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A LEGISLATIVE PROPOSAL

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A LEGISLATIVE PROPOSAL TO CREATE A NEW CABINET DEPARTMENT OF HOMELAND SECURITY

JUNE 18, 2002.—Message and accompanying papers referred to the Committee on the Whole House on the State of the Union and ordered to be printed

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To the Congress of the United States:

I hereby transmit to the Congress proposed legislation to create a new Cabinet Department of Homeland Security.

Our Nation faces a new and changing threat unlike any we have faced before—the global threat of terrorism. No nation is immune, and all nations must act decisively to protect against this constantly evolving threat.

We must recognize that the threat of terrorism is a permanent condition, and we must take action to protect America against the terrorists that seek to kill the innocent.

Since September 11, 2001, all levels of government and leaders from across the political spectrum have cooperated like never before. We have strengthened our aviation security and tightened our borders. We have stockpiled medicines to defend against bioterrorism and improved our ability to combat weapons of mass destruction. We have dramatically improved information sharing among our intelligence agencies, and we have taken new steps to protect our critical infrastructure.

Our Nation is stronger and better prepared today than it was on September 11. Yet, we can do better. I propose the most extensive reorganization of the Federal Government since the 1940s by creating a new Department of Homeland Security. For the first time we would have a single Department whose primary mission is to secure our homeland. Soon after the Second World War, President Harry Truman recognized that our Nation's fragmented military defenses needed reorganization to help win the Cold War. President Truman proposed uniting our military forces under a single entity, now the Department of Defense, and creating the National Security Council to bring together defense, intelligence, and diplomacy. President Truman's reforms are still helping us to fight terror abroad, and today we need similar dramatic reforms to secure our people at home.

President Truman and Congress reorganized our Government to meet a very visible enemy in the Cold War. Today our Nation must once again reorganize our Government to protect against an often-invisible enemy, an enemy that hides in the shadows and an enemy that can strike with many different types of weapons. Our enemies seek to obtain the most dangerous and deadly weapons of mass destruction and use them against the innocent. While we are winning the war on terrorism, Al Qaeda and other terrorist organizations still have thousands of trained killers spread across the globe plotting attacks against America and the other nations of the civilized world.

Immediately after last fall's attack, I used my legal authority to establish the White House Office of Homeland Security and the Homeland Security Council to help ensure that our Federal response and protection efforts were coordinated and effective. I also

directed Homeland Security Advisor Tom Ridge to study the Federal Government as a whole to determine if the current structure allows us to meet the threats of today while preparing for the unknown threats of tomorrow. After careful study of the current structure, coupled with the experience gained since September 11 and new information we have learned about or enemies while fighting a war, I have concluded that our Nation needs a more unified homeland security structure.

I propose to create a new Department of Homeland Security by substantially transforming the current confusing patchwork of government activities into a single department whose primary mission is to secure our homeland. My proposal builds on the strong bipartisan work on the issue of homeland security that has been conducted by Members of Congress. In designing the new Department, my Administration considered a number of homeland security organizational proposals that have emerged from outside studies, commissions, and Members of Congress.

The Need for a Department of Homeland Security

Today no Federal Government agency has homeland security as its primary mission. Responsibilities for homeland security are dispersed among more than 100 different entities of the Federal Government. America needs a unified homeland security structure that will improve protection against today's threats and be flexible enough to help meet the unknown threats of the future.

The mission of the new Department would be to prevent terrorist attacks within the United States, to reduce America's vulnerability to terrorism, and to minimize the damage and recover from attacks that may occur. The Department of Homeland Security would mobilize and focus the resources of the Federal Government, State and local governments, the private sector, and the American people to accomplish its mission.

The Department of Homeland Security would make Americans safer because for the first time we would have one department dedicated to securing the homeland. One department would secure our borders, transportation sector, ports, and critical infrastructure. One department would analyze homeland security intelligence from multiple sources, synthesize it with a comprehensive assessment of America's vulenrabilities, and take action to secure our highest risk facilities and systems. One department would coordinate communications with State and local governments, private industry, and the American people about threats and preparedness. One department would coordinate our efforts to secure the American people against bioterrorism and other weapons of mass destruction. One department would help train and equip our first responders. One department would manage Federal emergency response activities.

Our goal is not to expand Government, but to create an agile organization that takes advantage of modern technology and management techniques to meet a new and constantly evolving threat. We can improve our homeland security by minimizing the duplication of efforts, improving coordination, and combining functions that are currently fragmented and inefficient. The new Department would allow us to have more security officers in the field working to stop

terrorists and fewer resources in Washington managing duplicative activities that drain critical homeland security resources.

The Department of Homeland Security would have a clear and efficient organizational structure with four main divisions: Border and Transportation Security; Emergency Preparedness and Response; Chemical, Biological, Radiological and Nuclear Countermeasures; and Information Analysis and Infrastructure Protection.

Border and Transportation Security

Terrorism is a global threat and we must improve our border security to help keep out those who mean to do us harm. We must closely monitor who is coming into and out of our country to help prevent foreign terrorists from entering our country and bringing in their instruments of terror. At the same time, we must expedite the legal flow of people and goods on which our economy depends. Securing our borders and controlling entry to the United States has always been the responsibility of the Federal Government. Yet, this responsibility and the security of our transportation systems is now dispersed among several major Government organizations. Under my proposed legislation, the Department of Homeland Security would unify authority over major Federal security operations related to our borders, territorial waters, and transportation systems.

The Department would assume responsibility for the United States Coast Guard, the United States Customs Service, the Immigration and Naturalization Service (including the Border Patrol), the Animal and Plant Health Inspection Service, and the Transportation Security Administration. The Secretary of Homeland Security would have the authority to administer and enforce all immigration and nationality laws, including the visa issuance functions of consular officers. As a result, the Department would have sole responsibility for managing entry into the United States and protecting our transportation infrastructure. It would ensure that all aspects of border control, including the issuing of visas, are informed by a central information-sharing clearinghouse and compatible databases.

Emergency Preparedness and Response

Although our top priority is preventing future attacks, we must also prepare to minimize the damage and recover from attacks that may occur.

My legislative proposal requires the Department of Homeland Security to ensure the preparedness of our Nation's emergency response professionals, provide the Federal Government's response, and aid America's recovery from terrorist attacks and natural disasters. To fulfill these missions, the Department of Homeland Security would incorporate the Federal Emergency Management Agency (FEMA) as one of its key components. The Department would administer the domestic disaster preparedness grant programs for firefighters, police, and emergency personnel currently managed by FEMA, the Department of Justice, and the Department of Health and Human Services. In responding to an incident, the Department would manage such critical response assets as the Nuclear Emergency Search Team (from the Department of Energy) and the National Pharmaceutical Stockpile (from the Department of Health

and Human Services). Finally, the Department of Homeland Security would integrate the Federal interagency emergency response plans into a single, comprehensive, Government-wide plan, and would work to ensure that all response personnel have the equipment and capability to communicate with each other as necessary.

Chemical, Biological, Radiological, and Nuclear Countermeasures

Our enemies today seek to acquire and use the most deadly weapons known to mankind—chemical, biological, radiological, and nuclear weapons.

The new Department of Homeland Security would lead the Federal Government's efforts in preparing for and responding to the full range of terrorist threats involving weapons of mass destruction. The Department would set national policy and establish guidelines for State and local governments. The Department would direct exercises for Federal, State, and local chemical, biological, radiological, and nuclear attack response teams and plans. The Department would consolidate and synchronize the disparate efforts of multiple Federal agencies now scattered across several departments. This would create a single office whose primary mission is the critical task of securing the United States from catastrophic terrorism.

The Department would improve America's ability to develop diagnostics, vaccines, antibodies, antidotes, and other countermeasures against new weapons. It would consolidate and prioritize the disparate homeland security-related research and development programs currently scattered throughout the executive branch, and the Department would assist State and local public safety agencies by evaluating equipment and setting standards.

Information Analysis and Infrastructure Protection

For the first time the Government would have under one roof the capability to identify and assess threats to the homeland, map those threats against our vulnerabilities, issue timely warnings, and take action to help secure the homeland.

The Information Analysis and Infrastructure Protection division of the new Department of Homeland Security would complement the reforms on intelligence-gathering and information-sharing already underway at the FBI and the CIA. The Department would analyze information and intelligence from the FBI, CIA, and many other Federal agencies to better understand the terrorist threat to the American homeland.

The Department would comprehensively assess the vulnerability of America's key assets and critical infrastructures, including food and water systems, agriculture, health systems and emergency services, information and telecommunications, banking and finance, energy, transportation, the chemical and defense industries, postal and shipping entities, and national monuments and icons. The Department would integrate its own and others' threat analyses with its comprehensive vulnerability assessment to identify protective priorities and support protective steps to be taken by the Department, other Federal departments and agencies, State and local agencies, and the private sector. Working closely with State and local officials, other Federal agencies, and the private sector,

the Department would help ensure that proper steps are taken to protect high-risk potential targets.

Other Components

In addition to these four core divisions, the submitted legislation would also transfer responsibility for the Secret Service to the Department of Homeland Security. The Secret Service, which would report directly to the Secretary of Homeland Security, would retain its primary mission to protect the President and other Government Leaders. The Secret Service would, however, contribute its specialized protective expertise to the fulfillment of the Department's core mission.

Finally, under my legislation, the Department of Homeland Security would consolidate and streamline relations with the Federal Government for America's State and local governments. The new Department would contain an intergovernmental affairs office to coordinate Federal homeland security programs with State and local officials. It would give State and local officials one primary contact instead of many when it comes to matters related to training, equipment, planning, and other critical needs such as emergency response.

The consolidation of the Government's homeland security efforts as outlined in my proposed legislation can achieve great efficiencies that further enhance our security. Yet, to achieve these efficiencies, the new Secretary of Homeland Security would require considerable flexibility in procurement, integration of information technology systems, and personnel issues. My proposed legislation provides the Secretary of Homeland Security with just such flexibility and managerial authorities. I call upon the Congress to implement these measures in order to ensure that we are maximizing our ability to secure our homeland.

Continued Interagency Coordination at the White House

Even with the creation of the new Department, there will remain a strong need for a White House Office of Homeland Security. Protecting America from terrorism will remain a multi-departmental issue and will continue to require interagency coordination. Presidents will continue to require the confidential advice of a Homeland Security Advisor, and I intend for the White House Office of Homeland Security and the Homeland Security Council to maintain a strong role in coordinating our governmentwide efforts to secure the homeland.

The Lessons of History

History teaches us that new challenges require new organizational structures. History also teaches us that critical security challenges require clear lines of responsibility and the unified effort of the U.S. Government.

President Truman said, looking at the lessons of the Second World War: "It is now time to discard obsolete organizational forms, and to provide for the future the soundest, the most effective, and the most economical kind of structure for our armed forces." When skeptics told President Truman that this proposed reorganization was too ambitious to be enacted, he simply replied

that it had to be. In the years to follow, the Congress acted upon President Truman's recommendation, eventually laying a sound organizational foundation that enabled the United States to win the Cold War. All Americans today enjoy the inheritance of this landmark organizational reform: a unified Department of Defense that has become the most powerful force for freedom the world has ever seen.

Today America faces a threat that is wholly different from the threat we faced during the Cold War. Our terrorist enemies hide in shadows and attack civilians with whatever means of destruction they can access. But as in the Cold War, meeting this threat requires clear lines of responsibility and the unified efforts of government at all levels—Federal, State, local, and tribal—the private sector, and all Americans. America needs a homeland security establishment that can help prevent catastrophic attacks and mobilize national resources for an enduring conflict while protecting our Nation's values and liberties.

Years from today, our world will still be fighting the threat of terrorism. It is my hope that future generations will be able to look back on the Homeland Security Act of 2002—as we now remember the National Security Act of 1947—as the solid organizational foundation for America's triumph in a long and difficult struggle against a formidable enemy.

History has given our Nation new challenges—and important new assignments. Only the United States Congress can create a new department of Government. We face an urgent need, and I am pleased that Congress has responded to my call to act before the end of the current congressional session with the same bipartisan spirit that allowed us to act expeditiously on legislation after September 11.

These are times that demand bipartisan action and bipartisan solutions to meet the new and changing threats we face as a Nation. I urge the Congress to join me in creating a single, permanent department with an overriding and urgent mission—securing the homeland of America and protecting the American people. Together we can meet this ambitious deadline and help ensure that the American homeland is secure against the terrorist threat.

GEORGE W. BUSH.

THE WHITE HOUSE, *June 18, 2002.*

A BILL

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

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

3 **SEC. 1. SHORT TITLE; TABLE OF CONTENTS.**

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

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

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

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Sec. 101. Executive department; mission.
Sec. 102. Secretary; functions.
Sec. 103. Other officers.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Sec. 201. Under Secretary for Information Analysis and Infrastructure Protection.
Sec. 202. Functions transferred.
Sec. 203. Access to information.
Sec. 204. Information voluntarily provided.

TITLE III—CHEMICAL, BIOLOGICAL, RADIOLOGICAL, AND NUCLEAR COUNTERMEASURES

Sec. 301. Under Secretary for Chemical, Biological, Radiological, and Nuclear Countermeasures.
Sec. 302. Functions transferred.
Sec. 303. Conduct of certain public health-related activities.
Sec. 304. Military activities.

TITLE IV—BORDER AND TRANSPORTATION SECURITY

Sec. 401. Under Secretary for Border and Transportation Security.
Sec. 402. Functions transferred.
Sec. 403. Visa issuance.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

Sec. 501. Under Secretary for Emergency Preparedness and Response.
Sec. 502. Functions transferred.
Sec. 503. Nuclear incident response.

Sec. 504. Definition.
Sec. 505. Conduct of certain public health-related activities.

TITLE VI—MANAGEMENT

Sec. 601. Under Secretary for Management.
Sec. 602. Chief Financial Officer.
Sec. 603. Chief Information Officer.

TITLE VII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities

Sec. 701. Responsibilities.

Subtitle B—Inspector General

Sec. 710. Authority of the Secretary.

Subtitle C—United States Secret Service

Sec. 720. Functions transferred.

Subtitle D—General Provisions

Sec. 730. Establishment of human resources management system.
Sec. 731. Advisory committees.
Sec. 732. Acquisitions; property.
Sec. 733. Reorganization; transfer.
Sec. 734. Miscellaneous provisions.
Sec. 735. Authorization of appropriations.

TITLE VIII—TRANSITION

Sec. 801. Definitions.
Sec. 802. Transfer of agencies.
Sec. 803. Transitional authorities.
Sec. 804. Savings provisions.
Sec. 805. Terminations.
Sec. 806. Incidental transfers.

TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

Sec. 901. Inspector General Act.
Sec. 902. Executive Schedule.
Sec. 903. United States Secret Service.
Sec. 904. Coast Guard.
Sec. 905. Strategic National Stockpile and smallpox vaccine development.
Sec. 906. Select agent registration.
Sec. 907. National Bio-Weapons Defense Analysis Center.

1 **SEC. 2. DEFINITIONS.**

1 Unless the context clearly indicates otherwise, the following shall apply for purposes of
2 this Act:
3 (1) 'American homeland' or 'homeland' means the United States, in a geographic
4 sense;
5 (2) 'Assets' includes contracts, facilities, property, records, unobligated or
6 unexpended balances of appropriations, and other funds or resources (other than
7 personnel);
8 (3) 'Department' means the Department of Homeland Security;
9 (4) 'Emergency response providers' includes Federal, State, and local government
10 emergency public safety, law enforcement, emergency response, emergency medical, and
11 related personnel, agencies, and authorities;
12 (5) 'Executive agency' means an executive agency and a military department, as
13 defined, respectively, in sections 105 and 102 of title 5, United States Code;
14 (6) 'Functions' includes authorities, powers, rights, privileges, immunities,
15 programs, projects, activities, duties, responsibilities, and obligations;
16 (7) 'Local government' has the meaning given in section 102(6) of the Robert T.
17 Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288;
18 (8) 'Major disaster' has the meaning given in section 102(2) of the Robert T.
19 Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288;
20 (9) 'Personnel' means officers and employees;
21 (10) 'Secretary' means the Secretary of Homeland Security; and
22 (11) 'United States', when used in a geographic sense, means any State (within
23 the meaning of section 102(4) of the Robert T. Stafford Disaster Relief and Emergency

1 Assistance Act, Pub. L. No. 93-288), any possession of the United States, and any waters
2 within the jurisdiction of the United States.

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

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

10 **SEC. 4. EFFECTIVE DATE.**

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

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

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

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

17 (b)(1) The primary mission of the Department is to—

18 (A) prevent terrorist attacks within the United States;

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

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

22 (2) In carrying out the mission described in paragraph (1), and as further

1 described in this Act, the Department's primary responsibilities shall include—

2 (A) information analysis and infrastructure protection;

3 (B) chemical, biological, radiological, nuclear, and related

4 countermeasures;

5 (C) border and transportation security;

6 (D) emergency preparedness and response; and

7 (E) coordination (including the provision of training and equipment) with

8 other executive agencies, with State and local government personnel, agencies,

9 and authorities, with the private sector, and with other entities.

10 (3) The Department shall also be responsible for carrying out other functions of

11 entities transferred to the Department as provided by law.

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

13 (a)(1) There is a Secretary of Homeland Security, appointed by the President, by and with

14 the advice and consent of the Senate.

15 (2) The Secretary is the head of the Department and shall have direction,

16 authority, and control over it.

17 (3) All functions of all officers, employees, and organizational units of the

18 Department are vested in the Secretary.

19 (b) The Secretary—

20 (1) may delegate any of his functions to any officer, employee, or organizational

21 unit of the Department;

22 (2) may promulgate regulations hereunder; and

23 (3) shall have such functions, including the authority to make contracts, grants,

1 and cooperative agreements, and to enter into agreements with other executive agencies,
2 as may be necessary and proper to carry out his responsibilities under this Act or
3 otherwise provided by law.

4 **SEC. 103. OTHER OFFICERS.**

5 (a) To assist the Secretary in the performance of his functions, there are the following
6 officers, appointed by the President, by and with the advice and consent of the Senate:
7 (1) a Deputy Secretary of Homeland Security, who shall be the Secretary's first
8 assistant for purposes of chapter 33, subchapter 3, of title 5, United States Code;
9 (2) an Under Secretary for Information Analysis and Infrastructure Protection;
10 (3) an Under Secretary for Chemical, Biological, Radiological, and Nuclear
11 Countermeasures;
12 (4) an Under Secretary for Border and Transportation Security;
13 (5) an Under Secretary for Emergency Preparedness and Response;
14 (6) an Under Secretary for Management; and
15 (7) not more than six Assistant Secretaries.
16 (b) To assist the Secretary in the performance of his functions, there is an Inspector
17 General, who shall be appointed as provided in section 3(a) of the Inspector General Act of 1978.
18 (c) To assist the Secretary in the performance of his functions, there is a Commandant of
19 the Coast Guard, who shall be appointed as provided in section 44 of title 14, United States
20 Code.
21 (d) To assist the Secretary in the performance of his functions, there are the following
22 officers, appointed by the President:
23 (1) a General Counsel, who shall be the chief legal officer of the Department;

(2) not more than ten Assistant Secretaries;

(3) a Director of the Secret Service;

(4) a Chief Financial Officer; and

(5) a Chief Information Officer.

(e) Subject to the provisions of this Act, every officer of the Department shall perform the functions specified by law for his office or prescribed by the Secretary.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

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

In assisting the Secretary with the responsibilities specified in section 101(b)(2)(A), the primary responsibilities of the Under Secretary for Information Analysis and Infrastructure Protection shall include—

(1) receiving and analyzing law enforcement information, intelligence, and other information in order to understand the nature and scope of the terrorist threat to the American homeland and to detect and identify potential threats of terrorism within the United States;

(2) comprehensively assessing the vulnerabilities of the key resources and critical infrastructures in the United States;

(3) integrating relevant information, intelligence analyses, and vulnerability assessments (whether such information, analyses, or assessments are provided or produced by the Department or others) to identify protective priorities and support

1 protective measures by the Department, by other executive agencies, by State and local
2 government personnel, agencies, and authorities, by the private sector, and by other
3 entities;
4 (4) developing a comprehensive national plan for securing the key resources and
5 critical infrastructures in the United States;
6 (5) taking or seeking to effect necessary measures to protect the key resources and
7 critical infrastructures in the United States, in coordination with other executive agencies
8 and in cooperation with State and local government personnel, agencies, and authorities,
9 the private sector, and other entities;
10 (6) administering the Homeland Security Advisory System, exercising primary
11 responsibility for public threat advisories, and (in coordination with other executive
12 agencies) providing specific warning information to State and local government
13 personnel, agencies, and authorities, the private sector, other entities, and the public, as
14 well as advice about appropriate protective actions and countermeasures; and
15 (7) reviewing, analyzing, and making recommendations for improvements in the
16 policies and procedures governing the sharing of law enforcement, intelligence, and other
17 information relating to homeland security within the Federal government and between
18 such government and State and local government personnel, agencies, and authorities.
19 **SEC. 202. FUNCTIONS TRANSFERRED.**
20 In accordance with title VIII, there shall be transferred to the Secretary the functions,
21 personnel, assets, and liabilities of the following entities—
22 (1) the National Infrastructure Protection Center of the Federal Bureau of
23 Investigation (other than the Computer Investigations and Operations Section), including

1 the functions of the Attorney General relating thereto;

2 (2) the National Communications System of the Department of Defense,

3 including the functions of the Secretary of Defense relating thereto;

4 (3) the Critical Infrastructure Assurance Office of the Department of Commerce,

5 including the functions of the Secretary of Commerce relating thereto;

6 (4) the Computer Security Division of the National Institute of Standards and

7 Technology, including the functions of the Secretary of Commerce relating thereto;

8 (5) the National Infrastructure Simulation and Analysis Center of the Department

9 of Energy, including the functions of the Secretary of Energy relating thereto; and

10 (6) the Federal Computer Incident Response Center of the General Services

11 Administration, including the functions of the Administrator of General Services relating

12 thereto.

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

14 The Secretary shall have access to all reports, assessments, and analytical information

15 relating to threats of terrorism in the United States and to other areas of responsibility described

16 in section 101(b), and to all information concerning infrastructure or other vulnerabilities of the

17 United States to terrorism, whether or not such information has been analyzed, that may be

18 collected, possessed, or prepared by any executive agency, except as otherwise directed by the

19 President. The Secretary shall also have access to other information relating to the foregoing

20 matters that may be collected, possessed, or prepared by an executive agency, as the President

21 may further provide. With respect to the material to which the Secretary has access under this

22 section—

23 (1) the Secretary may obtain such material by request, and may enter into

1 cooperative arrangements with other executive agencies to share such material on a
2 regular or routine basis, including requests or arrangements involving broad categories of
3 material;
4 (2) regardless of whether the Secretary has made any request or entered into any
5 cooperative arrangement pursuant to paragraph (1), all executive agencies promptly shall
6 provide to the Secretary—
7 (A) all reports, assessments, and analytical information relating to threats
8 of terrorism in the United States and to other areas of responsibility described in
9 section 101(b);
10 (B) all information concerning infrastructure or other vulnerabilities of the
11 United States to terrorism, whether or not such information has been analyzed;
12 (C) all information relating to significant and credible threats of terrorism
13 in the United States, whether or not such information has been analyzed, if the
14 President has provided that the Secretary shall have access to such information;
15 and
16 (D) such other material as the President may further provide; and
17 (3) the Secretary shall ensure that any material received pursuant to this section is
18 protected from unauthorized disclosure and handled and used only for the performance of
19 official duties, and that any intelligence information shared under this section shall be
20 transmitted, retained, and disseminated consistent with the authority of the Director of
21 Central Intelligence to protect intelligence sources and methods under the National
22 Security Act and related procedures or, as appropriate, similar authorities of the Attorney
23 General concerning sensitive law enforcement information.

1 **SEC. 204. INFORMATION VOLUNTARILY PROVIDED.**

2 Information provided voluntarily by non-Federal entities or individuals that relates to
3 infrastructure vulnerabilities or other vulnerabilities to terrorism and is or has been in the
4 possession of the Department shall not be subject to section 552 of title 5, United States Code.

5 TITLE III—CHEMICAL, BIOLOGICAL, RADIOLOGICAL,
6 AND NUCLEAR COUNTERMEASURES

7 **SEC. 301. UNDER SECRETARY FOR CHEMICAL, BIOLOGICAL, RADIOLOGICAL,**
8 **AND NUCLEAR COUNTERMEASURES.**

9 In assisting the Secretary with the responsibilities specified in section 101(b)(2)(B), the
10 primary responsibilities of the Under Secretary for Chemical, Biological, Radiological, and
11 Nuclear Countermeasures shall include—

12 (1) securing the people, infrastructures, property, resources, and systems in the
13 United States from acts of terrorism involving chemical, biological, radiological, or
14 nuclear weapons or other emerging threats;

15 (2) conducting a national scientific research and development program to support
16 the mission of the Department, including developing national policy for and coordinating
17 the Federal government's civilian efforts to identify, devise, and implement scientific,
18 technological, and other countermeasures to chemical, biological, radiological, nuclear,
19 and other emerging terrorist threats, including directing, funding, and conducting
20 research and development relating to the same;

21 (3) establishing priorities for, directing, funding, and conducting national
22 research, development, and procurement of technology and systems—

1 (A) for preventing the importation of chemical, biological, radiological,
2 nuclear, and related weapons and material; and
3 (B) for detecting, preventing, protecting against, and responding to
4 terrorist attacks that involve such weapons or material; and
5 (4) establishing guidelines for State and local government efforts to develop and
6 implement countermeasures to threats of chemical, biological, radiological, and nuclear
7 terrorism, and other emerging terrorist threats.
8 **SEC. 302. FUNCTIONS TRANSFERRED.**
9 In accordance with title VIII, there shall be transferred to the Secretary the functions,
10 personnel, assets, and liabilities of the following entities—
11 (1) the select agent registration enforcement programs and activities of the
12 Department of Health and Human Services, including the functions of the Secretary of
13 Health and Human Services relating thereto;
14 (2) the following programs and activities of the Department of Energy, including
15 the functions of the Secretary of Energy relating thereto (but not including programs and
16 activities relating to the strategic nuclear defense posture of the United States):
17 (A) the chemical and biological national security and supporting programs
18 and activities of the non-proliferation and verification research and development
19 program;
20 (B) the nuclear smuggling programs and activities, and other programs
21 and activities directly related to homeland security, within the proliferation
22 detection program of the non-proliferation and verification research and
23 development program: *provided*, That the programs and activities described in

this subparagraph may be designated by the President either for transfer to the Department or for joint operation by the Secretary and the Secretary of Energy;

(C) the nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program;

(D) the energy security and assurance program and activities;

(E) such life sciences activities of the biological and environmental research program related to microbial pathogens as may be designated by the President for transfer to the Department;

(F) the Environmental Measurements Laboratory; and

(G) the advanced scientific computing research program and activities, and the intelligence program and activities, at Lawrence Livermore National Laboratory;

(3) the National Bio-Weapons Defense Analysis Center of the Department of Defense, including the functions of the Secretary of Defense related thereto; and

(4) the Plum Island Animal Disease Center of the Department of Agriculture, including the functions of the Secretary of Agriculture relating thereto.

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

(a)(1) Except as the President may otherwise direct, the Secretary shall carry out his civilian human health-related biological, biomedical, and infectious disease defense research and development (including vaccine research and development) responsibilities through the Department of Health and Human Services (including the Public Health Service), under agreements with the Secretary of Health and Human Services, and may transfer funds to him in

1 connection with such agreements.

2 (2) With respect to any responsibilities carried out through the Department of
3 Health and Human Services under this subsection, the Secretary, in consultation with the
4 Secretary of Health and Human Services, shall have the authority to establish the research
5 and development program, including the setting of priorities.

6 (b) With respect to such other research and development responsibilities under this title,
7 including health-related chemical, radiological, and nuclear defense research and development
8 responsibilities, as he may elect to carry out through the Department of Health and Human
9 Services (including the Public Health Service) (under agreements with the Secretary of Health
10 and Human Services) or through other Federal agencies (under agreements with their respective
11 heads), the Secretary may transfer funds to the Secretary of Health and Human Services, or to
12 such heads, as the case may be.

13 **SEC. 304. MILITARY ACTIVITIES.**

14 Except as specifically provided in this Act, nothing in this Act shall confer upon the
15 Secretary any authority to engage in warfighting, the military defense of the United States, or
16 other traditional military activities.

17 TITLE IV—BORDER AND TRANSPORTATION SECURITY

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

20 In assisting the Secretary with the responsibilities specified in section 101(b)(2)(C), the
21 primary responsibilities of the Under Secretary for Border and Transportation Security shall
22 include—

1 (1) preventing the entry of terrorists and the instruments of terrorism into the
2 United States;
3 (2) securing the borders, territorial waters, ports, terminals, waterways, and air,
4 land, and sea transportation systems of the United States, including managing and
5 coordinating governmental activities at ports of entry;
6 (3) administering the immigration and naturalization laws of the United States,
7 including the establishment of rules, in accordance with section 403, governing the
8 granting of visas or other forms of permission, including parole, to enter the United States
9 to individuals who are not citizens or lawful permanent residents thereof;
10 (4) administering the customs laws of the United States; and
11 (5) in carrying out the foregoing responsibilities, ensuring the speedy, orderly, and
12 efficient flow of lawful traffic and commerce.
13 **SEC. 402. FUNCTIONS TRANSFERRED.**
14 In accordance with title VIII, there shall be transferred to the Secretary the functions,
15 personnel, assets, and liabilities of the following entities—
16 (1) the United States Customs Service of the Department of the Treasury,
17 including the functions of the Secretary of the Treasury relating thereto;
18 (2) the Immigration and Naturalization Service of the Department of Justice,
19 including the functions of the Attorney General relating thereto;
20 (3) the Animal and Plant Health Inspection Service of the Department of
21 Agriculture, including the functions of the Secretary of Agriculture relating thereto;
22 (4) the Coast Guard of the Department of Transportation, which shall be
23 maintained as a distinct entity within the Department, including the functions of the

1 Secretary of Transportation relating thereto;

2 (5) the Transportation Security Administration of the Department of

3 Transportation, including the functions of the Secretary of Transportation, and of the

4 Under Secretary of Transportation for Security, relating thereto; and

5 (6) the Federal Protective Service of the General Services Administration,

6 including the functions of the Administrator of General Services relating thereto.

7 **SEC. 403. VISA ISSUANCE.**

8 (a) Notwithstanding the provisions of section 104 of the Immigration and Nationality Act

9 (8 U.S.C. 1104) or any other law, and except as provided in subsection (b) of this section, the

10 Secretary shall have—

11 (1) exclusive authority, through the Secretary of State, to issue regulations with

12 respect to, administer, and enforce the provisions of that Act and all other immigration

13 and nationality laws relating to the functions of diplomatic and consular officers of the

14 United States in connection with the granting or refusal of visas; and

15 (2) authority to confer or impose upon any officer or employee of the United

16 States, with the consent of the executive agency under whose jurisdiction such officer or

17 employee is serving, any of the functions specified in paragraph (1).

18 (b) The Secretary of State may refuse a visa to an alien if the Secretary of State deems

19 such refusal necessary or advisable in the interests of the United States.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

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

In assisting the Secretary with the responsibilities specified in section 101(b)(2)(D), the primary responsibilities of the Under Secretary for Emergency Preparedness and Response shall include—

(1) helping to ensure the preparedness of emergency response providers for terrorist attacks, major disasters, and other emergencies;

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

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

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

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

(3) providing the Federal government's response to terrorist attacks and major disasters, including—

(A) managing such response;

(B) directing the Domestic Emergency Support Team, the Strategic National Stockpile, the National Disaster Medical System, and (when operating as

1 an organizational unit of the Department pursuant to this title) the Nuclear
2 Incident Response Team;
3 (C) overseeing the Metropolitan Medical Response System; and
4 (D) coordinating other Federal response resources in the event of a
5 terrorist attack or major disaster;
6 (4) aiding the recovery from terrorist attacks and major disasters;
7 (5) building a comprehensive national incident management system with Federal,
8 State, and local government personnel, agencies, and authorities, to respond to such
9 attacks and disasters;
10 (6) consolidating existing Federal government emergency response plans into a
11 single, coordinated national response plan; and
12 (7) developing comprehensive programs for developing interoperative
13 communications technology, and helping to ensure that emergency response providers
14 acquire such technology.
15 **SEC. 502. FUNCTIONS TRANSFERRED.**
16 In accordance with title VIII, there shall be transferred to the Secretary the functions,
17 personnel, assets, and liabilities of the following entities—
18 (1) the Federal Emergency Management Agency, including the functions of the
19 Director of the Federal Emergency Management Agency relating thereto;
20 (2) the Office for Domestic Preparedness of the Office of Justice Programs,
21 including the functions of the Attorney General relating thereto;
22 (3) the National Domestic Preparedness Office of the Federal Bureau of
23 Investigation, including the functions of the Attorney General relating thereto;

1 (4) the Domestic Emergency Support Teams of the Department of Justice,
2 including the functions of the Attorney General relating thereto;
3 (5) the Office of the Assistant Secretary for Public Health Emergency
4 Preparedness (including the Office of Emergency Preparedness, the National Disaster
5 Medical System, and the Metropolitan Medical Response System) of the Department of
6 Health and Human Services, including the functions of the Secretary of Health and
7 Human Services relating thereto; and
8 (6) the Strategic National Stockpile of the Department of Health and Human
9 Services, including the functions of the Secretary of Health and Human Services relating
10 thereto.
11 **SEC. 503. NUCLEAR INCIDENT RESPONSE.**
12 (a) At the direction of the Secretary (in connection with an actual or threatened terrorist
13 attack, major disaster, or other emergency), the Nuclear Incident Response Team shall operate as
14 an organizational unit of the Department. While so operating, the Nuclear Incident Response
15 Team shall be subject to the direction, authority, and control of the Secretary.
16 (b) Nothing in this title shall be understood to limit the ordinary responsibility of the
17 Secretary of Energy and the Administrator of the Environmental Protection Agency for
18 organizing, training, equipping, and utilizing their respective entities in the Nuclear Incident
19 Response Team, or (subject to the provisions of this title) from exercising direction, authority,
20 and control over them when they are not operating as a unit of the Department.
21 **SEC. 504. DEFINITION.**
22 For purposes of this title, 'Nuclear Incident Response Team' means a resource that
23 includes—

1 (1) those entities of the Department of Energy that perform nuclear and/or
2 radiological emergency support functions (including accident response, search response,
3 advisory, and technical operations functions), radiation exposure functions at the medical
4 assistance facility known as Oak Ridge National Laboratory, radiological assistance
5 functions, and related functions; and
6 (2) those entities of the Environmental Protection Agency that perform such
7 support functions (including radiological emergency response functions) and related
8 functions.
9 **SEC. 505. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.**
10 (a) Except as the President may otherwise direct, the Secretary shall carry out the
11 following responsibilities through the Department of Health and Human Services (including the
12 Public Health Service), under agreements with the Secretary of Health and Human Services, and
13 may transfer funds to him in connection with such agreements:
14 (1) all biological, chemical, radiological, and nuclear preparedness-related
15 construction, renovation, and enhancement of security for research and development or
16 other facilities owned or occupied by the Department of Health and Human Services; and
17 (2) all public health-related activities being carried out by the Department of
18 Health and Human Services on the effective date of this Act (other than activities under
19 functions transferred by this Act to the Department) to assist State and local government
20 personnel, agencies, or authorities, non-Federal public and private health care facilities
21 and providers, and public and non-profit health and educational facilities, to plan, prepare
22 for, prevent, identify, and respond to biological, chemical, radiological, and nuclear
23 events and public health emergencies, by means including direct services, technical

assistance, communications and surveillance, education and training activities, and grants.

(b) With respect to any responsibilities carried out through the Department of Health and Human Services under this section, the Secretary, in consultation with the Secretary of Health and Human Services, shall have the authority to establish the preparedness and response program, including the setting of priorities.

TITLE VI—MANAGEMENT

SEC. 601. UNDER SECRETARY FOR MANAGEMENT.

In assisting the Secretary with the management and administration of the Department, the primary responsibilities of the Under Secretary for Management shall include, for the Department—

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

(2) procurement;

(3) human resources and personnel;

(4) information technology and communications systems;

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

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

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

SEC. 602. CHIEF FINANCIAL OFFICER.

The Chief Financial Officer shall report to the Secretary, or to another official of the

1 Department, as the Secretary may direct.

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

3 The Chief Information Officer shall report to the Secretary, or to another official of the

4 Department, as the Secretary may direct.

5 TITLE VII—COORDINATION WITH NON-FEDERAL 6 ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET 7 SERVICE; GENERAL PROVISIONS

8 Subtitle A—Coordination with Non-Federal Entities

9 **SEC. 701. RESPONSIBILITIES.**

10 In discharging his responsibilities relating to coordination (including the provision of

11 training and equipment) with State and local government personnel, agencies, and authorities,

12 with the private sector, and with other entities, the responsibilities of the Secretary shall

13 include—

14 (1) coordinating with State and local government personnel, agencies, and

15 authorities, and with the private sector, to ensure adequate planning, equipment, training,

16 and exercise activities;

17 (2) coordinating and, as appropriate, consolidating, the Federal government's

18 communications and systems of communications relating to homeland security with State

19 and local government personnel, agencies, and authorities, the private sector, other

20 entities, and the public;

21 (3) directing and supervising grant programs of the Federal government for State

1 and local government emergency response providers; and

2 (4) distributing or, as appropriate, coordinating the distribution of, warnings and

3 information to State and local government personnel, agencies, and authorities and to the

4 public.

5 **Subtitle B—Inspector General**

6 **SEC. 710. AUTHORITY OF THE SECRETARY.**

7 (a) Notwithstanding the last two sentences of section 3(a) of the Inspector General Act of

8 1978, the Inspector General shall be under the authority, direction, and control of the Secretary

9 with respect to audits or investigations, or the issuance of subpoenas, that require access to

10 information concerning—

11 (1) intelligence, counterintelligence, or counterterrorism matters;

12 (2) ongoing criminal investigations or proceedings;

13 (3) undercover operations;

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

15 (5) other matters the disclosure of which would, in the Secretary's judgment,

16 constitute a serious threat to the protection of any person or property authorized

17 protection by section 3056 of title 18, United States Code, section 202 of title 3 of such

18 Code, or any provision of the Presidential Protection Assistance Act of 1976; or

19 (6) other matters the disclosure of which would, in the Secretary's judgment,

20 constitute a serious threat to national security.

21 (b) With respect to the information described in subsection (a), the Secretary may

22 prohibit the Inspector General from carrying out or completing any audit or investigation, or

1 from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or
2 complete such audit or investigation or to issue such subpoena, if the Secretary determines that
3 such prohibition is necessary to prevent the disclosure of any information described in subsection
4 (a), to preserve the national security, or to prevent a significant impairment to the interests of the
5 United States.
6 (c) The Secretary shall notify the President of the Senate and the Speaker of the House of
7 Representatives within thirty days of any exercise of his authority under this section.

8 **Subtitle C—United States Secret Service**

9 **SEC. 720. FUNCTIONS TRANSFERRED.**

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

14 **Subtitle D—General Provisions**

15 **SEC. 730. ESTABLISHMENT OF HUMAN RESOURCES MANAGEMENT SYSTEM.**

16 Title 5, United States Code, is amended by inserting—
17 (1) after part III a new part as follows:

18 "PART IV—DEPARTMENT OF HOMELAND SECURITY
19 CHAPTER 100
20 "Sec.
21 "10001. Human Resources Management System.

1 **"§ 10001. Human Resources Management System**

2 "Notwithstanding any other provision of this title, the Secretary of Homeland Security
3 may, in regulations prescribed jointly with the Director of the Office of Personnel Management,
4 establish, and from time to time adjust, a human resources management system for some or all of
5 the organizational units of the Department of Homeland Security, which shall be flexible,
6 contemporary, and grounded in the public employment principles of merit and fitness."; and

7 (2) the following after the matter relating to part III in the analysis:

8 "PART IV—DEPARTMENT OF HOMELAND SECURITY

9 **"Chapter Section"**
10 **" 1. Human Resources Management System ..... 10001".**

11 **SEC. 731. ADVISORY COMMITTEES.**

12 The Secretary may establish, appoint members of, and use the services of, advisory
13 committees, as he may deem necessary. The service of an individual as a member of an advisory
14 committee established under this paragraph shall not be considered to be service bringing him
15 within the provisions of sections 203, 205, or 207 of title 18, United States Code, unless his act,
16 which by any such section is made unlawful when performed by an individual referred to therein,
17 is with respect to any particular matter that directly involves the Department or in which the
18 Department is directly interested. An advisory committee established under this section shall not
19 be subject to Pub. L. No. 92-463, but the Secretary shall publish notice in the Federal Register
20 announcing the establishment of such a committee and identifying its purpose and membership.

21 **SEC. 732. ACQUISITIONS; PROPERTY.**

22 (a)(1) When the Secretary carries out basic, applied, and advanced research and
23 development projects, he may exercise the same authority (subject to the same limitations and
24 conditions) with respect to such research and projects as the Secretary of Defense may exercise
25 under section 2371 of title 10, United States Code (except for subsections (b) and (f)), after
26 making a determination that the use of a contract, grant, or cooperative agreement for such

1 project is not feasible or appropriate. The annual report required under subsection (h) of such
2 section, as applied to the Secretary by this paragraph, shall be submitted to the President of the
3 Senate and the Speaker of the House of Representatives.
4 (2) The Secretary may, under the authority of paragraph (1), carry out prototype
5 projects in accordance with the requirements and conditions provided for carrying out
6 prototype projects under section 845 of the National Defense Authorization Act for Fiscal
7 Year 1994 (Pub. L. No. 103-160). In applying the authorities of such section 845,
8 subsection (c) thereof shall apply with respect to prototype projects under this paragraph,
9 and the Secretary shall perform the functions of the Secretary of Defense under
10 subsection (d) thereof.
11 (b) Notwithstanding the time and pay limitations of section 3109 of title 5, United States
12 Code, the Secretary may procure personal services, including the services of experts and
13 consultants (or organizations thereof).
14 (c) Section 602 of the Act of June 30, 1949 (40 U.S.C. 474) is amended by replacing "; or
15 (21)" with "; (21) the Department of Homeland Security; or (22)".
16 (d) Notwithstanding any other provision of law, the Secretary, in accordance with
17 regulations prescribed jointly with the Administrator of General Services and the Director of the
18 Office of Management and Budget—
19 (1) may acquire replacement real property (including interests therein)—
20 (A) by transfer or exchange of the Department's property with other
21 executive agencies; or
22 (B) by sale to or exchange of the Department's property with non-Federal
23 parties;
24 (2) by lease, permit, license, or other similar instrument, may make available to
25 other executive agencies and to non-Federal parties, on a fair market rental value basis,
26 the unexpired portion of any government lease for real property occupied or possessed by

1 the Department;

2 (3) may make available by outlease agreements with other executive agencies or
3 with non-Federal parties, any unused or underused portion of or interest in any real or
4 related personal property occupied or possessed by the Department; and

5 (4) may deposit the proceeds of any exercise of the authority granted by this
6 subsection into any account in the Treasury available to him, without regard to fiscal year
7 limitations.

8 (e) Upon the written request of the Secretary, the Administrator of General Services shall
9 delegate to him all responsibilities and authorities provided by law to the Administrator for the
10 care and handling of the Department's surplus real and related personal property, pending its
11 disposition, and for the disposal of such property.

12 (f) Notwithstanding any other provision of law, the Secretary may retain, from the
13 proceeds of the sale of personal property, amounts necessary to recover, to the extent practicable,
14 the full costs (direct and indirect) incurred by the Secretary in disposing of such property,
15 including but not limited to the costs of warehousing, storage, environmental services,
16 advertising, appraisal, and transportation. Such amounts shall be deposited into an account
17 available for such expenses without regard to fiscal year limitations.

18 **SEC. 733. REORGANIZATION; TRANSFER.**

19 (a) The Secretary is authorized to allocate or reallocate functions among the officers of
20 the Department, and to establish, consolidate, alter, or discontinue such organizational units
21 within the Department, as he may deem necessary or appropriate, but such authority does not
22 extend to—

23 (1) any entity transferred to the Department and established by statute, or any
24 function vested by statute in such an entity or officer of such an entity, unless not less
25 than ninety days' notice has been given to the President of the Senate and Speaker of the
26 House of Representatives; or

(2) the abolition of any entity established or required to be maintained as a distinct entity by this Act.

(b) Except as otherwise specifically provided by law, not to exceed five percent of any appropriation available to the Secretary in any fiscal year may be transferred between such appropriations: *provided*, That not less than fifteen days' notice shall be given to the Committees on Appropriations of the Senate and House of Representatives before any such transfer is made.

SEC. 734. MISCELLANEOUS PROVISIONS.

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

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

(c) With respect to the Department, the Secretary shall have the same authorities that the Secretary of Transportation has with respect to the Department of Transportation under section 324 of title 49, United States Code.

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

SEC. 735. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

TITLE VIII—TRANSITION

SEC. 801. DEFINITIONS.

For purposes of this title—

(1) 'Agency' includes any entity, organizational unit, or function; and

(2) 'Transition period' means the twelve-month period beginning on the effective

1 date of this Act.

2 **SEC. 802. TRANSFER OF AGENCIES.**

3 The transfer of an agency to the Department shall occur when the President so directs, but
4 in no event later than the end of the transition period. When an agency is transferred, the
5 President may also transfer to the Department any agency established to carry out or support
6 adjudicatory or review functions in relation to the agency.

7 **SEC. 803. TRANSITIONAL AUTHORITIES.**

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

12 (b) During the transition period, upon the request of the Secretary, the head of any
13 executive agency may, on a reimbursable or nonreimbursable basis, provide services and/or
14 detail personnel to assist with the transition.

15 (c) Until the transfer of an agency to the Department, the President is authorized to
16 transfer to the Secretary not to exceed five percent of the unobligated balance of any
17 appropriation available to such agency, to fund the purposes authorized in this Act: *provided*,
18 That not less than fifteen days' notice shall be given to the Committees on Appropriations of the
19 Senate and House of Representatives before any such funds transfer is made.

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

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

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

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

(e) Upon the transfer of an agency to the Department—

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

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

SEC. 804. SAVINGS PROVISIONS.

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

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

(b) Subject to the authority of the Secretary under this Act—

(1) pending proceedings in an agency, including notices of proposed rulemaking,

and applications for licenses, permits, certificates, grants, and financial assistance, shall continue notwithstanding the enactment of this Act or the transfer of the agency to the Department, unless discontinued or modified under the same terms and conditions and to the same extent that such discontinuance could have occurred if such enactment or transfer had not occurred; and

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

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

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

(e)(1) Notwithstanding the generality of the foregoing (including subsections (a) and (d)), in and for the Department the Secretary may, in regulations prescribed jointly with the Director of the Office of Personnel Management, adopt the rules, procedures, terms, and conditions,

1 established by statute, rule, or regulation before the effective date of this Act, relating to
2 employment in any agency transferred to the Department pursuant to this Act; and
3 (2) except as otherwise provided in this Act, or under authority granted by this
4 Act, the transfer pursuant to this Act of personnel shall not alter the terms and conditions
5 of employment, including compensation, of any employee so transferred.
6 **SEC. 805. TERMINATIONS.**
7 Except as otherwise provided in this Act, whenever all the functions vested by law in any
8 agency have been transferred pursuant to this Act, each position and office the incumbent of
9 which was authorized to receive compensation at the rates prescribed for an office or position at
10 level II, III, IV, or V, of the Executive Schedule, shall terminate.
11 **SEC. 806. INCIDENTAL TRANSFERS.**
12 The Director of the Office of Management and Budget, in consultation with the
13 Secretary, is authorized and directed to make such additional incidental dispositions of
14 personnel, assets, and liabilities held, used, arising from, available, or to be made available, in
15 connection with the functions transferred by this Act, as he may deem necessary to accomplish
16 the purposes of this Act.

17 TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

18 **SEC. 901. INSPECTOR GENERAL ACT.**
19 Section 11 of the Inspector General Act of 1978 (Pub. L. No. 95-452) is amended by—
20 (1) inserting "Homeland Security," after "Transportation," each place it appears;
21 (2) replacing "; and" each place it appears with ";";
22 (3) replacing ",," with ","; and
23 (4) replacing ";;" with ";".
24 **SEC. 902. EXECUTIVE SCHEDULE.**
25 Title 5, United States Code, is amended—
26 (1) in section 5312, by inserting "Secretary of Homeland Security." as a new item

after "Affairs.";

(2) in section 5313, by inserting "Deputy Secretary of Homeland Security." as a new item after "Affairs.";

(3) in section 5314, by inserting "Under Secretaries, Department of Homeland Security." as a new item after "Affairs." the third place it appears;

(4) in section 5315, by inserting "Assistant Secretaries, Department of Homeland Security.", "General Counsel, Department of Homeland Security.", "Chief Financial Officer, Department of Homeland Security.", "Chief Information Officer, Department of Homeland Security.", and "Inspector General, Department of Homeland Security." as new items after "Affairs." the first place it appears.

SEC. 903. UNITED STATES SECRET SERVICE.

(a) The United States Code is amended in sections 202 and 208 of title 3, and in section 3056 of title 18, by replacing "of the Treasury", each place it appears, with "of Homeland Security".

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

SEC. 904. COAST GUARD.

(a) Title 14 of the United States Code is amended—

(1) in sections 1, 3, 53, 95, 145, 516, 666, 669, 673 (as added by Pub. L. No. 104-201), 673 (as added by Pub. L. No. 104-324), 674, 687, and 688, by replacing "of Transportation", each place it appears, with "of Homeland Security"; and

(2) after executing the other amendments required by this subsection, by redesignating the section 673 added by Pub. L. No. 104-324 as section 673a.

(b) Section 801(1) of title 10, United States Code, is amended by replacing "the General Counsel of the Department of Transportation" with "an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security".

(c) The amendments made by this section shall take effect on the date of transfer of the Coast Guard to the Department.

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

(a) The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 is amended—

(1) in section 121(a)(1)—

(A) by replacing "Secretary of Health and Human Services" with "Secretary of Homeland Security";

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

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

(2) in subsections 121(a)(2) and (b), by inserting "of Health and Human Services" after "Secretary" each place it appears.

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

SEC. 906. SELECT AGENT REGISTRATION.

(a) The Public Health Service Act is amended—

(1) in section 351A(a)(1)(A), by inserting "(as defined in subsection (*l*)(9))" after "Secretary";

(2) in section 351A(h)(2)(A), by inserting "Department of Homeland Security, the" before "Department of Health and Human Services";

(3) in section 351A(*l*), by inserting after paragraph (8) a new paragraph as follows:

1 "(9) The term 'Secretary' means the Secretary of Homeland Security, in
2 consultation with the Secretary of Health and Human Services."; and
3 (4) in section 352A(i)—
4 (i) by striking "(1)" the first place it appears; and
5 (ii) by striking paragraph (2).
6 (b) Section 201(b) of the Public Health Security and Bioterrorism Preparedness and
7 Response Act of 2002 is amended by replacing "Secretary of Health and Human Services" with
8 "Secretary of Homeland Security".
9 (c) The amendments made by this section shall take effect on the date of transfer of the
10 select agent registration enforcement programs and activities of the Department of Health and
11 Human Services to the Department.
12 **SEC. 907. NATIONAL BIO-WEAPONS DEFENSE ANALYSIS CENTER.**
13 There is established in the Department of Defense a National Bio-Weapons Defense
14 Analysis Center, whose mission is to develop countermeasures to potential attacks by terrorists
15 using weapons of mass destruction.

ANALYSIS FOR THE HOMELAND SECURITY ACT OF 2002

Section 1. Short title; table of contents.

This section provides a short title and a table of contents for the bill. The bill's short title is the "Homeland Security Act of 2002."

Section 2. Definitions.

This section provides definitions for a number of terms used in the bill. As provided in the definitions, "Department" in the bill refers to the Department of Homeland Security, and "Secretary" refers to the Secretary of Homeland Security. Other important defined terms are "assets" and "functions," which are used recurrently in the bill in referring to the resources and operations that are to be transferred to the new Department of Homeland Security.

Many of the definitions in the section are borrowed from pre-existing statutes, such as the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288. Among such borrowed definitions are that of "State," which includes the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and that of "local government," which includes all non-federal public entities and Indian tribes and tribal and Alaska Native organizations and villages. Another borrowed definition is that of "major disaster," which includes both natural disasters and severe fires, floods, and explosions, regardless of cause.

Section 3. Construction; severability.

This section, modeled on existing law, provides an express rule of construction and severability for the bill.

Section 4. Effective date.

This section specifies an effective date for the bill, which is thirty days following enactment or, if enacted within thirty days before January 1, 2003, on January 1, 2003.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

This title establishes the Department of Homeland Security, defines its primary missions and responsibilities, and creates its principal offices.

Section 101. Executive department; mission.

This section establishes the Department of Homeland Security in the executive branch of the United States government and defines its primary missions and responsibilities. The primary missions of the department include preventing terrorist attacks within the United States, reducing the vulnerability of the United States to terrorism at home, and minimizing the damage and assisting in the recovery from any attacks that may occur. The Department's primary responsibilities correspond to the five major functions established by the bill within the Department: information analysis and infrastructure protection; chemical, biological, radiological, nuclear, and related countermeasures; border and transportation security; emergency preparedness and response; and coordination with other parts of the federal government, with state and local governments, and with the private sector. These primary missions and responsibilities are not exhaustive, and the Department will continue to carry out other functions of the agencies it will absorb.

Section 102. Secretary; functions.

This section provides that the Department will be headed by a Secretary of Homeland Security appointed by the President and confirmed by the Senate. The section gives the Secretary full authority and control over the Department and the duties and activities performed by its personnel, and it endows him with the authorities necessary to fulfill the Department's statutory mission to protect the American homeland.

Section 103. Other officers.

This section creates the personnel structure that will support the Secretary in carrying out the missions and responsibilities of the Department. The section establishes a senior management team consisting of up to twelve Senate-confirmed officials, including a Deputy Secretary, an Under Secretary for each of the four divisions within the Department, an Under Secretary for Management, and up to six additional Assistant Secretaries whose duties may be defined by the Secretary. Additionally, the section provides for appointment of a Senate-confirmed Inspector General and a Senate-confirmed Commandant of the Coast Guard, under the same conditions provided in current law. The Director of the Secret Service, who is not currently Senate confirmed, will be appointed by the President without Senate confirmation. The General Counsel, Chief Financial Officer, and Chief Information Officer will also be presidential appointees not requiring Senate confirmation. The section authorizes appointment by the President of up to ten additional Assistant Secretaries; this will give the Secretary important flexibility in designing, structuring, and establishing the Department.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

This title concerns the responsibilities of the Department of Homeland Security for information analysis and infrastructure protection.

Section 201. Under Secretary for Information Analysis and Infrastructure Protection.

This section specifies primary responsibilities of the Under Secretary for Information Analysis and Infrastructure Protection. These include: (1) receiving and analyzing law enforcement information, intelligence, and other information in order to understand the nature and scope of the terrorist threat to the American homeland and to detect and identify potential threats of terrorism within the United States; (2) comprehensively assessing the vulnerabilities of key resources and critical infrastructures; (3) integrating relevant information, intelligence analyses, and vulnerability assessments to identify protective priorities and support protective measures; (4) developing a comprehensive national plan for securing key resources and critical infrastructures; (5) taking or seeking to effect necessary measures to protect those key resources and infrastructures; (6) administering the Homeland Security Advisory System, exercising primary responsibility for public threat advisories, and providing specific warning information to state and local governments and the private sector, as well as advice about appropriate protective actions and countermeasures; and (7) reviewing, analyzing, and making recommendations for improvements in the policies and procedures governing the sharing of law enforcement, intelligence, and other information relating to homeland security within the federal government and between the federal government and state and local governments.

Section 202. Functions transferred.

This section identifies agencies and functions relevant to information analysis and infrastructure protection that are to be transferred to the Department of Homeland Security. These include the National Infrastructure Protection Center of the FBI (other than the Computer Investigations and Operations Section), the National Communications System of the Department of Defense, the Critical Infrastructure Assurance Office of the Department of Commerce, the Computer Security Division of the National Institute of Standards and Technology, the National Infrastructure Simulation and Analysis Center of the Department of Energy, and the Federal Computer Incident Response Center of the General Services Administration.

Section 203. Access to information.

This section establishes the Secretary of Homeland Security's entitlement to receive intelligence and other information from agencies and departments of the United States government for the purpose of fulfilling the mission of information analysis and infrastructure protection. Under the terms of this section, there are three broad categories of information to which the Secretary is given access.

The first includes reports, assessments and analytical information relating to threats of terrorism in the United States and to other areas within the Department's responsibility. These materials represent the work product of United States law

enforcement, intelligence, and other government agencies. This category ordinarily would not include "raw," unprocessed data; for example, recordings or verbatim transcripts of conversations. Unless the President directs otherwise, all executive agencies have an affirmative obligation to furnish the specified reports, assessments, and analytical information to the Secretary, even if no request has been made for them.

The second category of material to which the Secretary is granted access by this section is information concerning infrastructure or other vulnerabilities of the United States to terrorism. This material may include "raw" data or information. In this category, too, unless the President directs otherwise, federal agencies are required to furnish the material to the Secretary without request.

The final category includes unprocessed "raw" data or information on subjects other than infrastructure or other vulnerabilities of the United States to terrorism. The Secretary has the right to receive such information only as the President provides. If the President provides that the Secretary shall have access to such information and it relates to significant and credible threats of terrorism, however, that information must be provided to the Secretary without request. Otherwise, the Secretary may request the material or make other cooperative arrangements with other executive agencies to receive it.

It is anticipated that the Secretary and executive agency heads will enter into agreements regarding thresholds for the automatic provision of each category of materials, but that information sharing will not be delayed pending such agreements. Given that the initial volume of information may be high, prior to the execution of any such agreements, the Secretary is expected to work with agency heads to ensure the orderly and appropriate sharing of information.

In all cases, the Secretary is required to ensure that material received pursuant to this section is used only for the performance of official duties and is protected from unauthorized disclosure. The Secretary's right to receive information is also made subject to the traditional authority of the intelligence and law enforcement agencies to protect sources and methods and sensitive law enforcement information.

Section 204. Information voluntarily provided.

This section encourages the sharing of information with the Department of Homeland Security by the private sector, state and local governments, and individuals. It provides that information voluntarily provided by non-federal parties to the Department of Homeland Security that relates to infrastructure vulnerabilities or other vulnerabilities to terrorism is not subject to public disclosure under the Freedom of Information Act. Also, such information would not lose its protected character if forwarded by the Department of Homeland Security to other federal departments or agencies.

TITLE III—CHEMICAL, BIOLOGICAL, RADIOLOGICAL, AND NUCLEAR COUNTERMEASURES

This title concerns the responsibilities of the Department of Homeland Security for chemical, biological, radiological, and nuclear countermeasures.

Section 301. Under Secretary for Chemical, Biological, Radiological, and Nuclear Countermeasures.

This section specifies primary responsibilities of the Under Secretary for Chemical, Biological, Radiological, and Nuclear Countermeasures. These include: (1) securing the people, infrastructures, property, resources, and systems in the United States from acts of terrorism involving chemical, biological, radiological, or nuclear weapons or other emerging threats, (2) conducting a national scientific research and development program to support the mission of the Department, including developing national policy and coordinating the federal government's (non-military) efforts to counter these types of terrorist threats, including relevant research and development, (3) establishing priorities and directing and supporting national research and development and procurement of technology and systems for detecting, preventing, protecting against, and responding to terrorist attacks using chemical, biological, radiological, nuclear, or related weapons and materials, and for preventing the importation of such weapons and materials into the United States, and (4) establishing guidelines for state and local efforts to develop and implement countermeasures in this area.

Section 302. Functions transferred.

This section identifies agencies and functions relevant to chemical, biological, radiological, and nuclear countermeasures that are to be transferred to the Department of Homeland Security. These include the select agent registration enforcement programs and activities of the Department of Health and Human Services, certain relevant programs and activities of the Department of Energy, the National Bio-Weapons Defense Analysis Center of the Department of Defense, and the Plum Island Animal Disease Center of the Department of Agriculture.

Section 303. Conduct of certain public health-related activities.

This section requires the Secretary of Homeland Security to carry out his civilian human health-related biological, biomedical, and infectious disease defense research and development responsibilities through agreements with the Department of Health and Human Services unless the President otherwise directs, and gives the Secretary specific transfer authority to fund such agreements. In carrying out these responsibilities, however, the Secretary retains full authority to establish the research and development program, including the setting of priorities. The section also gives the Secretary specific authority to fund other research and development projects that he elects to carry out through the Department of Health and Human Services or other federal agencies.

Section 304. Military activities.

This section clarifies that nothing in the bill confers upon the Secretary of Homeland Security any authority to engage in warfighting, the military defense of the United States, or other traditional military activities.

TITLE IV—BORDER AND TRANSPORTATION SECURITY

This title concerns the responsibilities of the Department of Homeland Security for border and transportation security.

Section 401. Under Secretary for Border and Transportation Security.

This section specifies primary responsibilities of the Under Secretary for Border and Transportation Security. These include: (1) preventing the entry of terrorists and the instruments of terrorism into the United States, (2) securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States, (3) administering the immigration and naturalization laws of the United States, including the establishment of rules governing the granting of visas and other forms of permission to enter the United States to individuals who are not citizens or lawful permanent residents, (4) administering the customs laws of the United States, and (5) ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce in carrying out these responsibilities.

Section 402. Functions transferred.

This section identifies agencies and functions relevant to border and transportation security that are to be transferred to the Department of Homeland Security. These include the United States Customs Service (now in the Department of the Treasury), the Immigration and Naturalization Service (now in the Department of Justice), the Animal and Plant Health Inspection Service (now in the Department of Agriculture), the Coast Guard (now in the Department of Transportation), and the Transportation Security Administration (now in the Department of Transportation). The section expressly requires that the Coast Guard be maintained as a distinct entity within the Department of Homeland Security. In addition, because of its important role in securing public buildings, the Federal Protective Service of the General Services Administration is also transferred to the Department.

Section 403. Visa issuance

This section transfers to the Secretary of Homeland Security control over the issuance and denial of visas to enter the United States, while preserving the Secretary of State's traditional authority to deny visas to aliens based upon the foreign policy interests of the United States. The section expressly authorizes the Secretary of Homeland Security to delegate his authority under this section to State Department and other federal government personnel and provides that the Secretary will exercise his authority through

the Secretary of State. The section does not alter the employment status of diplomatic or consular officers processing visas abroad, who will remain employees of the Department of State.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

This title concerns the responsibilities of the Department of Homeland Security for emergency preparedness and response.

Section 501. Under Secretary for Emergency Preparedness and Response.

This section specifies primary responsibilities of the Under Secretary for Emergency Preparedness and Response. These include: (1) helping to ensure the preparedness of emergency response providers for terrorist attacks, major disasters, and other emergencies, (2) establishing standards, conducting exercises and training, evaluating performance, and providing funds in relation to the Nuclear Incident Response Team (defined in section 504 of the bill), (3) providing the federal government's response to terrorist attacks and major disasters, (4) aiding the recovery from terrorist attacks and major disasters, (5) working with other federal and non-federal agencies to build a comprehensive national incident management system, (6) consolidating existing federal government emergency response plans into a single, coordinated national response plan, and (7) developing comprehensive programs for developing interoperative communications technology and ensuring that emergency response providers acquire such technology. The responsibility of providing the federal government's response to terrorist attacks and major disasters – item (3) above – includes a number of specific functions: (A) coordinating the overall response, (B) directing the Domestic Emergency Support Team, the Strategic National Stockpile, the National Disaster Medical System, and the Nuclear Incident Response Team, (C) overseeing the Metropolitan Medical Response System, and (D) coordinating other federal response resources.

As with other parts of the bill, the specification of primary responsibilities in this section does not detract from other important functions that will be transferred to the Department of Homeland Security, such as those of the United States Fire Administration of the Federal Emergency Management Agency. In all areas, the bill fully preserves the authority to carry out the functions of the Federal Emergency Management Agency, including support for community initiatives that promote homeland security, such as the Citizen Corps.

Section 502. Functions transferred.

This section identifies agencies and functions relevant to emergency preparedness and response that are to be transferred to the Department of Homeland Security. These include (1) the Federal Emergency Management Agency; (2) the following units of the Department of Justice: the Office for Domestic Preparedness of the Office of Justice Programs, the National Domestic Preparedness Office of the Federal Bureau of Investigation, and the Domestic Emergency Support Teams; and (3) the following units

of the Department of Health and Human Services: the Office of the Assistant Secretary for Public Health Emergency Preparedness (including the Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System) and the Strategic National Stockpile.

Section 503. Nuclear incident response.

This section authorizes the Secretary of Homeland Security, in connection with an actual or threatened terrorist attack, major disaster, or other emergency, to call certain elements of the Department of Energy and the Environmental Protection Agency into service as an organizational unit of the Department of Homeland Security. While so operating, these elements would be subject to the direction, authority, and control of the Secretary of Homeland Security. This grant of authority to the Secretary of Homeland Security would not limit the ordinary responsibility of the Secretary of Energy and the Administrator of the Environmental Protection Agency for organizing, training, equipping, and utilizing the elements from their respective agencies, or from exercising ordinary direction, authority, and control over them.

Section 504. Definition.

This section defines the term 'Nuclear Incident Response Team' for purposes of title V of the bill. The definition makes clear what entities of the Department of Energy and the Environmental Protection Agency could be called into service under this title as a unit of the Department of Homeland Security.

Section 505. Conduct of certain public health-related activities.

This section requires the Secretary of Homeland Security to carry out the following responsibilities through agreements with the Department of Health and Human Services, unless the President otherwise directs, and gives the Secretary specific transfer authority to fund such agreements: (1) all biological, chemical, radiological, and nuclear preparedness-related construction, renovation, and enhancement of security for research and development or other facilities owned or occupied by that Department; and (2) all public health-related activities being carried out by that Department on the effective date of the bill (other than activities under functions transferred by the bill to the Department of Homeland Security) to assist state and local government personnel, agencies, or authorities, non-federal public and private health care facilities and providers, and public and non-profit health and educational facilities, to plan, prepare for, prevent, identify, and respond to biological, chemical, radiological, and nuclear events and public health emergencies. In carrying out these responsibilities, the Secretary retains full authority to establish the preparedness and response program, including the setting of priorities.

TITLE VI—MANAGEMENT

This title concerns the management and administration of the Department of Homeland Security.

Section 601. Under Secretary for Management.

This section specifies primary responsibilities of the Under Secretary for Management. These include: (1) budget and fiscal matters, (2) procurement, (3) human resources and personnel, (4) information technology and communications systems, (5) facilities, property, equipment, and other material resources, (6) security for personnel, information technology and communications systems, and material resources, and (7) identification and tracking of performance measures.

Section 602. Chief Financial Officer.

This section expressly authorizes the Secretary of Homeland Security to direct to whom the Chief Financial Officer of the Department of Homeland Security shall report.

Section 603. Chief Information Officer.

This section expressly authorizes the Secretary of Homeland Security to direct to whom the Chief Information Officer of the Department of Homeland Security shall report.

TITLE VII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities

Section 701. Responsibilities.

This section specifies responsibilities of the Secretary of Homeland Security relating to coordination with state and local officials and the private sector in carrying out the mission of the Department of Homeland Security. These include coordinating with state and local governments and the private sector to ensure adequate planning, equipment, training, and exercise activities; coordinating and, as appropriate, consolidating, the federal government's communications and communications systems relating to homeland security with state and local governments, the private sector, other entities, and the public; directing and supervising federal grant programs for state and local government emergency response providers; and distributing, or, as appropriate, coordinating the distribution of, warnings and information to state and local governments and to the public.

Subtitle B—Inspector General

Section 710. Authority of the Secretary.

This section, modeled on sections 8 and 8e of the Inspector General Act, places the Secretary of Homeland Security on essentially the same footing, with respect to the

Department of Homeland Security, as the Secretary of Defense and the Attorney General, with respect to their own Departments. Under those two sections, the Secretary of Defense and the Attorney have limited authority to circumscribe the activities of their departmental Inspectors General upon notice to Congress. Consistent with those two sections, this section expressly requires the Secretary of Homeland Defense to notify the Congress within thirty days of any exercise of the limiting authority. This section reflects a carefully drawn balance between the need to respect the unusual and sensitive nature of the substantive work of the Departments and the overall purposes of the Inspector General Act.

Subtitle C—United States Secret Service

Section 720. Functions transferred.

This section provides for the transfer of the United States Secret Service to the Department of Homeland Security. The section expressly requires that the Secret Service be maintained as a distinct entity within the Department.

Subtitle D—General Provisions

Section 730. Establishment of Human Resources Management System.

This section creates a new part of title 5, United States Code, to allow the Secretary, jointly with the Director of the Office of Personnel Management, to issue regulations to create and adjust a human resources management system for the Department. Because the Department's mission includes contributing to the security of the nation and responding to evolving threats and conditions, the provision calls for the Secretary and the Director of the Office of Personnel Management to create a modern, flexible, and responsive program.

Section 731. Advisory Committees.

This section provides that the Secretary of Homeland Security may establish, appoint the members of, and use the services of advisory committees. The section further provides that the Federal Advisory Committee Act, Pub. L. No. 92-463, is to be inapplicable to any advisory committee so established or used; but the Secretary is required to publish notice in the Federal Register announcing the establishment of an advisory committee and its membership and purpose. Both the Central Intelligence Agency and the Federal Reserve System are now exempted by statute from the Federal Advisory Committee Act. *See* 5 U.S.C. app. 2 § 4(b). In view of the need for the Department of Homeland Security to establish or to use the services of advisory committees on highly confidential and sensitive homeland security matters, it is desirable to provide the Department with an exemption comparable to those already in existence for the Central Intelligence Agency and the Federal Reserve System.

Section 731 also provides that the services of an individual as a member of an advisory committee established under the section does not bring that member within any of three provisions of title 18 of the United States Code: section 203 (relating, in part, to the compensation of special government employees for outside representational services); section 205 (relating, in part, to the activities of special government employees in bringing claims against the government); and section 207 (relating, in part, to post-employment restrictions on special government employees). These exceptions are needed to enable the Department of Homeland Security to secure the services of individuals on its advisory committees who are highly qualified to serve and are otherwise willing to do so, but who might be reluctant to accept such appointments if it might expose them to the risk of a criminal prosecution for their outside work or activities. Section 731 nonetheless provides that such individuals shall remain subject to the criminal prohibitions of sections 203, 205 and 207 of title 18 with respect to any particular matter that directly involves the Department or in which the Department is directly interested.

Section 732. Acquisitions; property.

This section contains authorities of the Secretary of Homeland Security relating to acquisitions and property.

Subsection (a) authorizes the Department of Homeland Security to engage in transactions other than contracts, grants, and cooperative agreements (so-called "other transactions"), for research and development and prototype efforts. With the intent of attracting non-traditional contractors who offer innovative and cutting-edge technology, such other transactions are exempt from procurement laws. The Defense Advance Research Projects Agency currently uses this authority for significant research and development projects.

Subsection (b) authorizes the Department of Homeland Security to contract for private sector services, including consultants and experts, using a form of contracting that allows for the creation of an employer-employee relationship. Normally, agencies are required to obtain these services by direct hire under competitive appointment or other procedures under civil service laws. While contracts that create employer-employee relationships are generally prohibited, the nature of the Department's work may necessitate this additional flexibility in securing services.

Subsection (c) authorizes the Department of Homeland Security to invoke 40 U.S.C. 474 to avoid the application of any procurement statute or regulation that would impair the accomplishment of the Department's mission. Normal procurement operations would be subject to current government-wide procurement statutes and regulations. This exemption, however, would provide authority for necessary purchases or disposal that otherwise might not be allowed under current law. This same statutory authority exists for the Central Intelligence Agency and the Atomic Energy Commission (now vested in the Energy Research and Development Administration).

Subsection (d) gives the Secretary of Homeland Security authority to acquire and dispose of property, specifically as follows: (1) acquiring replacement real property by exchange or transfer in participation with another agency under mutually agreeable terms or by selling or exchanging real property assets to or with any non-federal source; (2) making unexpired portions of leases of real property available for interim uses, through leases, licenses, permits, or similar instruments issued to another federal agency or a non-federal entity; and (3) making underutilized portions of government-owned real property available through outlease agreements with a federal agency or a non-federal entity. The subsection also authorizes the Secretary of Homeland Security to deposit the proceeds from these transactions in any account in the Treasury available for purposes of the Department of Homeland Security.

Subsection (e) requires that the Administrator of the General Services Administration delegate, upon the written request of the Secretary of Homeland Security, disposal authorities for surplus real and related personal property.

Subsection (f) allows the Secretary of Homeland Security to retain the bulk of the net proceeds from surplus personal property transactions.

Section 733. Reorganization; transfer.

Subject to specific limitations, this section gives the Secretary of Homeland Security authority to reorganize the Department of Homeland Security by allocating or reallocating functions within the Department and by establishing, consolidating, altering or discontinuing organizational units within the Department. It also gives the Secretary limited authority (up to five percent) to transfer funding between appropriations accounts upon fifteen days notice to the House and Senate Appropriations Committees.

These authorities are critical to the successful establishment and organization of a new department. They allow the Secretary to fulfill the purpose of the bill by bringing together the many different functions and organizational units that will be consolidated in the new department and having them work together in new ways, and with new priorities. Similar reorganization authority was granted in the acts creating the Department of Energy and the Department of Education. Appropriations transfer provisions are enacted annually in a number of appropriations acts.

The Secretary's authority to reorganize would not extend to the abolition of an entity that the bill establishes or requires to be maintained as a distinct entity, including the United States Secret Service and the Coast Guard.

Section 734. Miscellaneous provisions.

This section, which adapts or makes applicable by cross-reference existing provisions of law, provides miscellaneous authorities to the Department of Homeland Security. These miscellaneous authorities relate largely to housekeeping matters such as the design and institution of an official Departmental seal, property given to the

Department, certain authorities of the Secretary of Transportation with respect to the Coast Guard and other federal personnel, and general delegation and redelegation authority within the Department.

Section 735. Authorization of appropriations.

This section authorizes the appropriation of such sums as may be necessary to carry out the purposes of the bill.

TITLE VIII—TRANSITION

This title concerns the orderly transfer of agencies and functions from their current locations to the Department of Homeland Security.

Section 801. Definitions.

For purposes of this title, this section defines "agency" to include any entity, organizational unit, or function, and defines "transition period" to mean the twelve-month period beginning on the effective date of the bill.

Section 802. Transfer of agencies.

This section provides that the transfer of an agency to the Department of Homeland Security will occur when the President so directs within the twelve-month transition period. It further authorizes the transfer of related adjudicatory and review units, such as the immigration judges, Board of Immigration Appeals, and Executive Office for Immigration Review, associated with the Immigration and Naturalization Service.

Section 803. Transitional authorities.

Subsection (a) of this section directs officials having responsibilities relating to an agency that will be transferred to the Department of Homeland Security to provide requested assistance to the Secretary of Homeland Security in preparing for the transfer and integration of the agency into the Department of Homeland Security.

Subsection (b) expressly authorizes the head of any executive agency, upon the request of the Secretary of Homeland Security, to provide services and to detail personnel to assist with the transition, on a reimbursable or nonreimbursable basis.

Pending the transfer of an agency to the Department of Homeland Security, subsection (c) authorizes the President to transfer to the Secretary of Homeland Security up to five percent of the unobligated balance of any appropriation available to the agency to fund the purposes authorized in the bill. Notice of at least 15 days to the Appropriations Committees would be required prior to such a transfer.

Subsection (d) allows the President to make interim acting appointments to fill the new offices created by the bill pending confirmation of nominees. The President is authorized to designate in an acting capacity any person who held a Senate-confirmed position immediately prior to the effective date (if that person is still a Senate-confirmed officer on the date of designation) or immediately prior to the date of designation. Subsection (d)(2) makes clear that, in accordance with established case law, Senate-confirmed officers who are appointed to fill new offices in the Department whose duties are germane to their original offices may be appointed without undergoing an additional confirmation proceeding. *See, e.g., Weiss v. United States,* 510 U.S. 163 (1994); *Shoemaker v. United States,* 147 U.S. 282 (1893).

Subsection (e)(1) provides that, upon the transfer of an agency to the Department of Homeland Security, the pertinent personnel, assets, and liabilities will be transferred, subject to the approval of the Director of the Office of Management and Budget. Subsection (e)(2) provides that the Secretary of Homeland Security will have all functions relating to a transferred agency that any other official could by law exercise in relation to the agency immediately before its transfer to the Department of Homeland Security, and in addition all functions vested in the Secretary by the bill or by law.

Section 804. Savings provisions.

This section contains provisions to ensure the appropriate continuation and effectiveness of rules, proceedings, laws, and other provisions relating to agencies, notwithstanding the enactment of the bill and the transfer of agencies to the Department of Homeland Security. Subsection (a) provides for the continued effectiveness of completed administrative actions, such as orders, rules, regulations, personnel actions, permits, grants, contracts, and licenses. Subsection (b) provides for the continuation of pending proceedings in an agency, such as notices of proposed rulemaking, and applications for licenses, permits, certificates, grants, and financial assistance. Subsection (c) provides for the continuation of pending civil actions. Subsection (d) provides that references relating to an agency in pre-existing statutes, executive orders, rules, regulations, and delegations of authority are generally to be understood so as to give them continued effect in a manner consistent with the agency's transfer to the Department of Homeland Security. For example, a reference to the Coast Guard as being in the Department of Transportation or under the authority of the Secretary of Transportation would be deemed to be a reference to the Coast Guard as being in the Department of Homeland Security or under the authority of the Secretary of Homeland Security, and a reference to the Attorney General as carrying out functions that are now assigned to the Immigration and Naturalization Service would be deemed to be a reference to the Secretary of Homeland Security as carrying out the same functions. Subsection (e) allows for the continuation and use in the Department of the various personnel and employment systems in place in the transferred agencies prior to transfer.

Section 805. Terminations.

This section provides for the termination of certain offices when all of an agency's functions have been transferred to the Department of Homeland Security.

Section 806. Incidental transfers.

This section authorizes and directs the Director of the Office of Management and Budget, in consultation with the Secretary of Homeland Security, to make certain additional incidental dispositions of personnel, assets, and liabilities related to functions transferred to the Department of Homeland Security.

TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

This title makes technical and conforming amendments to existing statutes that are needed for consistency or to effectuate earlier provisions of the bill. These amendments are not exhaustive; it is anticipated that other conforming and technical amendments will be enacted as necessary or appropriate in light of the changes made by the bill.

Section 901. Inspector General Act.

Conforming to the creation of an office of Inspector General for the Department of Homeland Security, this section amends certain provisions of the Inspector General Act to ensure the application of that Act to the new office. Additionally, the section corrects clerical errors in that Act.

Section 902. Executive Schedule.

This section amends certain provisions of title 5 of the United States Code, in order to specify the Executive Schedule levels for offices created by earlier provisions of the bill.

Section 903. United States Secret Service.

Conforming to the transfer of the United States Secret Service to the Department of Homeland Security, this section amends certain provisions of titles 3 and 18 of the United States Code, relating to the United States Secret Service, by replacing references to the Department and Secretary of the Treasury with references to the Department and Secretary of Homeland Security.

Section 904. Coast Guard.

Conforming to the transfer of the Coast Guard to the Department of Homeland Security, this section amends certain provisions of title 14 of the United States Code, relating to the Coast Guard, by replacing references to the Department and Secretary of

Transportation with references to the Department and Secretary of Homeland Security. Additionally, the section corrects a clerical error in title 14.

Section 905. Strategic National Stockpile and smallpox vaccine development.

Conforming to the transfer of the Strategic National Stockpile of the Department of Health and Human Services to the Department of Homeland Security, this section amends certain provisions of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. No. 107-188), by replacing references to the Department and Secretary of Health and Human Services with references to the Department and Secretary of Homeland Security.

Section 906. Select agent registration.

Conforming to the transfer of the select agent registration program of the Department of Health and Human Services to the Department of Homeland Security, this section amends certain provisions of the Public Health Service Act and Public Health Security and Bioterrorism Preparedness and Response Act of 2002, by replacing references to the Department and Secretary of Health and Human Services with references to the Department and Secretary of Homeland Security.

Section 907. National Bio-Weapons Defense Analysis Center.

Conforming to the incorporation into the Department of Homeland Security of the National Bio-Weapons Defense Analysis Center of the Department of Defense, this section establishes and defines the mission of that Center.

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