

A BILL

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

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

- Sec. 301. Under Secretary for Chemical, Biological, Radiological, and Nuclear Countermeasures.
- Sec. 302. Functions transferred.
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- Sec. 304. Military activities.

TITLE IV—BORDER AND TRANSPORTATION SECURITY

- Sec. 401. Under Secretary for Border and Transportation Security.
- Sec. 402. Functions transferred.
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TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

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

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- 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;

1 (2) not more than ten Assistant Secretaries;

2 (3) a Director of the Secret Service;

3 (4) a Chief Financial Officer; and

4 (5) a Chief Information Officer.

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

7 **TITLE II—INFORMATION ANALYSIS AND**
8 **INFRASTRUCTURE PROTECTION**

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

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

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

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

20 (3) integrating relevant information, intelligence analyses, and vulnerability
21 assessments (whether such information, analyses, or assessments are provided or
22 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

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

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

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

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

10 (F) the Environmental Measurements Laboratory; and

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

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

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

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

19 (a)(1) Except as the President may otherwise direct, the Secretary shall carry out his
20 civilian human health-related biological, biomedical, and infectious disease defense research and
21 development (including vaccine research and development) responsibilities through the
22 Department of Health and Human Services (including the Public Health Service), under
23 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.

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

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

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

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

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

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

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

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

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

20 (A) managing such response;

21 (B) directing the Domestic Emergency Support Team, the Strategic
22 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

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

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

7 **TITLE VI—MANAGEMENT**

8 **SEC. 601. UNDER SECRETARY FOR MANAGEMENT.**

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

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

13 (2) procurement;

14 (3) human resources and personnel;

15 (4) information technology and communications systems;

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

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

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

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

22 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

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

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

8 **SEC. 734. MISCELLANEOUS PROVISIONS.**

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

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

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

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

19 **SEC. 735. AUTHORIZATION OF APPROPRIATIONS.**

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

22 **TITLE VIII—TRANSITION**

23 **SEC. 801. DEFINITIONS.**

24 For purposes of this title—

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

26 (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—

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

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

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

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

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

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

16 **SEC. 804. SAVINGS PROVISIONS.**

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

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

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

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

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

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

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

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

24 (e)(1) Notwithstanding the generality of the foregoing (including subsections (a) and (d)),
25 in and for the Department the Secretary may, in regulations prescribed jointly with the Director
26 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 “;”;

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

1 after “Affairs.”;

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

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

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

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

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

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

17 **SEC. 904. COAST GUARD.**

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

19 (1) in sections 1, 3, 53, 95, 145, 516, 666, 669, 673 (as added by Pub. L. No. 104-
20 201), 673 (as added by Pub. L. No. 104-324), 674, 687, and 688, by replacing “of
21 Transportation”, each place it appears, with “of Homeland Security”; and

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

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

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

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

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

7 (1) in section 121(a)(1)—

8 (A) by replacing “Secretary of Health and Human Services” with
9 “Secretary of Homeland Security”;

10 (B) by inserting “the Secretary of Health and Human Services and”
11 between “in coordination with” and “the Secretary of Veterans Affairs”; and

12 (C) by inserting “of Health and Human Services” after “as are determined
13 by the Secretary”; and

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

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

19 **SEC. 906. SELECT AGENT REGISTRATION.**

20 (a) The Public Health Service Act is amended—

21 (1) in section 351A(a)(1)(A), by inserting “(as defined in subsection (l)(9))” after
22 “Secretary”;

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

25 (3) in section 351A(l), by inserting after paragraph (8) a new paragraph as
26 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.