

# Report for Congress

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## **Department of Homeland Security: Consolidation of Border and Transportation Security Agencies**

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William J. Krouse, Coordinator  
Analyst in Social Legislation  
Domestic Social Policy Division

# Department of Homeland Security: Consolidation of Border and Transportation Security Agencies

## Summary

The Homeland Security Act of 2002 (P.L. 107-296) transfers several border and transportation security agencies to the newly established Department of Homeland Security, consolidating some of them in a Directorate of Border and Transportation Security. The Act charges this new directorate with securing the borders; territorial waters; terminals; waterways; and air, land and sea transportation systems of the United States; and managing the nation's ports of entry. As in the past, the challenge for policymakers is to provide a level of border and transportation security that is commensurate with a multitude of threats, while facilitating legitimate travel and commerce, as well as protecting civil liberties.

An immediate challenge for the 108<sup>th</sup> Congress will be to work with the Administration to get the new department operational – up and running – at a time when threats to borders and transportation systems are real and arguably imminent. Moreover, the success of the Directorate will depend in large measure on the effective and expedited coordination of transferred agencies and programs; development of a unified strategic vision for departmental and directorate operations; leverage of new and existing technologies to improve threat detection; development of new inspection and compliance processes with an eye on security and facilitation of trade and travel; adequate funding and staffing; efficient deployment of resources; and successful implementation of recently enacted border, port, and transportation security-related legislation.

The agencies transferred to the Directorate of Border and Transportation Security include the U.S. Customs Service, the enforcement programs of the former Immigration and Naturalization Service (INS), the border and inspection programs of the Animal and Plant Health Inspection Service, the Transportation Security Administration, the Federal Protective Service, the Federal Law Enforcement Training Center, and the Office for Domestic Preparedness. The Coast Guard and the citizenship/services programs of INS have been transferred to the Department of Homeland Security as a stand-alone agency and bureau, respectively, outside of the directorate. Nonetheless, the activities of the Coast Guard and Bureau of Citizenship and Immigration Services will need to be closely coordinated with the new Directorate.

Included in this report are conceptual definitions for “border management” and “border security;” descriptions of the missions of the principal border management agencies; brief discussion of seaport and transportation security, since both are integral to border security; and a brief exploration of issues raised by transferring the Federal Protective Service, the Office for Domestic Preparedness, and the Federal Law Enforcement Training Center to this new directorate. The report concludes with a summary of major issues that are likely to emerge regarding the establishment and effective operations of the Border and Transportation Security Directorate.

## Key Policy Staff

<b>Agency</b>	<b>Staff</b>	<b>Phone #</b>
Immigration and Naturalization Service (INS)	Ruth Wasem Lisa Seghetti	707-7342 707-4669
Bureau of Consular Affairs (CA)	Susan Epstein Ruth Wasem (visas only)	707-6678 707-7342
U.S. Customs Service	William Krouse	707-2225
Animal and Plant Health Inspection Service (APHIS)	Jean Rawson	707-7283
U.S. Coast Guard	Martin Lee Ronald O'Rourke	707-7260 707-7610
Seaport Security	John Frittelli	707-7033
Transportation Security Administration (TSA)	Robert Kirk John Fischer	707-7769 707-7766
Federal Protective Service (FPS)	Elaine Halchin	707-0646
Federal Law Enforcement Training Center (FLETC)	William Krouse	707-2225
Office for Domestic Preparedness (ODP)	Ben Canada Keith Bea	707-0632 707-8672

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# Department of Homeland Security: Consolidation of Border and Transportation Security Agencies

This report examines the consolidation of certain federal agencies charged with border and transportation security within the newly established Department of Homeland Security. It also includes conceptual definitions for “border management” and “border security;” descriptions of the principal border management missions; brief discussions of seaport and transportation security, since both are integral to border security; and a brief exploration of issues raised by transferring the Federal Protective Service, the Office for Domestic Preparedness, and the Federal Law Enforcement Training Center to this new directorate. The report concludes with a summary of major issues that are likely to emerge regarding the establishment and effective operations of the new department and its Directorate of Border and Transportation Security.

## Introduction

Congress has passed the Homeland Security Act of 2002,<sup>1</sup> establishing a cabinet level Department of Homeland Security (DHS),<sup>2</sup> and within that department, a Directorate of Border and Transportation Security (DBTS).<sup>3</sup> The Homeland Security Act charges the DBTS with securing the borders; territorial waters; terminals; waterways; and air, land and sea transportation systems of the United States; and managing the Nation’s ports of entry. As in the past, the challenge for policymakers is to provide a level of border and transportation security that is commensurate with a multitude of threats, while facilitating legitimate travel and commerce, as well as protecting civil liberties. An immediate challenge for the 108<sup>th</sup> Congress will be to work with the Administration to get the new department, including DBTS, operational at a time when threats to borders and transportation systems are real and arguably imminent.

To better position federal agencies to prevent terrorists from entering, and smuggling “instruments of terror” into, the United States, and from attacking U.S. transportation systems, the Homeland Security Act transfers to the Directorate of Border and Transportation Security the following agencies and programs: (1) the

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<sup>1</sup> P.L. 107-296; 116 STAT. 2135.

<sup>2</sup> For further information on departmental-wide considerations and issues, see CRS Report RL31493, *Homeland Security: Department Organization and Management*, by Harold C. Relyea.

<sup>3</sup> For further information on departmental structure, see CRS Report RS21366, *Department of Homeland Security: Hypothetical Organization Chart*, by Sharon S. Gressle.

U.S. Customs Service, (2) the enforcement programs of the former Immigration and Naturalization Service (INS), (3) the border-related inspection programs of the Animal and Plant Health Inspection Service, (4) the Transportation Security Administration, (5) the Federal Protective Service, (6) the Federal Law Enforcement Training Center, and (7) the Office for Domestic Preparedness. The Act transfers to the new department, but not to the new directorate, the Coast Guard and the citizenship/services programs of INS as a stand-alone agency and bureau, respectively. Nonetheless, the activities of the Coast Guard and Bureau of Citizenship and Immigration Services will need to be closely coordinated with the new directorate.

The success of the new Department of Homeland Security and its Border and Transportation Security Directorate will depend in large measure on the development of a unified strategic focus for directorate operations; effective and expedited coordination of transferred agencies and programs; leverage of new and existing technologies to improve threat detection; development of new inspection and compliance processes with an eye on security and facilitation of legitimate travel and trade; adequate funding and staffing; efficient deployment of resources; and successful implementation of recently enacted border, port, and transportation security-related legislation.

## **Border Management and Transportation Security**

In the past, there have been many proposals to reorganize border management agencies prompted by concerns about illegal immigration and international drug trafficking.<sup>4</sup> The threat of terrorism, however, prompted the establishment of a Department of Homeland Security (DHS) and its Directorate of Border and Transportation Security (DBTS) that integrates border management agencies. Today, policy makers confront the real possibility that the World Trade Center and Pentagon attacks were not “singular” events, and that international terrorists have planned, will attempt, and may successfully carry out, attacks of similar magnitude against the United States in the future. At the same time, trade experts emphasize that shutting down borders in the event of a terrorist attack on the United States would have detrimental and possibly catastrophic effects on the national and world economies.<sup>5</sup> Hence, the security and livelihood of the United States depends more than ever upon how efficiently federal agencies charged with border management achieve their respective missions.

**Border Management and Security.** Border management entails regulating the flow of people and goods into the United States and, in some instances, from the United States. Border security is derived from how well border management agencies perform their missions. That entails not only effective law enforcement in some cases, but also prompt, efficient, and courteous service to the traveling public. Over the past half-century, border management evolved as a balancing act between

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<sup>4</sup> For further information on past attempt at border reorganizations, see CRS Report 97-974, *Reorganization Proposals for U.S. Border Management Agencies*, by Frederick M. Kaiser.

<sup>5</sup> O’Hanlon, Michael E., et al. *Protecting the American Homeland*. The Brookings Institution, Washington, 2002. p. 25.

facilitating legitimate cross border commerce and travel, and deterring illegal immigration and the smuggling of drugs and other contraband.

Even before the September 11 terrorist attacks, border management was emerging as a public policy area of growing concern for Congress. The Canadian and North American free trade agreements created a perception, among some observers, that some international borders were anachronistic, that they belonged to an earlier era of nationalism, and that their usefulness was rapidly diminishing. While these agreements fostered international trade, they did not cause the borders to disappear nor was that an intention. Instead, the borders became in some ways more prominent as increased trade and travel outpaced the institutions and infrastructures set up to accommodate and regulate those activities. From 1985 to 2000, for example, trade between the United States and Canada increased from \$116.3 to \$409.8 billion, yet the number of Customs inspectors on the northern border reportedly decreased by about 25%.<sup>6</sup>

Despite significant increases in resources (mostly deployed to the southern border), particularly for INS's Border Patrol, an unauthorized immigrant population of an estimated 7 to 9 million people<sup>7</sup> and the continuing availability of illegal drugs of foreign origin<sup>8</sup> were and continue to be clear indicators that current federal border management efforts have had mixed results to date. Critics of the status quo pointed to fragmented authorities, overlapping jurisdictions, duplicated efforts, and interagency rivalries.

**Consolidating Border and Transportation Security Missions.** The Homeland Security Act of 2002 (P.L. 107-296) in effect makes counterterrorism the central mission for agencies tasked with border and transportation security. Prior to the Homeland Security Act, no single government entity was charged with border management and transportation security. Rather, a handful of agencies was charged with what might be considered core border management missions. Those agencies included: (1) the U.S. Customs Service in the Department of the Treasury, (2) the former Immigration and Naturalization Service (INS) in the Department of Justice, and (3) the U.S. Coast Guard in the Department of Transportation. Many other agencies, like the Bureau of Consular Affairs in the Department of State and the Animal and Plant Health Inspection Service (APHIS) in the Department of Agriculture, play integral roles in border management as well. Reportedly, at least 40 federal agencies are involved in some aspect of border management.

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<sup>6</sup> Flynn, Stephen E. *America the Vulnerable*. *Foreign Affairs*, January/February 2002. p. 66.

<sup>7</sup> Camarota, Steven. *Census Bureau: Eight Million Illegal Aliens in 2000 (Finding Raises Concern Over Border Control in light of Terrorist Threat)*. Center for Immigration Studies, Washington, October 24, 2001. [<http://www.cis.org/articles/2001/censusrelease1001.html>].

<sup>8</sup> According to Federal-wide Drug Seizure System, federal authorities seized between 100 to 130 tons of cocaine per year for the last 5 years. According to DEA estimates, federal authorities seized approximately 20% to 25% of the cocaine in transit to the United States, either at the border or on the high seas.

Examination of the activities of these agencies indicates that federal border management missions can be broadly classified into five overarching areas: (1) immigration and nationality, (2) international trade, (3) environmental and health quarantine, (4) port security, and (5) border and coastal patrol. As a sixth category, transportation security is evolving as a federal mission that overlaps, and possibly dovetails, with border management missions as well.

The creation of the new Department and its Directorate of Border and Transportation Security has raised questions among some analysts as to whether addressing border security from the angle of counter-terrorism alone, without considering other federal objectives, like stemming drug trafficking or facilitating legitimate cross border commerce, is practical or reasonable. Clearly, a key challenge for policymakers charged with establishing the new department and its Directorate of Border and Transportation Security will be to develop an integrated strategic border management and transportation security focus that effectively weaves counterterrorism into other federal border management- and transportation security-related goals and activities.<sup>9</sup>

**Building Security, Law Enforcement Training, and Terrorism Preparedness.** The Homeland Security Act of 2002 also transfers several other federal entities to the Directorate of Border and Transportation Security. They include (1) the Federal Protective Service (FPS), formerly located in the General Services Administration; (2) the Federal Law Enforcement Training Center (FLETC), formerly located in the Department of the Treasury; and (3) the Office of Domestic Preparedness (ODP), formerly located in the Office of Justice Programs at the Department of Justice. The inclusion of FPS, FLETC, and ODP will increase the new directorate's responsibilities in the areas of federal building security, training federal law enforcement officers, and providing state and local first responders with training and assistance (with a special emphasis on terrorism preparedness). These activities, however, are not viewed traditionally as falling under either border or transportation security missions. On the other hand, locating them in the Directorate of Border and Transportation Security gives that directorate a wider scope of responsibility that may permit new approaches in the area of combating terrorism.

## **INS, Consular Affairs, and Immigration Policy<sup>10</sup>**

U.S. immigration and nationality policy has historically balanced generous principles with restrictive priorities. The generous principles emphasize the reunification of families; the admission of immigrants with needed job skills; the protection of refugees and asylees; the promotion of opportunities for cultural exchange; the facilitation of trade, commerce, and diplomacy; and the diversity of admissions by the country of origin. Another principle of immigration and nationality policy is to provide immigrants an opportunity to integrate fully into

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<sup>9</sup> U.S. Commission on National Security/21st Century. *Roadmap for National Security: Imperative for Change*. (Washington, February 15, 2001). p. 156. Available at [<http://www.nssg.gov/>].

<sup>10</sup> This section was prepared by Ruth Wasem, Lisa Seghetti, Susan Epstein, and William Krouse.



society. Along these lines, immigrants (legal permanent residents) usually have the opportunity to become citizens through a process known as naturalization. The restrictive priorities of U.S. immigration law focus on protecting public health and welfare, national security, public safety, and labor markets.

These principles and priorities are embodied in the Immigration and Nationality Act (INA), first codified in 1952. It is noteworthy that there is a tension between the generous principles and restrictive priorities of immigration law. This tension was difficult to reconcile in the day-to-day operations of the two lead agencies charged with managing the migration of non-citizens across U.S. borders—Justice’s Immigration and Naturalization Service and the State Department’s Bureau of Consular Affairs. This was in evidence as Congress considered proposals to establish a Department of Homeland Security. While the Homeland Security Act does not alter the fundamental tenets of U.S. immigration and nationality policy, the Act abolishes INS, creating separate bureaus for immigration enforcement and services. It vests the Secretary of Homeland Security with responsibility for issuing regulations and policies related to visa issuance.<sup>11</sup>

**The Former Immigration and Naturalization Service (INS).** The Homeland Security Act of 2002 (P.L. 107-296) dismantles the INS and transfers immigration enforcement and service functions to DHS as two separate and distinct bureaus. Proposals to split INS had been considered by Congress prior to the homeland security debate.<sup>12</sup> For FY2002, Congress provided INS with \$6.2 billion, supporting 36,117 funded permanent positions. According to DOJ, the FY2002 budget included \$4.0 billion (26,708 positions) for enforcement programs, over \$1.4 billion (5,707 positions) for immigration services, and \$730 million (3,702 positions) for administration and support (shared services).<sup>13</sup>

The Homeland Security Act establishes a Bureau of Border Security (to be headed by an Assistant Secretary) in the Directorate of Border and Transportation Security; and it establishes a Bureau of Citizenship and Immigration Services (to be headed by a Director) under the DHS Deputy Secretary’s office. The Act explicitly prohibits the joining of these two bureaus into a single agency or the consolidation

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<sup>11</sup> For further analysis of the potential transfer of immigration functions and activities to a new Department of Homeland Security, see CRS Report RL31560, *Homeland Security Proposals: Issues Regarding Transfer of Immigration Agencies and Functions*, by Lisa M. Seghetti and Ruth Ellen Wasem; and CRS Report RL31512, *Visa Issuances: Policy, Issues, and Legislation*, by Ruth Ellen Wasem..

<sup>12</sup> Preceding the homeland security debate, the Administration supported a restructuring plan to split the agency’s service and enforcement programs within INS. On April 25, 2002, the House passed a measure (H.R. 3231) that would have dismantled INS. On May 2, a similar, but competing, measure (S. 2444) was introduced in the Senate. Both bills would have established separate immigration services and enforcement bureaus. The Senate bill, however, would have created an immigration director with overall statutory authority for immigration policy. The House bill would have established an Associate Attorney General for Immigration, but the statutory authority for immigration services and enforcement would have devolved to the respective bureau directors.

<sup>13</sup> U.S. Department of Justice, *2003 Budget Summary*, (Washington, winter 2002). p. 105.

of the functions or organizational units of these two bureaus.<sup>14</sup> The Act also establishes a Director of Shared Services under the Deputy Secretary's Office. Coordination and information sharing between these two separate bureaus will be critical to the success of the Directorate's management of border and transportation security and the Department's management of immigration and nationality policy.

***Immigration Enforcement.*** Immigration enforcement functions – previously carried out by INS – include the following: (1) patrol of the border between ports of entry; (2) inspection of travelers seeking entry into the United States at ports of entry; (3) investigation of violations of immigration law both at the border and within the interior of the United States; (4) detention and removal of non-citizens found to be in violation of immigration law; and (5) the collection of intelligence concerning immigration-related illegal activities. The Homeland Security Act transfers all former INS enforcement functions to the Bureau of Border Security, in the DHS Directorate for Border and Transportation Security.

*Between ports of entry*, the U.S. Border Patrol, formerly a division of INS, enforces U.S. immigration law and other federal laws at the border. Border Patrol agents often apprehend drug smugglers and others engaged in criminal activities, but the principal focus of the Border Patrol has been to stem illegal immigration,<sup>15</sup> by compelling border crossers to present themselves for inspection at a designated port of entry. *At ports of entry*, immigration inspectors – formerly attached to INS – examine and verify the travel documents of international travelers to determine their eligibility to enter the United States.<sup>16</sup> Unlike other immigration enforcement functions, the inspections function includes service-related activities as well. For example, immigration inspectors are often the first line of contact with the traveling public, including non-citizens seeking to enter the United States for the first time. On the other hand, immigration inspectors screen foreign travelers by checking border lookout systems to determine whether they are listed as known terrorists or supporters of terrorist organizations.<sup>17</sup>

Special agents investigate immigration violations at the border, since neither the Border Patrol nor immigration inspections has a criminal investigations capability, and in the interior of the United States, as well. Such investigations include identifying criminal aliens for removal, immigration-related document and benefit fraud, alien smuggling, and employer sanctions. Federal law prohibits employers from knowingly hiring aliens who are unauthorized to work in the United States.

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<sup>14</sup> Section 471(b) of P.L. 107-296.

<sup>15</sup> Over 90% of Border Patrol agents are deployed on the Southwest border.

<sup>16</sup> According to the INS Statistics Office, INS inspectors screened about 511 million persons for entry (approximately 36% citizens and 64% non-citizens) in FY2001. The non-citizens they found inadmissible number in the hundreds of thousands, but represented less than 0.2% of all inspections annually.

<sup>17</sup> In the INS budget, inspections was considered an enforcement program, but organizationally inspections was considered an examinations or service program. The Homeland Security Act transfers the immigration inspections program to the Bureau of Border Security, in the DHS Directorate of Border and Transportation Security.

Immigration special agents, inspectors, and Border Patrol agents participate in interagency task forces, like the Joint Terrorism Task Forces, since only an immigration officer can determine immigration and nationality status, as opposed to a U.S. Marshal or FBI agent.<sup>18</sup> In addition, a small number of immigration special agents are stationed abroad.

Immigration officers also oversee the detention and removal of non-citizens – many of whom cannot be released under the law until removed from the United States. In recent years, INS had come under intense criticism for not expeditiously deporting criminal aliens. Despite increased funding, INS officials had maintained that the agency did not possess sufficient detention capacity to comply with the law. Furthermore, immigration officers collect intelligence in regard to illegal immigration-related activities, such as alien smuggling or large-scale document and benefit fraud. Such intelligence is often useful to other federal law enforcement agencies, as well.

It is notable that immigration enforcement and service functions are linked. For example, immigration inspectors routinely query application processing databases maintained by former INS service programs in order to determine the immigration status of applicants for admission at international ports of entry. Conversely, immigration adjudicators routinely query immigration enforcement databases to determine whether non-citizen applicants for certain immigration benefits have been or are in violation of immigration law. In addition, immigration adjudicators are also required to conduct criminal background and lookout system checks on certain applicants by checking with the FBI and the Department of State. Along these lines, moreover, Congress has recently mandated that all immigration databases, service and enforcement systems, be made compatible (interoperable).<sup>19</sup>

***Immigration Services.*** The Homeland Security Act transfers citizenship and immigration services – previously administered by INS – to a Bureau for Citizenship and Immigration Services, under the DHS Office of Deputy Secretary. The transferred functions consist of two major activities: (1) the adjudication of immigration- and naturalization-related benefits; and (2) the consideration of refugee and asylum claims. As part of the former INS adjudications and nationality program, immigration adjudication officers and clerks process family-sponsored and employment-based immigrant petitions to determine the eligibility of relatives of U.S. citizens and immigrants (legal permanent residents), and employees of U.S. businesses, to be permanently admitted to the United States. Another significant workload for immigration adjudications officers is that associated with applications for adjustment of status to permanent residency for non-citizens who are already in the United States, but who are otherwise eligible for immigrant status. Immigration officers also process temporary (nonimmigrant) employment and fiancee visa

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<sup>18</sup> A term of art, “immigration officers” include special agents, immigration agents, immigration inspectors, Border Patrol agents, deportation officers, detention enforcement officers, Asylum Corps officers, and adjudications officers.

<sup>19</sup> Section 202(a)(1) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107-173; 116 Stat. 543).

applications, nonimmigrant visa adjustments and extensions of stay, as well as many other immigration- and naturalization-related applications.<sup>20</sup>

The former INS Office of International Affairs, among other things, oversaw the consideration of refugee claims abroad, and asylum claims domestically. Essentially, non-citizens are granted refugee and asylum status on the same basis. Under current law, refugees and asylees are persons who are outside of their home country (or the last country in which they habitually resided), and are unable to return to that country because of a well founded fear of persecution on the basis of race, religion, nationality, membership in a particular social group, or political opinion. Asylum applicants apply in the United States; refugee applicants apply from abroad. Located in eight offices around the country, the Asylum Corps – previously part of INS – accounts for a small, but high profile portion of the immigration services workload. In addition, immigration officers (often Asylum Corps officers) – previously attached to INS – are assigned to many foreign locations to consider refugee claims.

**Consular Affairs (CA): Visa and Passport Issuance.** The Department of State’s Bureau of Consular Affairs (CA) manages three functions, two of which – visa and passport issuance – are related to border management and security. Of these two functions, however, overseas visa issuance policy was the principal focus of border security proposals acted upon by Congress. The third function, unrelated to border security, includes services to U.S. citizens abroad.

The Homeland Security Act vests the Secretary of Homeland Security with responsibility for issuing regulations related to the granting or refusal of visas, and for providing homeland security training to consular officers, but limits that authority in that the Secretary may not alter or reverse the decision of an individual consular officer. To promote homeland security and provide training to consular staff, the Act authorizes the Secretary to station DHS staff at consular posts abroad. By comparison, the Administration’s proposal would have given the Secretary of Homeland Security exclusive policy authority “through the Secretary of State” over the granting or refusal of visas.

Under section 104 of the INA (unamended by P.L. 107-296), the Secretary of State continues to hold the primary responsibility for the administration and enforcement of immigration law as it relates to the duties and functions of diplomatic and consular officers.<sup>21</sup> CA’s Visa Office carries out the Secretary of State’s immigration responsibilities, processing immigrant and nonimmigrant visa applications (as opposed to visa petitions, which are processed by INS). Section 211(a) of Title 22 of the *United States Code* charges the Secretary of State with

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<sup>20</sup> In FY2001, INS received about 7.8 million applications and completed a record 7 million, but INS ended the year with nearly 4.9 million applications pending, a nearly 24% increase over the previous year.

<sup>21</sup> Among other things, Section 221 of the INA (8 U.S.C., § 1201) sets out that, subject to limitations in the Act and relevant regulations, consular officers may issue immigrant and nonimmigrant visas.

responsibilities related to issuing passports to U.S. citizens.<sup>22</sup> CA's Passport Office oversees the issuance of U.S. passports. While CA provides for headquarters management of all consular activities, these activities are conducted by the staff of many different bureaus (regional and administrative) within the Department of State. For FY2002, the department-wide budget for consular activities was about \$574 million,<sup>23</sup> supporting 3,756 positions.<sup>24</sup>

CA also maintains the Consolidated Lookout and Support System (CLASS), a system that is used to screen persons known to be ineligible for visas. CLASS lookout records, in turn, are downloaded into the Interagency Border Inspection System (IBIS), a system that is maintained by Customs and used by both Customs and INS inspectors to screen foreign travelers seeking to enter the United States.<sup>25</sup> CLASS was developed under State's Border Security Program, which is fully funded through machine readable visa (MRV) application fees that are paid by persons seeking nonimmigrant visas. For FY2002, under the Border Security Program, it was estimated the MRV fees would generate an estimated \$465 million,<sup>26</sup> but this estimate did not factor in the decline in travel due to the September 11 terrorist attacks. In addition to funding CLASS, significant amounts of MRV fees are allocated to passport issuance and systems, and to the Diplomatic Security Service to conduct visa and passport fraud investigations.<sup>27</sup>

In regard to processing immigrant visas, CA works in tandem with immigration service programs – formerly part of INS – in a two-step process. The immigration service programs process the family-sponsored and employment-based *immigrant* visa petitions and, if favorably adjudicated, CA contacts the prospective immigrants. Then, CA processes their visa applications and, if favorably adjudicated, issues the non-citizen beneficiaries immigrant visas. The burden of proof is on applicants to establish eligibility. For denials of visa applications (immigrant or nonimmigrant), there is only limited review, and no process for administrative or judicial appeal. Following inspection at a U.S. port of entry, the immigrant visa holder becomes a legal permanent resident. For the majority of *nonimmigrant* (temporary) visas, most of which do not require a U.S. petitioner, CA handles the entire application process.

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<sup>22</sup> With certain exceptions, Section 215 of the INA prohibits any U.S. citizen from departing from or entering the United States without a valid passport.

<sup>23</sup> U.S. Department of State. *Congressional Presentation Document, FY2003*, (Washington, winter 2002). p. 40. (Hereafter cited as *Congressional Presentation Document, FY2003*.)

<sup>24</sup> *Ibid.*, p. 41.

<sup>25</sup> For further information, see CRS Report RL31019, *Terrorism: Automated Lookout Systems and Border Security Options and Issues*, by William J. Krouse and Raphael F. Perl.

<sup>26</sup> *Congressional Presentation Document, FY2003*, p. 516.

<sup>27</sup> Nearly all of this amount, for the border security program, \$476 million, is allocated for consular activities; therefore, it overlaps with the \$574 million for consular activities.

In general, foreign nationals who wish to come to the United States must have a visa to be admitted.<sup>28</sup> A notable exception would be the visa waiver program under which foreign nationals from certain countries seeking to enter the United States for a temporary visit for business or pleasure may enter without a visa.<sup>29</sup> In FY2001, Consular Affairs issued over 406,000 immigrant visas,<sup>30</sup> and nearly 7.6 million nonimmigrant visas.<sup>31</sup> Often described as a double check system, both State's consular officers at overseas posts (when aliens apply for a visa), and immigration inspectors at international ports of entry (when aliens apply for admission) are required to confirm that the alien is admissible and not subject to exclusion as enumerated in the INA. Beside criminal and public health-related grounds, such reasons for exclusion also include being a suspected terrorist or supporter of a terrorist organization.

## **Customs Service and International Trade<sup>32</sup>**

The Homeland Security Act of 2002 (P.L. 107-296) transfers the U.S. Customs Service in its entirety to the DHS Directorate of Border and Transportation Security. The Customs Service, formerly an agency of the Department of the Treasury, screens goods and merchandise being imported into and, to a lesser extent, exported from, the United States. Customs is the lead agency charged with administering the Tariff Act of 1930, as amended. At international ports of entry, Customs officers represent about 40 other federal agencies, administering and enforcing over 400 statutes and regulations related to international trade and commerce, drug and crime control, immigration, public health and safety, environmental protection, child welfare, and national security.<sup>33</sup>

Customs processes goods being imported into the United States, including collection of duties and tariffs. The agency plays a major role in federal efforts to interdict illegal drugs and other contraband being smuggled into the United States. Customs administers U.S. export law, in part, by interdicting the export of unreported currency from narcotics trafficking and other illicit activities, preventing international terrorist groups and rogue nations from obtaining sensitive and controlled commodities, and interdicting stolen vehicles and other stolen property. Like other

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<sup>28</sup> Authorities to except or to waive visa requirements are specified in law, such as the broad parole authority of the Attorney General under §212(d)(5) of INA and the specific authority of the Visa Waiver Program in §217 of INA.

<sup>29</sup> See CRS Report RS21205, *Immigration: Visa Waiver Program*, by Alison Siskin.

<sup>30</sup> In FY2001, over 1 million people gained immigrant status (legal permanent residency). Well over half were already in the United States and, therefore, processed by INS and their status adjusted to legal permanent residency in the United States under section 245 of the INA. As a result, they were not issued immigrant visas by the Department of State.

<sup>31</sup> In FY2001, according to INS, about 325 million nonimmigrants were admitted to the United States (including multiple entries by the same visitors). Of those nonimmigrants, an estimated 17 million were admitted under the visa waiver program.

<sup>32</sup> This section was prepared by William Krouse.

<sup>33</sup> Provided they have the requisite training, certain Immigration Inspectors and Border Patrol agents are authorized to act as Customs officers at the border.

federal law enforcement agencies, Customs has also engaged in efforts to identify and investigate trans-border crimes committed through the Internet. Those various responsibilities comprise Customs' dual mission of enforcing the laws of the United States, while fostering legitimate international commerce and travel. All of Customs' activities are related to border management and security.

In FY2001, Customs collected over \$22 billion in trade-related duties, taxes, and fees.<sup>34</sup> Total imports for that year reached an estimated value of \$1.2 trillion.<sup>35</sup> A large percentage of these imports arrived in more than 16 million cargo containers, and about 5.7 million of these containers arrived by ship (most of the rest come by rail or commercial trucks).<sup>36</sup> In FY2001, Customs processed more than 214,000 ships.<sup>37</sup> In addition, Customs processed over 472 million pedestrians and passengers (nearly 66 million arrived by aircraft, 11 million by ship, 307 million by automobile, 53 million pedestrians, and 35 million by some other means of conveyance).<sup>38</sup> For FY2002, Congress appropriated \$3.1 billion for Customs,<sup>39</sup> supporting 18,595 full time equivalent staff positions. This was a 35% increase over the agency's FY2001 appropriation, most of which was provided to improve border security.<sup>40</sup>

A number of Customs-related provisions included in the Homeland Security Act address concerns among the "importing community"<sup>41</sup> that Customs' transfer to DHS – a department exclusively focused on counterterrorism – may result in less emphasis

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<sup>34</sup> U.S. Customs Service, *U.S. Customs Service: America's Frontline, FY2001 Annual Report*. Washington, July 2002. p. 70.

<sup>35</sup> *Ibid*, p. 16

<sup>36</sup> U.S. Customs Service, *U.S. Customs Container Security Initiative to Safeguard U.S., Global Economy, Fact Sheet*. Washington, February 2002. p. 1. Available online from the Customs Service at [<http://www.customs.gov/hot-new/pressrel/2002/0222-00.htm>]

<sup>37</sup> *Ibid.*, p. 1.

<sup>38</sup> *Customs FY2001 Annual Report*, p. 16.

<sup>39</sup> This amount includes the FY2002 emergency supplemental appropriation of \$393 million allocated in the Department of Defense Appropriations Act (P.L. 107-117). It also includes monies appropriated into four accounts: 1) \$2.501 billion in the salaries and expenses account, 2) \$185 million in the air and marine interdiction program account, 3) \$428 million in the automation modernization account, and 4) \$3 million in the harbor maintenance fee account.

<sup>40</sup> From FY1992 to FY2001, Congress increased direct appropriations for the U.S. Customs Service from \$1.5 to \$2.3 billion, a 59% increase. To cover the costs of commercial operations and as directed by Congress, Customs offsets its direct appropriation by the balance of merchandise processing fees in the Customs User Fee Account (\$930 million in FY2001). In addition to appropriated funding, the Customs Service collects Consolidated Omnibus Budget Reconciliation Act (COBRA) fee receipts that are available to the agency for expenditure (\$305 million in FY2001).

<sup>41</sup> Possibly not all inclusive, the concept of "importing community" would include importers, exporters, customs brokers, shippers, freight forwarders, carriers, international trade attorneys and consultants, and foreign trade zones.

on facilitating legitimate international commerce and travel.<sup>42</sup> For example, the Act gives the Secretary of the Treasury continued authority over “customs revenue functions.”<sup>43</sup> It also includes several other provisions, which were recommended by the House Committee on Ways and Means, that:

- ! establish the Customs Service as a stand-alone agency vested with largely the same revenue-related responsibilities as the agency currently holds;
- ! require that the Customs Service be headed by a Commissioner (as is the case today), who would be appointed with advice and consent of the Senate;
- ! leave the statutory revenue collecting authority with the Secretary of the Treasury, but allow the Secretary to delegate revenue collecting responsibilities to the proposed DHS;
- ! prohibit the use of Customs user fees for non-Customs-related activities;
- ! require the Administration to submit a separate budget on Customs’ revenue functions within the proposed DHS;
- ! define “customs revenue function” and related activities;
- ! require the GAO to report on all trade functions performed by the executive branch;
- ! direct the DHS Secretary to maintain adequate staffing to assure that the agency’s revenue services are maintained;
- ! establish reporting requirements to ensure that the level of revenue services provided by Customs prior to enactment are maintained; and
- ! dedicate a portion of merchandise processing fees for the continued development, establishment, and implementation of an Automated Commercial Environment (a computer system to track imports).

### **Animal and Plant Health Inspection Service (APHIS)<sup>44</sup>**

While the INS and Customs Service are the principal border management and inspection agencies, they are assisted in this endeavor by other federal inspection agencies that are charged with protecting the environment, food supply, and public

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<sup>42</sup> Saccomano, Ann. One Agency, Many Questions: Department of Homeland Security Will Have Impact on Trade System. *Journal Commerce*, November 25-December 1, 2002, p. 13. Edmonson, R.G. Trade Facilitation in Peril? Some Wonder if Customs Trade Role Will Be Diminished or Lost within Proposed Department of Homeland Security. *Journal of Commerce*, June 17, 2002. p. 39.

<sup>43</sup> Some Members of Congress explored the possibility of splitting Customs enforcement and trade compliance activities (loosely equivalent to those activities that would fall under “customs revenue functions”) along the same lines as splitting INS enforcement and services activities. Others observed, however, that Customs’ enforcement activities are derived largely from its regulatory activities, and that all these activities are part of managing international trade at the borders.

<sup>44</sup> This section was prepared by Jean Rawson and William Krouse.



health.<sup>45</sup> The Department of Agriculture's Animal and Plant Health Inspection Service (APHIS), following INS and Customs, has the largest presence at the border. As a lead inspections agency, nearly 60% of APHIS's staff and 30% of its \$1.2 billion FY2001 budget were dedicated to border inspection-related duties. As such, APHIS has been included in recent proposals to consolidate border management agencies.

The Homeland Security Act of 2002 (P.L. 107-296) transfers APHIS import and entry inspection functions to the DHS Directorate for Border and Transportation Security, but explicitly exempts the agency's plant and animal quarantine operations, reflecting recommendations made by the House Committee on Agriculture. The Act requires the DHS Secretary to follow APHIS regulations, policies, and procedures concerning border inspections, and the USDA Secretary retains the authority to make changes in the same, with the requirement to coordinate with the DHS Secretary. By comparison, the Administration's original plan would have transferred APHIS in its entirety to the proposed DHS.

Agriculture's APHIS conducts inspection and quarantine activities at international ports of entry to minimize the risk that agricultural pests and exotic animal and plant diseases will be introduced into the United States. APHIS is also charged with several non-border management responsibilities that include nationwide monitoring of animal and plant health; pest and disease management; animal care; and controlling and eradicating pests and diseases that are harmful to agriculture, wildlife, or public safety. These functions, for the most part, will remain in the Department of Agriculture.

The Homeland Security Act gives the DHS Secretary the authority to issue directives and guidelines to ensure the effective use of the transferred personnel, pursuant to consultation with USDA. It effectively transfers 3,200 APHIS employees to the new department, and requires USDA to transfer – from the fees it collects from importers for inspection services – sufficient funds to cover the costs incurred by DHS in carrying out agricultural inspection activities at borders and ports of entry. In addition, the Act transfers the Plum Island Foreign Animal Disease Diagnostics Laboratory to the DHS Directorate of Science and Technology. This lab was formerly operated jointly by APHIS and USDA's in-house research agency, the Agricultural Research Service (ARS). It also directs the USDA and DHS Secretaries to create an agreement of understanding so that ARS personnel would continue to be able to use the facility.

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<sup>45</sup> Other agencies bring their expertise to bear at the border, as well, supporting the federal inspection services in carrying out their responsibilities related to the environmental and public health quarantine function. They include the Environmental Protection Agency; the Fish and Wildlife Service in the Department of the Interior; the Food Safety Inspection Service in the Department of Agriculture; and the Food and Drug Administration, the Public Health Service's Commissioned Officer Corps, and the Centers for Disease Control and Prevention in the Department of Health and Human Services.

## Coast Guard and Maritime Security<sup>46</sup>

In recent years, many analysts have identified U.S. vessels, ports, shoreside facilities, and infrastructure as vulnerable to terrorist attacks. To address these vulnerabilities in part, the Homeland Security Act of 2002 (P.L. 107-296) transfers the U.S. Coast Guard to the DHS. In addition, Congress passed the Maritime Transportation Security Act of 2002 (P.L. 107-295), an Act that includes many border security-related provisions as well.

**Background Information on the Coast Guard.** The Homeland Security Act of 2002 transfers all Coast Guard authorities, functions, personnel, and assets to the DHS. The Act also requires the Commandant of the Coast Guard to report directly to the Secretary of Homeland Security. Hence, the Coast Guard is transferred to DHS as a stand-alone agency, outside of the Directorate of Border and Transportation Security. Nonetheless, the activities of the Coast Guard will need to be closely coordinated with the new Directorate, particularly in the area of seaport security.

Formerly located in the Department of Transportation, the Coast Guard is one of five military services. The Coast Guard contributes to border security in the areas of maritime intervention and seaports and coastal waterways security. Charged with federal law enforcement in both U.S. territorial waters and on the high seas, border security-related missions include multi-agency maritime drug interdiction; illegal migrant interdiction; and regulating foreign fishing vessel transits into the 200-mile U.S. Exclusive Economic Zone (EEZ). In addition, the Coast Guard is responsible for the search and rescue of those who find themselves in distress in all waters, and icebreaking operations in areas like the Great Lakes to maintain year-round access to those waterways and the polar regions in support of scientific and national security operations. The Coast Guard, with its ports and waterways security mandate, is the federal agency that coordinates the inspection and security activities of other federal agencies and local port authorities.<sup>47</sup>

There has been continuing concern over the adequacy of Coast Guard operating resources and the condition of some of its vessels and equipment. The Administration and Congress have significantly increased these resources. For FY2002, Congress appropriated \$5.7 billion for the Coast Guard (including a \$209 million counterterrorism supplemental). This amount funds about 37,000 active-duty personnel, about 6,000 civilian employees, and about 8,000 reserve uniformed personnel. Later in the year, Congress appropriated for the Coast Guard an additional

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<sup>46</sup> This section was prepared by Martin Lee and Ronald O'Rourke (Coast Guard), and John Frittelli (seaport security).

<sup>47</sup> For further information, see CRS Report RS20924, *Homeland Security: Coast Guard Legislation in the 107<sup>th</sup> Congress*, by Martin Lee, and CRS Report RS21125, *Homeland Security: Coast Guard Operations-Background and Issues for Congress*, by Ronald O'Rourke.

\$255 million in a supplemental spending measure<sup>48</sup> for further recovery and response to the September 11 terrorist attacks, bringing total FY2002 Coast Guard funding to over \$6.0 billion.<sup>49</sup>

As with other agencies, some Members of Congress voiced concern that, if the Coast Guard were transferred to the proposed DHS, certain non-security functions such as boating safety, search and rescue, and fishing regulation could be de-emphasized.<sup>50</sup> To address these concerns, the Act defines “non-homeland security” and “homeland security” Coast Guard missions. The Act, moreover, requires these missions remain intact after the agency’s transfer, and prohibits substantially or significantly reducing those missions or the Agency’s capabilities to perform them. It further requires the DHS Inspector General to assess annually how all missions of the Coast Guard are being performed. And the Act requires that a study be conducted to assess the feasibility of accelerating the Integrated Deepwater System program from the planned 20-year period to a 10-year period.<sup>51</sup>

**Seaport Security Legislation.** While the transfer of the Coast Guard to DHS may address some aspects of security at U.S. seaports, on November 14, 2002 the Congress passed a separate measure, the Maritime Transportation Security Act of 2002 (P.L. 107-295) addressing this issue in further detail. Even before the September 11 terrorist attacks, an interagency commission issued a report that found, with few exceptions, the level of security at seaports was poor to fair.<sup>52</sup> Today, there is heightened concern that a cargo container or ship’s hull could be used to transport a weapon of mass destruction to the United States that might be detonated in a major seaport.<sup>53</sup> The Act creates a U.S. maritime security system and requires federal agencies, ports, and vessel owners to take numerous steps to upgrade security. The Act requires the Coast Guard to develop national and regional area maritime transportation security plans. It requires further that ports, waterfront terminals, and certain types of vessels to develop and submit to the Coast Guard for approval security and incident response plans.

The Act authorizes the Customs Service to require that cargo manifest information for inbound or outbound shipments be provided to the agency electronically prior to the arrival or departure of the cargo. This information may be

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<sup>48</sup> P.L. 107-206; 116 STAT. 820.

<sup>49</sup> From FY1992 to FY2001, the Coast Guard budget increased from about \$3.6 to \$5.1 billion

<sup>50</sup> The House Committee on Transportation and Infrastructure recommended that the Coast Guard remain in DOT, a new Coast Guard Vice Commandant for Homeland Security be created, and all core missions be performed at adequate levels, but this proposal failed to pass.

<sup>51</sup> See CRS Report RS21019, *Coast Guard Deepwater Program: Background and Issues for Congress*, by Ronald O’Rourke.

<sup>52</sup> *Report of The Interagency Commission on Crime and Security in U.S. Seaports*. Washington, Fall 2000. P. 169.

<sup>53</sup> For further information, see CRS Report RS21293, *Terrorist Nuclear Attacks on Seaports: Threat and Response*, by Jon Medalia.

shared with other appropriate federal agencies. The DHS Secretary is required to assess the security measures of foreign ports engaged in trade with the United States. If a foreign port does not maintain effective antiterrorism measures, the United States may prescribe conditions for vessels arriving in U.S. waters from those ports or deny their entry. The Act also tasks the Department of Transportation with determining the level of funding needed to finance a grant program for security upgrades, and charges the Maritime Administration with allocating such grants in a “fair and equitable” manner to port authorities, terminal operators, and state and local governments. It also authorizes \$90 million in grants for research and development to improve cargo inspection, nuclear materials detection, and the physical security of marine shipping containers.

### **Transportation Security: An Evolving Federal Activity<sup>54</sup>**

The Homeland Security Act of 2002 (P.L. 107-296) transfers the Transportation Security Administration (TSA) to the DHS Directorate of Border and Transportation Security, and requires that TSA be maintained as a distinct entity within the DHS for 2 years after enactment. TSA, founded by the Aviation and Transportation Security Act (ATSA),<sup>55</sup> is responsible for the security of *all modes of transportation*. Because aircraft were used as weapons in the September 11, 2001, attacks and ATSA’s tight aviation security deadlines for programs initiated in the wake of the attacks, TSA’s early efforts have focused on aviation security.<sup>56</sup> Notwithstanding the need to secure other modes of transportation, the rising TSA budget and estimates of the agency’s eventual size have sparked controversy.

According to TSA, the agency’s total appropriation for FY2002 was \$5.8 billion.<sup>57</sup> Early estimates of TSA’s personnel needs were in the range of 28,000 to 33,000 employees. More recent estimates have been in the range of 60,000 to 70,000 employees. The agency asserts that this increase in funding and personnel is largely an outgrowth of ATSA’s tight implementation guidelines and especially the

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<sup>54</sup> This section was prepared by Robert Kirk.

<sup>55</sup> P.L. 107-71; 115 STAT. 597.

<sup>56</sup> On November 18, 2002, Secretary of Transportation, Norman Mineta, announced that TSA had met ATSA’s one year after enactment deadline for deploying federal screeners at all screening stations at all 429 commercial service airports. This was one of the two exceptionally demanding ATSA deadlines that many observers predicted that ATSA would fail to meet. The second exceptionally demanding deadline is the upcoming December 31, 2002 deadline for 100% Explosive Detection Systems (EDS) screening of checked baggage. Currently, TSA’s goal is to have EDS screening of all baggage at more than 400 airports by the deadline. A combination of electronic screening, in some cases augmented by other congressionally authorized techniques, are to be used at these airports, until 100% EDS baggage screening can be in place and operating.

<sup>57</sup> Of this amount, \$5.2 billion was for aviation security, including: \$2.3 billion for passenger screening; \$1.9 billion for baggage screening; and \$944 million for security direction and enforcement. In addition, for FY2002, the TSA budget included: \$261 million for maritime and land security; \$1.5 million for intelligence; \$164 million for research and development; and \$244 million for headquarters staff, start-up costs, administrative contracts, and information technology projects.

requirement that all checked baggage be screened by explosive detection systems (EDS) by December 31, 2002.<sup>58</sup> The Homeland Security Act provides for a process whereby airports may request and the Under Secretary for Transportation Security may extend by one year the ATSA December 31, 2002, deadline that all checked baggage be screened by explosive detection systems (EDS). In addition, the bill prohibits the new department from receiving any funding from the various transportation trust funds.<sup>59</sup>

Under ATSA, the design of TSA was influenced significantly by the decision to put the proposed agency in the Department of Transportation. While TSA's security mandate covers both domestic and international transportation, its international transportation security role overlaps with border security. For example, when TSA baggage screeners prevent someone with ill intent from boarding an international flight, this could be viewed as a border security activity. Also, when TSA sky marshals provide security on international flights departing from airports abroad, this could also be viewed as a border security activity. Nonetheless, how TSA's security functions will be merged or coordinated with border management agencies, like the new Bureau of Border Security (formerly INS enforcement programs), Customs, and the Coast Guard, has yet to be specified.

## **Federal Building Security<sup>60</sup>**

The Homeland Security Act of 2002 (P.L. 107-296) transfers the Office of Federal Protective Service (FPS) to the DHS Directorate for Border and Transportation Security. FPS was formerly part of the Public Buildings Service (PBS) at the General Services Administration (GSA). Under PBS, approximately 7,000 contract security personnel supplement nearly 1,400 FPS employees.<sup>61</sup> FPS delivers integrated security and law enforcement services to all federal buildings that GSA owns, controls, or leases, providing protection to federal employees and visitors in about 8,300 properties within the United States. Services provided by FPS include:<sup>62</sup>

- ! Providing a visible uniformed presence in major federal facilities
- ! Responding to criminal incidents and other emergencies
- ! Installing and monitoring security devices and systems
- ! Investigating criminal incidents

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<sup>58</sup> Checked baggage screeners were not included in the early personnel estimates.

<sup>59</sup> The latter TSA provisions emerged from a contentious mark up meeting of the House Select Committee on Homeland Security on July 22, 2002 on H.R. 5005.

<sup>60</sup> This section was prepared by Elaine Halchin.

<sup>61</sup> Information provided in a facsimile by the Office of Federal Protective Service, May 9, 2002.

<sup>62</sup> General Services Administration. Security and Law Enforcement Services – Frequently Asked Questions. Available at [<http://www.gsa.gov/>]. Last visited on August 9, 2002. Click on “FAQs.” Click on “Federal Protective Service Information on Chemical, Biological and Bomb Threats.” Click on “Office of Federal Protective Service.” Click on the document cited above.

- ! Conducting physical security surveys
- ! Coordinating a comprehensive program for occupant agencies' emergency plans
- ! Providing formal crime prevention and security awareness programs
- ! Providing police emergency and special security services during natural disasters, major civil disturbances, and other incidents and emergencies

It is notable that many agencies are responsible for securing their buildings and protecting their personnel. These include agencies and associated facilities that: (1) are exempted statutorily from GSA's authority; (2) have requested and received a delegation of security authority from GSA; or (3) have independent real property authority.<sup>63</sup> At the same time, any federal agency may contract with FPS for security services. Provisions in the Homeland Security Act allow the GSA Administrator to retain the authority to collect such fees and authorize the transfer of funds from the rents and fees collected by GSA to DHS. The Act also requires that these funds be used solely for the protection of buildings and grounds owned or occupied by federal government entities. Furthermore, it would prohibit the DHS Secretary from obligating amounts in the Federal Buildings Fund.

### **Federal Law Enforcement Training Center<sup>64</sup>**

The Homeland Security Act of 2002 (P.L. 107-296) transfers the Federal Law Enforcement Training Center (FLETC) to the DHS Directorate of Border and Transportation Security. FLETC was formerly part of the Department of Treasury. While federal law enforcement agencies have different training needs and federal law enforcement officers (police, inspectors, and investigators) receive training from many sources, federal agencies often send their personnel to FLETC for various levels of training, ranging from basic training to more advanced investigative techniques on such topics as financial or computer crime. The main FLETC campus is located in Glynco, Georgia. For FY2002, Congress provided \$132 million for FLETC. An additional \$46 million in offsetting fee collections was available for center operations, bringing the FLETC net budget authority to \$178 million.

The Homeland Security Act also includes provisions stating that the enactment would not affect law enforcement training agreements already entered into, and all FLETC activities would be continued in the same locations as prior to enactment. One rationale for transferring FLETC to the DHS Directorate of Border and Transportation Security is that the new directorate will be hiring additional staff in the coming years. In addition, with the Customs Services being transferred to the new directorate, the Secret Service to DHS, and the Bureau of Alcohol, Tobacco, and

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<sup>63</sup> Twenty-six agencies have independent real property authority. The list includes, for example, all 13 executive departments, the Federal Emergency Management Agency, the General Services Administration, and the U.S. Postal Service. (U.S. Department of Justice, *Vulnerability Assessment of Federal Facilities*. Washington, DC, U.S. Department of Justice, 1995. p. H-2.)

<sup>64</sup> This section was prepared by William Krouse.

Firearms to the Department of Justice, FLETC would have been the lone law enforcement entity within the Department of the Treasury.

## Office for Domestic Preparedness<sup>65</sup>

The Homeland Security Act of 2002 (P.L. 107-296) transfers the Office for Domestic Preparedness to the DHS Directorate of Border and Transportation Security. ODP, formerly part of the Office of Justice Programs at the Department of Justice,<sup>66</sup> provides federal training, equipment grants, and technical assistance to state and local first responders.<sup>67</sup> ODP's activities focus exclusively on preparedness for terrorist attacks – particularly those involving weapons of mass destruction (WMDs). For FY2002, Congress provided \$651 million for ODP.

While ODP offers assistance in a law enforcement context and provides most of its assistance to law enforcement officers, it also offers assistance to fire and rescue personnel, and public health officials. This approach, with an emphasis on law enforcement, was outlined in the Interagency Domestic Terrorism Concept of Operations Plan (CONPLAN), which divides terrorism response into two categories: *consequence management* – responding to and recovering from attacks; and *crisis management* – investigating crime scenes and pursuing terrorists.<sup>68</sup> The Bush Administration, however, does not support the distinction between consequence and crisis management, calling it an “artificial distinction.”<sup>69</sup> In its FY2003 proposed budget, the Administration proposed transferring ODP to FEMA, and consolidating about \$3.5 billion in existing and proposed preparedness assistance programs for state and local first responders in a single formula grant program to be administered by FEMA.<sup>70</sup>

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<sup>65</sup> This section was prepared by Ben Canada. For more information on domestic preparedness issues, see CRS Report RL31490, *Department of Homeland Security: State and Local Preparedness Issues*, by Ben Canada.

<sup>66</sup> The ODP web site is: [<http://www.ojp.usdoj.gov/odp/>].

<sup>67</sup> Other federal agencies offer preparedness assistance with a consequence management focus: (1) FEMA's Office for National Preparedness, for example, provides grants for planning, equipment, and exercises, and provides technical assistance; (2) the U.S. Fire Administration and the Emergency Management Institute, also located within FEMA, provides a wide array of training to state and local responders; and (3) the Department of Health and Human Services (HHS), through its Office of Emergency Preparedness, seeks to coordinate the resources of local governments to prepare for weapons of mass destruction incidents. For further information, see CRS Report RL31227, *Terrorism Preparedness: Catalog of Selected Federal Assistance Programs*, coordinated by Ben Canada.

<sup>68</sup> The CONPLAN is available from the Federal Bureau of Investigation's web site at [<http://www.fbi.gov/publications/conplan/conplan.pdf>].

<sup>69</sup> Office of Homeland Security, *Department of Homeland Security* (Washington: GPO, June 2002), pp. 13-14.

<sup>70</sup> For further information on the formula grant proposal, see CRS Report RL31475, *First Responder Initiative: Policy Issues and Options*, by Ben Canada.

The Homeland Security Act expands ODP's mission from supervising terrorism preparedness training and assistance programs to also include coordinating state and local preparedness efforts on a national basis. Other agencies charged with consequence management functions, like FEMA and the HHS Office for Emergency Preparedness are transferred to the Emergency Preparedness and Response Directorate, along with the FBI's National Domestic Preparedness Office and Domestic Emergency Support Team. These transfers effectively split responsibility for preparedness assistance programs between the Directorate of Border and Transportation Security and the Directorate of Emergency Preparedness and Response.<sup>71</sup> In part, this split reflects the concern of key policy makers that ODP would lose its focus and expertise on crisis management and law enforcement training if wholly transferred to the Directorate of Emergency Preparedness and Response, the cornerstone of which is FEMA.<sup>72</sup>

## Issues for Congress

To more effectively address the increased threat of terrorism, Congress passed legislation that establishes the cabinet-level Department of Homeland Security (DHS). To DHS were transferred several federal agencies charged with overseeing elements of border, transportation, federal building security, law enforcement training, and domestic preparedness. The establishment of the new department and its Directorate of Border and Transportation Security raises new issues for Congress. The most immediate issue for the 108<sup>th</sup> Congress will be to work with the Administration to make the new department operational – up and running—at a time when threats to borders and transportation systems are real and arguably imminent. Other corollary issues, listed below, may arise as well.

**Expeditious Consolidation of Agencies and Functions.** In the short run, there is a real risk that the reorganization will make the country more vulnerable to terrorist attacks by disrupting these agencies, dispersing their resources, and distracting their attention from more immediate threat responses and related initiatives. What steps can be taken to maintain the desired expanded focus on counterterrorism and border security while consolidating these agencies? How can any disruption to legitimate travel and commerce caused by an expanded focus on counterterrorism be mitigated?

**Integration and Strategic Focus.** In the long run, after the physical consolidation of these agencies has been completed, many integrative and harmonization of operations steps may still be necessary. How will these agencies (within and without the Directorate) share information needed for border security? How will agreements be struck to more effectively integrate the border inspection activities? How will coordination be improved with the multiple agencies that are left out of the consolidation? Finally, can the activities of the transferred agencies and functions be conducted under a single and unified strategic vision that is built

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<sup>71</sup> For further information, see CRS Report RS21367, *Emergency Preparedness and Response Directorate of the Department of Homeland Security*, by Keith Bea, *et al.*

<sup>72</sup> See generally Jason Peckenpugh, "Homeland Security Bill Would Reorganize Federal First Responder Programs," *Government Executive*, Nov. 14, 2002.



around the central mission – counterterrorism – while also incorporating the transferred agencies’ other border management- and transportation security-related missions and activities?

**Border Security and Technology.** Congress has explored, and in many cases adopted, other border and transportation security-related provisions. Many of these provisions center on the concept of extending our border-related activities outward by identifying threats and preventing their arrival at U.S. borders through increased intelligence, preinspection, port security, and leverage of 21<sup>st</sup> Century technologies. With regard to technology, Congress has passed legislation to require (1) greater information sharing across agencies and departments through interoperable computer systems; (2) greater use of biometrics to verify the identity of travelers, and (3) the submission of electronic manifests from airlines and shippers prior to arrival. In addition, the Administration, with Congressional support, has explored new inspection and compliance processes that are designed not only to increase security, but also to facilitate legitimate cross border travel and commerce. How quickly and effectively can these provisions be implemented and these new technologies be brought online to improve threat detection, while keeping borders open to legitimate cross-border travel and commerce moving?

**Adequate Funding and Staffing.** Outside observers, including the Congressional Budget Office<sup>73</sup> and General Accounting Office,<sup>74</sup> cautioned that establishing the Department of Homeland Security would increase costs. Several questions arise here. How can costs be reduced through eliminating redundancies, or will it be necessary to increase spending to more fully integrate disparate systems and operations? Should funding be increased for other more specific border security- and transportation-related initiatives, such as continuing the development and implementation of automated interoperable information systems that track persons and merchandise (possibly international terrorists and instruments of terror) entering the United States, or by putting additional inspectors and agents on the border?

**Efficient Deployment of Resources.** In response to narcotics trafficking and illegal immigration, Congress increased resources for the Customs Service and INS. The lion’s share of these increased resources were deployed to the southern tier of the United States, the Caribbean and the Southwest border with Mexico. How will existing resources and future supplemental resources be deployed to all the U.S. borders and preinspection sites abroad to most effectively prevent future terrorist

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<sup>73</sup> Based on the assumption that the necessary amounts were appropriated, CBO estimates that implementing the Homeland Security Act (H.R. 5005, as introduced) would cost about \$4.5 billion over the FY2003 to FY2007 period, and estimated that implementing the National Homeland Security and Combating Terrorism Act (S. 2452, as introduced) would cost about \$10.6 billion over the same time period. These amounts were in addition to the funding necessary to maintain the ongoing activities of the transferred agencies. Neither estimate separated out costs associated with establishing the Border and Transportation Security division/directorate.

<sup>74</sup> U.S. General Accounting Office, GAO-02-957T, *Homeland Security: Critical Design and Implementation Issues*, Statement of David Walker Comptroller General of the United States, (Washington: July 17, 2002), p. 20. [<http://www.gao.gov/new.items/d02957t.pdf>]

attacks while simultaneously deterring other illegal activities and facilitating legitimate cross-border trade and travel?

**Coast Guard and Inter-Departmental Coordination.** There is growing recognition that U.S. seaports and maritime traffic are vulnerable to terrorist attacks. How will the efforts and activities of the Coast Guard and the Directorate of Border and Transportation Security be coordinated within the Department of Homeland Security?

**Transportation Security.** Congress created and charged the Transportation Security Administration with securing *all modes of transportation*. In addition, the vast majority of TSA's counterterrorism efforts will be directed toward protecting *domestic* transportation. How and when will TSA provide increased security for non-aviation modes of transportation? What mechanisms will be necessary to coordinate the activities of TSA with border agencies, like the new Bureau of Border Security, Customs, and the Coast Guard?

**Federal Building Security.** The Federal Protective Service (FPS) is a relatively small agency charged with providing law enforcement services in GSA buildings. Located in the Border and Transportation Security Directorate, will FPS continue to provide the same level of security services to federal agencies? Or will those services be increased? Will FPS's mission change to encompass a wider range of activities related to homeland security?

**Federal Law Enforcement Training.** The Federal Law Enforcement Training Center (FLETC) provides various levels of training to federal police, inspectors, and investigators on levels ranging from basic training to advanced investigative techniques. It is likely that the new department and directorate will receive many new law enforcement positions for which recruits will need to be trained at FLETC, but the center also provides training for numerous other non-homeland security agencies. Will FLETC continue to provide the same level of training to non-homeland security agencies, or will it focus on directorate and departmental needs in the future?

**Terrorism Preparedness.** Transferred to the Directorate of Border and Transportation Security, the Office for Domestic Preparedness (ODP) is charged with coordinating state and local preparedness efforts and supervising terrorism preparedness grant programs. Will ODP's activities complement those of the transferred border and transportation security agencies that were also transferred to the Directorate? Will ODP's new responsibilities constitute a major new mission for the directorate on par with border and transportation security? To what extent will ODP's efforts to coordinate state and local terrorism preparedness overlap with those of the DHS Directorate of Emergency Preparedness and Response?