A. Background

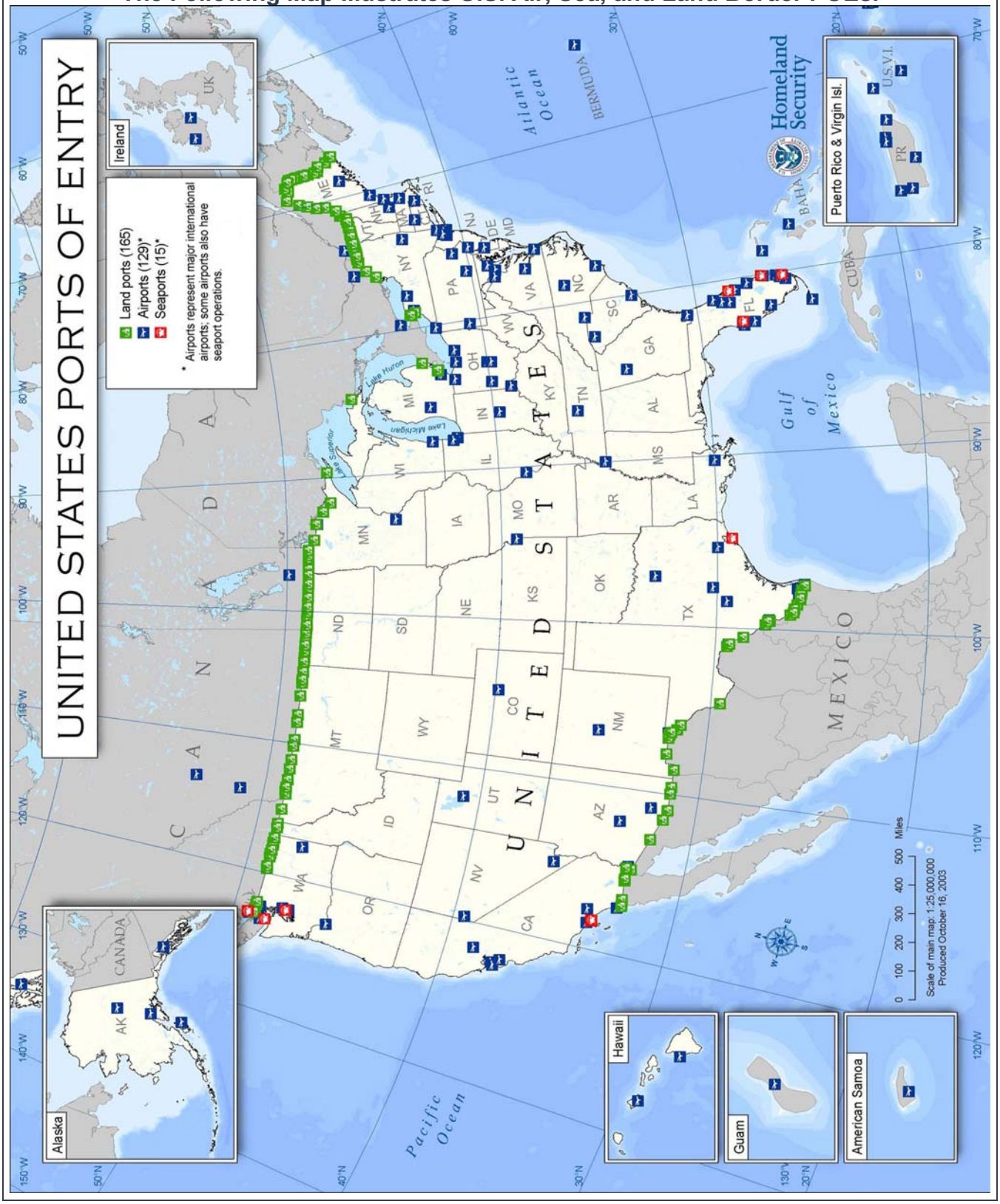
General: The U.S. shares a 5,525-mile border with Canada and a 1,989-mile border with Mexico. Our maritime border includes 95,000 miles of shoreline and navigable waterways as well as a 3.4 million square mile exclusive economic zone. Additionally, there are many international airports throughout the country. All people and goods entering the U.S. legally by air, land, or sea must enter through one of over 300 controlled Ports-of-Entry (POE). A POE is a geographical location, such as an airport, a seaport, or a land or river crossing that is the inspection point for the enforcement of immigration and customs laws and regulations and agricultural import restrictions. According to U.S. Government statistics, over 448 million people passed through POEs into the U.S. in 2002, as well as an enormous volume of trade: $1.4 trillion in imports and $974 billion in exports. This represents a decrease in some areas when compared to 2001[1], but is reflective of the time period, including and immediately following the terrorist attacks on September 11, 2001.

The Administration recognizes the importance of border control. In its Homeland Security Strategy, the White House stated that:

> "America's borders – land, air or sea – are the boundaries between the United States and the rest of the world. The massive flow of people and goods across our borders helps drive our economy, but can also serve as a conduit for terrorists, weapons of mass destruction, illegal migrants, contraband, and other unlawful commodities. The new threats and opportunities of the 21st century demand a new approach to border management. President Bush envisions a border that is grounded on two key principles:
>
> - First, America's air, land, and sea borders must provide a strong defense for the American people against all external threats, most importantly international terrorists but also drugs, foreign disease, and other dangerous items.
> - Second, America's border must be highly efficient, posing little or no obstacle to legitimate trade and travel."[2]

[1] 2001 statistics show over 510 million people, $1.35 trillion in imports, and $1 trillion in exports passing through POEs in 2001.
[2] http://www.whitehouse.gov/homeland/homeland_security_book.html#10. August 26, 2003.

The Following Map Illustrates U.S. Air, Sea, and Land Border POEs.



Economically, it is vital that legitimate traffic (both people and goods) continue to move efficiently across our borders through POEs and that known travelers/goods[3] be facilitated. At the same time, it is critical to our country that undocumented people and illicit goods not be allowed to cross the borders and enter the U.S. Meeting these two needs is a constant challenge for those involved in border management, including the Data Management Improvement Act (DMIA) Task Force.

The Data Management Improvement Act Task Force: The DMIA Task Force was established by the DMIA of 2000 to make recommendations on cross-border traffic, security, and coordination. Task Force members were chosen to represent the broad spectrum of interests related to immigration and naturalization, travel and tourism, transportation, trade, law enforcement, national security, and the environment. The 17 Task Force members include nine from the private sector, two representing state and local governments, five from federal departments, and the chairperson, designated by the Secretary of the Department of Homeland Security (DHS). (See Appendix A, Task Force Components). The DMIA specifically charges the Task Force to evaluate and make recommendations on the following:

1. How to carry out section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) as amended (relating to an electronic, integrated entry/exit data system);

2. How the U.S. can improve the flow of traffic at airports, seaports, and land border POEs through: A) enhancing systems for data collection and data sharing, including the electronic, integrated entry/exit data system, by better use of technology, resources, and personnel; B) increasing cooperation between the public and private sectors; C) increasing cooperation among federal agencies and among federal and state agencies (interpreted to include local government agencies); and D) modifying information technology systems while taking into account the different data systems, infrastructure, and processing procedures of airports, seaports, and land border POEs; and

3. The cost of each of its recommendations.

The DMIA also specifies that "the Attorney General, in consultation with the Secretary of State, the Secretary of Commerce, and the Secretary of the Treasury, should consult with affected foreign governments to improve border management cooperation."[4]

The Task Force's mission is defined by legislation, but the Task Force has also been affected by certain mandates and changes in environment.[5] For example, in 2002-2003, the actions of the Task Force were greatly affected by the development of DHS. Subsequent sections of this chapter describe legislative mandates that affect the mission of the Task Force, including

[3] The term "known traveler/goods" is used throughout this report to refer to people and goods that have undergone certain background checks, increased security measures, and enrolled in programs designed to facilitate low-risk traffic.
[4] This was amended by the bill creating the Department of Homeland Security wherein these responsibilities were transferred to the Secretary, DHS, from the Attorney General.
[5] The DMIA required the establishment of the Task Force within 6 months of its enactment in December of 2000. However, following the change in administration in 2001, the new leadership reviewed the Task Force before giving approval to proceed in the late fall of 2001.

information on the development of DHS and its effect on the Task Force, and the Task Force's initiatives in 2003.

B. Task Force Initiatives

In 2002 the Task Force presented its first report to the Senate and House Judiciary Committees as required by the DMIA. The 2002 report to Congress focused on recommendations for the electronic, integrated entry/exit system (now called the U.S. Visitor and Immigrant Status Indicator Technology [US-VISIT] Program). Updated information on this topic and other issues explored last year are included in Chapter 6 of this report. In 2003 the Task Force focused on three main areas: facilities and infrastructure, cooperation and coordination, and information technology (IT) interoperability.

The Task Force convened in January of 2003 for an administrative and planning meeting. Later in January, the Task Force was briefed on facilities and infrastructure by the Transportation Security Administration (TSA), International Council of Cruise Lines (ICCL), General Services Administration (GSA), Federal Highways Administration (FHWA), U.S. Coast Guard (USCG), Border Station Partnership Council (BSPC), the legacy Immigration and Naturalization Service (INS) Office of Facilities and Engineering, American Association of Port Authorities (AAPA), and Airports Council International--North America (ACI-NA). In addition, Task Force members briefed each other on the past and present cooperation and coordination initiatives of their various organizations regarding border management. At the first public meeting, on February 21, 2003, members decided to schedule several fact-finding trips to different regions (including California, New Mexico, Arizona, Texas, Mexico, Canada, Washington State, and Florida) to collect information for the 2003 report. The 2003 sites build on fact-finding trips in 2002 to Michigan, New York, California, Texas, Virginia, Maryland, Canada, and Mexico. The sites were selected to allow the Task Force the opportunity to observe the greatest variety of facilities, modes of transportation, size and type of POE, and interaction with industry, state and local governments, and communities.

In April, the Task Force made its first 2003 site visit to Los Angeles, Long Beach, and San Diego, California. This fact-finding mission included an overview of facilities and operations at Los Angeles International Airport and briefings and demonstrations of airport operations, facilities, and automated inspections projects from the U.S. Customs and Border Protection[6] (CBP) officials. Task Force members also viewed facilities and operations at the Port of Los Angeles and the Port of Long Beach and were briefed and given demonstrations on seaport operations by CBP and TSA officials, the USCG, officials of the Port of Los Angeles, Port Authority Police, and officials of Carnival Cruise Lines. On May 1, 2003, the Task Force toured San Ysidro and Otay Mesa POEs and was given briefings on land border operations, facilities, and automated inspections projects by CBP officials.

The Task Force's next site visit was to Los Alamos and Santa Fe, New Mexico, in June for a workshop on IT interoperability and border management issues hosted by Los Alamos National Laboratory (LANL). Technical representatives from the many agencies and bureaus that own and operate the systems currently involved in border management were also included

[6] Initially established as the Bureau of Customs and Border Protection.

in the workshop. Lawrence Livermore and Sandia National Laboratories also participated in these briefings. These briefings helped the Task Force understand the complexities as well as the benefits inherent in IT systems.

Later that month, the Task Force visited the CBP field operations office in Tucson and the Nogales and Mariposa POEs in Arizona. The Task Force was briefed and given demonstrations of land border operations, facilities, and automated inspections projects by CBP officials. The Task Force then visited the CBP field operations office in El Paso, the Bridge of the Americas and Paseo del Norte POEs in Texas, and Santa Theresa POE in New Mexico. The Task Force viewed the U.S. Border Patrol's (USBP) El Paso sector and toured the U.S. Consulate in Ciudad Juarez, Chihuahua, Mexico. This visit allowed the Task Force to observe land border crossings and the border control capabilities of the USBP. The Task Force visit to the Consulate enabled Task Force members to observe the visa issuance process. The Task Force then held a stakeholders' meeting in El Paso.

In July members of the Task Force made a site visit to CBP field operations offices in Vancouver, Canada, and Blaine and Seattle, Washington. Members viewed facilities and operations at the CBP field offices at Vancouver International Airport, the Pacific Highway and Peace Arch POEs, Seattle-Tacoma International Airport, the ferry terminal at Pier 69, and the Pier 30 Cruise Terminal in Seattle. The Task Force was briefed and given demonstrations on land border (vehicle and rail) operations, airport operations, seaport operations, facilities, automated inspections projects (NEXUS), and pre-inspections projects from CBP and TSA officials. The Task Force also talked with industry and local government representatives.

In August members of the Task Force traveled to Miami to view facilities and operations of the USCG, Miami Dade Port Authority, Miami International Airport (MIA), and the Port of Miami. The Task Force was given briefings by CBP, ICCL, AAPA, and TSA and talked with industry representatives.

Task Force members' observations from the site visits were compiled and integrated into this report. Based on these observations, the Task Force identified issues regarding facilities and infrastructure, cooperation and coordination, and IT interoperability. The Task Force had a closed meeting, published in the Federal Register, on September 23, 2003, during which members reached consensus on 12 recommendations to address the issues identified that they will send to Congress this year. These recommendations are also included in this report. The Task Force will work through the fall to finalize its report to Congress due on December 31 of this year.

C. PURPOSE OF REPORT

The Task Force is required to submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate containing the findings, conclusions, and recommendations of the Task Force by December 31, 2002, and by December 31 every year thereafter that the Task Force is in existence. Each report will also measure and evaluate how much progress the Task Force has made, how much work remains, how long the remaining work will take to complete, and the cost of completing the remaining work. The first report,

submitted in December 2002, was very well received and can be found in its entirety on the DMIA web site at www.immigration.gov.[7] This year's report details the findings of the Task Force in 2003 and includes recommendations to Congress for the improvement of cooperation and coordination, facilities and infrastructure, and IT interoperability. Subsequent chapters explain each topic in more detail and provide information on resources and updates to issues explored in 2002.

D. LEGISLATIVE MANDATES

Department of Homeland Security (DHS)

In the aftermath of the terrorist attacks against America on September 11, 2001, President George W. Bush decided 22 previously disparate domestic agencies needed to be coordinated into one department to better protect the nation against threats. On November 25, 2002, the President signed the bill creating DHS, and on January 24, 2003, the new Department came into existence. By law the DHS Secretary had one year from the time the Department became effective to bring all of the 22 agencies into the new organization, but most of the larger component parts were required to move into the new Department by March 1, 2003.

The development of DHS was meant to solve many of the border management problems that plagued previous agencies and to streamline coordination and chain of command. The Homeland Security Act of 2002 describes the mission of the Department, in part, as follows:

> "The primary mission of the Department is to:
>
> - Prevent terrorist attacks within the U.S.;
> - Reduce the vulnerability of the U.S. to terrorism . . . ;
> - Ensure that the overall economic security of the U.S. is not diminished by efforts, activities, and programs aimed at securing the homeland;
> - Monitor connections between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and otherwise contribute to efforts to interdict illegal drug trafficking."

The Department will apply laws that impact who and what enters the U.S. in order to prevent the entry of terrorists while facilitating the legitimate flow of people, goods, and services on which our economy depends. Major initiatives include the following:

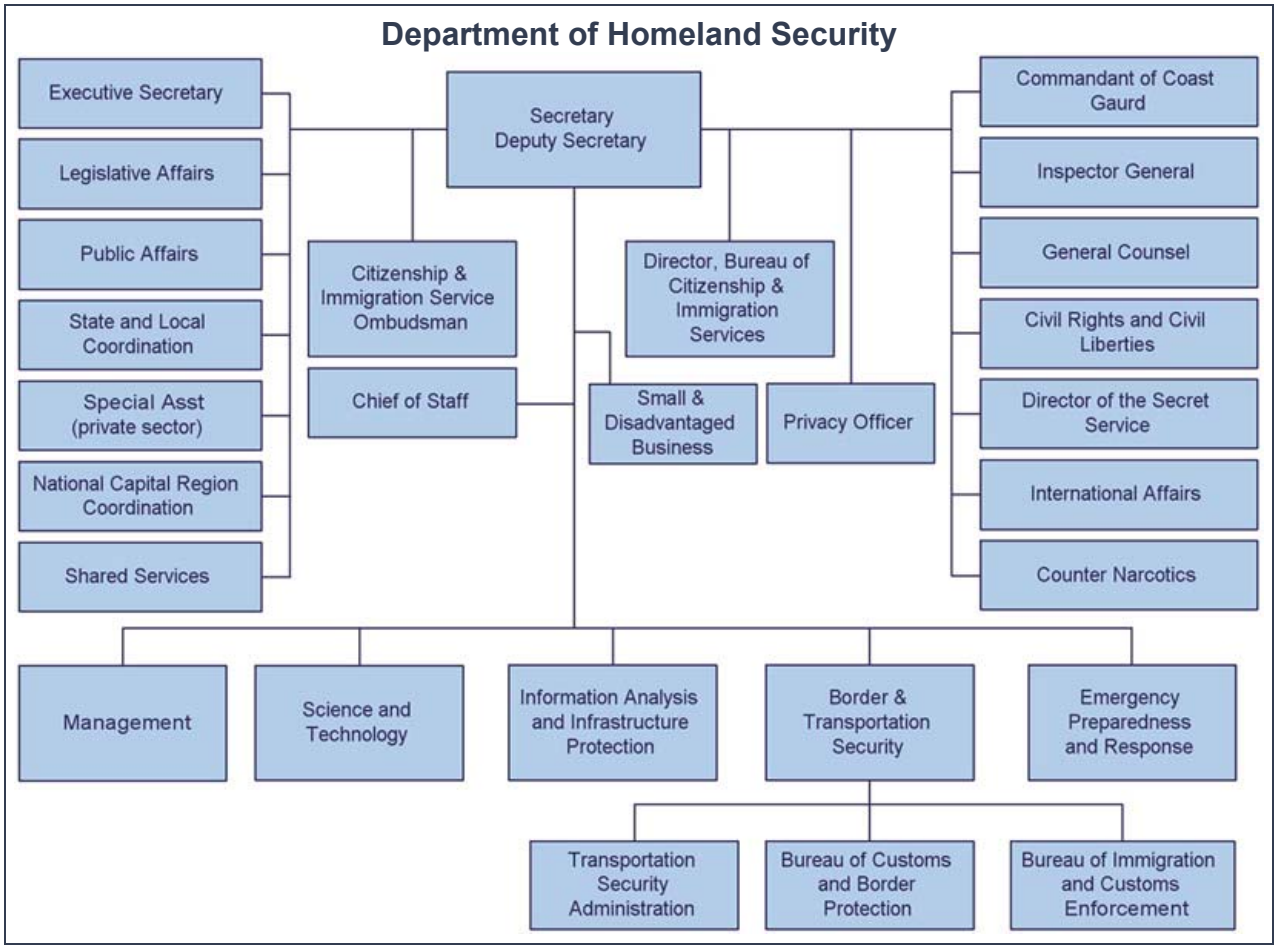
- Ensure accountability in border and transportation security by consolidating the border and transportation security agencies (INS, United States Custom Service [USCS], USCG, TSA, and the Animal and Plant Health Inspection Service [APHIS]) under DHS.[8] The Department will establish visa policies through Department of State (DOS) and coordinate the border control activities of all federal agencies not incorporated within the new Department.

[7] For direct access to the report, the full address is as follows: www.immigration.gov/graphics/shared/lawenfor/bmgmt/inspect/dmia.htm.
[8] These agencies are referred to as "legacy" agencies throughout this report.

- Create “smart borders” that provide better security through risk management, better intelligence, coordinated national efforts, and international cooperation against the threats posed by terrorists and criminal activities. At the same time, the future border will be increasingly transparent to the efficient flow of people, goods, and conveyances engaged in legitimate economic and social activities.

- Reform immigration services by separating legacy INS enforcement and service functions within the new Department. This reform aims to ensure full enforcement of the laws regulating admissions and to improve benefits to applicants.

The agencies or specific functions of agencies that became part of DHS have been organized into five major directorates: Border and Transportation Security, Emergency Preparedness and Response, Management, Science and Technology, and Information Analysis and Infrastructure Protection. The Secret Service and USCG are also located in DHS, remaining intact and reporting directly to the Secretary. In addition, the legacy INS adjudications and benefits programs, part of the U.S. Citizenship and Immigration Services,[9] report directly to the Deputy Secretary.



[9] Initially established as the Bureau of Citizenship and Immigration Services.

Directorate of Border and Transportation Security (BTS): BTS is currently led by Under Secretary Asa Hutchinson and is responsible for maintaining the security of our nation's borders and transportation systems. BTS brings the major border security and transportation operations under one roof, including:

- The USCS (from Department of Treasury);
- Most of the INS (from Department of Justice);
- The Federal Protective Service (from GSA);
- The TSA (from Department of Transportation);
- Federal Law Enforcement Training Center (from Department of Treasury);
- Part of APHIS (from Department of Agriculture); and
- Office for Domestic Preparedness (from Department of Justice).

Section 402 of the Homeland Security Act of 2002 describes the responsibilities of the BTS Directorate in part as:

- "Preventing the entry of terrorists and the instruments of terrorism into the United States;
- Securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States, including managing and coordinating those functions transferred to the Department at ports of entry;
- Carrying out immigration enforcement functions; . . .
- Establishing and administering rules in accordance with section 428 of the Homeland Security Act governing the granting of visas or other forms of permission, including parole, to enter the U.S.; . . .
- Administering the customs laws of the U.S.;
- Conducting the inspection and related administrative functions of the Department of Agriculture; . . .
- Carrying out the foregoing responsibilities, ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce."

Within BTS there are three bureaus, each with a specific mission: CBP, U.S. Immigration and Customs Enforcement[10] (ICE), and TSA.

U.S. Customs and Border Protection (CBP): CBP is dedicated to securing the borders. This bureau has consolidated incoming agencies into "one face at the border" by establishing a new organizational framework that integrates all of the border agencies into one chain of command. "One face at the border" is the establishment of a single CBP officer who will interact with the traveling public and facilitate the entry of legitimate goods at the nation's POEs, rather than different officers conducting various types of inspections, as was the traditional method. By combining resources, skills, and best practices of the separate agencies into a unified workforce, CBP can maximize efficiency and focus on the priority mission of preventing terrorists and terrorist weapons from entering the U.S. while facilitating lawful traffic.

This "one-stop processing" will soon be in place at the nation's 300 POEs. The first CBP officers will be hired in late September 2003 and begin training in October. Legacy INS,

[10] Initially established as the Bureau of Immigration and Customs Enforcement.

USCS, and Department of Agriculture inspectors have already been joined at POEs. In spring of 2004, these legacy inspectors will be converted to new officer positions and begin cross-training in all new aspects of their jobs. Each workforce brings with it the traditional missions of their legacy agencies—missions ranging from interdiction of illegal drugs to enforcement of trade and immigration laws, to protection of American agriculture from pests and diseases—and they now all also assume the DHS mission. In addition to officers at POEs, CBP also includes USBP, whose agents are responsible for protecting the U.S. border between POEs.

U.S. Immigration and Customs Enforcement (ICE): ICE is dedicated to investigating criminal violations of immigration and customs laws. This agency combined all the investigative functions of legacy USCS and INS, Air and Marine Operations (AMO) from legacy USCS, and the Federal Protective Service into one bureau. This bureau is essentially responsible for interior enforcement, providing air and marine support, and the security of federal buildings. On September 2, 2003, Secretary Ridge announced that the Federal Air Marshal Service (FAMS) will transfer to ICE. The cross-training of FAMS agents and ICE agents will increase the number of agents who can be deployed in the event of a terrorist attack.

Transportation Security Administration (TSA): The recently created TSA, which is now part of the BTS Directorate, has statutory responsibility for protecting U.S. transportation systems to ensure freedom of movement for people and commerce, including day-to-day federal security screening operations for passenger air transportation and intrastate air transportation.

In addition to the three bureaus, the Office of the Under Secretary, BTS, has several components, one of which is the DMIA Task Force. In March 2003, authority for the DMIA Task Force transferred to DHS. A delegation of authority from the Secretary to the Under Secretary for BTS was given in July 2003. Clearly the legislation creating DHS had a profound effect on the DMIA Task Force, but Congress has passed several other pieces of legislation that affect border management and shape the role of this Task Force. Summaries of such legislation follow in chronological order.

North American Free Trade Agreement (NAFTA): The Customs Modernization Act and Informed Compliance Act were enacted as part of NAFTA implementing legislation in December 1993. Most relevant to the Task Force are Title VI –Customs Modernization and Title IV – National Customs Automation Program.

Through passage of this Act, Congress, at the time, supported an effort they considered crucial in providing legacy USCS, now within CBP, with the necessary tools to successfully redesign its processes for the 21st Century. An implementation plan included various initiatives, including three critical areas for legacy USCS internal operations, and the customs operations of the trade community: the Act allowed legacy USCS to develop a fully automated commercial environment, redesign and restructure its core business-related activities, and reevaluate the culture and work practices of its employees.

The central tenet for establishing the Modernization Act was to reduce the paperwork and simplify the processes for the entry of goods into the U.S. Given the rapid increase in the number of goods that enter our country, both for consumption and production, it is essential

that today's CBP develop systems and programs capable of handling higher trade volumes, while at the same time meeting its enforcement and revenue collection responsibilities.

Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA): In Section 110 of the IIRIRA, Congress directed the Attorney General to develop an electronic, integrated entry/exit system to collect records of arrival and departure from every alien entering and leaving the U.S. The provisions of IIRIRA were aimed at adopting stronger penalties against illegal immigration, streamlining deportation processes (subsequently termed "removal process") by curtailing the legal appeal process, and curbing the ability of terrorists to use the immigration process to enter and operate in the U.S. The latter was also addressed in the Antiterrorism and Effective Death Penalty Act in 1996.

Data Management Improvement Act (DMIA): Congress amended Section 110 on June 15, 2000, with the DMIA which revised and expanded the description of the entry/exit system to be implemented under Section 110. The DMIA also included the provisions establishing this Task Force. At a minimum, the DMIA requires that the entry/exit system must integrate the arrival and departure information on certain aliens in an electronic format in the databases of the Department of Justice (including legacy INS) and DOS. The DMIA contains further requirements for matching arrival and departure information and for reports to Congress, using the available data, on alien overstays. The DMIA (Pub. L. 106-215) can be found in its entirety in Appendix B.

The Visa Waiver Permanent Program Act (VWPPA): The VWPPA, passed by Congress on October 30, 2000, also affected DMIA Task Force activities. The VWPPA specifies procedures for adding countries to the Visa Waiver Program (VWP) and for country removals. A major provision in the VWPPA requires the Attorney General to develop and implement an entry/exit system that will collect a record of arrival and departure for every alien admitted under VWP who arrives and departs by sea or air.

Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act): On October 26, 2001, Congress passed additional legislation affecting entry/exit control. In Sections 414 and 415 of the USA PATRIOT Act, Congress respectively addressed visa integrity and security and participation by the "Office of Homeland Security" in the entry/exit development and implementation process. Section 414 specifically states that the Attorney General should:

- Fully implement the electronic, integrated entry/exit system for airports, seaports, and land border POEs with all deliberate speed; and
- Immediately begin establishing the private and public membership task force required by DMIA to study and make recommendations on an entry/exit system and related border matters.

Most importantly, this legislation added two new considerations: the "utilization of biometric technology" and "the development of tamper-resistant documents readable at POEs." The requirement for biometric technology significantly raises the bar on the development and cost for a viable entry/exit system.

Aviation and Transportation Security Act: On November 19, 2001, Congress passed the Aviation and Transportation Security Act of 2001, which substantially enhanced the security of the aviation and transportation industries. The statute established TSA within the Department of Transportation (DOT) to be responsible for security in all modes of transportation, including:

- Civil aviation security, and related research and development activities;
- Security responsibilities over other modes of transportation that are exercised by DOT;
- Day-to-day federal security screening operations for passenger air transportation and intrastate air transportation;
- Policies, strategies, and plans for dealing with threats to transportation;
- Domestic transportation during a national emergency, including aviation, rail and other surface transportation, maritime transportation, and port security; and
- Management of security information, including notifying airport or airline security officers of the identity of individuals known to pose a risk of air piracy or terrorism or threat to an airline.

Specifically relevant for purposes of the entry/exit system, Section 115 required that within 60 days of the passage of the law, passenger-carrying air carriers must electronically transmit passenger and crew manifest data, with specific data elements, to the legacy USCS via the Advance Passenger Information System (APIS).

Legacy USCS, in cooperation with the legacy INS and the airline industry, initiated development of APIS as a voluntary program in 1988 to collect biographical information from air passengers prior to departure for the U.S. from foreign locations. The Aviation and Transportation Security Act of 2001 made the electronic transmission of advance passenger information (API) mandatory. In January 2003, legacy INS proposed a rule that required sea carriers to send API information. CBP will have a final rule on API published in December 2003.

The Enhanced Border Security and Visa Entry Reform Act of 2002 (BSA): The BSA was enacted on May 14, 2002. The major provisions of the BSA that pertain to the Task Force work are:

- Authorization for the appropriation of $150 million to legacy INS for improvements, expansion, and utilization of technology for border security and facilitating the flow of commerce and people at POEs;
- Requirement for the development of an interoperable law enforcement and intelligence data system (known as “Chimera”);

- Elimination of the existing statutory requirement that the inspection process take no longer than 45 minutes at airports (however, port managers still use this standard as a goal);

- Mandate that all visas and travel and entry documents issued by the Attorney General and the Secretary of State be machine-readable, tamper-resistant, and use biometric identifiers by October 26, 2004;[11]

- Requirement that readers and scanners that allow biometric comparison and authentication of all travel and entry documents be installed at all U.S. POEs;

- Requirement that manifest requirements be clarified and enhanced to include mandatory address while in the U.S. and electronic submission; and

- Mandatory transmission of electronic manifests to an immigration officer (now CBP officer) by all commercial vessels or aircraft transporting any person arriving or departing the U.S.

Trade Act of 2002: Section 343(a) of the Trade Act of 2002 enacted on August 6, 2002, requires that the Secretary develop final regulations by October 1, 2003, that provide for the mandatory collection of electronic cargo information by the legacy USCS (now part of CBP), either prior to the arrival of the cargo in the U.S. or its departure from the U.S. by any mode of commercial transportation (sea, air, rail, or truck). Under section 343(a), as amended, the information required must consist of that information about the cargo which is determined to be reasonably necessary to enable CBP to identify high-risk shipments so as to prevent smuggling and ensure cargo safety and security pursuant to the laws that are enforced and administered by CBP.

Under section 343(a), as amended, the requirement to provide particular cargo information to CBP is generally to be imposed upon the party likely to have direct knowledge of the required information. However, where doing so is not practicable, CBP must take into account how the party on whom the requirement is imposed acquires the necessary information under ordinary commercial practices, and whether and how this party is able to verify the information it has acquired. Where the party is not reasonably able to verify the information, the proposed regulations must allow the party to submit the information on the basis of what it reasonably believes to be true.

The Trade Act also requires CBP to take into consideration the remaining parameters set forth in the statute, including:

- The existence of competitive relationships among parties upon which the information collection requirements are imposed;

[11] In this regard, interagency agreement has been reached to initially use two fingerprints and a photograph as the standard biometric identifiers. DOS has a comprehensive plan for deployment of fingerprint enrollment equipment to all visa-issuing posts, which will phase in the fingerprint requirement for visa applicants in order to meet the October 26, 2004, deadline.

- Differences among cargo carriers that arise from varying modes of transportation, different commercial practices and operational characteristics, and the technological capacity to collect and transmit information electronically;

- The need for interim requirements to reflect the technology that is available at the time of promulgation of the regulations for purposes of the parties transmitting, and CBP receiving and analyzing, electronic information in a timely fashion;

- That the use of information collected pursuant to these regulations is to be only for ensuring cargo safety and security and preventing smuggling and not for determining merchandise entry or for any other commercial enforcement purposes;

- The protection of the privacy of business proprietary and any other confidential cargo information that CBP receives under these regulations, with the exception that certain manifest information is required to be made available for public disclosure under 19 U.S.C. 1431(c);

- Balancing the likely impact on the flow of commerce with the impact on cargo safety and security in determining the timing for transmittal of required information;

- Where practicable, avoiding requirements in the regulations that are redundant with one another or with requirements under other provisions of law; and

- The need, where appropriate, for different transition periods for different classes of affected parties to comply with the electronic filing requirements in the regulations.

The 24-Hour Rule: On October 31, 2002, the legacy USCS promulgated a regulation (RIN 1515-AD11) to be effective December 2, 2002: *Presentation of Vessel Cargo Declaration to Customs Before Cargo Is Laden Aboard Vessel at Foreign Port for Transport to the United States*. The purpose of this regulation, as required by the Trade Act of 2002, is to stipulate "Advance Presentation of Vessel Cargo Manifest to Customs,…pursuant to 19 U.S.C. 1431(d), for any vessel subject to entry under 19 U.S.C. 1434 upon its arrival in the United States, Customs must receive the vessel's cargo manifest (declaration) from the carrier 24 hours before the related cargo is laden aboard the vessel at the foreign port. The proposed rule also enumerated the specific informational elements that would need to be included in the submitted cargo."[12]

Maritime Transportation Security Act (MTSA): Enacted November 25, 2002, the MTSA directs the Secretary of the department in which the USCG operates to prepare a National Maritime Transportation Security Plan for deterring and responding to a transportation security incident. Provisions of the Act increase reporting requirements for vessels and ports, and allow the Secretary of Homeland Security to prescribe conditions for vessels from foreign ports to enter the U.S. The Act also directs the development of a cargo tracking system.

[12] 67 FR 66319

DHS announced the publication of regulations July 1, 2003, requiring sectors of the maritime industry to implement measures designed to protect America's ports and waterways from a terrorist attack. These regulations significantly strengthen the security of our ports by requiring preventive security measures and plans to deter threats and provide a framework for response in the event of an attack. The interim final rules are effective as of July 1, 2003. They will be replaced by final rules by October 25, 2003. Responsibility for implementing the Act transferred with the USCG from DOT to DHS.

The regulations build on a comprehensive port security strategy and range of enhancements directed by the President following the September 11, 2001, terrorist attacks and implement significant portions of MTSA. By requiring completion of security assessments, development of security plans, and implementation of security measures and procedures, these regulations will reduce the risk and mitigate the exposure of our ports and waterways to terrorist activity.

The regulations focus on those sectors of maritime industry and port facilities that have a higher risk of involvement in a transportation security incident and require measures that have three scalable security levels. Measures may include passenger, vehicle, and baggage screening procedures; security patrols; establishing restricted areas; personnel identification procedures; access control measures; and/or installation of surveillance equipment.

The regulations amend other sections of the Code of Federal Regulations to implement Automatic Identification System (AIS) requirements for certain vessels, as required by MTSA. AIS is a system of equipment and technologies that automatically sends detailed ship information to other ships and shore-based agencies. Installing AIS equipment on certain vessels traveling in our waters will allow comprehensive, virtually instantaneous vessel tracking and monitoring, increasing security and safety in our shipping channels and our awareness of maritime activity. The regulations were developed through interagency teamwork within DHS (USCG, TSA, and CBP) and with DOT's Maritime Administration.