects to
16 provide interim progress reports, no less often
17 than annually;

18 (D) administer the Acceleration Fund to
19 carry out the purposes of this paragraph;

20 (E) advise the Secretary and Under Sec-
21 retary on funding priorities under subsection
22 (c)(3)(E); and

23 (F) perform other appropriate activities as
24 directed by the Under Secretary.

25 (g) OFFICE OF RISK ANALYSIS AND ASSESSMENT.—

1 (1) ESTABLISHMENT.—There is established an
2 Office of Risk Analysis and Assessment within the
3 Directorate of Science and Technology.

4 (2) FUNCTIONS.—The Office of Risk Analysis
5 and Assessment shall assist the Secretary, the
6 Under Secretary, and other Directorates with re-
7 spect to their risk analysis and risk management ac-
8 tivities by providing scientific or technical support
9 for such activities. Such support shall include, as
10 appropriate—

11 (A) identification and characterization of
12 homeland security threats;

13 (B) evaluation and delineation of the risk
14 of these threats;

15 (C) pinpointing of vulnerabilities or linked
16 vulnerabilities to these threats;

17 (D) determination of criticality of possible
18 threats;

19 (E) analysis of possible technologies, re-
20 search, and protocols to mitigate or eliminate
21 threats, vulnerabilities, and criticalities;

22 (F) evaluation of the effectiveness of var-
23 ious forms of risk communication; and

24 (G) other appropriate activities as directed
25 by the Secretary.

1 (3) METHODS.—In performing the activities de-
2 scribed under paragraph (2), the Office of Risk
3 Analysis and Assessment may support or conduct, or
4 commission from federally funded research and de-
5 velopment centers or other entities, work involving
6 modeling, statistical analyses, field tests and exer-
7 cises (including red teaming), testbed development,
8 development of standards and metrics.

9 (h) OFFICE FOR TECHNOLOGY EVALUATION AND
10 TRANSITION.—

11 (1) ESTABLISHMENT.—There is established an
12 Office for Technology Evaluation and Transition
13 within the Directorate of Science and Technology.

14 (2) FUNCTION.—The Office for Technology
15 Evaluation and Transition shall, with respect to
16 technologies relevant to homeland security needs—

17 (A) serve as the principal, national point-
18 of-contact and clearinghouse for receiving and
19 processing proposals or inquiries regarding such
20 technologies;

21 (B) identify and evaluate promising new
22 technologies;

23 (C) undertake testing and evaluation of,
24 and assist in transitioning, such technologies
25 into deployable, fielded systems;

1 (D) consult with and advise agencies re-
2 garding the development, acquisition, and de-
3 ployment of such technologies;

4 (E) coordinate with SARPA to accelerate
5 the transition of technologies developed by
6 SARPA and ensure transition paths for such
7 technologies; and

8 (F) perform other appropriate activities as
9 directed by the Under Secretary.

10 (3) TECHNICAL SUPPORT WORKING GROUP.—

11 The functions described under this subsection may
12 be carried out through, or in coordination with, or
13 through an entity established by the Secretary and
14 modeled after, the Technical Support Working
15 Group (organized under the April, 1982, National
16 Security Decision Directive Numbered 30) that pro-
17 vides an interagency forum to coordinate research
18 and development of technologies for combating ter-
19 rorism.

20 (i) OFFICE OF LABORATORY RESEARCH.—

21 (1) ESTABLISHMENT.—There is established an
22 Office of Laboratory Research within the Direc-
23 torate of Science and Technology.

24 (2) RESEARCH AND DEVELOPMENT FUNCTIONS
25 TRANSFERRED.—There shall be transferred to the

1 Department, to be administered by the Under Sec-
2 retary, the functions, personnel, assets, and liabil-
3 ities of the following programs and activities:

4 (A) Within the Department of Energy (but
5 not including programs and activities relating
6 to the strategic nuclear defense posture of the
7 United States) the following:

8 (i) The chemical and biological na-
9 tional security and supporting programs
10 and activities supporting domestic response
11 of the nonproliferation and verification re-
12 search and development program.

13 (ii) The nuclear smuggling programs
14 and activities, and other programs and ac-
15 tivities directly related to homeland secu-
16 rity, within the proliferation detection pro-
17 gram of the nonproliferation and
18 verification research and development pro-
19 gram, except that the programs and activi-
20 ties described in this clause may be des-
21 ignated by the President either for transfer
22 to the Department or for joint operation
23 by the Secretary and the Secretary of En-
24 ergy.

1 (iii) The nuclear assessment program
2 and activities of the assessment, detection,
3 and cooperation program of the inter-
4 national materials protection and coopera-
5 tion program.

6 (iv) The Environmental Measure-
7 ments Laboratory.

8 (B) Within the Department of Defense,
9 the National Bio-Weapons Defense Analysis
10 Center established under section 161.

11 (3) RESPONSIBILITIES.—The Office of Labora-
12 tory Research shall—

13 (A) supervise the activities of the entities
14 transferred under this subsection;

15 (B) administer the disbursement and un-
16 dertake oversight of research and development
17 funds transferred from the Department to other
18 agencies outside of the Department, including
19 funds transferred to the Department of Health
20 and Human Services consistent with subsection
21 (c)(3)(E);

22 (C) establish and direct new research and
23 development facilities as the Secretary deter-
24 mines appropriate;

1 (D) include a science advisor to the Under
2 Secretary on research priorities related to bio-
3 logical and chemical weapons, with supporting
4 scientific staff, who shall advise on and support
5 research priorities with respect to—

6 (i) research on countermeasures for
7 biological weapons, including research on
8 the development of drugs, devices, and bio-
9 logics; and

10 (ii) research on biological and chem-
11 ical threat agents; and

12 (E) other appropriate activities as directed
13 by the Under Secretary.

14 (j) OFFICE FOR NATIONAL LABORATORIES.—

15 (1) ESTABLISHMENT.—There is established
16 within the Directorate of Science and Technology an
17 Office for National Laboratories, which shall be re-
18 sponsible for the coordination and utilization of the
19 Department of Energy national laboratories and
20 sites in a manner to create a networked laboratory
21 system for the purpose of supporting the missions of
22 the Department.

23 (2) JOINT SPONSORSHIP ARRANGEMENTS.—

24 (A) NATIONAL LABORATORIES.—The De-
25 partment may be a joint sponsor, under a mul-

1 tiple agency sponsorship arrangement with the
2 Department of Energy, of 1 or more Depart-
3 ment of Energy national laboratories in the per-
4 formance of work on behalf of the Department.

5 (B) DEPARTMENT OF ENERGY SITE.—The
6 Department may be a joint sponsor of Depart-
7 ment of Energy sites in the performance of
8 work as if such sites were federally funded re-
9 search and development centers and the work
10 were performed under a multiple agency spon-
11 sorship arrangement with the Department.

12 (C) PRIMARY SPONSOR.—The Department
13 of Energy shall be the primary sponsor under
14 a multiple agency sponsorship arrangement en-
15 tered into under subparagraph (A) or (B).

16 (D) CONDITIONS.—A joint sponsorship ar-
17 rangement under this subsection shall—

18 (i) provide for the direct funding and
19 management by the Department of the
20 work being carried out on behalf of the
21 Department; and

22 (ii) include procedures for addressing
23 the coordination of resources and tasks to
24 minimize conflicts between work under-
25 taken on behalf of either Department.

1 (E) LEAD AGENT AND FEDERAL ACQUISITION REGULATION.—
2

3 (i) LEAD AGENT.—The Secretary of
4 Energy shall act as the lead agent in co-
5 ordinating the formation and performance
6 of a joint sponsorship agreement between
7 the Department and a Department of En-
8 ergy national laboratory or site for work on
9 homeland security.

10 (ii) COMPLIANCE WITH FEDERAL AC-
11 QUISSION REGULATION.—Any work per-
12 formed by a national laboratory or site
13 under this section shall comply with the
14 policy on the use of federally funded re-
15 search and development centers under sec-
16 tion 35.017 of the Federal Acquisition
17 Regulation.

18 (F) FUNDING.—The Department shall
19 provide funds for work at the Department of
20 Energy national laboratories or sites, as the
21 case may be, under this section under the same
22 terms and conditions as apply to the primary
23 sponsor of such national laboratory under sec-
24 tion 303(b)(1)(C) of the Federal Property and
25 Administrative Services Act of 1949 (41 U.S.C.

1 253 (b)(1)(C)) or of such site to the extent
2 such section applies to such site as a federally
3 funded research and development center by rea-
4 son of subparagraph (B).

5 (3) OTHER ARRANGEMENTS.—The Office for
6 National Laboratories may enter into other arrange-
7 ments with Department of Energy national labora-
8 tories or sites to carry out work to support the mis-
9 sions of the Department under applicable law, except
10 that the Department of Energy may not charge or
11 apply administrative fees for work on behalf of the
12 Department.

13 (4) TECHNOLOGY TRANSFER.—The Office for
14 National Laboratories may exercise the authorities
15 in section 12 of the Stevenson-Wydler Technology
16 Innovation Act of 1980 (15 U.S.C. 3710a) to permit
17 the Director of a Department of Energy national
18 laboratory to enter into cooperative research and de-
19 velopment agreements, or to negotiate licensing
20 agreements, pertaining to work supported by the De-
21 partment at the Department of Energy national lab-
22 oratory.

23 (5) ASSISTANCE IN ESTABLISHING DEPART-
24 MENT.—At the request of the Under Secretary, the
25 Department of Energy shall provide for the tem-

1 porary appointment or assignment of employees of
2 Department of Energy national laboratories or sites
3 to the Department for purposes of assisting in the
4 establishment or organization of the technical pro-
5 grams of the Department through an agreement
6 that includes provisions for minimizing conflicts be-
7 tween work assignments of such personnel.

8 (k) STRATEGY FOR COUNTERMEASURE RESEARCH.—

9 (1) IN GENERAL.—The Secretary, acting
10 through the Under Secretary for Science and Tech-
11 nology, shall develop a comprehensive, long-term
12 strategy and plan for engaging non-Federal entities,
13 particularly including private, for-profit entities, in
14 the research, development, and production of home-
15 land security countermeasures for biological, chem-
16 ical, and radiological weapons.

17 (2) TIMEFRAME.—The strategy and plan under
18 this subsection, together with recommendations for
19 the enactment of supporting or enabling legislation,
20 shall be submitted to the Congress within 270 days
21 after the date of enactment of this Act.

22 (3) COORDINATION.—In developing the strategy
23 and plan under this subsection, the Secretary shall
24 consult with—

1 (A) other agencies with expertise in re-
2 search, development, and production of counter-
3 measures;

4 (B) private, for-profit entities and entre-
5 preneurs with appropriate expertise and tech-
6 nology regarding countermeasures;

7 (C) investors that fund such entities;

8 (D) nonprofit research universities and in-
9 stitutions;

10 (E) public health and other interested pri-
11 vate sector and government entities; and

12 (F) governments allied with the United
13 States in the war on terrorism.

14 (4) PURPOSE.—The strategy and plan under
15 this subsection shall evaluate proposals to assure
16 that—

17 (A) research on countermeasures by non-
18 Federal entities leads to the expeditious devel-
19 opment and production of countermeasures that
20 may be procured and deployed in the homeland
21 security interests of the United States;

22 (B) capital is available to fund the ex-
23 penses associated with such research, develop-
24 ment, and production, including Government
25 grants and contracts and appropriate capital

1 formation tax incentives that apply to non-Fed-
2 eral entities with and without tax liability;

3 (C) the terms for procurement of such
4 countermeasures are defined in advance so that
5 such entities may accurately and reliably assess
6 the potential countermeasures market and the
7 potential rate of return;

8 (D) appropriate intellectual property, risk
9 protection, and Government approval standards
10 are applicable to such countermeasures;

11 (E) Government-funded research is con-
12 ducted and prioritized so that such research
13 complements, and does not unnecessarily dupli-
14 cate, research by non-Federal entities and that
15 such Government-funded research is made
16 available, transferred, and licensed on commer-
17 cially reasonable terms to such entities for de-
18 velopment; and

19 (F) universities and research institutions
20 play a vital role as partners in research and de-
21 velopment and technology transfer, with appro-
22 priate progress benchmarks for such activities,
23 with for-profit entities.

24 (5) REPORTING.—The Secretary shall report
25 periodically to the Congress on the status of non-

1 Federal entity countermeasure research, develop-
2 ment, and production, and submit additional rec-
3 ommendations for legislation as needed.

4 (l) CLASSIFICATION OF RESEARCH.—

5 (1) IN GENERAL.—To the greatest extent prac-
6 ticable, research conducted or supported by the De-
7 partment shall be unclassified.

8 (2) CLASSIFICATION AND REVIEW.—The Under
9 Secretary shall—

10 (A)(i) decide whether classification is ap-
11 propriate before the award of a research grant,
12 contract, cooperative agreement, or other trans-
13 action by the Department; and

14 (ii) if the decision under clause (i) is one
15 of classification, control the research results
16 through standard classification procedures; and

17 (B) periodically review all classified re-
18 search grants, contracts, cooperative agree-
19 ments, and other transactions issued by the De-
20 partment to determine whether classification is
21 still necessary.

22 (3) RESTRICTIONS.—No restrictions shall be
23 placed upon the conduct or reporting of federally
24 funded fundamental research that has not received

1 national security classification, except as provided
2 under applicable provisions of law.

3 (m) OFFICE OF SCIENCE AND TECHNOLOGY POL-
4 ICY.—The National Science and Technology Policy, Orga-
5 nization, and Priorities Act is amended—

6 (1) in section 204(b)(1) (42 U.S.C.
7 6613(b)(1)), by inserting “homeland security,” after
8 “national security,”; and

9 (2) in section 208(a)(1) (42 U.S.C.
10 6617(a)(1)), by inserting “the National Office for
11 Combating Terrorism,” after “National Security
12 Council,”.

13 **SEC. 136. DIRECTORATE OF IMMIGRATION AFFAIRS.**

14 The Directorate of Immigration Affairs shall be es-
15 tablished and shall carry out all functions of that Direc-
16 torate in accordance with division B of this Act.

17 **SEC. 137. OFFICE FOR STATE AND LOCAL GOVERNMENT**
18 **COORDINATION.**

19 (a) ESTABLISHMENT.—There is established within
20 the Office of the Secretary the Office for State and Local
21 Government Coordination, to oversee and coordinate de-
22 partmental programs for and relationships with State and
23 local governments.

24 (b) RESPONSIBILITIES.—The Office established
25 under subsection (a) shall—

1 (1) coordinate the activities of the Department
2 relating to State and local government;

3 (2) assess, and advocate for, the resources
4 needed by State and local government to implement
5 the national strategy for combating terrorism;

6 (3) provide State and local government with
7 regular information, research, and technical support
8 to assist local efforts at securing the homeland; and

9 (4) develop a process for receiving meaningful
10 input from State and local government to assist the
11 development of the national strategy for combating
12 terrorism and other homeland security activities.

13 (c) HOMELAND SECURITY LIAISON OFFICERS.—

14 (1) CHIEF HOMELAND SECURITY LIAISON OFFI-
15 CER.—

16 (A) APPOINTMENT.—The Secretary shall
17 appoint a Chief Homeland Security Liaison Of-
18 ficer to coordinate the activities of the Home-
19 land Security Liaison Officers, designated
20 under paragraph (2).

21 (B) ANNUAL REPORT.—The Chief Home-
22 land Security Liaison Officer shall prepare an
23 annual report, that contains—

24 (i) a description of the State and local
25 priorities in each of the 50 States based on

1 discovered needs of first responder organi-
2 zations, including law enforcement agen-
3 cies, fire and rescue agencies, medical pro-
4 viders, emergency service providers, and
5 relief agencies;

6 (ii) a needs assessment that identifies
7 homeland security functions in which the
8 Federal role is duplicative of the State or
9 local role, and recommendations to de-
10 crease or eliminate inefficiencies between
11 the Federal Government and State and
12 local entities;

13 (iii) recommendations to Congress re-
14 garding the creation, expansion, or elimi-
15 nation of any program to assist State and
16 local entities to carry out their respective
17 functions under the Department; and

18 (iv) proposals to increase the coordi-
19 nation of Department priorities within
20 each State and between the States.

21 (2) HOMELAND SECURITY LIAISON OFFICERS.—

22 (A) DESIGNATION.—The Secretary shall
23 designate in each State not less than 1 em-
24 ployee of the Department to—

- 1 (i) serve as the Homeland Security
- 2 Liaison Officer in that State; and
- 3 (ii) provide coordination between the
- 4 Department and State and local first re-
- 5 sponders, including—
- 6 (I) law enforcement agencies;
- 7 (II) fire and rescue agencies;
- 8 (III) medical providers;
- 9 (IV) emergency service providers;
- 10 and
- 11 (V) relief agencies.
- 12 (B) DUTIES.—Each Homeland Security
- 13 Liaison Officer designated under subparagraph
- 14 (A) shall—
- 15 (i) ensure coordination between the
- 16 Department and—
- 17 (I) State, local, and community-
- 18 based law enforcement;
- 19 (II) fire and rescue agencies; and
- 20 (III) medical and emergency re-
- 21 lief organizations;
- 22 (ii) identify State and local areas re-
- 23 quiring additional information, training,
- 24 resources, and security;

1 (iii) provide training, information, and
2 education regarding homeland security for
3 State and local entities;

4 (iv) identify homeland security func-
5 tions in which the Federal role is duplica-
6 tive of the State or local role, and rec-
7 ommend ways to decrease or eliminate in-
8 efficiencies;

9 (v) assist State and local entities in
10 priority setting based on discovered needs
11 of first responder organizations, including
12 law enforcement agencies, fire and rescue
13 agencies, medical providers, emergency
14 service providers, and relief agencies;

15 (vi) assist the Department to identify
16 and implement State and local homeland
17 security objectives in an efficient and pro-
18 ductive manner; and

19 (vii) serve as a liaison to the Depart-
20 ment in representing State and local prior-
21 ities and concerns regarding homeland se-
22 curity.

23 (d) FEDERAL INTERAGENCY COMMITTEE ON FIRST
24 RESPONDERS.—

1 (1) IN GENERAL.—There is established an
2 Interagency Committee on First Responders, that
3 shall—

4 (A) ensure coordination among the Federal
5 agencies involved with—

6 (i) State, local, and community-based
7 law enforcement;

8 (ii) fire and rescue operations; and

9 (iii) medical and emergency relief
10 services;

11 (B) identify community-based law enforce-
12 ment, fire and rescue, and medical and emer-
13 gency relief services needs;

14 (C) recommend new or expanded grant
15 programs to improve community-based law en-
16 forcement, fire and rescue, and medical and
17 emergency relief services;

18 (D) identify ways to streamline the process
19 through which Federal agencies support com-
20 munity-based law enforcement, fire and rescue,
21 and medical and emergency relief services; and

22 (E) assist in priority setting based on dis-
23 covered needs.

24 (2) MEMBERSHIP.—The Interagency Com-
25 mittee on First Responders shall be composed of—

1 (A) the Chief Homeland Security Liaison
2 Officer of the Department;

3 (B) a representative of the Health Re-
4 sources and Services Administration of the De-
5 partment of Health and Human Services;

6 (C) a representative of the Centers for Dis-
7 ease Control and Prevention of the Department
8 of Health and Human Services;

9 (D) a representative of the Federal Emer-
10 gency Management Agency of the Department;

11 (E) a representative of the United States
12 Coast Guard of the Department;

13 (F) a representative of the Department of
14 Defense;

15 (G) a representative of the Office of Do-
16 mestic Preparedness of the Department;

17 (H) a representative of the Directorate of
18 Immigration Affairs of the Department;

19 (I) a representative of the Transportation
20 Security Agency of the Department;

21 (J) a representative of the Federal Bureau
22 of Investigation of the Department of Justice;

23 and

24 (K) representatives of any other Federal
25 agency identified by the President as having a

1 significant role in the purposes of the Inter-
2 agency Committee on First Responders.

3 (3) ADMINISTRATION.—The Department shall
4 provide administrative support to the Interagency
5 Committee on First Responders and the Advisory
6 Council, which shall include—

7 (A) scheduling meetings;

8 (B) preparing agenda;

9 (C) maintaining minutes and records;

10 (D) producing reports; and

11 (E) reimbursing Advisory Council mem-
12 bers.

13 (4) LEADERSHIP.—The members of the Inter-
14 agency Committee on First Responders shall select
15 annually a chairperson.

16 (5) MEETINGS.—The Interagency Committee
17 on First Responders shall meet—

18 (A) at the call of the Chief Homeland Se-
19 curity Liaison Officer of the Department; or

20 (B) not less frequently than once every 3
21 months.

22 (e) ADVISORY COUNCIL FOR THE FEDERAL INTER-
23 AGENCY COMMITTEE ON FIRST RESPONDERS.—

24 (1) ESTABLISHMENT.—There is established an
25 Advisory Council for the Federal Interagency Com-

1 mittee on First Responders (in this section referred
2 to as the “Advisory Council”).

3 (2) MEMBERSHIP.—

4 (A) IN GENERAL.—The Advisory Council
5 shall be composed of not more than 13 mem-
6 bers, selected by the Interagency Committee on
7 First Responders.

8 (B) REPRESENTATION.—The Interagency
9 Committee on First Responders shall ensure
10 that the membership of the Advisory Council
11 represents—

12 (i) the law enforcement community;

13 (ii) fire and rescue organizations;

14 (iii) medical and emergency relief
15 services; and

16 (iv) both urban and rural commu-
17 nities.

18 (3) CHAIRPERSON.—The Advisory Council shall
19 select annually a chairperson from among its mem-
20 bers.

21 (4) COMPENSATION OF MEMBERS.—The mem-
22 bers of the Advisory Council shall serve without
23 compensation, but shall be eligible for reimburse-
24 ment of necessary expenses connected with their
25 service to the Advisory Council.

1 (5) MEETINGS.—The Advisory Council shall
2 meet with the Interagency Committee on First Re-
3 sponders not less frequently than once every 3
4 months.

5 **SEC. 138. UNITED STATES SECRET SERVICE.**

6 There are transferred to the Department the authori-
7 ties, functions, personnel, and assets of the United States
8 Secret Service, which shall be maintained as a distinct en-
9 tity within the Department.

10 **SEC. 139. BORDER COORDINATION WORKING GROUP.**

11 (a) DEFINITIONS.—In this section:

12 (1) BORDER SECURITY FUNCTIONS.—The term
13 “border security functions” means the securing of
14 the borders, territorial waters, ports, terminals, wa-
15 terways, and air, land, and sea transportation sys-
16 tems of the United States.

17 (2) RELEVANT AGENCIES.—The term “relevant
18 agencies” means any department or agency of the
19 United States that the President determines to be
20 relevant to performing border security functions.

21 (b) ESTABLISHMENT.—The Secretary shall establish
22 a border security working group (in this section referred
23 to as the “Working Group”), composed of the Secretary
24 or the designee of the Secretary, the Under Secretary for

1 Border and Transportation Protection, and the Under
2 Secretary for Immigration Affairs.

3 (c) FUNCTIONS.—The Working Group shall meet not
4 less frequently than once every 3 months and shall—

5 (1) with respect to border security functions,
6 develop coordinated budget requests, allocations of
7 appropriations, staffing requirements, communica-
8 tion, use of equipment, transportation, facilities, and
9 other infrastructure;

10 (2) coordinate joint and cross-training pro-
11 grams for personnel performing border security
12 functions;

13 (3) monitor, evaluate and make improvements
14 in the coverage and geographic distribution of bor-
15 der security programs and personnel;

16 (4) develop and implement policies and tech-
17 nologies to ensure the speedy, orderly, and efficient
18 flow of lawful traffic, travel and commerce, and en-
19 hanced scrutiny for high-risk traffic, travel, and
20 commerce; and

21 (5) identify systemic problems in coordination
22 encountered by border security agencies and pro-
23 grams and propose administrative, regulatory, or
24 statutory changes to mitigate such problems.

1 (d) RELEVANT AGENCIES.—The Secretary shall con-
2 sult representatives of relevant agencies with respect to
3 deliberations under subsection (c), and may include rep-
4 resentatives of such agencies in Working Group delibera-
5 tions, as appropriate.

6 **SEC. 140. EXECUTIVE SCHEDULE POSITIONS.**

7 Section 5314 of title 5, United States Code, is
8 amended by adding at the end the following:

9 “Under Secretary for Border and Transpor-
10 tation, Department of Homeland Security.

11 “Under Secretary for Critical Infrastructure
12 Protection, Department of Homeland Security.

13 “Under Secretary for Emergency Preparedness
14 and Response, Department of Homeland Security.

15 “Under Secretary for Immigration, Department
16 of Homeland Security.

17 “Under Secretary for Intelligence, Department
18 of Homeland Security.

19 “Under Secretary for Science and Technology,
20 Department of Homeland Security.”.

21 **Subtitle C—National Emergency**
22 **Preparedness Enhancement**

23 **SEC. 151. SHORT TITLE.**

24 This subtitle may be cited as the “National Emer-
25 gency Preparedness Enhancement Act of 2002”.

1 **SEC. 152. PREPAREDNESS INFORMATION AND EDUCATION.**

2 (a) ESTABLISHMENT OF CLEARINGHOUSE.—There is
3 established in the Department a National Clearinghouse
4 on Emergency Preparedness (referred to in this section
5 as the “Clearinghouse”). The Clearinghouse shall be head-
6 ed by a Director.

7 (b) CONSULTATION.—The Clearinghouse shall con-
8 sult with such heads of agencies, such task forces ap-
9 pointed by Federal officers or employees, and such rep-
10 resentatives of the private sector, as appropriate, to collect
11 information on emergency preparedness, including infor-
12 mation relevant to the Strategy.

13 (c) DUTIES.—

14 (1) DISSEMINATION OF INFORMATION.—The
15 Clearinghouse shall ensure efficient dissemination of
16 accurate emergency preparedness information.

17 (2) CENTER.—The Clearinghouse shall estab-
18 lish a one-stop center for emergency preparedness
19 information, which shall include a website, with links
20 to other relevant Federal websites, a telephone num-
21 ber, and staff, through which information shall be
22 made available on—

23 (A) ways in which States, political subdivi-
24 sions, and private entities can access Federal
25 grants;

1 (B) emergency preparedness education and
2 awareness tools that businesses, schools, and
3 the general public can use; and

4 (C) other information as appropriate.

5 (3) PUBLIC AWARENESS CAMPAIGN.—The
6 Clearinghouse shall develop a public awareness cam-
7 paign. The campaign shall be ongoing, and shall in-
8 clude an annual theme to be implemented during the
9 National Emergency Preparedness Week established
10 under section 154. The Clearinghouse shall work
11 with heads of agencies to coordinate public service
12 announcements and other information-sharing tools
13 utilizing a wide range of media.

14 (4) BEST PRACTICES INFORMATION.—The
15 Clearinghouse shall compile and disseminate infor-
16 mation on best practices for emergency preparedness
17 identified by the Secretary and the heads of other
18 agencies.

19 **SEC. 153. PILOT PROGRAM.**

20 (a) EMERGENCY PREPAREDNESS ENHANCEMENT
21 PILOT PROGRAM.—The Department shall award grants to
22 private entities to pay for the Federal share of the cost
23 of improving emergency preparedness, and educating em-
24 ployees and other individuals using the entities' facilities
25 about emergency preparedness.

1 (b) USE OF FUNDS.—An entity that receives a grant
2 under this subsection may use the funds made available
3 through the grant to—

4 (1) develop evacuation plans and drills;

5 (2) plan additional or improved security meas-
6 ures, with an emphasis on innovative technologies or
7 practices;

8 (3) deploy innovative emergency preparedness
9 technologies; or

10 (4) educate employees and customers about the
11 development and planning activities described in
12 paragraphs (1) and (2) in innovative ways.

13 (c) FEDERAL SHARE.—The Federal share of the cost
14 described in subsection (a) shall be 50 percent, up to a
15 maximum of \$250,000 per grant recipient.

16 (d) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated \$5,000,000 for each of
18 fiscal years 2003 through 2005 to carry out this section.

19 **SEC. 154. DESIGNATION OF NATIONAL EMERGENCY PRE-**
20 **PAREDNESS WEEK.**

21 (a) NATIONAL WEEK.—

22 (1) DESIGNATION.—Each week that includes
23 September 11 is “National Emergency Preparedness
24 Week”.

1 (2) PROCLAMATION.—The President is re-
2 requested every year to issue a proclamation calling on
3 the people of the United States (including State and
4 local governments and the private sector) to observe
5 the week with appropriate activities and programs.

6 (b) FEDERAL AGENCY ACTIVITIES.—In conjunction
7 with National Emergency Preparedness Week, the head
8 of each agency, as appropriate, shall coordinate with the
9 Department to inform and educate the private sector and
10 the general public about emergency preparedness activi-
11 ties, resources, and tools, giving a high priority to emer-
12 gency preparedness efforts designed to address terrorist
13 attacks.

14 **Subtitle D—Miscellaneous** 15 **Provisions**

16 **SEC. 161. NATIONAL BIO-WEAPONS DEFENSE ANALYSIS** 17 **CENTER.**

18 (a) ESTABLISHMENT.—There is established within
19 the Department of Defense a National Bio-Weapons De-
20 fense Analysis Center (in this section referred to as the
21 “Center”).

22 (b) MISSION.—The mission of the Center is to de-
23 velop countermeasures to potential attacks by terrorists
24 using biological or chemical weapons that are weapons of
25 mass destruction (as defined under section 1403 of the

1 Defense Against Weapons of Mass Destruction Act of
2 1996 (50 U.S.C. 2302(1)) and conduct research and
3 analysis concerning such weapons.

4 **SEC. 162. REVIEW OF FOOD SAFETY.**

5 (a) REVIEW OF FOOD SAFETY LAWS AND FOOD
6 SAFETY ORGANIZATIONAL STRUCTURE.—The Secretary
7 shall enter into an agreement with and provide funding
8 to the National Academy of Sciences to conduct a detailed,
9 comprehensive study which shall—

10 (1) review all Federal statutes and regulations
11 affecting the safety and security of the food supply
12 to determine the effectiveness of the statutes and
13 regulations at protecting the food supply from delib-
14 erate contamination; and

15 (2) review the organizational structure of Fed-
16 eral food safety oversight to determine the efficiency
17 and effectiveness of the organizational structure at
18 protecting the food supply from deliberate contami-
19 nation.

20 (b) REPORT.—

21 (1) IN GENERAL.—Not later than 1 year after
22 the date of enactment of this Act, the National
23 Academy of Sciences shall prepare and submit to the
24 President, the Secretary, and Congress a com-
25 prehensive report containing—

1 (A) the findings and conclusions derived
2 from the reviews conducted under subsection
3 (a); and

4 (B) specific recommendations for
5 improving—

6 (i) the effectiveness and efficiency of
7 Federal food safety and security statutes
8 and regulations; and

9 (ii) the organizational structure of
10 Federal food safety oversight.

11 (2) CONTENTS.—In conjunction with the rec-
12 ommendations under paragraph (1), the report
13 under paragraph (1) shall address—

14 (A) the effectiveness with which Federal
15 food safety statutes and regulations protect
16 public health and ensure the food supply re-
17 mains free from contamination;

18 (B) the shortfalls, redundancies, and in-
19 consistencies in Federal food safety statutes
20 and regulations;

21 (C) the application of resources among
22 Federal food safety oversight agencies;

23 (D) the effectiveness and efficiency of the
24 organizational structure of Federal food safety
25 oversight;

1 (E) the shortfalls, redundancies, and in-
2 consistencies of the organizational structure of
3 Federal food safety oversight; and

4 (F) the merits of a unified, central organi-
5 zational structure of Federal food safety over-
6 sight.

7 (c) RESPONSE OF THE SECRETARY.—Not later than
8 90 days after the date on which the report under this sec-
9 tion is submitted to the Secretary, the Secretary shall pro-
10 vide to the President and Congress the response of the
11 Department to the recommendations of the report and rec-
12 ommendations of the Department to further protect the
13 food supply from contamination.

14 **SEC. 163. EXCHANGE OF EMPLOYEES BETWEEN AGENCIES**
15 **AND STATE OR LOCAL GOVERNMENTS.**

16 (a) FINDINGS.—Congress finds that—

17 (1) information sharing between Federal, State,
18 and local agencies is vital to securing the homeland
19 against terrorist attacks;

20 (2) Federal, State, and local employees working
21 cooperatively can learn from one another and resolve
22 complex issues;

23 (3) Federal, State, and local employees have
24 specialized knowledge that should be consistently

1 shared between and among agencies at all levels of
2 government; and

3 (4) providing training and other support, such
4 as staffing, to the appropriate Federal, State, and
5 local agencies can enhance the ability of an agency
6 to analyze and assess threats against the homeland,
7 develop appropriate responses, and inform the
8 United States public.

9 (b) EXCHANGE OF EMPLOYEES.—

10 (1) IN GENERAL.—The Secretary may provide
11 for the exchange of employees of the Department
12 and State and local agencies in accordance with sub-
13 chapter VI of chapter 33 of title 5, United States
14 Code.

15 (2) CONDITIONS.—With respect to exchanges
16 described under this subsection, the Secretary shall
17 ensure that—

18 (A) any assigned employee shall have ap-
19 propriate training or experience to perform the
20 work required by the assignment; and

21 (B) any assignment occurs under condi-
22 tions that appropriately safeguard classified
23 and other sensitive information.

1 **SEC. 164. WHISTLEBLOWER PROTECTION FOR FEDERAL**
2 **EMPLOYEES WHO ARE AIRPORT SECURITY**
3 **SCREENERS.**

4 Section 111(d) of the Aviation and Transportation
5 Security Act (Public Law 107–71; 115 Stat. 620; 49
6 U.S.C. 44935 note) is amended—

7 (1) by striking “(d) SCREENER PERSONNEL.—
8 Notwithstanding any other provision of law,” and in-
9 serting the following:

10 “(d) SCREENER PERSONNEL.—

11 “(1) IN GENERAL.—Notwithstanding any other
12 provision of law (except as provided under para-
13 graph (2)),”; and

14 (2) by adding at the end the following:

15 “(2) WHISTLEBLOWER PROTECTION.—

16 “(A) DEFINITION.—In this paragraph, the
17 term “security screener” means—

18 “(i) any Federal employee hired as a
19 security screener under subsection (e) of
20 section 44935 of title 49, United States
21 Code; or

22 “(ii) an applicant for the position of a
23 security screener under that subsection.

24 “(B) IN GENERAL.—Notwithstanding
25 paragraph (1)—

1 “(1) IN GENERAL.—No air carrier, contractor,
2 subcontractor, or employer described under para-
3 graph (2)”;

4 (2) by redesignating paragraphs (1) through
5 (4) as subparagraphs (A) through (D), respectively;
6 and

7 (3) by adding at the end the following:

8 “(2) APPLICABLE EMPLOYERS.—Paragraph (1)
9 shall apply to—

10 “(A) an air carrier or contractor or sub-
11 contractor of an air carrier;

12 “(B) an employer of airport security
13 screening personnel, other than the Federal
14 Government, including a State or municipal
15 government, or an airport authority, or a con-
16 tractor of such government or airport authority;
17 or

18 “(C) an employer of private screening per-
19 sonnel described in section 44919 or 44920 of
20 this title.”.

21 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
22 Section 42121(b)(2)(B) of title 49, United States Code,
23 is amended—

24 (1) in clause (i), by striking “paragraphs (1)
25 through (4) of subsection (a)” and inserting “sub-

1 paragraphs (A) through (D) of subsection (a)(1)”;
2 and

3 (2) in clause (iii), by striking “paragraphs (1)
4 through (4) of subsection (a)” and inserting “sub-
5 paragraphs (A) through (D) of subsection (a)(1)”.

6 **SEC. 166. BIOTERRORISM PREPAREDNESS AND RESPONSE**

7 **DIVISION.**

8 Section 319D of the Public Health Service Act (42
9 U.S.C. 2472–4) is amended—

10 (1) by redesignating subsection (c) as sub-
11 section (d); and

12 (2) by inserting after subsection (b), the fol-
13 lowing:

14 “(c) BIOTERRORISM PREPAREDNESS AND RESPONSE
15 DIVISION.—

16 “(1) ESTABLISHMENT.—There is established
17 within the Office of the Director of the Centers for
18 Disease Control and Prevention a Bioterrorism Pre-
19 paredness and Response Division (in this subsection
20 referred to as the ‘Division’).

21 “(2) MISSION.—The Division shall have the fol-
22 lowing primary missions:

23 “(A) To lead and coordinate the activities
24 and responsibilities of the Centers for Disease

1 Control and Prevention with respect to coun-
2 tering bioterrorism.

3 “(B) To coordinate and facilitate the inter-
4 action of Centers for Disease Control and Pre-
5 vention personnel with personnel from the De-
6 partment of Homeland Security and, in so
7 doing, serve as a major contact point for 2-way
8 communications between the jurisdictions of
9 homeland security and public health.

10 “(C) To train and employ a cadre of public
11 health personnel who are dedicated full-time to
12 the countering of bioterrorism.

13 “(3) RESPONSIBILITIES.—In carrying out the
14 mission under paragraph (2), the Division shall as-
15 sume the responsibilities of and budget authority for
16 the Centers for Disease Control and Prevention with
17 respect to the following programs:

18 “(A) The Bioterrorism Preparedness and
19 Response Program.

20 “(B) The Strategic National Stockpile.

21 “(C) Such other programs and responsibil-
22 ities as may be assigned to the Division by the
23 Director of the Centers for Disease Control and
24 Prevention.

1 “(4) DIRECTOR.—There shall be in the Division
2 a Director, who shall be appointed by the Director
3 of the Centers for Disease Control and Prevention,
4 in consultation with the Secretary of Health and
5 Human Services and the Secretary of Homeland Se-
6 curity.

7 “(5) STAFFING.—Under agreements reached
8 between the Director of the Centers for Disease
9 Control and Prevention and the Secretary of Home-
10 land Security—

11 “(A) the Division may be staffed, in part,
12 by personnel assigned from the Department of
13 Homeland Security by the Secretary of Home-
14 land Security; and

15 “(B) the Director of the Centers for Dis-
16 ease Control and Prevention may assign some
17 personnel from the Division to the Department
18 of Homeland Security.”.

19 **SEC. 167. COORDINATION WITH THE DEPARTMENT OF**
20 **HEALTH AND HUMAN SERVICES UNDER THE**
21 **PUBLIC HEALTH SERVICE ACT.**

22 (a) IN GENERAL.—The annual Federal response plan
23 developed by the Secretary under sections 102(b)(14) and
24 134(b)(7) shall be consistent with section 319 of the Pub-
25 lic Health Service Act (42 U.S.C. 247d).

1 (b) DISCLOSURES AMONG RELEVANT AGENCIES.—

2 (1) IN GENERAL.—Full disclosure among rel-
3 evant agencies shall be made in accordance with this
4 subsection.

5 (2) PUBLIC HEALTH EMERGENCY.—During the
6 period in which the Secretary of Health and Human
7 Services has declared the existence of a public health
8 emergency under section 319(a) of the Public
9 Health Service Act (42 U.S.C. 247d(a)), the Sec-
10 retary of Health and Human Services shall keep rel-
11 evant agencies, including the Department of Home-
12 land Security, the Department of Justice, and the
13 Federal Bureau of Investigation, fully and currently
14 informed.

15 (3) POTENTIAL PUBLIC HEALTH EMER-
16 GENCY.—In cases involving, or potentially involving,
17 a public health emergency, but in which no deter-
18 mination of an emergency by the Secretary of
19 Health and Human Services under section 319(a) of
20 the Public Health Service Act (42 U.S.C. 247d(a)),
21 has been made, all relevant agencies, including the
22 Department of Homeland Security, the Department
23 of Justice, and the Federal Bureau of Investigation,
24 shall keep the Secretary of Health and Human Serv-

1 ices and the Director of the Centers for Disease
2 Control and Prevention fully and currently informed.

3 **SEC. 168. RAIL SECURITY ENHANCEMENTS.**

4 (a) IN GENERAL.—There are authorized to be appro-
5 priated to the Department, for the benefit of Amtrak, for
6 the 2-year period beginning on the date of enactment of
7 this Act—

8 (1) \$375,000,000 for grants to finance the cost
9 of enhancements to the security and safety of Am-
10 trak rail passenger service;

11 (2) \$778,000,000 for grants for life safety im-
12 provements to 6 New York Amtrak tunnels built in
13 1910, the Baltimore and Potomac Amtrak tunnel
14 built in 1872, and the Washington, D.C. Union Sta-
15 tion Amtrak tunnels built in 1904 under the Su-
16 preme Court and House and Senate Office Build-
17 ings; and

18 (3) \$55,000,000 for the emergency repair, and
19 returning to service of Amtrak passenger cars and
20 locomotives.

21 (b) AVAILABILITY OF FUNDS.—Amounts appro-
22 priated under subsection (a) shall remain available until
23 expended.

24 (c) COORDINATION WITH EXISTING LAW.—Amounts
25 made available to Amtrak under this section shall not be

1 considered to be Federal assistance for purposes of part
2 C of subtitle V of title 49, United States Code.

3 **SEC. 169. GRANTS FOR FIREFIGHTING PERSONNEL.**

4 (a) Section 33 of the Federal Fire Prevention and
5 Control Act of 1974 (15 U.S.C. 2229) is amended—

6 (1) by redesignating subsections (c), (d), and
7 (e) as subsections (d), (e), and (f), respectively;

8 (2) by inserting after subsection (b) the fol-
9 lowing:

10 “(c) PERSONNEL GRANTS.—

11 “(1) EXCLUSION.—Grants awarded under sub-
12 section (b) to hire ‘employees engaged in fire protec-
13 tion’, as that term is defined in section 3 of the Fair
14 Labor Standards Act (29 U.S.C. 203), shall not be
15 subject to paragraphs (10) or (11) of subsection (b).

16 “(2) DURATION.—Grants awarded under para-
17 graph (1) shall be for a 3-year period.

18 “(3) MAXIMUM AMOUNT.—The total amount of
19 grants awarded under paragraph (1) shall not ex-
20 ceed \$100,000 per firefighter, indexed for inflation,
21 over the 3-year grant period.

22 “(4) FEDERAL SHARE.—

23 “(A) IN GENERAL.—Notwithstanding sub-
24 section (b)(6), the Federal share of a grant
25 under paragraph (1) shall not exceed 75 per-

1 cent of the total salary and benefits cost for ad-
2 ditional firefighters hired.

3 “(B) WAIVER.—The Director may waive
4 the 25 percent non-Federal match under sub-
5 paragraph (A) for a jurisdiction of 50,000 or
6 fewer residents or in cases of extreme hardship.

7 “(5) APPLICATION.—In addition to the infor-
8 mation under subsection (b)(5), an application for a
9 grant under paragraph (1), shall include—

10 “(A) an explanation for the need for Fed-
11 eral assistance; and

12 “(B) specific plans for obtaining necessary
13 support to retain the position following the con-
14 clusion of Federal support.

15 “(6) MAINTENANCE OF EFFORT.—Grants
16 awarded under paragraph (1) shall only be used to
17 pay the salaries and benefits of additional fire-
18 fighting personnel, and shall not be used to supplant
19 funding allocated for personnel from State and local
20 sources.”; and

21 (3) in subsection (f) (as redesignated by para-
22 graph (1)), by adding at the end the following:

23 “(3) \$1,000,000,000 for each of fiscal years
24 2003 and 2004, to be used only for grants under
25 subsection (c).”.

1 **SEC. 170. REVIEW OF TRANSPORTATION SECURITY EN-**
2 **HANCEMENTS.**

3 (a) REVIEW OF TRANSPORTATION VULNERABILITIES
4 AND FEDERAL TRANSPORTATION SECURITY EFFORTS.—
5 The Comptroller General shall conduct a detailed, com-
6 prehensive study which shall—

7 (1) review all available intelligence on terrorist
8 threats against aviation, seaport, rail and transit fa-
9 cilities;

10 (2) review all available information on
11 vulnerabilities at aviation, seaport, rail and transit
12 facilities; and

13 (3) review the steps taken by agencies since
14 September 11, 2001, to improve aviation, seaport,
15 rail, and transit security to determine their effective-
16 ness at protecting passengers and transportation in-
17 frastructure from terrorist attack.

18 (b) REPORT.—Not later than 1 year after the date
19 of enactment of this Act, the Comptroller General shall
20 prepare and submit to Congress and the Secretary a com-
21 prehensive report containing—

22 (1) the findings and conclusions from the re-
23 views conducted under subsection (a); and

24 (2) proposed steps to improve any deficiencies
25 found in aviation, seaport, rail, and transit security

1 including, to the extent possible, the cost of imple-
2 menting the steps.

3 (c) RESPONSE OF THE SECRETARY.—Not later than
4 90 days after the date on which the report under this sec-
5 tion is submitted to the Secretary, the Secretary shall pro-
6 vide to the President and Congress—

7 (1) the response of the Department to the rec-
8 ommendations of the report; and

9 (2) recommendations of the Department to fur-
10 ther protect passengers and transportation infra-
11 structure from terrorist attack.

12 **SEC. 171. INTEROPERABILITY OF INFORMATION SYSTEMS.**

13 (a) IN GENERAL.—The Director of the Office of
14 Management and Budget, in consultation with the Sec-
15 retary and affected entities, shall develop—

16 (1) a comprehensive enterprise architecture for
17 information systems, including communications sys-
18 tems, to achieve interoperability between and among
19 information systems of agencies with responsibility
20 for homeland security; and

21 (2) a plan to achieve interoperability between
22 and among information systems, including commu-
23 nications systems, of agencies with responsibility for
24 homeland security and those of State and local agen-
25 cies with responsibility for homeland security.

1 (b) TIMETABLES.—The Director of the Office of
2 Management and Budget, in consultation with the Sec-
3 retary and affected entities, shall establish timetables for
4 development and implementation of the enterprise archi-
5 tecture and plan referred to in subsection (a).

6 (c) IMPLEMENTATION.—The Director of the Office of
7 Management and Budget, in consultation with the Sec-
8 retary and acting under the responsibilities of the Director
9 under law (including the Clinger-Cohen Act of 1996), shall
10 ensure the implementation of the enterprise architecture
11 developed under subsection (a)(1), and shall coordinate,
12 oversee, and evaluate the management and acquisition of
13 information technology by agencies with responsibility for
14 homeland security to ensure interoperability consistent
15 with the enterprise architecture developed under sub-
16 section (a)(1).

17 (d) AGENCY COOPERATION.—The head of each agen-
18 cy with responsibility for homeland security shall fully co-
19 operate with the Director of the Office of Management
20 and Budget in the development of a comprehensive enter-
21 prise architecture for information systems and in the man-
22 agement and acquisition of information technology con-
23 sistent with the comprehensive enterprise architecture de-
24 veloped under subsection (a)(1).

1 (e) CONTENT.—The enterprise architecture devel-
2 oped under subsection (a)(1), and the information systems
3 managed and acquired under the enterprise architecture,
4 shall possess the characteristics of—

5 (1) rapid deployment;

6 (2) a highly secure environment, providing data
7 access only to authorized users; and

8 (3) the capability for continuous system up-
9 grades to benefit from advances in technology while
10 preserving the integrity of stored data.

11 (f) UPDATED VERSIONS.—The Director of the Office
12 of Management and Budget, in consultation with the Sec-
13 retary, shall oversee and ensure the development of up-
14 dated versions of the enterprise architecture and plan de-
15 veloped under subsection (a), as necessary.

16 (g) REPORT.—The Director of the Office of Manage-
17 ment and Budget, in consultation with the Secretary, shall
18 annually report to Congress on the development and im-
19 plementation of the enterprise architecture and plan re-
20 ferred to under subsection (a).

21 (h) CONSULTATION.—The Director of the Office of
22 Management and Budget shall consult with information
23 systems management experts in the public and private sec-
24 tors, in the development and implementation of the enter-

1 prise architecture and plan referred to under subsection
2 (a).

3 (i) **PRINCIPAL OFFICER.**—The Director of the Office
4 of Management and Budget shall designate, with the ap-
5 proval of the President, a principal officer in the Office
6 of Management and Budget whose primary responsibility
7 shall be to carry out the duties of the Director under this
8 section.

9 **SEC. 172. EXTENSION OF CUSTOMS USER FEES.**

10 Section 13031(j)(3) of the Consolidated Omnibus
11 Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3))
12 is amended by striking “September 30, 2003” and insert-
13 ing “March 31, 2004”.

14 **Subtitle E—Transition Provisions**

15 **SEC. 181. DEFINITIONS.**

16 In this subtitle:

17 (1) **AGENCY.**—The term “agency” includes any
18 entity, organizational unit, or function transferred or
19 to be transferred under this title.

20 (2) **TRANSITION PERIOD.**—The term “transi-
21 tion period” means the 1-year period beginning on
22 the effective date of this division.

23 **SEC. 182. TRANSFER OF AGENCIES.**

24 The transfer of an agency to the Department, as au-
25 thorized by this title, shall occur when the President so

1 directs, but in no event later than the end of the transition
2 period.

3 **SEC. 183. TRANSITIONAL AUTHORITIES.**

4 (a) PROVISION OF ASSISTANCE BY OFFICIALS.—

5 Until an agency is transferred to the Department, any of-
6 ficial having authority over, or functions relating to, the
7 agency immediately before the effective date of this divi-
8 sion shall provide to the Secretary such assistance, includ-
9 ing the use of personnel and assets, as the Secretary may
10 reasonably request in preparing for the transfer and inte-
11 gration of the agency into the Department.

12 (b) SERVICES AND PERSONNEL.—During the transi-
13 tion period, upon the request of the Secretary, the head
14 of any agency (as defined under section 2) may, on a reim-
15 bursable basis, provide services and detail personnel to as-
16 sist with the transition.

17 (c) ACTING OFFICIALS.—

18 (1) DESIGNATION.—During the transition pe-
19 riod, pending the nomination and advice and consent
20 of the Senate to the appointment of an officer re-
21 quired by this division to be appointed by and with
22 such advice and consent, the President may des-
23 ignate any officer whose appointment was required
24 to be made by and with such advice and consent,
25 and who continues as such an officer, to act in such

1 office until the office is filled as provided in this di-
2 vision.

3 (2) COMPENSATION.—While serving as an act-
4 ing officer under paragraph (1), the officer shall re-
5 ceive compensation at the higher of the rate
6 provided—

7 (A) under this division for the office in
8 which that officer acts; or

9 (B) for the office held at the time of des-
10 ignation.

11 (3) PERIOD OF SERVICE.—The person serving
12 as an acting officer under paragraph (1) may serve
13 in the office for the periods described under section
14 3346 of title 5, United States Code, as if the office
15 became vacant on the effective date of this division.

16 (d) EXCEPTION TO ADVICE AND CONSENT REQUIRE-
17 MENT.—Nothing in this Act shall be construed to require
18 the advice and consent of the Senate to the appointment
19 by the President to a position in the Department of any
20 officer—

21 (1) whose agency is transferred to the Depart-
22 ment under this Act;

23 (2) whose appointment was by and with the ad-
24 vice and consent of the Senate;

1 (3) who is proposed to serve in a directorate or
2 office of the Department that is similar to the trans-
3 ferred agency in which the officer served; and

4 (4) whose authority and responsibilities fol-
5 lowing such transfer would be equivalent to those
6 performed prior to such transfer.

7 **SEC. 184. INCIDENTAL TRANSFERS AND TRANSFER OF RE-**
8 **LATED FUNCTIONS.**

9 (a) INCIDENTAL TRANSFERS.—The Director of the
10 Office of Management and Budget, in consultation with
11 the Secretary, shall make such additional incidental dis-
12 positions of personnel, assets, and liabilities held, used,
13 arising from, available, or to be made available, in connec-
14 tion with the functions transferred by this title, as the Di-
15 rector determines necessary to accomplish the purposes of
16 this title.

17 (b) ADJUDICATORY OR REVIEW FUNCTIONS.—

18 (1) IN GENERAL.—At the time an agency is
19 transferred to the Department, the President may
20 also transfer to the Department any agency estab-
21 lished to carry out or support adjudicatory or review
22 functions in relation to the transferred agency.

23 (2) EXCEPTION.—The President may not trans-
24 fer the Executive Office of Immigration Review of
25 the Department of Justice under this subsection.

1 (c) TRANSFER OF RELATED FUNCTIONS.—The
2 transfer, under this title, of an agency that is a subdivision
3 of a department before such transfer shall include the
4 transfer to the Secretary of any function relating to such
5 agency that, on the date before the transfer, was exercised
6 by the head of the department from which such agency
7 is transferred.

8 (d) REFERENCES.—A reference in any other Federal
9 law, Executive order, rule, regulation, delegation of au-
10 thority, or other document pertaining to an agency trans-
11 ferred under this title that refers to the head of the de-
12 partment from which such agency is transferred is deemed
13 to refer to the Secretary.

14 **SEC. 185. IMPLEMENTATION PROGRESS REPORTS AND LEG-**
15 **ISLATIVE RECOMMENDATIONS.**

16 (a) IN GENERAL.—In consultation with the President
17 and in accordance with this section, the Secretary shall
18 prepare implementation progress reports and submit such
19 reports to—

20 (1) the President of the Senate and the Speaker
21 of the House of Representatives for referral to the
22 appropriate committees; and

23 (2) the Comptroller General of the United
24 States.

25 (b) REPORT FREQUENCY.—

1 (1) INITIAL REPORT.—As soon as practicable,
2 and not later than 6 months after the date of enact-
3 ment of this Act, the Secretary shall submit the first
4 implementation progress report.

5 (2) SEMIANNUAL REPORTS.—Following the
6 submission of the report under paragraph (1), the
7 Secretary shall submit additional implementation
8 progress reports not less frequently than once every
9 6 months until all transfers to the Department
10 under this title have been completed.

11 (3) FINAL REPORT.—Not later than 6 months
12 after all transfers to the Department under this title
13 have been completed, the Secretary shall submit a
14 final implementation progress report.

15 (c) CONTENTS.—

16 (1) IN GENERAL.—Each implementation
17 progress report shall report on the progress made in
18 implementing titles I, II, III, and XI, including ful-
19 fillment of the functions transferred under this Act,
20 and shall include all of the information specified
21 under paragraph (2) that the Secretary has gathered
22 as of the date of submission. Information contained
23 in an earlier report may be referenced, rather than
24 set out in full, in a subsequent report. The final im-

1 plementation progress report shall include any re-
2 quired information not yet provided.

3 (2) SPECIFICATIONS.—Each implementation
4 progress report shall contain, to the extent
5 available—

6 (A) with respect to the transfer and incor-
7 poration of entities, organizational units, and
8 functions—

9 (i) the actions needed to transfer and
10 incorporate entities, organizational units,
11 and functions into the Department;

12 (ii) a projected schedule, with mile-
13 stones, for completing the various phases
14 of the transition;

15 (iii) a progress report on taking those
16 actions and meeting the schedule;

17 (iv) the organizational structure of the
18 Department, including a listing of the re-
19 spective directorates, the field offices of the
20 Department, and the executive positions
21 that will be filled by political appointees or
22 career executives;

23 (v) the location of Department head-
24 quarters, including a timeframe for relo-
25 cating to the new location, an estimate of

1 cost for the relocation, and information
2 about which elements of the various agen-
3 cies will be located at headquarters;

4 (vi) unexpended funds and assets, li-
5 abilities, and personnel that will be trans-
6 ferred, and the proposed allocations and
7 disposition within the Department; and

8 (vii) the costs of implementing the
9 transition;

10 (B) with respect to human capital
11 planning—

12 (i) a description of the workforce
13 planning undertaken for the Department,
14 including the preparation of an inventory
15 of skills and competencies available to the
16 Department, to identify any gaps, and to
17 plan for the training, recruitment, and re-
18 tention policies necessary to attract and re-
19 tain a workforce to meet the needs of the
20 Department;

21 (ii) the past and anticipated future
22 record of the Department with respect to
23 recruitment and retention of personnel;

24 (iii) plans or progress reports on the
25 utilization by the Department of existing

1 personnel flexibility, provided by law or
2 through regulations of the President and
3 the Office of Personnel Management, to
4 achieve the human capital needs of the De-
5 partment;

6 (iv) any inequitable disparities in pay
7 or other terms and conditions of employ-
8 ment among employees within the Depart-
9 ment resulting from the consolidation
10 under this division of functions, entities,
11 and personnel previously covered by dis-
12 parate personnel systems; and

13 (v) efforts to address the disparities
14 under clause (iv) using existing personnel
15 flexibility;

16 (C) with respect to information
17 technology—

18 (i) an assessment of the existing and
19 planned information systems of the De-
20 partment; and

21 (ii) a report on the development and
22 implementation of enterprise architecture
23 and of the plan to achieve interoperability;

24 (D) with respect to programmatic
25 implementation—

1 (i) the progress in implementing the
2 programmatic responsibilities of this divi-
3 sion;

4 (ii) the progress in implementing the
5 mission of each entity, organizational unit,
6 and function transferred to the Depart-
7 ment;

8 (iii) recommendations of any other
9 governmental entities, organizational units,
10 or functions that need to be incorporated
11 into the Department in order for the De-
12 partment to function effectively; and

13 (iv) recommendations of any entities,
14 organizational units, or functions not re-
15 lated to homeland security transferred to
16 the Department that need to be trans-
17 ferred from the Department or terminated
18 for the Department to function effectively.

19 (d) LEGISLATIVE RECOMMENDATIONS.—

20 (1) INCLUSION IN REPORT.—The Secretary,
21 after consultation with the appropriate committees
22 of Congress, shall include in the report under this
23 section, recommendations for legislation that the
24 Secretary determines is necessary to—

1 (A) facilitate the integration of transferred
2 entities, organizational units, and functions into
3 the Department;

4 (B) reorganize agencies, executive posi-
5 tions, and the assignment of functions within
6 the Department;

7 (C) address any inequitable disparities in
8 pay or other terms and conditions of employ-
9 ment among employees within the Department
10 resulting from the consolidation of agencies,
11 functions, and personnel previously covered by
12 disparate personnel systems;

13 (D) enable the Secretary to engage in pro-
14 curement essential to the mission of the De-
15 partment;

16 (E) otherwise help further the mission of
17 the Department; and

18 (F) make technical and conforming amend-
19 ments to existing law to reflect the changes
20 made by titles I, II, III, and XI.

21 (2) SEPARATE SUBMISSION OF PROPOSED LEG-
22 ISLATION.—The Secretary may submit the proposed
23 legislation under paragraph (1) to Congress before
24 submitting the balance of the report under this sec-
25 tion.

1 **SEC. 186. TRANSFER AND ALLOCATION.**

2 Except as otherwise provided in this title, the per-
3 sonnel employed in connection with, and the assets, liabil-
4 ities, contracts, property, records, and unexpended balance
5 of appropriations, authorizations, allocations, and other
6 funds employed, held, used, arising from, available to, or
7 to be made available in connection with the agencies trans-
8 ferred under this title, shall be transferred to the Sec-
9 retary for appropriate allocation, subject to the approval
10 of the Director of the Office of Management and Budget
11 and to section 1531 of title 31, United States Code. Unex-
12 pended funds transferred under this subsection shall be
13 used only for the purposes for which the funds were origi-
14 nally authorized and appropriated.

15 **SEC. 187. SAVINGS PROVISIONS.**

16 (a) CONTINUING EFFECT OF LEGAL DOCUMENTS.—
17 All orders, determinations, rules, regulations, permits,
18 agreements, grants, contracts, recognitions of labor orga-
19 nizations, collective bargaining agreements, certificates, li-
20 censes, registrations, privileges, and other administrative
21 actions—

22 (1) which have been issued, made, granted, or
23 allowed to become effective by the President, any
24 Federal agency or official thereof, or by a court of
25 competent jurisdiction, in the performance of func-
26 tions which are transferred under this title; and

1 (2) which are in effect at the time this division
2 takes effect, or were final before the effective date
3 of this division and are to become effective on or
4 after the effective date of this division,
5 shall, to the extent related to such functions, continue in
6 effect according to their terms until modified, terminated,
7 superseded, set aside, or revoked in accordance with law
8 by the President, the Secretary or other authorized offi-
9 cial, or a court of competent jurisdiction, or by operation
10 of law.

11 (b) PROCEEDINGS NOT AFFECTED.—The provisions
12 of this title shall not affect any proceedings, including no-
13 tices of proposed rulemaking, or any application for any
14 license, permit, certificate, or financial assistance pending
15 before an agency at the time this title takes effect, with
16 respect to functions transferred by this title but such pro-
17 ceedings and applications shall continue. Orders shall be
18 issued in such proceedings, appeals shall be taken there-
19 from, and payments shall be made pursuant to such or-
20 ders, as if this title had not been enacted, and orders
21 issued in any such proceedings shall continue in effect
22 until modified, terminated, superseded, or revoked by a
23 duly authorized official, by a court of competent jurisdic-
24 tion, or by operation of law. Nothing in this subsection
25 shall be deemed to prohibit the discontinuance or modi-

1 fication of any such proceeding under the same terms and
2 conditions and to the same extent that such proceeding
3 could have been discontinued or modified if this title had
4 not been enacted.

5 (c) SUITS NOT AFFECTED.—The provisions of this
6 title shall not affect suits commenced before the effective
7 date of this division, and in all such suits, proceedings
8 shall be had, appeals taken, and judgments rendered in
9 the same manner and with the same effect as if this title
10 had not been enacted.

11 (d) NONABATEMENT OF ACTIONS.—No suit, action,
12 or other proceeding commenced by or against an agency,
13 or by or against any individual in the official capacity of
14 such individual as an officer of an agency, shall abate by
15 reason of the enactment of this title.

16 (e) ADMINISTRATIVE ACTIONS RELATING TO PRO-
17 MULGATION OF REGULATIONS.—Any administrative ac-
18 tion relating to the preparation or promulgation of a regu-
19 lation by an agency relating to a function transferred
20 under this title may be continued by the Department with
21 the same effect as if this title had not been enacted.

22 (f) EMPLOYMENT AND PERSONNEL.—

23 (1) EMPLOYEE RIGHTS.—

24 (A) TRANSFERRED AGENCIES.—The De-
25 partment, or a subdivision of the Department,

1 that includes an entity or organizational unit,
2 or subdivision thereof, transferred under this
3 Act, or performs functions transferred under
4 this Act shall not be excluded from coverage of
5 chapter 71 of title 5, United States Code, as a
6 result of any order issued under section
7 7103(b)(1) of title 5, United States Code, after
8 July 19, 2002.

9 (B) TRANSFERRED EMPLOYEES.—An em-
10 ployee transferred to the Department under
11 this Act, who was in an appropriate unit under
12 section 7112 of title 5, United States Code,
13 prior to the transfer, shall not be excluded from
14 a unit under subsection (b)(6) of that section
15 unless—

16 (i) the primary job duty of the em-
17 ployee is materially changed after the
18 transfer; and

19 (ii) the primary job duty of the em-
20 ployee after such change consists of intel-
21 ligence, counterintelligence, or investigative
22 duties directly related to the investigation
23 of terrorism, if it is clearly demonstrated
24 that membership in a unit and coverage
25 under chapter 71 of title 5, United States

1 Code, cannot be applied in a manner that
2 would not have a substantial adverse effect
3 on national security.

4 (C) TRANSFERRED FUNCTIONS.—An em-
5 ployee of the Department who is primarily en-
6 gaged in carrying out a function transferred to
7 the Department under this Act or a function
8 substantially similar to a function so trans-
9 ferred shall not be excluded from a unit under
10 section 7112(b)(6) of title 5, United States
11 Code, unless the function prior to the transfer
12 was performed by an employee excluded from a
13 unit under that section.

14 (D) OTHER AGENCIES, EMPLOYEES, AND
15 FUNCTIONS.—

16 (i) EXCLUSION OF SUBDIVISION.—
17 Subject to paragraph (A), a subdivision of
18 the Department shall not be excluded from
19 coverage under chapter 71 of title 5,
20 United States Code, under section
21 7103(b)(1) of that title unless—

22 (I) the subdivision has, as a pri-
23 mary function, intelligence, counter-
24 intelligence, or investigative duties di-

1 rectly related to terrorism investiga-
2 tion; and

3 (II) the provisions of that chap-
4 ter cannot be applied to that subdivi-
5 sion in a manner consistent with na-
6 tional security requirements and con-
7 siderations.

8 (ii) EXCLUSION OF EMPLOYEE.—Sub-
9 ject to subparagraphs (B) and (C), an em-
10 ployee of the Department shall not be ex-
11 cluded from a unit under section
12 7112(b)(6) of title 5, United States Code,
13 unless the primary job duty of the em-
14 ployee consists of intelligence, counterintel-
15 ligence, or investigative duties directly re-
16 lated to terrorism investigation, if it is
17 clearly demonstrated that membership in a
18 unit and coverage under chapter 71 of title
19 5, United States Code, cannot be applied
20 in a manner that would not have a sub-
21 stantial adverse effect on national security.

22 (E) PRIOR EXCLUSION.—Subparagraphs
23 (A) through (D) shall not apply to any entity
24 or organizational unit, or subdivision thereof,
25 transferred to the Department under this Act

1 that, on July 19, 2002, was excluded from cov-
2 erage under chapter 71 of title 5, United States
3 Code, under section 7103(b)(1) of that title.

4 (2) TERMS AND CONDITIONS OF EMPLOY-
5 MENT.—The transfer of an employee to the Depart-
6 ment under this Act shall not alter the terms and
7 conditions of employment, including compensation,
8 of any employee so transferred.

9 (3) CONDITIONS AND CRITERIA FOR APPOINT-
10 MENT.—Any qualifications, conditions, or criteria re-
11 quired by law for appointments to a position in an
12 agency, or subdivision thereof, transferred to the De-
13 partment under this title, including a requirement
14 that an appointment be made by the President, by
15 and with the advice and consent of the Senate, shall
16 continue to apply with respect to any appointment to
17 the position made after such transfer to the Depart-
18 ment has occurred.

19 (4) WHISTLEBLOWER PROTECTION.—The
20 President may not exclude any position transferred
21 to the Department as a covered position under sec-
22 tion 2302(a)(2)(B)(ii) of title 5, United States Code,
23 to the extent that such exclusion subject to that au-
24 thority was not made before the date of enactment
25 of this Act.

1 (g) NO EFFECT ON INTELLIGENCE AUTHORITIES.—
2 The transfer of authorities, functions, personnel, and as-
3 sets of elements of the United States Government under
4 this title, or the assumption of authorities and functions
5 by the Department under this title, shall not be construed,
6 in cases where such authorities, functions, personnel, and
7 assets are engaged in intelligence activities as defined in
8 the National Security Act of 1947, as affecting the au-
9 thorities of the Director of Central Intelligence, the Sec-
10 retary of Defense, or the heads of departments and agen-
11 cies within the intelligence community.

12 **SEC. 188. TRANSITION PLAN.**

13 (a) IN GENERAL.—Not later than September 15,
14 2002, the President shall submit to Congress a transition
15 plan as set forth in subsection (b).

16 (b) CONTENTS.—

17 (1) IN GENERAL.—The transition plan under
18 subsection (a) shall include a detailed—

19 (A) plan for the transition to the Depart-
20 ment and implementation of titles I, II, and III
21 and division B; and

22 (B) proposal for the financing of those op-
23 erations and needs of the Department that do
24 not represent solely the continuation of func-

1 tions for which appropriations already are avail-
2 able.

3 (2) FINANCING PROPOSAL.—The financing pro-
4 posal under paragraph (1)(B) may consist of any
5 combination of specific appropriations transfers, spe-
6 cific reprogrammings, and new specific appropria-
7 tions as the President considers advisable.

8 **SEC. 189. USE OF APPROPRIATED FUNDS.**

9 (a) APPLICABILITY OF THIS SECTION.—Notwith-
10 standing any other provision of this Act or any other law,
11 this section shall apply to the use of any funds, disposal
12 of property, and acceptance, use, and disposal of gifts, or
13 donations of services or property, of, for, or by the Depart-
14 ment, including any agencies, entities, or other organiza-
15 tions transferred to the Department under this Act, the
16 Office, and the National Combating Terrorism Strategy
17 Panel.

18 (b) USE OF TRANSFERRED FUNDS.—Except as may
19 be provided in an appropriations Act in accordance with
20 subsection (d), balances of appropriations and any other
21 funds or assets transferred under this Act—

22 (1) shall be available only for the purposes for
23 which they were originally available;

24 (2) shall remain subject to the same conditions
25 and limitations provided by the law originally appro-

1 priating or otherwise making available the amount,
2 including limitations and notification requirements
3 related to the reprogramming of appropriated funds;
4 and

5 (3) shall not be used to fund any new position
6 established under this Act.

7 (c) NOTIFICATION REGARDING TRANSFERS.—The
8 President shall notify Congress not less than 15 days be-
9 fore any transfer of appropriations balances, other funds,
10 or assets under this Act.

11 (d) ADDITIONAL USES OF FUNDS DURING TRANSI-
12 TION.—Subject to subsection (c), amounts transferred to,
13 or otherwise made available to, the Department may be
14 used during the transition period for purposes in addition
15 to those for which they were originally available (including
16 by transfer among accounts of the Department), but only
17 to the extent such transfer or use is specifically permitted
18 in advance in an appropriations Act and only under the
19 conditions and for the purposes specified in such appro-
20 priations Act.

21 (e) DISPOSAL OF PROPERTY.—

22 (1) STRICT COMPLIANCE.—If specifically au-
23 thorized to dispose of real property in this or any
24 other Act, the Secretary shall exercise this authority
25 in strict compliance with section 204 of the Federal

1 Property and Administrative Services Act of 1949
2 (40 U.S.C. 485).

3 (2) DEPOSIT OF PROCEEDS.—The Secretary
4 shall deposit the proceeds of any exercise of property
5 disposal authority into the miscellaneous receipts of
6 the Treasury in accordance with section 3302(b) of
7 title 31, United States Code.

8 (f) GIFTS.—Gifts or donations of services or property
9 of or for the Department, the Office, or the National Com-
10 bating Terrorism Strategy Panel may not be accepted,
11 used, or disposed of unless specifically permitted in ad-
12 vance in an appropriations Act and only under the condi-
13 tions and for the purposes specified in such appropriations
14 Act.

15 (g) BUDGET REQUEST.—Under section 1105 of title
16 31, United States Code, the President shall submit to
17 Congress a detailed budget request for the Department
18 for fiscal year 2004.

19 **Subtitle F—Administrative**
20 **Provisions**

21 **SEC. 191. REORGANIZATIONS AND DELEGATIONS.**

22 (a) REORGANIZATION AUTHORITY.—

23 (1) IN GENERAL.—The Secretary may, as nec-
24 essary and appropriate—

1 (A) allocate, or reallocate, functions among
2 officers of the Department; and

3 (B) establish, consolidate, alter, or dis-
4 continue organizational entities within the De-
5 partment.

6 (2) LIMITATION.—Paragraph (1) does not
7 apply to—

8 (A) any office, bureau, unit, or other entity
9 established by law and transferred to the De-
10 partment;

11 (B) any function vested by law in an entity
12 referred to in subparagraph (A) or vested by
13 law in an officer of such an entity; or

14 (C) the alteration of the assignment or del-
15 egation of functions assigned by this Act to any
16 officer or organizational entity of the Depart-
17 ment.

18 (b) DELEGATION AUTHORITY.—

19 (1) SECRETARY.—The Secretary may—

20 (A) delegate any of the functions of the
21 Secretary; and

22 (B) authorize successive redelegations of
23 functions of the Secretary to other officers and
24 employees of the Department.

1 (2) OFFICERS.—An officer of the Department
2 may—

3 (A) delegate any function assigned to the
4 officer by law; and

5 (B) authorize successive redelegations of
6 functions assigned to the officer by law to other
7 officers and employees of the Department.

8 (3) LIMITATIONS.—

9 (A) INTERUNIT DELEGATION.—Any func-
10 tion assigned by this title to an organizational
11 unit of the Department or to the head of an or-
12 ganizational unit of the Department may not be
13 delegated to an officer or employee outside of
14 that unit.

15 (B) FUNCTIONS.—Any function vested by
16 law in an entity established by law and trans-
17 ferred to the Department or vested by law in an
18 officer of such an entity may not be delegated
19 to an officer or employee outside of that entity.

20 **SEC. 192. REPORTING REQUIREMENTS.**

21 (a) ANNUAL EVALUATIONS.—The Comptroller Gen-
22 eral of the United States shall monitor and evaluate the
23 implementation of titles I, II, III, and XI. Not later than
24 15 months after the effective date of this division, and
25 every year thereafter for the succeeding 5 years, the

1 Comptroller General shall submit a report to Congress
2 containing—

3 (1) an evaluation of the implementation
4 progress reports submitted to Congress and the
5 Comptroller General by the Secretary under section
6 185;

7 (2) the findings and conclusions of the Comp-
8 troller General of the United States resulting from
9 the monitoring and evaluation conducted under this
10 subsection, including evaluations of how successfully
11 the Department is meeting—

12 (A) the homeland security missions of the
13 Department; and

14 (B) the other missions of the Department;
15 and

16 (3) any recommendations for legislation or ad-
17 ministrative action the Comptroller General con-
18 siders appropriate.

19 (b) BIENNIAL REPORTS.—Every 2 years the Sec-
20 retary shall submit to Congress—

21 (1) a report assessing the resources and re-
22 quirements of executive agencies relating to border
23 security and emergency preparedness issues; and

24 (2) a report certifying the preparedness of the
25 United States to prevent, protect against, and re-

1 spond to natural disasters, cyber attacks, and inci-
2 dents involving weapons of mass destruction.

3 (c) POINT OF ENTRY MANAGEMENT REPORT.—Not
4 later than 1 year after the effective date of this division,
5 the Secretary shall submit to Congress a report outlining
6 proposed steps to consolidate management authority for
7 Federal operations at key points of entry into the United
8 States.

9 (d) COMBATING TERRORISM AND HOMELAND SECU-
10 RITY.—Not later than 270 days after the date of enact-
11 ment of this Act, the Secretary and the Director shall—

12 (1) in consultation with the head of each de-
13 partment or agency affected by titles I, II, III, and
14 XI, develop definitions of the terms “combating ter-
15 rorism” and “homeland security” for purposes of
16 those titles and shall consider such definitions in de-
17 termining the mission of the Department and Office;
18 and

19 (2) submit a report to Congress on such defini-
20 tions.

21 (e) RESULTS-BASED MANAGEMENT.—

22 (1) STRATEGIC PLAN.—

23 (A) IN GENERAL.—Not later than Sep-
24 tember 30, 2003, consistent with the require-
25 ments of section 306 of title 5, United States

1 Code, the Secretary, in consultation with Con-
2 gress, shall prepare and submit to the Director
3 of the Office of Management and Budget and
4 to Congress a strategic plan for the program
5 activities of the Department.

6 (B) PERIOD; REVISIONS.—The strategic
7 plan shall cover a period of not less than 5
8 years from the fiscal year in which it is sub-
9 mitted and it shall be updated and revised at
10 least every 3 years.

11 (C) CONTENTS.—The strategic plan shall
12 describe the planned results for the non-home-
13 land security related activities of the Depart-
14 ment and the homeland security related activi-
15 ties of the Department.

16 (2) PERFORMANCE PLAN.—

17 (A) IN GENERAL.—In accordance with sec-
18 tion 1115 of title 31, United States Code, the
19 Secretary shall prepare an annual performance
20 plan covering each program activity set forth in
21 the budget of the Department.

22 (B) CONTENTS.—The performance plan
23 shall include—

24 (i) the goals to be achieved during the
25 year;

- 1 (ii) strategies and resources required
2 to meet the goals; and
3 (iii) the means used to verify and vali-
4 date measured values.

5 (C) SCOPE.—The performance plan should
6 describe the planned results for the non-home-
7 land security related activities of the Depart-
8 ment and the homeland security related activi-
9 ties of the Department.

10 (3) PERFORMANCE REPORT.—

11 (A) IN GENERAL.—In accordance with sec-
12 tion 1116 of title 31, United States Code, the
13 Secretary shall prepare and submit to the
14 President and Congress an annual report on
15 program performance for each fiscal year.

16 (B) CONTENTS.—The performance report
17 shall include the actual results achieved during
18 the year compared to the goals expressed in the
19 performance plan for that year.

20 **SEC. 193. ENVIRONMENTAL PROTECTION, SAFETY, AND**
21 **HEALTH REQUIREMENTS.**

22 The Secretary shall—

- 23 (1) ensure that the Department complies with
24 all applicable environmental, safety, and health stat-
25 utes and requirements; and

1 (2) whenever necessary due to an urgent home-
2 land security need, procure temporary (not to exceed
3 1 year) or intermittent personal services, including
4 the services of experts or consultants (or organiza-
5 tions thereof), without regard to the pay limitations
6 of such section 3109.

7 **SEC. 196. PRESERVING NON-HOMELAND SECURITY MIS-**
8 **SION PERFORMANCE.**

9 (a) IN GENERAL.—For each entity transferred into
10 the Department that has non-homeland security functions,
11 the respective Under Secretary in charge, in conjunction
12 with the head of such entity, shall report to the Secretary,
13 the Comptroller General, and the appropriate committees
14 of Congress on the performance of the entity in all of its
15 missions, with a particular emphasis on examining the
16 continued level of performance of the non-homeland secu-
17 rity missions.

18 (b) CONTENTS.—The report referred to in subsection

19 (a) shall—

20 (1) to the greatest extent possible, provide an
21 inventory of the non-homeland security functions of
22 the entity and identify the capabilities of the entity
23 with respect to those functions, including—

24 (A) the number of employees who carry
25 out those functions;

1 (B) the budget for those functions; and

2 (C) the flexibilities, personnel or otherwise,
3 currently used to carry out those functions;

4 (2) contain information related to the roles, re-
5 sponsibilities, missions, organizational structure, ca-
6 pabilities, personnel assets, and annual budgets, spe-
7 cifically with respect to the capabilities of the entity
8 to accomplish its non-homeland security missions
9 without any diminishment; and

10 (3) contain information regarding whether any
11 changes are required to the roles, responsibilities,
12 missions, organizational structure, modernization
13 programs, projects, activities, recruitment and reten-
14 tion programs, and annual fiscal resources to enable
15 the entity to accomplish its non-homeland security
16 missions without diminishment.

17 (c) **TIMING.**—Each Under Secretary shall provide the
18 report referred to in subsection (a) annually, for the 5
19 years following the transfer of the entity to the Depart-
20 ment.

21 **SEC. 197. FUTURE YEARS HOMELAND SECURITY PROGRAM.**

22 (a) **IN GENERAL.**—Each budget request submitted to
23 Congress for the Department under section 1105 of title
24 31, United States Code, and each budget request sub-
25 mitted to Congress for the National Terrorism Prevention

1 and Response Program shall be accompanied by a Future
2 Years Homeland Security Program.

3 (b) CONTENTS.—The Future Years Homeland Secu-
4 rity Program under subsection (a) shall be structured, and
5 include the same type of information and level of detail,
6 as the Future Years Defense Program submitted to Con-
7 gress by the Department of Defense under section 221
8 of title 10, United States Code.

9 (c) EFFECTIVE DATE.—This section shall take effect
10 with respect to the preparation and submission of the fis-
11 cal year 2005 budget request for the Department and the
12 fiscal year 2005 budget request for the National Ter-
13 rorism Prevention and Response Program, and for any
14 subsequent fiscal year.

15 **SEC. 198. PROTECTION OF VOLUNTARILY FURNISHED CON-**
16 **FIDENTIAL INFORMATION.**

17 (a) DEFINITIONS.—In this section:

18 (1) CRITICAL INFRASTRUCTURE.—The term
19 “critical infrastructure” has the meaning given that
20 term in section 1016(e) of the USA PATRIOT ACT
21 of 2001 (42 U.S.C. 5195(e)).

22 (2) FURNISHED VOLUNTARILY.—

23 (A) DEFINITION.—The term “furnished
24 voluntarily” means a submission of a record
25 that—

1 (i) is made to the Department in the
2 absence of authority of the Department re-
3 quiring that record to be submitted; and

4 (ii) is not submitted or used to satisfy
5 any legal requirement or obligation or to
6 obtain any grant, permit, benefit (such as
7 agency forbearance, loans, or reduction or
8 modifications of agency penalties or rul-
9 ings), or other approval from the Govern-
10 ment.

11 (B) BENEFIT.—In this paragraph, the
12 term “benefit” does not include any warning,
13 alert, or other risk analysis by the Department.

14 (b) IN GENERAL.—Notwithstanding any other provi-
15 sion of law, a record pertaining to the vulnerability of and
16 threats to critical infrastructure (such as attacks, re-
17 sponse, and recovery efforts) that is furnished voluntarily
18 to the Department shall not be made available under sec-
19 tion 552 of title 5, United States Code, if—

20 (1) the provider would not customarily make
21 the record available to the public; and

22 (2) the record is designated and certified by the
23 provider, in a manner specified by the Department,
24 as confidential and not customarily made available
25 to the public.

1 (c) RECORDS SHARED WITH OTHER AGENCIES.—

2 (1) IN GENERAL.—

3 (A) RESPONSE TO REQUEST.—An agency
4 in receipt of a record that was furnished volun-
5 tarily to the Department and subsequently
6 shared with the agency shall, upon receipt of a
7 request under section 552 of title 5, United
8 States Code, for the record—

9 (i) not make the record available; and

10 (ii) refer the request to the Depart-
11 ment for processing and response in ac-
12 cordance with this section.

13 (B) SEGREGABLE PORTION OF RECORD.—

14 Any reasonably segregable portion of a record
15 shall be provided to the person requesting the
16 record after deletion of any portion which is ex-
17 empt under this section.

18 (2) DISCLOSURE OF INDEPENDENTLY FUR-
19 NISHED RECORDS.—Notwithstanding paragraph (1),
20 nothing in this section shall prohibit an agency from
21 making available under section 552 of title 5, United
22 States Code, any record that the agency receives
23 independently of the Department, regardless of
24 whether or not the Department has a similar or
25 identical record.

1 (d) WITHDRAWAL OF CONFIDENTIAL DESIGNA-
2 TION.—The provider of a record that is furnished volun-
3 tarily to the Department under subsection (b) may at any
4 time withdraw, in a manner specified by the Department,
5 the confidential designation.

6 (e) PROCEDURES.—The Secretary shall prescribe
7 procedures for—

8 (1) the acknowledgement of receipt of records
9 furnished voluntarily;

10 (2) the designation, certification, and marking
11 of records furnished voluntarily as confidential and
12 not customarily made available to the public;

13 (3) the care and storage of records furnished
14 voluntarily;

15 (4) the protection and maintenance of the con-
16 fidentiality of records furnished voluntarily; and

17 (5) the withdrawal of the confidential designa-
18 tion of records under subsection (d).

19 (f) EFFECT ON STATE AND LOCAL LAW.—Nothing
20 in this section shall be construed as preempting or other-
21 wise modifying State or local law concerning the disclosure
22 of any information that a State or local government re-
23 ceives independently of the Department.

24 (g) REPORT.—

1 (1) REQUIREMENT.—Not later than 18 months
2 after the date of the enactment of this Act, the
3 Comptroller General of the United States shall sub-
4 mit to the committees of Congress specified in para-
5 graph (2) a report on the implementation and use
6 of this section, including—

7 (A) the number of persons in the private
8 sector, and the number of State and local agen-
9 cies, that furnished voluntarily records to the
10 Department under this section;

11 (B) the number of requests for access to
12 records granted or denied under this section;
13 and

14 (C) such recommendations as the Comp-
15 troller General considers appropriate regarding
16 improvements in the collection and analysis of
17 sensitive information held by persons in the pri-
18 vate sector, or by State and local agencies, re-
19 lating to vulnerabilities of and threats to critical
20 infrastructure, including the response to such
21 vulnerabilities and threats.

22 (2) COMMITTEES OF CONGRESS.—The commit-
23 tees of Congress specified in this paragraph are—

24 (A) the Committees on the Judiciary and
25 Governmental Affairs of the Senate; and

1 (B) the Committees on the Judiciary and
2 Government Reform and Oversight of the
3 House of Representatives.

4 (3) FORM.—The report shall be submitted in
5 unclassified form, but may include a classified
6 annex.

7 **SEC. 199. AUTHORIZATION OF APPROPRIATIONS.**

8 There are authorized to be appropriated such sums
9 as may be necessary to—

10 (1) enable the Secretary to administer and
11 manage the Department; and

12 (2) carry out the functions of the Department
13 other than those transferred to the Department
14 under this Act.

15 **TITLE II—NATIONAL OFFICE**
16 **FOR COMBATING TERRORISM**

17 **SEC. 201. NATIONAL OFFICE FOR COMBATING TERRORISM.**

18 (a) ESTABLISHMENT.—There is established within
19 the Executive Office of the President the National Office
20 for Combating Terrorism.

21 (b) OFFICERS.—

22 (1) DIRECTOR.—The head of the Office shall be
23 the Director of the National Office for Combating
24 Terrorism, who shall be appointed by the President,
25 by and with the advice and consent of the Senate.

1 (2) EXECUTIVE SCHEDULE LEVEL I POSI-
2 TION.—Section 5312 of title 5, United States Code,
3 is amended by adding at the end the following:

4 “Director of the National Office for Combating
5 Terrorism.”.

6 (3) OTHER OFFICERS.—The President shall as-
7 sign to the Office such other officers as the Presi-
8 dent, in consultation with the Director, considers ap-
9 propriate to discharge the responsibilities of the Of-
10 fice.

11 (c) RESPONSIBILITIES.—Subject to the direction and
12 control of the President, the responsibilities of the Office
13 shall include the following:

14 (1) To develop national objectives and policies
15 for combating terrorism.

16 (2) To ensure that relevant agencies and enti-
17 ties conduct appropriate risk analysis and risk man-
18 agement activities and provide pertinent information
19 derived such activities to the Office, and to review
20 and integrate such information into the development
21 of the Strategy.

22 (3) To direct and review the development of a
23 comprehensive national assessment of terrorist
24 threats and vulnerabilities to those threats, which
25 shall be—

1 (A) conducted by the heads of relevant
2 agencies, the National Security Advisor, the Di-
3 rector of the Office of Science and Technology
4 Policy, and other involved White House entities;
5 and

6 (B) used in preparation of the Strategy.

7 (4) To develop, with the Secretary of Homeland
8 Security, the Strategy under title III.

9 (5) To coordinate, oversee, and evaluate the im-
10 plementation and execution of the Strategy by agen-
11 cies with responsibilities for combating terrorism
12 under the Strategy, particularly those involving mili-
13 tary, intelligence, law enforcement, diplomatic, and
14 scientific and technological assets.

15 (6) To work with agencies, including the Envi-
16 ronmental Protection Agency, to ensure that appro-
17 priate actions are taken to address vulnerabilities
18 identified by the Directorate of Critical Infrastruc-
19 ture Protection within the Department.

20 (7)(A) To coordinate, with the advice of the
21 Secretary, the development of a comprehensive an-
22 nual budget for the programs and activities under
23 the Strategy, including the budgets of the military
24 departments and agencies within the National For-
25 eign Intelligence Program relating to international

1 terrorism, but excluding military programs, projects,
2 or activities relating to force protection.

3 (B) To have the lead responsibility for budget
4 recommendations relating to military, intelligence,
5 law enforcement, and diplomatic assets in support of
6 the Strategy.

7 (8) To exercise funding authority for Federal
8 terrorism prevention and response agencies in ac-
9 cordance with section 202.

10 (9) To serve as an advisor to the National Se-
11 curity Council.

12 (10) To work with the Director of the Federal
13 Bureau of Investigation to ensure that—

14 (A) the Director of the National Office for
15 Combating Terrorism receives the relevant in-
16 formation from the Federal Bureau of Inves-
17 tigation related to terrorism; and

18 (B) such information is made available to
19 the appropriate agencies and to State and local
20 law enforcement officials.

21 (d) RESOURCES.—In consultation with the Director,
22 the President shall assign or allocate to the Office such
23 resources, including funds, personnel, and other resources,
24 as the President considers appropriate and that are avail-
25 able to the President under appropriations Acts for fiscal

1 year 2002 and fiscal year 2003 in the “Office of Adminis-
2 tration” appropriations account or the “Office of Home-
3 land Security” appropriations account. Any transfer or re-
4 programming of funds made under this section shall be
5 subject to the reprogramming procedures in the Treasury
6 and General Government Appropriations Act, 2002 (Pub-
7 lic Law 107–67).

8 (e) OVERSIGHT BY CONGRESS.—The establishment
9 of the Office within the Executive Office of the President
10 shall not be construed as affecting access by Congress, or
11 any committee of Congress, to—

12 (1) any information, document, record, or paper
13 in the possession of the Office or any study con-
14 ducted by or at the direction of the Director; or

15 (2) any personnel of the Office.

16 **SEC. 202. FUNDING FOR STRATEGY PROGRAMS AND AC-**
17 **TIVITIES.**

18 (a) BUDGET REVIEW.—In consultation with the Di-
19 rector of the Office of Management and Budget, the Sec-
20 retary, and the heads of other agencies, the National Secu-
21 rity Advisor, the Director of the Office of Science and
22 Technology Policy, and other involved White House enti-
23 ties, the Director shall—

24 (1) identify programs that contribute to the
25 Strategy; and

1 (2) in the development of the budget submitted
2 by the President to Congress under section 1105 of
3 title 31, United States Code, review and provide ad-
4 vice to the heads of agencies on the amount and use
5 of funding for programs identified under paragraph
6 (1).

7 (b) SUBMITTAL OF PROPOSED BUDGETS TO THE DI-
8 RECTOR.—

9 (1) IN GENERAL.—The head of each Federal
10 terrorism prevention and response agency shall sub-
11 mit to the Director each year the proposed budget
12 of that agency for the fiscal year beginning in that
13 year for programs and activities of that agency
14 under the Strategy during that fiscal year.

15 (2) DATE FOR SUBMISSION.—The proposed
16 budget of an agency for a fiscal year under para-
17 graph (1) shall be submitted to the Director—

18 (A) not later than the date on which the
19 agency completes the collection of information
20 for purposes of the submission by the President
21 of a budget to Congress for that fiscal year
22 under section 1105 of title 31, United States
23 Code; and

1 (B) before that information is submitted to
2 the Director of the Office of Management and
3 Budget for such purposes.

4 (3) **FORMAT.**—In consultation with the Director
5 of the Office of Management and Budget, the Direc-
6 tor shall specify the format for the submittal of pro-
7 posed budgets under paragraph (1).

8 (c) **REVIEW OF PROPOSED BUDGETS.**—

9 (1) **IN GENERAL.**—The Director shall review
10 each proposed budget submitted to the Director
11 under subsection (b).

12 (2) **INADEQUATE FUNDING DETERMINATION.**—
13 If the Director determines under paragraph (1) that
14 the proposed budget of an agency for a fiscal year
15 under subsection (b) is inadequate, in whole or in
16 part, to permit the implementation by the agency
17 during the fiscal year of the goals of the Strategy
18 applicable to the agency during the fiscal year, the
19 Director shall submit to the head of the agency—

20 (A) a notice in writing of the determina-
21 tion; and

22 (B) a statement of the proposed funding,
23 and any specific initiatives, that would (as de-
24 termined by the Director) permit the implemen-
25 tation by the agency during the fiscal year of

1 the goals of the Strategy applicable to the agen-
2 cy during the fiscal year.

3 (3) ADEQUATE FUNDING DETERMINATION.—If
4 the Director determines under paragraph (1) that
5 the proposed budget of an agency for a fiscal year
6 under subsection (b) is adequate to permit the im-
7 plementation by the agency during the fiscal year of
8 the goals of the Strategy applicable to the agency
9 during the fiscal year, the Director shall submit to
10 the head of the agency a notice in writing of that
11 determination.

12 (4) MAINTENANCE OF RECORDS.—The Director
13 shall maintain a record of—

14 (A) each notice submitted under paragraph
15 (2), including any statement accompanying
16 such notice; and

17 (B) each notice submitted under paragraph
18 (3).

19 (d) AGENCY RESPONSE TO REVIEW OF PROPOSED
20 BUDGETS.—

21 (1) INCORPORATION OF PROPOSED FUNDING.—
22 The head of a Federal terrorism prevention and re-
23 sponse agency that receives a notice under sub-
24 section (c)(2) with respect to the proposed budget of
25 the agency for a fiscal year shall incorporate the

1 proposed funding, and any initiatives, set forth in
2 the statement accompanying the notice into the in-
3 formation submitted to the Office of Management
4 and Budget in support of the proposed budget for
5 the agency for the fiscal year under section 1105 of
6 title 31, United States Code.

7 (2) ADDITIONAL INFORMATION.—The head of
8 each agency described under paragraph (1) for a fis-
9 cal year shall include as an appendix to the informa-
10 tion submitted to the Office of Management and
11 Budget under that paragraph for the fiscal year the
12 following:

13 (A) A summary of any modifications in the
14 proposed budget of such agency for the fiscal
15 year under paragraph (1).

16 (B) An assessment of the effect of such
17 modifications on the capacity of such agency to
18 perform its responsibilities during the fiscal
19 year other than its responsibilities under the
20 Strategy.

21 (3) SUBMISSION TO CONGRESS.—

22 (A) IN GENERAL.—Subject to subpara-
23 graph (B), the head of each agency described
24 under paragraph (1) for a fiscal year shall sub-
25 mit to Congress a copy of the appendix sub-

1 mitted to the Office of Management and Budg-
2 et for the fiscal year under paragraph (2) at
3 the same time the budget of the President for
4 the fiscal year is submitted to Congress under
5 section 1105 of title 31, United States Code.

6 (B) ELEMENTS WITHIN INTELLIGENCE
7 PROGRAMS.—In the submission of the copy of
8 the appendix to Congress under subparagraph
9 (A), those elements of the appendix which are
10 within the National Foreign Intelligence Pro-
11 gram shall be submitted to—

12 (i) the Select Committee on Intel-
13 ligence of the Senate;

14 (ii) the Permanent Select Committee
15 on Intelligence of the House of Represent-
16 atives;

17 (iii) the Committee on Appropriations
18 of the Senate; and

19 (iv) the Committee on Appropriations
20 of the House of Representatives.

21 (e) SUBMITTAL OF REVISED PROPOSED BUDGETS.—

22 (1) IN GENERAL.—At the same time the head
23 of a Federal terrorism prevention and response
24 agency submits its proposed budget for a fiscal year
25 to the Office of Management and Budget for pur-

1 poses of the submission by the President of a budget
2 to Congress for the fiscal year under section 1105
3 of title 31, United States Code, the head of the
4 agency shall submit a copy of the proposed budget
5 to the Director.

6 (2) REVIEW AND DECERTIFICATION AUTHOR-
7 ITY.—The Director of the National Office for Com-
8 bating Terrorism—

9 (A) shall review each proposed budget sub-
10 mitted under paragraph (1); and

11 (B) in the case of a proposed budget for a
12 fiscal year to which subsection (c)(2) applies in
13 the fiscal year, if the Director determines as a
14 result of the review that the proposed budget
15 does not include the proposed funding, and any
16 initiatives, set forth in the notice under that
17 subsection with respect to the proposed
18 budget—

19 (i) may decertify the proposed budget;

20 and

21 (ii) with respect to any proposed
22 budget so decertified, shall submit to
23 Congress—

24 (I) a notice of the decertification;

1 (II) a copy of the notice sub-
2 mitted to the agency concerned for
3 the fiscal year under subsection
4 (c)(2)(B); and
5 (III) the budget recommenda-
6 tions made under this section.

7 (f) NATIONAL TERRORISM PREVENTION AND RE-
8 SPONSE PROGRAM BUDGET.—

9 (1) IN GENERAL.—For each fiscal year, fol-
10 lowing the submittal of proposed budgets to the Di-
11 rector under subsection (b), the Director shall, in
12 consultation with the Secretary and the head of each
13 Federal terrorism prevention and response agency
14 concerned—

15 (A) develop a consolidated proposed budget
16 for such fiscal year for all programs and activi-
17 ties under the Strategy for such fiscal year; and

18 (B) subject to paragraph (2), submit the
19 consolidated proposed budget to the President
20 and to Congress.

21 (2) ELEMENTS WITHIN INTELLIGENCE PRO-
22 GRAMS.—In the submission of the consolidated pro-
23 posed budget to Congress under paragraph (1)(B),
24 those elements of the budget which are within the

1 National Foreign Intelligence Program shall be sub-
2 mitted to—

3 (A) the Select Committee on Intelligence of
4 the Senate;

5 (B) the Permanent Select Committee on
6 Intelligence of the House of Representatives;

7 (C) the Committee on Appropriations of
8 the Senate; and

9 (D) the Committee on Appropriations of
10 the House of Representatives.

11 (3) DESIGNATION OF CONSOLIDATED PRO-
12 POSED BUDGET.—The consolidated proposed budget
13 for a fiscal year under this subsection shall be
14 known as the National Terrorism Prevention and
15 Response Program Budget for the fiscal year.

16 (g) REPROGRAMMING AND TRANSFER REQUESTS.—

17 (1) APPROVAL BY THE DIRECTOR.—The head
18 of a Federal terrorism prevention and response
19 agency may not submit to Congress a request for
20 the reprogramming or transfer of any funds speci-
21 fied in the National Terrorism Prevention and Re-
22 sponse Program Budget for programs or activities of
23 the agency under the Strategy for a fiscal year in
24 excess of \$5,000,000 without the approval of the Di-
25 rector.

1 (2) APPROVAL BY THE PRESIDENT.—The
2 President may, upon the request of the head of the
3 agency concerned, permit the submittal to Congress
4 of a request previously disapproved by the Director
5 under paragraph (1) if the President determines
6 that the submittal of the request to Congress will
7 further the purposes of the Strategy.

8 **TITLE III—NATIONAL STRATEGY**
9 **FOR COMBATING TERRORISM**
10 **AND THE HOMELAND SECU-**
11 **RITY RESPONSE**

12 **SEC. 301. STRATEGY.**

13 (a) DEVELOPMENT.—The Secretary and the Director
14 shall develop the National Strategy for Combating Ter-
15 rorism and Homeland Security Response for detection,
16 prevention, protection, response, and recovery to counter
17 terrorist threats, including threat, vulnerability, and risk
18 assessment and analysis, and the plans, policies, training,
19 exercises, evaluation, and interagency cooperation that ad-
20 dress each such action relating to such threats.

21 (b) RESPONSIBILITIES.—

22 (1) RESPONSIBILITIES OF THE SECRETARY.—
23 The Secretary shall have responsibility for portions
24 of the Strategy addressing border security, critical
25 infrastructure protection, emergency preparation

1 and response, and integrating State and local efforts
2 with activities of the Federal Government.

3 (2) RESPONSIBILITIES OF THE DIRECTOR.—

4 The Director shall have overall responsibility for de-
5 velopment of the Strategy, and particularly for those
6 portions of the Strategy addressing intelligence, mili-
7 tary assets, law enforcement, and diplomacy.

8 (c) CONTENTS.—The contents of the Strategy shall
9 include—

10 (1) a comprehensive statement of mission,
11 goals, objectives, desired end-state, priorities and re-
12 sponsibilities;

13 (2) policies and procedures to maximize the col-
14 lection, translation, analysis, exploitation, and dis-
15 semination of information relating to combating ter-
16 rorism and the homeland security response through-
17 out the Federal Government and with State and
18 local authorities;

19 (3) plans for countering chemical, biological, ra-
20 diological, nuclear and explosives, and cyber threats;

21 (4) plans for integrating the capabilities and as-
22 sets of the United States military into all aspects of
23 the Strategy;

24 (5) plans for improving the resources of, coordi-
25 nation among, and effectiveness of health and med-

1 ical sectors for detecting and responding to terrorist
2 attacks on the homeland;

3 (6) specific measures to enhance cooperative ef-
4 forts between the public and private sectors in pro-
5 tecting against terrorist attacks;

6 (7) a review of measures needed to enhance
7 transportation security with respect to potential ter-
8 rorist attacks;

9 (8) plans for identifying, prioritizing, and meet-
10 ing research and development objectives to support
11 homeland security needs; and

12 (9) other critical areas.

13 (d) COOPERATION.—At the request of the Secretary
14 or Director, departments and agencies shall provide nec-
15 essary information or planning documents relating to the
16 Strategy.

17 (e) INTERAGENCY COUNCIL.—

18 (1) ESTABLISHMENT.—There is established the
19 National Combating Terrorism and Homeland Secu-
20 rity Response Council to assist with preparation and
21 implementation of the Strategy.

22 (2) MEMBERSHIP.—The members of the Coun-
23 cil shall be the heads of the Federal terrorism pre-
24 vention and response agencies or their designees.

1 The Secretary and Director shall designate such
2 agencies.

3 (3) CO-CHAIRS AND MEETINGS.—The Secretary
4 and Director shall co-chair the Council, which shall
5 meet at their direction.

6 (f) SUBMISSION TO CONGRESS.—Not later than De-
7 cember 1, 2003, and each year thereafter in which a Presi-
8 dent is inaugurated, the Secretary and the Director shall
9 submit the Strategy to Congress.

10 (g) UPDATING.—Not later than December 1, 2005,
11 and on December 1, of every 2 years thereafter, the Sec-
12 retary and the Director shall submit to Congress an up-
13 dated version of the Strategy.

14 (h) PROGRESS REPORTS.—Not later than December
15 1, 2004, and on December 1, of each year thereafter, the
16 Secretary and the Director may submit to Congress a re-
17 port that—

18 (1) describes the progress on implementation of
19 the Strategy; and

20 (2) provides recommendations for improvement
21 of the Strategy and the implementation of the Strat-
22 egy.

1 **SEC. 302. MANAGEMENT GUIDANCE FOR STRATEGY IMPLE-**
2 **MENTATION.**

3 (a) **IN GENERAL.**—In consultation with the Director
4 and the Secretary, the Director of the Office of Manage-
5 ment and Budget shall provide management guidance for
6 agencies to successfully implement and execute the Strat-
7 egy.

8 (b) **OFFICE OF MANAGEMENT AND BUDGET RE-**
9 **PORT.**—Not later than 180 days after the date of the sub-
10 mission of the Strategy referred to under section 301, the
11 Director of the Office of Management and Budget shall—

12 (1) submit to Congress a report describing
13 agency progress under subsection (a); and

14 (2) provide a copy of the report to the Comp-
15 troller General of the United States.

16 (c) **GENERAL ACCOUNTING OFFICE REPORT.**—Not
17 later than 90 days after the receipt of the report required
18 under subsection (b), the Comptroller General of the
19 United States shall submit a report to the Governmental
20 Affairs Committee of the Senate, the Government Reform
21 Committee of the House of Representatives, the Com-
22 mittee on Appropriations of the Senate, and the Com-
23 mittee on Appropriations of the House of Representatives,
24 evaluating—

25 (1) the management guidance identified under
26 subsection (a); and

1 (2) Federal agency performance in imple-
2 menting and executing the Strategy.

3 **SEC. 303. NATIONAL COMBATING TERRORISM STRATEGY**

4 **PANEL.**

5 (a) ESTABLISHMENT.—The Secretary and the Direc-
6 tor shall establish a nonpartisan, independent panel to be
7 known as the National Combating Terrorism Strategy
8 Panel (in this section referred to as the “Panel”).

9 (b) MEMBERSHIP.—

10 (1) APPOINTMENT.—The Panel shall be com-
11 posed of a chairperson and 8 other individuals ap-
12 pointed by the Secretary and the Director, in con-
13 sultation with the chairman and ranking member of
14 the Committee on Governmental Affairs of the Sen-
15 ate and the chairman and ranking member of the
16 Committee on Government Reform of the House of
17 Representatives, from among individuals in the pri-
18 vate sector who are recognized experts in matters re-
19 lating to combating terrorism and the homeland se-
20 curity of the United States.

21 (2) TERMS.—

22 (A) IN GENERAL.—An individual shall be
23 appointed to the Panel for an 18-month term.

24 (B) TERM PERIODS.—Terms on the Panel
25 shall not be continuous. All terms shall be for

1 the 18-month period which begins 12 months
2 before each date a report is required to be sub-
3 mitted under subsection (1)(2)(A).

4 (C) MULTIPLE TERMS.—An individual may
5 serve more than 1 term.

6 (c) DUTIES.—The Panel shall—

7 (1) conduct and submit to the Secretary the as-
8 sessment of the Strategy; and

9 (2) conduct the independent, alternative assess-
10 ment of homeland security measures required under
11 this section.

12 (d) ALTERNATIVE ASSESSMENT.—The Panel shall
13 submit to the Secretary an independent assessment of the
14 optimal policies and programs to combat terrorism, includ-
15 ing homeland security measures. As part of the assess-
16 ment, the Panel shall, to the extent practicable, estimate
17 the funding required by fiscal year to achieve these opti-
18 mal approaches.

19 (e) INFORMATION FROM FEDERAL AGENCIES.—

20 (1) IN GENERAL.—Subject to paragraph (2),
21 the Panel may secure directly from any agency such
22 information as the Panel considers necessary to
23 carry out this section. Upon request of the Chair-
24 person, the head of such department or agency shall
25 furnish such information to the Panel.

1 (2) INTELLIGENCE INFORMATION.—The provi-
2 sion of information under this paragraph related to
3 intelligence shall be provided in accordance with pro-
4 cedures established by the Director of Central Intel-
5 ligence and in accordance with section 103(d)(3) of
6 the National Security Act of 1947 (50 U.S.C. 403–
7 3(d)(3)).

8 (f) COMPENSATION OF MEMBERS.—Each member of
9 the Panel shall be compensated at a rate equal to the daily
10 equivalent of the annual rate of basic pay prescribed for
11 level IV of the Executive Schedule under section 5315 of
12 title 5, United States Code, for each day (including travel
13 time) during which such member is engaged in the per-
14 formance of the duties of the Panel.

15 (g) TRAVEL EXPENSES.—The members of the Panel
16 shall be allowed travel expenses, including per diem in lieu
17 of subsistence, at rates authorized for employees of agen-
18 cies under subchapter I of chapter 57 of title 5, United
19 States Code, while away from their homes or regular
20 places of business in the performance of services for the
21 Panel.

22 (h) STAFF.—

23 (1) IN GENERAL.—The Chairperson of the
24 Panel may, without regard to the civil service laws
25 and regulations, appoint and terminate an executive

1 director and such other additional personnel as may
2 be necessary to enable the Panel to perform its du-
3 ties. The employment of an executive director shall
4 be subject to confirmation by the Panel.

5 (2) COMPENSATION.—The Chairperson of the
6 Panel may fix the compensation of the executive di-
7 rector and other personnel without regard to chapter
8 51 and subchapter III of chapter 53 of title 5,
9 United States Code, relating to classification of posi-
10 tions and General Schedule pay rates, except that
11 the rate of pay for the executive director and other
12 personnel may not exceed the rate payable for level
13 V of the Executive Schedule under section 5316 of
14 such title.

15 (3) PERSONNEL AS FEDERAL EMPLOYEES.—

16 (A) IN GENERAL.—The executive director
17 and any personnel of the Panel who are employ-
18 ees shall be employees under section 2105 of
19 title 5, United States Code, for purposes of
20 chapters 63, 81, 83, 84, 85, 87, 89, and 90 of
21 that title.

22 (B) MEMBERS OF PANEL.—Subparagraph
23 (A) shall not be construed to apply to members
24 of the Panel.

1 (4) REDUCTION OF STAFF.—During periods
2 that members are not serving terms on the Panel,
3 the executive director shall reduce the number and
4 hours of employees to the minimum necessary to—

5 (A) provide effective continuity of the
6 Panel; and

7 (B) minimize personnel costs of the Panel.

8 (i) DETAIL OF GOVERNMENT EMPLOYEES.—Any
9 Federal Government employee may be detailed to the
10 Panel without reimbursement, and such detail shall be
11 without interruption or loss of civil service status or privi-
12 lege.

13 (j) ADMINISTRATIVE PROVISIONS.—

14 (1) USE OF MAIL AND PRINTING.—The Panel
15 may use the United States mails and obtain printing
16 and binding services in the same manner and under
17 the same conditions as other agencies.

18 (2) SUPPORT SERVICES.—The Secretary shall
19 furnish the Panel any administrative and support
20 services requested by the Panel.

21 (3) GIFTS.—The Panel may accept, use, and
22 dispose of gifts or donations of services or property.

23 (k) PAYMENT OF PANEL EXPENSES.—The com-
24 pensation, travel expenses, and per diem allowances of
25 members and employees of the Panel shall be paid out of

1 funds available to the Department for the payment of
2 compensation, travel allowances, and per diem allowances,
3 respectively, of civilian employees of the Department. The
4 other expenses of the Panel shall be paid out of funds
5 available to the Department for the payment of similar
6 expenses incurred by the Department.

7 (l) REPORTS.—

8 (1) PRELIMINARY REPORT.—

9 (A) REPORT TO SECRETARY.—Not later
10 than July 1, 2004, the Panel shall submit to
11 the Secretary and the Director a preliminary
12 report setting forth the activities and the find-
13 ings and recommendations of the Panel under
14 subsection (d), including any recommendations
15 for legislation that the Panel considers appro-
16 priate.

17 (B) REPORT TO CONGRESS.—Not later
18 than 30 days after the submission of the report
19 under subparagraph (A), the Secretary and the
20 Director shall submit to the committees re-
21 ferred to under subsection (b), and the Commit-
22 tees on Appropriations of the Senate and the
23 House of Representatives, a copy of that report
24 with the comments of the Secretary on the re-
25 port.

1 (2) QUADRENNIAL REPORTS.—

2 (A) REPORTS TO SECRETARY.—Not later
3 than December 1, 2004, and not later than De-
4 cember 1 every 4 years thereafter, the Panel
5 shall submit to the Secretary and the Director
6 a report setting forth the activities and the
7 findings and recommendations of the Panel
8 under subsection (d), including any rec-
9 ommendations for legislation that the Panel
10 considers appropriate.

11 (B) REPORTS TO CONGRESS.—Not later
12 than 60 days after each report is submitted
13 under subparagraph (A), the Secretary shall
14 submit to the committees referred to under sub-
15 section (b), and the Committees on Appropria-
16 tions of the Senate and the House of Rep-
17 resentatives, a copy of the report with the com-
18 ments of the Secretary and the Director on the
19 report.

1 **TITLE IV—LAW ENFORCEMENT**
2 **POWERS OF INSPECTOR GEN-**
3 **ERAL AGENTS**

4 **SEC. 401. LAW ENFORCEMENT POWERS OF INSPECTOR**
5 **GENERAL AGENTS.**

6 (a) IN GENERAL.—Section 6 of the Inspector General
7 Act of 1978 (5 U.S.C. App.) is amended by adding at the
8 end the following:

9 “(e)(1) In addition to the authority otherwise pro-
10 vided by this Act, each Inspector General appointed under
11 section 3, any Assistant Inspector General for Investiga-
12 tions under such an Inspector General, and any special
13 agent supervised by such an Assistant Inspector General
14 may be authorized by the Attorney General to—

15 “(A) carry a firearm while engaged in official
16 duties as authorized under this Act or other statute,
17 or as expressly authorized by the Attorney General;

18 “(B) make an arrest without a warrant while
19 engaged in official duties as authorized under this
20 Act or other statute, or as expressly authorized by
21 the Attorney General, for any offense against the
22 United States committed in the presence of such In-
23 spector General, Assistant Inspector General, or
24 agent, or for any felony cognizable under the laws
25 of the United States if such Inspector General, As-

1 sistant Inspector General, or agent has reasonable
2 grounds to believe that the person to be arrested has
3 committed or is committing such felony; and

4 “(C) seek and execute warrants for arrest,
5 search of a premises, or seizure of evidence issued
6 under the authority of the United States upon prob-
7 able cause to believe that a violation has been com-
8 mitted.

9 “(2) The Attorney General may authorize exercise of
10 the powers under this subsection only upon an initial de-
11 termination that—

12 “(A) the affected Office of Inspector General is
13 significantly hampered in the performance of respon-
14 sibilities established by this Act as a result of the
15 lack of such powers;

16 “(B) available assistance from other law en-
17 forcement agencies is insufficient to meet the need
18 for such powers; and

19 “(C) adequate internal safeguards and manage-
20 ment procedures exist to ensure proper exercise of
21 such powers.

22 “(3) The Inspector General offices of the Department
23 of Commerce, Department of Education, Department of
24 Energy, Department of Health and Human Services, De-
25 partment of Homeland Security, Department of Housing

1 and Urban Development, Department of the Interior, De-
2 partment of Justice, Department of Labor, Department
3 of State, Department of Transportation, Department of
4 the Treasury, Department of Veterans Affairs, Agency for
5 International Development, Environmental Protection
6 Agency, Federal Deposit Insurance Corporation, Federal
7 Emergency Management Agency, General Services Admin-
8 istration, National Aeronautics and Space Administration,
9 Nuclear Regulatory Commission, Office of Personnel Man-
10 agement, Railroad Retirement Board, Small Business Ad-
11 ministration, Social Security Administration, and the Ten-
12 nessee Valley Authority are exempt from the requirement
13 of paragraph (2) of an initial determination of eligibility
14 by the Attorney General.

15 “(4) The Attorney General shall promulgate, and re-
16 vise as appropriate, guidelines which shall govern the exer-
17 cise of the law enforcement powers established under para-
18 graph (1).

19 “(5) Powers authorized for an Office of Inspector
20 General under paragraph (1) shall be rescinded or sus-
21 pended upon a determination by the Attorney General that
22 any of the requirements under paragraph (2) is no longer
23 satisfied or that the exercise of authorized powers by that
24 Office of Inspector General has not complied with the

1 guidelines promulgated by the Attorney General under
2 paragraph (4).

3 “(6) A determination by the Attorney General under
4 paragraph (2) or (5) shall not be reviewable in or by any
5 court.

6 “(7) To ensure the proper exercise of the law enforce-
7 ment powers authorized by this subsection, the Offices of
8 Inspector General described under paragraph (3) shall,
9 not later than 180 days after the date of enactment of
10 this subsection, collectively enter into a memorandum of
11 understanding to establish an external review process for
12 ensuring that adequate internal safeguards and manage-
13 ment procedures continue to exist within each Office and
14 within any Office that later receives an authorization
15 under paragraph (2). The review process shall be estab-
16 lished in consultation with the Attorney General, who shall
17 be provided with a copy of the memorandum of under-
18 standing that establishes the review process. Under the
19 review process, the exercise of the law enforcement powers
20 by each Office of Inspector General shall be reviewed peri-
21 odically by another Office of Inspector General or by a
22 committee of Inspectors General. The results of each re-
23 view shall be communicated in writing to the applicable
24 Inspector General and to the Attorney General.

1 “(8) No provision of this subsection shall limit the
2 exercise of law enforcement powers established under any
3 other statutory authority, including United States Mar-
4 shals Service special deputation.”.

5 (b) PROMULGATION OF INITIAL GUIDELINES.—

6 (1) DEFINITION.—In this subsection, the term
7 “memoranda of understanding” means the agree-
8 ments between the Department of Justice and the
9 Inspector General offices described under section
10 6(e)(3) of the Inspector General Act of 1978 (5
11 U.S.C. App) (as added by subsection (a) of this sec-
12 tion) that—

13 (A) are in effect on the date of enactment
14 of this Act; and

15 (B) authorize such offices to exercise au-
16 thority that is the same or similar to the au-
17 thority under section 6(e)(1) of such Act.

18 (2) IN GENERAL.—Not later than 180 days
19 after the date of enactment of this Act, the Attorney
20 General shall promulgate guidelines under section
21 6(e)(4) of the Inspector General Act of 1978 (5
22 U.S.C. App) (as added by subsection (a) of this sec-
23 tion) applicable to the Inspector General offices de-
24 scribed under section 6(e)(3) of that Act.

1 (3) MINIMUM REQUIREMENTS.—The guidelines
2 promulgated under this subsection shall include, at
3 a minimum, the operational and training require-
4 ments in the memoranda of understanding.

5 (4) NO LAPSE OF AUTHORITY.—The memo-
6 randa of understanding in effect on the date of en-
7 actment of this Act shall remain in effect until the
8 guidelines promulgated under this subsection take
9 effect.

10 (c) EFFECTIVE DATES.—

11 (1) IN GENERAL.—Subsection (a) shall take ef-
12 fect 180 days after the date of enactment of this
13 Act.

14 (2) INITIAL GUIDELINES.—Subsection (b) shall
15 take effect on the date of enactment of this Act.

16 **TITLE V—FEDERAL EMERGENCY**
17 **PROCUREMENT FLEXIBILITY**

18 **Subtitle A—Temporary Flexibility**
19 **for Certain Procurements**

20 **SEC. 501. DEFINITION.**

21 In this title, the term “executive agency” has the
22 meaning given that term under section 4(1) of the Office
23 of Federal Procurement Policy Act (41 U.S.C. 403(1)).

1 **SEC. 502. PROCUREMENTS FOR DEFENSE AGAINST OR RE-**
2 **COVERY FROM TERRORISM OR NUCLEAR, BI-**
3 **OLOGICAL, CHEMICAL, OR RADIOLOGICAL**
4 **ATTACK.**

5 The authorities provided in this subtitle apply to any
6 procurement of property or services by or for an executive
7 agency that, as determined by the head of the executive
8 agency, are to be used to facilitate defense against or re-
9 covery from terrorism or nuclear, biological, chemical, or
10 radiological attack, but only if a solicitation of offers for
11 the procurement is issued during the 1-year period begin-
12 ning on the date of the enactment of this Act.

13 **SEC. 503. INCREASED SIMPLIFIED ACQUISITION THRESH-**
14 **OLD FOR PROCUREMENTS IN SUPPORT OF**
15 **HUMANITARIAN OR PEACEKEEPING OPER-**
16 **ATIONS OR CONTINGENCY OPERATIONS.**

17 (a) TEMPORARY THRESHOLD AMOUNTS.—For a pro-
18 curement referred to in section 502 that is carried out
19 in support of a humanitarian or peacekeeping operation
20 or a contingency operation, the simplified acquisition
21 threshold definitions shall be applied as if the amount de-
22 termined under the exception provided for such an oper-
23 ation in those definitions were—

24 (1) in the case of a contract to be awarded and
25 performed, or purchase to be made, inside the
26 United States, \$250,000; or

1 (2) in the case of a contract to be awarded and
2 performed, or purchase to be made, outside the
3 United States, \$500,000.

4 (b) SIMPLIFIED ACQUISITION THRESHOLD DEFINI-
5 TIONS.—In this section, the term “simplified acquisition
6 threshold definitions” means the following:

7 (1) Section 4(11) of the Office of Federal Pro-
8 curement Policy Act (41 U.S.C. 403(11)).

9 (2) Section 309(d) of the Federal Property and
10 Administrative Services Act of 1949 (41 U.S.C.
11 259(d)).

12 (3) Section 2302(7) of title 10, United States
13 Code.

14 (c) SMALL BUSINESS RESERVE.—For a procurement
15 carried out pursuant to subsection (a), section 15(j) of the
16 Small Business Act (15 U.S.C. 644(j)) shall be applied
17 as if the maximum anticipated value identified therein is
18 equal to the amounts referred to in subsection (a).

19 **SEC. 504. INCREASED MICRO-PURCHASE THRESHOLD FOR**
20 **CERTAIN PROCUREMENTS.**

21 In the administration of section 32 of the Office of
22 Federal Procurement Policy Act (41 U.S.C. 428) with re-
23 spect to a procurement referred to in section 502, the
24 amount specified in subsections (c), (d), and (f) of such
25 section 32 shall be deemed to be \$10,000.

1 **SEC. 505. APPLICATION OF CERTAIN COMMERCIAL ITEMS**

2 **AUTHORITIES TO CERTAIN PROCUREMENTS.**

3 (a) **AUTHORITY.—**

4 (1) **IN GENERAL.—**The head of an executive
5 agency may apply the provisions of law listed in
6 paragraph (2) to a procurement referred to in sec-
7 tion 502 without regard to whether the property or
8 services are commercial items.

9 (2) **COMMERCIAL ITEM LAWS.—**The provisions
10 of law referred to in paragraph (1) are as follows:

11 (A) Sections 31 and 34 of the Office of
12 Federal Procurement Policy Act (41 U.S.C.
13 427, 430).

14 (B) Section 2304(g) of title 10, United
15 States Code.

16 (C) Section 303(g) of the Federal Property
17 and Administrative Services Act of 1949 (41
18 U.S.C. 253(g)).

19 (b) **INAPPLICABILITY OF LIMITATION ON USE OF**
20 **SIMPLIFIED ACQUISITION PROCEDURES.—**

21 (1) **IN GENERAL.—**The \$5,000,000 limitation
22 provided in section 31(a)(2) of the Office of Federal
23 Procurement Policy Act (41 U.S.C. 427(a)(2)), sec-
24 tion 2304(g)(1)(B) of title 10, United States Code,
25 and section 303(g)(1)(B) of the Federal Property
26 and Administrative Services Act of 1949 (41 U.S.C.

1 253(g)(1)(B)) shall not apply to purchases of prop-
2 erty or services to which any of the provisions of law
3 referred to in subsection (a) are applied under the
4 authority of this section.

5 (2) OMB GUIDANCE.—The Director of the Of-
6 fice of Management and Budget shall issue guidance
7 and procedures for the use of simplified acquisition
8 procedures for a purchase of property or services in
9 excess of \$5,000,000 under the authority of this sec-
10 tion.

11 (c) CONTINUATION OF AUTHORITY FOR SIMPLIFIED
12 PURCHASE PROCEDURES.—Authority under a provision of
13 law referred to in subsection (a)(2) that expires under sec-
14 tion 4202(e) of the Clinger-Cohen Act of 1996 (divisions
15 D and E of Public Law 104–106; 10 U.S.C. 2304 note)
16 shall, notwithstanding such section, continue to apply for
17 use by the head of an executive agency as provided in sub-
18 sections (a) and (b).

19 **SEC. 506. USE OF STREAMLINED PROCEDURES.**

20 (a) REQUIRED USE.—The head of an executive agen-
21 cy shall, when appropriate, use streamlined acquisition au-
22 thorities and procedures authorized by law for a procure-
23 ment referred to in section 502, including authorities and
24 procedures that are provided under the following provi-
25 sions of law:

1 (1) FEDERAL PROPERTY AND ADMINISTRATIVE
2 SERVICES ACT OF 1949.—In title III of the Federal
3 Property and Administrative Services Act of 1949:

4 (A) Paragraphs (1), (2), (6), and (7) of
5 subsection (c) of section 303 (41 U.S.C. 253),
6 relating to use of procedures other than com-
7 petitive procedures under certain circumstances
8 (subject to subsection (e) of such section).

9 (B) Section 303J (41 U.S.C. 253j), relat-
10 ing to orders under task and delivery order con-
11 tracts.

12 (2) TITLE 10, UNITED STATES CODE.—In chap-
13 ter 137 of title 10, United States Code:

14 (A) Paragraphs (1), (2), (6), and (7) of
15 subsection (c) of section 2304, relating to use
16 of procedures other than competitive procedures
17 under certain circumstances (subject to sub-
18 section (e) of such section).

19 (B) Section 2304c, relating to orders
20 under task and delivery order contracts.

21 (3) OFFICE OF FEDERAL PROCUREMENT POL-
22 ICY ACT.—Paragraphs (1)(B), (1)(D), and (2) of
23 section 18(c) of the Office of Federal Procurement
24 Policy Act (41 U.S.C. 416(c)), relating to inapplica-
25 bility of a requirement for procurement notice.

1 (b) WAIVER OF CERTAIN SMALL BUSINESS THRESH-
2 OLD REQUIREMENTS.—Subclause (II) of section
3 8(a)(1)(D)(i) of the Small Business Act (15 U.S.C.
4 637(a)(1)(D)(i)) and clause (ii) of section 31(b)(2)(A) of
5 such Act (15 U.S.C. 657a(b)(2)(A)) shall not apply in the
6 use of streamlined acquisition authorities and procedures
7 referred to in paragraphs (1)(A) and (2)(A) of subsection
8 (a) for a procurement referred to in section 502.

9 **SEC. 507. REVIEW AND REPORT BY COMPTROLLER GEN-**
10 **ERAL.**

11 (a) REQUIREMENTS.—Not later than March 31,
12 2004, the Comptroller General shall—

13 (1) complete a review of the extent to which
14 procurements of property and services have been
15 made in accordance with this subtitle; and

16 (2) submit a report on the results of the review
17 to the Committee on Governmental Affairs of the
18 Senate and the Committee on Government Reform
19 of the House of Representatives.

20 (b) CONTENT OF REPORT.—The report under sub-
21 section (a)(2) shall include the following matters:

22 (1) ASSESSMENT.—The Comptroller General's
23 assessment of—

24 (A) the extent to which property and serv-
25 ices procured in accordance with this title have

1 contributed to the capacity of the workforce of
2 Federal Government employees within each ex-
3 ecutive agency to carry out the mission of the
4 executive agency; and

5 (B) the extent to which Federal Govern-
6 ment employees have been trained on the use of
7 technology.

8 (2) RECOMMENDATIONS.—Any recommenda-
9 tions of the Comptroller General resulting from the
10 assessment described in paragraph (1).

11 (c) CONSULTATION.—In preparing for the review
12 under subsection (a)(1), the Comptroller shall consult with
13 the Committee on Governmental Affairs of the Senate and
14 the Committee on Government Reform of the House of
15 Representatives on the specific issues and topics to be re-
16 viewed. The extent of coverage needed in areas such as
17 technology integration, employee training, and human
18 capital management, as well as the data requirements of
19 the study, shall be included as part of the consultation.

20 **Subtitle B—Other Matters**

21 **SEC. 511. IDENTIFICATION OF NEW ENTRANTS INTO THE** 22 **FEDERAL MARKETPLACE.**

23 The head of each executive agency shall conduct mar-
24 ket research on an ongoing basis to identify effectively the
25 capabilities, including the capabilities of small businesses

1 and new entrants into Federal contracting, that are avail-
2 able in the marketplace for meeting the requirements of
3 the executive agency in furtherance of defense against or
4 recovery from terrorism or nuclear, biological, chemical,
5 or radiological attack. The head of the executive agency
6 shall, to the maximum extent practicable, take advantage
7 of commercially available market research methods, in-
8 cluding use of commercial databases, to carry out the re-
9 search.

10 **TITLE VI—EFFECTIVE DATE**

11 **SEC. 601. EFFECTIVE DATE.**

12 This division shall take effect 30 days after the date
13 of enactment of this Act or, if enacted within 30 days be-
14 fore January 1, 2003, on January 1, 2003.

15 **DIVISION B—IMMIGRATION RE-** 16 **FORM, ACCOUNTABILITY,** 17 **AND SECURITY ENHANCE-** 18 **MENT ACT OF 2002**

19 **SEC. 1001. SHORT TITLE.**

20 This division may be cited as the “Immigration Re-
21 form, Accountability, and Security Enhancement Act of
22 2002”.

23 **SEC. 1002. DEFINITIONS.**

24 In this division:

1 (1) ENFORCEMENT BUREAU.—The term “En-
2 forcement Bureau” means the Bureau of Enforce-
3 ment and Border Affairs established in section 114
4 of the Immigration and Nationality Act, as added by
5 section 1105 of this Act.

6 (2) FUNCTION.—The term “function” includes
7 any duty, obligation, power, authority, responsibility,
8 right, privilege, activity, or program.

9 (3) IMMIGRATION ENFORCEMENT FUNC-
10 TIONS.—The term “immigration enforcement func-
11 tions” has the meaning given the term in section
12 114(b)(2) of the Immigration and Nationality Act,
13 as added by section 1105 of this Act.

14 (4) IMMIGRATION LAWS OF THE UNITED
15 STATES.—The term “immigration laws of the United
16 States” has the meaning given the term in section
17 111(e) of the Immigration and Nationality Act, as
18 added by section 1102 of this Act.

19 (5) IMMIGRATION POLICY, ADMINISTRATION,
20 AND INSPECTION FUNCTIONS.—The term “immigra-
21 tion policy, administration, and inspection func-
22 tions” has the meaning given the term in section
23 112(b)(3) of the Immigration and Nationality Act,
24 as added by section 1103 of this Act.

1 (6) IMMIGRATION SERVICE FUNCTIONS.—The
2 term “immigration service functions” has the mean-
3 ing given the term in section 113(b)(2) of the Immi-
4 gration and Nationality Act, as added by section
5 1104 of this Act.

6 (7) OFFICE.—The term “office” includes any
7 office, administration, agency, bureau, institute,
8 council, unit, organizational entity, or component
9 thereof.

10 (8) SECRETARY.—The term “Secretary” means
11 the Secretary of Homeland Security.

12 (9) SERVICE BUREAU.—The term “Service Bu-
13 reau” means the Bureau of Immigration Services es-
14 tablished in section 113 of the Immigration and Na-
15 tionality Act, as added by section 1104 of this Act.

16 (10) UNDER SECRETARY.—The term “Under
17 Secretary” means the Under Secretary of Homeland
18 Security for Immigration Affairs appointed under
19 section 112 of the Immigration and Nationality Act,
20 as added by section 1103 of this Act.

1 **TITLE XI—DIRECTORATE OF**
2 **IMMIGRATION AFFAIRS**
3 **Subtitle A—Organization**

4 **SEC. 1101. ABOLITION OF INS.**

5 (a) **IN GENERAL.**—The Immigration and Naturaliza-
6 tion Service is abolished.

7 (b) **REPEAL.**—Section 4 of the Act of February 14,
8 1903, as amended (32 Stat. 826; relating to the establish-
9 ment of the Immigration and Naturalization Service), is
10 repealed.

11 **SEC. 1102. ESTABLISHMENT OF DIRECTORATE OF IMMI-**
12 **GRATION AFFAIRS.**

13 (a) **ESTABLISHMENT.**—Title I of the Immigration
14 and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

15 (1) by inserting “**CHAPTER 1—DEFINITIONS**
16 **AND GENERAL AUTHORITIES**” after “**TITLE**
17 **I—GENERAL**”; and

18 (2) by adding at the end the following:

19 **“CHAPTER 2—DIRECTORATE OF**
20 **IMMIGRATION AFFAIRS**

21 **“SEC. 111. ESTABLISHMENT OF DIRECTORATE OF IMMIGRA-**
22 **TION AFFAIRS.**

23 “(a) **ESTABLISHMENT.**—There is established within
24 the Department of Homeland Security the Directorate of
25 Immigration Affairs.

1 “(b) PRINCIPAL OFFICERS.—The principal officers of
2 the Directorate are the following:

3 “(1) The Under Secretary of Homeland Secu-
4 rity for Immigration Affairs appointed under section
5 112.

6 “(2) The Assistant Secretary of Homeland Se-
7 curity for Immigration Services appointed under sec-
8 tion 113.

9 “(3) The Assistant Secretary of Homeland Se-
10 curity for Enforcement and Border Affairs ap-
11 pointed under section 114.

12 “(c) FUNCTIONS.—Under the authority of the Sec-
13 retary of Homeland Security, the Directorate shall per-
14 form the following functions:

15 “(1) Immigration policy, administration, and
16 inspection functions, as defined in section 112(b).

17 “(2) Immigration service and adjudication func-
18 tions, as defined in section 113(b).

19 “(3) Immigration enforcement functions, as de-
20 fined in section 114(b).

21 “(d) AUTHORIZATION OF APPROPRIATIONS.—

22 “(1) IN GENERAL.—There are authorized to be
23 appropriated to the Department of Homeland Secu-
24 rity such sums as may be necessary to carry out the
25 functions of the Directorate.

1 “(2) AVAILABILITY OF FUNDS.—Amounts ap-
2 propriated pursuant to paragraph (1) are authorized
3 to remain available until expended.

4 “(e) IMMIGRATION LAWS OF THE UNITED STATES
5 DEFINED.—In this chapter, the term ‘immigration laws
6 of the United States’ means the following:

7 “(1) This Act.

8 “(2) Such other statutes, Executive orders, reg-
9 ulations, or directives, treaties, or other international
10 agreements to which the United States is a party,
11 insofar as they relate to the admission to, detention
12 in, or removal from the United States of aliens, inso-
13 far as they relate to the naturalization of aliens, or
14 insofar as they otherwise relate to the status of
15 aliens.”.

16 (b) CONFORMING AMENDMENTS.—(1) The Immigra-
17 tion and Nationality Act (8 U.S.C. 1101 et seq.) is
18 amended—

19 (A) by striking section 101(a)(34) (8 U.S.C.
20 1101(a)(34)) and inserting the following:

21 “(34) The term ‘Directorate’ means the Directorate
22 of Immigration Affairs established by section 111.”;

23 (B) by adding at the end of section 101(a) the
24 following new paragraphs:

1 “(51) The term ‘Secretary’ means the Secretary of
2 Homeland Security.

3 “(52) The term ‘Department’ means the Department
4 of Homeland Security.”;

5 (C) by striking “Attorney General” and “De-
6 partment of Justice” each place it appears and in-
7 serting “Secretary” and “Department”, respectively;

8 (D) in section 101(a)(17) (8 U.S.C.
9 1101(a)(17)), by striking “The” and inserting “Ex-
10 cept as otherwise provided in section 111(e), the;
11 and

12 (E) by striking “Immigration and Naturaliza-
13 tion Service”, “Service”, and “Service’s” each place
14 they appear and inserting “Directorate of Immigra-
15 tion Affairs”, “Directorate”, and “Directorate’s”,
16 respectively.

17 (2) Section 6 of the Act entitled “An Act to authorize
18 certain administrative expenses for the Department of
19 Justice, and for other purposes”, approved July 28, 1950
20 (64 Stat. 380), is amended—

21 (A) by striking “Immigration and Naturaliza-
22 tion Service” and inserting “Directorate of Immigra-
23 tion Affairs”;

24 (B) by striking clause (a); and

1 (C) by redesignating clauses (b), (c), (d), and
2 (e) as clauses (a), (b), (c), and (d), respectively.

3 (c) REFERENCES.—Any reference in any statute, re-
4 organization plan, Executive order, regulation, agreement,
5 determination, or other official document or proceeding to
6 the Immigration and Naturalization Service shall be
7 deemed to refer to the Directorate of Immigration Affairs
8 of the Department of Homeland Security, and any ref-
9 erence in the immigration laws of the United States (as
10 defined in section 111(e) of the Immigration and Nation-
11 ality Act, as added by this section) to the Attorney Gen-
12 eral shall be deemed to refer to the Secretary of Homeland
13 Security, acting through the Under Secretary of Home-
14 land Security for Immigration Affairs.

15 **SEC. 1103. UNDER SECRETARY OF HOMELAND SECURITY**
16 **FOR IMMIGRATION AFFAIRS.**

17 (a) IN GENERAL.—Chapter 2 of title I of the Immi-
18 gration and Nationality Act, as added by section 1102 of
19 this Act, is amended by adding at the end the following:

20 **“SEC. 112. UNDER SECRETARY OF HOMELAND SECURITY**
21 **FOR IMMIGRATION AFFAIRS.**

22 “(a) UNDER SECRETARY OF IMMIGRATION AF-
23 FAIRS.—The Directorate shall be headed by an Under
24 Secretary of Homeland Security for Immigration Affairs

1 who shall be appointed in accordance with section 103(c)
2 of the Immigration and Nationality Act.

3 “(b) RESPONSIBILITIES OF THE UNDER SEC-
4 RETARY.—

5 “(1) IN GENERAL.—The Under Secretary shall
6 be charged with any and all responsibilities and au-
7 thority in the administration of the Directorate and
8 of this Act which are conferred upon the Secretary
9 as may be delegated to the Under Secretary by the
10 Secretary or which may be prescribed by the Sec-
11 retary.

12 “(2) DUTIES.—Subject to the authority of the
13 Secretary under paragraph (1), the Under Secretary
14 shall have the following duties:

15 “(A) IMMIGRATION POLICY.—The Under
16 Secretary shall develop and implement policy
17 under the immigration laws of the United
18 States. The Under Secretary shall propose, pro-
19 mulgate, and issue rules, regulations, and state-
20 ments of policy with respect to any function
21 within the jurisdiction of the Directorate.

22 “(B) ADMINISTRATION.—The Under Sec-
23 retary shall have responsibility for—

24 “(i) the administration and enforce-
25 ment of the functions conferred upon the

1 Directorate under section 1111(c) of this
2 Act; and

3 “(ii) the administration of the Direc-
4 torate, including the direction, supervision,
5 and coordination of the Bureau of Immi-
6 gration Services and the Bureau of En-
7 forcement and Border Affairs.

8 “(C) INSPECTIONS.—The Under Secretary
9 shall be directly responsible for the administra-
10 tion and enforcement of the functions of the Di-
11 rectorate under the immigration laws of the
12 United States with respect to the inspection of
13 aliens arriving at ports of entry of the United
14 States.

15 “(3) ACTIVITIES.—As part of the duties de-
16 scribed in paragraph (2), the Under Secretary shall
17 do the following:

18 “(A) RESOURCES AND PERSONNEL MAN-
19 AGEMENT.—The Under Secretary shall manage
20 the resources, personnel, and other support re-
21 quirements of the Directorate.

22 “(B) INFORMATION RESOURCES MANAGE-
23 MENT.—Under the direction of the Secretary,
24 the Under Secretary shall manage the informa-
25 tion resources of the Directorate, including the

1 maintenance of records and databases and the
2 coordination of records and other information
3 within the Directorate, and shall ensure that
4 the Directorate obtains and maintains adequate
5 information technology systems to carry out its
6 functions.

7 “(C) COORDINATION OF RESPONSE TO
8 CIVIL RIGHTS VIOLATIONS.—The Under Sec-
9 retary shall coordinate, with the Civil Rights
10 Officer of the Department of Homeland Secu-
11 rity or other officials, as appropriate, the reso-
12 lution of immigration issues that involve civil
13 rights violations.

14 “(D) RISK ANALYSIS AND RISK MANAGE-
15 MENT.—Assisting and supporting the Sec-
16 retary, in coordination with other Directorates
17 and entities outside the Department, in con-
18 ducting appropriate risk analysis and risk man-
19 agement activities consistent with the mission
20 and functions of the Directorate.

21 “(3) DEFINITION.—In this chapter, the term
22 “immigration policy, administration, and inspection
23 functions” means the duties, activities, and powers
24 described in this subsection.

25 “(c) GENERAL COUNSEL.—

1 “(1) IN GENERAL.—There shall be within the
2 Directorate a General Counsel, who shall be ap-
3 pointed by the Secretary of Homeland Security, in
4 consultation with the Under Secretary.

5 “(2) FUNCTION.—The General Counsel shall—

6 “(A) serve as the chief legal officer for the
7 Directorate; and

8 “(B) be responsible for providing special-
9 ized legal advice, opinions, determinations, reg-
10 ulations, and any other assistance to the Under
11 Secretary with respect to legal matters affecting
12 the Directorate, and any of its components.

13 “(d) FINANCIAL OFFICERS FOR THE DIRECTORATE
14 OF IMMIGRATION AFFAIRS.—

15 “(1) CHIEF FINANCIAL OFFICER.—

16 “(A) IN GENERAL.—There shall be within
17 the Directorate a Chief Financial Officer. The
18 position of Chief Financial Officer shall be a ca-
19 reer reserved position in the Senior Executive
20 Service and shall have the authorities and func-
21 tions described in section 902 of title 31,
22 United States Code, in relation to financial ac-
23 tivities of the Directorate. For purposes of sec-
24 tion 902(a)(1) of such title, the Under Sec-
25 retary shall be deemed to be an agency head.

1 “(B) FUNCTIONS.—The Chief Financial
2 Officer shall be responsible for directing, super-
3 vising, and coordinating all budget formulas
4 and execution for the Directorate.

5 “(2) DEPUTY CHIEF FINANCIAL OFFICER.—The
6 Directorate shall be deemed to be an agency for pur-
7 poses of section 903 of such title (relating to Deputy
8 Chief Financial Officers).

9 “(e) CHIEF OF POLICY.—

10 “(1) IN GENERAL.—There shall be within the
11 Directorate a Chief of Policy. Under the authority of
12 the Under Secretary, the Chief of Policy shall be re-
13 sponsible for—

14 “(A) establishing national immigration pol-
15 icy and priorities;

16 “(B) performing policy research and anal-
17 ysis on issues arising under the immigration
18 laws of the United States; and

19 “(C) coordinating immigration policy be-
20 tween the Directorate, the Service Bureau, and
21 the Enforcement Bureau.

22 “(2) WITHIN THE SENIOR EXECUTIVE SERV-
23 ICE.—The position of Chief of Policy shall be a Sen-
24 ior Executive Service position under section 5382 of
25 title 5, United States Code.

1 “(f) CHIEF OF CONGRESSIONAL, INTERGOVERN-
2 MENTAL, AND PUBLIC AFFAIRS.—

3 “(1) IN GENERAL.—There shall be within the
4 Directorate a Chief of Congressional, Intergovern-
5 mental, and Public Affairs. Under the authority of
6 the Under Secretary, the Chief of Congressional,
7 Intergovernmental, and Public Affairs shall be re-
8 sponsible for—

9 “(A) providing to Congress information re-
10 lating to issues arising under the immigration
11 laws of the United States, including information
12 on specific cases;

13 “(B) serving as a liaison with other Fed-
14 eral agencies on immigration issues; and

15 “(C) responding to inquiries from, and
16 providing information to, the media on immi-
17 gration issues.

18 “(2) WITHIN THE SENIOR EXECUTIVE SERV-
19 ICE.—The position of Chief of Congressional, Inter-
20 governmental, and Public Affairs shall be a Senior
21 Executive Service position under section 5382 of
22 title 5, United States Code.”.

23 (b) COMPENSATION OF THE UNDER SECRETARY.—
24 Section 5314 of title 5, United States Code, is amended
25 by adding at the end the following:

1 “Under Secretary of Immigration Affairs, De-
2 partment of Justice.”.

3 (c) COMPENSATION OF GENERAL COUNSEL AND
4 CHIEF FINANCIAL OFFICER.—Section 5316 of title 5,
5 United States Code, is amended by adding at the end the
6 following:

7 “General Counsel, Directorate of Immigration
8 Affairs, Department of Homeland Security.

9 “Chief Financial Officer, Directorate of Immi-
10 gration Affairs, Department of Homeland Secu-
11 rity.”.

12 (d) REPEALS.—The following provisions of law are
13 repealed:

14 (1) Section 7 of the Act of March 3, 1891, as
15 amended (26 Stat. 1085; relating to the establish-
16 ment of the office of the Commissioner of Immigra-
17 tion and Naturalization).

18 (2) Section 201 of the Act of June 20, 1956
19 (70 Stat. 307; relating to the compensation of as-
20 sistant commissioners and district directors).

21 (3) Section 1 of the Act of March 2, 1895 (28
22 Stat. 780; relating to special immigrant inspectors).

23 (e) CONFORMING AMENDMENTS.—(1)(A) Section
24 101(a)(8) of the Immigration and Nationality Act (8
25 U.S.C. 1101(a)(8)) is amended to read as follows:

1 “(8) The term ‘Under Secretary’ means the
2 Under Secretary of Homeland Security for Immigra-
3 tion Affairs who is appointed under section 103(c).”.

4 (B) Except as provided in subparagraph (C), the Im-
5 migration and Nationality Act (8 U.S.C. 1101 et seq.) is
6 amended by striking “Commissioner of Immigration and
7 Naturalization” and “Commissioner” each place they ap-
8 pear and inserting “Under Secretary of Homeland Secu-
9 rity for Immigration Affairs” and “Under Secretary”, re-
10 spectively.

11 (C) The amendments made by subparagraph (B) do
12 not apply to references to the “Commissioner of Social Se-
13 curity” in section 290(c) of the Immigration and Nation-
14 ality Act (8 U.S.C. 1360(c)).

15 (2) Section 103 of the Immigration and Nationality
16 Act (8 U.S.C. 1103) is amended—

17 (A) in subsection (c), by striking “Commis-
18 sioner” and inserting “Under Secretary”;

19 (B) in the section heading, by striking “COM-
20 MISSIONER” and inserting “UNDER SECRETARY”;

21 (C) in subsection (d), by striking “Commis-
22 sioner” and inserting “Under Secretary”; and

23 (D) in subsection (e), by striking “Commis-
24 sioner” and inserting “Under Secretary”.

1 (3) Sections 104 and 105 of the Immigration and Na-
2 tionality Act (8 U.S.C. 1104, 1105) are amended by strik-
3 ing “Director” each place it appears and inserting “As-
4 sistant Secretary of State for Consular Affairs”.

5 (4) Section 104(c) of the Immigration and Nation-
6 ality Act (8 U.S.C. 1104(c)) is amended—

7 (A) in the first sentence, by striking “Passport
8 Office, a Visa Office,” and inserting “a Passport
9 Services office, a Visa Services office, an Overseas
10 Citizen Services office,”; and

11 (B) in the second sentence, by striking “the
12 Passport Office and the Visa Office” and inserting
13 “the Passport Services office and the Visa Services
14 office”.

15 (5) Section 5315 of title 5, United States Code, is
16 amended by striking the following:

17 “Commissioner of Immigration and Naturaliza-
18 tion, Department of Justice.”.

19 (f) REFERENCES.—Any reference in any statute, re-
20 organization plan, Executive order, regulation, agreement,
21 determination, or other official document or proceeding to
22 the Commissioner of Immigration and Naturalization shall
23 be deemed to refer to the Under Secretary of Homeland
24 Security for Immigration Affairs.

1 **SEC. 1104. BUREAU OF IMMIGRATION SERVICES.**

2 (a) IN GENERAL.—Chapter 2 of title I of the Immi-
3 gration and Nationality Act, as added by section 1102 and
4 amended by section 1103, is further amended by adding
5 at the end the following:

6 **“SEC. 113. BUREAU OF IMMIGRATION SERVICES.**

7 “(a) ESTABLISHMENT OF BUREAU.—

8 “(1) IN GENERAL.—There is established within
9 the Directorate a bureau to be known as the Bureau
10 of Immigration Services (in this chapter referred to
11 as the ‘Service Bureau’).

12 “(2) ASSISTANT SECRETARY.—The head of the
13 Service Bureau shall be the Assistant Secretary of
14 Homeland Security for Immigration Services (in this
15 chapter referred to as the ‘Assistant Secretary for
16 Immigration Services’), who—

17 “(A) shall be appointed by the Secretary of
18 Homeland Security, in consultation with the
19 Under Secretary; and

20 “(B) shall report directly to the Under
21 Secretary.

22 “(b) RESPONSIBILITIES OF THE ASSISTANT SEC-
23 RETARY.—

24 “(1) IN GENERAL.—Subject to the authority of
25 the Secretary and the Under Secretary, the Assist-
26 ant Secretary for Immigration Services shall admin-

1 ister the immigration service functions of the Direc-
2 torate.

3 “(2) IMMIGRATION SERVICE FUNCTIONS DE-
4 FINED.—In this chapter, the term ‘immigration
5 service functions’ means the following functions
6 under the immigration laws of the United States:

7 “(A) Adjudications of petitions for classi-
8 fication of nonimmigrant and immigrant status.

9 “(B) Adjudications of applications for ad-
10 justment of status and change of status.

11 “(C) Adjudications of naturalization appli-
12 cations.

13 “(D) Adjudications of asylum and refugee
14 applications.

15 “(E) Adjudications performed at Service
16 centers.

17 “(F) Determinations concerning custody
18 and parole of asylum seekers who do not have
19 prior nonpolitical criminal records and who
20 have been found to have a credible fear of per-
21 secution, including determinations under section
22 236B.

23 “(G) All other adjudications under the im-
24 migration laws of the United States.

1 “(c) CHIEF BUDGET OFFICER OF THE SERVICE BU-
2 REAU.—There shall be within the Service Bureau a Chief
3 Budget Officer. Under the authority of the Chief Finan-
4 cial Officer of the Directorate, the Chief Budget Officer
5 of the Service Bureau shall be responsible for monitoring
6 and supervising all financial activities of the Service Bu-
7 reau.

8 “(d) QUALITY ASSURANCE.—There shall be within
9 the Service Bureau an Office of Quality Assurance that
10 shall develop procedures and conduct audits to—

11 “(1) ensure that the Directorate’s policies with
12 respect to the immigration service functions of the
13 Directorate are properly implemented; and

14 “(2) ensure that Service Bureau policies or
15 practices result in sound records management and
16 efficient and accurate service.

17 “(e) OFFICE OF PROFESSIONAL RESPONSIBILITY.—
18 There shall be within the Service Bureau an Office of Pro-
19 fessional Responsibility that shall have the responsibility
20 for ensuring the professionalism of the Service Bureau
21 and for receiving and investigating charges of misconduct
22 or ill treatment made by the public.

23 “(f) TRAINING OF PERSONNEL.—The Assistant Sec-
24 retary for Immigration Services, in consultation with the

1 Under Secretary, shall have responsibility for determining
2 the training for all personnel of the Service Bureau.”.

3 (b) COMPENSATION OF ASSISTANT SECRETARY OF
4 SERVICE BUREAU.—Section 5315 of title 5, United States
5 Code, is amended by adding at the end the following:

6 “Assistant Secretary of Homeland Security for
7 Immigration Services, Directorate of Immigration
8 Affairs, Department of Homeland Security.”.

9 (c) SERVICE BUREAU OFFICES.—

10 (1) IN GENERAL.—Under the direction of the
11 Secretary, the Under Secretary, acting through the
12 Assistant Secretary for Immigration Services, shall
13 establish Service Bureau offices, including suboffices
14 and satellite offices, in appropriate municipalities
15 and locations in the United States. In the selection
16 of sites for the Service Bureau offices, the Under
17 Secretary shall consider the location’s proximity and
18 accessibility to the community served, the workload
19 for which that office shall be responsible, whether
20 the location would significantly reduce the backlog of
21 cases in that given geographic area, whether the lo-
22 cation will improve customer service, and whether
23 the location is in a geographic area with an increase
24 in the population to be served. The Under Secretary
25 shall conduct periodic reviews to assess whether the

1 location and size of the respective Service Bureau of-
2 fices adequately serve customer service needs.

3 (2) TRANSITION PROVISION.—In determining
4 the location of Service Bureau offices, including sub-
5 offices and satellite offices, the Under Secretary
6 shall first consider maintaining and upgrading of-
7 fices in existing geographic locations that satisfy the
8 provisions of paragraph (1). The Under Secretary
9 shall also explore the feasibility and desirability of
10 establishing new Service Bureau offices, including
11 suboffices and satellite offices, in new geographic lo-
12 cations where there is a demonstrated need.

13 **SEC. 1105. BUREAU OF ENFORCEMENT AND BORDER AF-**
14 **FAIRS.**

15 (a) IN GENERAL.—Chapter 2 of title I of the Immi-
16 gration and Nationality Act, as added by section 1102 and
17 amended by sections 1103 and 1104, is further amended
18 by adding at the end the following:

19 **“SEC. 114. BUREAU OF ENFORCEMENT AND BORDER AF-**
20 **FAIRS.**

21 “(a) ESTABLISHMENT OF BUREAU.—

22 “(1) IN GENERAL.—There is established within
23 the Directorate a bureau to be known as the Bureau
24 of Enforcement and Border Affairs (in this chapter
25 referred to as the ‘Enforcement Bureau’).

1 “(2) ASSISTANT SECRETARY.—The head of the
2 Enforcement Bureau shall be the Assistant Sec-
3 retary of Homeland Security for Enforcement and
4 Border Affairs (in this chapter referred to as the
5 ‘Assistant Secretary for Immigration Enforcement’),
6 who—

7 “(A) shall be appointed by the Secretary of
8 Homeland Security, in consultation with the
9 Under Secretary; and

10 “(B) shall report directly to the Under
11 Secretary.

12 “(b) RESPONSIBILITIES OF THE ASSISTANT SEC-
13 RETARY.—

14 “(1) IN GENERAL.—Subject to the authority of
15 the Secretary and the Under Secretary, the Assist-
16 ant Secretary for Immigration Enforcement shall
17 administer the immigration enforcement functions of
18 the Directorate.

19 “(2) IMMIGRATION ENFORCEMENT FUNCTIONS
20 DEFINED.—In this chapter, the term ‘immigration
21 enforcement functions’ means the following functions
22 under the immigration laws of the United States:

23 “(A) The border patrol function.

24 “(B) The detention function, except as
25 specified in section 113(b)(2)(F).

1 “(C) The removal function.

2 “(D) The intelligence function.

3 “(E) The investigations function.

4 “(c) CHIEF BUDGET OFFICER OF THE ENFORCE-
5 MENT BUREAU.—There shall be within the Enforcement
6 Bureau a Chief Budget Officer. Under the authority of
7 the Chief Financial Officer of the Directorate, the Chief
8 Budget Officer of the Enforcement Bureau shall be re-
9 sponsible for monitoring and supervising all financial ac-
10 tivities of the Enforcement Bureau.

11 “(d) OFFICE OF PROFESSIONAL RESPONSIBILITY.—
12 There shall be within the Enforcement Bureau an Office
13 of Professional Responsibility that shall have the responsi-
14 bility for ensuring the professionalism of the Enforcement
15 Bureau and receiving charges of misconduct or ill treat-
16 ment made by the public and investigating the charges.

17 “(e) OFFICE OF QUALITY ASSURANCE.—There shall
18 be within the Enforcement Bureau an Office of Quality
19 Assurance that shall develop procedures and conduct au-
20 dits to—

21 “(1) ensure that the Directorate’s policies with
22 respect to immigration enforcement functions are
23 properly implemented; and

1 “(2) ensure that Enforcement Bureau policies
2 or practices result in sound record management and
3 efficient and accurate recordkeeping.

4 “(f) TRAINING OF PERSONNEL.—The Assistant Sec-
5 retary for Immigration Enforcement, in consultation with
6 the Under Secretary, shall have responsibility for deter-
7 mining the training for all personnel of the Enforcement
8 Bureau.”.

9 (b) COMPENSATION OF ASSISTANT SECRETARY OF
10 ENFORCEMENT BUREAU.—Section 5315 of title 5, United
11 States Code, is amended by adding at the end the fol-
12 lowing:

13 “Assistant Secretary of Homeland Security for
14 Enforcement and Border Affairs, Directorate of Im-
15 migration Affairs, Department of Homeland Secu-
16 rity.”.

17 (c) ENFORCEMENT BUREAU OFFICES.—

18 (1) IN GENERAL.—Under the direction of the
19 Secretary, the Under Secretary, acting through the
20 Assistant Secretary for Immigration Enforcement,
21 shall establish Enforcement Bureau offices, includ-
22 ing suboffices and satellite offices, in appropriate
23 municipalities and locations in the United States. In
24 the selection of sites for the Enforcement Bureau of-
25 fices, the Under Secretary shall make selections ac-

1 cording to trends in unlawful entry and unlawful
2 presence, alien smuggling, national security con-
3 cerns, the number of Federal prosecutions of immi-
4 gration-related offenses in a given geographic area,
5 and other enforcement considerations. The Under
6 Secretary shall conduct periodic reviews to assess
7 whether the location and size of the respective En-
8 forcement Bureau offices adequately serve enforce-
9 ment needs.

10 (2) **TRANSITION PROVISION.**—In determining
11 the location of Enforcement Bureau offices, includ-
12 ing suboffices and satellite offices, the Under Sec-
13 retary shall first consider maintaining and upgrad-
14 ing offices in existing geographic locations that sat-
15 isfy the provisions of paragraph (1). The Under Sec-
16 retary shall also explore the feasibility and desir-
17 ability of establishing new Enforcement Bureau of-
18 fices, including suboffices and satellite offices, in
19 new geographic locations where there is a dem-
20 onstrated need.

21 **SEC. 1106. OFFICE OF THE OMBUDSMAN WITHIN THE DI-**
22 **RECTORATE.**

23 (a) **IN GENERAL.**—Chapter 2 of title I of the Immi-
24 gration and Nationality Act, as added by section 1102 and

1 amended by sections 1103, 1104, and 1105, is further
2 amended by adding at the end the following:

3 **“SEC. 115. OFFICE OF THE OMBUDSMAN FOR IMMIGRATION**
4 **AFFAIRS.**

5 “(a) IN GENERAL.—There is established within the
6 Directorate the Office of the Ombudsman for Immigration
7 Affairs, which shall be headed by the Ombudsman.

8 “(b) OMBUDSMAN.—

9 “(1) APPOINTMENT.—The Ombudsman shall be
10 appointed by the Secretary of Homeland Security, in
11 consultation with the Under Secretary. The Om-
12 budsman shall report directly to the Under Sec-
13 retary.

14 “(2) COMPENSATION.—The Ombudsman shall
15 be entitled to compensation at the same rate as the
16 highest rate of basic pay established for the Senior
17 Executive Service under section 5382 of title 5,
18 United States Code, or, if the Secretary of Home-
19 land Security so determines, at a rate fixed under
20 section 9503 of such title.

21 “(c) FUNCTIONS OF OFFICE.—The functions of the
22 Office of the Ombudsman for Immigration Affairs shall
23 include—

24 “(1) to assist individuals in resolving problems
25 with the Directorate or any component thereof;

1 “(2) to identify systemic problems encountered
2 by the public in dealings with the Directorate or any
3 component thereof;

4 “(3) to propose changes in the administrative
5 practices or regulations of the Directorate, or any
6 component thereof, to mitigate problems identified
7 under paragraph (2);

8 “(4) to identify potential changes in statutory
9 law that may be required to mitigate such problems;
10 and

11 “(5) to monitor the coverage and geographic
12 distribution of local offices of the Directorate.

13 “(d) PERSONNEL ACTIONS.—The Ombudsman shall
14 have the responsibility and authority to appoint local or
15 regional representatives of the Ombudsman’s Office as in
16 the Ombudsman’s judgment may be necessary to address
17 and rectify problems.

18 “(e) ANNUAL REPORT.—Not later than December 31
19 of each year, the Ombudsman shall submit a report to the
20 Committee on the Judiciary of the House of Representa-
21 tives and the Committee on the Judiciary of the Senate
22 on the activities of the Ombudsman during the fiscal year
23 ending in that calendar year. Each report shall contain
24 a full and substantive analysis, in addition to statistical
25 information, and shall contain—

1 “(1) a description of the initiatives that the Of-
2 fice of the Ombudsman has taken on improving the
3 responsiveness of the Directorate;

4 “(2) a summary of serious or systemic problems
5 encountered by the public, including a description of
6 the nature of such problems;

7 “(3) an accounting of the items described in
8 paragraphs (1) and (2) for which action has been
9 taken, and the result of such action;

10 “(4) an accounting of the items described in
11 paragraphs (1) and (2) for which action remains to
12 be completed;

13 “(5) an accounting of the items described in
14 paragraphs (1) and (2) for which no action has been
15 taken, the reasons for the inaction, and identify any
16 Agency official who is responsible for such inaction;

17 “(6) recommendations as may be appropriate to
18 resolve problems encountered by the public;

19 “(7) recommendations as may be appropriate to
20 resolve problems encountered by the public, includ-
21 ing problems created by backlogs in the adjudication
22 and processing of petitions and applications;

23 “(8) recommendations to resolve problems
24 caused by inadequate funding or staffing; and

1 “(9) such other information as the Ombudsman
2 may deem advisable.

3 “(f) AUTHORIZATION OF APPROPRIATIONS.—

4 “(1) IN GENERAL.—There are authorized to be
5 appropriated to the Office of the Ombudsman such
6 sums as may be necessary to carry out its functions.

7 “(2) AVAILABILITY OF FUNDS.—Amounts ap-
8 propriated pursuant to paragraph (1) are authorized
9 to remain available until expended.”.

10 **SEC. 1107. OFFICE OF IMMIGRATION STATISTICS WITHIN**
11 **THE DIRECTORATE.**

12 (a) IN GENERAL.—Chapter 2 of title I of the Immi-
13 gration and Nationality Act, as added by section 1102 and
14 amended by sections 1103, 1104, and 1105, is further
15 amended by adding at the end the following:

16 **“SEC. 116. OFFICE OF IMMIGRATION STATISTICS.**

17 “(a) ESTABLISHMENT.—There is established within
18 the Directorate an Office of Immigration Statistics (in this
19 section referred to as the ‘Office’), which shall be headed
20 by a Director who shall be appointed by the Secretary of
21 Homeland Security, in consultation with the Under Sec-
22 retary. The Office shall collect, maintain, compile, analyze,
23 publish, and disseminate information and statistics about
24 immigration in the United States, including information
25 and statistics involving the functions of the Directorate

1 and the Executive Office for Immigration Review (or its
2 successor entity).

3 “(b) RESPONSIBILITIES OF DIRECTOR.—The Direc-
4 tor of the Office shall be responsible for the following:

5 “(1) STATISTICAL INFORMATION.—Maintenance
6 of all immigration statistical information of the Di-
7 rectorate of Immigration Affairs.

8 “(2) STANDARDS OF RELIABILITY AND VALID-
9 ITY.—Establishment of standards of reliability and
10 validity for immigration statistics collected by the
11 Bureau of Immigration Services, the Bureau of En-
12 forcement, and the Executive Office for Immigration
13 Review (or its successor entity).

14 “(c) RELATION TO THE DIRECTORATE OF IMMIGRA-
15 TION AFFAIRS AND THE EXECUTIVE OFFICE FOR IMMI-
16 GRATION REVIEW.—

17 “(1) OTHER AUTHORITIES.—The Directorate
18 and the Executive Office for Immigration Review (or
19 its successor entity) shall provide statistical informa-
20 tion to the Office from the operational data systems
21 controlled by the Directorate and the Executive Of-
22 fice for Immigration Review (or its successor entity),
23 respectively, as requested by the Office, for the pur-
24 pose of meeting the responsibilities of the Director
25 of the Office.

1 “(2) DATABASES.—The Director of the Office,
2 under the direction of the Secretary, shall ensure the
3 interoperability of the databases of the Directorate,
4 the Bureau of Immigration Services, the Bureau of
5 Enforcement, and the Executive Office for Immigra-
6 tion Review (or its successor entity) to permit the
7 Director of the Office to perform the duties of such
8 office.”.

9 (b) TRANSFER OF FUNCTIONS.—There are trans-
10 ferred to the Directorate of Immigration Affairs for exer-
11 cise by the Under Secretary through the Office of Immi-
12 gration Statistics established by section 116 of the Immi-
13 gration and Nationality Act, as added by subsection (a),
14 the functions performed by the Statistics Branch of the
15 Office of Policy and Planning of the Immigration and Nat-
16 uralization Service, and the statistical functions performed
17 by the Executive Office for Immigration Review (or its
18 successor entity), on the day before the effective date of
19 this title.

20 **SEC. 1108. CLERICAL AMENDMENTS.**

21 The table of contents of the Immigration and Nation-
22 ality Act is amended—

23 (1) by inserting after the item relating to the
24 heading for title I the following:

 “CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES”;

1 by, the Commissioner of Immigration and Natu-
2 ralization or the Immigration and Naturalization
3 Service (or any officer, employee, or component
4 thereof), immediately prior to the effective date of
5 this title, are transferred to the Directorate of Immi-
6 gration Affairs on such effective date for exercise by
7 the Under Secretary in accordance with section
8 112(b) of the Immigration and Nationality Act, as
9 added by section 1103 of this Act.

10 (b) EXERCISE OF AUTHORITIES.—Except as other-
11 wise provided by law, the Under Secretary may, for pur-
12 poses of performing any function transferred to the Direc-
13 torate of Immigration Affairs under subsection (a), exer-
14 cise all authorities under any other provision of law that
15 were available with respect to the performance of that
16 function to the official responsible for the performance of
17 the function immediately before the effective date of the
18 transfer of the function under this title.

19 **SEC. 1112. TRANSFER OF PERSONNEL AND OTHER RE-**
20 **SOURCES.**

21 Subject to section 1531 of title 31, United States
22 Code, upon the effective date of this title, there are trans-
23 ferred to the Under Secretary for appropriate allocation
24 in accordance with section 1115—

1 (1) the personnel of the Department of Justice
2 employed in connection with the functions trans-
3 ferred under this title; and

4 (2) the assets, liabilities, contracts, property,
5 records, and unexpended balance of appropriations,
6 authorizations, allocations, and other funds em-
7 ployed, held, used, arising from, available to, or to
8 be made available to the Immigration and Natu-
9 ralization Service in connection with the functions
10 transferred pursuant to this title.

11 **SEC. 1113. DETERMINATIONS WITH RESPECT TO FUNC-**
12 **TIONS AND RESOURCES.**

13 Under the direction of the Secretary, the Under Sec-
14 retary shall determine, in accordance with the cor-
15 responding criteria set forth in sections 1112(b), 1113(b),
16 and 1114(b) of the Immigration and Nationality Act (as
17 added by this title)—

18 (1) which of the functions transferred under
19 section 1111 are—

20 (A) immigration policy, administration,
21 and inspection functions;

22 (B) immigration service functions; and

23 (C) immigration enforcement functions;

24 and

1 (2) which of the personnel, assets, liabilities,
2 grants, contracts, property, records, and unexpended
3 balances of appropriations, authorizations, alloca-
4 tions, and other funds transferred under section
5 1112 were held or used, arose from, were available
6 to, or were made available, in connection with the
7 performance of the respective functions specified in
8 paragraph (1) immediately prior to the effective date
9 of this title.

10 **SEC. 1114. DELEGATION AND RESERVATION OF FUNC-**
11 **TIONS.**

12 (a) IN GENERAL.—

13 (1) DELEGATION TO THE BUREAUS.—Under
14 the direction of the Secretary, and subject to section
15 112(b)(1) of the Immigration and Nationality Act
16 (as added by section 1103), the Under Secretary
17 shall delegate—

18 (A) immigration service functions to the
19 Assistant Secretary for Immigration Services;
20 and

21 (B) immigration enforcement functions to
22 the Assistant Secretary for Immigration En-
23 forcement.

24 (2) RESERVATION OF FUNCTIONS.—Subject to
25 section 112(b)(1) of the Immigration and Nation-

1 ality Act (as added by section 1103), immigration
2 policy, administration, and inspection functions shall
3 be reserved for exercise by the Under Secretary.

4 (b) NONEXCLUSIVE DELEGATIONS AUTHORIZED.—
5 Delegations made under subsection (a) may be on a non-
6 exclusive basis as the Under Secretary may determine may
7 be necessary to ensure the faithful execution of the Under
8 Secretary's responsibilities and duties under law.

9 (c) EFFECT OF DELEGATIONS.—Except as otherwise
10 expressly prohibited by law or otherwise provided in this
11 title, the Under Secretary may make delegations under
12 this subsection to such officers and employees of the office
13 of the Under Secretary, the Service Bureau, and the En-
14 forcement Bureau, respectively, as the Under Secretary
15 may designate, and may authorize successive redelegations
16 of such functions as may be necessary or appropriate. No
17 delegation of functions under this subsection or under any
18 other provision of this title shall relieve the official to
19 whom a function is transferred under this title of responsi-
20 bility for the administration of the function.

21 (d) STATUTORY CONSTRUCTION.—Nothing in this di-
22 vision may be construed to limit the authority of the
23 Under Secretary, acting directly or by delegation under
24 the Secretary, to establish such offices or positions within
25 the Directorate of Immigration Affairs, in addition to

1 those specified by this division, as the Under Secretary
2 may determine to be necessary to carry out the functions
3 of the Directorate.

4 **SEC. 1115. ALLOCATION OF PERSONNEL AND OTHER RE-**
5 **SOURCES.**

6 (a) **AUTHORITY OF THE UNDER SECRETARY.—**

7 (1) **IN GENERAL.—**Subject to paragraph (2)
8 and section 1114(b), the Under Secretary shall
9 make allocations of personnel, assets, liabilities,
10 grants, contracts, property, records, and unexpended
11 balances of appropriations, authorizations, alloca-
12 tions, and other funds held, used, arising from,
13 available to, or to be made available in connection
14 with the performance of the respective functions, as
15 determined under section 1113, in accordance with
16 the delegation of functions and the reservation of
17 functions made under section 1114.

18 (2) **LIMITATION.—**Unexpended funds trans-
19 ferred pursuant to section 1112 shall be used only
20 for the purposes for which the funds were originally
21 authorized and appropriated.

22 (b) **AUTHORITY TO TERMINATE AFFAIRS OF INS.—**

23 The Attorney General in consultation with the Secretary,
24 shall provide for the termination of the affairs of the Im-
25 migration and Naturalization Service and such further

1 measures and dispositions as may be necessary to effec-
2 tuate the purposes of this division.

3 (c) TREATMENT OF SHARED RESOURCES.—The
4 Under Secretary is authorized to provide for an appro-
5 priate allocation, or coordination, or both, of resources in-
6 volved in supporting shared support functions for the of-
7 fice of the Under Secretary, the Service Bureau, and the
8 Enforcement Bureau. The Under Secretary shall maintain
9 oversight and control over the shared computer databases
10 and systems and records management.

11 **SEC. 1116. SAVINGS PROVISIONS.**

12 (a) LEGAL DOCUMENTS.—All orders, determinations,
13 rules, regulations, permits, grants, loans, contracts, rec-
14 ognition of labor organizations, agreements, including col-
15 lective bargaining agreements, certificates, licenses, and
16 privileges—

17 (1) that have been issued, made, granted, or al-
18 lowed to become effective by the President, the At-
19 torney General, the Commissioner of the Immigra-
20 tion and Naturalization Service, their delegates, or
21 any other Government official, or by a court of com-
22 petent jurisdiction, in the performance of any func-
23 tion that is transferred under this title; and

24 (2) that are in effect on the effective date of
25 such transfer (or become effective after such date

1 pursuant to their terms as in effect on such effective
2 date);
3 shall continue in effect according to their terms until
4 modified, terminated, superseded, set aside, or revoked in
5 accordance with law by the President, any other author-
6 ized official, a court of competent jurisdiction, or operation
7 of law, except that any collective bargaining agreement
8 shall remain in effect until the date of termination speci-
9 fied in the agreement.

10 (b) PROCEEDINGS.—

11 (1) PENDING.—Sections 111 through 116 of
12 the Immigration and Nationality Act, as added by
13 subtitle A of this title, shall not affect any pro-
14 ceeding or any application for any benefit, service, li-
15 cense, permit, certificate, or financial assistance
16 pending on the effective date of this title before an
17 office whose functions are transferred under this
18 title, but such proceedings and applications shall be
19 continued.

20 (2) ORDERS.—Orders shall be issued in such
21 proceedings, appeals shall be taken therefrom, and
22 payments shall be made pursuant to such orders, as
23 if this Act had not been enacted, and orders issued
24 in any such proceeding shall continue in effect until
25 modified, terminated, superseded, or revoked by a

1 duly authorized official, by a court of competent ju-
2 risdiction, or by operation of law.

3 (3) DISCONTINUANCE OR MODIFICATION.—

4 Nothing in this section shall be considered to pro-
5 hibit the discontinuance or modification of any such
6 proceeding under the same terms and conditions and
7 to the same extent that such proceeding could have
8 been discontinued or modified if this section had not
9 been enacted.

10 (c) SUITS.—This title, and the amendments made by
11 this title, shall not affect suits commenced before the ef-
12 fective date of this title, and in all such suits, proceeding
13 shall be had, appeals taken, and judgments rendered in
14 the same manner and with the same effect as if this title,
15 and the amendments made by this title, had not been en-
16 acted.

17 (d) NONABATEMENT OF ACTIONS.—No suit, action,
18 or other proceeding commenced by or against the Depart-
19 ment of Justice or the Immigration and Naturalization
20 Service, or by or against any individual in the official ca-
21 pacity of such individual as an officer or employee in con-
22 nection with a function transferred pursuant to this sec-
23 tion, shall abate by reason of the enactment of this Act.

24 (e) CONTINUANCE OF SUIT WITH SUBSTITUTION OF
25 PARTIES.—If any Government officer in the official capaci-

1 ity of such officer is party to a suit with respect to a func-
2 tion of the officer, and such function is transferred under
3 this title to any other officer or office, then such suit shall
4 be continued with the other officer or the head of such
5 other office, as applicable, substituted or added as a party.

6 (f) ADMINISTRATIVE PROCEDURE AND JUDICIAL RE-
7 VIEW.—Except as otherwise provided by this title, any
8 statutory requirements relating to notice, hearings, action
9 upon the record, or administrative or judicial review that
10 apply to any function transferred under this title shall
11 apply to the exercise of such function by the head of the
12 office, and other officers of the office, to which such func-
13 tion is transferred.

14 **SEC. 1117. INTERIM SERVICE OF THE COMMISSIONER OF**
15 **IMMIGRATION AND NATURALIZATION.**

16 The individual serving as the Commissioner of Immi-
17 gration and Naturalization on the day before the effective
18 date of this title may serve as Under Secretary until the
19 date on which an Under Secretary is appointed under sec-
20 tion 112 of the Immigration and Nationality Act, as added
21 by section 1103.

22 **SEC. 1118. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**
23 **AUTHORITIES NOT AFFECTED.**

24 Nothing in this title, or any amendment made by this
25 title, may be construed to authorize or require the transfer

1 or delegation of any function vested in, or exercised by
2 the Executive Office for Immigration Review of the De-
3 partment of Justice (or its successor entity), or any offi-
4 cer, employee, or component thereof immediately prior to
5 the effective date of this title.

6 **SEC. 1119. OTHER AUTHORITIES NOT AFFECTED.**

7 Nothing in this title, or any amendment made by this
8 title, may be construed to authorize or require the transfer
9 or delegation of any function vested in, or exercised by—

10 (1) the Secretary of State under the State De-
11 partment Basic Authorities Act of 1956, or under
12 the immigration laws of the United States, imme-
13 diately prior to the effective date of this title, with
14 respect to the issuance and use of passports and
15 visas;

16 (2) the Secretary of Labor or any official of the
17 Department of Labor immediately prior to the effec-
18 tive date of this title, with respect to labor certifi-
19 cations or any other authority under the immigra-
20 tion laws of the United States; or

21 (3) except as otherwise specifically provided in
22 this division, any other official of the Federal Gov-
23 ernment under the immigration laws of the United
24 States immediately prior to the effective date of this
25 title.

1 **SEC. 1120. TRANSITION FUNDING.**

2 (a) AUTHORIZATION OF APPROPRIATIONS FOR TRAN-
3 SITION.—

4 (1) IN GENERAL.—There are authorized to be
5 appropriated to the Department of Homeland Secu-
6 rity such sums as may be necessary—

7 (A) to effect—

8 (i) the abolition of the Immigration
9 and Naturalization Service;

10 (ii) the establishment of the Direc-
11 torate of Immigration Affairs and its com-
12 ponents, the Bureau of Immigration Serv-
13 ices, and the Bureau of Enforcement and
14 Border Affairs; and

15 (iii) the transfer of functions required
16 to be made under this division; and

17 (B) to carry out any other duty that is
18 made necessary by this division, or any amend-
19 ment made by this division.

20 (2) ACTIVITIES SUPPORTED.—Activities sup-
21 ported under paragraph (1) include—

22 (A) planning for the transfer of functions
23 from the Immigration and Naturalization Serv-
24 ice to the Directorate of Immigration Affairs,
25 including the preparation of any reports and

1 implementation plans necessary for such trans-
2 fer;

3 (B) the division, acquisition, and disposi-
4 tion of—

5 (i) buildings and facilities;

6 (ii) support and infrastructure re-
7 sources; and

8 (iii) computer hardware, software, and
9 related documentation;

10 (C) other capital expenditures necessary to
11 effect the transfer of functions described in this
12 paragraph;

13 (D) revision of forms, stationery, logos,
14 and signage;

15 (E) expenses incurred in connection with
16 the transfer and training of existing personnel
17 and hiring of new personnel; and

18 (F) such other expenses necessary to effect
19 the transfers, as determined by the Secretary.

20 (b) AVAILABILITY OF FUNDS.—Amounts appro-
21 priated pursuant to subsection (a) are authorized to re-
22 main available until expended.

23 (c) TRANSITION ACCOUNT.—

24 (1) ESTABLISHMENT.—There is established in
25 the general fund of the Treasury of the United

1 States a separate account, which shall be known as
2 the “Directorate of Immigration Affairs Transition
3 Account” (in this section referred to as the “Ac-
4 count”).

5 (2) USE OF ACCOUNT.—There shall be depos-
6 ited into the Account all amounts appropriated
7 under subsection (a) and amounts reprogrammed for
8 the purposes described in subsection (a).

9 (d) REPORT TO CONGRESS ON TRANSITION.—Begin-
10 ning not later than 90 days after the effective date of divi-
11 sion A of this Act, and at the end of each fiscal year in
12 which appropriations are made pursuant to subsection (c),
13 the Secretary of Homeland Security shall submit a report
14 to Congress concerning the availability of funds to cover
15 transition costs, including—

16 (1) any unobligated balances available for such
17 purposes; and

18 (2) a calculation of the amount of appropria-
19 tions that would be necessary to fully fund the ac-
20 tivities described in subsection (a).

21 (e) EFFECTIVE DATE.—This section shall take effect
22 1 year after the effective date of division A of this Act.

1 **Subtitle C—Miscellaneous**
2 **Provisions**

3 **SEC. 1121. FUNDING ADJUDICATION AND NATURALIZATION**
4 **SERVICES.**

5 (a) **LEVEL OF FEES.**—Section 286(m) of the Immi-
6 gration and Nationality Act (8 U.S.C. 1356(m)) is amend-
7 ed by striking “services, including the costs of similar
8 services provided without charge to asylum applicants or
9 other immigrants” and inserting “services”.

10 (b) **USE OF FEES.**—

11 (1) **IN GENERAL.**—Each fee collected for the
12 provision of an adjudication or naturalization service
13 shall be used only to fund adjudication or natu-
14 ralization services or, subject to the availability of
15 funds provided pursuant to subsection (c), costs of
16 similar services provided without charge to asylum
17 and refugee applicants.

18 (2) **PROHIBITION.**—No fee may be used to fund
19 adjudication- or naturalization-related audits that
20 are not regularly conducted in the normal course of
21 operation.

22 (c) **REFUGEE AND ASYLUM ADJUDICATION SERV-**
23 **ICES.**—

24 (1) **AUTHORIZATION OF APPROPRIATIONS.**—In
25 addition to such sums as may be otherwise available

1 for such purposes, there are authorized to be appro-
2 priated such sums as may be necessary to carry out
3 the provisions of sections 207 through 209 of the
4 Immigration and Nationality Act.

5 (2) AVAILABILITY OF FUNDS.—Funds appro-
6 priated pursuant to paragraph (1) are authorized to
7 remain available until expended.

8 (d) SEPARATION OF FUNDING.—

9 (1) IN GENERAL.—There shall be established
10 separate accounts in the Treasury of the United
11 States for appropriated funds and other collections
12 available for the Bureau of Immigration Services
13 and the Bureau of Enforcement and Border Affairs.

14 (2) FEES.—Fees imposed for a particular serv-
15 ice, application, or benefit shall be deposited into the
16 account established under paragraph (1) that is for
17 the bureau with jurisdiction over the function to
18 which the fee relates.

19 (3) FEES NOT TRANSFERABLE.—No fee may be
20 transferred between the Bureau of Immigration
21 Services and the Bureau of Enforcement and Border
22 Affairs for purposes not authorized by section 286
23 of the Immigration and Nationality Act, as amended
24 by subsection (a).

1 (e) AUTHORIZATION OF APPROPRIATIONS FOR BACK-
2 LOG REDUCTION.—

3 (1) IN GENERAL.—There are authorized to be
4 appropriated such sums as may be necessary for
5 each of the fiscal years 2003 through 2006 to carry
6 out the Immigration Services and Infrastructure Im-
7 provement Act of 2000 (title II of Public Law 106-
8 313).

9 (2) AVAILABILITY OF FUNDS.—Amounts appro-
10 priated under paragraph (1) are authorized to re-
11 main available until expended.

12 (3) INFRASTRUCTURE IMPROVEMENT AC-
13 COUNT.—Amounts appropriated under paragraph
14 (1) shall be deposited into the Immigration Services
15 and Infrastructure Improvements Account estab-
16 lished by section 204(a)(2) of title II of Public Law
17 106-313.

18 **SEC. 1122. APPLICATION OF INTERNET-BASED TECH-**
19 **NOLOGIES.**

20 (a) ESTABLISHMENT OF ON-LINE DATABASE.—

21 (1) IN GENERAL.—Not later than 2 years after
22 the effective date of division A, the Secretary, in
23 consultation with the Under Secretary and the Tech-
24 nology Advisory Committee, shall establish an Inter-
25 net-based system that will permit an immigrant,

1 nonimmigrant, employer, or other person who files
2 any application, petition, or other request for any
3 benefit under the immigration laws of the United
4 States access to on-line information about the proc-
5 essing status of the application, petition, or other re-
6 quest.

7 (2) PRIVACY CONSIDERATIONS.—The Under
8 Secretary shall consider all applicable privacy issues
9 in the establishment of the Internet system de-
10 scribed in paragraph (1). No personally identifying
11 information shall be accessible to unauthorized per-
12 sons.

13 (3) MEANS OF ACCESS.—The on-line informa-
14 tion under the Internet system described in para-
15 graph (1) shall be accessible to the persons described
16 in paragraph (1) through a personal identification
17 number (PIN) or other personalized password.

18 (4) PROHIBITION ON FEES.—The Under Sec-
19 retary shall not charge any immigrant, non-
20 immigrant, employer, or other person described in
21 paragraph (1) a fee for access to the information in
22 the database that pertains to that person.

23 (b) FEASIBILITY STUDY FOR ON-LINE FILING AND
24 IMPROVED PROCESSING.—

25 (1) ON-LINE FILING.—

1 (A) IN GENERAL.—The Under Secretary,
2 in consultation with the Technology Advisory
3 Committee, shall conduct a study to determine
4 the feasibility of on-line filing of the documents
5 described in subsection (a).

6 (B) STUDY ELEMENTS.—The study
7 shall—

8 (i) include a review of computerization
9 and technology of the Immigration and
10 Naturalization Service (or successor agen-
11 cy) relating to immigration services and
12 the processing of such documents;

13 (ii) include an estimate of the time-
14 frame and costs of implementing on-line
15 filing of such documents; and

16 (iii) consider other factors in imple-
17 menting such a filing system, including the
18 feasibility of the payment of fees on-line.

19 (2) REPORT.—Not later than 2 years after the
20 effective date of division A, the Under Secretary
21 shall submit to the Committees on the Judiciary of
22 the Senate and the House of Representatives a re-
23 port on the findings of the study conducted under
24 this subsection.

25 (c) TECHNOLOGY ADVISORY COMMITTEE.—

1 (1) ESTABLISHMENT.—Not later than 1 year
2 after the effective date of division A, the Under Sec-
3 retary shall establish, after consultation with the
4 Committees on the Judiciary of the Senate and the
5 House of Representatives, an advisory committee (in
6 this section referred to as the “Technology Advisory
7 Committee”) to assist the Under Secretary in—

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

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

12 (2) COMPOSITION.—The Technology Advisory
13 Committee shall be composed of—

14 (A) experts from the public and private
15 sector capable of establishing and implementing
16 the system in an expeditious manner; and

17 (B) representatives of persons or entities
18 who may use the tracking system described in
19 subsection (a) and the on-line filing system de-
20 scribed in subsection (b)(1).

21 **SEC. 1123. ALTERNATIVES TO DETENTION OF ASYLUM**
22 **SEEKERS.**

23 (a) ASSIGNMENTS OF ASYLUM OFFICERS.—The
24 Under Secretary shall assign asylum officers to major
25 ports of entry in the United States to assist in the inspec-

1 tion of asylum seekers. For other ports of entry, the Under
2 Secretary shall take steps to ensure that asylum officers
3 participate in the inspections process.

4 (b) AMENDMENT OF THE IMMIGRATION AND NA-
5 TIONALITY ACT.—Chapter 4 of title II of the Immigration
6 and Nationality Act (8 U.S.C. 1221 et seq.) is amended
7 by inserting after section 236A the following new section:
8 **“SEC. 236B. ALTERNATIVES TO DETENTION OF ASYLUM**
9 **SEEKERS.**

10 “(a) DEVELOPMENT OF ALTERNATIVES TO DETEN-
11 TION.—The Under Secretary shall—

12 “(1) authorize and promote the utilization of al-
13 ternatives to the detention of asylum seekers who do
14 not have nonpolitical criminal records; and

15 “(2) establish conditions for the detention of
16 asylum seekers that ensure a safe and humane envi-
17 ronment.

18 “(b) SPECIFIC ALTERNATIVES FOR CONSIDER-
19 ATION.—The Under Secretary shall consider the following
20 specific alternatives to the detention of asylum seekers de-
21 scribed in subsection (a):

22 “(1) Parole from detention.

23 “(2) For individuals not otherwise qualified for
24 parole under paragraph (1), parole with appearance
25 assistance provided by private nonprofit voluntary

1 agencies with expertise in the legal and social needs
2 of asylum seekers.

3 “(3) For individuals not otherwise qualified for
4 parole under paragraph (1) or (2), non-secure shel-
5 ter care or group homes operated by private non-
6 profit voluntary agencies with expertise in the legal
7 and social needs of asylum seekers.

8 “(4) Noninstitutional settings for minors such
9 as foster care or group homes operated by private
10 nonprofit voluntary agencies with expertise in the
11 legal and social needs of asylum seekers.

12 “(c) REGULATIONS.—The Under Secretary shall pro-
13 mulgate such regulations as may be necessary to carry out
14 this section.

15 “(d) DEFINITION.—In this section, the term ‘asylum
16 seeker’ means any applicant for asylum under section 208
17 or any alien who indicates an intention to apply for asylum
18 under that section.”.

19 (b) CLERICAL AMENDMENT.—The table of contents
20 of the Immigration and Nationality Act is amended by in-
21 serting after the item relating to section 236A the fol-
22 lowing new item:

“Sec. 236B. Alternatives to detention of asylum seekers.”.

1 **Subtitle D—Effective Date**

2 **SEC. 1131. EFFECTIVE DATE.**

3 This title, and the amendments made by this title,
4 shall take effect one year after the effective date of divi-
5 sion A of this Act.

6 **TITLE XII—UNACCOMPANIED**
7 **ALIEN CHILD PROTECTION**

8 **SEC. 1201. SHORT TITLE.**

9 This title may be cited as the “Unaccompanied Alien
10 Child Protection Act of 2002”.

11 **SEC. 1202. DEFINITIONS.**

12 (a) IN GENERAL.—In this title:

13 (1) DIRECTOR.—The term “Director” means
14 the Director of the Office.

15 (2) OFFICE.—The term “Office” means the Of-
16 fice of Refugee Resettlement as established by sec-
17 tion 411 of the Immigration and Nationality Act.

18 (3) SERVICE.—The term “Service” means the
19 Immigration and Naturalization Service (or, upon
20 the effective date of title XI, the Directorate of Im-
21 migration Affairs).

22 (4) UNACCOMPANIED ALIEN CHILD.—The term
23 “unaccompanied alien child” means a child who—

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

1 (B) has not attained the age of 18; and

2 (C) with respect to whom—

3 (i) there is no parent or legal guard-
4 ian in the United States; or

5 (ii) no parent or legal guardian in the
6 United States is available to provide care
7 and physical custody.

8 (5) VOLUNTARY AGENCY.—The term “vol-
9 untary agency” means a private, nonprofit voluntary
10 agency with expertise in meeting the cultural, devel-
11 opmental, or psychological needs of unaccompanied
12 alien children as licensed by the appropriate State
13 and certified by the Director of the Office of Ref-
14 ugee Resettlement.

15 (b) AMENDMENTS TO THE IMMIGRATION AND NA-
16 TIONALITY ACT.—Section 101(a) (8 U.S.C. 1101(a)) is
17 amended by adding at the end the following new para-
18 graphs:

19 “(53) The term ‘unaccompanied alien child’ means
20 a child who—

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

23 “(B) has not attained the age of 18; and

24 “(C) with respect to whom—

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

3 “(ii) no parent or legal guardian in the
4 United States is able to provide care and phys-
5 ical custody.

6 “(54) The term ‘unaccompanied refugee children’
7 means persons described in paragraph (42) who—

8 “(A) have not attained the age of 18; and

9 “(B) with respect to whom there are no parents
10 or legal guardians available to provide care and
11 physical custody.”.

12 **Subtitle A—Structural Changes**

13 **SEC. 1211. RESPONSIBILITIES OF THE OFFICE OF REFUGEE**

14 **RESETTLEMENT WITH RESPECT TO UNAC-**

15 **COMPANIED ALIEN CHILDREN.**

16 (a) IN GENERAL.—

17 (1) RESPONSIBILITIES OF THE OFFICE.—The
18 Office shall be responsible for—

19 (A) coordinating and implementing the
20 care and placement for unaccompanied alien
21 children who are in Federal custody by reason
22 of their immigration status; and

23 (B) ensuring minimum standards of deten-
24 tion for all unaccompanied alien children.

1 (2) DUTIES OF THE DIRECTOR WITH RESPECT
2 TO UNACCOMPANIED ALIEN CHILDREN.—The Direc-
3 tor shall be responsible under this title for—

4 (A) ensuring that the best interests of the
5 child are considered in decisions and actions re-
6 lating to the care and placement of an unac-
7 companied alien child;

8 (B) making placement, release, and deten-
9 tion determinations for all unaccompanied alien
10 children in the custody of the Office;

11 (C) implementing the placement, release,
12 and detention determinations made by the Of-
13 fice;

14 (D) convening, in the absence of the As-
15 sistant Secretary, Administration for Children
16 and Families of the Department of Health and
17 Human Services, the Interagency Task Force
18 on Unaccompanied Alien Children established
19 in section 1212;

20 (E) identifying a sufficient number of
21 qualified persons, entities, and facilities to
22 house unaccompanied alien children in accord-
23 ance with sections 1222 and 1223;

1 (F) overseeing the persons, entities, and
2 facilities described in sections 1222 and 1223 to
3 ensure their compliance with such provisions;

4 (G) compiling, updating, and publishing at
5 least annually a State-by-State list of profes-
6 sionals or other entities qualified to contract
7 with the Office to provide the services described
8 in sections 1231 and 1232;

9 (H) maintaining statistical information
10 and other data on unaccompanied alien children
11 in the Office's custody and care, which shall
12 include—

13 (i) biographical information such as
14 the child's name, gender, date of birth,
15 country of birth, and country of habitual
16 residence;

17 (ii) the date on which the child came
18 into Federal custody, including each in-
19 stance in which such child came into the
20 custody of—

21 (I) the Service; or

22 (II) the Office;

23 (iii) information relating to the cus-
24 tody, detention, release, and repatriation of

1 unaccompanied alien children who have
2 been in the custody of the Office;

3 (iv) in any case in which the child is
4 placed in detention, an explanation relating
5 to the detention; and

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

8 (I) collecting and compiling statistical in-
9 formation from the Service, including Border
10 Patrol and inspections officers, on the unaccom-
11 panied alien children with whom they come into
12 contact; and

13 (J) conducting investigations and inspec-
14 tions of facilities and other entities in which un-
15 accompanied alien children reside.

16 (3) DUTIES WITH RESPECT TO FOSTER CARE.—

17 In carrying out the duties described in paragraph
18 (3)(F), the Director is encouraged to utilize the ref-
19 ugee children foster care system established under
20 section 412(d)(2) of the Immigration and Nation-
21 ality Act for the placement of unaccompanied alien
22 children.

23 (4) POWERS.—In carrying out the duties under
24 paragraph (3), the Director shall have the power
25 to—

1 (A) contract with service providers to per-
2 form the services described in sections 1222,
3 1223, 1231, and 1232; and

4 (B) compel compliance with the terms and
5 conditions set forth in section 1223, including
6 the power to terminate the contracts of pro-
7 viders that are not in compliance with such con-
8 ditions and reassign any unaccompanied alien
9 child to a similar facility that is in compliance
10 with such section.

11 (b) NO EFFECT ON SERVICE, EOIR, AND DEPART-
12 MENT OF STATE ADJUDICATORY RESPONSIBILITIES.—
13 Nothing in this title may be construed to transfer the re-
14 sponsibility for adjudicating benefit determinations under
15 the Immigration and Nationality Act from the authority
16 of any official of the Service, the Executive Office of Immi-
17 gration Review (or successor entity), or the Department
18 of State.

19 **SEC. 1212. ESTABLISHMENT OF INTERAGENCY TASK FORCE**
20 **ON UNACCOMPANIED ALIEN CHILDREN.**

21 (a) ESTABLISHMENT.—There is established an Inter-
22 agency Task Force on Unaccompanied Alien Children.

23 (b) COMPOSITION.—The Task Force shall consist of
24 the following members:

1 (1) The Assistant Secretary, Administration for
2 Children and Families, Department of Health and
3 Human Services.

4 (2) The Under Secretary of Homeland Security
5 for Immigration Affairs.

6 (3) The Assistant Secretary of State for Popu-
7 lation, Refugees, and Migration.

8 (4) The Director.

9 (5) Such other officials in the executive branch
10 of Government as may be designated by the Presi-
11 dent.

12 (c) CHAIRMAN.—The Task Force shall be chaired by
13 the Assistant Secretary, Administration for Children and
14 Families, Department of Health and Human Services.

15 (d) ACTIVITIES OF THE TASK FORCE.—In consulta-
16 tion with nongovernmental organizations, the Task Force
17 shall—

18 (1) measure and evaluate the progress of the
19 United States in treating unaccompanied alien chil-
20 dren in United States custody; and

21 (2) expand interagency procedures to collect
22 and organize data, including significant research and
23 resource information on the needs and treatment of
24 unaccompanied alien children in the custody of the
25 United States Government.

1 **SEC. 1213. TRANSITION PROVISIONS.**

2 (a) **TRANSFER OF FUNCTIONS.**—All functions with
3 respect to the care and custody of unaccompanied alien
4 children under the immigration laws of the United States
5 vested by statute in, or exercised by, the Commissioner
6 of Immigration and Naturalization (or any officer, em-
7 ployee, or component thereof), immediately prior to the
8 effective date of this subtitle, are transferred to the Office.

9 (b) **TRANSFER AND ALLOCATIONS OF APPROPRIA-**
10 **TIONS AND PERSONNEL.**—The personnel employed in con-
11 nection with, and the assets, liabilities, contracts, prop-
12 erty, records, and unexpended balances of appropriations,
13 authorizations, allocations, and other funds employed,
14 used, held, arising from, available to, or to be made avail-
15 able in connection with the functions transferred by this
16 section, subject to section 1531 of title 31, United States
17 Code, shall be transferred to the Office. Unexpended funds
18 transferred pursuant to this section shall be used only for
19 the purposes for which the funds were originally author-
20 ized and appropriated.

21 (c) **LEGAL DOCUMENTS.**—All orders, determinations,
22 rules, regulations, permits, grants, loans, contracts, rec-
23 ognition of labor organizations, agreements, including col-
24 lective bargaining agreements, certificates, licenses, and
25 privileges—

1 (1) that have been issued, made, granted, or al-
2 lowed to become effective by the President, the At-
3 torney General, the Commissioner of the Immigra-
4 tion and Naturalization Service, their delegates, or
5 any other Government official, or by a court of com-
6 petent jurisdiction, in the performance of any func-
7 tion that is transferred pursuant to this section; and

8 (2) that are in effect on the effective date of
9 such transfer (or become effective after such date
10 pursuant to their terms as in effect on such effective
11 date);

12 shall continue in effect according to their terms until
13 modified, terminated, superseded, set aside, or revoked in
14 accordance with law by the President, any other author-
15 ized official, a court of competent jurisdiction, or operation
16 of law, except that any collective bargaining agreement
17 shall remain in effect until the date of termination speci-
18 fied in the agreement.

19 (d) PROCEEDINGS.—

20 (1) PENDING.—The transfer of functions under
21 subsection (a) shall not affect any proceeding or any
22 application for any benefit, service, license, permit,
23 certificate, or financial assistance pending on the ef-
24 fective date of this subtitle before an office whose
25 functions are transferred pursuant to this section,

1 but such proceedings and applications shall be con-
2 tinued.

3 (2) ORDERS.—Orders shall be issued in such
4 proceedings, appeals shall be taken therefrom, and
5 payments shall be made pursuant to such orders, as
6 if this Act had not been enacted, and orders issued
7 in any such proceeding shall continue in effect until
8 modified, terminated, superseded, or revoked by a
9 duly authorized official, by a court of competent ju-
10 risdiction, or by operation of law.

11 (3) DISCONTINUANCE OR MODIFICATION.—
12 Nothing in this section shall be considered to pro-
13 hibit the discontinuance or modification of any such
14 proceeding under the same terms and conditions and
15 to the same extent that such proceeding could have
16 been discontinued or modified if this section had not
17 been enacted.

18 (e) SUITS.—This section shall not affect suits com-
19 menced before the effective date of this subtitle, and in
20 all such suits, proceeding shall be had, appeals taken, and
21 judgments rendered in the same manner and with the
22 same effect as if this section had not been enacted.

23 (f) NONABATEMENT OF ACTIONS.—No suit, action,
24 or other proceeding commenced by or against the Depart-
25 ment of Justice or the Immigration and Naturalization

1 Service, or by or against any individual in the official ca-
2 pacity of such individual as an officer or employee in con-
3 nection with a function transferred under this section,
4 shall abate by reason of the enactment of this Act.

5 (g) CONTINUANCE OF SUIT WITH SUBSTITUTION OF
6 PARTIES.—If any Government officer in the official capac-
7 ity of such officer is party to a suit with respect to a func-
8 tion of the officer, and pursuant to this section such func-
9 tion is transferred to any other officer or office, then such
10 suit shall be continued with the other officer or the head
11 of such other office, as applicable, substituted or added
12 as a party.

13 (h) ADMINISTRATIVE PROCEDURE AND JUDICIAL
14 REVIEW.—Except as otherwise provided by this title, any
15 statutory requirements relating to notice, hearings, action
16 upon the record, or administrative or judicial review that
17 apply to any function transferred pursuant to any provi-
18 sion of this section shall apply to the exercise of such func-
19 tion by the head of the office, and other officers of the
20 office, to which such function is transferred pursuant to
21 such provision.

22 **SEC. 1214. EFFECTIVE DATE.**

23 This subtitle shall take effect one year after the effec-
24 tive date of division A of this Act.

1 **Subtitle B—Custody, Release, Fam-**
2 **ily Reunification, and Detention**

3 **SEC. 1221. PROCEDURES WHEN ENCOUNTERING UNACCOM-**
4 **PANIED ALIEN CHILDREN.**

5 (a) UNACCOMPANIED CHILDREN FOUND ALONG THE
6 UNITED STATES BORDER OR AT UNITED STATES PORTS
7 OF ENTRY.—

8 (1) IN GENERAL.—Subject to paragraph (2), if
9 an immigration officer finds an unaccompanied alien
10 child who is described in paragraph (2) at a land
11 border or port of entry of the United States and de-
12 termines that such child is inadmissible under the
13 Immigration and Nationality Act, the officer shall—

14 (A) permit such child to withdraw the
15 child's application for admission pursuant to
16 section 235(a)(4) of the Immigration and Na-
17 tionality Act; and

18 (B) remove such child from the United
19 States.

20 (2) SPECIAL RULE FOR CONTIGUOUS COUN-
21 TRIES.—

22 (A) IN GENERAL.—Any child who is a na-
23 tional or habitual resident of a country that is
24 contiguous with the United States and that has
25 an agreement in writing with the United States

1 providing for the safe return and orderly repa-
2 triation of unaccompanied alien children who
3 are nationals or habitual residents of such
4 country shall be treated in accordance with
5 paragraph (1), unless a determination is made
6 on a case-by-case basis that—

7 (i) such child has a fear of returning
8 to the child's country of nationality or
9 country of last habitual residence owing to
10 a fear of persecution;

11 (ii) the return of such child to the
12 child's country of nationality or country of
13 last habitual residence would endanger the
14 life or safety of such child; or

15 (iii) the child cannot make an inde-
16 pendent decision to withdraw the child's
17 application for admission due to age or
18 other lack of capacity.

19 (B) RIGHT OF CONSULTATION.—Any child
20 described in subparagraph (A) shall have the
21 right to consult with a consular officer from the
22 child's country of nationality or country of last
23 habitual residence prior to repatriation, as well
24 as consult with the Office, telephonically, and
25 such child shall be informed of that right.

1 (3) RULE FOR APPREHENSIONS AT THE BOR-
2 DER.—The custody of unaccompanied alien children
3 not described in paragraph (2) who are apprehended
4 at the border of the United States or at a United
5 States port of entry shall be treated in accordance
6 with the provisions of subsection (b).

7 (b) CUSTODY OF UNACCOMPANIED ALIEN CHILDREN
8 FOUND IN THE INTERIOR OF THE UNITED STATES.—

9 (1) ESTABLISHMENT OF JURISDICTION.—

10 (A) IN GENERAL.—Except as otherwise
11 provided under subsection (a) and subpara-
12 graphs (B) and (C), the custody of all unaccom-
13 panied alien children, including responsibility
14 for their detention, where appropriate, shall be
15 under the jurisdiction of the Office.

16 (B) EXCEPTION FOR CHILDREN WHO HAVE
17 COMMITTED CRIMES.—Notwithstanding sub-
18 paragraph (A), the Service shall retain or as-
19 sume the custody and care of any unaccom-
20 panied alien child who—

21 (i) has been charged with any felony,
22 excluding offenses proscribed by the Immi-
23 gration and Nationality Act, while such
24 charges are pending; or

1 (ii) has been convicted of any such fel-
2 ony.

3 (C) EXCEPTION FOR CHILDREN WHO
4 THREATEN NATIONAL SECURITY.—Notwith-
5 standing subparagraph (A), the Service shall
6 retain or assume the custody and care of an un-
7 accompanied alien child if the Secretary of
8 Homeland Security has substantial evidence
9 that such child endangers the national security
10 of the United States.

11 (2) NOTIFICATION.—Upon apprehension of an
12 unaccompanied alien child, the Secretary shall
13 promptly notify the Office.

14 (3) TRANSFER OF UNACCOMPANIED ALIEN
15 CHILDREN.—

16 (A) TRANSFER TO THE OFFICE.—The care
17 and custody of an unaccompanied alien child
18 shall be transferred to the Office—

19 (i) in the case of a child not described
20 in paragraph (1) (B) or (C), not later than
21 72 hours after the apprehension of such
22 child; or

23 (ii) in the case of a child whose cus-
24 tody has been retained or assumed by the
25 Service pursuant to paragraph (1) (B) or

1 (C), immediately following a determination
2 that the child no longer meets the descrip-
3 tion set forth in such paragraph.

4 (B) TRANSFER TO THE SERVICE.—Upon
5 determining that a child in the custody of the
6 Office is described in paragraph (1) (B) or (C),
7 the Director shall promptly make arrangements
8 to transfer the care and custody of such child
9 to the Service.

10 (c) AGE DETERMINATIONS.—In any case in which
11 the age of an alien is in question and the resolution of
12 questions about such alien's age would affect the alien's
13 eligibility for treatment under the provisions of this title,
14 a determination of whether such alien meets the age re-
15 quirements of this title shall be made in accordance with
16 the provisions of section 1225.

17 **SEC. 1222. FAMILY REUNIFICATION FOR UNACCOMPANIED**
18 **ALIEN CHILDREN WITH RELATIVES IN THE**
19 **UNITED STATES.**

20 (a) PLACEMENT AUTHORITY.—

21 (1) ORDER OF PREFERENCE.—Subject to the
22 Director's discretion under paragraph (4) and sec-
23 tion 1223(a)(2), an unaccompanied alien child in the
24 custody of the Office shall be promptly placed with

1 one of the following individuals in the following
2 order of preference:

3 (A) A parent who seeks to establish cus-
4 tody, as described in paragraph (3)(A).

5 (B) A legal guardian who seeks to estab-
6 lish custody, as described in paragraph (3)(A).

7 (C) An adult relative.

8 (D) An entity designated by the parent or
9 legal guardian that is capable and willing to
10 care for the child's well-being.

11 (E) A State-licensed juvenile shelter, group
12 home, or foster home willing to accept legal cus-
13 tody of the child.

14 (F) A qualified adult or entity seeking cus-
15 tody of the child when it appears that there is
16 no other likely alternative to long-term deten-
17 tion and family reunification does not appear to
18 be a reasonable alternative. For purposes of
19 this subparagraph, the qualification of the adult
20 or entity shall be decided by the Office.

21 (2) HOME STUDY.—Notwithstanding the provi-
22 sions of paragraph (1), no unaccompanied alien child
23 shall be placed with a person or entity unless a valid
24 home-study conducted by an agency of the State of
25 the child's proposed residence, by an agency author-

1 ized by that State to conduct such a study, or by an
2 appropriate voluntary agency contracted with the
3 Office to conduct such studies has found that the
4 person or entity is capable of providing for the
5 child's physical and mental well-being.

6 (3) RIGHT OF PARENT OR LEGAL GUARDIAN TO
7 CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

8 (A) PLACEMENT WITH PARENT OR LEGAL
9 GUARDIAN.—If an unaccompanied alien child is
10 placed with any person or entity other than a
11 parent or legal guardian, but subsequent to
12 that placement a parent or legal guardian seeks
13 to establish custody, the Director shall assess
14 the suitability of placing the child with the par-
15 ent or legal guardian and shall make a written
16 determination on the child's placement within
17 30 days.

18 (B) RULE OF CONSTRUCTION.—Nothing in
19 this title shall be construed to—

20 (i) supersede obligations under any
21 treaty or other international agreement to
22 which the United States is a party, includ-
23 ing The Hague Convention on the Civil As-
24 pects of International Child Abduction, the
25 Vienna Declaration and Programme of Ac-

1 tion, and the Declaration of the Rights of
2 the Child; or

3 (ii) limit any right or remedy under
4 such international agreement.

5 (4) PROTECTION FROM SMUGGLERS AND TRAF-
6 FICKERS.—The Director shall take affirmative steps
7 to ensure that unaccompanied alien children are pro-
8 tected from smugglers, traffickers, or others seeking
9 to victimize or otherwise engage such children in
10 criminal, harmful, or exploitative activity. Attorneys
11 involved in such activities should be reported to their
12 State bar associations for disciplinary action.

13 (5) GRANTS AND CONTRACTS.—Subject to the
14 availability of appropriations, the Director is author-
15 ized to make grants to, and enter into contracts
16 with, voluntary agencies to carry out the provisions
17 of this section.

18 (6) REIMBURSEMENT OF STATE EXPENSES.—
19 Subject to the availability of appropriations, the Di-
20 rector is authorized to reimburse States for any ex-
21 penses they incur in providing assistance to unac-
22 companied alien children who are served pursuant to
23 this title.

24 (b) CONFIDENTIALITY.—All information obtained by
25 the Office relating to the immigration status of a person

1 listed in subsection (a) shall remain confidential and may
2 be used only for the purposes of determining such person's
3 qualifications under subsection (a)(1).

4 **SEC. 1223. APPROPRIATE CONDITIONS FOR DETENTION OF**
5 **UNACCOMPANIED ALIEN CHILDREN.**

6 (a) STANDARDS FOR PLACEMENT.—

7 (1) PROHIBITION OF DETENTION IN CERTAIN
8 FACILITIES.—Except as provided in paragraph (2),
9 an unaccompanied alien child shall not be placed in
10 an adult detention facility or a facility housing delin-
11 quent children.

12 (2) DETENTION IN APPROPRIATE FACILITIES.—
13 An unaccompanied alien child who has exhibited a
14 violent or criminal behavior that endangers others
15 may be detained in conditions appropriate to the be-
16 havior in a facility appropriate for delinquent chil-
17 dren.

18 (3) STATE LICENSURE.—In the case of a place-
19 ment of a child with an entity described in section
20 1222(a)(1)(E), the entity must be licensed by an ap-
21 propriate State agency to provide residential, group,
22 child welfare, or foster care services for dependent
23 children.

24 (4) CONDITIONS OF DETENTION.—

1 (A) IN GENERAL.—The Director shall pro-
2 mulgate regulations incorporating standards for
3 conditions of detention in such placements that
4 provide for—

5 (i) educational services appropriate to
6 the child;

7 (ii) medical care;

8 (iii) mental health care, including
9 treatment of trauma;

10 (iv) access to telephones;

11 (v) access to legal services;

12 (vi) access to interpreters;

13 (vii) supervision by professionals
14 trained in the care of children, taking into
15 account the special cultural, linguistic, and
16 experiential needs of children in immigra-
17 tion proceedings;

18 (viii) recreational programs and activi-
19 ties;

20 (ix) spiritual and religious needs; and

21 (x) dietary needs.

22 (B) NOTIFICATION OF CHILDREN.—Such
23 regulations shall provide that all children are
24 notified orally and in writing of such standards.

1 (b) PROHIBITION OF CERTAIN PRACTICES.—The Di-
2 rector and the Secretary of Homeland Security shall de-
3 velop procedures prohibiting the unreasonable use of—

4 (1) shackling, handcuffing, or other restraints
5 on children;

6 (2) solitary confinement; or

7 (3) pat or strip searches.

8 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
9 tion shall be construed to supersede procedures favoring
10 release of children to appropriate adults or entities or
11 placement in the least secure setting possible, as defined
12 in the Stipulated Settlement Agreement under Flores v.
13 Reno.

14 **SEC. 1224. REPATRIATED UNACCOMPANIED ALIEN CHIL-**
15 **DREN.**

16 (a) COUNTRY CONDITIONS.—

17 (1) SENSE OF CONGRESS.—It is the sense of
18 Congress that, to the extent consistent with the trea-
19 ties and other international agreements to which the
20 United States is a party and to the extent prac-
21 ticable, the United States Government should under-
22 take efforts to ensure that it does not repatriate
23 children in its custody into settings that would
24 threaten the life and safety of such children.

25 (2) ASSESSMENT OF CONDITIONS.—

1 (A) IN GENERAL.—In carrying out repatri-
2 ations of unaccompanied alien children, the Of-
3 fice shall conduct assessments of country condi-
4 tions to determine the extent to which the coun-
5 try to which a child is being repatriated has a
6 child welfare system capable of ensuring the
7 child's well being.

8 (B) FACTORS FOR ASSESSMENT.—In as-
9 sessing country conditions, the Office shall, to
10 the maximum extent practicable, examine the
11 conditions specific to the locale of the child's
12 repatriation.

13 (b) REPORT ON REPATRIATION OF UNACCOMPANIED
14 ALIEN CHILDREN.—Beginning not later than 18 months
15 after the date of enactment of this Act, and annually
16 thereafter, the Director shall submit a report to the Judi-
17 ciary Committees of the House of Representatives and
18 Senate on the Director's efforts to repatriate unaccom-
19 panied alien children. Such report shall include at a min-
20 imum the following information:

21 (1) The number of unaccompanied alien chil-
22 dren ordered removed and the number of such chil-
23 dren actually removed from the United States.

24 (2) A description of the type of immigration re-
25 lief sought and denied to such children.

1 (3) A statement of the nationalities, ages, and
2 gender of such children.

3 (4) A description of the procedures used to ef-
4 fect the removal of such children from the United
5 States.

6 (5) A description of steps taken to ensure that
7 such children were safely and humanely repatriated
8 to their country of origin.

9 (6) Any information gathered in assessments of
10 country and local conditions pursuant to subsection
11 (a)(2).

12 **SEC. 1225. ESTABLISHING THE AGE OF AN UNACCOM-**
13 **PANIED ALIEN CHILD.**

14 The Director shall develop procedures that permit the
15 presentation and consideration of a variety of forms of evi-
16 dence, including testimony of a child and other persons,
17 to determine an unaccompanied alien child's age for pur-
18 poses of placement, custody, parole, and detention. Such
19 procedures shall allow the appeal of a determination to
20 an immigration judge. Radiographs shall not be the sole
21 means of determining age.

22 **SEC. 1226. EFFECTIVE DATE.**

23 This subtitle shall take effect one year after the effec-
24 tive date of division A of this Act.

1 **Subtitle C—Access by Unaccom-**
2 **panied Alien Children to Guard-**
3 **ians Ad Litem and Counsel**

4 **SEC. 1231. RIGHT OF UNACCOMPANIED ALIEN CHILDREN**
5 **TO GUARDIANS AD LITEM.**

6 (a) GUARDIAN AD LITEM.—

7 (1) APPOINTMENT.—The Director shall appoint
8 a guardian ad litem who meets the qualifications de-
9 scribed in paragraph (2) for each unaccompanied
10 alien child in the custody of the Office not later than
11 72 hours after the Office assumes physical or con-
12 structive custody of such child. The Director is en-
13 couraged, wherever practicable, to contract with a
14 voluntary agency for the selection of an individual to
15 be appointed as a guardian ad litem under this para-
16 graph.

17 (2) QUALIFICATIONS OF GUARDIAN AD
18 LITEM.—

19 (A) IN GENERAL.—No person shall serve
20 as a guardian ad litem unless such person—

21 (i) is a child welfare professional or
22 other individual who has received training
23 in child welfare matters; and

1 (ii) possesses special training on the
2 nature of problems encountered by unac-
3 companied alien children.

4 (B) PROHIBITION.—A guardian ad litem
5 shall not be an employee of the Service.

6 (3) DUTIES.—The guardian ad litem shall—

7 (A) conduct interviews with the child in a
8 manner that is appropriate, taking into account
9 the child's age;

10 (B) investigate the facts and circumstances
11 relevant to such child's presence in the United
12 States, including facts and circumstances aris-
13 ing in the country of the child's nationality or
14 last habitual residence and facts and cir-
15 cumstances arising subsequent to the child's de-
16 parture from such country;

17 (C) work with counsel to identify the
18 child's eligibility for relief from removal or vol-
19 untary departure by sharing with counsel infor-
20 mation collected under subparagraph (B);

21 (D) develop recommendations on issues
22 relative to the child's custody, detention, re-
23 lease, and repatriation;

24 (E) ensure that the child's best interests
25 are promoted while the child participates in, or

1 is subject to, proceedings or actions under the
2 Immigration and Nationality Act;

3 (F) ensure that the child understands such
4 determinations and proceedings; and

5 (G) report findings and recommendations
6 to the Director and to the Executive Office of
7 Immigration Review (or successor entity).

8 (4) TERMINATION OF APPOINTMENT.—The
9 guardian ad litem shall carry out the duties de-
10 scribed in paragraph (3) until—

11 (A) those duties are completed,

12 (B) the child departs the United States,

13 (C) the child is granted permanent resi-
14 dent status in the United States,

15 (D) the child attains the age of 18, or

16 (E) the child is placed in the custody of a
17 parent or legal guardian,

18 whichever occurs first.

19 (5) POWERS.—The guardian ad litem—

20 (A) shall have reasonable access to the
21 child, including access while such child is being
22 held in detention or in the care of a foster fam-
23 ily;

1 (B) shall be permitted to review all records
2 and information relating to such proceedings
3 that are not deemed privileged or classified;

4 (C) may seek independent evaluations of
5 the child;

6 (D) shall be notified in advance of all hear-
7 ings involving the child that are held in connec-
8 tion with proceedings under the Immigration
9 and Nationality Act, and shall be given a rea-
10 sonable opportunity to be present at such hear-
11 ings; and

12 (E) shall be permitted to consult with the
13 child during any hearing or interview involving
14 such child.

15 (b) TRAINING.—The Director shall provide profes-
16 sional training for all persons serving as guardians ad
17 litem under this section in the circumstances and condi-
18 tions that unaccompanied alien children face as well as
19 in the various immigration benefits for which such a child
20 might be eligible.

21 **SEC. 1232. RIGHT OF UNACCOMPANIED ALIEN CHILDREN**
22 **TO COUNSEL.**

23 (a) ACCESS TO COUNSEL.—

24 (1) IN GENERAL.—The Director shall ensure
25 that all unaccompanied alien children in the custody

1 of the Office or in the custody of the Service who
2 are not described in section 1221(a)(2) shall have
3 competent counsel to represent them in immigration
4 proceedings or matters.

5 (2) PRO BONO REPRESENTATION.—To the max-
6 imum extent practicable, the Director shall utilize
7 the services of pro bono attorneys who agree to pro-
8 vide representation to such children without charge.

9 (3) GOVERNMENT FUNDED REPRESENTA-
10 TION.—

11 (A) APPOINTMENT OF COMPETENT COUN-
12 SEL.—Notwithstanding section 292 of the Im-
13 migration and Nationality Act (8 U.S.C. 1362)
14 or any other provision of law, when no com-
15 petent counsel is available to represent an unac-
16 companied alien child without charge, the Di-
17 rector shall appoint competent counsel for such
18 child at the expense of the Government.

19 (B) LIMITATION ON ATTORNEY FEES.—
20 Counsel appointed under subparagraph (A) may
21 not be compensated at a rate in excess of the
22 rate provided under section 3006A of title 18,
23 United States Code.

24 (C) ASSUMPTION OF THE COST OF GOV-
25 ERNMENT-PAID COUNSEL.—In the case of a

1 child for whom counsel is appointed under sub-
2 paragraph (A) who is subsequently placed in
3 the physical custody of a parent or legal guard-
4 ian, such parent or legal guardian may elect to
5 retain the same counsel to continue representa-
6 tion of the child, at no expense to the Govern-
7 ment, beginning on the date that the parent or
8 legal guardian assumes physical custody of the
9 child.

10 (4) DEVELOPMENT OF NECESSARY INFRA-
11 STRUCTURES AND SYSTEMS.—In ensuring that legal
12 representation is provided to such children, the Di-
13 rector shall develop the necessary mechanisms to
14 identify entities available to provide such legal as-
15 sistance and representation and to recruit such enti-
16 ties.

17 (5) CONTRACTING AND GRANT MAKING AU-
18 THORITY.—

19 (A) IN GENERAL.—Subject to the avail-
20 ability of appropriations, the Director shall
21 enter into contracts with or make grants to na-
22 tional nonprofit agencies with relevant expertise
23 in the delivery of immigration-related legal serv-
24 ices to children in order to carry out this sub-
25 section.

1 (B) INELIGIBILITY FOR GRANTS AND CON-
2 TRACTS.—In making grants and entering into
3 contracts with such agencies, the Director shall
4 ensure that no such agency is—

5 (i) a grantee or contractee for services
6 provided under section 1222 or 1231; and

7 (ii) simultaneously a grantee or con-
8 tractee for services provided under sub-
9 paragraph (A).

10 (b) REQUIREMENT OF LEGAL REPRESENTATION.—

11 The Director shall ensure that all unaccompanied alien
12 children have legal representation within 7 days of the
13 child coming into Federal custody.

14 (c) DUTIES.—Counsel shall represent the unaccom-
15 panied alien child all proceedings and actions relating to
16 the child's immigration status or other actions involving
17 the Service and appear in person for all individual merits
18 hearings before the Executive Office for Immigration Re-
19 view (or its successor entity) and interviews involving the
20 Service.

21 (d) ACCESS TO CHILD.—

22 (1) IN GENERAL.—Counsel shall have reason-
23 able access to the unaccompanied alien child, includ-
24 ing access while the child is being held in detention,

1 in the care of a foster family, or in any other setting
2 that has been determined by the Office.

3 (2) RESTRICTION ON TRANSFERS.—Absent
4 compelling and unusual circumstances, no child who
5 is represented by counsel shall be transferred from
6 the child's placement to another placement unless
7 advance notice of at least 24 hours is made to coun-
8 sel of such transfer.

9 (e) TERMINATION OF APPOINTMENT.—Counsel shall
10 carry out the duties described in subsection (c) until—

11 (1) those duties are completed,

12 (2) the child departs the United States,

13 (3) the child is granted withholding of removal
14 under section 241(b)(3) of the Immigration and Na-
15 tionality Act,

16 (4) the child is granted protection under the
17 Convention Against Torture,

18 (5) the child is granted asylum in the United
19 States under section 208 of the Immigration and
20 Nationality Act,

21 (6) the child is granted permanent resident sta-
22 tus in the United States, or

23 (7) the child attains 18 years of age,
24 whichever occurs first.

1 (f) NOTICE TO COUNSEL DURING IMMIGRATION PRO-
2 CEEDINGS.—

3 (1) IN GENERAL.—Except when otherwise re-
4 quired in an emergency situation involving the phys-
5 ical safety of the child, counsel shall be given prompt
6 and adequate notice of all immigration matters af-
7 fecting or involving an unaccompanied alien child,
8 including adjudications, proceedings, and processing,
9 before such actions are taken.

10 (2) OPPORTUNITY TO CONSULT WITH COUN-
11 SEL.—An unaccompanied alien child in the custody
12 of the Office may not give consent to any immigra-
13 tion action, including consenting to voluntary depart-
14 ure, unless first afforded an opportunity to consult
15 with counsel.

16 (g) ACCESS TO RECOMMENDATIONS OF GUARDIAN
17 AD LITEM.—Counsel shall be afforded an opportunity to
18 review the recommendation by the guardian ad litem af-
19 fecting or involving a client who is an unaccompanied alien
20 child.

21 **SEC. 1233. EFFECTIVE DATE; APPLICABILITY.**

22 (a) EFFECTIVE DATE.—This subtitle shall take effect
23 one year after the effective date of division A of this Act.

24 (b) APPLICABILITY.—The provisions of this subtitle
25 shall apply to all unaccompanied alien children in Federal

1 custody on, before, or after the effective date of this sub-
2 title.

3 **Subtitle D—Strengthening Policies**
4 **for Permanent Protection of**
5 **Alien Children**

6 **SEC. 1241. SPECIAL IMMIGRANT JUVENILE VISA.**

7 (a) J VISA.—Section 101(a)(27)(J) (8 U.S.C.
8 1101(a)(27)(J)) is amended to read as follows:

9 “(J) an immigrant under the age of 18 on the
10 date of application who is present in the United
11 States—

12 “(i) who has been declared dependent on a
13 juvenile court located in the United States or
14 whom such a court has legally committed to, or
15 placed under the custody of, a department or
16 agency of a State, or an individual or entity ap-
17 pointed by a State, and who has been deemed
18 eligible by that court for long-term foster care
19 due to abuse, neglect, or abandonment, or a
20 similar basis found under State law;

21 “(ii) for whom it has been determined in
22 administrative or judicial proceedings that it
23 would not be in the alien’s best interest to be
24 returned to the alien’s or parent’s previous

1 country of nationality or country of last habit-
2 ual residence; and

3 “(iii) for whom the Office of Refugee Re-
4 settlement of the Department of Health and
5 Human Services has certified to the Under Sec-
6 retary of Homeland Security for Immigration
7 Affairs that the classification of an alien as a
8 special immigrant under this subparagraph has
9 not been made solely to provide an immigration
10 benefit to that alien;

11 except that no natural parent or prior adoptive par-
12 ent of any alien provided special immigrant status
13 under this subparagraph shall thereafter, by virtue
14 of such parentage, be accorded any right, privilege,
15 or status under this Act;”.

16 (b) ADJUSTMENT OF STATUS.—Section 245(h)(2) (8
17 U.S.C. 1255(h)(2)) is amended—

18 (1) by amending subparagraph (A) to read as
19 follows:

20 “(A) paragraphs (1), (4), (5), (6), and
21 (7)(A) of section 212(a) shall not apply;”;

22 (2) in subparagraph (B), by striking the period
23 and inserting “, and”; and

24 (3) by adding at the end the following new sub-
25 paragraph:

1 “(C) the Secretary of Homeland Security
2 may waive paragraph (2) (A) and (B) in the
3 case of an offense which arose as a consequence
4 of the child being unaccompanied.”.

5 (c) ELIGIBILITY FOR ASSISTANCE.—A child who has
6 been granted relief under section 101(a)(27)(J) of the Im-
7 migration and Nationality Act (8 U.S.C. 1101(a)(27)(J)),
8 as amended by subsection (a), and who is in the custody
9 of a State shall be eligible for all funds made available
10 under section 412(d) of such Act.

11 **SEC. 1242. TRAINING FOR OFFICIALS AND CERTAIN PRI-**
12 **VATE PARTIES WHO COME INTO CONTACT**
13 **WITH UNACCOMPANIED ALIEN CHILDREN.**

14 (a) TRAINING OF STATE AND LOCAL OFFICIALS AND
15 CERTAIN PRIVATE PARTIES.—The Secretary of Health
16 and Human Services, acting jointly with the Secretary,
17 shall provide appropriate training to be available to State
18 and county officials, child welfare specialists, teachers,
19 public counsel, and juvenile judges who come into contact
20 with unaccompanied alien children. The training shall pro-
21 vide education on the processes pertaining to unaccom-
22 panied alien children with pending immigration status and
23 on the forms of relief potentially available. The Director
24 shall be responsible for establishing a core curriculum that
25 can be incorporated into currently existing education,

1 training, or orientation modules or formats that are cur-
2 rently used by these professionals.

3 (b) TRAINING OF SERVICE PERSONNEL.—The Sec-
4 retary, acting jointly with the Secretary of Health and
5 Human Services, shall provide specialized training to all
6 personnel of the Service who come into contact with unac-
7 companied alien children. In the case of Border Patrol
8 agents and immigration inspectors, such training shall in-
9 clude specific training on identifying children at the
10 United States border or at United States ports of entry
11 who have been victimized by smugglers or traffickers, and
12 children for whom asylum or special immigrant relief may
13 be appropriate, including children described in section
14 1221(a)(2).

15 **SEC. 1243. EFFECTIVE DATE.**

16 The amendment made by section 1241 shall apply to
17 all eligible children who were in the United States before,
18 on, or after the date of enactment of this Act.

19 **Subtitle E—Children Refugee and**
20 **Asylum Seekers**

21 **SEC. 1251. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.**

22 (a) SENSE OF CONGRESS.—Congress commends the
23 Service for its issuance of its “Guidelines for Children’s
24 Asylum Claims”, dated December 1998, and encourages
25 and supports the Service’s implementation of such guide-

1 lines in an effort to facilitate the handling of children’s
2 asylum claims. Congress calls upon the Executive Office
3 for Immigration Review of the Department of Justice (or
4 successor entity) to adopt the “Guidelines for Children’s
5 Asylum Claims” in its handling of children’s asylum
6 claims before immigration judges and the Board of Immi-
7 gration Appeals.

8 (b) TRAINING.—The Secretary of Homeland Security
9 shall provide periodic comprehensive training under the
10 “Guidelines for Children’s Asylum Claims” to asylum offi-
11 cers, immigration judges, members of the Board of Immi-
12 gration Appeals, and immigration officers who have con-
13 tact with children in order to familiarize and sensitize such
14 officers to the needs of children asylum seekers. Voluntary
15 agencies shall be allowed to assist in such training.

16 **SEC. 1252. UNACCOMPANIED REFUGEE CHILDREN.**

17 (a) IDENTIFYING UNACCOMPANIED REFUGEE CHIL-
18 DREN.—Section 207(e) (8 U.S.C. 1157(e)) is amended—

19 (1) by redesignating paragraphs (3), (4), (5),
20 (6), and (7) as paragraphs (4), (5), (6), (7), and
21 (8), respectively; and

22 (2) by inserting after paragraph (2) the fol-
23 lowing new paragraph:

1 “(3) An analysis of the worldwide situation
2 faced by unaccompanied refugee children, by region.

3 Such analysis shall include an assessment of—

4 “(A) the number of unaccompanied refugee
5 children, by region;

6 “(B) the capacity of the Department of
7 State to identify such refugees;

8 “(C) the capacity of the international com-
9 munity to care for and protect such refugees;

10 “(D) the capacity of the voluntary agency
11 community to resettle such refugees in the
12 United States;

13 “(E) the degree to which the United States
14 plans to resettle such refugees in the United
15 States in the coming fiscal year; and

16 “(F) the fate that will befall such unac-
17 companied refugee children for whom resettle-
18 ment in the United States is not possible.”.

19 (b) TRAINING ON THE NEEDS OF UNACCOMPANIED
20 REFUGEE CHILDREN.—Section 207(f)(2) (8 U.S.C.
21 1157(f)(2)) is amended by—

22 (1) striking “and” after “countries,”; and

23 (2) inserting before the period at the end the
24 following: “, and instruction on the needs of unac-
25 companied refugee children”.

1 **Subtitle F—Authorization of**
2 **Appropriations**

3 **SEC. 1261. AUTHORIZATION OF APPROPRIATIONS.**

4 (a) IN GENERAL.—There are authorized to be appro-
5 priated such sums as may be necessary to carry out the
6 provisions of this title.

7 (b) AVAILABILITY OF FUNDS.—Amounts appro-
8 priated pursuant to subsection (a) are authorized to re-
9 main available until expended.

10 **TITLE XIII—AGENCY FOR IMMI-**
11 **GRATION HEARINGS AND AP-**
12 **PEALS**

13 **Subtitle A—Structure and Function**

14 **SEC. 1301. ESTABLISHMENT.**

15 (a) IN GENERAL.—There is established within the
16 Department of Justice the Agency for Immigration Hear-
17 ings and Appeals (in this title referred to as the “Agen-
18 cy”).

19 (b) ABOLITION OF EOIR.—The Executive Office for
20 Immigration Review of the Department of Justice is here-
21 by abolished.

22 **SEC. 1302. DIRECTOR OF THE AGENCY.**

23 (a) APPOINTMENT.—There shall be at the head of the
24 Agency a Director who shall be appointed by the Presi-
25 dent, by and with the advice and consent of the Senate.

1 (b) OFFICES.—The Director shall appoint a Deputy
2 Director, General Counsel, Pro Bono Coordinator, and
3 other offices as may be necessary to carry out this title.

4 (c) RESPONSIBILITIES.—The Director shall—

5 (1) administer the Agency and be responsible
6 for the promulgation of rules and regulations affect-
7 ing the Agency;

8 (2) appoint each Member of the Board of Immi-
9 gration Appeals, including a Chair;

10 (3) appoint the Chief Immigration Judge; and

11 (4) appoint and fix the compensation of attor-
12 neys, clerks, administrative assistants, and other
13 personnel as may be necessary.

14 **SEC. 1303. BOARD OF IMMIGRATION APPEALS.**

15 (a) IN GENERAL.—The Board of Immigration Ap-
16 peals (in this title referred to as the “Board”) shall per-
17 form the appellate functions of the Agency. The Board
18 shall consist of a Chair and not less than 14 other immi-
19 gration appeals judges.

20 (b) APPOINTMENT.—Members of the Board shall be
21 appointed by the Director, in consultation with the Chair
22 of the Board of Immigration Appeals.

23 (c) QUALIFICATIONS.—The Chair and each other
24 Member of the Board shall be an attorney in good stand-
25 ing of a bar of a State or the District of Columbia and

1 shall have at least 7 years of professional legal expertise
2 in immigration and nationality law.

3 (d) CHAIR.—The Chair shall direct, supervise, and
4 establish the procedures and policies of the Board.

5 (e) JURISDICTION.—

6 (1) IN GENERAL.—The Board shall have such
7 jurisdiction as was, prior to the date of enactment
8 of this Act, provided by statute or regulation to the
9 Board of Immigration Appeals (as in effect under
10 the Executive Office of Immigration Review).

11 (2) DE NOVO REVIEW.—The Board shall have
12 de novo review of any decision by an immigration
13 judge, including any final order of removal.

14 (f) DECISIONS OF THE BOARD.—The decisions of the
15 Board shall constitute final agency action, subject to re-
16 view only as provided by the Immigration and Nationality
17 Act and other applicable law.

18 (g) INDEPENDENCE OF BOARD MEMBERS.—The
19 Members of the Board shall exercise their independent
20 judgment and discretion in the cases coming before the
21 Board.

22 **SEC. 1304. CHIEF IMMIGRATION JUDGE.**

23 (a) ESTABLISHMENT OF OFFICE.—There shall be
24 within the Agency the position of Chief Immigration
25 Judge, who shall administer the immigration courts.

1 (b) DUTIES OF THE CHIEF IMMIGRATION JUDGE.—

2 The Chief Immigration Judge shall be responsible for the
3 general supervision, direction, and procurement of re-
4 source and facilities and for the general management of
5 immigration court dockets.

6 (c) APPOINTMENT OF IMMIGRATION JUDGES.—Im-

7 migration judges shall be appointed by the Director, in
8 consultation with the Chief Immigration Judge.

9 (d) QUALIFICATIONS.—Each immigration judge, in-
10 cluding the Chief Immigration Judge, shall be an attorney
11 in good standing of a bar of a State or the District of
12 Columbia and shall have at least 7 years of professional
13 legal expertise in immigration and nationality law.

14 (e) JURISDICTION AND AUTHORITY OF IMMIGRATION

15 COURTS.—The immigration courts shall have such juris-
16 diction as was, prior to the date of enactment of this Act,
17 provided by statute or regulation to the immigration
18 courts within the Executive Office for Immigration Review
19 of the Department of Justice.

20 (f) INDEPENDENCE OF IMMIGRATION JUDGES.—The

21 immigration judges shall exercise their independent judg-
22 ment and discretion in the cases coming before the Immi-
23 gration Court.

1 **SEC. 1305. CHIEF ADMINISTRATIVE HEARING OFFICER.**

2 (a) ESTABLISHMENT OF POSITION.—There shall be
3 within the Agency the position of Chief Administrative
4 Hearing Officer.

5 (b) DUTIES OF THE CHIEF ADMINISTRATIVE HEAR-
6 ING OFFICER.—The Chief Administrative Hearing Officer
7 shall hear cases brought under sections 274A, 274B, and
8 274C of the Immigration and Nationality Act.

9 **SEC. 1306. REMOVAL OF JUDGES.**

10 Immigration judges and Members of the Board may
11 be removed from office only for good cause, including ne-
12 glect of duty or malfeasance, by the Director, in consulta-
13 tion with the Chair of the Board, in the case of the re-
14 moval of a Member of the Board, or in consultation with
15 the Chief Immigration Judge, in the case of the removal
16 of an immigration judge.

17 **SEC. 1307. AUTHORIZATION OF APPROPRIATIONS.**

18 There are authorized to be appropriated to the Agen-
19 cy such sums as may be necessary to carry out this title.

20 **Subtitle B—Transfer of Functions**
21 **and Savings Provisions**

22 **SEC. 1311. TRANSITION PROVISIONS.**

23 (a) TRANSFER OF FUNCTIONS.—All functions under
24 the immigration laws of the United States (as defined in
25 section 111(e) of the Immigration and Nationality Act, as
26 added by section 1101(a)(2) of this Act) vested by statute

1 in, or exercised by, the Executive Office of Immigration
2 Review of the Department of Justice (or any officer, em-
3 ployee, or component thereof), immediately prior to the
4 effective date of this title, are transferred to the Agency.

5 (b) TRANSFER AND ALLOCATIONS OF APPROPRIA-
6 TIONS AND PERSONNEL.—The personnel employed in con-
7 nection with, and the assets, liabilities, contracts, prop-
8 erty, records, and unexpended balances of appropriations,
9 authorizations, allocations, and other funds employed,
10 used, held, arising from, available to, or to be made avail-
11 able in connection with the functions transferred by this
12 section, subject to section 1531 of title 31, United States
13 Code, shall be transferred to the Agency. Unexpended
14 funds transferred pursuant to this section shall be used
15 only for the purposes for which the funds were originally
16 authorized and appropriated.

17 (c) LEGAL DOCUMENTS.—All orders, determinations,
18 rules, regulations, permits, grants, loans, contracts, rec-
19 ognition of labor organizations, agreements, including col-
20 lective bargaining agreements, certificates, licenses, and
21 privileges—

22 (1) that have been issued, made, granted, or al-
23 lowed to become effective by the Attorney General or
24 the Executive Office of Immigration Review of the
25 Department of Justice, their delegates, or any other

1 Government official, or by a court of competent ju-
2 risdiction, in the performance of any function that is
3 transferred under this section; and

4 (2) that are in effect on the effective date of
5 such transfer (or become effective after such date
6 pursuant to their terms as in effect on such effective
7 date);

8 shall continue in effect according to their terms until
9 modified, terminated, superseded, set aside, or revoked in
10 accordance with law by the Agency, any other authorized
11 official, a court of competent jurisdiction, or operation of
12 law, except that any collective bargaining agreement shall
13 remain in effect until the date of termination specified in
14 the agreement.

15 (d) PROCEEDINGS.—

16 (1) PENDING.—The transfer of functions under
17 subsection (a) shall not affect any proceeding or any
18 application for any benefit, service, license, permit,
19 certificate, or financial assistance pending on the ef-
20 fective date of this title before an office whose func-
21 tions are transferred pursuant to this section, but
22 such proceedings and applications shall be contin-
23 ued.

24 (2) ORDERS.—Orders shall be issued in such
25 proceedings, appeals shall be taken therefrom, and

1 payments shall be made pursuant to such orders, as
2 if this Act had not been enacted, and orders issued
3 in any such proceeding shall continue in effect until
4 modified, terminated, superseded, or revoked by a
5 duly authorized official, by a court of competent ju-
6 risdiction, or by operation of law.

7 (3) DISCONTINUANCE OR MODIFICATION.—
8 Nothing in this section shall be considered to pro-
9 hibit the discontinuance or modification of any such
10 proceeding under the same terms and conditions and
11 to the same extent that such proceeding could have
12 been discontinued or modified if this section had not
13 been enacted.

14 (e) SUITS.—This section shall not affect suits com-
15 menced before the effective date of this title, and in all
16 such suits, proceeding shall be had, appeals taken, and
17 judgments rendered in the same manner and with the
18 same effect as if this section had not been enacted.

19 (f) NONABATEMENT OF ACTIONS.—No suit, action,
20 or other proceeding commenced by or against the Depart-
21 ment of Justice or the Executive Office of Immigration
22 Review, or by or against any individual in the official ca-
23 pacity of such individual as an officer or employee in con-
24 nection with a function transferred under this section,
25 shall abate by reason of the enactment of this Act.

1 (g) CONTINUANCE OF SUIT WITH SUBSTITUTION OF
2 PARTIES.—If any Government officer in the official capac-
3 ity of such officer is party to a suit with respect to a func-
4 tion of the officer, and pursuant to this section such func-
5 tion is transferred to any other officer or office, then such
6 suit shall be continued with the other officer or the head
7 of such other office, as applicable, substituted or added
8 as a party.

9 (h) ADMINISTRATIVE PROCEDURE AND JUDICIAL
10 REVIEW.—Except as otherwise provided by this title, any
11 statutory requirements relating to notice, hearings, action
12 upon the record, or administrative or judicial review that
13 apply to any function transferred pursuant to any provi-
14 sion of this section shall apply to the exercise of such func-
15 tion by the head of the office, and other officers of the
16 office, to which such function is transferred pursuant to
17 such provision.

18 **Subtitle C—Effective Date**

19 **SEC. 1321. EFFECTIVE DATE.**

20 This title shall take effect one year after the effective
21 date of division A of this Act.

1 **DIVISION C—FEDERAL**
2 **WORKFORCE IMPROVEMENT**
3 **TITLE XXI—CHIEF HUMAN**
4 **CAPITAL OFFICERS**

5 **SEC. 2101. SHORT TITLE.**

6 This title may be cited as the “Chief Human Capital
7 Officers Act of 2002”.

8 **SEC. 2102. AGENCY CHIEF HUMAN CAPITAL OFFICERS.**

9 (a) IN GENERAL.—Part II of title 5, United States
10 Code, is amended by inserting after chapter 13 the fol-
11 lowing:

12 **“CHAPTER 14—AGENCY CHIEF HUMAN**
13 **CAPITAL OFFICERS**

“Sec.

“1401. Establishment of agency Chief Human Capital Officers.

“1402. Authority and functions of agency Chief Human Capital Officers.

14 **“§ 1401. Establishment of agency Chief Human Cap-**
15 **ital Officers**

16 “The head of each agency referred to under para-
17 graphs (1) and (2) of section 901(b) of title 31 shall ap-
18 point or designate a Chief Human Capital Officer, who
19 shall—

20 “(1) advise and assist the head of the agency
21 and other agency officials in carrying out the agen-
22 cy’s responsibilities for selecting, developing, train-

1 ing, and managing a high-quality, productive work-
2 force in accordance with merit system principles;

3 “(2) implement the rules and regulations of the
4 President and the Office of Personnel Management
5 and the laws governing the civil service within the
6 agency; and

7 “(3) carry out such functions as the primary
8 duty of the Chief Human Capital Officer.

9 **“§ 1402. Authority and functions of agency Chief**
10 **Human Capital Officers**

11 “(a) The functions of each Chief Human Capital Of-
12 ficer shall include—

13 “(1) setting the workforce development strategy
14 of the agency;

15 “(2) assessing workforce characteristics and fu-
16 ture needs based on the agency’s mission and stra-
17 tegic plan;

18 “(3) aligning the agency’s human resources
19 policies and programs with organization mission,
20 strategic goals, and performance outcomes;

21 “(4) developing and advocating a culture of
22 continuous learning to attract and retain employees
23 with superior abilities;

24 “(5) identifying best practices and
25 benchmarking studies; and

1 “(6) applying methods for measuring intellec-
2 tual capital and identifying links of that capital to
3 organizational performance and growth.

4 “(b) In addition to the authority otherwise provided
5 by this section, each agency Chief Human Capital
6 Officer—

7 “(1) shall have access to all records, reports,
8 audits, reviews, documents, papers, recommenda-
9 tions, or other material that—

10 “(A) are the property of the agency or are
11 available to the agency; and

12 “(B) relate to programs and operations
13 with respect to which that agency Chief Human
14 Capital Officer has responsibilities under this
15 chapter; and

16 “(2) may request such information or assist-
17 ance as may be necessary for carrying out the duties
18 and responsibilities provided by this chapter from
19 any Federal, State, or local governmental entity.”.

20 (b) TECHNICAL AND CONFORMING AMENDMENT.—

21 The table of chapters for part II of title 5, United States
22 Code, is amended by inserting after the item relating to
23 chapter 13 the following:

“14. Chief Human Capital Officers 1401”.

1 **SEC. 2103. CHIEF HUMAN CAPITAL OFFICERS COUNCIL.**

2 (a) ESTABLISHMENT.—There is established a Chief
3 Human Capital Officers Council, consisting of—

4 (1) the Director of the Office of Personnel
5 Management, who shall act as chairperson of the
6 Council;

7 (2) the Deputy Director for Management of the
8 Office of Management and Budget, who shall act as
9 vice chairperson of the Council; and

10 (3) the Chief Human Capital Officers of Execu-
11 tive departments and any other members who are
12 designated by the Director of the Office of Personnel
13 Management.

14 (b) FUNCTIONS.—The Chief Human Capital Officers
15 Council shall meet periodically to advise and coordinate
16 the activities of the agencies of its members on such mat-
17 ters as modernization of human resources systems, im-
18 proved quality of human resources information, and legis-
19 lation affecting human resources operations and organiza-
20 tions.

21 (c) EMPLOYEE LABOR ORGANIZATIONS AT MEET-
22 INGS.—The Chief Human Capital Officers Council shall
23 ensure that representatives of Federal employee labor or-
24 ganizations are present at a minimum of 1 meeting of the
25 Council each year. Such representatives shall not be mem-
26 bers of the Council.

1 (d) ANNUAL REPORT.—Each year the Chief Human
2 Capital Officers Council shall submit a report to Congress
3 on the activities of the Council.

4 **SEC. 2104. STRATEGIC HUMAN CAPITAL MANAGEMENT.**

5 Section 1103 of title 5, United States Code, is
6 amended by adding at the end the following:

7 “(c)(1) The Office of Personnel Management shall
8 design a set of systems, including appropriate metrics, for
9 assessing the management of human capital by Federal
10 agencies.

11 “(2) The systems referred to under paragraph (1)
12 shall be defined in regulations of the Office of Personnel
13 Management and include standards for—

14 “(A)(i) aligning human capital strategies of
15 agencies with the missions, goals, and organizational
16 objectives of those agencies; and

17 “(ii) integrating those strategies into the budget
18 and strategic plans of those agencies;

19 “(B) closing skill gaps in mission critical occu-
20 pations;

21 “(C) ensuring continuity of effective leadership
22 through implementation of recruitment, develop-
23 ment, and succession plans;

24 “(D) sustaining a culture that cultivates and
25 develops a high performing workforce;

1 “(E) developing and implementing a knowledge
2 management strategy supported by appropriate in-
3 vestment in training and technology; and

4 “(F) holding managers and human resources
5 officers accountable for efficient and effective human
6 resources management in support of agency missions
7 in accordance with merit system principles.”.

8 **SEC. 2105. EFFECTIVE DATE.**

9 This title shall take effect 180 days after the date
10 of enactment of this division.

11 **TITLE XXII—REFORMS RELAT-**
12 **ING TO FEDERAL HUMAN**
13 **CAPITAL MANAGEMENT**

14 **SEC. 2201. INCLUSION OF AGENCY HUMAN CAPITAL STRA-**
15 **TEGIC PLANNING IN PERFORMANCE PLANS**
16 **AND PROGRAM PERFORMANCE REPORTS.**

17 (a) PERFORMANCE PLANS.—Section 1115 of title 31,
18 United States Code, is amended—

19 (1) in subsection (a), by striking paragraph (3)
20 and inserting the following:

21 “(3) provide a description of how the perform-
22 ance goals and objectives are to be achieved, includ-
23 ing the operational processes, training, skills and
24 technology, and the human, capital, information, and

1 other resources and strategies required to meet
2 those performance goals and objectives.”;

3 (2) by redesignating subsection (f) as sub-
4 section (g); and

5 (3) by inserting after subsection (e) the fol-
6 lowing:

7 “(f) With respect to each agency with a Chief Human
8 Capital Officer, the Chief Human Capital Officer shall
9 prepare that portion of the annual performance plan de-
10 scribed under subsection (a)(3).”.

11 (b) PROGRAM PERFORMANCE REPORTS.—Section
12 1116(d) of title 31, United States Code, is amended—

13 (1) in paragraph (4), by striking “and” after
14 the semicolon;

15 (2) by redesignating paragraph (5) as para-
16 graph (6); and

17 (3) by inserting after paragraph (4) the fol-
18 lowing:

19 “(5) include a review of the performance goals
20 and evaluation of the performance plan relative to
21 the agency’s strategic human capital management;
22 and”.

1 **SEC. 2202. REFORM OF THE COMPETITIVE SERVICE HIRING**
2 **PROCESS.**

3 (a) IN GENERAL.—Chapter 33 of title 5, United
4 States Code, is amended—

5 (1) in section 3304(a)—

6 (A) in paragraph (1), by striking “and”
7 after the semicolon;

8 (B) in paragraph (2), by striking the pe-
9 riod and inserting “; and”; and

10 (C) by adding at the end the following:

11 “(3) authority for agencies to appoint, without
12 regard to the provisions of sections 3309 through
13 3318, candidates directly to positions for which—

14 “(A) public notice has been given; and

15 “(B) the Office of Personnel Management
16 has determined that there exists a severe short-
17 age of candidates or there is a critical hiring
18 need.

19 The Office shall prescribe, by regulation, criteria for iden-
20 tifying such positions and may delegate authority to make
21 determinations under such criteria.”; and

22 (2) by inserting after section 3318 the fol-
23 lowing:

24 “§ 3319. **Alternative ranking and selection procedures**

25 “(a)(1) the Office, in exercising its authority under
26 section 3304; or

1 “(2) an agency to which the Office has delegated ex-
2 mining authority under section 1104(a)(2);
3 may establish category rating systems for evaluating ap-
4 plicants for positions in the competitive service, under 2
5 or more quality categories based on merit consistent with
6 regulations prescribed by the Office of Personnel Manage-
7 ment, rather than assigned individual numerical ratings.

8 “(b) Within each quality category established under
9 subsection (a), preference-eligibles shall be listed ahead of
10 individuals who are not preference eligibles. For other
11 than scientific and professional positions at GS-9 of the
12 General Schedule (equivalent or higher), qualified pref-
13 erence-eligibles who have a compensable service-connected
14 disability of 10 percent or more shall be listed in the high-
15 est quality category.

16 “(c)(1) An appointing official may select any appli-
17 cant in the highest quality category or, if fewer than 3
18 candidates have been assigned to the highest quality cat-
19 egory, in a merged category consisting of the highest and
20 the second highest quality categories.

21 “(2) Notwithstanding paragraph (1), the appointing
22 official may not pass over a preference-eligible in the same
23 category from which selection is made, unless the require-
24 ments of section 3317(b) or 3318(b), as applicable, are
25 satisfied.

1 “(d) Each agency that establishes a category rating
2 system under this section shall submit in each of the 3
3 years following that establishment, a report to Congress
4 on that system including information on—

5 “(1) the number of employees hired under that
6 system;

7 “(2) the impact that system has had on the hir-
8 ing of veterans and minorities, including those who
9 are American Indian or Alaska Natives, Asian,
10 Black or African American, and native Hawaiian or
11 other Pacific Islander; and

12 “(3) the way in which managers were trained in
13 the administration of that system.

14 “(e) The Office of Personnel Management may pre-
15 scribe such regulations as it considers necessary to carry
16 out the provisions of this section.”.

17 (b) TECHNICAL AND CONFORMING AMENDMENT.—
18 The table of sections for chapter 33 of title 5, United
19 States Code, is amended by striking the item relating to
20 section 3319 and inserting the following:

“3319. Alternative ranking and selection procedures.”.

1 **SEC. 2203. PERMANENT EXTENSION, REVISION, AND EXPAN-**
2 **SION OF AUTHORITIES FOR USE OF VOL-**
3 **UNTARY SEPARATION INCENTIVE PAY AND**
4 **VOLUNTARY EARLY RETIREMENT.**

5 (a) VOLUNTARY SEPARATION INCENTIVE PAY-
6 MENTS.—

7 (1) IN GENERAL.—

8 (A) AMENDMENT TO TITLE 5, UNITED
9 STATES CODE.—Chapter 35 of title 5, United
10 States Code, is amended by inserting after sub-
11 chapter I the following:

12 “SUBCHAPTER II—VOLUNTARY SEPARATION
13 INCENTIVE PAYMENTS

14 “§ 3521. Definitions

15 “In this subchapter, the term—

16 “(1) ‘agency’ means an Executive agency as de-
17 fined under section 105; and

18 “(2) ‘employee’—

19 “(A) means an employee as defined under
20 section 2105 employed by an agency and an in-
21 dividual employed by a county committee estab-
22 lished under section 8(b)(5) of the Soil Con-
23 servation and Domestic Allotment Act (16
24 U.S.C. 590h(b)(5)) who—

25 “(i) is serving under an appointment
26 without time limitation; and

1 “(ii) has been currently employed for
2 a continuous period of at least 3 years;
3 and

4 “(B) shall not include—

5 “(i) a reemployed annuitant under
6 subchapter III of chapter 83 or 84 or an-
7 other retirement system for employees of
8 the Government;

9 “(ii) an employee having a disability
10 on the basis of which such employee is or
11 would be eligible for disability retirement
12 under subchapter III of chapter 83 or 84
13 or another retirement system for employees
14 of the Government;

15 “(iii) an employee who is in receipt of
16 a decision notice of involuntary separation
17 for misconduct or unacceptable perform-
18 ance;

19 “(iv) an employee who has previously
20 received any voluntary separation incentive
21 payment from the Federal Government
22 under this subchapter or any other author-
23 ity;

1 “(v) an employee covered by statutory
2 reemployment rights who is on transfer
3 employment with another organization; or

4 “(vi) any employee who—

5 “(I) during the 36-month period
6 preceding the date of separation of
7 that employee, performed service for
8 which a student loan repayment ben-
9 efit was or is to be paid under section
10 5379;

11 “(II) during the 24-month period
12 preceding the date of separation of
13 that employee, performed service for
14 which a recruitment or relocation
15 bonus was or is to be paid under sec-
16 tion 5753; or

17 “(III) during the 12-month pe-
18 riod preceding the date of separation
19 of that employee, performed service
20 for which a retention bonus was or is
21 to be paid under section 5754.

22 **“§ 3522. Agency plans; approval**

23 “(a) Before obligating any resources for voluntary
24 separation incentive payments, the head of each agency
25 shall submit to the Office of Personnel Management a

1 plan outlining the intended use of such incentive payments
2 and a proposed organizational chart for the agency once
3 such incentive payments have been completed.

4 “(b) The plan of an agency under subsection (a) shall
5 include—

6 “(1) the specific positions and functions to be
7 reduced or eliminated;

8 “(2) a description of which categories of em-
9 ployees will be offered incentives;

10 “(3) the time period during which incentives
11 may be paid;

12 “(4) the number and amounts of voluntary sep-
13 aration incentive payments to be offered; and

14 “(5) a description of how the agency will oper-
15 ate without the eliminated positions and functions.

16 “(c) The Director of the Office of Personnel Manage-
17 ment shall review each agency’s plan and may make any
18 appropriate modifications in the plan, in consultation with
19 the Director of the Office of Management and Budget. A
20 plan under this section may not be implemented without
21 the approval of the Director of the Office of Personnel
22 Management.

1 **“§ 3523. Authority to provide voluntary separation in-**
2 **centive payments**

3 “(a) A voluntary separation incentive payment under
4 this subchapter may be paid to an employee only as pro-
5 vided in the plan of an agency established under section
6 3522.

7 “(b) A voluntary incentive payment—

8 “(1) shall be offered to agency employees on the
9 basis of—

10 “(A) 1 or more organizational units;

11 “(B) 1 or more occupational series or lev-
12 els;

13 “(C) 1 or more geographical locations;

14 “(D) skills, knowledge, or other factors re-
15 lated to a position;

16 “(E) specific periods of time during which
17 eligible employees may elect a voluntary incen-
18 tive payment; or

19 “(F) any appropriate combination of such
20 factors;

21 “(2) shall be paid in a lump sum after the em-
22 ployee’s separation;

23 “(3) shall be equal to the lesser of—

24 “(A) an amount equal to the amount the
25 employee would be entitled to receive under sec-
26 tion 5595(c) if the employee were entitled to

1 payment under such section (without adjust-
2 ment for any previous payment made); or

3 “(B) an amount determined by the agency
4 head, not to exceed \$25,000;

5 “(4) may be made only in the case of an em-
6 ployee who voluntarily separates (whether by retire-
7 ment or resignation) under this subchapter;

8 “(5) shall not be a basis for payment, and shall
9 not be included in the computation, of any other
10 type of Government benefit;

11 “(6) shall not be taken into account in deter-
12 mining the amount of any severance pay to which
13 the employee may be entitled under section 5595,
14 based on any other separation; and

15 “(7) shall be paid from appropriations or funds
16 available for the payment of the basic pay of the em-
17 ployee.

18 **“§ 3524. Effect of subsequent employment with the**

19 **Government**

20 “(a) The term ‘employment’—

21 “(1) in subsection (b) includes employment
22 under a personal services contract (or other direct
23 contract) with the United States Government (other
24 than an entity in the legislative branch); and

1 “(2) in subsection (c) does not include employ-
2 ment under such a contract.

3 “(b) An individual who has received a voluntary sepa-
4 ration incentive payment under this subchapter and ac-
5 cepts any employment for compensation with the Govern-
6 ment of the United States within 5 years after the date
7 of the separation on which the payment is based shall be
8 required to pay, before the individual’s first day of employ-
9 ment, the entire amount of the incentive payment to the
10 agency that paid the incentive payment.

11 “(c)(1) If the employment under this section is with
12 an agency, other than the General Accounting Office, the
13 United States Postal Service, or the Postal Rate Commis-
14 sion, the Director of the Office of Personnel Management
15 may, at the request of the head of the agency, waive the
16 repayment if—

17 “(A) the individual involved possesses unique
18 abilities and is the only qualified applicant available
19 for the position; or

20 “(B) in the case of an emergency involving a di-
21 rect threat to life or property, the individual—

22 “(i) has skills directly related to resolving
23 the emergency; and

1 **“CHAPTER 35—RETENTION PREFERENCE,**
2 **VOLUNTARY SEPARATION INCENTIVE**
3 **PAYMENTS, RESTORATION, AND RE-**
4 **EMPLOYMENT”**; and

5 (ii) in the table of sections by insert-
6 ing after the item relating to section 3504
7 the following:

“SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE
PAYMENTS

“3521. Definitions.

“3522. Agency plans; approval.

“3523. Authority to provide voluntary separation incentive payments.

“3524. Effect of subsequent employment with the Government.

“3525. Regulations.”.

8 (2) ADMINISTRATIVE OFFICE OF THE UNITED
9 STATES COURTS.—The Director of the Administra-
10 tive Office of the United States Courts may, by reg-
11 ulation, establish a program substantially similar to
12 the program established under paragraph (1) for in-
13 dividuals serving in the judicial branch.

14 (3) CONTINUATION OF OTHER AUTHORITY.—
15 Any agency exercising any voluntary separation in-
16 centive authority in effect on the effective date of
17 this subsection may continue to offer voluntary sepa-
18 ration incentives consistent with that authority until
19 that authority expires.

20 (4) EFFECTIVE DATE.—This subsection shall
21 take effect 60 days after the date of enactment of
22 this Act.

1 (b) FEDERAL EMPLOYEE VOLUNTARY EARLY RE-
2 TIREMENT.—

3 (1) CIVIL SERVICE RETIREMENT SYSTEM.—Sec-
4 tion 8336(d)(2) of title 5, United States Code, is
5 amended to read as follows:

6 “(2)(A) has been employed continuously, by the
7 agency in which the employee is serving, for at least
8 the 31-day period ending on the date on which such
9 agency requests the determination referred to in
10 subparagraph (D);

11 “(B) is serving under an appointment that is
12 not time limited;

13 “(C) has not been duly notified that such em-
14 ployee is to be involuntarily separated for mis-
15 conduct or unacceptable performance;

16 “(D) is separated from the service voluntarily
17 during a period in which, as determined by the Of-
18 fice of Personnel Management (upon request of the
19 agency) under regulations prescribed by the Office—

20 “(i) such agency (or, if applicable, the
21 component in which the employee is serving) is
22 undergoing substantial delayering, substantial
23 reorganization, substantial reductions in force,
24 substantial transfer of function, or other sub-
25 stantial workforce restructuring (or shaping);

1 “(ii) a significant percentage of employees
2 serving in such agency (or component) are like-
3 ly to be separated or subject to an immediate
4 reduction in the rate of basic pay (without re-
5 gard to subchapter VI of chapter 53, or com-
6 parable provisions); or

7 “(iii) identified as being in positions which
8 are becoming surplus or excess to the agency’s
9 future ability to carry out its mission effec-
10 tively; and

11 “(E) as determined by the agency under regula-
12 tions prescribed by the Office, is within the scope of
13 the offer of voluntary early retirement, which may be
14 made on the basis of—

15 “(i) 1 or more organizational units;

16 “(ii) 1 or more occupational series or lev-
17 els;

18 “(iii) 1 or more geographical locations;

19 “(iv) specific periods;

20 “(v) skills, knowledge, or other factors re-
21 lated to a position; or

22 “(vi) any appropriate combination of such
23 factors;”.

24 (2) FEDERAL EMPLOYEES’ RETIREMENT SYS-
25 TEM.—Section 8414(b)(1) of title 5, United States

1 Code, is amended by striking subparagraph (B) and
2 inserting the following:

3 “(B)(i) has been employed continuously, by
4 the agency in which the employee is serving, for
5 at least the 31-day period ending on the date
6 on which such agency requests the determina-
7 tion referred to in clause (iv);

8 “(ii) is serving under an appointment that
9 is not time limited;

10 “(iii) has not been duly notified that such
11 employee is to be involuntarily separated for
12 misconduct or unacceptable performance;

13 “(iv) is separated from the service volun-
14 tarily during a period in which, as determined
15 by the Office of Personnel Management (upon
16 request of the agency) under regulations pre-
17 scribed by the Office—

18 “(I) such agency (or, if applicable, the
19 component in which the employee is serv-
20 ing) is undergoing substantial delayering,
21 substantial reorganization, substantial re-
22 ductions in force, substantial transfer of
23 function, or other substantial workforce re-
24 structuring (or shaping);

1 “(II) a significant percentage of em-
2 ployees serving in such agency (or compo-
3 nent) are likely to be separated or subject
4 to an immediate reduction in the rate of
5 basic pay (without regard to subchapter VI
6 of chapter 53, or comparable provisions);
7 or

8 “(III) identified as being in positions
9 which are becoming surplus or excess to
10 the agency’s future ability to carry out its
11 mission effectively; and

12 “(v) as determined by the agency under
13 regulations prescribed by the Office, is within
14 the scope of the offer of voluntary early retire-
15 ment, which may be made on the basis of—

16 “(I) 1 or more organizational units;

17 “(II) 1 or more occupational series or
18 levels;

19 “(III) 1 or more geographical loca-
20 tions;

21 “(IV) specific periods;

22 “(V) skills, knowledge, or other fac-
23 tors related to a position; or

24 “(VI) any appropriate combination of
25 such factors;”.

1 (3) GENERAL ACCOUNTING OFFICE AUTHOR-
2 ITY.—The amendments made by this subsection
3 shall not be construed to affect the authority under
4 section 1 of Public Law 106–303 (5 U.S.C. 8336
5 note; 114 Stat. 1063).

6 (4) TECHNICAL AND CONFORMING AMEND-
7 MENT.—Section 7001 of the 1998 Supplemental Ap-
8 propriations and Rescissions Act (Public Law 105–
9 174; 112 Stat. 91) is repealed.

10 (5) REGULATIONS.—The Office of Personnel
11 Management may prescribe regulations to carry out
12 this subsection.

13 (c) SENSE OF CONGRESS.—It is the sense of Con-
14 gress that the implementation of this section is intended
15 to reshape the Federal workforce and not downsize the
16 Federal workforce.

17 **SEC. 2204. STUDENT VOLUNTEER TRANSIT SUBSIDY.**

18 (a) IN GENERAL.—Section 7905(a)(1) of title 5,
19 United States Code, is amended by striking “and a mem-
20 ber of a uniformed service” and inserting “, a member
21 of a uniformed service, and a student who provides vol-
22 untary services under section 3111”.

23 (b) TECHNICAL AND CONFORMING AMENDMENT.—
24 Section 3111(c)(1) of title 5, United States Code, is
25 amended by striking “chapter 81 of this title” and insert-

1 ing “section 7905 (relating to commuting by means other
2 than single-occupancy motor vehicles), chapter 81”.

3 **TITLE XXIII—REFORMS RELAT-**
4 **ING TO THE SENIOR EXECU-**
5 **TIVE SERVICE**

6 **SEC. 2301. REPEAL OF RECERTIFICATION REQUIREMENTS**
7 **OF SENIOR EXECUTIVES.**

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

10 (1) in chapter 33—

11 (A) in section 3393(g) by striking
12 “3393a,”;

13 (B) by repealing section 3393a; and

14 (C) in the table of sections by striking the
15 item relating to section 3393a;

16 (2) in chapter 35—

17 (A) in section 3592(a)—

18 (i) in paragraph (1), by inserting “or”
19 at the end;

20 (ii) in paragraph (2), by striking “or”
21 at the end;

22 (iii) by striking paragraph (3); and

23 (iv) by striking the last sentence;

24 (B) in section 3593(a), by striking para-
25 graph (2) and inserting the following:

1 “(2) the appointee left the Senior Executive
2 Service for reasons other than misconduct, neglect of
3 duty, malfeasance, or less than fully successful execu-
4 tive performance as determined under subchapter
5 II of chapter 43.”; and

6 (C) in section 3594(b)—

7 (i) in paragraph (1), by inserting “or”
8 at the end;

9 (ii) in paragraph (2), by striking “or”
10 at the end; and

11 (iii) by striking paragraph (3);

12 (3) in section 7701(c)(1)(A), by striking “or re-
13 moval from the Senior Executive Service for failure
14 to be recertified under section 3393a”;

15 (4) in chapter 83—

16 (A) in section 8336(h)(1), by striking “for
17 failure to be recertified as a senior executive
18 under section 3393a or”; and

19 (B) in section 8339(h), in the first sen-
20 tence, by striking “, except that such reduction
21 shall not apply in the case of an employee retir-
22 ing under section 8336(h) for failure to be re-
23 certified as a senior executive”; and

24 (5) in chapter 84—

1 (A) in section 8414(a)(1), by striking “for
2 failure to be recertified as a senior executive
3 under section 3393a or”; and

4 (B) in section 8421(a)(2), by striking “,
5 except that an individual entitled to an annuity
6 under section 8414(a) for failure to be recer-
7 tified as a senior executive shall be entitled to
8 an annuity supplement without regard to such
9 applicable minimum retirement age”.

10 (b) SAVINGS PROVISION.—Notwithstanding the
11 amendments made by subsection (a)(2)(A), an appeal
12 under the final sentence of section 3592(a) of title 5,
13 United States Code, that is pending on the day before the
14 effective date of this section—

15 (1) shall not abate by reason of the enactment
16 of the amendments made by subsection (a)(2)(A);
17 and

18 (2) shall continue as if such amendments had
19 not been enacted.

20 (c) APPLICATION.—The amendment made by sub-
21 section (a)(2)(B) shall not apply with respect to an indi-
22 vidual who, before the effective date of this section, leaves
23 the Senior Executive Service for failure to be recertified
24 as a senior executive under section 3393a of title 5, United
25 States Code.

1 **SEC. 2302. ADJUSTMENT OF LIMITATION ON TOTAL AN-**
2 **NUAL COMPENSATION.**

3 Section 5307(a) of title 5, United States Code, is
4 amended by adding at the end the following:

5 “(3) Notwithstanding paragraph (1), the total pay-
6 ment referred to under such paragraph with respect to an
7 employee paid under section 5372, 5376, or 5383 of title
8 5 or section 332(f), 603, or 604 of title 28 shall not exceed
9 the total annual compensation payable to the Vice Presi-
10 dent under section 104 of title 3. Regulations prescribed
11 under subsection (c) may extend the application of this
12 paragraph to other equivalent categories of employees.”.

13 **TITLE XXIV—ACADEMIC**
14 **TRAINING**

15 **SEC. 2401. ACADEMIC TRAINING.**

16 (a) **ACADEMIC DEGREE TRAINING.**—Section 4107 of
17 title 5, United States Code, is amended to read as follows:

18 **“§ 4107. Academic degree training**

19 “(a) Subject to subsection (b), an agency may select
20 and assign an employee to academic degree training and
21 may pay or reimburse the costs of academic degree train-
22 ing from appropriated or other available funds if such
23 training—

24 “(1) contributes significantly to—

25 “(A) meeting an identified agency training
26 need;

1 “(B) resolving an identified agency staffing
2 problem; or

3 “(C) accomplishing goals in the strategic
4 plan of the agency;

5 “(2) is part of a planned, systematic, and co-
6 ordinated agency employee development program
7 linked to accomplishing the strategic goals of the
8 agency; and

9 “(3) is accredited and is provided by a college
10 or university that is accredited by a nationally recog-
11 nized body.

12 “(b) In exercising authority under subsection (a), an
13 agency shall—

14 “(1) consistent with the merit system principles
15 set forth in paragraphs (2) and (7) of section
16 2301(b), take into consideration the need to—

17 “(A) maintain a balanced workforce in
18 which women, members of racial and ethnic mi-
19 nority groups, and persons with disabilities are
20 appropriately represented in Government serv-
21 ice; and

22 “(B) provide employees effective education
23 and training to improve organizational and indi-
24 vidual performance;

1 (A) the United States Government actively
2 encourages and financially supports the train-
3 ing, education, and development of many
4 United States citizens;

5 (B) as a condition of some of those sup-
6 ports, many of those citizens have an obligation
7 to seek either compensated or uncompensated
8 employment in the Federal sector; and

9 (C) it is in the United States national in-
10 terest to maximize the return to the Nation of
11 funds invested in the development of such citi-
12 zens by seeking to employ them in the Federal
13 sector.

14 (2) POLICY.—It shall be the policy of the
15 United States Government to—

16 (A) establish procedures for ensuring that
17 United States citizens who have incurred serv-
18 ice obligations as the result of receiving finan-
19 cial support for education and training from the
20 United States Government and have applied for
21 Federal positions are considered in all recruit-
22 ment and hiring initiatives of Federal depart-
23 ments, bureaus, agencies, and offices; and

24 (B) advertise and open all Federal posi-
25 tions to United States citizens who have in-

1 curred service obligations with the United
2 States Government as the result of receiving fi-
3 nancial support for education and training from
4 the United States Government.

5 (b) FULFILLMENT OF SERVICE REQUIREMENT IF
6 NATIONAL SECURITY POSITIONS ARE UNAVAILABLE.—
7 Section 802(b)(2) of the David L. Boren National Secu-
8 rity Education Act of 1991 (50 U.S.C. 1902) is
9 amended—

10 (1) in subparagraph (A), by striking clause (ii)
11 and inserting the following:

12 “(ii) if the recipient demonstrates to
13 the Secretary (in accordance with such
14 regulations) that no national security posi-
15 tion in an agency or office of the Federal
16 Government having national security re-
17 sponsibilities is available, work in other of-
18 fices or agencies of the Federal Govern-
19 ment or in the field of higher education in
20 a discipline relating to the foreign country,
21 foreign language, area study, or inter-
22 national field of study for which the schol-
23 arship was awarded, for a period specified
24 by the Secretary, which period shall be de-

1 terminated in accordance with clause (i); or”;

2 and

3 (2) in subparagraph (B), by striking clause (ii)

4 and inserting the following:

5 “ (ii) if the recipient demonstrates to
6 the Secretary (in accordance with such
7 regulations) that no national security posi-
8 tion is available upon the completion of the
9 degree, work in other offices or agencies of
10 the Federal Government or in the field of
11 higher education in a discipline relating to
12 the foreign country, foreign language, area
13 study, or international field of study for
14 which the fellowship was awarded, for a
15 period specified by the Secretary, which pe-
16 riod shall be established in accordance with
17 clause (i); and”.

18 **SEC. 2403. COMPENSATORY TIME OFF FOR TRAVEL.**

19 Subchapter V of chapter 55 of title 5, United
20 States Code, is amended by adding at end the fol-
21 lowing:

22 **“§ 5550b. Compensatory time off for travel**

23 “(a) An employee shall receive 1 hour of compen-
24 satory time off for each hour spent by the employee in
25 travel status away from the official duty station of the

1 employee, to the extent that the time spent in travel status
2 is not otherwise compensable.

3 “(b) Not later than 30 days after the date of enact-
4 ment of this section, the Office of Personnel Management
5 shall prescribe regulations to implement this section.”.