

In the Senate of the United States,

November 19, 2002.

Resolved, That the bill from the House of Representatives (H.R. 5005) entitled “An Act to establish the Department of Homeland Security, and for other purposes.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE; TABLE OF CONTENTS.***

2 (a) *SHORT TITLE*.—*This Act may be cited as the*

3 *“Homeland Security Act of 2002”*.

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

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

TITLE I—DEPARTMENT OF HOMELAND SECURITY

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

*TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE
 PROTECTION*

*Subtitle A—Directorate for Information Analysis and Infrastructure Protection;
 Access to Information*

- Sec. 201. Directorate for Information Analysis and Infrastructure Protection.*
Sec. 202. Access to information.

Subtitle B—Critical Infrastructure Information

- Sec. 211. Short title.*
Sec. 212. Definitions.
Sec. 213. Designation of critical infrastructure protection program.
Sec. 214. Protection of voluntarily shared critical infrastructure information.
Sec. 215. No private right of action.

Subtitle C—Information Security

- Sec. 221. Procedures for sharing information.*
Sec. 222. Privacy Officer.
Sec. 223. Enhancement of non-Federal cybersecurity.
Sec. 224. Net guard.
Sec. 225. Cyber Security Enhancement Act of 2002.

Subtitle D—Office of Science and Technology

- Sec. 231. Establishment of office; Director.*
Sec. 232. Mission of office; duties.
Sec. 233. Definition of law enforcement technology.
*Sec. 234. Abolishment of Office of Science and Technology of National Institute
 of Justice; transfer of functions.*
Sec. 235. National Law Enforcement and Corrections Technology Centers.
Sec. 236. Coordination with other entities within Department of Justice.
Sec. 237. Amendments relating to National Institute of Justice.

*TITLE III—SCIENCE AND TECHNOLOGY IN SUPPORT OF HOMELAND
 SECURITY*

- Sec. 301. Under Secretary for Science and Technology.*
*Sec. 302. Responsibilities and authorities of the Under Secretary for Science and
 Technology.*
Sec. 303. Functions transferred.

- Sec. 304. Conduct of certain public health-related activities.*
- Sec. 305. Federally funded research and development centers.*
- Sec. 306. Miscellaneous provisions.*
- Sec. 307. Homeland Security Advanced Research Projects Agency.*
- Sec. 308. Conduct of research, development, demonstration, testing and evaluation.*
- Sec. 309. Utilization of Department of Energy national laboratories and sites in support of homeland security activities.*
- Sec. 310. Transfer of Plum Island Animal Disease Center, Department of Agriculture.*
- Sec. 311. Homeland Security Science and Technology Advisory Committee.*
- Sec. 312. Homeland Security Institute.*
- Sec. 313. Technology clearinghouse to encourage and support innovative solutions to enhance homeland security.*

TITLE IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

Subtitle A—Under Secretary for Border and Transportation Security

- Sec. 401. Under Secretary for Border and Transportation Security.*
- Sec. 402. Responsibilities.*
- Sec. 403. Functions transferred.*

Subtitle B—United States Customs Service

- Sec. 411. Establishment; Commissioner of Customs.*
- Sec. 412. Retention of customs revenue functions by Secretary of the Treasury.*
- Sec. 413. Preservation of customs funds.*
- Sec. 414. Separate budget request for customs.*
- Sec. 415. Definition.*
- Sec. 416. GAO report to Congress.*
- Sec. 417. Allocation of resources by the Secretary.*
- Sec. 418. Reports to Congress.*
- Sec. 419. Customs user fees.*

Subtitle C—Miscellaneous Provisions

- Sec. 421. Transfer of certain agricultural inspection functions of the Department of Agriculture.*
- Sec. 422. Functions of Administrator of General Services.*
- Sec. 423. Functions of Transportation Security Administration.*
- Sec. 424. Preservation of Transportation Security Administration as a distinct entity.*
- Sec. 425. Explosive detection systems.*
- Sec. 426. Transportation security.*
- Sec. 427. Coordination of information and information technology.*
- Sec. 428. Visa issuance.*
- Sec. 429. Information on visa denials required to be entered into electronic data system.*
- Sec. 430. Office for Domestic Preparedness.*

Subtitle D—Immigration Enforcement Functions

- Sec. 441. Transfer of functions to Under Secretary for Border and Transportation Security.*
- Sec. 442. Establishment of Bureau of Border Security.*

- Sec. 443. Professional responsibility and quality review.*
Sec. 444. Employee discipline.
Sec. 445. Report on improving enforcement functions.
Sec. 446. Sense of Congress regarding construction of fencing near San Diego, California.

Subtitle E—Citizenship and Immigration Services

- Sec. 451. Establishment of Bureau of Citizenship and Immigration Services.*
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Sec. 453. Professional responsibility and quality review.
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Sec. 455. Effective date.
Sec. 456. Transition.
Sec. 457. Funding for citizenship and immigration services.
Sec. 458. Backlog elimination.
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Sec. 461. Application of Internet-based technologies.
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Subtitle F—General Immigration Provisions

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Sec. 472. Voluntary separation incentive payments.
Sec. 473. Authority to conduct a demonstration project relating to disciplinary action.
Sec. 474. Sense of Congress.
Sec. 475. Director of Shared Services.
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Sec. 477. Reports and implementation plans.
Sec. 478. Immigration functions.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

- Sec. 501. Under Secretary for Emergency Preparedness and Response.*
Sec. 502. Responsibilities.
Sec. 503. Functions transferred.
Sec. 504. Nuclear incident response.
Sec. 505. Conduct of certain public health-related activities.
Sec. 506. Definition.
Sec. 507. Role of Federal Emergency Management Agency.
Sec. 508. Use of national private sector networks in emergency response.
Sec. 509. Use of commercially available technology, goods, and services.

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- Sec. 601. Treatment of charitable trusts for members of the Armed Forces of the United States and other governmental organizations.*

TITLE VII—MANAGEMENT

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Sec. 702. Chief Financial Officer.
Sec. 703. Chief Information Officer.

Sec. 704. Chief Human Capital Officer.

Sec. 705. Establishment of Officer for Civil Rights and Civil Liberties.

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

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- Sec. 880. Prohibition of the Terrorism Information and Prevention System.*
- Sec. 881. Review of pay and benefit plans.*
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- Sec. 883. Requirement to comply with laws protecting equal employment opportunity and providing whistleblower protections.*
- Sec. 884. Federal Law Enforcement Training Center.*
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- Sec. 886. Sense of Congress reaffirming the continued importance and applicability of the Posse Comitatus Act.*
- Sec. 887. Coordination with the Department of Health and Human Services under the Public Health Service Act.*
- Sec. 888. Preserving Coast Guard mission performance.*
- Sec. 889. Homeland security funding analysis in President's budget.*
- Sec. 890. Air Transportation Safety and System Stabilization Act.*

Subtitle I—Information Sharing

- Sec. 891. Short title; findings; and sense of Congress.*
- Sec. 892. Facilitating homeland security information sharing procedures.*
- Sec. 893. Report.*
- Sec. 894. Authorization of appropriations.*
- Sec. 895. Authority to share grand jury information.*
- Sec. 896. Authority to share electronic, wire, and oral interception information.*
- Sec. 897. Foreign intelligence information.*
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TITLE IX—NATIONAL HOMELAND SECURITY COUNCIL

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- Sec. 902. Function.*
- Sec. 903. Membership.*
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TITLE X—INFORMATION SECURITY

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- Sec. 1002. Management of information technology.*
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- Sec. 1005. Technical and conforming amendments.*
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- Sec. 1102. Authorities of the Attorney General.*
- Sec. 1103. Statutory construction.*

Subtitle B—Transfer of the Bureau of Alcohol, Tobacco and Firearms to the Department of Justice

- Sec. 1111. Bureau of Alcohol, Tobacco, Firearms, and Explosives.*
- Sec. 1112. Technical and conforming amendments.*
- Sec. 1113. Powers of agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives.*
- Sec. 1114. Explosives training and research facility.*
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Subtitle C—Explosives

- Sec. 1121. Short title.*
- Sec. 1122. Permits for purchasers of explosives.*
- Sec. 1123. Persons prohibited from receiving or possessing explosive materials.*
- Sec. 1124. Requirement to provide samples of explosive materials and ammonium nitrate.*
- Sec. 1125. Destruction of property of institutions receiving Federal financial assistance.*
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TITLE XII—AIRLINE WAR RISK INSURANCE LEGISLATION

- Sec. 1201. Air carrier liability for third party claims arising out of acts of terrorism.*
- Sec. 1202. Extension of insurance policies.*
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TITLE XIII—FEDERAL WORKFORCE IMPROVEMENT

Subtitle A—Chief Human Capital Officers

- Sec. 1301. Short title.*
- Sec. 1302. Agency Chief Human Capital Officers.*
- Sec. 1303. Chief Human Capital Officers Council.*
- Sec. 1304. Strategic human capital management.*
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Subtitle B—Reforms Relating to Federal Human Capital Management

- Sec. 1311. Inclusion of agency human capital strategic planning in performance plans and programs performance reports.*
- Sec. 1312. Reform of the competitive service hiring process.*
- Sec. 1313. Permanent extension, revision, and expansion of authorities for use of voluntary separation incentive pay and voluntary early retirement.*
- Sec. 1314. Student volunteer transit subsidy.*

Subtitle C—Reforms Relating to the Senior Executive Service

- Sec. 1321. Repeal of recertification requirements of senior executives.*
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- Sec. 1331. Academic training.*
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TITLE XIV—ARMING PILOTS AGAINST TERRORISM

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Sec. 1708. National Bio-Weapons Defense Analysis Center.
Sec. 1709. Collaboration with the Secretary of Homeland Security.

Sec. 1710. Railroad safety to include railroad security.

Sec. 1711. Hazmat safety to include hazmat security.

Sec. 1712. Office of Science and Technology Policy.

Sec. 1713. National Oceanographic Partnership Program.

Sec. 1714. Clarification of definition of manufacturer.

Sec. 1715. Clarification of definition of vaccine-related injury or death.

Sec. 1716. Clarification of definition of vaccine.

Sec. 1717. Effective date.

1 **SEC. 2. DEFINITIONS.**

2 *In this Act, the following definitions apply:*

3 *(1) Each of the terms “American homeland” and*
 4 *“homeland” means the United States.*

5 *(2) The term “appropriate congressional com-*
 6 *mittee” means any committee of the House of Rep-*
 7 *resentatives or the Senate having legislative or over-*
 8 *sight jurisdiction under the Rules of the House of*
 9 *Representatives or the Senate, respectively, over the*
 10 *matter concerned.*

11 *(3) The term “assets” includes contracts, facili-*
 12 *ties, property, records, unobligated or unexpended bal-*
 13 *ances of appropriations, and other funds or resources*
 14 *(other than personnel).*

15 *(4) The term “critical infrastructure” has the*
 16 *meaning given that term in section 1016(e) of Public*
 17 *Law 107–56 (42 U.S.C. 5195c(e)).*

18 *(5) The term “Department” means the Depart-*
 19 *ment of Homeland Security.*

20 *(6) The term “emergency response providers” in-*
 21 *cludes Federal, State, and local emergency public*

1 *safety, law enforcement, emergency response, emer-*
2 *gency medical (including hospital emergency facili-*
3 *ties), and related personnel, agencies, and authorities.*

4 *(7) The term “executive agency” means an execu-*
5 *tive agency and a military department, as defined,*
6 *respectively, in sections 105 and 102 of title 5, United*
7 *States Code.*

8 *(8) The term “functions” includes authorities,*
9 *powers, rights, privileges, immunities, programs,*
10 *projects, activities, duties, and responsibilities.*

11 *(9) The term “key resources” means publicly or*
12 *privately controlled resources essential to the minimal*
13 *operations of the economy and government.*

14 *(10) The term “local government” means—*

15 *(A) a county, municipality, city, town,*
16 *township, local public authority, school district,*
17 *special district, intrastate district, council of*
18 *governments (regardless of whether the council of*
19 *governments is incorporated as a nonprofit cor-*
20 *poration under State law), regional or interstate*
21 *government entity, or agency or instrumentality*
22 *of a local government;*

23 *(B) an Indian tribe or authorized tribal or-*
24 *ganization, or in Alaska a Native village or*
25 *Alaska Regional Native Corporation; and*

1 (C) a rural community, unincorporated
2 town or village, or other public entity.

3 (11) The term “major disaster” has the meaning
4 given in section 102(2) of the Robert T. Stafford Dis-
5 aster Relief and Emergency Assistance Act (42 U.S.C.
6 5122).

7 (12) The term “personnel” means officers and
8 employees.

9 (13) The term “Secretary” means the Secretary
10 of Homeland Security.

11 (14) The term “State” means any State of the
12 United States, the District of Columbia, the Common-
13 wealth of Puerto Rico, the Virgin Islands, Guam,
14 American Samoa, the Commonwealth of the Northern
15 Mariana Islands, and any possession of the United
16 States.

17 (15) The term “terrorism” means any activity
18 that—

19 (A) involves an act that—

20 (i) is dangerous to human life or po-
21 tentially destructive of critical infrastruc-
22 ture or key resources; and

23 (ii) is a violation of the criminal laws
24 of the United States or of any State or other
25 subdivision of the United States; and

1 (B) appears to be intended—

2 (i) to intimidate or coerce a civilian
3 population;

4 (ii) to influence the policy of a govern-
5 ment by intimidation or coercion; or

6 (iii) to affect the conduct of a govern-
7 ment by mass destruction, assassination, or
8 kidnapping.

9 (16)(A) The term “United States”, when used in
10 a geographic sense, means any State of the United
11 States, the District of Columbia, the Commonwealth
12 of Puerto Rico, the Virgin Islands, Guam, American
13 Samoa, the Commonwealth of the Northern Mariana
14 Islands, any possession of the United States, and any
15 waters within the jurisdiction of the United States.

16 (B) Nothing in this paragraph or any other pro-
17 vision of this Act shall be construed to modify the def-
18 inition of “United States” for the purposes of the Im-
19 migration and Nationality Act or any other immi-
20 gration or nationality law.

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

22 Any provision of this Act held to be invalid or unen-
23 forceable by its terms, or as applied to any person or cir-
24 cumstance, shall be construed so as to give it the maximum
25 effect permitted by law, unless such holding shall be one

1 *of utter invalidity or unenforceability, in which event such*
 2 *provision shall be deemed severable from this Act and shall*
 3 *not affect the remainder thereof, or the application of such*
 4 *provision to other persons not similarly situated or to other,*
 5 *dissimilar circumstances.*

6 **SEC. 4. EFFECTIVE DATE.**

7 *This Act shall take effect 60 days after the date of en-*
 8 *actment.*

9 **TITLE I—DEPARTMENT OF**
 10 **HOMELAND SECURITY**

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

12 *(a) ESTABLISHMENT.—There is established a Depart-*
 13 *ment of Homeland Security, as an executive department of*
 14 *the United States within the meaning of title 5, United*
 15 *States Code.*

16 *(b) MISSION.—*

17 *(1) IN GENERAL.—The primary mission of the*
 18 *Department is to—*

19 *(A) prevent terrorist attacks within the*
 20 *United States;*

21 *(B) reduce the vulnerability of the United*
 22 *States to terrorism;*

23 *(C) minimize the damage, and assist in the*
 24 *recovery, from terrorist attacks that do occur*
 25 *within the United States;*

1 (D) carry out all functions of entities trans-
2 ferred to the Department, including by acting as
3 a focal point regarding natural and manmade
4 crises and emergency planning;

5 (E) ensure that the functions of the agencies
6 and subdivisions within the Department that are
7 not related directly to securing the homeland are
8 not diminished or neglected except by a specific
9 explicit Act of Congress;

10 (F) ensure that the overall economic secu-
11 rity of the United States is not diminished by ef-
12 forts, activities, and programs aimed at securing
13 the homeland; and

14 (G) monitor connections between illegal
15 drug trafficking and terrorism, coordinate efforts
16 to sever such connections, and otherwise con-
17 tribute to efforts to interdict illegal drug traf-
18 ficking.

19 (2) *RESPONSIBILITY FOR INVESTIGATING AND*
20 *PROSECUTING TERRORISM.*—Except as specifically
21 provided by law with respect to entities transferred to
22 the Department under this Act, primary responsi-
23 bility for investigating and prosecuting acts of ter-
24 rorism shall be vested not in the Department, but

1 *rather in Federal, State, and local law enforcement*
2 *agencies with jurisdiction over the acts in question.*

3 **SEC. 102. SECRETARY; FUNCTIONS.**

4 *(a) SECRETARY.—*

5 *(1) IN GENERAL.—There is a Secretary of Home-*
6 *land Security, appointed by the President, by and*
7 *with the advice and consent of the Senate.*

8 *(2) HEAD OF DEPARTMENT.—The Secretary is*
9 *the head of the Department and shall have direction,*
10 *authority, and control over it.*

11 *(3) FUNCTIONS VESTED IN SECRETARY.—All*
12 *functions of all officers, employees, and organizational*
13 *units of the Department are vested in the Secretary.*

14 *(b) FUNCTIONS.—The Secretary—*

15 *(1) except as otherwise provided by this Act, may*
16 *delegate any of the Secretary's functions to any offi-*
17 *cer, employee, or organizational unit of the Depart-*
18 *ment;*

19 *(2) shall have the authority to make contracts,*
20 *grants, and cooperative agreements, and to enter into*
21 *agreements with other executive agencies, as may be*
22 *necessary and proper to carry out the Secretary's re-*
23 *sponsibilities under this Act or otherwise provided by*
24 *law; and*

1 (3) *shall take reasonable steps to ensure that in-*
2 *formation systems and databases of the Department*
3 *are compatible with each other and with appropriate*
4 *databases of other Departments.*

5 (c) *COORDINATION WITH NON-FEDERAL ENTITIES.—*
6 *With respect to homeland security, the Secretary shall co-*
7 *ordinate through the Office of State and Local Coordination*
8 *(established under section 801) (including the provision of*
9 *training and equipment) with State and local government*
10 *personnel, agencies, and authorities, with the private sector,*
11 *and with other entities, including by—*

12 (1) *coordinating with State and local govern-*
13 *ment personnel, agencies, and authorities, and with*
14 *the private sector, to ensure adequate planning,*
15 *equipment, training, and exercise activities;*

16 (2) *coordinating and, as appropriate, consoli-*
17 *dating, the Federal Government's communications*
18 *and systems of communications relating to homeland*
19 *security with State and local government personnel,*
20 *agencies, and authorities, the private sector, other en-*
21 *tities, and the public; and*

22 (3) *distributing or, as appropriate, coordinating*
23 *the distribution of, warnings and information to*
24 *State and local government personnel, agencies, and*
25 *authorities and to the public.*

1 (d) *MEETINGS OF NATIONAL SECURITY COUNCIL.*—
2 *The Secretary may, subject to the direction of the President,*
3 *attend and participate in meetings of the National Security*
4 *Council.*

5 (e) *ISSUANCE OF REGULATIONS.*—*The issuance of reg-*
6 *ulations by the Secretary shall be governed by the provisions*
7 *of chapter 5 of title 5, United States Code, except as specifi-*
8 *cally provided in this Act, in laws granting regulatory au-*
9 *thorities that are transferred by this Act, and in laws en-*
10 *acted after the date of enactment of this Act.*

11 (f) *SPECIAL ASSISTANT TO THE SECRETARY.*—*The*
12 *Secretary shall appoint a Special Assistant to the Secretary*
13 *who shall be responsible for—*

14 (1) *creating and fostering strategic communica-*
15 *tions with the private sector to enhance the primary*
16 *mission of the Department to protect the American*
17 *homeland;*

18 (2) *advising the Secretary on the impact of the*
19 *Department’s policies, regulations, processes, and ac-*
20 *tions on the private sector;*

21 (3) *interfacing with other relevant Federal agen-*
22 *cies with homeland security missions to assess the im-*
23 *pect of these agencies’ actions on the private sector;*

1 (4) *creating and managing private sector advisory*
2 *councils composed of representatives of industries*
3 *and associations designated by the Secretary to—*

4 (A) *advise the Secretary on private sector*
5 *products, applications, and solutions as they re-*
6 *late to homeland security challenges; and*

7 (B) *advise the Secretary on homeland secu-*
8 *rity policies, regulations, processes, and actions*
9 *that affect the participating industries and asso-*
10 *ciations;*

11 (5) *working with Federal laboratories, Federally*
12 *funded research and development centers, other Feder-*
13 *ally funded organizations, academia, and the private*
14 *sector to develop innovative approaches to address*
15 *homeland security challenges to produce and deploy*
16 *the best available technologies for homeland security*
17 *missions;*

18 (6) *promoting existing public-private partner-*
19 *ships and developing new public-private partnerships*
20 *to provide for collaboration and mutual support to*
21 *address homeland security challenges; and*

22 (7) *assisting in the development and promotion*
23 *of private sector best practices to secure critical infra-*
24 *structure.*

1 (g) *STANDARDS POLICY*.—All standards activities of
 2 the Department shall be conducted in accordance with sec-
 3 tion 12(d) of the National Technology Transfer Advance-
 4 ment Act of 1995 (15 U.S.C. 272 note) and Office of Man-
 5 agement and Budget Circular A–119.

6 **SEC. 103. OTHER OFFICERS.**

7 (a) *DEPUTY SECRETARY; UNDER SECRETARIES*.—
 8 There are the following officers, appointed by the President,
 9 by and with the advice and consent of the Senate:

10 (1) A Deputy Secretary of Homeland Security,
 11 who shall be the Secretary's first assistant for pur-
 12 poses of subchapter III of chapter 33 of title 5, United
 13 States Code.

14 (2) An Under Secretary for Information Anal-
 15 ysis and Infrastructure Protection.

16 (3) An Under Secretary for Science and Tech-
 17 nology.

18 (4) An Under Secretary for Border and Trans-
 19 portation Security.

20 (5) An Under Secretary for Emergency Pre-
 21 paredness and Response.

22 (6) A Director of the Bureau of Citizenship and
 23 Immigration Services.

24 (7) An Under Secretary for Management.

25 (8) Not more than 12 Assistant Secretaries.

1 (9) *A General Counsel, who shall be the chief*
 2 *legal officer of the department.*

3 (b) *INSPECTOR GENERAL.—There is an Inspector Gen-*
 4 *eral, who shall be appointed as provided in section 3(a)*
 5 *of the Inspector General Act of 1978.*

6 (c) *COMMANDANT OF THE COAST GUARD.—To assist*
 7 *the Secretary in the performance of the Secretary's func-*
 8 *tions, there is a Commandant of the Coast Guard, who shall*
 9 *be appointed as provided in section 44 of title 14, United*
 10 *States Code, and who shall report directly to the Secretary.*
 11 *In addition to such duties as may be provided in this Act*
 12 *and as assigned to the Commandant by the Secretary, the*
 13 *duties of the Commandant shall include those required by*
 14 *section 2 of title 14, United States Code.*

15 (d) *OTHER OFFICERS.—To assist the Secretary in the*
 16 *performance of the Secretary's functions, there are the fol-*
 17 *lowing officers, appointed by the President:*

18 (1) *A Director of the Secret Service.*

19 (2) *A Chief Information Officer.*

20 (3) *A Chief Human Capital Officer.*

21 (4) *A Chief Financial Officer.*

22 (5) *An Officer for Civil Rights and Civil Lib-*
 23 *erties.*

24 (e) *PERFORMANCE OF SPECIFIC FUNCTIONS.—Subject*
 25 *to the provisions of this Act, every officer of the Department*

1 *shall perform the functions specified by law for the official's*
 2 *office or prescribed by the Secretary.*

3 ***TITLE II—INFORMATION ANAL-***
 4 ***YSIS AND INFRASTRUCTURE***
 5 ***PROTECTION***

6 ***Subtitle A—Directorate for Infor-***
 7 ***mation Analysis and Infrastruc-***
 8 ***ture Protection; Access to Infor-***
 9 ***mation***

10 ***SEC. 201. DIRECTORATE FOR INFORMATION ANALYSIS AND***
 11 ***INFRASTRUCTURE PROTECTION.***

12 *(a) UNDER SECRETARY OF HOMELAND SECURITY FOR*
 13 *INFORMATION ANALYSIS AND INFRASTRUCTURE PROTEC-*
 14 *TION.—*

15 *(1) IN GENERAL.—There shall be in the Depart-*
 16 *ment a Directorate for Information Analysis and In-*
 17 *frastructure Protection headed by an Under Secretary*
 18 *for Information Analysis and Infrastructure Protec-*
 19 *tion, who shall be appointed by the President, by and*
 20 *with the advice and consent of the Senate.*

21 *(2) RESPONSIBILITIES.—The Under Secretary*
 22 *shall assist the Secretary in discharging the respon-*
 23 *sibilities assigned by the Secretary.*

1 (b) *ASSISTANT SECRETARY FOR INFORMATION ANAL-*
 2 *YSIS; ASSISTANT SECRETARY FOR INFRASTRUCTURE PRO-*
 3 *TECTION.*—

4 (1) *ASSISTANT SECRETARY FOR INFORMATION*
 5 *ANALYSIS.*—*There shall be in the Department an As-*
 6 *stant Secretary for Information Analysis, who shall*
 7 *be appointed by the President.*

8 (2) *ASSISTANT SECRETARY FOR INFRASTRUC-*
 9 *TURE PROTECTION.*—*There shall be in the Depart-*
 10 *ment an Assistant Secretary for Infrastructure Pro-*
 11 *tection, who shall be appointed by the President.*

12 (3) *RESPONSIBILITIES.*—*The Assistant Secretary*
 13 *for Information Analysis and the Assistant Secretary*
 14 *for Infrastructure Protection shall assist the Under*
 15 *Secretary for Information Analysis and Infrastruc-*
 16 *ture Protection in discharging the responsibilities of*
 17 *the Under Secretary under this section.*

18 (c) *DISCHARGE OF INFORMATION ANALYSIS AND IN-*
 19 *FRASTRUCTURE PROTECTION.*—*The Secretary shall ensure*
 20 *that the responsibilities of the Department regarding infor-*
 21 *mation analysis and infrastructure protection are carried*
 22 *out through the Under Secretary for Information Analysis*
 23 *and Infrastructure Protection.*

24 (d) *RESPONSIBILITIES OF UNDER SECRETARY.*—*Sub-*
 25 *ject to the direction and control of the Secretary, the respon-*

1 *sibilities of the Under Secretary for Information Analysis*
2 *and Infrastructure Protection shall be as follows:*

3 (1) *To access, receive, and analyze law enforce-*
4 *ment information, intelligence information, and other*
5 *information from agencies of the Federal Government,*
6 *State and local government agencies (including law*
7 *enforcement agencies), and private sector entities, and*
8 *to integrate such information in order to—*

9 (A) *identify and assess the nature and scope*
10 *of terrorist threats to the homeland;*

11 (B) *detect and identify threats of terrorism*
12 *against the United States; and*

13 (C) *understand such threats in light of ac-*
14 *tual and potential vulnerabilities of the home-*
15 *land.*

16 (2) *To carry out comprehensive assessments of*
17 *the vulnerabilities of the key resources and critical in-*
18 *frastructure of the United States, including the per-*
19 *formance of risk assessments to determine the risks*
20 *posed by particular types of terrorist attacks within*
21 *the United States (including an assessment of the*
22 *probability of success of such attacks and the feasi-*
23 *bility and potential efficacy of various counter-*
24 *measures to such attacks).*

1 (3) *To integrate relevant information, analyses,*
2 *and vulnerability assessments (whether such informa-*
3 *tion, analyses, or assessments are provided or pro-*
4 *duced by the Department or others) in order to iden-*
5 *tify priorities for protective and support measures by*
6 *the Department, other agencies of the Federal Govern-*
7 *ment, State and local government agencies and au-*
8 *thorities, the private sector, and other entities.*

9 (4) *To ensure, pursuant to section 202, the time-*
10 *ly and efficient access by the Department to all infor-*
11 *mation necessary to discharge the responsibilities*
12 *under this section, including obtaining such informa-*
13 *tion from other agencies of the Federal Government.*

14 (5) *To develop a comprehensive national plan for*
15 *securing the key resources and critical infrastructure*
16 *of the United States, including power production,*
17 *generation, and distribution systems, information*
18 *technology and telecommunications systems (includ-*
19 *ing satellites), electronic financial and property*
20 *record storage and transmission systems, emergency*
21 *preparedness communications systems, and the phys-*
22 *ical and technological assets that support such sys-*
23 *tems.*

24 (6) *To recommend measures necessary to protect*
25 *the key resources and critical infrastructure of the*

1 *United States in coordination with other agencies of*
2 *the Federal Government and in cooperation with*
3 *State and local government agencies and authorities,*
4 *the private sector, and other entities.*

5 *(7) To administer the Homeland Security Advi-*
6 *sory System, including—*

7 *(A) exercising primary responsibility for*
8 *public advisories related to threats to homeland*
9 *security; and*

10 *(B) in coordination with other agencies of*
11 *the Federal Government, providing specific*
12 *warning information, and advice about appro-*
13 *priate protective measures and countermeasures,*
14 *to State and local government agencies and au-*
15 *thorities, the private sector, other entities, and*
16 *the public.*

17 *(8) To review, analyze, and make recommenda-*
18 *tions for improvements in the policies and procedures*
19 *governing the sharing of law enforcement informa-*
20 *tion, intelligence information, intelligence-related in-*
21 *formation, and other information relating to home-*
22 *land security within the Federal Government and be-*
23 *tween the Federal Government and State and local*
24 *government agencies and authorities.*

1 (9) *To disseminate, as appropriate, information*
2 *analyzed by the Department within the Department,*
3 *to other agencies of the Federal Government with re-*
4 *sponsibilities relating to homeland security, and to*
5 *agencies of State and local governments and private*
6 *sector entities with such responsibilities in order to*
7 *assist in the deterrence, prevention, preemption of, or*
8 *response to, terrorist attacks against the United*
9 *States.*

10 (10) *To consult with the Director of Central In-*
11 *telligence and other appropriate intelligence, law en-*
12 *forcement, or other elements of the Federal Govern-*
13 *ment to establish collection priorities and strategies*
14 *for information, including law enforcement-related*
15 *information, relating to threats of terrorism against*
16 *the United States through such means as the represen-*
17 *tation of the Department in discussions regarding re-*
18 *quirements and priorities in the collection of such in-*
19 *formation.*

20 (11) *To consult with State and local govern-*
21 *ments and private sector entities to ensure appro-*
22 *priate exchanges of information, including law en-*
23 *forcement-related information, relating to threats of*
24 *terrorism against the United States.*

25 (12) *To ensure that—*

1 (A) any material received pursuant to this
2 Act is protected from unauthorized disclosure
3 and handled and used only for the performance
4 of official duties; and

5 (B) any intelligence information under this
6 Act is shared, retained, and disseminated con-
7 sistent with the authority of the Director of Cen-
8 tral Intelligence to protect intelligence sources
9 and methods under the National Security Act of
10 1947 (50 U.S.C. 401 et seq.) and related proce-
11 dures and, as appropriate, similar authorities of
12 the Attorney General concerning sensitive law
13 enforcement information.

14 (13) To request additional information from
15 other agencies of the Federal Government, State and
16 local government agencies, and the private sector re-
17 lating to threats of terrorism in the United States, or
18 relating to other areas of responsibility assigned by
19 the Secretary, including the entry into cooperative
20 agreements through the Secretary to obtain such in-
21 formation.

22 (14) To establish and utilize, in conjunction with
23 the chief information officer of the Department, a se-
24 cure communications and information technology in-
25 frastructure, including data-mining and other ad-

1 *vanced analytical tools, in order to access, receive,*
2 *and analyze data and information in furtherance of*
3 *the responsibilities under this section, and to dissemi-*
4 *nate information acquired and analyzed by the De-*
5 *partment, as appropriate.*

6 *(15) To ensure, in conjunction with the chief in-*
7 *formation officer of the Department, that any infor-*
8 *mation databases and analytical tools developed or*
9 *utilized by the Department—*

10 *(A) are compatible with one another and*
11 *with relevant information databases of other*
12 *agencies of the Federal Government; and*

13 *(B) treat information in such databases in*
14 *a manner that complies with applicable Federal*
15 *law on privacy.*

16 *(16) To coordinate training and other support to*
17 *the elements and personnel of the Department, other*
18 *agencies of the Federal Government, and State and*
19 *local governments that provide information to the De-*
20 *partment, or are consumers of information provided*
21 *by the Department, in order to facilitate the identi-*
22 *fication and sharing of information revealed in their*
23 *ordinary duties and the optimal utilization of infor-*
24 *mation received from the Department.*

1 (17) *To coordinate with elements of the intel-*
 2 *ligence community and with Federal, State, and local*
 3 *law enforcement agencies, and the private sector, as*
 4 *appropriate.*

5 (18) *To provide intelligence and information*
 6 *analysis and support to other elements of the Depart-*
 7 *ment.*

8 (19) *To perform such other duties relating to*
 9 *such responsibilities as the Secretary may provide.*

10 (e) *STAFF.—*

11 (1) *IN GENERAL.—The Secretary shall provide*
 12 *the Directorate with a staff of analysts having appro-*
 13 *priate expertise and experience to assist the Direc-*
 14 *torate in discharging responsibilities under this sec-*
 15 *tion.*

16 (2) *PRIVATE SECTOR ANALYSTS.—Analysts*
 17 *under this subsection may include analysts from the*
 18 *private sector.*

19 (3) *SECURITY CLEARANCES.—Analysts under*
 20 *this subsection shall possess security clearances appro-*
 21 *priate for their work under this section.*

22 (f) *DETAIL OF PERSONNEL.—*

23 (1) *IN GENERAL.—In order to assist the Direc-*
 24 *torate in discharging responsibilities under this sec-*
 25 *tion, personnel of the agencies referred to in para-*

1 *graph (2) may be detailed to the Department for the*
 2 *performance of analytic functions and related duties.*

3 (2) *COVERED AGENCIES.—The agencies referred*
 4 *to in this paragraph are as follows:*

5 (A) *The Department of State.*

6 (B) *The Central Intelligence Agency.*

7 (C) *The Federal Bureau of Investigation.*

8 (D) *The National Security Agency.*

9 (E) *The National Imagery and Mapping*
 10 *Agency.*

11 (F) *The Defense Intelligence Agency.*

12 (G) *Any other agency of the Federal Gov-*
 13 *ernment that the President considers appro-*
 14 *priate.*

15 (3) *COOPERATIVE AGREEMENTS.—The Secretary*
 16 *and the head of the agency concerned may enter into*
 17 *cooperative agreements for the purpose of detailing*
 18 *personnel under this subsection.*

19 (4) *BASIS.—The detail of personnel under this*
 20 *subsection may be on a reimbursable or non-reim-*
 21 *bursable basis.*

22 (g) *FUNCTIONS TRANSFERRED.—In accordance with*
 23 *title XV, there shall be transferred to the Secretary, for as-*
 24 *signment to the Under Secretary for Information Analysis*

1 *and Infrastructure Protection under this section, the func-*
 2 *tions, personnel, assets, and liabilities of the following:*

3 (1) *The National Infrastructure Protection Cen-*
 4 *ter of the Federal Bureau of Investigation (other than*
 5 *the Computer Investigations and Operations Section),*
 6 *including the functions of the Attorney General relat-*
 7 *ing thereto.*

8 (2) *The National Communications System of the*
 9 *Department of Defense, including the functions of the*
 10 *Secretary of Defense relating thereto.*

11 (3) *The Critical Infrastructure Assurance Office*
 12 *of the Department of Commerce, including the func-*
 13 *tions of the Secretary of Commerce relating thereto.*

14 (4) *The National Infrastructure Simulation and*
 15 *Analysis Center of the Department of Energy and the*
 16 *energy security and assurance program and activities*
 17 *of the Department, including the functions of the Sec-*
 18 *retary of Energy relating thereto.*

19 (5) *The Federal Computer Incident Response*
 20 *Center of the General Services Administration, in-*
 21 *cluding the functions of the Administrator of General*
 22 *Services relating thereto.*

23 (h) *INCLUSION OF CERTAIN ELEMENTS OF THE DE-*
 24 *PARTMENT AS ELEMENTS OF THE INTELLIGENCE COMMU-*

1 *NITY.—Section 3(4) of the National Security Act of 1947*
 2 *(50 U.S.C. 401(a)) is amended—*

3 *(1) by striking “and” at the end of subpara-*
 4 *graph (I);*

5 *(2) by redesignating subparagraph (J) as sub-*
 6 *paragraph (K); and*

7 *(3) by inserting after subparagraph (I) the fol-*
 8 *lowing new subparagraph:*

9 *“(J) the elements of the Department of*
 10 *Homeland Security concerned with the analyses*
 11 *of foreign intelligence information; and”.*

12 **SEC. 202. ACCESS TO INFORMATION.**

13 *(a) IN GENERAL.—*

14 *(1) THREAT AND VULNERABILITY INFORMA-*
 15 *TION.—Except as otherwise directed by the President,*
 16 *the Secretary shall have such access as the Secretary*
 17 *considers necessary to all information, including re-*
 18 *ports, assessments, analyses, and unevaluated intel-*
 19 *ligence relating to threats of terrorism against the*
 20 *United States and to other areas of responsibility as-*
 21 *signed by the Secretary, and to all information con-*
 22 *cerning infrastructure or other vulnerabilities of the*
 23 *United States to terrorism, whether or not such infor-*
 24 *mation has been analyzed, that may be collected, pos-*

1 *essed, or prepared by any agency of the Federal Gov-*
 2 *ernment.*

3 (2) *OTHER INFORMATION.*—*The Secretary shall*
 4 *also have access to other information relating to mat-*
 5 *ters under the responsibility of the Secretary that*
 6 *may be collected, possessed, or prepared by an agency*
 7 *of the Federal Government as the President may fur-*
 8 *ther provide.*

9 (b) *MANNER OF ACCESS.*—*Except as otherwise di-*
 10 *rected by the President, with respect to information to*
 11 *which the Secretary has access pursuant to this section—*

12 (1) *the Secretary may obtain such material upon*
 13 *request, and may enter into cooperative arrangements*
 14 *with other executive agencies to provide such material*
 15 *or provide Department officials with access to it on*
 16 *a regular or routine basis, including requests or ar-*
 17 *rangements involving broad categories of material, ac-*
 18 *cess to electronic databases, or both; and*

19 (2) *regardless of whether the Secretary has made*
 20 *any request or entered into any cooperative arrange-*
 21 *ment pursuant to paragraph (1), all agencies of the*
 22 *Federal Government shall promptly provide to the*
 23 *Secretary—*

24 (A) *all reports (including information re-*
 25 *ports containing intelligence which has not been*

1 *fully evaluated), assessments, and analytical in-*
2 *formation relating to threats of terrorism against*
3 *the United States and to other areas of responsi-*
4 *bility assigned by the Secretary;*

5 *(B) all information concerning the vulner-*
6 *ability of the infrastructure of the United States,*
7 *or other vulnerabilities of the United States, to*
8 *terrorism, whether or not such information has*
9 *been analyzed;*

10 *(C) all other information relating to signifi-*
11 *cant and credible threats of terrorism against the*
12 *United States, whether or not such information*
13 *has been analyzed; and*

14 *(D) such other information or material as*
15 *the President may direct.*

16 *(c) TREATMENT UNDER CERTAIN LAWS.—The Sec-*
17 *retary shall be deemed to be a Federal law enforcement, in-*
18 *telligence, protective, national defense, immigration, or na-*
19 *tional security official, and shall be provided with all infor-*
20 *mation from law enforcement agencies that is required to*
21 *be given to the Director of Central Intelligence, under any*
22 *provision of the following:*

23 *(1) The USA PATRIOT Act of 2001 (Public*
24 *Law 107–56).*

1 (2) *Section 2517(6) of title 18, United States*
2 *Code.*

3 (3) *Rule 6(e)(3)(C) of the Federal Rules of*
4 *Criminal Procedure.*

5 (d) *ACCESS TO INTELLIGENCE AND OTHER INFORMA-*
6 *TION.—*

7 (1) *ACCESS BY ELEMENTS OF FEDERAL GOVERN-*
8 *MENT.—Nothing in this title shall preclude any ele-*
9 *ment of the intelligence community (as that term is*
10 *defined in section 3(4) of the National Security Act*
11 *of 1947 (50 U.S.C. 401a(4)), or other any element of*
12 *the Federal Government with responsibility for ana-*
13 *lyzing terrorist threat information, from receiving*
14 *any intelligence or other information relating to ter-*
15 *rorism.*

16 (2) *SHARING OF INFORMATION.—The Secretary,*
17 *in consultation with the Director of Central Intel-*
18 *ligence, shall work to ensure that intelligence or other*
19 *information relating to terrorism to which the De-*
20 *partment has access is appropriately shared with the*
21 *elements of the Federal Government referred to in*
22 *paragraph (1), as well as with State and local gov-*
23 *ernments, as appropriate.*

1 ***Subtitle B—Critical Infrastructure***
 2 ***Information***

3 **SEC. 211. SHORT TITLE.**

4 *This subtitle may be cited as the “Critical Infrastruc-*
 5 *ture Information Act of 2002”.*

6 **SEC. 212. DEFINITIONS.**

7 *In this subtitle:*

8 (1) *AGENCY.*—*The term “agency” has the mean-*
 9 *ing given it in section 551 of title 5, United States*
 10 *Code.*

11 (2) *COVERED FEDERAL AGENCY.*—*The term*
 12 *“covered Federal agency” means the Department of*
 13 *Homeland Security.*

14 (3) *CRITICAL INFRASTRUCTURE INFORMATION.*—
 15 *The term “critical infrastructure information” means*
 16 *information not customarily in the public domain*
 17 *and related to the security of critical infrastructure or*
 18 *protected systems—*

19 (A) *actual, potential, or threatened inter-*
 20 *ference with, attack on, compromise of, or inca-*
 21 *pacitation of critical infrastructure or protected*
 22 *systems by either physical or computer-based at-*
 23 *tack or other similar conduct (including the mis-*
 24 *use of or unauthorized access to all types of com-*
 25 *munications and data transmission systems)*

1 *that violates Federal, State, or local law, harms*
 2 *interstate commerce of the United States, or*
 3 *threatens public health or safety;*

4 *(B) the ability of any critical infrastructure*
 5 *or protected system to resist such interference,*
 6 *compromise, or incapacitation, including any*
 7 *planned or past assessment, projection, or esti-*
 8 *mate of the vulnerability of critical infrastruc-*
 9 *ture or a protected system, including security*
 10 *testing, risk evaluation thereto, risk management*
 11 *planning, or risk audit; or*

12 *(C) any planned or past operational prob-*
 13 *lem or solution regarding critical infrastructure*
 14 *or protected systems, including repair, recovery,*
 15 *reconstruction, insurance, or continuity, to the*
 16 *extent it is related to such interference, com-*
 17 *promise, or incapacitation.*

18 (4) *CRITICAL INFRASTRUCTURE PROTECTION*
 19 *PROGRAM.—The term “critical infrastructure protec-*
 20 *tion program” means any component or bureau of a*
 21 *covered Federal agency that has been designated by*
 22 *the President or any agency head to receive critical*
 23 *infrastructure information.*

24 (5) *INFORMATION SHARING AND ANALYSIS ORGA-*
 25 *NIZATION.—The term “Information Sharing and*

1 *Analysis Organization*” means any formal or infor-
2 mal entity or collaboration created or employed by
3 public or private sector organizations, for purposes
4 of—

5 (A) gathering and analyzing critical infra-
6 structure information in order to better under-
7 stand security problems and interdependencies
8 related to critical infrastructure and protected
9 systems, so as to ensure the availability, integ-
10 rity, and reliability thereof;

11 (B) communicating or disclosing critical
12 infrastructure information to help prevent, de-
13 tect, mitigate, or recover from the effects of a in-
14 terference, compromise, or a incapacitation prob-
15 lem related to critical infrastructure or protected
16 systems; and

17 (C) voluntarily disseminating critical infra-
18 structure information to its members, State,
19 local, and Federal Governments, or any other en-
20 tities that may be of assistance in carrying out
21 the purposes specified in subparagraphs (A) and
22 (B).

23 (6) *PROTECTED SYSTEM*.—The term “protected
24 system”—

(A) means any service, physical or computer-based system, process, or procedure that directly or indirectly affects the viability of a facility of critical infrastructure; and

(B) includes any physical or computer-based system, including a computer, computer system, computer or communications network, or any component hardware or element thereof, software program, processing instructions, or information or data in transmission or storage therein, irrespective of the medium of transmission or storage.

(7) VOLUNTARY.—

(A) IN GENERAL.—The term “voluntary”, in the case of any submittal of critical infrastructure information to a covered Federal agency, means the submittal thereof in the absence of such agency’s exercise of legal authority to compel access to or submission of such information and may be accomplished by a single entity or an Information Sharing and Analysis Organization on behalf of itself or its members.

(B) EXCLUSIONS.—The term “voluntary”—

(i) in the case of any action brought under the securities laws as is defined in

1 *section 3(a)(47) of the Securities Exchange*
 2 *Act of 1934 (15 U.S.C. 78c(a)(47))—*

3 *(I) does not include information*
 4 *or statements contained in any docu-*
 5 *ments or materials filed with the Secu-*
 6 *rities and Exchange Commission, or*
 7 *with Federal banking regulators, pur-*
 8 *suant to section 12(i) of the Securities*
 9 *Exchange Act of 1934 (15 U.S.C.*
 10 *781(I)); and*

11 *(II) with respect to the submittal*
 12 *of critical infrastructure information,*
 13 *does not include any disclosure or*
 14 *writing that when made accompanied*
 15 *the solicitation of an offer or a sale of*
 16 *securities; and*

17 *(ii) does not include information or*
 18 *statements submitted or relied upon as a*
 19 *basis for making licensing or permitting de-*
 20 *terminations, or during regulatory pro-*
 21 *ceedings.*

22 **SEC. 213. DESIGNATION OF CRITICAL INFRASTRUCTURE**
 23 **PROTECTION PROGRAM.**

24 *A critical infrastructure protection program may be*
 25 *designated as such by one of the following:*

1 (1) *The President.*

2 (2) *The Secretary of Homeland Security.*

3 **SEC. 214. PROTECTION OF VOLUNTARILY SHARED CRITICAL**
 4 **INFRASTRUCTURE INFORMATION.**

5 (a) *PROTECTION.*—

6 (1) *IN GENERAL.*—Notwithstanding any other
 7 provision of law, critical infrastructure information
 8 (including the identity of the submitting person or
 9 entity) that is voluntarily submitted to a covered Fed-
 10 eral agency for use by that agency regarding the secu-
 11 rity of critical infrastructure and protected systems,
 12 analysis, warning, interdependency study, recovery,
 13 reconstitution, or other informational purpose, when
 14 accompanied by an express statement specified in
 15 paragraph (2)—

16 (A) shall be exempt from disclosure under
 17 section 552 of title 5, United States Code (com-
 18 monly referred to as the Freedom of Information
 19 Act);

20 (B) shall not be subject to any agency rules
 21 or judicial doctrine regarding *ex parte* commu-
 22 nications with a decision making official;

23 (C) shall not, without the written consent of
 24 the person or entity submitting such informa-
 25 tion, be used directly by such agency, any other

1 *Federal, State, or local authority, or any third*
2 *party, in any civil action arising under Federal*
3 *or State law if such information is submitted in*
4 *good faith;*

5 *(D) shall not, without the written consent of*
6 *the person or entity submitting such informa-*
7 *tion, be used or disclosed by any officer or em-*
8 *ployee of the United States for purposes other*
9 *than the purposes of this subtitle, except—*

10 *(i) in furtherance of an investigation*
11 *or the prosecution of a criminal act; or*

12 *(ii) when disclosure of the information*
13 *would be—*

14 *(I) to either House of Congress, or*
15 *to the extent of matter within its juris-*
16 *diction, any committee or sub-*
17 *committee thereof, any joint committee*
18 *thereof or subcommittee of any such*
19 *joint committee; or*

20 *(II) to the Comptroller General, or*
21 *any authorized representative of the*
22 *Comptroller General, in the course of*
23 *the performance of the duties of the*
24 *General Accounting Office.*

1 (E) shall not, if provided to a State or local
2 government or government agency—

3 (i) be made available pursuant to any
4 State or local law requiring disclosure of
5 information or records;

6 (ii) otherwise be disclosed or distrib-
7 uted to any party by said State or local
8 government or government agency without
9 the written consent of the person or entity
10 submitting such information; or

11 (iii) be used other than for the purpose
12 of protecting critical infrastructure or pro-
13 tected systems, or in furtherance of an in-
14 vestigation or the prosecution of a criminal
15 act; and

16 (F) does not constitute a waiver of any ap-
17 plicable privilege or protection provided under
18 law, such as trade secret protection.

19 (2) *EXPRESS STATEMENT.*—For purposes of
20 paragraph (1), the term “express statement”, with re-
21 spect to information or records, means—

22 (A) in the case of written information or
23 records, a written marking on the information or
24 records substantially similar to the following:
25 “This information is voluntarily submitted to

1 *the Federal Government in expectation of protec-*
 2 *tion from disclosure as provided by the provi-*
 3 *sions of the Critical Infrastructure Information*
 4 *Act of 2002.”; or*

5 *(B) in the case of oral information, a simi-*
 6 *lar written statement submitted within a reason-*
 7 *able period following the oral communication.*

8 *(b) LIMITATION.—No communication of critical infra-*
 9 *structure information to a covered Federal agency made*
 10 *pursuant to this subtitle shall be considered to be an action*
 11 *subject to the requirements of the Federal Advisory Com-*
 12 *mittee Act (5 U.S.C. App. 2).*

13 *(c) INDEPENDENTLY OBTAINED INFORMATION.—Noth-*
 14 *ing in this section shall be construed to limit or otherwise*
 15 *affect the ability of a State, local, or Federal Government*
 16 *entity, agency, or authority, or any third party, under ap-*
 17 *plicable law, to obtain critical infrastructure information*
 18 *in a manner not covered by subsection (a), including any*
 19 *information lawfully and properly disclosed generally or*
 20 *broadly to the public and to use such information in any*
 21 *manner permitted by law.*

22 *(d) TREATMENT OF VOLUNTARY SUBMITTAL OF IN-*
 23 *FORMATION.—The voluntary submittal to the Government*
 24 *of information or records that are protected from disclosure*
 25 *by this subtitle shall not be construed to constitute compli-*

1 *ance with any requirement to submit such information to*
 2 *a Federal agency under any other provision of law.*

3 *(e) PROCEDURES.—*

4 *(1) IN GENERAL.—The Secretary of the Depart-*
 5 *ment of Homeland Security shall, in consultation*
 6 *with appropriate representatives of the National Se-*
 7 *curity Council and the Office of Science and Tech-*
 8 *nology Policy, establish uniform procedures for the re-*
 9 *ceipt, care, and storage by Federal agencies of critical*
 10 *infrastructure information that is voluntarily sub-*
 11 *mitted to the Government. The procedures shall be es-*
 12 *tablished not later than 90 days after the date of the*
 13 *enactment of this subtitle.*

14 *(2) ELEMENTS.—The procedures established*
 15 *under paragraph (1) shall include mechanisms*
 16 *regarding—*

17 *(A) the acknowledgement of receipt by Fed-*
 18 *eral agencies of critical infrastructure informa-*
 19 *tion that is voluntarily submitted to the Govern-*
 20 *ment;*

21 *(B) the maintenance of the identification of*
 22 *such information as voluntarily submitted to the*
 23 *Government for purposes of and subject to the*
 24 *provisions of this subtitle;*

1 (C) the care and storage of such informa-
2 tion; and

3 (D) the protection and maintenance of the
4 confidentiality of such information so as to per-
5 mit the sharing of such information within the
6 Federal Government and with State and local
7 governments, and the issuance of notices and
8 warnings related to the protection of critical in-
9 frastructure and protected systems, in such man-
10 ner as to protect from public disclosure the iden-
11 tity of the submitting person or entity, or infor-
12 mation that is proprietary, business sensitive, re-
13 lates specifically to the submitting person or en-
14 tity, and is otherwise not appropriately in the
15 public domain.

16 (f) *PENALTIES.*—Whoever, being an officer or employee
17 of the United States or of any department or agency thereof,
18 knowingly publishes, divulges, discloses, or makes known in
19 any manner or to any extent not authorized by law, any
20 critical infrastructure information protected from disclo-
21 sure by this subtitle coming to him in the course of this
22 employment or official duties or by reason of any examina-
23 tion or investigation made by, or return, report, or record
24 made to or filed with, such department or agency or officer
25 or employee thereof, shall be fined under title 18 of the

1 *United States Code, imprisoned not more than 1 year, or*
2 *both, and shall be removed from office or employment.*

3 (g) *AUTHORITY TO ISSUE WARNINGS.—The Federal*
4 *Government may provide advisories, alerts, and warnings*
5 *to relevant companies, targeted sectors, other governmental*
6 *entities, or the general public regarding potential threats*
7 *to critical infrastructure as appropriate. In issuing a*
8 *warning, the Federal Government shall take appropriate*
9 *actions to protect from disclosure—*

10 (1) *the source of any voluntarily submitted crit-*
11 *ical infrastructure information that forms the basis*
12 *for the warning; or*

13 (2) *information that is proprietary, business sen-*
14 *sitive, relates specifically to the submitting person or*
15 *entity, or is otherwise not appropriately in the public*
16 *domain.*

17 (h) *AUTHORITY TO DELEGATE.—The President may*
18 *delegate authority to a critical infrastructure protection*
19 *program, designated under section 213, to enter into a vol-*
20 *untary agreement to promote critical infrastructure secu-*
21 *rity, including with any Information Sharing and Analysis*
22 *Organization, or a plan of action as otherwise defined in*
23 *section 708 of the Defense Production Act of 1950 (50*
24 *U.S.C. App. 2158).*

1 **SEC. 215. NO PRIVATE RIGHT OF ACTION.**

2 *Nothing in this subtitle may be construed to create a*
 3 *private right of action for enforcement of any provision of*
 4 *this Act.*

5 ***Subtitle C—Information Security***

6 **SEC. 221. PROCEDURES FOR SHARING INFORMATION.**

7 *The Secretary shall establish procedures on the use of*
 8 *information shared under this title that—*

9 *(1) limit the redissemination of such information*
 10 *to ensure that it is not used for an unauthorized pur-*
 11 *pose;*

12 *(2) ensure the security and confidentiality of*
 13 *such information;*

14 *(3) protect the constitutional and statutory*
 15 *rights of any individuals who are subjects of such in-*
 16 *formation; and*

17 *(4) provide data integrity through the timely re-*
 18 *moval and destruction of obsolete or erroneous names*
 19 *and information.*

20 **SEC. 222. PRIVACY OFFICER.**

21 *The Secretary shall appoint a senior official in the De-*
 22 *partment to assume primary responsibility for privacy pol-*
 23 *icy, including—*

24 *(1) assuring that the use of technologies sustain,*
 25 *and do not erode, privacy protections relating to the*
 26 *use, collection, and disclosure of personal information;*

1 (2) *assuring that personal information contained*
 2 *in Privacy Act systems of records is handled in full*
 3 *compliance with fair information practices as set out*
 4 *in the Privacy Act of 1974;*

5 (3) *evaluating legislative and regulatory pro-*
 6 *posals involving collection, use, and disclosure of per-*
 7 *sonal information by the Federal Government;*

8 (4) *conducting a privacy impact assessment of*
 9 *proposed rules of the Department or that of the De-*
 10 *partment on the privacy of personal information, in-*
 11 *cluding the type of personal information collected and*
 12 *the number of people affected; and*

13 (5) *preparing a report to Congress on an annual*
 14 *basis on activities of the Department that affect pri-*
 15 *vacv, including complaints of privacy violations, im-*
 16 *plementation of the Privacy Act of 1974, internal*
 17 *controls, and other matters.*

18 **SEC. 223. ENHANCEMENT OF NON-FEDERAL**
 19 **CYBERSECURITY.**

20 *In carrying out the responsibilities under section 201,*
 21 *the Under Secretary for Information Analysis and Infra-*
 22 *structure Protection shall—*

23 (1) *as appropriate, provide to State and local*
 24 *government entities, and upon request to private enti-*

1 *ties that own or operate critical information*
2 *systems—*

3 *(A) analysis and warnings related to*
4 *threats to, and vulnerabilities of, critical infor-*
5 *mation systems; and*

6 *(B) in coordination with the Under Sec-*
7 *retary for Emergency Preparedness and Re-*
8 *sponse, crisis management support in response to*
9 *threats to, or attacks on, critical information*
10 *systems; and*

11 *(2) as appropriate, provide technical assistance,*
12 *upon request, to the private sector and other govern-*
13 *ment entities, in coordination with the Under Sec-*
14 *retary for Emergency Preparedness and Response,*
15 *with respect to emergency recovery plans to respond*
16 *to major failures of critical information systems.*

17 **SEC. 224. NET GUARD.**

18 *The Under Secretary for Information Analysis and In-*
19 *frastructure Protection may establish a national technology*
20 *guard, to be known as “NET Guard”, comprised of local*
21 *teams of volunteers with expertise in relevant areas of*
22 *science and technology, to assist local communities to re-*
23 *spond and recover from attacks on information systems and*
24 *communications networks.*

1 **SEC. 225. CYBER SECURITY ENHANCEMENT ACT OF 2002.**

2 (a) *SHORT TITLE.*—*This section may be cited as the*
 3 *“Cyber Security Enhancement Act of 2002”.*

4 (b) *AMENDMENT OF SENTENCING GUIDELINES RELAT-*
 5 *ING TO CERTAIN COMPUTER CRIMES.*—

6 (1) *DIRECTIVE TO THE UNITED STATES SEN-*
 7 *TENCING COMMISSION.*—*Pursuant to its authority*
 8 *under section 994(p) of title 28, United States Code,*
 9 *and in accordance with this subsection, the United*
 10 *States Sentencing Commission shall review and, if*
 11 *appropriate, amend its guidelines and its policy*
 12 *statements applicable to persons convicted of an of-*
 13 *fense under section 1030 of title 18, United States*
 14 *Code.*

15 (2) *REQUIREMENTS.*—*In carrying out this sub-*
 16 *section, the Sentencing Commission shall—*

17 (A) *ensure that the sentencing guidelines*
 18 *and policy statements reflect the serious nature*
 19 *of the offenses described in paragraph (1), the*
 20 *growing incidence of such offenses, and the need*
 21 *for an effective deterrent and appropriate pun-*
 22 *ishment to prevent such offenses;*

23 (B) *consider the following factors and the*
 24 *extent to which the guidelines may or may not*
 25 *account for them—*

1 (i) the potential and actual loss result-
2 ing from the offense;

3 (ii) the level of sophistication and
4 planning involved in the offense;

5 (iii) whether the offense was committed
6 for purposes of commercial advantage or
7 private financial benefit;

8 (iv) whether the defendant acted with
9 malicious intent to cause harm in commit-
10 ting the offense;

11 (v) the extent to which the offense vio-
12 lated the privacy rights of individuals
13 harmed;

14 (vi) whether the offense involved a com-
15 puter used by the government in furtherance
16 of national defense, national security, or the
17 administration of justice;

18 (vii) whether the violation was in-
19 tended to or had the effect of significantly
20 interfering with or disrupting a critical in-
21 frastructure; and

22 (viii) whether the violation was in-
23 tended to or had the effect of creating a
24 threat to public health or safety, or injury
25 to any person;

1 (C) assure reasonable consistency with other
 2 relevant directives and with other sentencing
 3 guidelines;

4 (D) account for any additional aggravating
 5 or mitigating circumstances that might justify
 6 exceptions to the generally applicable sentencing
 7 ranges;

8 (E) make any necessary conforming changes
 9 to the sentencing guidelines; and

10 (F) assure that the guidelines adequately
 11 meet the purposes of sentencing as set forth in
 12 section 3553(a)(2) of title 18, United States
 13 Code.

14 (c) *STUDY AND REPORT ON COMPUTER CRIMES.*—Not
 15 later than May 1, 2003, the United States Sentencing Com-
 16 mission shall submit a brief report to Congress that ex-
 17 plains any actions taken by the Sentencing Commission in
 18 response to this section and includes any recommendations
 19 the Commission may have regarding statutory penalties for
 20 offenses under section 1030 of title 18, United States Code.

21 (d) *EMERGENCY DISCLOSURE EXCEPTION.*—

22 (1) *IN GENERAL.*—Section 2702(b) of title 18,
 23 United States Code, is amended—

24 (A) in paragraph (5), by striking “or” at
 25 the end;

1 (B) in paragraph (6)(A), by inserting “or”
 2 at the end;

3 (C) by striking paragraph (6)(C); and

4 (D) by adding at the end the following:

5 “(7) to a Federal, State, or local governmental
 6 entity, if the provider, in good faith, believes that an
 7 emergency involving danger of death or serious phys-
 8 ical injury to any person requires disclosure without
 9 delay of communications relating to the emergency.”.

10 (2) *REPORTING OF DISCLOSURES.*—A govern-
 11 ment entity that receives a disclosure under section
 12 2702(b) of title 18, United States Code, shall file, not
 13 later than 90 days after such disclosure, a report to
 14 the Attorney General stating the paragraph of that
 15 section under which the disclosure was made, the date
 16 of the disclosure, the entity to which the disclosure
 17 was made, the number of customers or subscribers to
 18 whom the information disclosed pertained, and the
 19 number of communications, if any, that were dis-
 20 closed. The Attorney General shall publish all such re-
 21 ports into a single report to be submitted to Congress
 22 1 year after the date of enactment of this Act.

23 (e) *GOOD FAITH EXCEPTION.*—Section 2520(d)(3) of
 24 title 18, United States Code, is amended by inserting “or
 25 2511(2)(i)” after “2511(3)”.

1 (f) *INTERNET ADVERTISING OF ILLEGAL DEVICES.*—
 2 Section 2512(1)(c) of title 18, United States Code, is
 3 amended—

4 (1) by inserting “or disseminates by electronic
 5 means” after “or other publication”; and

6 (2) by inserting “knowing the content of the ad-
 7 vertisement and” before “knowing or having reason to
 8 know”.

9 (g) *STRENGTHENING PENALTIES.*—Section 1030(c) of
 10 title 18, United States Code, is amended—

11 (1) by striking “and” at the end of paragraph
 12 (3);

13 (2) in each of subparagraphs (A) and (C) of
 14 paragraph (4), by inserting “except as provided in
 15 paragraph (5),” before “a fine under this title”;

16 (3) in paragraph (4)(C), by striking the period
 17 at the end and inserting “; and”; and

18 (4) by adding at the end the following:

19 “(5)(A) if the offender knowingly or recklessly
 20 causes or attempts to cause serious bodily injury from
 21 conduct in violation of subsection (a)(5)(A)(i), a fine
 22 under this title or imprisonment for not more than 20
 23 years, or both; and

24 “(B) if the offender knowingly or recklessly
 25 causes or attempts to cause death from conduct in

1 *violation of subsection (a)(5)(A)(i), a fine under this*
 2 *title or imprisonment for any term of years or for*
 3 *life, or both.”.*

4 *(h) PROVIDER ASSISTANCE.—*

5 *(1) SECTION 2703.—Section 2703(e) of title 18,*
 6 *United States Code, is amended by inserting “, statu-*
 7 *tory authorization” after “subpoena”.*

8 *(2) SECTION 2511.—Section 2511(2)(a)(ii) of title*
 9 *18, United States Code, is amended by inserting “,*
 10 *statutory authorization,” after “court order” the last*
 11 *place it appears.*

12 *(i) EMERGENCIES.—Section 3125(a)(1) of title 18,*
 13 *United States Code, is amended—*

14 *(1) in subparagraph (A), by striking “or” at the*
 15 *end;*

16 *(2) in subparagraph (B), by striking the comma*
 17 *at the end and inserting a semicolon; and*

18 *(3) by adding at the end the following:*

19 *“(C) an immediate threat to a national se-*
 20 *curity interest; or*

21 *“(D) an ongoing attack on a protected com-*
 22 *puter (as defined in section 1030) that con-*
 23 *stitutes a crime punishable by a term of impris-*
 24 *onment greater than one year;”.*

25 *(j) PROTECTING PRIVACY.—*

1 (1) *SECTION 2511.*—Section 2511(4) of title 18,
2 *United States Code*, is amended—

3 (A) *by striking paragraph (b); and*

4 (B) *by redesignating paragraph (c) as*
5 *paragraph (b).*

6 (2) *SECTION 2701.*—Section 2701(b) of title 18,
7 *United States Code*, is amended—

8 (A) *in paragraph (1), by inserting “, or in*
9 *furtherance of any criminal or tortious act in*
10 *violation of the Constitution or laws of the*
11 *United States or any State” after “commercial*
12 *gain”;*

13 (B) *in paragraph (1)(A), by striking “one*
14 *year” and inserting “5 years”;*

15 (C) *in paragraph (1)(B), by striking “two*
16 *years” and inserting “10 years”; and*

17 (D) *by striking paragraph (2) and insert-*
18 *ing the following:*

19 “(2) *in any other case—*

20 “(A) *a fine under this title or imprisonment*
21 *for not more than 1 year or both, in the case of*
22 *a first offense under this paragraph; and*

23 “(B) *a fine under this title or imprison-*
24 *ment for not more than 5 years, or both, in the*
25 *case of an offense under this subparagraph that*

1 *occurs after a conviction of another offense under*
 2 *this section.”.*

3 ***Subtitle D—Office of Science and***
 4 ***Technology***

5 ***SEC. 231. ESTABLISHMENT OF OFFICE; DIRECTOR.***

6 *(a) ESTABLISHMENT.—*

7 *(1) IN GENERAL.—There is hereby established*
 8 *within the Department of Justice an Office of Science*
 9 *and Technology (hereinafter in this title referred to as*
 10 *the “Office”).*

11 *(2) AUTHORITY.—The Office shall be under the*
 12 *general authority of the Assistant Attorney General,*
 13 *Office of Justice Programs, and shall be established*
 14 *within the National Institute of Justice.*

15 *(b) DIRECTOR.—The Office shall be headed by a Direc-*
 16 *tor, who shall be an individual appointed based on ap-*
 17 *proval by the Office of Personnel Management of the execu-*
 18 *tive qualifications of the individual.*

19 ***SEC. 232. MISSION OF OFFICE; DUTIES.***

20 *(a) MISSION.—The mission of the Office shall be—*

21 *(1) to serve as the national focal point for work*
 22 *on law enforcement technology; and*

23 *(2) to carry out programs that, through the pro-*
 24 *vision of equipment, training, and technical assist-*
 25 *ance, improve the safety and effectiveness of law en-*

1 *forcement technology and improve access to such tech-*
2 *nology by Federal, State, and local law enforcement*
3 *agencies.*

4 **(b) DUTIES.**—*In carrying out its mission, the Office*
5 *shall have the following duties:*

6 *(1) To provide recommendations and advice to*
7 *the Attorney General.*

8 *(2) To establish and maintain advisory groups*
9 *(which shall be exempt from the provisions of the Fed-*
10 *eral Advisory Committee Act (5 U.S.C. App.)) to as-*
11 *sess the law enforcement technology needs of Federal,*
12 *State, and local law enforcement agencies.*

13 *(3) To establish and maintain performance*
14 *standards in accordance with the National Tech-*
15 *nology Transfer and Advancement Act of 1995 (Pub-*
16 *lic Law 104–113) for, and test and evaluate law en-*
17 *forcement technologies that may be used by, Federal,*
18 *State, and local law enforcement agencies.*

19 *(4) To establish and maintain a program to cer-*
20 *tify, validate, and mark or otherwise recognize law*
21 *enforcement technology products that conform to*
22 *standards established and maintained by the Office in*
23 *accordance with the National Technology Transfer*
24 *and Advancement Act of 1995 (Public Law 104–113).*
25 *The program may, at the discretion of the Office,*

1 *allow for supplier's declaration of conformity with*
2 *such standards.*

3 *(5) To work with other entities within the De-*
4 *partment of Justice, other Federal agencies, and the*
5 *executive office of the President to establish a coordi-*
6 *nated Federal approach on issues related to law en-*
7 *forcement technology.*

8 *(6) To carry out research, development, testing,*
9 *evaluation, and cost-benefit analyses in fields that*
10 *would improve the safety, effectiveness, and efficiency*
11 *of law enforcement technologies used by Federal,*
12 *State, and local law enforcement agencies, including,*
13 *but not limited to—*

14 *(A) weapons capable of preventing use by*
15 *unauthorized persons, including personalized*
16 *guns;*

17 *(B) protective apparel;*

18 *(C) bullet-resistant and explosion-resistant*
19 *glass;*

20 *(D) monitoring systems and alarm systems*
21 *capable of providing precise location informa-*
22 *tion;*

23 *(E) wire and wireless interoperable commu-*
24 *nication technologies;*

1 (F) tools and techniques that facilitate in-
2 vestigative and forensic work, including com-
3 puter forensics;

4 (G) equipment for particular use in
5 counterterrorism, including devices and tech-
6 nologies to disable terrorist devices;

7 (H) guides to assist State and local law en-
8 forcement agencies;

9 (I) DNA identification technologies; and

10 (J) tools and techniques that facilitate in-
11 vestigations of computer crime.

12 (7) To administer a program of research, devel-
13 opment, testing, and demonstration to improve the
14 interoperability of voice and data public safety com-
15 munications.

16 (8) To serve on the Technical Support Working
17 Group of the Department of Defense, and on other rel-
18 evant interagency panels, as requested.

19 (9) To develop, and disseminate to State and
20 local law enforcement agencies, technical assistance
21 and training materials for law enforcement personnel,
22 including prosecutors.

23 (10) To operate the regional National Law En-
24 forcement and Corrections Technology Centers and, to

1 *the extent necessary, establish additional centers*
2 *through a competitive process.*

3 *(11) To administer a program of acquisition, re-*
4 *search, development, and dissemination of advanced*
5 *investigative analysis and forensic tools to assist*
6 *State and local law enforcement agencies in com-*
7 *bating cybercrime.*

8 *(12) To support research fellowships in support*
9 *of its mission.*

10 *(13) To serve as a clearinghouse for information*
11 *on law enforcement technologies.*

12 *(14) To represent the United States and State*
13 *and local law enforcement agencies, as requested, in*
14 *international activities concerning law enforcement*
15 *technology.*

16 *(15) To enter into contracts and cooperative*
17 *agreements and provide grants, which may require*
18 *in-kind or cash matches from the recipient, as nec-*
19 *essary to carry out its mission.*

20 *(16) To carry out other duties assigned by the*
21 *Attorney General to accomplish the mission of the Of-*
22 *fice.*

23 *(c) COMPETITION REQUIRED.—Except as otherwise ex-*
24 *pressly provided by law, all research and development car-*

1 ried out by or through the Office shall be carried out on
2 a competitive basis.

3 (d) *INFORMATION FROM FEDERAL AGENCIES.*—Fed-
4 eral agencies shall, upon request from the Office and in ac-
5 cordance with Federal law, provide the Office with any
6 data, reports, or other information requested, unless compli-
7 ance with such request is otherwise prohibited by law.

8 (e) *PUBLICATIONS.*—Decisions concerning publica-
9 tions issued by the Office shall rest solely with the Director
10 of the Office.

11 (f) *TRANSFER OF FUNDS.*—The Office may transfer
12 funds to other Federal agencies or provide funding to non-
13 Federal entities through grants, cooperative agreements, or
14 contracts to carry out its duties under this section.

15 (g) *ANNUAL REPORT.*—The Director of the Office shall
16 include with the budget justification materials submitted to
17 Congress in support of the Department of Justice budget
18 for each fiscal year (as submitted with the budget of the
19 President under section 1105(a) of title 31, United States
20 Code) a report on the activities of the Office. Each such
21 report shall include the following:

22 (1) *For the period of 5 fiscal years beginning*
23 *with the fiscal year for which the budget is*
24 *submitted—*

1 (A) the Director's assessment of the needs of
 2 Federal, State, and local law enforcement agen-
 3 cies for assistance with respect to law enforce-
 4 ment technology and other matters consistent
 5 with the mission of the Office; and

6 (B) a strategic plan for meeting such needs
 7 of such law enforcement agencies.

8 (2) For the fiscal year preceding the fiscal year
 9 for which such budget is submitted, a description of
 10 the activities carried out by the Office and an evalua-
 11 tion of the extent to which those activities successfully
 12 meet the needs assessed under paragraph (1)(A) in
 13 previous reports.

14 **SEC. 233. DEFINITION OF LAW ENFORCEMENT TECH-**
 15 **NOLOGY.**

16 For the purposes of this title, the term "law enforce-
 17 ment technology" includes investigative and forensic tech-
 18 nologies, corrections technologies, and technologies that sup-
 19 port the judicial process.

20 **SEC. 234. ABOLISHMENT OF OFFICE OF SCIENCE AND TECH-**
 21 **NOLOGY OF NATIONAL INSTITUTE OF JUS-**
 22 **TICE; TRANSFER OF FUNCTIONS.**

23 (a) *AUTHORITY TO TRANSFER FUNCTIONS.*—The At-
 24 torney General may transfer to the Office any other pro-
 25 gram or activity of the Department of Justice that the At-

1 *torney General, in consultation with the Committee on the*
2 *Judiciary of the Senate and the Committee on the Judici-*
3 *ary of the House of Representatives, determines to be con-*
4 *sistent with the mission of the Office.*

5 **(b) TRANSFER OF PERSONNEL AND ASSETS.**—*With re-*
6 *spect to any function, power, or duty, or any program or*
7 *activity, that is established in the Office, those employees*
8 *and assets of the element of the Department of Justice from*
9 *which the transfer is made that the Attorney General deter-*
10 *mines are needed to perform that function, power, or duty,*
11 *or for that program or activity, as the case may be, shall*
12 *be transferred to the Office.*

13 **(c) REPORT ON IMPLEMENTATION.**—*Not later than 1*
14 *year after the date of the enactment of this Act, the Attorney*
15 *General shall submit to the Committee on the Judiciary of*
16 *the Senate and the Committee on the Judiciary of the House*
17 *of Representatives a report on the implementation of this*
18 *title. The report shall—*

19 **(1)** *provide an accounting of the amounts and*
20 *sources of funding available to the Office to carry out*
21 *its mission under existing authorizations and appro-*
22 *priations, and set forth the future funding needs of*
23 *the Office; and*

1 (2) *include such other information and rec-*
 2 *ommendations as the Attorney General considers ap-*
 3 *propriate.*

4 **SEC. 235. NATIONAL LAW ENFORCEMENT AND CORREC-**
 5 **TIONS TECHNOLOGY CENTERS.**

6 (a) *IN GENERAL.*—*The Director of the Office shall op-*
 7 *erate and support National Law Enforcement and Correc-*
 8 *tions Technology Centers (hereinafter in this section re-*
 9 *ferred to as “Centers”)* and, *to the extent necessary, estab-*
 10 *lish new centers through a merit-based, competitive process.*

11 (b) *PURPOSE OF CENTERS.*—*The purpose of the Cen-*
 12 *ters shall be to—*

13 (1) *support research and development of law en-*
 14 *forcement technology;*

15 (2) *support the transfer and implementation of*
 16 *technology;*

17 (3) *assist in the development and dissemination*
 18 *of guidelines and technological standards; and*

19 (4) *provide technology assistance, information,*
 20 *and support for law enforcement, corrections, and*
 21 *criminal justice purposes.*

22 (c) *ANNUAL MEETING.*—*Each year, the Director shall*
 23 *convene a meeting of the Centers in order to foster collabora-*
 24 *tion and communication between Center participants.*

1 (d) *REPORT*.—Not later than 12 months after the date
 2 of the enactment of this Act, the Director shall transmit
 3 to the Congress a report assessing the effectiveness of the
 4 existing system of Centers and identify the number of Cen-
 5 ters necessary to meet the technology needs of Federal, State,
 6 and local law enforcement in the United States.

7 **SEC. 236. COORDINATION WITH OTHER ENTITIES WITHIN**
 8 **DEPARTMENT OF JUSTICE.**

9 Section 102 of the Omnibus Crime Control and Safe
 10 Streets Act of 1968 (42 U.S.C. 3712) is amended in sub-
 11 section (a)(5) by inserting “coordinate and” before “pro-
 12 vide”.

13 **SEC. 237. AMENDMENTS RELATING TO NATIONAL INSTI-**
 14 **TUTE OF JUSTICE.**

15 Section 202(c) of the Omnibus Crime Control and
 16 Safety Streets Act of 1968 (42 U.S.C. 3722(c)) is
 17 amended—

18 (1) in paragraph (3) by inserting “, including
 19 cost effectiveness where practical,” before “of projects”;
 20 and

21 (2) by striking “and” after the semicolon at the
 22 end of paragraph (8), striking the period at the end
 23 of paragraph (9) and inserting “; and”, and by add-
 24 ing at the end the following:

1 “(10) research and development of tools and tech-
 2 nologies relating to prevention, detection, investiga-
 3 tion, and prosecution of crime; and

4 “(11) support research, development, testing,
 5 training, and evaluation of tools and technology for
 6 Federal, State, and local law enforcement agencies.”.

7 **TITLE III—SCIENCE AND TECH-**
 8 **NOLOGY IN SUPPORT OF**
 9 **HOMELAND SECURITY**

10 **SEC. 301. UNDER SECRETARY FOR SCIENCE AND TECH-**
 11 **NOLOGY.**

12 *There shall be in the Department a Directorate of*
 13 *Science and Technology headed by an Under Secretary for*
 14 *Science and Technology.*

15 **SEC. 302. RESPONSIBILITIES AND AUTHORITIES OF THE**
 16 **UNDER SECRETARY FOR SCIENCE AND TECH-**
 17 **NOLOGY.**

18 *The Secretary, acting through the Under Secretary for*
 19 *Science and Technology, shall have the responsibility for—*

20 (1) *advising the Secretary regarding research*
 21 *and development efforts and priorities in support of*
 22 *the Department’s missions;*

23 (2) *developing, in consultation with other appro-*
 24 *priate executive agencies, a national policy and stra-*
 25 *tegic plan for, identifying priorities, goals, objectives*

1 *and policies for, and coordinating the Federal Gov-*
2 *ernment's civilian efforts to identify and develop*
3 *countermeasures to chemical, biological, radiological,*
4 *nuclear, and other emerging terrorist threats, includ-*
5 *ing the development of comprehensive, research-based*
6 *definable goals for such efforts and development of an-*
7 *nuual measurable objectives and specific targets to ac-*
8 *complish and evaluate the goals for such efforts;*

9 *(3) supporting the Under Secretary for Informa-*
10 *tion Analysis and Infrastructure Protection, by as-*
11 *sessing and testing homeland security vulnerabilities*
12 *and possible threats;*

13 *(4) conducting basic and applied research, devel-*
14 *opment, demonstration, testing, and evaluation ac-*
15 *tivities that are relevant to any or all elements of the*
16 *Department, through both intramural and extramural*
17 *programs, except that such responsibility does not ex-*
18 *tend to human health-related research and develop-*
19 *ment activities;*

20 *(5) establishing priorities for, directing, funding,*
21 *and conducting national research, development, test*
22 *and evaluation, and procurement of technology and*
23 *systems for—*

1 (A) preventing the importation of chemical,
2 biological, radiological, nuclear, and related
3 weapons and material; and

4 (B) detecting, preventing, protecting
5 against, and responding to terrorist attacks;

6 (6) establishing a system for transferring home-
7 land security developments or technologies to federal,
8 state, local government, and private sector entities;

9 (7) entering into work agreements, joint sponsor-
10 ships, contracts, or any other agreements with the De-
11 partment of Energy regarding the use of the national
12 laboratories or sites and support of the science and
13 technology base at those facilities;

14 (8) collaborating with the Secretary of Agri-
15 culture and the Attorney General as provided in sec-
16 tion 212 of the Agricultural Bioterrorism Protection
17 Act of 2002 (7 U.S.C. 8401), as amended by section
18 1709(b);

19 (9) collaborating with the Secretary of Health
20 and Human Services and the Attorney General in de-
21 termining any new biological agents and toxins that
22 shall be listed as “select agents” in Appendix A of
23 part 72 of title 42, Code of Federal Regulations, pur-
24 suant to section 351A of the Public Health Service
25 Act (42 U.S.C. 262a);

1 (10) *supporting United States leadership in*
2 *science and technology;*

3 (11) *establishing and administering the primary*
4 *research and development activities of the Depart-*
5 *ment, including the long-term research and develop-*
6 *ment needs and capabilities for all elements of the De-*
7 *partment;*

8 (12) *coordinating and integrating all research,*
9 *development, demonstration, testing, and evaluation*
10 *activities of the Department;*

11 (13) *coordinating with other appropriate execu-*
12 *tive agencies in developing and carrying out the*
13 *science and technology agenda of the Department to*
14 *reduce duplication and identify unmet needs; and*

15 (14) *developing and overseeing the administra-*
16 *tion of guidelines for merit review of research and de-*
17 *velopment projects throughout the Department, and*
18 *for the dissemination of research conducted or spon-*
19 *sored by the Department.*

20 **SEC. 303. FUNCTIONS TRANSFERRED.**

21 *In accordance with title XV, there shall be transferred*
22 *to the Secretary the functions, personnel, assets, and liabil-*
23 *ities of the following entities:*

24 (1) *The following programs and activities of the*
25 *Department of Energy, including the functions of the*

1 *Secretary of Energy relating thereto (but not includ-*
2 *ing programs and activities relating to the strategic*
3 *nuclear defense posture of the United States):*

4 *(A) The chemical and biological national se-*
5 *curity and supporting programs and activities of*
6 *the nonproliferation and verification research*
7 *and development program.*

8 *(B) The nuclear smuggling programs and*
9 *activities within the proliferation detection pro-*
10 *gram of the nonproliferation and verification re-*
11 *search and development program. The programs*
12 *and activities described in this subparagraph*
13 *may be designated by the President either for*
14 *transfer to the Department or for joint operation*
15 *by the Secretary and the Secretary of Energy.*

16 *(C) The nuclear assessment program and*
17 *activities of the assessment, detection, and co-*
18 *operation program of the international materials*
19 *protection and cooperation program.*

20 *(D) Such life sciences activities of the bio-*
21 *logical and environmental research program re-*
22 *lated to microbial pathogens as may be des-*
23 *ignated by the President for transfer to the De-*
24 *partment.*

1 (E) *The Environmental Measurements Lab-*
 2 *oratory.*

3 (F) *The advanced scientific computing re-*
 4 *search program and activities at Lawrence*
 5 *Livermore National Laboratory.*

6 (2) *The National Bio-Weapons Defense Analysis*
 7 *Center of the Department of Defense, including the*
 8 *functions of the Secretary of Defense related thereto.*

9 **SEC. 304. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED**
 10 **ACTIVITIES.**

11 (a) *IN GENERAL.*—*With respect to civilian human*
 12 *health-related research and development activities relating*
 13 *to countermeasures for chemical, biological, radiological,*
 14 *and nuclear and other emerging terrorist threats carried out*
 15 *by the Department of Health and Human Services (includ-*
 16 *ing the Public Health Service), the Secretary of Health and*
 17 *Human Services shall set priorities, goals, objectives, and*
 18 *policies and develop a coordinated strategy for such activi-*
 19 *ties in collaboration with the Secretary of Homeland Secu-*
 20 *rity to ensure consistency with the national policy and stra-*
 21 *tegic plan developed pursuant to section 302(2).*

22 (b) *EVALUATION OF PROGRESS.*—*In carrying out sub-*
 23 *section (a), the Secretary of Health and Human Services*
 24 *shall collaborate with the Secretary in developing specific*
 25 *benchmarks and outcome measurements for evaluating*

1 *progress toward achieving the priorities and goals described*
 2 *in such subsection.*

3 (c) *ADMINISTRATION OF COUNTERMEASURES AGAINST*
 4 *SMALLPOX.—Section 224 of the Public Health Service Act*
 5 *(42 U.S.C. 233) is amended by adding the following:*

6 “(p) *ADMINISTRATION OF SMALLPOX COUNTER-*
 7 *MEASURES BY HEALTH PROFESSIONALS.—*

8 “(1) *IN GENERAL.—For purposes of this section,*
 9 *and subject to other provisions of this subsection, a*
 10 *covered person shall be deemed to be an employee of*
 11 *the Public Health Service with respect to liability*
 12 *arising out of administration of a covered counter-*
 13 *measure against smallpox to an individual during the*
 14 *effective period of a declaration by the Secretary*
 15 *under paragraph (2)(A).*

16 “(2) *DECLARATION BY SECRETARY CONCERNING*
 17 *COUNTERMEASURE AGAINST SMALLPOX.—*

18 “(A) *AUTHORITY TO ISSUE DECLARA-*
 19 *TION.—*

20 “(i) *IN GENERAL.—The Secretary may*
 21 *issue a declaration, pursuant to this para-*
 22 *graph, concluding that an actual or poten-*
 23 *tial bioterrorist incident or other actual or*
 24 *potential public health emergency makes ad-*
 25 *visable the administration of a covered*

1 *countermeasure to a category or categories*
2 *of individuals.*

3 “(ii) *COVERED COUNTERMEASURE.—*
4 *The Secretary shall specify in such declara-*
5 *tion the substance or substances that shall*
6 *be considered covered countermeasures (as*
7 *defined in paragraph (8)(A)) for purposes*
8 *of administration to individuals during the*
9 *effective period of the declaration.*

10 “(iii) *EFFECTIVE PERIOD.—The Sec-*
11 *retary shall specify in such declaration the*
12 *beginning and ending dates of the effective*
13 *period of the declaration, and may subse-*
14 *quently amend such declaration to shorten*
15 *or extend such effective period, provided*
16 *that the new closing date is after the date*
17 *when the declaration is amended.*

18 “(iv) *PUBLICATION.—The Secretary*
19 *shall promptly publish each such declara-*
20 *tion and amendment in the Federal Reg-*
21 *ister.*

22 “(B) *LIABILITY OF UNITED STATES ONLY*
23 *FOR ADMINISTRATIONS WITHIN SCOPE OF DEC-*
24 *LARATION.—Except as provided in paragraph*
25 *(5)(B)(ii), the United States shall be liable under*

1 *this subsection with respect to a claim arising*
 2 *out of the administration of a covered counter-*
 3 *measure to an individual only if—*

4 “(i) *the countermeasure was adminis-*
 5 *tered by a qualified person, for a purpose*
 6 *stated in paragraph (7)(A)(i), and during*
 7 *the effective period of a declaration by the*
 8 *Secretary under subparagraph (A) with re-*
 9 *spect to such countermeasure; and*

10 “(ii)(I) *the individual was within a*
 11 *category of individuals covered by the dec-*
 12 *laration; or*

13 “(II) *the qualified person admin-*
 14 *istering the countermeasure had reasonable*
 15 *grounds to believe that such individual was*
 16 *within such category.*

17 “(C) *PRESUMPTION OF ADMINISTRATION*
 18 *WITHIN SCOPE OF DECLARATION IN CASE OF AC-*
 19 *CIDENTAL VACCINIA INOCULATION.—*

20 “(i) *IN GENERAL.—If vaccinia vaccine*
 21 *is a covered countermeasure specified in a*
 22 *declaration under subparagraph (A), and*
 23 *an individual to whom the vaccinia vaccine*
 24 *is not administered contracts vaccinia,*

1 *then, under the circumstances specified in*
2 *clause (ii), the individual—*

3 “(I) *shall be rebuttably presumed*
4 *to have contracted vaccinia from an*
5 *individual to whom such vaccine was*
6 *administered as provided by clauses (i)*
7 *and (ii) of subparagraph (B); and*

8 “(II) *shall (unless such presump-*
9 *tion is rebutted) be deemed for pur-*
10 *poses of this subsection to be an indi-*
11 *vidual to whom a covered counter-*
12 *measure was administered by a quali-*
13 *fied person in accordance with the*
14 *terms of such declaration and as de-*
15 *scribed by subparagraph (B).*

16 “(ii) *CIRCUMSTANCES IN WHICH PRE-*
17 *SUMPTION APPLIES.—The presumption and*
18 *deeming stated in clause (i) shall apply*
19 *if—*

20 “(I) *the individual contracts*
21 *vaccinia during the effective period of*
22 *a declaration under subparagraph (A)*
23 *or by the date 30 days after the close*
24 *of such period; or*

1 “(II) *the individual resides or has*
 2 *resided with an individual to whom*
 3 *such vaccine was administered as pro-*
 4 *vided by clauses (i) and (ii) of sub-*
 5 *paragraph (B) and contracts vaccinia*
 6 *after such date.*

7 “(3) *EXCLUSIVITY OF REMEDY.—The remedy*
 8 *provided by subsection (a) shall be exclusive of any*
 9 *other civil action or proceeding for any claim or suit*
 10 *this subsection encompasses.*

11 “(4) *CERTIFICATION OF ACTION BY ATTORNEY*
 12 *GENERAL.—Subsection (c) applies to actions under*
 13 *this subsection, subject to the following provisions:*

14 “(A) *NATURE OF CERTIFICATION.—The cer-*
 15 *tification by the Attorney General that is the*
 16 *basis for deeming an action or proceeding to be*
 17 *against the United States, and for removing an*
 18 *action or proceeding from a State court, is a cer-*
 19 *tification that the action or proceeding is*
 20 *against a covered person and is based upon a*
 21 *claim alleging personal injury or death arising*
 22 *out of the administration of a covered counter-*
 23 *measure.*

24 “(B) *CERTIFICATION OF ATTORNEY GEN-*
 25 *ERAL CONCLUSIVE.—The certification of the At-*

1 *torney General of the facts specified in subpara-*
 2 *graph (A) shall conclusively establish such facts*
 3 *for purposes of jurisdiction pursuant to this sub-*
 4 *section.*

5 “(5) *DEFENDANT TO COOPERATE WITH UNITED*
 6 *STATES.—*

7 “(A) *IN GENERAL.—A covered person shall*
 8 *cooperate with the United States in the proc-*
 9 *essing and defense of a claim or action under*
 10 *this subsection based upon alleged acts or omis-*
 11 *sions of such person.*

12 “(B) *CONSEQUENCES OF FAILURE TO CO-*
 13 *OPERATE.—Upon the motion of the United*
 14 *States or any other party and upon finding that*
 15 *such person has failed to so cooperate—*

16 “(i) *the court shall substitute such per-*
 17 *son as the party defendant in place of the*
 18 *United States and, upon motion, shall re-*
 19 *mand any such suit to the court in which*
 20 *it was instituted if it appears that the court*
 21 *lacks subject matter jurisdiction;*

22 “(ii) *the United States shall not be lia-*
 23 *ble based on the acts or omissions of such*
 24 *person; and*

1 “(iii) *the Attorney General shall not be*
2 *obligated to defend such action.*

3 “(6) *RECOURSE AGAINST COVERED PERSON IN*
4 *CASE OF GROSS MISCONDUCT OR CONTRACT VIOLA-*
5 *TION.—*

6 “(A) *IN GENERAL.—Should payment be*
7 *made by the United States to any claimant*
8 *bringing a claim under this subsection, either by*
9 *way of administrative determination, settlement,*
10 *or court judgment, the United States shall have,*
11 *notwithstanding any provision of State law, the*
12 *right to recover for that portion of the damages*
13 *so awarded or paid, as well as interest and any*
14 *costs of litigation, resulting from the failure of*
15 *any covered person to carry out any obligation*
16 *or responsibility assumed by such person under*
17 *a contract with the United States or from any*
18 *grossly negligent, reckless, or illegal conduct or*
19 *willful misconduct on the part of such person.*

20 “(B) *VENUE.—The United States may*
21 *maintain an action under this paragraph*
22 *against such person in the district court of the*
23 *United States in which such person resides or*
24 *has its principal place of business.*

1 “(7) *DEFINITIONS.*—*As used in this subsection,*
 2 *terms have the following meanings:*

3 “(A) *COVERED COUNTERMEASURE.*—*The*
 4 *term ‘covered countermeasure’, or ‘covered coun-*
 5 *termeasure against smallpox’, means a substance*
 6 *that is—*

7 “(i)(I) *used to prevent or treat small-*
 8 *pox (including the vaccinia or another vac-*
 9 *cine); or*

10 “(II) *vaccinia immune globulin used to*
 11 *control or treat the adverse effects of*
 12 *vaccinia inoculation; and*

13 “(ii) *specified in a declaration under*
 14 *paragraph (2).*

15 “(B) *COVERED PERSON.*—*The term ‘covered*
 16 *person’, when used with respect to the adminis-*
 17 *tration of a covered countermeasure, includes*
 18 *any person who is—*

19 “(i) *a manufacturer or distributor of*
 20 *such countermeasure;*

21 “(ii) *a health care entity under whose*
 22 *auspices such countermeasure was adminis-*
 23 *tered;*

24 “(iii) *a qualified person who adminis-*
 25 *tered such countermeasure; or*

1 “(iv) an official, agent, or employee of
 2 a person described in clause (i), (ii), or
 3 (iii).

4 “(C) *QUALIFIED PERSON*.—The term ‘quali-
 5 fied person’, when used with respect to the ad-
 6 ministration of a covered countermeasure, means
 7 a licensed health professional or other individual
 8 who is authorized to administer such counter-
 9 measure under the law of the State in which the
 10 countermeasure was administered.”.

11 **SEC. 305. FEDERALLY FUNDED RESEARCH AND DEVELOP-**
 12 **MENT CENTERS.**

13 *The Secretary, acting through the Under Secretary for*
 14 *Science and Technology, shall have the authority to estab-*
 15 *lish or contract with 1 or more federally funded research*
 16 *and development centers to provide independent analysis*
 17 *of homeland security issues, or to carry out other respon-*
 18 *sibilities under this Act, including coordinating and inte-*
 19 *grating both the extramural and intramural programs de-*
 20 *scribed in section 308.*

21 **SEC. 306. MISCELLANEOUS PROVISIONS.**

22 *(a) CLASSIFICATION*.—*To the greatest extent prac-*
 23 *ticable, research conducted or supported by the Department*
 24 *shall be unclassified.*

1 (b) *CONSTRUCTION.*—*Nothing in this title shall be con-*
 2 *strued to preclude any Under Secretary of the Department*
 3 *from carrying out research, development, demonstration, or*
 4 *deployment activities, as long as such activities are coordi-*
 5 *nated through the Under Secretary for Science and Tech-*
 6 *nology.*

7 (c) *REGULATIONS.*—*The Secretary, acting through the*
 8 *Under Secretary for Science and Technology, may issue*
 9 *necessary regulations with respect to research, development,*
 10 *demonstration, testing, and evaluation activities of the De-*
 11 *partment, including the conducting, funding, and reviewing*
 12 *of such activities.*

13 (d) *NOTIFICATION OF PRESIDENTIAL LIFE SCIENCES*
 14 *DESIGNATIONS.*—*Not later than 60 days before effecting*
 15 *any transfer of Department of Energy life sciences activities*
 16 *pursuant to section 303(1)(D) of this Act, the President*
 17 *shall notify the appropriate congressional committees of the*
 18 *proposed transfer and shall include the reasons for the*
 19 *transfer and a description of the effect of the transfer on*
 20 *the activities of the Department of Energy.*

21 **SEC. 307. HOMELAND SECURITY ADVANCED RESEARCH**
 22 **PROJECTS AGENCY.**

23 (a) *DEFINITIONS.*—*In this section:*

24 (1) *FUND.*—*The term “Fund” means the Accel-*
 25 *eration Fund for Research and Development of Home-*

1 *land Security Technologies established in subsection*
 2 *(c).*

3 (2) *HOMELAND SECURITY RESEARCH.*—*The term*
 4 *“homeland security research” means research relevant*
 5 *to the detection of, prevention of, protection against,*
 6 *response to, attribution of, and recovery from home-*
 7 *land security threats, particularly acts of terrorism.*

8 (3) *HSARPA.*—*The term “HSARPA” means the*
 9 *Homeland Security Advanced Research Projects Agen-*
 10 *cy established in subsection (b).*

11 (4) *UNDER SECRETARY.*—*The term “Under Sec-*
 12 *retary” means the Under Secretary for Science and*
 13 *Technology.*

14 (b) *HSARPA.*—

15 (1) *ESTABLISHMENT.*—*There is established the*
 16 *Homeland Security Advanced Research Projects Agen-*
 17 *cy.*

18 (2) *DIRECTOR.*—*HSARPA shall be headed by a*
 19 *Director, who shall be appointed by the Secretary.*
 20 *The Director shall report to the Under Secretary.*

21 (3) *RESPONSIBILITIES.*—*The Director shall ad-*
 22 *minister the Fund to award competitive, merit-re-*
 23 *viewed grants, cooperative agreements or contracts to*
 24 *public or private entities, including businesses, feder-*
 25 *ally funded research and development centers, and*

1 *universities. The Director shall administer the Fund*
2 *to—*

3 *(A) support basic and applied homeland se-*
4 *curity research to promote revolutionary changes*
5 *in technologies that would promote homeland se-*
6 *curity;*

7 *(B) advance the development, testing and*
8 *evaluation, and deployment of critical homeland*
9 *security technologies; and*

10 *(C) accelerate the prototyping and deploy-*
11 *ment of technologies that would address home-*
12 *land security vulnerabilities.*

13 *(4) TARGETED COMPETITIONS.—The Director*
14 *may solicit proposals to address specific*
15 *vulnerabilities identified by the Director.*

16 *(5) COORDINATION.—The Director shall ensure*
17 *that the activities of HSARPA are coordinated with*
18 *those of other relevant research agencies, and may run*
19 *projects jointly with other agencies.*

20 *(6) PERSONNEL.—In hiring personnel for*
21 *HSARPA, the Secretary shall have the hiring and*
22 *management authorities described in section 1101 of*
23 *the Strom Thurmond National Defense Authorization*
24 *Act for Fiscal Year 1999 (5 U.S.C. 3104 note; Public*
25 *Law 105–261). The term of appointments for employ-*

1 *ees under subsection (c)(1) of that section may not ex-*
 2 *ceed 5 years before the granting of any extension*
 3 *under subsection (c)(2) of that section.*

4 (7) *DEMONSTRATIONS.*—*The Director, periodi-*
 5 *cally, shall hold homeland security technology dem-*
 6 *onstrations to improve contact among technology de-*
 7 *velopers, vendors and acquisition personnel.*

8 (c) *FUND.*—

9 (1) *ESTABLISHMENT.*—*There is established the*
 10 *Acceleration Fund for Research and Development of*
 11 *Homeland Security Technologies, which shall be ad-*
 12 *ministered by the Director of HSARPA.*

13 (2) *AUTHORIZATION OF APPROPRIATIONS.*—
 14 *There are authorized to be appropriated \$500,000,000*
 15 *to the Fund for fiscal year 2003 and such sums as*
 16 *may be necessary thereafter.*

17 (3) *COAST GUARD.*—*Of the funds authorized to*
 18 *be appropriated under paragraph (2), not less than*
 19 *10 percent of such funds for each fiscal year through*
 20 *fiscal year 2005 shall be authorized only for the*
 21 *Under Secretary, through joint agreement with the*
 22 *Commandant of the Coast Guard, to carry out re-*
 23 *search and development of improved ports, waterways*
 24 *and coastal security surveillance and perimeter pro-*
 25 *tection capabilities for the purpose of minimizing the*

1 *possibility that Coast Guard cutters, aircraft, heli-*
 2 *copters, and personnel will be diverted from non-*
 3 *homeland security missions to the ports, waterways*
 4 *and coastal security mission.*

5 **SEC. 308. CONDUCT OF RESEARCH, DEVELOPMENT, DEM-**
 6 **ONSTRATION, TESTING AND EVALUATION.**

7 *(a) IN GENERAL.—The Secretary, acting through the*
 8 *Under Secretary for Science and Technology, shall carry*
 9 *out the responsibilities under section 302(4) through both*
 10 *extramural and intramural programs.*

11 *(b) EXTRAMURAL PROGRAMS.—*

12 *(1) IN GENERAL.—The Secretary, acting through*
 13 *the Under Secretary for Science and Technology, shall*
 14 *operate extramural research, development, demonstra-*
 15 *tion, testing, and evaluation programs so as to—*

16 *(A) ensure that colleges, universities, private*
 17 *research institutes, and companies (and con-*
 18 *sortia thereof) from as many areas of the United*
 19 *States as practicable participate;*

20 *(B) ensure that the research funded is of*
 21 *high quality, as determined through merit review*
 22 *processes developed under section 302(14); and*

23 *(C) distribute funds through grants, cooper-*
 24 *ative agreements, and contracts.*

1 (2) *UNIVERSITY-BASED CENTERS FOR HOMELAND*
2 *SECURITY.*—

3 (A) *ESTABLISHMENT.*—*The Secretary, act-*
4 *ing through the Under Secretary for Science and*
5 *Technology, shall establish within 1 year of the*
6 *date of enactment of this Act a university-based*
7 *center or centers for homeland security. The pur-*
8 *pose of this center or centers shall be to establish*
9 *a coordinated, university-based system to en-*
10 *hance the Nation's homeland security.*

11 (B) *CRITERIA FOR SELECTION.*—*In select-*
12 *ing colleges or universities as centers for home-*
13 *land security, the Secretary shall consider the*
14 *following criteria:*

15 (i) *Demonstrated expertise in the*
16 *training of first responders.*

17 (ii) *Demonstrated expertise in respond-*
18 *ing to incidents involving weapons of mass*
19 *destruction and biological warfare.*

20 (iii) *Demonstrated expertise in emer-*
21 *gency medical services.*

22 (iv) *Demonstrated expertise in chem-*
23 *ical, biological, radiological, and nuclear*
24 *countermeasures.*

1 (v) *Strong affiliations with animal*
2 *and plant diagnostic laboratories.*

3 (vi) *Demonstrated expertise in food*
4 *safety.*

5 (vii) *Affiliation with Department of*
6 *Agriculture laboratories or training centers.*

7 (viii) *Demonstrated expertise in water*
8 *and wastewater operations.*

9 (ix) *Demonstrated expertise in port*
10 *and waterway security.*

11 (x) *Demonstrated expertise in multi-*
12 *modal transportation.*

13 (xi) *Nationally recognized programs in*
14 *information security.*

15 (xii) *Nationally recognized programs*
16 *in engineering.*

17 (xiii) *Demonstrated expertise in edu-*
18 *cational outreach and technical assistance.*

19 (xiv) *Demonstrated expertise in border*
20 *transportation and security.*

21 (xv) *Demonstrated expertise in inter-*
22 *disciplinary public policy research and*
23 *communication outreach regarding science,*
24 *technology, and public policy.*

1 (C) *DISCRETION OF SECRETARY.*—*The Sec-*
 2 *retary shall have the discretion to establish such*
 3 *centers and to consider additional criteria as*
 4 *necessary to meet the evolving needs of homeland*
 5 *security and shall report to Congress concerning*
 6 *the implementation of this paragraph as nec-*
 7 *essary.*

8 (D) *AUTHORIZATION OF APPROPRIA-*
 9 *TIONS.*—*There are authorized to be appropriated*
 10 *such sums as may be necessary to carry out this*
 11 *paragraph.*

12 (c) *INTRAMURAL PROGRAMS.*—

13 (1) *CONSULTATION.*—*In carrying out the duties*
 14 *under section 302, the Secretary, acting through the*
 15 *Under Secretary for Science and Technology, may*
 16 *draw upon the expertise of any laboratory of the Fed-*
 17 *eral Government, whether operated by a contractor or*
 18 *the Government.*

19 (2) *LABORATORIES.*—*The Secretary, acting*
 20 *through the Under Secretary for Science and Tech-*
 21 *nology, may establish a headquarters laboratory for*
 22 *the Department at any laboratory or site and may es-*
 23 *tablish additional laboratory units at other labora-*
 24 *tories or sites.*

1 (3) *CRITERIA FOR HEADQUARTERS LABORA-*
2 *TORY.—If the Secretary chooses to establish a head-*
3 *quarters laboratory pursuant to paragraph (2), then*
4 *the Secretary shall do the following:*

5 (A) *Establish criteria for the selection of the*
6 *headquarters laboratory in consultation with the*
7 *National Academy of Sciences, appropriate Fed-*
8 *eral agencies, and other experts.*

9 (B) *Publish the criteria in the Federal Reg-*
10 *ister.*

11 (C) *Evaluate all appropriate laboratories or*
12 *sites against the criteria.*

13 (D) *Select a laboratory or site on the basis*
14 *of the criteria.*

15 (E) *Report to the appropriate congressional*
16 *committees on which laboratory was selected,*
17 *how the selected laboratory meets the published*
18 *criteria, and what duties the headquarters lab-*
19 *oratory shall perform.*

20 (4) *LIMITATION ON OPERATION OF LABORA-*
21 *TORIES.—No laboratory shall begin operating as the*
22 *headquarters laboratory of the Department until at*
23 *least 30 days after the transmittal of the report re-*
24 *quired by paragraph (3)(E).*

1 **SEC. 309. UTILIZATION OF DEPARTMENT OF ENERGY NA-**
 2 **TIONAL LABORATORIES AND SITES IN SUP-**
 3 **PORT OF HOMELAND SECURITY ACTIVITIES.**

4 (a) *AUTHORITY TO UTILIZE NATIONAL LABORATORIES*
 5 *AND SITES.*—

6 (1) *IN GENERAL.*—*In carrying out the missions*
 7 *of the Department, the Secretary may utilize the De-*
 8 *partment of Energy national laboratories and sites*
 9 *through any 1 or more of the following methods, as*
 10 *the Secretary considers appropriate:*

11 (A) *A joint sponsorship arrangement re-*
 12 *ferred to in subsection (b).*

13 (B) *A direct contract between the Depart-*
 14 *ment and the applicable Department of Energy*
 15 *laboratory or site, subject to subsection (c).*

16 (C) *Any “work for others” basis made*
 17 *available by that laboratory or site.*

18 (D) *Any other method provided by law.*

19 (2) *ACCEPTANCE AND PERFORMANCE BY LABS*
 20 *AND SITES.*—*Notwithstanding any other law gov-*
 21 *erning the administration, mission, use, or operations*
 22 *of any of the Department of Energy national labora-*
 23 *tories and sites, such laboratories and sites are au-*
 24 *thorized to accept and perform work for the Secretary,*
 25 *consistent with resources provided, and perform such*
 26 *work on an equal basis to other missions at the lab-*

1 *oratory and not on a noninterference basis with other*
2 *missions of such laboratory or site.*

3 *(b) JOINT SPONSORSHIP ARRANGEMENTS.—*

4 *(1) LABORATORIES.—The Department may be a*
5 *joint sponsor, under a multiple agency sponsorship*
6 *arrangement with the Department of Energy, of 1 or*
7 *more Department of Energy national laboratories in*
8 *the performance of work.*

9 *(2) SITES.—The Department may be a joint*
10 *sponsor of a Department of Energy site in the per-*
11 *formance of work as if such site were a federally fund-*
12 *ed research and development center and the work were*
13 *performed under a multiple agency sponsorship ar-*
14 *rangement with the Department.*

15 *(3) PRIMARY SPONSOR.—The Department of En-*
16 *ergy shall be the primary sponsor under a multiple*
17 *agency sponsorship arrangement referred to in para-*
18 *graph (1) or (2).*

19 *(4) LEAD AGENT.—The Secretary of Energy*
20 *shall act as the lead agent in coordinating the forma-*
21 *tion and performance of a joint sponsorship arrange-*
22 *ment under this subsection between the Department*
23 *and a Department of Energy national laboratory or*
24 *site.*

1 (5) *FEDERAL ACQUISITION REGULATION.*—Any
 2 work performed by a Department of Energy national
 3 laboratory or site under a joint sponsorship arrange-
 4 ment under this subsection shall comply with the pol-
 5 icy on the use of federally funded research and devel-
 6 opment centers under the Federal Acquisition Regula-
 7 tions.

8 (6) *FUNDING.*—The Department shall provide
 9 funds for work at the Department of Energy national
 10 laboratories or sites, as the case may be, under a joint
 11 sponsorship arrangement under this subsection under
 12 the same terms and conditions as apply to the pri-
 13 mary sponsor of such national laboratory under sec-
 14 tion 303(b)(1)(C) of the Federal Property and Admin-
 15 istrative Services Act of 1949 (41 U.S.C. 253
 16 (b)(1)(C)) or of such site to the extent such section ap-
 17 plies to such site as a federally funded research and
 18 development center by reason of this subsection.

19 (c) *SEPARATE CONTRACTING.*—To the extent that pro-
 20 grams or activities transferred by this Act from the Depart-
 21 ment of Energy to the Department of Homeland Security
 22 are being carried out through direct contracts with the oper-
 23 ator of a national laboratory or site of the Department of
 24 Energy, the Secretary of Homeland Security and the Sec-
 25 retary of Energy shall ensure that direct contracts for such

1 *programs and activities between the Department of Home-*
 2 *land Security and such operator are separate from the di-*
 3 *rect contracts of the Department of Energy with such oper-*
 4 *ator.*

5 (d) *AUTHORITY WITH RESPECT TO COOPERATIVE RE-*
 6 *SEARCH AND DEVELOPMENT AGREEMENTS AND LICENSING*
 7 *AGREEMENTS.*—*In connection with any utilization of the*
 8 *Department of Energy national laboratories and sites*
 9 *under this section, the Secretary may permit the director*
 10 *of any such national laboratory or site to enter into cooper-*
 11 *ative research and development agreements or to negotiate*
 12 *licensing agreements with any person, any agency or in-*
 13 *strumentality, of the United States, any unit of State or*
 14 *local government, and any other entity under the authority*
 15 *granted by section 12 of the Stevenson-Wydler Technology*
 16 *Innovation Act of 1980 (15 U.S.C. 3710a). Technology may*
 17 *be transferred to a non-Federal party to such an agreement*
 18 *consistent with the provisions of sections 11 and 12 of that*
 19 *Act (15 U.S.C. 3710, 3710a).*

20 (e) *REIMBURSEMENT OF COSTS.*—*In the case of an ac-*
 21 *tivity carried out by the operator of a Department of En-*
 22 *ergy national laboratory or site in connection with any uti-*
 23 *lization of such laboratory or site under this section, the*
 24 *Department of Homeland Security shall reimburse the De-*
 25 *partment of Energy for costs of such activity through a*

1 *method under which the Secretary of Energy waives any*
 2 *requirement for the Department of Homeland Security to*
 3 *pay administrative charges or personnel costs of the Depart-*
 4 *ment of Energy or its contractors in excess of the amount*
 5 *that the Secretary of Energy pays for an activity carried*
 6 *out by such contractor and paid for by the Department of*
 7 *Energy.*

8 (f) *LABORATORY DIRECTED RESEARCH AND DEVELOP-*
 9 *MENT BY THE DEPARTMENT OF ENERGY.*—No funds au-
 10 *thorized to be appropriated or otherwise made available to*
 11 *the Department in any fiscal year may be obligated or ex-*
 12 *pended for laboratory directed research and development ac-*
 13 *tivities carried out by the Department of Energy unless*
 14 *such activities support the missions of the Department of*
 15 *Homeland Security.*

16 (g) *OFFICE FOR NATIONAL LABORATORIES.*—There is
 17 *established within the Directorate of Science and Tech-*
 18 *nology an Office for National Laboratories, which shall be*
 19 *responsible for the coordination and utilization of the De-*
 20 *partment of Energy national laboratories and sites under*
 21 *this section in a manner to create a networked laboratory*
 22 *system for the purpose of supporting the missions of the*
 23 *Department.*

24 (h) *DEPARTMENT OF ENERGY COORDINATION ON*
 25 *HOMELAND SECURITY RELATED RESEARCH.*—The Sec-

1 *retary of Energy shall ensure that any research, develop-*
 2 *ment, test, and evaluation activities conducted within the*
 3 *Department of Energy that are directly or indirectly related*
 4 *to homeland security are fully coordinated with the Sec-*
 5 *retary to minimize duplication of effort and maximize the*
 6 *effective application of Federal budget resources.*

7 **SEC. 310. TRANSFER OF PLUM ISLAND ANIMAL DISEASE**
 8 **CENTER, DEPARTMENT OF AGRICULTURE.**

9 (a) *IN GENERAL.*—*In accordance with title XV, the*
 10 *Secretary of Agriculture shall transfer to the Secretary of*
 11 *Homeland Security the Plum Island Animal Disease Center*
 12 *of the Department of Agriculture, including the assets and*
 13 *liabilities of the Center.*

14 (b) *CONTINUED DEPARTMENT OF AGRICULTURE AC-*
 15 *CESS.*—*On completion of the transfer of the Plum Island*
 16 *Animal Disease Center under subsection (a), the Secretary*
 17 *of Homeland Security and the Secretary of Agriculture*
 18 *shall enter into an agreement to ensure that the Department*
 19 *of Agriculture is able to carry out research, diagnostic, and*
 20 *other activities of the Department of Agriculture at the Cen-*
 21 *ter.*

22 (c) *DIRECTION OF ACTIVITIES.*—*The Secretary of Ag-*
 23 *riculture shall continue to direct the research, diagnostic,*
 24 *and other activities of the Department of Agriculture at the*
 25 *Center described in subsection (b).*

1 (d) *NOTIFICATION.*—

2 (1) *IN GENERAL.*—*At least 180 days before any*
 3 *change in the biosafety level at the Plum Island Ani-*
 4 *mal Disease Center, the President shall notify Con-*
 5 *gress of the change and describe the reasons for the*
 6 *change.*

7 (2) *LIMITATION.*—*No change described in para-*
 8 *graph (1) may be made earlier than 180 days after*
 9 *the completion of the transition period (as defined in*
 10 *section 1501.*

11 **SEC. 311. HOMELAND SECURITY SCIENCE AND TECH-**
 12 **NOLOGY ADVISORY COMMITTEE.**

13 (a) *ESTABLISHMENT.*—*There is established within the*
 14 *Department a Homeland Security Science and Technology*
 15 *Advisory Committee (in this section referred to as the “Ad-*
 16 *visory Committee”). The Advisory Committee shall make*
 17 *recommendations with respect to the activities of the Under*
 18 *Secretary for Science and Technology, including identifying*
 19 *research areas of potential importance to the security of the*
 20 *Nation.*

21 (b) *MEMBERSHIP.*—

22 (1) *APPOINTMENT.*—*The Advisory Committee*
 23 *shall consist of 20 members appointed by the Under*
 24 *Secretary for Science and Technology, which shall in-*
 25 *clude emergency first-responders or representatives of*

1 *organizations or associations of emergency first-re-*
2 *sponders. The Advisory Committee shall also include*
3 *representatives of citizen groups, including economi-*
4 *cally disadvantaged communities. The individuals*
5 *appointed as members of the Advisory Committee—*

6 *(A) shall be eminent in fields such as emer-*
7 *gency response, research, engineering, new prod-*
8 *uct development, business, and management con-*
9 *sulting;*

10 *(B) shall be selected solely on the basis of es-*
11 *tablished records of distinguished service;*

12 *(C) shall not be employees of the Federal*
13 *Government; and*

14 *(D) shall be so selected as to provide rep-*
15 *resentation of a cross-section of the research, de-*
16 *velopment, demonstration, and deployment ac-*
17 *tivities supported by the Under Secretary for*
18 *Science and Technology.*

19 *(2) NATIONAL RESEARCH COUNCIL.—The Under*
20 *Secretary for Science and Technology may enter into*
21 *an arrangement for the National Research Council to*
22 *select members of the Advisory Committee, but only if*
23 *the panel used by the National Research Council re-*
24 *fects the representation described in paragraph (1).*

25 *(c) TERMS OF OFFICE.—*

1 (1) *IN GENERAL.*—*Except as otherwise provided*
2 *in this subsection, the term of office of each member*
3 *of the Advisory Committee shall be 3 years.*

4 (2) *ORIGINAL APPOINTMENTS.*—*The original*
5 *members of the Advisory Committee shall be ap-*
6 *pointed to three classes of three members each. One*
7 *class shall have a term of 1 year, 1 a term of 2 years,*
8 *and the other a term of 3 years.*

9 (3) *VACANCIES.*—*A member appointed to fill a*
10 *vacancy occurring before the expiration of the term*
11 *for which the member's predecessor was appointed*
12 *shall be appointed for the remainder of such term.*

13 (d) *ELIGIBILITY.*—*A person who has completed two*
14 *consecutive full terms of service on the Advisory Committee*
15 *shall thereafter be ineligible for appointment during the 1-*
16 *year period following the expiration of the second such term.*

17 (e) *MEETINGS.*—*The Advisory Committee shall meet at*
18 *least quarterly at the call of the Chair or whenever one-*
19 *third of the members so request in writing. Each member*
20 *shall be given appropriate notice of the call of each meeting,*
21 *whenever possible not less than 15 days before the meeting.*

22 (f) *QUORUM.*—*A majority of the members of the Advi-*
23 *sory Committee not having a conflict of interest in the mat-*
24 *ter being considered by the Advisory Committee shall con-*
25 *stitute a quorum.*

1 (g) *CONFLICT OF INTEREST RULES.*—*The Advisory*
 2 *Committee shall establish rules for determining when 1 of*
 3 *its members has a conflict of interest in a matter being con-*
 4 *sidered by the Advisory Committee.*

5 (h) *REPORTS.*—

6 (1) *ANNUAL REPORT.*—*The Advisory Committee*
 7 *shall render an annual report to the Under Secretary*
 8 *for Science and Technology for transmittal to Con-*
 9 *gress on or before January 31 of each year. Such re-*
 10 *port shall describe the activities and recommendations*
 11 *of the Advisory Committee during the previous year.*

12 (2) *ADDITIONAL REPORTS.*—*The Advisory Com-*
 13 *mittee may render to the Under Secretary for trans-*
 14 *mittal to Congress such additional reports on specific*
 15 *policy matters as it considers appropriate.*

16 (i) *FACA EXEMPTION.*—*Section 14 of the Federal Ad-*
 17 *visory Committee Act shall not apply to the Advisory Com-*
 18 *mittee.*

19 (j) *TERMINATION.*—*The Department of Homeland Se-*
 20 *curity Science and Technology Advisory Committee shall*
 21 *terminate 3 years after the effective date of this Act.*

22 **SEC. 312. HOMELAND SECURITY INSTITUTE.**

23 (a) *ESTABLISHMENT.*—*The Secretary shall establish a*
 24 *federally funded research and development center to be*

1 known as the “Homeland Security Institute” (in this sec-
2 tion referred to as the “Institute”).

3 (b) *ADMINISTRATION.*—The Institute shall be adminis-
4 tered as a separate entity by the Secretary.

5 (c) *DUTIES.*—The duties of the Institute shall be deter-
6 mined by the Secretary, and may include the following:

7 (1) *Systems analysis, risk analysis, and simula-*
8 *tion and modeling to determine the vulnerabilities of*
9 *the Nation’s critical infrastructures and the effective-*
10 *ness of the systems deployed to reduce those*
11 *vulnerabilities.*

12 (2) *Economic and policy analysis to assess the*
13 *distributed costs and benefits of alternative ap-*
14 *proaches to enhancing security.*

15 (3) *Evaluation of the effectiveness of measures*
16 *deployed to enhance the security of institutions, facili-*
17 *ties, and infrastructure that may be terrorist targets.*

18 (4) *Identification of instances when common*
19 *standards and protocols could improve the interoper-*
20 *ability and effective utilization of tools developed for*
21 *field operators and first responders.*

22 (5) *Assistance for Federal agencies and depart-*
23 *ments in establishing testbeds to evaluate the effective-*
24 *ness of technologies under development and to assess*

1 *the appropriateness of such technologies for deploy-*
 2 *ment.*

3 (6) *Design of metrics and use of those metrics to*
 4 *evaluate the effectiveness of homeland security pro-*
 5 *grams throughout the Federal Government, including*
 6 *all national laboratories.*

7 (7) *Design of and support for the conduct of*
 8 *homeland security-related exercises and simulations.*

9 (8) *Creation of strategic technology development*
 10 *plans to reduce vulnerabilities in the Nation's critical*
 11 *infrastructure and key resources.*

12 (d) *CONSULTATION ON INSTITUTE ACTIVITIES.—In*
 13 *carrying out the duties described in subsection (c), the Insti-*
 14 *tute shall consult widely with representatives from private*
 15 *industry, institutions of higher education, nonprofit insti-*
 16 *tutions, other Government agencies, and federally funded*
 17 *research and development centers.*

18 (e) *USE OF CENTERS.—The Institute shall utilize the*
 19 *capabilities of the National Infrastructure Simulation and*
 20 *Analysis Center.*

21 (f) *ANNUAL REPORTS.—The Institute shall transmit*
 22 *to the Secretary and Congress an annual report on the ac-*
 23 *tivities of the Institute under this section.*

24 (g) *TERMINATION.—The Homeland Security Institute*
 25 *shall terminate 3 years after the effective date of this Act.*

1 **SEC. 313. TECHNOLOGY CLEARINGHOUSE TO ENCOURAGE**
2 **AND SUPPORT INNOVATIVE SOLUTIONS TO**
3 **ENHANCE HOMELAND SECURITY.**

4 (a) *ESTABLISHMENT OF PROGRAM.*—The Secretary,
5 acting through the Under Secretary for Science and Tech-
6 nology, shall establish and promote a program to encourage
7 technological innovation in facilitating the mission of the
8 Department (as described in section 101).

9 (b) *ELEMENTS OF PROGRAM.*—The program described
10 in subsection (a) shall include the following components:

11 (1) *The establishment of a centralized Federal*
12 *clearinghouse for information relating to technologies*
13 *that would further the mission of the Department for*
14 *dissemination, as appropriate, to Federal, State, and*
15 *local government and private sector entities for addi-*
16 *tional review, purchase, or use.*

17 (2) *The issuance of announcements seeking*
18 *unique and innovative technologies to advance the*
19 *mission of the Department.*

20 (3) *The establishment of a technical assistance*
21 *team to assist in screening, as appropriate, proposals*
22 *submitted to the Secretary (except as provided in sub-*
23 *section (c)(2)) to assess the feasibility, scientific and*
24 *technical merits, and estimated cost of such proposals,*
25 *as appropriate.*

1 (4) *The provision of guidance, recommendations,*
 2 *and technical assistance, as appropriate, to assist*
 3 *Federal, State, and local government and private sec-*
 4 *tor efforts to evaluate and implement the use of tech-*
 5 *nologies described in paragraph (1) or (2).*

6 (5) *The provision of information for persons*
 7 *seeking guidance on how to pursue proposals to de-*
 8 *velop or deploy technologies that would enhance home-*
 9 *land security, including information relating to Fed-*
 10 *eral funding, regulation, or acquisition.*

11 (c) *MISCELLANEOUS PROVISIONS.—*

12 (1) *IN GENERAL.—Nothing in this section shall*
 13 *be construed as authorizing the Secretary or the tech-*
 14 *nical assistance team established under subsection*
 15 *(b)(3) to set standards for technology to be used by the*
 16 *Department, any other executive agency, any State or*
 17 *local government entity, or any private sector entity.*

18 (2) *CERTAIN PROPOSALS.—The technical assist-*
 19 *ance team established under subsection (b)(3) shall*
 20 *not consider or evaluate proposals submitted in re-*
 21 *sponse to a solicitation for offers for a pending pro-*
 22 *curement or for a specific agency requirement.*

23 (3) *COORDINATION.—In carrying out this sec-*
 24 *tion, the Secretary shall coordinate with the Technical*
 25 *Support Working Group (organized under the April*

1 1982 National Security Decision Directive Numbered
2 30).

3 **TITLE IV—DIRECTORATE OF**
4 **BORDER AND TRANSPORTATION SECURITY**

6 **Subtitle A—Under Secretary for**
7 **Border and Transportation Security**

9 **SEC. 401. UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.**

11 *There shall be in the Department a Directorate of Border and Transportation Security headed by an Under Secretary for Border and Transportation Security.*

14 **SEC. 402. RESPONSIBILITIES.**

15 *The Secretary, acting through the Under Secretary for Border and Transportation Security, shall be responsible for the following:*

18 (1) *Preventing the entry of terrorists and the instruments of terrorism into the United States.*

20 (2) *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.*

1 (3) *Carrying out the immigration enforcement*
2 *functions vested by statute in, or performed by, the*
3 *Commissioner of Immigration and Naturalization (or*
4 *any officer, employee, or component of the Immigra-*
5 *tion and Naturalization Service) immediately before*
6 *the date on which the transfer of functions specified*
7 *under section 441 takes effect.*

8 (4) *Establishing and administering rules, in ac-*
9 *cordance with section 428, governing the granting of*
10 *visas or other forms of permission, including parole,*
11 *to enter the United States to individuals who are not*
12 *a citizen or an alien lawfully admitted for permanent*
13 *residence in the United States.*

14 (5) *Establishing national immigration enforce-*
15 *ment policies and priorities.*

16 (6) *Except as provided in subtitle C, admin-*
17 *istering the customs laws of the United States.*

18 (7) *Conducting the inspection and related ad-*
19 *ministrative functions of the Department of Agri-*
20 *culture transferred to the Secretary of Homeland Se-*
21 *curity under section 421.*

22 (8) *In carrying out the foregoing responsibilities,*
23 *ensuring the speedy, orderly, and efficient flow of law-*
24 *ful traffic and commerce.*

1 **SEC. 403. FUNCTIONS TRANSFERRED.**

2 *In accordance with title XV (relating to transition*
 3 *provisions), there shall be transferred to the Secretary the*
 4 *functions, personnel, assets, and liabilities of—*

5 *(1) the United States Customs Service of the De-*
 6 *partment of the Treasury, including the functions of*
 7 *the Secretary of the Treasury relating thereto;*

8 *(2) the Transportation Security Administration*
 9 *of the Department of Transportation, including the*
 10 *functions of the Secretary of Transportation, and of*
 11 *the Under Secretary of Transportation for Security,*
 12 *relating thereto;*

13 *(3) the Federal Protective Service of the General*
 14 *Services Administration, including the functions of*
 15 *the Administrator of General Services relating there-*
 16 *to;*

17 *(4) the Federal Law Enforcement Training Cen-*
 18 *ter of the Department of the Treasury; and*

19 *(5) the Office for Domestic Preparedness of the*
 20 *Office of Justice Programs, including the functions of*
 21 *the Attorney General relating thereto.*

22 ***Subtitle B—United States Customs***
 23 ***Service***

24 **SEC. 411. ESTABLISHMENT; COMMISSIONER OF CUSTOMS.**

25 *(a) ESTABLISHMENT.—There is established in the De-*
 26 *partment the United States Customs Service, under the au-*

1 *thority of the Under Secretary for Border and Transpor-*
 2 *tation Security, which shall be vested with those functions*
 3 *including, but not limited to those set forth in section*
 4 *415(7), and the personnel, assets, and liabilities attrib-*
 5 *utable to those functions.*

6 (b) COMMISSIONER OF CUSTOMS.—

7 (1) IN GENERAL.—*There shall be at the head of*
 8 *the Customs Service a Commissioner of Customs, who*
 9 *shall be appointed by the President, by and with the*
 10 *advice and consent of the Senate.*

11 (2) COMPENSATION.—*Section 5314 of title 5,*
 12 *United States Code, is amended by striking*

13 *“Commissioner of Customs, Department of the*
 14 *Treasury”*

15 *and inserting*

16 *“Commissioner of Customs, Department of*
 17 *Homeland Security.”.*

18 (3) CONTINUATION IN OFFICE.—*The individual*
 19 *serving as the Commissioner of Customs on the day*
 20 *before the effective date of this Act may serve as the*
 21 *Commissioner of Customs on and after such effective*
 22 *date until a Commissioner of Customs is appointed*
 23 *under paragraph (1).*

1 **SEC. 412. RETENTION OF CUSTOMS REVENUE FUNCTIONS**

2 **BY SECRETARY OF THE TREASURY.**

3 *(a) RETENTION OF CUSTOMS REVENUE FUNCTIONS BY*
 4 *SECRETARY OF THE TREASURY.—*

5 *(1) RETENTION OF AUTHORITY.—Notwith-*
 6 *standing section 403(a)(1), authority related to Cus-*
 7 *tom revenue functions that was vested in the Sec-*
 8 *retary of the Treasury by law before the effective date*
 9 *of this Act under those provisions of law set forth in*
 10 *paragraph (2) shall not be transferred to the Sec-*
 11 *retary by reason of this Act, and on and after the ef-*
 12 *fective date of this Act, the Secretary of the Treasury*
 13 *may delegate any such authority to the Secretary at*
 14 *the discretion of the Secretary of the Treasury. The*
 15 *Secretary of the Treasury shall consult with the Sec-*
 16 *retary regarding the exercise of any such authority*
 17 *not delegated to the Secretary.*

18 *(2) STATUTES.—The provisions of law referred*
 19 *to in paragraph (1) are the following: the Tariff Act*
 20 *of 1930; section 249 of the Revised Statutes of the*
 21 *United States (19 U.S.C. 3); section 2 of the Act of*
 22 *March 4, 1923 (19 U.S.C. 6); section 13031 of the*
 23 *Consolidated Omnibus Budget Reconciliation Act of*
 24 *1985 (19 U.S.C. 58c); section 251 of the Revised Stat-*
 25 *utes of the United States (19 U.S.C. 66); section 1 of*
 26 *the Act of June 26, 1930 (19 U.S.C. 68); the Foreign*

1 *Trade Zones Act (19 U.S.C. 81a et seq.); section 1 of*
 2 *the Act of March 2, 1911 (19 U.S.C. 198); the Trade*
 3 *Act of 1974; the Trade Agreements Act of 1979; the*
 4 *North American Free Trade Area Implementation*
 5 *Act; the Uruguay Round Agreements Act; the Carib-*
 6 *bean Basin Economic Recovery Act; the Andean*
 7 *Trade Preference Act; the African Growth and Oppor-*
 8 *tunity Act; and any other provision of law vesting*
 9 *customs revenue functions in the Secretary of the*
 10 *Treasury.*

11 (b) *MAINTENANCE OF CUSTOMS REVENUE FUNC-*
 12 *TIONS.—*

13 (1) *MAINTENANCE OF FUNCTIONS.—Notwith-*
 14 *standing any other provision of this Act, the Sec-*
 15 *retary may not consolidate, discontinue, or diminish*
 16 *those functions described in paragraph (2) performed*
 17 *by the United States Customs Service (as established*
 18 *under section 411) on or after the effective date of this*
 19 *Act, reduce the staffing level, or reduce the resources*
 20 *attributable to such functions, and the Secretary shall*
 21 *ensure that an appropriate management structure is*
 22 *implemented to carry out such functions.*

23 (2) *FUNCTIONS.—The functions referred to in*
 24 *paragraph (1) are those functions performed by the*
 25 *following personnel, and associated support staff, of*

1 *the United States Customs Service on the day before*
2 *the effective date of this Act: Import Specialists,*
3 *Entry Specialists, Drawback Specialists, National*
4 *Import Specialist, Fines and Penalties Specialists,*
5 *attorneys of the Office of Regulations and Rulings,*
6 *Customs Auditors, International Trade Specialists,*
7 *Financial Systems Specialists.*

8 *(c) NEW PERSONNEL.—The Secretary of the Treasury*
9 *is authorized to appoint up to 20 new personnel to work*
10 *with personnel of the Department in performing customs*
11 *revenue functions.*

12 **SEC. 413. PRESERVATION OF CUSTOMS FUNDS.**

13 *Notwithstanding any other provision of this Act, no*
14 *funds available to the United States Customs Service or col-*
15 *lected under paragraphs (1) through (8) of section 13031(a)*
16 *of the Consolidated Omnibus Budget Reconciliation Act of*
17 *1985 may be transferred for use by any other agency or*
18 *office in the Department.*

19 **SEC. 414. SEPARATE BUDGET REQUEST FOR CUSTOMS.**

20 *The President shall include in each budget transmitted*
21 *to Congress under section 1105 of title 31, United States*
22 *Code, a separate budget request for the United States Cus-*
23 *toms Service.*

1 **SEC. 415. DEFINITION.**

2 *In this subtitle, the term “customs revenue function”*
3 *means the following:*

4 (1) *Assessing and collecting customs duties (in-*
5 *cluding antidumping and countervailing duties and*
6 *duties imposed under safeguard provisions), excise*
7 *taxes, fees, and penalties due on imported merchan-*
8 *dise, including classifying and valuing merchandise*
9 *for purposes of such assessment.*

10 (2) *Processing and denial of entry of persons,*
11 *baggage, cargo, and mail, with respect to the assess-*
12 *ment and collection of import duties.*

13 (3) *Detecting and apprehending persons engaged*
14 *in fraudulent practices designed to circumvent the*
15 *customs laws of the United States.*

16 (4) *Enforcing section 337 of the Tariff Act of*
17 *1930 and provisions relating to import quotas and*
18 *the marking of imported merchandise, and providing*
19 *Customs Recordations for copyrights, patents, and*
20 *trademarks.*

21 (5) *Collecting accurate import data for compila-*
22 *tion of international trade statistics.*

23 (6) *Enforcing reciprocal trade agreements.*

24 (7) *Functions performed by the following per-*
25 *sonnel, and associated support staff, of the United*
26 *States Customs Service on the day before the effective*

1 *date of this Act: Import Specialists, Entry Special-*
 2 *ists, Drawback Specialists, National Import Spe-*
 3 *cialist, Fines and Penalties Specialists, attorneys of*
 4 *the Office of Regulations and Rulings, Customs Audi-*
 5 *tors, International Trade Specialists, Financial Sys-*
 6 *tems Specialists.*

7 *(8) Functions performed by the following offices,*
 8 *with respect to any function described in any of para-*
 9 *graphs (1) through (7), and associated support staff,*
 10 *of the United States Customs Service on the day be-*
 11 *fore the effective date of this Act: the Office of Infor-*
 12 *mation and Technology, the Office of Laboratory*
 13 *Services, the Office of the Chief Counsel, the Office of*
 14 *Congressional Affairs, the Office of International Af-*
 15 *airs, and the Office of Training and Development.*

16 **SEC. 416. GAO REPORT TO CONGRESS.**

17 *Not later than 3 months after the effective date of this*
 18 *Act, the Comptroller General of the United States shall sub-*
 19 *mit to Congress a report that sets forth all trade functions*
 20 *performed by the executive branch, specifying each agency*
 21 *that performs each such function.*

22 **SEC. 417. ALLOCATION OF RESOURCES BY THE SECRETARY.**

23 *(a) IN GENERAL.—The Secretary shall ensure that*
 24 *adequate staffing is provided to assure that levels of customs*

1 *revenue services provided on the day before the effective date*
 2 *of this Act shall continue to be provided.*

3 (b) *NOTIFICATION OF CONGRESS.*—*The Secretary shall*
 4 *notify the Committee on Ways and Means of the House of*
 5 *Representatives and the Committee on Finance of the Sen-*
 6 *ate at least 90 days prior to taking any action which*
 7 *would—*

8 (1) *result in any significant reduction in cus-*
 9 *oms revenue services, including hours of operation,*
 10 *provided at any office within the Department or any*
 11 *port of entry;*

12 (2) *eliminate or relocate any office of the De-*
 13 *partment which provides customs revenue services; or*

14 (3) *eliminate any port of entry.*

15 (c) *DEFINITION.*—*In this section, the term “customs*
 16 *revenue services” means those customs revenue functions de-*
 17 *scribed in paragraphs (1) through (6) and paragraph (8)*
 18 *of section 415.*

19 **SEC. 418. REPORTS TO CONGRESS.**

20 (a) *CONTINUING REPORTS.*—*The United States Cus-*
 21 *oms Service shall, on and after the effective date of this*
 22 *Act, continue to submit to the Committee on Ways and*
 23 *Means of the House of Representatives and the Committee*
 24 *on Finance of the Senate any report required, on the day*

1 *before such the effective date of this Act, to be so submitted*
 2 *under any provision of law.*

3 (b) *REPORT ON CONFORMING AMENDMENTS.*—Not
 4 *later than 60 days after the date of enactment of this Act,*
 5 *the Secretary of the Treasury shall submit a report to the*
 6 *Committee on Finance of the Senate and the Committee on*
 7 *Ways and Means of the House of Representatives of pro-*
 8 *posed conforming amendments to the statutes set forth*
 9 *under section 412(a)(2) in order to determine the appro-*
 10 *priate allocation of legal authorities described under this*
 11 *subsection. The Secretary of the Treasury shall also identify*
 12 *those authorities vested in the Secretary of the Treasury*
 13 *that are exercised by the Commissioner of Customs on or*
 14 *before the effective date of this section.*

15 **SEC. 419. CUSTOMS USER FEES.**

16 (a) *IN GENERAL.*—Section 13031(f) of the Consoli-
 17 *dated Omnibus Budget Reconciliation Act of 1985 (19*
 18 *U.S.C. 58c(f)) is amended—*

19 (1) *in paragraph (1), by striking subparagraph*
 20 *(B) and inserting the following:*

21 “(B) *amounts deposited into the Customs*
 22 *Commercial and Homeland Security Automation*
 23 *Account under paragraph (5).”;*

1 (2) in paragraph (4), by striking “(other than
2 the excess fees determined by the Secretary under
3 paragraph (5))”; and

4 (3) by striking paragraph (5) and inserting the
5 following:

6 “(5)(A) There is created within the general fund of the
7 Treasury a separate account that shall be known as the
8 ‘Customs Commercial and Homeland Security Automation
9 Account’. In each of fiscal years 2003, 2004, and 2005 there
10 shall be deposited into the Account from fees collected under
11 subsection (a)(9)(A), \$350,000,000.

12 “(B) There is authorized to be appropriated from the
13 Account in fiscal years 2003 through 2005 such amounts
14 as are available in that Account for the development, estab-
15 lishment, and implementation of the Automated Commer-
16 cial Environment computer system for the processing of
17 merchandise that is entered or released and for other pur-
18 poses related to the functions of the Department of Home-
19 land Security. Amounts appropriated pursuant to this sub-
20 paragraph are authorized to remain available until ex-
21 pended.

22 “(C) In adjusting the fee imposed by subsection
23 (a)(9)(A) for fiscal year 2006, the Secretary of the Treasury
24 shall reduce the amount estimated to be collected in fiscal
25 year 2006 by the amount by which total fees deposited to

1 *the Account during fiscal years 2003, 2004, and 2005 exceed*
 2 *total appropriations from that Account.”.*

3 (b) *CONFORMING AMENDMENT.—Section 311(b) of the*
 4 *Customs Border Security Act of 2002 (Public Law 107–*
 5 *210) is amended by striking paragraph (2).*

6 ***Subtitle C—Miscellaneous*** 7 ***Provisions***

8 ***SEC. 421. TRANSFER OF CERTAIN AGRICULTURAL INSPEC-*** 9 ***TION FUNCTIONS OF THE DEPARTMENT OF*** 10 ***AGRICULTURE.***

11 (a) *TRANSFER OF AGRICULTURAL IMPORT AND ENTRY*
 12 *INSPECTION FUNCTIONS.—There shall be transferred to the*
 13 *Secretary the functions of the Secretary of Agriculture relat-*
 14 *ing to agricultural import and entry inspection activities*
 15 *under the laws specified in subsection (b).*

16 (b) *COVERED ANIMAL AND PLANT PROTECTION*
 17 *LAWS.—The laws referred to in subsection (a) are the fol-*
 18 *lowing:*

19 (1) *The Act commonly known as the Virus-*
 20 *Serum-Toxin Act (the eighth paragraph under the*
 21 *heading “Bureau of Animal Industry” in the Act of*
 22 *March 4, 1913; 21 U.S.C. 151 et seq.).*

23 (2) *Section 1 of the Act of August 31, 1922 (com-*
 24 *monly known as the Honeybee Act; 7 U.S.C. 281).*

1 (3) *Title III of the Federal Seed Act* (7 U.S.C.
2 1581 *et seq.*).

3 (4) *The Plant Protection Act* (7 U.S.C. 7701 *et*
4 *seq.*).

5 (5) *The Animal Health Protection Act* (subtitle
6 *E of title X of Public Law 107–171; 7 U.S.C. 8301*
7 *et seq.*).

8 (6) *The Lacey Act Amendments of 1981* (16
9 U.S.C. 3371 *et seq.*).

10 (7) *Section 11 of the Endangered Species Act of*
11 *1973* (16 U.S.C. 1540).

12 (c) *EXCLUSION OF QUARANTINE ACTIVITIES.*—*For*
13 *purposes of this section, the term “functions” does not in-*
14 *clude any quarantine activities carried out under the laws*
15 *specified in subsection (b).*

16 (d) *EFFECT OF TRANSFER.*—

17 (1) *COMPLIANCE WITH DEPARTMENT OF AGRICULTURE*
18 *REGULATIONS.*—*The authority transferred*
19 *pursuant to subsection (a) shall be exercised by the*
20 *Secretary in accordance with the regulations, policies,*
21 *and procedures issued by the Secretary of Agriculture*
22 *regarding the administration of the laws specified in*
23 *subsection (b).*

24 (2) *RULEMAKING COORDINATION.*—*The Secretary*
25 *of Agriculture shall coordinate with the Secretary*

1 *whenever the Secretary of Agriculture prescribes regu-*
 2 *lations, policies, or procedures for administering the*
 3 *functions transferred under subsection (a) under a*
 4 *law specified in subsection (b).*

5 (3) *EFFECTIVE ADMINISTRATION.—The Sec-*
 6 *retary, in consultation with the Secretary of Agri-*
 7 *culture, may issue such directives and guidelines as*
 8 *are necessary to ensure the effective use of personnel*
 9 *of the Department of Homeland Security to carry out*
 10 *the functions transferred pursuant to subsection (a).*

11 (e) *TRANSFER AGREEMENT.—*

12 (1) *AGREEMENT REQUIRED; REVISION.—Before*
 13 *the end of the transition period, as defined in section*
 14 *1501, the Secretary of Agriculture and the Secretary*
 15 *shall enter into an agreement to effectuate the transfer*
 16 *of functions required by subsection (a). The Secretary*
 17 *of Agriculture and the Secretary may jointly revise*
 18 *the agreement as necessary thereafter.*

19 (2) *REQUIRED TERMS.—The agreement required*
 20 *by this subsection shall specifically address the fol-*
 21 *lowing:*

22 (A) *The supervision by the Secretary of Ag-*
 23 *riculture of the training of employees of the Sec-*
 24 *retary to carry out the functions transferred pur-*
 25 *suant to subsection (a).*

1 (B) *The transfer of funds to the Secretary*
 2 *under subsection (f).*

3 (3) *COOPERATION AND RECIPROCITY.—The Sec-*
 4 *retary of Agriculture and the Secretary may include*
 5 *as part of the agreement the following:*

6 (A) *Authority for the Secretary to perform*
 7 *functions delegated to the Animal and Plant*
 8 *Health Inspection Service of the Department of*
 9 *Agriculture regarding the protection of domestic*
 10 *livestock and plants, but not transferred to the*
 11 *Secretary pursuant to subsection (a).*

12 (B) *Authority for the Secretary of Agri-*
 13 *culture to use employees of the Department of*
 14 *Homeland Security to carry out authorities dele-*
 15 *gated to the Animal and Plant Health Inspec-*
 16 *tion Service regarding the protection of domestic*
 17 *livestock and plants.*

18 (f) *PERIODIC TRANSFER OF FUNDS TO DEPARTMENT*
 19 *OF HOMELAND SECURITY.—*

20 (1) *TRANSFER OF FUNDS.—Out of funds col-*
 21 *lected by fees authorized under sections 2508 and*
 22 *2509 of the Food, Agriculture, Conservation, and*
 23 *Trade Act of 1990 (21 U.S.C. 136, 136a), the Sec-*
 24 *retary of Agriculture shall transfer, from time to time*
 25 *in accordance with the agreement under subsection*

1 (e), to the Secretary funds for activities carried out
2 by the Secretary for which such fees were collected.

3 (2) *LIMITATION.*—The proportion of fees collected
4 pursuant to such sections that are transferred to the
5 Secretary under this subsection may not exceed the
6 proportion of the costs incurred by the Secretary to
7 all costs incurred to carry out activities funded by
8 such fees.

9 (g) *TRANSFER OF DEPARTMENT OF AGRICULTURE EM-*
10 *PLOYEES.*—Not later than the completion of the transition
11 period defined under section 1501, the Secretary of Agri-
12 culture shall transfer to the Secretary not more than 3,200
13 full-time equivalent positions of the Department of Agri-
14 culture.

15 (h) *PROTECTION OF INSPECTION ANIMALS.*—Title V of
16 the Agricultural Risk Protection Act of 2000 (7 U.S.C.
17 2279e, 2279f) is amended—

18 (1) in section 501(a)—

19 (A) by inserting “or the Department of
20 Homeland Security” after “Department of Agri-
21 culture”; and

22 (B) by inserting “or the Secretary of Home-
23 land Security” after “Secretary of Agriculture”;

1 (2) by striking “Secretary” each place it appears
 2 (other than in sections 501(a) and 501(e)) and insert-
 3 ing “Secretary concerned”; and

4 (3) by adding at the end of section 501 the fol-
 5 lowing new subsection:

6 “(e) *SECRETARY CONCERNED DEFINED.*—In this title,
 7 the term ‘Secretary concerned’ means—

8 “(1) the Secretary of Agriculture, with respect to
 9 an animal used for purposes of official inspections by
 10 the Department of Agriculture; and

11 “(2) the Secretary of Homeland Security, with
 12 respect to an animal used for purposes of official in-
 13 spections by the Department of Homeland Security.”.

14 **SEC. 422. FUNCTIONS OF ADMINISTRATOR OF GENERAL**
 15 **SERVICES.**

16 (a) *OPERATION, MAINTENANCE, AND PROTECTION OF*
 17 *FEDERAL BUILDINGS AND GROUNDS.*—Nothing in this Act
 18 may be construed to affect the functions or authorities of
 19 the Administrator of General Services with respect to the
 20 operation, maintenance, and protection of buildings and
 21 grounds owned or occupied by the Federal Government and
 22 under the jurisdiction, custody, or control of the Adminis-
 23 trator. Except for the law enforcement and related security
 24 functions transferred under section 403(3), the Adminis-
 25 trator shall retain all powers, functions, and authorities

1 *vested in the Administrator under chapter 10 of title 40,*
 2 *United States Code, and other provisions of law that are*
 3 *necessary for the operation, maintenance, and protection of*
 4 *such buildings and grounds.*

5 (b) *COLLECTION OF RENTS AND FEES; FEDERAL*
 6 *BUILDINGS FUND.—*

7 (1) *STATUTORY CONSTRUCTION.—Nothing in this*
 8 *Act may be construed—*

9 (A) *to direct the transfer of, or affect, the*
 10 *authority of the Administrator of General Serv-*
 11 *ices to collect rents and fees, including fees col-*
 12 *lected for protective services; or*

13 (B) *to authorize the Secretary or any other*
 14 *official in the Department to obligate amounts*
 15 *in the Federal Buildings Fund established by*
 16 *section 490(f) of title 40, United States Code.*

17 (2) *USE OF TRANSFERRED AMOUNTS.—Any*
 18 *amounts transferred by the Administrator of General*
 19 *Services to the Secretary out of rents and fees col-*
 20 *lected by the Administrator shall be used by the Sec-*
 21 *retary solely for the protection of buildings or grounds*
 22 *owned or occupied by the Federal Government.*

1 **SEC. 423. FUNCTIONS OF TRANSPORTATION SECURITY AD-**
2 **MINISTRATION.**

3 (a) *CONSULTATION WITH FEDERAL AVIATION ADMIN-*
4 *ISTRATION.*—*The Secretary and other officials in the De-*
5 *partment shall consult with the Administrator of the Fed-*
6 *eral Aviation Administration before taking any action that*
7 *might affect aviation safety, air carrier operations, aircraft*
8 *airworthiness, or the use of airspace. The Secretary shall*
9 *establish a liaison office within the Department for the pur-*
10 *pose of consulting with the Administrator of the Federal*
11 *Aviation Administration.*

12 (b) *REPORT TO CONGRESS.*—*Not later than 60 days*
13 *after the date of enactment of this Act, the Secretary of*
14 *Transportation shall transmit to Congress a report con-*
15 *taining a plan for complying with the requirements of sec-*
16 *tion 44901(d) of title 49, United States Code, as amended*
17 *by section 425 of this Act.*

18 (c) *LIMITATIONS ON STATUTORY CONSTRUCTION.*—

19 (1) *GRANT OF AUTHORITY.*—*Nothing in this Act*
20 *may be construed to vest in the Secretary or any*
21 *other official in the Department any authority over*
22 *transportation security that is not vested in the*
23 *Under Secretary of Transportation for Security, or in*
24 *the Secretary of Transportation under chapter 449 of*
25 *title 49, United States Code, on the day before the*
26 *date of enactment of this Act.*

1 (2) *OBLIGATION OF AIP FUNDS.*—*Nothing in this*
 2 *Act may be construed to authorize the Secretary or*
 3 *any other official in the Department to obligate*
 4 *amounts made available under section 48103 of title*
 5 *49, United States Code.*

6 **SEC. 424. PRESERVATION OF TRANSPORTATION SECURITY**
 7 **ADMINISTRATION AS A DISTINCT ENTITY.**

8 (a) *IN GENERAL.*—*Notwithstanding any other provi-*
 9 *sion of this Act, and subject to subsection (b), the Transpor-*
 10 *tation Security Administration shall be maintained as a*
 11 *distinct entity within the Department under the Under Sec-*
 12 *retary for Border Transportation and Security.*

13 (b) *SUNSET.*—*Subsection (a) shall cease to apply 2*
 14 *years after the date of enactment of this Act.*

15 **SEC. 425. EXPLOSIVE DETECTION SYSTEMS.**

16 *Section 44901(d) of title 49, United States Code,*
 17 *is amended by adding at the end the following:*

18 “(2) *DEADLINE.*—

19 “(A) *IN GENERAL.*—*If, in his discretion or*
 20 *at the request of an airport, the Under Secretary*
 21 *of Transportation for Security determines that*
 22 *the Transportation Security Administration is*
 23 *not able to deploy explosive detection systems re-*
 24 *quired to be deployed under paragraph (1) at all*
 25 *airports where explosive detection systems are re-*

1 *quired by December 31, 2002, then with respect*
2 *to each airport for which the Under Secretary*
3 *makes that determination—*

4 *“(i) the Under Secretary shall submit*
5 *to the Senate Committee on Commerce,*
6 *Science, and Transportation and the House*
7 *of Representatives Committee on Transpor-*
8 *tation and Infrastructure a detailed plan*
9 *(which may be submitted in classified form)*
10 *for the deployment of the number of explo-*
11 *sive detection systems at that airport nec-*
12 *essary to meet the requirements of para-*
13 *graph (1) as soon as practicable at that air-*
14 *port but in no event later than December*
15 *31, 2003; and*

16 *“(ii) the Under Secretary shall take all*
17 *necessary action to ensure that alternative*
18 *means of screening all checked baggage is*
19 *implemented until the requirements of para-*
20 *graph (1) have been met.*

21 *“(B) CRITERIA FOR DETERMINATION.—In*
22 *making a determination under subparagraph*
23 *(A), the Under Secretary shall take into*
24 *account—*

1 “(i) the nature and extent of the re-
 2 quired modifications to the airport’s ter-
 3 minal buildings, and the technical, engi-
 4 neering, design and construction issues;

5 “(ii) the need to ensure that such in-
 6 stallations and modifications are effective;
 7 and

8 “(iii) the feasibility and cost-effective-
 9 ness of deploying explosive detection systems
 10 in the baggage sorting area or other non-
 11 public area rather than the lobby of an air-
 12 port terminal building.

13 “(C) *RESPONSE.*—The Under Secretary
 14 shall respond to the request of an airport under
 15 subparagraph (A) within 14 days of receiving
 16 the request. A denial of request shall create no
 17 right of appeal or judicial review.

18 “(D) *AIRPORT EFFORT REQUIRED.*—Each
 19 airport with respect to which the Under Sec-
 20 retary makes a determination under subpara-
 21 graph (A) shall—

22 “(i) cooperate fully with the Transpor-
 23 tation Security Administration with respect
 24 to screening checked baggage and changes to

1 *accommodate explosive detection systems;*
 2 *and*

3 “(ii) *make security projects a priority*
 4 *for the obligation or expenditure of funds*
 5 *made available under chapter 417 or 471*
 6 *until explosive detection systems required to*
 7 *be deployed under paragraph (1) have been*
 8 *deployed at that airport.*

9 “(3) *REPORTS.—Until the Transportation Secu-*
 10 *rity Administration has met the requirements of*
 11 *paragraph (1), the Under Secretary shall submit a*
 12 *classified report every 30 days after the date of enact-*
 13 *ment of this Act to the Senate Committee on Com-*
 14 *merce, Science, and Transportation and the House of*
 15 *Representatives Committee on Transportation and*
 16 *Infrastructure describing the progress made toward*
 17 *meeting such requirements at each airport.”.*

18 **SEC. 426. TRANSPORTATION SECURITY.**

19 (a) *TRANSPORTATION SECURITY OVERSIGHT*
 20 *BOARD.—*

21 (1) *ESTABLISHMENT.—Section 115(a) of title 49,*
 22 *United States Code, is amended by striking “Depart-*
 23 *ment of Transportation” and inserting “Department*
 24 *of Homeland Security”.*

1 (2) *MEMBERSHIP*.—Section 115(b)(1) of title 49,
2 *United States Code*, is amended—

3 (A) *by striking subparagraph (G);*

4 (B) *by redesignating subparagraphs (A)*
5 *through (F) as subparagraphs (B) through (G),*
6 *respectively; and*

7 (C) *by inserting before subparagraph (B)*
8 *(as so redesignated) the following:*

9 “(A) *The Secretary of Homeland Security,*
10 *or the Secretary’s designee.*”.

11 (3) *CHAIRPERSON*.—Section 115(b)(2) of title 49,
12 *United States Code*, is amended by striking “*Sec-*
13 *retary of Transportation*” and inserting “*Secretary of*
14 *Homeland Security*”.

15 (b) *APPROVAL OF AIP GRANT APPLICATIONS FOR SE-*
16 *URITY ACTIVITIES*.—Section 47106 of title 49, *United*
17 *States Code*, is amended by adding at the end the following:

18 “(g) *CONSULTATION WITH SECRETARY OF HOMELAND*
19 *SECURITY*.—*The Secretary shall consult with the Secretary*
20 *of Homeland Security before approving an application*
21 *under this subchapter for an airport development project*
22 *grant for activities described in section 47102(3)(B)(ii)*
23 *only as they relate to security equipment or section*
24 *47102(3)(B)(x) only as they relate to installation of bulk*
25 *explosive detection system.*”.

1 **SEC. 427. COORDINATION OF INFORMATION AND INFORMA-**
 2 **TION TECHNOLOGY.**

3 (a) *DEFINITION OF AFFECTED AGENCY.*—*In this sec-*
 4 *tion, the term “affected agency” means—*

5 (1) *the Department;*

6 (2) *the Department of Agriculture;*

7 (3) *the Department of Health and Human Serv-*
 8 *ices; and*

9 (4) *any other department or agency determined*
 10 *to be appropriate by the Secretary.*

11 (b) *COORDINATION.*—*The Secretary, in coordination*
 12 *with the Secretary of Agriculture, the Secretary of Health*
 13 *and Human Services, and the head of each other depart-*
 14 *ment or agency determined to be appropriate by the Sec-*
 15 *retary, shall ensure that appropriate information (as deter-*
 16 *mined by the Secretary) concerning inspections of articles*
 17 *that are imported or entered into the United States, and*
 18 *are inspected or regulated by 1 or more affected agencies,*
 19 *is timely and efficiently exchanged between the affected*
 20 *agencies.*

21 (c) *REPORT AND PLAN.*—*Not later than 18 months*
 22 *after the date of enactment of this Act, the Secretary, in*
 23 *consultation with the Secretary of Agriculture, the Sec-*
 24 *retary of Health and Human Services, and the head of each*
 25 *other department or agency determined to be appropriate*
 26 *by the Secretary, shall submit to Congress—*

1 (1) *a report on the progress made in imple-*
 2 *menting this section; and*

3 (2) *a plan to complete implementation of this*
 4 *section.*

5 **SEC. 428. VISA ISSUANCE.**

6 (a) *DEFINITION.*—*In this subsection, the term “con-*
 7 *sular office” has the meaning given that term under section*
 8 *101(a)(9) of the Immigration and Nationality Act (8*
 9 *U.S.C. 1101(a)(9)).*

10 (b) *IN GENERAL.*—*Notwithstanding section 104(a) of*
 11 *the Immigration and Nationality Act (8 U.S.C. 1104(a))*
 12 *or any other provision of law, and except as provided in*
 13 *subsection (c) of this section, the Secretary—*

14 (1) *shall be vested exclusively with all authorities*
 15 *to issue regulations with respect to, administer, and*
 16 *enforce the provisions of such Act, and of all other im-*
 17 *migration and nationality laws, relating to the func-*
 18 *tions of consular officers of the United States in con-*
 19 *nection with the granting or refusal of visas, and*
 20 *shall have the authority to refuse visas in accordance*
 21 *with law and to develop programs of homeland secu-*
 22 *rity training for consular officers (in addition to con-*
 23 *sular training provided by the Secretary of State),*
 24 *which authorities shall be exercised through the Sec-*
 25 *retary of State, except that the Secretary shall not*

1 *have authority to alter or reverse the decision of a*
 2 *consular officer to refuse a visa to an alien; and*

3 *(2) shall have authority to confer or impose upon*
 4 *any officer or employee of the United States, with the*
 5 *consent of the head of the executive agency under*
 6 *whose jurisdiction such officer or employee is serving,*
 7 *any of the functions specified in paragraph (1).*

8 *(c) AUTHORITY OF THE SECRETARY OF STATE.—*

9 *(1) IN GENERAL.—Notwithstanding subsection*
 10 *(b), the Secretary of State may direct a consular offi-*
 11 *cer to refuse a visa to an alien if the Secretary of*
 12 *State deems such refusal necessary or advisable in the*
 13 *foreign policy or security interests of the United*
 14 *States.*

15 *(2) CONSTRUCTION REGARDING AUTHORITY.—*
 16 *Nothing in this section, consistent with the Secretary*
 17 *of Homeland Security's authority to refuse visas in*
 18 *accordance with law, shall be construed as affecting*
 19 *the authorities of the Secretary of State under the fol-*
 20 *lowing provisions of law:*

21 *(A) Section 101(a)(15)(A) of the Immigra-*
 22 *tion and Nationality Act (8 U.S.C.*
 23 *1101(a)(15)(A)).*

24 *(B) Section 204(d)(2) of the Immigration*
 25 *and Nationality Act (8 U.S.C. 1154) (as it will*

1 *take effect upon the entry into force of the Con-*
 2 *vention on Protection of Children and Coopera-*
 3 *tion in Respect to Inter-Country adoption).*

4 *(C) Section 212(a)(3)(B)(i)(IV)(bb) of the*
 5 *Immigration and Nationality Act (8 U.S.C.*
 6 *1182(a)(3)(B)(i)(IV)(bb)).*

7 *(D) Section 212(a)(3)(B)(i)(VI) of the Im-*
 8 *migration and Nationality Act (8 U.S.C.*
 9 *1182(a)(3)(B)(i)(VI)).*

10 *(E) Section 212(a)(3)(B)(vi)(II) of the Im-*
 11 *migration and Nationality Act (8 U.S.C.*
 12 *1182(a)(3)(B)(vi)(II)).*

13 *(F) Section 212(a)(3)(C) of the Immigration*
 14 *and Nationality Act (8 U.S.C. 1182(a)(3)(C)).*

15 *(G) Section 212(a)(10)(C) of the Immigra-*
 16 *tion and Nationality Act (8 U.S.C.*
 17 *1182(a)(10)(C)).*

18 *(H) Section 212(f) of the Immigration and*
 19 *Nationality Act (8 U.S.C. 1182(f)).*

20 *(I) Section 219(a) of the Immigration and*
 21 *Nationality Act (8 U.S.C. 1189(a)).*

22 *(J) Section 237(a)(4)(C) of the Immigration*
 23 *and Nationality Act (8 U.S.C. 1227(a)(4)(C)).*

1 (K) *Section 401 of the Cuban Liberty and*
2 *Democratic Solidarity (LIBERTAD) Act of*
3 *1996 (22 U.S.C. 6034; Public Law 104–114).*

4 (L) *Section 613 of the Departments of Com-*
5 *merce, Justice, and State, the Judiciary and Re-*
6 *lated Agencies Appropriations Act, 1999 (as con-*
7 *tained in section 101(b) of division A of Public*
8 *Law 105–277) (Omnibus Consolidated and*
9 *Emergency Supplemental Appropriations Act,*
10 *1999); 112 Stat. 2681; H.R. 4328 (originally*
11 *H.R. 4276) as amended by section 617 of Public*
12 *Law 106–553.*

13 (M) *Section 103(f) of the Chemical Weapon*
14 *Convention Implementation Act of 1998 (112*
15 *Stat. 2681–865).*

16 (N) *Section 801 of H.R. 3427, the Admiral*
17 *James W. Nance and Meg Donovan Foreign Re-*
18 *lations Authorization Act, Fiscal Years 2000 and*
19 *2001, as enacted by reference in Public Law*
20 *106–113.*

21 (O) *Section 568 of the Foreign Operations,*
22 *Export Financing, and Related Programs Ap-*
23 *propriations Act, 2002 (Public Law 107–115).*

24 (P) *Section 51 of the State Department*
25 *Basic Authorities Act of 1956 (22 U.S.C. 2723).*

1 (d) *CONSULAR OFFICERS AND CHIEFS OF MISSIONS.*—

2 (1) *IN GENERAL.*—*Nothing in this section may*
 3 *be construed to alter or affect—*

4 (A) *the employment status of consular offi-*
 5 *cers as employees of the Department of State; or*

6 (B) *the authority of a chief of mission*
 7 *under section 207 of the Foreign Service Act of*
 8 *1980 (22 U.S.C. 3927).*

9 (2) *CONSTRUCTION REGARDING DELEGATION OF*
 10 *AUTHORITY.*—*Nothing in this section shall be con-*
 11 *strued to affect any delegation of authority to the Sec-*
 12 *retary of State by the President pursuant to any*
 13 *proclamation issued under section 212(f) of the Immi-*
 14 *gration and Nationality Act (8 U.S.C. 1182(f)), con-*
 15 *sistent with the Secretary of Homeland Security's au-*
 16 *thority to refuse visas in accordance with law.*

17 (e) *ASSIGNMENT OF HOMELAND SECURITY EMPLOY-*
 18 *EES TO DIPLOMATIC AND CONSULAR POSTS.*—

19 (1) *IN GENERAL.*—*The Secretary is authorized to*
 20 *assign employees of the Department to each diplo-*
 21 *matic and consular post at which visas are issued,*
 22 *unless the Secretary determines that such an assign-*
 23 *ment at a particular post would not promote home-*
 24 *land security.*

1 (2) *FUNCTIONS.—Employees assigned under*
2 *paragraph (1) shall perform the following functions:*

3 (A) *Provide expert advice and training to*
4 *consular officers regarding specific security*
5 *threats relating to the adjudication of individual*
6 *visa applications or classes of applications.*

7 (B) *Review any such applications, either on*
8 *the initiative of the employee of the Department*
9 *or upon request by a consular officer or other*
10 *person charged with adjudicating such applica-*
11 *tions.*

12 (C) *Conduct investigations with respect to*
13 *consular matters under the jurisdiction of the*
14 *Secretary.*

15 (3) *EVALUATION OF CONSULAR OFFICERS.—The*
16 *Secretary of State shall evaluate, in consultation with*
17 *the Secretary, as deemed appropriate by the Sec-*
18 *retary, the performance of consular officers with re-*
19 *spect to the processing and adjudication of applica-*
20 *tions for visas in accordance with performance stand-*
21 *ards developed by the Secretary for these procedures.*

22 (4) *REPORT.—The Secretary shall, on an annual*
23 *basis, submit a report to Congress that describes the*
24 *basis for each determination under paragraph (1)*
25 *that the assignment of an employee of the Department*

1 *at a particular diplomatic post would not promote*
2 *homeland security.*

3 (5) *PERMANENT ASSIGNMENT; PARTICIPATION IN*
4 *TERRORIST LOOKOUT COMMITTEE.*—When appro-
5 *priate, employees of the Department assigned to per-*
6 *form functions described in paragraph (2) may be as-*
7 *signed permanently to overseas diplomatic or con-*
8 *sular posts with country-specific or regional responsi-*
9 *bility. If the Secretary so directs, any such employee,*
10 *when present at an overseas post, shall participate in*
11 *the terrorist lookout committee established under sec-*
12 *tion 304 of the Enhanced Border Security and Visa*
13 *Entry Reform Act of 2002 (8 U.S.C. 1733).*

14 (6) *TRAINING AND HIRING.*—

15 (A) *IN GENERAL.*—The Secretary shall en-
16 *sure, to the extent possible, that any employees of*
17 *the Department assigned to perform functions*
18 *under paragraph (2) and, as appropriate, con-*
19 *sular officers, shall be provided the necessary*
20 *training to enable them to carry out such func-*
21 *tions, including training in foreign languages,*
22 *interview techniques, and fraud detection tech-*
23 *niques, in conditions in the particular country*
24 *where each employee is assigned, and in other*
25 *appropriate areas of study.*

1 (B) *USE OF CENTER.*—*The Secretary is au-*
 2 *thorized to use the National Foreign Affairs*
 3 *Training Center, on a reimbursable basis, to ob-*
 4 *tain the training described in subparagraph (A).*

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

8 (A) *a report on the implementation of this*
 9 *subsection; and*

10 (B) *any legislative proposals necessary to*
 11 *further the objectives of this subsection.*

12 (8) *EFFECTIVE DATE.*—*This subsection shall take*
 13 *effect on the earlier of—*

14 (A) *the date on which the President pub-*
 15 *lishes notice in the Federal Register that the*
 16 *President has submitted a report to Congress set-*
 17 *ting forth a memorandum of understanding be-*
 18 *tween the Secretary and the Secretary of State*
 19 *governing the implementation of this section; or*

20 (B) *the date occurring 1 year after the date*
 21 *of enactment of this Act.*

22 (f) *NO CREATION OF PRIVATE RIGHT OF ACTION.*—
 23 *Nothing in this section shall be construed to create or au-*
 24 *thorize a private right of action to challenge a decision of*

1 *a consular officer or other United States official or employee*
2 *to grant or deny a visa.*

3 (g) *STUDY REGARDING USE OF FOREIGN NATION-*
4 *ALS.—*

5 (1) *IN GENERAL.—The Secretary of Homeland*
6 *Security shall conduct a study of the role of foreign*
7 *nationals in the granting or refusal of visas and other*
8 *documents authorizing entry of aliens into the United*
9 *States. The study shall address the following:*

10 (A) *The proper role, if any, of foreign na-*
11 *tionals in the process of rendering decisions on*
12 *such grants and refusals.*

13 (B) *Any security concerns involving the em-*
14 *ployment of foreign nationals.*

15 (C) *Whether there are cost-effective alter-*
16 *natives to the use of foreign nationals.*

17 (2) *REPORT.—Not later than 1 year after the*
18 *date of the enactment of this Act, the Secretary shall*
19 *submit a report containing the findings of the study*
20 *conducted under paragraph (1) to the Committee on*
21 *the Judiciary, the Committee on International Rela-*
22 *tions, and the Committee on Government Reform of*
23 *the House of Representatives, and the Committee on*
24 *the Judiciary, the Committee on Foreign Relations,*

1 *and the Committee on Government Affairs of the Sen-*
 2 *ate.*

3 *(h) REPORT.—Not later than 120 days after the date*
 4 *of the enactment of this Act, the Director of the Office of*
 5 *Science and Technology Policy shall submit to Congress a*
 6 *report on how the provisions of this section will affect proce-*
 7 *dures for the issuance of student visas.*

8 *(i) VISA ISSUANCE PROGRAM FOR SAUDI ARABIA.—*
 9 *Notwithstanding any other provision of law, after the date*
 10 *of the enactment of this Act all third party screening pro-*
 11 *grams in Saudi Arabia shall be terminated. On-site per-*
 12 *sonnel of the Department of Homeland Security shall re-*
 13 *view all visa applications prior to adjudication.*

14 **SEC. 429. INFORMATION ON VISA DENIALS REQUIRED TO**
 15 **BE ENTERED INTO ELECTRONIC DATA SYS-**
 16 **TEM.**

17 *(a) IN GENERAL.—Whenever a consular officer of the*
 18 *United States denies a visa to an applicant, the consular*
 19 *officer shall enter the fact and the basis of the denial and*
 20 *the name of the applicant into the interoperable electronic*
 21 *data system implemented under section 202(a) of the En-*
 22 *hanced Border Security and Visa Entry Reform Act of 2002*
 23 *(8 U.S.C. 1722(a)).*

1 (b) *PROHIBITION.*—*In the case of any alien with re-*
 2 *spect to whom a visa has been denied under subsection*
 3 *(a)—*

4 (1) *no subsequent visa may be issued to the alien*
 5 *unless the consular officer considering the alien’s visa*
 6 *application has reviewed the information concerning*
 7 *the alien placed in the interoperable electronic data*
 8 *system, has indicated on the alien’s application that*
 9 *the information has been reviewed, and has stated for*
 10 *the record why the visa is being issued or a waiver*
 11 *of visa ineligibility recommended in spite of that in-*
 12 *formation; and*

13 (2) *the alien may not be admitted to the United*
 14 *States without a visa issued in accordance with the*
 15 *procedures described in paragraph (1).*

16 **SEC. 430. OFFICE FOR DOMESTIC PREPAREDNESS.**

17 (a) *IN GENERAL.*—*The Office for Domestic Prepared-*
 18 *ness shall be within the Directorate of Border and Trans-*
 19 *portation Security.*

20 (b) *DIRECTOR.*—*There shall be a Director of the Office*
 21 *for Domestic Preparedness, who shall be appointed by the*
 22 *President, by and with the advice and consent of the Senate.*
 23 *The Director of the Office for Domestic Preparedness shall*
 24 *report directly to the Under Secretary for Border and*
 25 *Transportation Security.*

1 (c) *RESPONSIBILITIES.*—*The Office for Domestic Pre-*
2 *paredness shall have the primary responsibility within the*
3 *executive branch of Government for the preparedness of the*
4 *United States for acts of terrorism, including—*

5 (1) *coordinating preparedness efforts at the Fed-*
6 *eral level, and working with all State, local, tribal,*
7 *parish, and private sector emergency response pro-*
8 *viders on all matters pertaining to combating ter-*
9 *rorism, including training, exercises, and equipment*
10 *support;*

11 (2) *coordinating or, as appropriate, consoli-*
12 *dating communications and systems of communica-*
13 *tions relating to homeland security at all levels of*
14 *government;*

15 (3) *directing and supervising terrorism pre-*
16 *paredness grant programs of the Federal Government*
17 *(other than those programs administered by the De-*
18 *partment of Health and Human Services) for all*
19 *emergency response providers;*

20 (4) *incorporating the Strategy priorities into*
21 *planning guidance on an agency level for the pre-*
22 *paredness efforts of the Office for Domestic Prepared-*
23 *ness;*

24 (5) *providing agency-specific training for agents*
25 *and analysts within the Department, other agencies,*

1 *and State and local agencies and international enti-*
2 *ties;*

3 *(6) as the lead executive branch agency for pre-*
4 *paredness of the United States for acts of terrorism,*
5 *cooperating closely with the Federal Emergency Man-*
6 *agement Agency, which shall have the primary re-*
7 *sponsibility within the executive branch to prepare*
8 *for and mitigate the effects of nonterrorist-related dis-*
9 *asters in the United States;*

10 *(7) assisting and supporting the Secretary, in*
11 *coordination with other Directorates and entities out-*
12 *side the Department, in conducting appropriate risk*
13 *analysis and risk management activities of State,*
14 *local, and tribal governments consistent with the mis-*
15 *sion and functions of the Directorate; and*

16 *(8) those elements of the Office of National Pre-*
17 *paredness of the Federal Emergency Management*
18 *Agency which relate to terrorism, which shall be con-*
19 *solidated within the Department in the Office for Do-*
20 *mestic Preparedness established under this section.*

21 *(d) FISCAL YEARS 2003 and 2004.—During fiscal*
22 *year 2003 and fiscal year 2004, the Director of the Office*
23 *for Domestic Preparedness established under this section*
24 *shall manage and carry out those functions of the Office*
25 *for Domestic Preparedness of the Department of Justice*

1 *(transferred under this section) before September 11, 2001,*
 2 *under the same terms, conditions, policies, and authorities,*
 3 *and with the required level of personnel, assets, and budget*
 4 *before September 11, 2001.*

5 ***Subtitle D—Immigration***
 6 ***Enforcement Functions***

7 ***SEC. 441. TRANSFER OF FUNCTIONS TO UNDER SECRETARY***
 8 ***FOR BORDER AND TRANSPORTATION SECU-***
 9 ***RITY.***

10 *In accordance with title XV (relating to transition*
 11 *provisions), there shall be transferred from the Commis-*
 12 *sioner of Immigration and Naturalization to the Under*
 13 *Secretary for Border and Transportation Security all func-*
 14 *tions performed under the following programs, and all per-*
 15 *sonnel, assets, and liabilities pertaining to such programs,*
 16 *immediately before such transfer occurs:*

- 17 *(1) The Border Patrol program.*
 18 *(2) The detention and removal program.*
 19 *(3) The intelligence program.*
 20 *(4) The investigations program.*
 21 *(5) The inspections program.*

22 ***SEC. 442. ESTABLISHMENT OF BUREAU OF BORDER SECU-***
 23 ***RITY.***

24 *(a) ESTABLISHMENT OF BUREAU.—*

1 (1) *IN GENERAL.*—*There shall be in the Depart-*
 2 *ment of Homeland Security a bureau to be known as*
 3 *the “Bureau of Border Security”.*

4 (2) *ASSISTANT SECRETARY.*—*The head of the*
 5 *Bureau of Border Security shall be the Assistant Sec-*
 6 *retary of the Bureau of Border Security, who—*

7 *(A) shall report directly to the Under Sec-*
 8 *retary for Border and Transportation Security;*
 9 *and*

10 *(B) shall have a minimum of 5 years pro-*
 11 *fessional experience in law enforcement, and a*
 12 *minimum of 5 years of management experience.*

13 (3) *FUNCTIONS.*—*The Assistant Secretary of the*
 14 *Bureau of Border Security—*

15 *(A) shall establish the policies for per-*
 16 *forming such functions as are—*

17 *(i) transferred to the Under Secretary*
 18 *for Border and Transportation Security by*
 19 *section 441 and delegated to the Assistant*
 20 *Secretary by the Under Secretary for Bor-*
 21 *der and Transportation Security; or*

22 *(ii) otherwise vested in the Assistant*
 23 *Secretary by law;*

24 *(B) shall oversee the administration of such*
 25 *policies; and*

1 (C) shall advise the Under Secretary for
 2 Border and Transportation Security with respect
 3 to any policy or operation of the Bureau of Bor-
 4 der Security that may affect the Bureau of Citi-
 5 zenship and Immigration Services established
 6 under subtitle E, including potentially con-
 7 flicting policies or operations.

8 (4) PROGRAM TO COLLECT INFORMATION RELAT-
 9 ING TO FOREIGN STUDENTS.—The Assistant Secretary
 10 of the Bureau of Border Security shall be responsible
 11 for administering the program to collect information
 12 relating to nonimmigrant foreign students and other
 13 exchange program participants described in section
 14 641 of the Illegal Immigration Reform and Immi-
 15 grant Responsibility Act of 1996 (8 U.S.C. 1372), in-
 16 cluding the Student and Exchange Visitor Informa-
 17 tion System established under that section, and shall
 18 use such information to carry out the enforcement
 19 functions of the Bureau.

20 (5) MANAGERIAL ROTATION PROGRAM.—

21 (A) IN GENERAL.—Not later than 1 year
 22 after the date on which the transfer of functions
 23 specified under section 441 takes effect, the As-
 24 sistant Secretary of the Bureau of Border Secu-
 25 rity shall design and implement a managerial

1 *rotation program under which employees of such*
 2 *bureau holding positions involving supervisory*
 3 *or managerial responsibility and classified, in*
 4 *accordance with chapter 51 of title 5, United*
 5 *States Code, as a GS-14 or above, shall—*

6 *(i) gain some experience in all the*
 7 *major functions performed by such bureau;*
 8 *and*

9 *(ii) work in at least one local office of*
 10 *such bureau.*

11 *(B) REPORT.—Not later than 2 years after*
 12 *the date on which the transfer of functions speci-*
 13 *fied under section 441 takes effect, the Secretary*
 14 *shall submit a report to the Congress on the im-*
 15 *plementation of such program.*

16 *(b) CHIEF OF POLICY AND STRATEGY.—*

17 *(1) IN GENERAL.—There shall be a position of*
 18 *Chief of Policy and Strategy for the Bureau of Border*
 19 *Security.*

20 *(2) FUNCTIONS.—In consultation with Bureau of*
 21 *Border Security personnel in local offices, the Chief of*
 22 *Policy and Strategy shall be responsible for—*

23 *(A) making policy recommendations and*
 24 *performing policy research and analysis on im-*
 25 *migration enforcement issues; and*

1 (B) coordinating immigration policy issues
2 with the Chief of Policy and Strategy for the Bu-
3 reau of Citizenship and Immigration Services
4 (established under subtitle E), as appropriate.

5 (c) *LEGAL ADVISOR.*—There shall be a principal legal
6 advisor to the Assistant Secretary of the Bureau of Border
7 Security. The legal advisor shall provide specialized legal
8 advice to the Assistant Secretary of the Bureau of Border
9 Security and shall represent the bureau in all exclusion,
10 deportation, and removal proceedings before the Executive
11 Office for Immigration Review.

12 **SEC. 443. PROFESSIONAL RESPONSIBILITY AND QUALITY**
13 **REVIEW.**

14 The Under Secretary for Border and Transportation
15 Security shall be responsible for—

16 (1) conducting investigations of noncriminal al-
17 legations of misconduct, corruption, and fraud involv-
18 ing any employee of the Bureau of Border Security
19 that are not subject to investigation by the Inspector
20 General for the Department;

21 (2) inspecting the operations of the Bureau of
22 Border Security and providing assessments of the
23 quality of the operations of such bureau as a whole
24 and each of its components; and

1 (3) *providing an analysis of the management of*
 2 *the Bureau of Border Security.*

3 **SEC. 444. EMPLOYEE DISCIPLINE.**

4 *The Under Secretary for Border and Transportation*
 5 *Security may, notwithstanding any other provision of law,*
 6 *impose disciplinary action, including termination of em-*
 7 *ployment, pursuant to policies and procedures applicable*
 8 *to employees of the Federal Bureau of Investigation, on any*
 9 *employee of the Bureau of Border Security who willfully*
 10 *deceives the Congress or agency leadership on any matter.*

11 **SEC. 445. REPORT ON IMPROVING ENFORCEMENT FUNC-**
 12 **TIONS.**

13 (a) *IN GENERAL.*—*The Secretary, not later than 1*
 14 *year after being sworn into office, shall submit to the Com-*
 15 *mittees on Appropriations and the Judiciary of the House*
 16 *of Representatives and of the Senate a report with a plan*
 17 *detailing how the Bureau of Border Security, after the*
 18 *transfer of functions specified under section 441 takes effect,*
 19 *will enforce comprehensively, effectively, and fairly all the*
 20 *enforcement provisions of the Immigration and Nationality*
 21 *Act (8 U.S.C. 1101 et seq.) relating to such functions.*

22 (b) *CONSULTATION.*—*In carrying out subsection (a),*
 23 *the Secretary of Homeland Security shall consult with the*
 24 *Attorney General, the Secretary of State, the Director of the*
 25 *Federal Bureau of Investigation, the Secretary of the Treas-*

1 *ury, the Secretary of Labor, the Commissioner of Social Se-*
 2 *curity, the Director of the Executive Office for Immigration*
 3 *Review, and the heads of State and local law enforcement*
 4 *agencies to determine how to most effectively conduct en-*
 5 *forcement operations.*

6 **SEC. 446. SENSE OF CONGRESS REGARDING CONSTRUC-**
 7 **TION OF FENCING NEAR SAN DIEGO, CALI-**
 8 **FORNIA.**

9 *It is the sense of the Congress that completing the 14-*
 10 *mile border fence project required to be carried out under*
 11 *section 102(b) of the Illegal Immigration Reform and Im-*
 12 *migrant Responsibility Act of 1996 (8 U.S.C. 1103 note)*
 13 *should be a priority for the Secretary.*

14 ***Subtitle E—Citizenship and***
 15 ***Immigration Services***

16 **SEC. 451. ESTABLISHMENT OF BUREAU OF CITIZENSHIP**
 17 **AND IMMIGRATION SERVICES.**

18 *(a) ESTABLISHMENT OF BUREAU.—*

19 *(1) IN GENERAL.—There shall be in the Depart-*
 20 *ment a bureau to be known as the “Bureau of Citi-*
 21 *zenship and Immigration Services”.*

22 *(2) DIRECTOR.—The head of the Bureau of Citi-*
 23 *zenship and Immigration Services shall be the Direc-*
 24 *tor of the Bureau of Citizenship and Immigration*
 25 *Services, who—*

1 (A) shall report directly to the Deputy Sec-
2 retary;

3 (B) shall have a minimum of 5 years of
4 management experience; and

5 (C) shall be paid at the same level as the
6 Assistant Secretary of the Bureau of Border Se-
7 curity.

8 (3) *FUNCTIONS.*—*The Director of the Bureau of*
9 *Citizenship and Immigration Services—*

10 (A) shall establish the policies for per-
11 forming such functions as are transferred to the
12 Director by this section or this Act or otherwise
13 vested in the Director by law;

14 (B) shall oversee the administration of such
15 policies;

16 (C) shall advise the Deputy Secretary with
17 respect to any policy or operation of the Bureau
18 of Citizenship and Immigration Services that
19 may affect the Bureau of Border Security of the
20 Department, including potentially conflicting
21 policies or operations;

22 (D) shall establish national immigration
23 services policies and priorities;

24 (E) shall meet regularly with the Ombuds-
25 man described in section 452 to correct serious

1 *service problems identified by the Ombudsman;*
 2 *and*

3 *(F) shall establish procedures requiring a*
 4 *formal response to any recommendations sub-*
 5 *mitted in the Ombudsman's annual report to*
 6 *Congress within 3 months after its submission to*
 7 *Congress.*

8 *(4) MANAGERIAL ROTATION PROGRAM.—*

9 *(A) IN GENERAL.—Not later than 1 year*
 10 *after the effective date specified in section 455,*
 11 *the Director of the Bureau of Citizenship and*
 12 *Immigration Services shall design and imple-*
 13 *ment a managerial rotation program under*
 14 *which employees of such bureau holding positions*
 15 *involving supervisory or managerial responsi-*
 16 *bility and classified, in accordance with chapter*
 17 *51 of title 5, United States Code, as a GS-14 or*
 18 *above, shall—*

19 *(i) gain some experience in all the*
 20 *major functions performed by such bureau;*
 21 *and*

22 *(ii) work in at least one field office*
 23 *and one service center of such bureau.*

24 *(B) REPORT.—Not later than 2 years after*
 25 *the effective date specified in section 455, the*

1 *Secretary shall submit a report to Congress on*
2 *the implementation of such program.*

3 (5) *PILOT INITIATIVES FOR BACKLOG ELIMI-*
4 *NATION.—The Director of the Bureau of Citizenship*
5 *and Immigration Services is authorized to implement*
6 *innovative pilot initiatives to eliminate any remain-*
7 *ing backlog in the processing of immigration benefit*
8 *applications, and to prevent any backlog in the proc-*
9 *essing of such applications from recurring, in accord-*
10 *ance with section 204(a) of the Immigration Services*
11 *and Infrastructure Improvements Act of 2000 (8*
12 *U.S.C. 1573(a)). Such initiatives may include meas-*
13 *ures such as increasing personnel, transferring per-*
14 *sonnel to focus on areas with the largest potential for*
15 *backlog, and streamlining paperwork.*

16 (b) *TRANSFER OF FUNCTIONS FROM COMMIS-*
17 *SIONER.—In accordance with title XV (relating to transi-*
18 *tion provisions), there are transferred from the Commis-*
19 *sioner of Immigration and Naturalization to the Director*
20 *of the Bureau of Citizenship and Immigration Services the*
21 *following functions, and all personnel, infrastructure, and*
22 *funding provided to the Commissioner in support of such*
23 *functions immediately before the effective date specified in*
24 *section 455:*

25 (1) *Adjudications of immigrant visa petitions.*

1 (2) *Adjudications of naturalization petitions.*

2 (3) *Adjudications of asylum and refugee applica-*
3 *tions.*

4 (4) *Adjudications performed at service centers.*

5 (5) *All other adjudications performed by the Im-*
6 *migration and Naturalization Service immediately*
7 *before the effective date specified in section 455.*

8 (c) *CHIEF OF POLICY AND STRATEGY.—*

9 (1) *IN GENERAL.—There shall be a position of*
10 *Chief of Policy and Strategy for the Bureau of Citi-*
11 *zenship and Immigration Services.*

12 (2) *FUNCTIONS.—In consultation with Bureau of*
13 *Citizenship and Immigration Services personnel in*
14 *field offices, the Chief of Policy and Strategy shall be*
15 *responsible for—*

16 (A) *making policy recommendations and*
17 *performing policy research and analysis on im-*
18 *migration services issues; and*

19 (B) *coordinating immigration policy issues*
20 *with the Chief of Policy and Strategy for the Bu-*
21 *reau of Border Security of the Department.*

22 (d) *LEGAL ADVISOR.—*

23 (1) *IN GENERAL.—There shall be a principal*
24 *legal advisor to the Director of the Bureau of Citizen-*
25 *ship and Immigration Services.*

1 (2) *FUNCTIONS.*—*The legal advisor shall be re-*
 2 *sponsible for—*

3 (A) *providing specialized legal advice, opin-*
 4 *ions, determinations, regulations, and any other*
 5 *assistance to the Director of the Bureau of Citi-*
 6 *zenship and Immigration Services with respect*
 7 *to legal matters affecting the Bureau of Citizen-*
 8 *ship and Immigration Services; and*

9 (B) *representing the Bureau of Citizenship*
 10 *and Immigration Services in visa petition ap-*
 11 *peal proceedings before the Executive Office for*
 12 *Immigration Review.*

13 (e) *BUDGET OFFICER.*—

14 (1) *IN GENERAL.*—*There shall be a Budget Offi-*
 15 *cer for the Bureau of Citizenship and Immigration*
 16 *Services.*

17 (2) *FUNCTIONS.*—

18 (A) *IN GENERAL.*—*The Budget Officer shall*
 19 *be responsible for—*

20 (i) *formulating and executing the*
 21 *budget of the Bureau of Citizenship and Im-*
 22 *migration Services;*

23 (ii) *financial management of the Bu-*
 24 *reau of Citizenship and Immigration Serv-*
 25 *ices; and*

1 (iii) collecting all payments, fines, and
 2 other debts for the Bureau of Citizenship
 3 and Immigration Services.

4 (f) *CHIEF OF OFFICE OF CITIZENSHIP.*—

5 (1) *IN GENERAL.*—There shall be a position of
 6 Chief of the Office of Citizenship for the Bureau of
 7 Citizenship and Immigration Services.

8 (2) *FUNCTIONS.*—The Chief of the Office of Citi-
 9 zenship for the Bureau of Citizenship and Immigra-
 10 tion Services shall be responsible for promoting in-
 11 struction and training on citizenship responsibilities
 12 for aliens interested in becoming naturalized citizens
 13 of the United States, including the development of
 14 educational materials.

15 **SEC. 452. CITIZENSHIP AND IMMIGRATION SERVICES OM-**
 16 **BUDSMAN.**

17 (a) *IN GENERAL.*—Within the Department, there shall
 18 be a position of Citizenship and Immigration Services Om-
 19 budsman (in this section referred to as the “Ombudsman”).
 20 The Ombudsman shall report directly to the Deputy Sec-
 21 retary. The Ombudsman shall have a background in cus-
 22 tomer service as well as immigration law.

23 (b) *FUNCTIONS.*—It shall be the function of the
 24 Ombudsman—

1 (1) *to assist individuals and employers in resolv-*
2 *ing problems with the Bureau of Citizenship and Im-*
3 *migration Services;*

4 (2) *to identify areas in which individuals and*
5 *employers have problems in dealing with the Bureau*
6 *of Citizenship and Immigration Services; and*

7 (3) *to the extent possible, to propose changes in*
8 *the administrative practices of the Bureau of Citizen-*
9 *ship and Immigration Services to mitigate problems*
10 *identified under paragraph (2).*

11 (c) *ANNUAL REPORTS.—*

12 (1) *OBJECTIVES.—Not later than June 30 of*
13 *each calendar year, the Ombudsman shall report to*
14 *the Committee on the Judiciary of the House of Rep-*
15 *resentatives and the Senate on the objectives of the Of-*
16 *fice of the Ombudsman for the fiscal year beginning*
17 *in such calendar year. Any such report shall contain*
18 *full and substantive analysis, in addition to statis-*
19 *tical information, and—*

20 (A) *shall identify the recommendations the*
21 *Office of the Ombudsman has made on improv-*
22 *ing services and responsiveness of the Bureau of*
23 *Citizenship and Immigration Services;*

24 (B) *shall contain a summary of the most*
25 *pervasive and serious problems encountered by*

1 *individuals and employers, including a descrip-*
2 *tion of the nature of such problems;*

3 *(C) shall contain an inventory of the items*
4 *described in subparagraphs (A) and (B) for*
5 *which action has been taken and the result of*
6 *such action;*

7 *(D) shall contain an inventory of the items*
8 *described in subparagraphs (A) and (B) for*
9 *which action remains to be completed and the*
10 *period during which each item has remained on*
11 *such inventory;*

12 *(E) shall contain an inventory of the items*
13 *described in subparagraphs (A) and (B) for*
14 *which no action has been taken, the period dur-*
15 *ing which each item has remained on such in-*
16 *ventory, the reasons for the inaction, and shall*
17 *identify any official of the Bureau of Citizenship*
18 *and Immigration Services who is responsible for*
19 *such inaction;*

20 *(F) shall contain recommendations for such*
21 *administrative action as may be appropriate to*
22 *resolve problems encountered by individuals and*
23 *employers, including problems created by exces-*
24 *sive backlogs in the adjudication and processing*

1 *of immigration benefit petitions and applica-*
 2 *tions; and*

3 *(G) shall include such other information as*
 4 *the Ombudsman may deem advisable.*

5 (2) *REPORT TO BE SUBMITTED DIRECTLY.—*
 6 *Each report required under this subsection shall be*
 7 *provided directly to the committees described in para-*
 8 *graph (1) without any prior comment or amendment*
 9 *from the Secretary, Deputy Secretary, Director of the*
 10 *Bureau of Citizenship and Immigration Services, or*
 11 *any other officer or employee of the Department or*
 12 *the Office of Management and Budget.*

13 (d) *OTHER RESPONSIBILITIES.—The Ombudsman—*
 14 (1) *shall monitor the coverage and geographic al-*
 15 *location of local offices of the Ombudsman;*

16 (2) *shall develop guidance to be distributed to all*
 17 *officers and employees of the Bureau of Citizenship*
 18 *and Immigration Services outlining the criteria for*
 19 *referral of inquiries to local offices of the Ombuds-*
 20 *man;*

21 (3) *shall ensure that the local telephone number*
 22 *for each local office of the Ombudsman is published*
 23 *and available to individuals and employers served by*
 24 *the office; and*

1 (4) *shall meet regularly with the Director of the*
 2 *Bureau of Citizenship and Immigration Services to*
 3 *identify serious service problems and to present rec-*
 4 *ommendations for such administrative action as may*
 5 *be appropriate to resolve problems encountered by in-*
 6 *dividuals and employers.*

7 (e) *PERSONNEL ACTIONS.*—

8 (1) *IN GENERAL.*—*The Ombudsman shall have*
 9 *the responsibility and authority—*

10 (A) *to appoint local ombudsmen and make*
 11 *available at least 1 such ombudsman for each*
 12 *State; and*

13 (B) *to evaluate and take personnel actions*
 14 *(including dismissal) with respect to any em-*
 15 *ployee of any local office of the Ombudsman.*

16 (2) *CONSULTATION.*—*The Ombudsman may con-*
 17 *sult with the appropriate supervisory personnel of the*
 18 *Bureau of Citizenship and Immigration Services in*
 19 *carrying out the Ombudsman’s responsibilities under*
 20 *this subsection.*

21 (f) *RESPONSIBILITIES OF BUREAU OF CITIZENSHIP*
 22 *AND IMMIGRATION SERVICES.*—*The Director of the Bureau*
 23 *of Citizenship and Immigration Services shall establish*
 24 *procedures requiring a formal response to all recommenda-*

1 *tions submitted to such director by the Ombudsman within*
 2 *3 months after submission to such director.*

3 *(g) OPERATION OF LOCAL OFFICES.—*

4 *(1) IN GENERAL.—Each local ombudsman—*

5 *(A) shall report to the Ombudsman or the*
 6 *delegate thereof;*

7 *(B) may consult with the appropriate su-*
 8 *pervisory personnel of the Bureau of Citizenship*
 9 *and Immigration Services regarding the daily*
 10 *operation of the local office of such ombudsman;*

11 *(C) shall, at the initial meeting with any*
 12 *individual or employer seeking the assistance of*
 13 *such local office, notify such individual or em-*
 14 *ployer that the local offices of the Ombudsman*
 15 *operate independently of any other component of*
 16 *the Department and report directly to Congress*
 17 *through the Ombudsman; and*

18 *(D) at the local ombudsman's discretion,*
 19 *may determine not to disclose to the Bureau of*
 20 *Citizenship and Immigration Services contact*
 21 *with, or information provided by, such indi-*
 22 *vidual or employer.*

23 *(2) MAINTENANCE OF INDEPENDENT COMMU-*
 24 *NICATIONS.—Each local office of the Ombudsman*
 25 *shall maintain a phone, facsimile, and other means*

1 of electronic communication access, and a post office
2 address, that is separate from those maintained by
3 the Bureau of Citizenship and Immigration Services,
4 or any component of the Bureau of Citizenship and
5 Immigration Services.

6 **SEC. 453. PROFESSIONAL RESPONSIBILITY AND QUALITY**
7 **REVIEW.**

8 (a) *IN GENERAL.*—The Director of the Bureau of Citi-
9 zenship and Immigration Services shall be responsible for—

10 (1) *conducting investigations of noncriminal al-*
11 *legations of misconduct, corruption, and fraud involv-*
12 *ing any employee of the Bureau of Citizenship and*
13 *Immigration Services that are not subject to inves-*
14 *tigation by the Inspector General for the Department;*

15 (2) *inspecting the operations of the Bureau of*
16 *Citizenship and Immigration Services and providing*
17 *assessments of the quality of the operations of such*
18 *bureau as a whole and each of its components; and*

19 (3) *providing an analysis of the management of*
20 *the Bureau of Citizenship and Immigration Services.*

21 (b) *SPECIAL CONSIDERATIONS.*—In providing assess-
22 ments in accordance with subsection (a)(2) with respect to
23 a decision of the Bureau of Citizenship and Immigration
24 Services, or any of its components, consideration shall be
25 given to—

1 (1) *the accuracy of the findings of fact and con-*
2 *clusions of law used in rendering the decision;*

3 (2) *any fraud or misrepresentation associated*
4 *with the decision; and*

5 (3) *the efficiency with which the decision was*
6 *rendered.*

7 **SEC. 454. EMPLOYEE DISCIPLINE.**

8 *The Director of the Bureau of Citizenship and Immi-*
9 *gration Services may, notwithstanding any other provision*
10 *of law, impose disciplinary action, including termination*
11 *of employment, pursuant to policies and procedures appli-*
12 *cable to employees of the Federal Bureau of Investigation,*
13 *on any employee of the Bureau of Citizenship and Immi-*
14 *gration Services who willfully deceives Congress or agency*
15 *leadership on any matter.*

16 **SEC. 455. EFFECTIVE DATE.**

17 *Notwithstanding section 4, sections 451 through 456,*
18 *and the amendments made by such sections, shall take effect*
19 *on the date on which the transfer of functions specified*
20 *under section 441 takes effect.*

21 **SEC. 456. TRANSITION.**

22 (a) *REFERENCES.*—*With respect to any function*
23 *transferred by this subtitle to, and exercised on or after the*
24 *effective date specified in section 455 by, the Director of*
25 *the Bureau of Citizenship and Immigration Services, any*

1 *reference in any other Federal law, Executive order, rule,*
 2 *regulation, or delegation of authority, or any document of*
 3 *or pertaining to a component of government from which*
 4 *such function is transferred—*

5 (1) *to the head of such component is deemed to*
 6 *refer to the Director of the Bureau of Citizenship and*
 7 *Immigration Services; or*

8 (2) *to such component is deemed to refer to the*
 9 *Bureau of Citizenship and Immigration Services.*

10 (b) *OTHER TRANSITION ISSUES.—*

11 (1) *EXERCISE OF AUTHORITIES.—Except as oth-*
 12 *erwise provided by law, a Federal official to whom a*
 13 *function is transferred by this subtitle may, for pur-*
 14 *poses of performing the function, exercise all authori-*
 15 *ties under any other provision of law that were avail-*
 16 *able with respect to the performance of that function*
 17 *to the official responsible for the performance of the*
 18 *function immediately before the effective date specified*
 19 *in section 455.*

20 (2) *TRANSFER AND ALLOCATION OF APPROPRIA-*
 21 *TIONS AND PERSONNEL.—The personnel of the De-*
 22 *partment of Justice employed in connection with the*
 23 *functions transferred by this subtitle (and functions*
 24 *that the Secretary determines are properly related to*
 25 *the functions of the Bureau of Citizenship and Immi-*

1 *gration Services), and the assets, liabilities, contracts,*
 2 *property, records, and unexpended balance of appro-*
 3 *priations, authorizations, allocations, and other funds*
 4 *employed, held, used, arising from, available to, or to*
 5 *be made available to, the Immigration and Natu-*
 6 *ralization Service in connection with the functions*
 7 *transferred by this subtitle, subject to section 202 of*
 8 *the Budget and Accounting Procedures Act of 1950,*
 9 *shall be transferred to the Director of the Bureau of*
 10 *Citizenship and Immigration Services for allocation*
 11 *to the appropriate component of the Department. Un-*
 12 *expended funds transferred pursuant to this para-*
 13 *graph shall be used only for the purposes for which*
 14 *the funds were originally authorized and appro-*
 15 *priated. The Secretary shall have the right to adjust*
 16 *or realign transfers of funds and personnel effected*
 17 *pursuant to this subtitle for a period of 2 years after*
 18 *the effective date specified in section 455.*

19 **SEC. 457. FUNDING FOR CITIZENSHIP AND IMMIGRATION**
 20 **SERVICES.**

21 *Section 286(m) of the Immigration and Nationality*
 22 *Act (8 U.S.C. 1356(m)) is amended by striking “services,*
 23 *including the costs of similar services provided without*
 24 *charge to asylum applicants or other immigrants.” and in-*
 25 *serting “services.”.*

1 **SEC. 458. BACKLOG ELIMINATION.**

2 Section 204(a)(1) of the *Immigration Services and In-*
 3 *frastructure Improvements Act of 2000* (8 U.S.C.
 4 1573(a)(1)) is amended by striking “not later than one year
 5 after the date of enactment of this Act;” and inserting “1
 6 year after the date of the enactment of the *Homeland Secu-*
 7 *urity Act of 2002;*”.

8 **SEC. 459. REPORT ON IMPROVING IMMIGRATION SERVICES.**

9 (a) *IN GENERAL.*—The Secretary, not later than 1
 10 year after the effective date of this Act, shall submit to the
 11 Committees on the Judiciary and Appropriations of the
 12 House of Representatives and of the Senate a report with
 13 a plan detailing how the Bureau of Citizenship and Immi-
 14 gration Services, after the transfer of functions specified in
 15 this subtitle takes effect, will complete efficiently, fairly, and
 16 within a reasonable time, the adjudications described in
 17 paragraphs (1) through (5) of section 451(b).

18 (b) *CONTENTS.*—For each type of adjudication to be
 19 undertaken by the Director of the Bureau of Citizenship and
 20 Immigration Services, the report shall include the following:

21 (1) Any potential savings of resources that may
 22 be implemented without affecting the quality of the
 23 adjudication.

24 (2) The goal for processing time with respect to
 25 the application.

1 (3) *Any statutory modifications with respect to*
2 *the adjudication that the Secretary considers advis-*
3 *able.*

4 (c) *CONSULTATION.*—*In carrying out subsection (a),*
5 *the Secretary shall consult with the Secretary of State, the*
6 *Secretary of Labor, the Assistant Secretary of the Bureau*
7 *of Border Security of the Department, and the Director of*
8 *the Executive Office for Immigration Review to determine*
9 *how to streamline and improve the process for applying for*
10 *and making adjudications described in section 451(b) and*
11 *related processes.*

12 **SEC. 460. REPORT ON RESPONDING TO FLUCTUATING**
13 **NEEDS.**

14 *Not later than 30 days after the date of the enactment*
15 *of this Act, the Attorney General shall submit to Congress*
16 *a report on changes in law, including changes in authoriza-*
17 *tions of appropriations and in appropriations, that are*
18 *needed to permit the Immigration and Naturalization Serv-*
19 *ice, and, after the transfer of functions specified in this sub-*
20 *title takes effect, the Bureau of Citizenship and Immigra-*
21 *tion Services of the Department, to ensure a prompt and*
22 *timely response to emergent, unforeseen, or impending*
23 *changes in the number of applications for immigration ben-*
24 *efits, and otherwise to ensure the accommodation of chang-*
25 *ing immigration service needs.*

1 **SEC. 461. APPLICATION OF INTERNET-BASED TECH-**
2 **NOLOGIES.**

3 (a) *ESTABLISHMENT OF TRACKING SYSTEM.*—The
4 Secretary, not later than 1 year after the effective date of
5 this Act, in consultation with the Technology Advisory
6 Committee established under subsection (c), shall establish
7 an Internet-based system, that will permit a person, em-
8 ployer, immigrant, or nonimmigrant who has filings with
9 the Secretary for any benefit under the Immigration and
10 Nationality Act (8 U.S.C. 1101 et seq.), access to online
11 information about the processing status of the filing in-
12 volved.

13 (b) *FEASIBILITY STUDY FOR ONLINE FILING AND IM-*
14 *PROVED PROCESSING.*—

15 (1) *ONLINE FILING.*—The Secretary, in consulta-
16 tion with the Technology Advisory Committee estab-
17 lished under subsection (c), shall conduct a feasibility
18 study on the online filing of the filings described in
19 subsection (a). The study shall include a review of
20 computerization and technology of the Immigration
21 and Naturalization Service relating to the immigra-
22 tion services and processing of filings related to im-
23 migrant services. The study shall also include an esti-
24 mate of the timeframe and cost and shall consider
25 other factors in implementing such a filing system,
26 including the feasibility of fee payment online.

1 (2) *REPORT.*—*A report on the study under this*
2 *subsection shall be submitted to the Committees on the*
3 *Judiciary of the House of Representatives and the*
4 *Senate not later than 1 year after the effective date*
5 *of this Act.*

6 (c) *TECHNOLOGY ADVISORY COMMITTEE.*—

7 (1) *ESTABLISHMENT.*—*The Secretary shall estab-*
8 *lish, not later than 60 days after the effective date of*
9 *this Act, an advisory committee (in this section re-*
10 *ferred to as the “Technology Advisory Committee”) to*
11 *assist the Secretary in—*

12 (A) *establishing the tracking system under*
13 *subsection (a); and*

14 (B) *conducting the study under subsection*
15 *(b).*

16 *The Technology Advisory Committee shall be estab-*
17 *lished after consultation with the Committees on the*
18 *Judiciary of the House of Representatives and the*
19 *Senate.*

20 (2) *COMPOSITION.*—*The Technology Advisory*
21 *Committee shall be composed of representatives from*
22 *high technology companies capable of establishing and*
23 *implementing the system in an expeditious manner,*
24 *and representatives of persons who may use the track-*

1 *ing system described in subsection (a) and the online*
 2 *filing system described in subsection (b)(1).*

3 **SEC. 462. CHILDREN'S AFFAIRS.**

4 (a) *TRANSFER OF FUNCTIONS.*—*There are transferred*
 5 *to the Director of the Office of Refugee Resettlement of the*
 6 *Department of Health and Human Services functions*
 7 *under the immigration laws of the United States with re-*
 8 *spect to the care of unaccompanied alien children that were*
 9 *vested by statute in, or performed by, the Commissioner of*
 10 *Immigration and Naturalization (or any officer, employee,*
 11 *or component of the Immigration and Naturalization Serv-*
 12 *ice) immediately before the effective date specified in sub-*
 13 *section (d).*

14 (b) *FUNCTIONS.*—

15 (1) *IN GENERAL.*—*Pursuant to the transfer made*
 16 *by subsection (a), the Director of the Office of Refugee*
 17 *Resettlement shall be responsible for—*

18 (A) *coordinating and implementing the care*
 19 *and placement of unaccompanied alien children*
 20 *who are in Federal custody by reason of their*
 21 *immigration status, including developing a plan*
 22 *to be submitted to Congress on how to ensure*
 23 *that qualified and independent legal counsel is*
 24 *timely appointed to represent the interests of*
 25 *each such child, consistent with the law regard-*

1 *ing appointment of counsel that is in effect on*
2 *the date of the enactment of this Act;*

3 *(B) ensuring that the interests of the child*
4 *are considered in decisions and actions relating*
5 *to the care and custody of an unaccompanied*
6 *alien child;*

7 *(C) making placement determinations for*
8 *all unaccompanied alien children who are in*
9 *Federal custody by reason of their immigration*
10 *status;*

11 *(D) implementing the placement determina-*
12 *tions;*

13 *(E) implementing policies with respect to*
14 *the care and placement of unaccompanied alien*
15 *children;*

16 *(F) identifying a sufficient number of*
17 *qualified individuals, entities, and facilities to*
18 *house unaccompanied alien children;*

19 *(G) overseeing the infrastructure and per-*
20 *sonnel of facilities in which unaccompanied*
21 *alien children reside;*

22 *(H) reuniting unaccompanied alien chil-*
23 *dren with a parent abroad in appropriate cases;*

24 *(I) compiling, updating, and publishing at*
25 *least annually a state-by-state list of profes-*

1 *sionals or other entities qualified to provide*
2 *guardian and attorney representation services*
3 *for unaccompanied alien children;*

4 *(J) maintaining statistical information and*
5 *other data on unaccompanied alien children for*
6 *whose care and placement the Director is respon-*
7 *sible, which shall include—*

8 *(i) biographical information, such as a*
9 *child's name, gender, date of birth, country*
10 *of birth, and country of habitual residence;*

11 *(ii) the date on which the child came*
12 *into Federal custody by reason of his or her*
13 *immigration status;*

14 *(iii) information relating to the child's*
15 *placement, removal, or release from each fa-*
16 *cility in which the child has resided;*

17 *(iv) in any case in which the child is*
18 *placed in detention or released, an expla-*
19 *nation relating to the detention or release;*
20 *and*

21 *(v) the disposition of any actions in*
22 *which the child is the subject;*

23 *(K) collecting and compiling statistical in-*
24 *formation from the Department of Justice, the*
25 *Department of Homeland Security, and the De-*

1 *partment of State on each department's actions*
2 *relating to unaccompanied alien children; and*

3 *(L) conducting investigations and inspec-*
4 *tions of facilities and other entities in which un-*
5 *accompanied alien children reside.*

6 *(2) COORDINATION WITH OTHER ENTITIES; NO*
7 *RELEASE ON OWN RECOGNIZANCE.—In making deter-*
8 *minations described in paragraph (1)(C), the Director*
9 *of the Office of Refugee Resettlement—*

10 *(A) shall consult with appropriate juvenile*
11 *justice professionals, the Director of the Bureau*
12 *of Citizenship and Immigration Services, and*
13 *the Assistant Secretary of the Bureau of Border*
14 *Security to ensure that such determinations en-*
15 *sure that unaccompanied alien children de-*
16 *scribed in such subparagraph—*

17 *(i) are likely to appear for all hearings*
18 *or proceedings in which they are involved;*

19 *(ii) are protected from smugglers, traf-*
20 *fickers, or others who might seek to vic-*
21 *timize or otherwise engage them in crimi-*
22 *nal, harmful, or exploitive activity; and*

23 *(iii) are placed in a setting in which*
24 *they not likely to pose a danger to them-*
25 *selves or others; and*

1 (B) shall not release such children upon
2 their own recognizance.

3 (3) *DUTIES WITH RESPECT TO FOSTER CARE.*—

4 In carrying out the duties described in paragraph
5 (1)(G), the Director of the Office of Refugee Resettle-
6 ment is encouraged to use the refugee children foster
7 care system established pursuant to section 412(d) of
8 the Immigration and Nationality Act (8 U.S.C.
9 1522(d)) for the placement of unaccompanied alien
10 children.

11 (c) *RULE OF CONSTRUCTION.*—Nothing in this section
12 may be construed to transfer the responsibility for adjudi-
13 cating benefit determinations under the Immigration and
14 Nationality Act (8 U.S.C. 1101 et seq.) from the authority
15 of any official of the Department of Justice, the Department
16 of Homeland Security, or the Department of State.

17 (d) *EFFECTIVE DATE.*—Notwithstanding section 4,
18 this section shall take effect on the date on which the trans-
19 fer of functions specified under section 441 takes effect.

20 (e) *REFERENCES.*—With respect to any function
21 transferred by this section, any reference in any other Fed-
22 eral law, Executive order, rule, regulation, or delegation of
23 authority, or any document of or pertaining to a component
24 of government from which such function is transferred—

1 (1) *to the head of such component is deemed to*
 2 *refer to the Director of the Office of Refugee Resettle-*
 3 *ment; or*

4 (2) *to such component is deemed to refer to the*
 5 *Office of Refugee Resettlement of the Department of*
 6 *Health and Human Services.*

7 (f) *OTHER TRANSITION ISSUES.—*

8 (1) *EXERCISE OF AUTHORITIES.—Except as oth-*
 9 *erwise provided by law, a Federal official to whom a*
 10 *function is transferred by this section may, for pur-*
 11 *poses of performing the function, exercise all authori-*
 12 *ties under any other provision of law that were avail-*
 13 *able with respect to the performance of that function*
 14 *to the official responsible for the performance of the*
 15 *function immediately before the effective date specified*
 16 *in subsection (d).*

17 (2) *SAVINGS PROVISIONS.—Subsections (a), (b),*
 18 *and (c) of section 1512 shall apply to a transfer of*
 19 *functions under this section in the same manner as*
 20 *such provisions apply to a transfer of functions under*
 21 *this Act to the Department of Homeland Security.*

22 (3) *TRANSFER AND ALLOCATION OF APPROPRIA-*
 23 *TIONS AND PERSONNEL.—The personnel of the De-*
 24 *partment of Justice employed in connection with the*
 25 *functions transferred by this section, and the assets,*

1 *liabilities, contracts, property, records, and unex-*
2 *pended balance of appropriations, authorizations, al-*
3 *locations, and other funds employed, held, used, aris-*
4 *ing from, available to, or to be made available to, the*
5 *Immigration and Naturalization Service in connec-*
6 *tion with the functions transferred by this section,*
7 *subject to section 202 of the Budget and Accounting*
8 *Procedures Act of 1950, shall be transferred to the Di-*
9 *rector of the Office of Refugee Resettlement for alloca-*
10 *tion to the appropriate component of the Department*
11 *of Health and Human Services. Unexpended funds*
12 *transferred pursuant to this paragraph shall be used*
13 *only for the purposes for which the funds were origi-*
14 *nally authorized and appropriated.*

15 *(g) DEFINITIONS.—As used in this section—*

16 *(1) the term “placement” means the placement of*
17 *an unaccompanied alien child in either a detention*
18 *facility or an alternative to such a facility; and*

19 *(2) the term “unaccompanied alien child” means*
20 *a child who—*

21 *(A) has no lawful immigration status in the*
22 *United States;*

23 *(B) has not attained 18 years of age; and*

24 *(C) with respect to whom—*

- 1 (i) there is no parent or legal guardian
 2 in the United States; or
 3 (ii) no parent or legal guardian in the
 4 United States is available to provide care
 5 and physical custody.

6 ***Subtitle F—General Immigration***
 7 ***Provisions***

8 ***SEC. 471. ABOLISHMENT OF INS.***

9 (a) *IN GENERAL.*—Upon completion of all transfers
 10 from the Immigration and Naturalization Service as pro-
 11 vided for by this Act, the Immigration and Naturalization
 12 Service of the Department of Justice is abolished.

13 (b) *PROHIBITION.*—The authority provided by section
 14 1502 may be used to reorganize functions or organizational
 15 units within the Bureau of Border Security or the Bureau
 16 of Citizenship and Immigration Services, but may not be
 17 used to recombine the two bureaus into a single agency or
 18 otherwise to combine, join, or consolidate functions or orga-
 19 nizational units of the two bureaus with each other.

20 ***SEC. 472. VOLUNTARY SEPARATION INCENTIVE PAYMENTS.***

21 (a) *DEFINITIONS.*—For purposes of this section—

22 (1) the term “employee” means an employee (as
 23 defined by section 2105 of title 5, United States Code)
 24 who—

1 (A) has completed at least 3 years of cur-
 2 rent continuous service with 1 or more covered
 3 entities; and

4 (B) is serving under an appointment with-
 5 out time limitation;

6 but does not include any person under subparagraphs
 7 (A)–(G) of section 663(a)(2) of Public Law 104–208
 8 (5 U.S.C. 5597 note);

9 (2) the term “covered entity” means—

10 (A) the Immigration and Naturalization
 11 Service;

12 (B) the Bureau of Border Security of the
 13 Department of Homeland Security; and

14 (C) the Bureau of Citizenship and Immi-
 15 gration Services of the Department of Homeland
 16 Security; and

17 (3) the term “transfer date” means the date on
 18 which the transfer of functions specified under section
 19 441 takes effect.

20 (b) *STRATEGIC RESTRUCTURING PLAN*.—Before the
 21 Attorney General or the Secretary obligates any resources
 22 for voluntary separation incentive payments under this sec-
 23 tion, such official shall submit to the appropriate commit-
 24 tees of Congress a strategic restructuring plan, which shall
 25 include—

1 (1) *an organizational chart depicting the covered*
 2 *entities after their restructuring pursuant to this Act;*

3 (2) *a summary description of how the authority*
 4 *under this section will be used to help carry out that*
 5 *restructuring; and*

6 (3) *the information specified in section 663(b)(2)*
 7 *of Public Law 104–208 (5 U.S.C. 5597 note).*

8 *As used in the preceding sentence, the “appropriate commit-*
 9 *tees of Congress” are the Committees on Appropriations,*
 10 *Government Reform, and the Judiciary of the House of*
 11 *Representatives, and the Committees on Appropriations,*
 12 *Governmental Affairs, and the Judiciary of the Senate.*

13 (c) *AUTHORITY.—The Attorney General and the Sec-*
 14 *retary may, to the extent necessary to help carry out their*
 15 *respective strategic restructuring plan described in sub-*
 16 *section (b), make voluntary separation incentive payments*
 17 *to employees. Any such payment—*

18 (1) *shall be paid to the employee, in a lump*
 19 *sum, after the employee has separated from service;*

20 (2) *shall be paid from appropriations or funds*
 21 *available for the payment of basic pay of the em-*
 22 *ployee;*

23 (3) *shall be equal to the lesser of—*

1 (A) the amount the employee would be enti-
 2 tled to receive under section 5595(c) of title 5,
 3 United States Code; or

4 (B) an amount not to exceed \$25,000, as de-
 5 termined by the Attorney General or the Sec-
 6 retary;

7 (4) may not be made except in the case of any
 8 qualifying employee who voluntarily separates
 9 (whether by retirement or resignation) before the end
 10 of—

11 (A) the 3-month period beginning on the
 12 date on which such payment is offered or made
 13 available to such employee; or

14 (B) the 3-year period beginning on the date
 15 of the enactment of this Act,
 16 whichever occurs first;

17 (5) shall not be a basis for payment, and shall
 18 not be included in the computation, of any other type
 19 of Government benefit; and

20 (6) shall not be taken into account in deter-
 21 mining the amount of any severance pay to which the
 22 employee may be entitled under section 5595 of title
 23 5, United States Code, based on any other separation.

24 (d) *ADDITIONAL AGENCY CONTRIBUTIONS TO THE RE-*
 25 *TIREMENT FUND.*—

1 (1) *IN GENERAL.*—*In addition to any payments*
2 *which it is otherwise required to make, the Depart-*
3 *ment of Justice and the Department of Homeland Se-*
4 *curity shall, for each fiscal year with respect to which*
5 *it makes any voluntary separation incentive pay-*
6 *ments under this section, remit to the Office of Per-*
7 *sonnel Management for deposit in the Treasury of the*
8 *United States to the credit of the Civil Service Retire-*
9 *ment and Disability Fund the amount required under*
10 *paragraph (2).*

11 (2) *AMOUNT REQUIRED.*—*The amount required*
12 *under this paragraph shall, for any fiscal year, be the*
13 *amount under subparagraph (A) or (B), whichever is*
14 *greater.*

15 (A) *FIRST METHOD.*—*The amount under*
16 *this subparagraph shall, for any fiscal year, be*
17 *equal to the minimum amount necessary to offset*
18 *the additional costs to the retirement systems*
19 *under title 5, United States Code (payable out of*
20 *the Civil Service Retirement and Disability*
21 *Fund) resulting from the voluntary separation of*
22 *the employees described in paragraph (3), as de-*
23 *termined under regulations of the Office of Per-*
24 *sonnel Management.*

1 (B) *SECOND METHOD.*—*The amount under*
 2 *this subparagraph shall, for any fiscal year, be*
 3 *equal to 45 percent of the sum total of the final*
 4 *basic pay of the employees described in para-*
 5 *graph (3).*

6 (3) *COMPUTATIONS TO BE BASED ON SEPARA-*
 7 *TIONS OCCURRING IN THE FISCAL YEAR INVOLVED.*—
 8 *The employees described in this paragraph are those*
 9 *employees who receive a voluntary separation incen-*
 10 *tive payment under this section based on their sepa-*
 11 *rating from service during the fiscal year with respect*
 12 *to which the payment under this subsection relates.*

13 (4) *FINAL BASIC PAY DEFINED.*—*In this sub-*
 14 *section, the term “final basic pay” means, with re-*
 15 *spect to an employee, the total amount of basic pay*
 16 *which would be payable for a year of service by such*
 17 *employee, computed using the employee’s final rate of*
 18 *basic pay, and, if last serving on other than a full-*
 19 *time basis, with appropriate adjustment therefor.*

20 (e) *EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE*
 21 *GOVERNMENT.*—*An individual who receives a voluntary*
 22 *separation incentive payment under this section and who,*
 23 *within 5 years after the date of the separation on which*
 24 *the payment is based, accepts any compensated employment*
 25 *with the Government or works for any agency of the Gov-*

ernment through a personal services contract, shall be required to pay, prior to the individual's first day of employment, the entire amount of the incentive payment. Such payment shall be made to the covered entity from which the individual separated or, if made on or after the transfer date, to the Deputy Secretary or the Under Secretary for Border and Transportation Security (for transfer to the appropriate component of the Department of Homeland Security, if necessary).

(f) *EFFECT ON EMPLOYMENT LEVELS.*—

(1) *INTENDED EFFECT.*—Voluntary separations under this section are not intended to necessarily reduce the total number of full-time equivalent positions in any covered entity.

(2) *USE OF VOLUNTARY SEPARATIONS.*—A covered entity may redeploy or use the full-time equivalent positions vacated by voluntary separations under this section to make other positions available to more critical locations or more critical occupations.

SEC. 473. AUTHORITY TO CONDUCT A DEMONSTRATION PROJECT RELATING TO DISCIPLINARY ACTION.

(a) *IN GENERAL.*—The Attorney General and the Secretary may each, during a period ending not later than 5 years after the date of the enactment of this Act, conduct

1 *a demonstration project for the purpose of determining*
2 *whether one or more changes in the policies or procedures*
3 *relating to methods for disciplining employees would result*
4 *in improved personnel management.*

5 (b) *SCOPE.—A demonstration project under this*
6 *section—*

7 (1) *may not cover any employees apart from*
8 *those employed in or under a covered entity; and*

9 (2) *shall not be limited by any provision of*
10 *chapter 43, 75, or 77 of title 5, United States Code.*

11 (c) *PROCEDURES.—Under the demonstration project—*

12 (1) *the use of alternative means of dispute reso-*
13 *lution (as defined in section 571 of title 5, United*
14 *States Code) shall be encouraged, whenever appro-*
15 *priate; and*

16 (2) *each covered entity under the jurisdiction of*
17 *the official conducting the project shall be required to*
18 *provide for the expeditious, fair, and independent re-*
19 *view of any action to which section 4303 or sub-*
20 *chapter II of chapter 75 of such title 5 would other-*
21 *wise apply (except an action described in section*
22 *7512(5) of such title 5).*

23 (d) *ACTIONS INVOLVING DISCRIMINATION.—Notwith-*
24 *standing any other provision of this section, if, in the case*
25 *of any matter described in section 7702(a)(1)(B) of title 5,*

1 *United States Code, there is no judicially reviewable action*
 2 *under the demonstration project within 120 days after the*
 3 *filing of an appeal or other formal request for review (re-*
 4 *ferred to in subsection (c)(2)), an employee shall be entitled*
 5 *to file a civil action to the same extent and in the same*
 6 *manner as provided in section 7702(e)(1) of such title 5*
 7 *(in the matter following subparagraph (C) thereof).*

8 *(e) CERTAIN EMPLOYEES.—Employees shall not be in-*
 9 *cluded within any project under this section if such employ-*
 10 *ees are—*

11 *(1) neither managers nor supervisors; and*

12 *(2) within a unit with respect to which a labor*
 13 *organization is accorded exclusive recognition under*
 14 *chapter 71 of title 5, United States Code.*

15 *Notwithstanding the preceding sentence, an aggrieved em-*
 16 *ployee within a unit (referred to in paragraph (2)) may*
 17 *elect to participate in a complaint procedure developed*
 18 *under the demonstration project in lieu of any negotiated*
 19 *grievance procedure and any statutory procedure (as such*
 20 *term is used in section 7121 of such title 5).*

21 *(f) REPORTS.—The General Accounting Office shall*
 22 *prepare and submit to the Committees on Government Re-*
 23 *form and the Judiciary of the House of Representatives and*
 24 *the Committees on Governmental Affairs and the Judiciary*
 25 *of the Senate periodic reports on any demonstration project*

1 *conducted under this section, such reports to be submitted*
 2 *after the second and fourth years of its operation. Upon*
 3 *request, the Attorney General or the Secretary shall furnish*
 4 *such information as the General Accounting Office may re-*
 5 *quire to carry out this subsection.*

6 (g) *DEFINITION.—In this section, the term “covered*
 7 *entity” has the meaning given such term in section*
 8 *472(a)(2).*

9 **SEC. 474. SENSE OF CONGRESS.**

10 *It is the sense of Congress that—*

11 (1) *the missions of the Bureau of Border Secu-*
 12 *rity and the Bureau of Citizenship and Immigration*
 13 *Services are equally important and, accordingly, they*
 14 *each should be adequately funded; and*

15 (2) *the functions transferred under this subtitle*
 16 *should not, after such transfers take effect, operate at*
 17 *levels below those in effect prior to the enactment of*
 18 *this Act.*

19 **SEC. 475. DIRECTOR OF SHARED SERVICES.**

20 (a) *IN GENERAL.—Within the Office of Deputy Sec-*
 21 *retary, there shall be a Director of Shared Services.*

22 (b) *FUNCTIONS.—The Director of Shared Services shall*
 23 *be responsible for the coordination of resources for the Bu-*
 24 *reau of Border Security and the Bureau of Citizenship and*
 25 *Immigration Services, including—*

- 1 (1) *information resources management, includ-*
2 *ing computer databases and information technology;*
- 3 (2) *records and file management; and*
- 4 (3) *forms management.*

5 **SEC. 476. SEPARATION OF FUNDING.**

6 (a) *IN GENERAL.*—*There shall be established separate*
7 *accounts in the Treasury of the United States for appro-*
8 *priated funds and other deposits available for the Bureau*
9 *of Citizenship and Immigration Services and the Bureau*
10 *of Border Security.*

11 (b) *SEPARATE BUDGETS.*—*To ensure that the Bureau*
12 *of Citizenship and Immigration Services and the Bureau*
13 *of Border Security are funded to the extent necessary to*
14 *fully carry out their respective functions, the Director of*
15 *the Office of Management and Budget shall separate the*
16 *budget requests for each such entity.*

17 (c) *FEEES.*—*Fees imposed for a particular service, ap-*
18 *plication, or benefit shall be deposited into the account es-*
19 *tablished under subsection (a) that is for the bureau with*
20 *jurisdiction over the function to which the fee relates.*

21 (d) *FEEES NOT TRANSFERABLE.*—*No fee may be trans-*
22 *ferred between the Bureau of Citizenship and Immigration*
23 *Services and the Bureau of Border Security for purposes*
24 *not authorized by section 286 of the Immigration and Na-*
25 *tionality Act (8 U.S.C. 1356).*

1 **SEC. 477. REPORTS AND IMPLEMENTATION PLANS.**

2 (a) *DIVISION OF FUNDS.*—*The Secretary, not later*
 3 *than 120 days after the effective date of this Act, shall sub-*
 4 *mit to the Committees on Appropriations and the Judiciary*
 5 *of the House of Representatives and of the Senate a report*
 6 *on the proposed division and transfer of funds, including*
 7 *unexpended funds, appropriations, and fees, between the*
 8 *Bureau of Citizenship and Immigration Services and the*
 9 *Bureau of Border Security.*

10 (b) *DIVISION OF PERSONNEL.*—*The Secretary, not*
 11 *later than 120 days after the effective date of this Act, shall*
 12 *submit to the Committees on Appropriations and the Judi-*
 13 *ciary of the House of Representatives and of the Senate a*
 14 *report on the proposed division of personnel between the Bu-*
 15 *reau of Citizenship and Immigration Services and the Bu-*
 16 *reau of Border Security.*

17 (c) *IMPLEMENTATION PLAN.*—

18 (1) *IN GENERAL.*—*The Secretary, not later than*
 19 *120 days after the effective date of this Act, and every*
 20 *6 months thereafter until the termination of fiscal*
 21 *year 2005, shall submit to the Committees on Appro-*
 22 *priations and the Judiciary of the House of Rep-*
 23 *resentatives and of the Senate an implementation*
 24 *plan to carry out this Act.*

25 (2) *CONTENTS.*—*The implementation plan*
 26 *should include details concerning the separation of the*

1 *Bureau of Citizenship and Immigration Services and*
2 *the Bureau of Border Security, including the fol-*
3 *lowing:*

4 (A) *Organizational structure, including the*
5 *field structure.*

6 (B) *Chain of command.*

7 (C) *Procedures for interaction among such*
8 *bureaus.*

9 (D) *Fraud detection and investigation.*

10 (E) *The processing and handling of removal*
11 *proceedings, including expedited removal and*
12 *applications for relief from removal.*

13 (F) *Recommendations for conforming*
14 *amendments to the Immigration and Nationality*
15 *Act (8 U.S.C. 1101 et seq.).*

16 (G) *Establishment of a transition team.*

17 (H) *Methods to phase in the costs of sepa-*
18 *rating the administrative support systems of the*
19 *Immigration and Naturalization Service in*
20 *order to provide for separate administrative sup-*
21 *port systems for the Bureau of Citizenship and*
22 *Immigration Services and the Bureau of Border*
23 *Security.*

24 (d) *COMPTROLLER GENERAL STUDIES AND RE-*
25 *PORTS.—*

1 (1) *STATUS REPORTS ON TRANSITION.*—Not later
2 than 18 months after the date on which the transfer
3 of functions specified under section 441 takes effect,
4 and every 6 months thereafter, until full implementa-
5 tion of this subtitle has been completed, the Comp-
6 troller General of the United States shall submit to
7 the Committees on Appropriations and on the Judici-
8 ary of the House of Representatives and the Senate a
9 report containing the following:

10 (A) *A determination of whether the trans-*
11 *fers of functions made by subtitles D and E have*
12 *been completed, and if a transfer of functions has*
13 *not taken place, identifying the reasons why the*
14 *transfer has not taken place.*

15 (B) *If the transfers of functions made by*
16 *subtitles D and E have been completed, an iden-*
17 *tification of any issues that have arisen due to*
18 *the completed transfers.*

19 (C) *An identification of any issues that*
20 *may arise due to any future transfer of func-*
21 *tions.*

22 (2) *REPORT ON MANAGEMENT.*—Not later than 4
23 years after the date on which the transfer of functions
24 specified under section 441 takes effect, the Comp-
25 troller General of the United States shall submit to

1 *the Committees on Appropriations and on the Judici-*
 2 *ary of the House of Representatives and the Senate a*
 3 *report, following a study, containing the following:*

4 *(A) Determinations of whether the transfer*
 5 *of functions from the Immigration and Natu-*
 6 *ralization Service to the Bureau of Citizenship*
 7 *and Immigration Services and the Bureau of*
 8 *Border Security have improved, with respect to*
 9 *each function transferred, the following:*

10 *(i) Operations.*

11 *(ii) Management, including account-*
 12 *ability and communication.*

13 *(iii) Financial administration.*

14 *(iv) Recordkeeping, including informa-*
 15 *tion management and technology.*

16 *(B) A statement of the reasons for the deter-*
 17 *minations under subparagraph (A).*

18 *(C) Any recommendations for further im-*
 19 *provements to the Bureau of Citizenship and Im-*
 20 *migration Services and the Bureau of Border Se-*
 21 *curity.*

22 *(3) REPORT ON FEES.—Not later than 1 year*
 23 *after the date of the enactment of this Act, the Comp-*
 24 *troller General of the United States shall submit to*
 25 *the Committees on the Judiciary of the House of Rep-*

1 *representatives and of the Senate a report examining*
 2 *whether the Bureau of Citizenship and Immigration*
 3 *Services is likely to derive sufficient funds from fees*
 4 *to carry out its functions in the absence of appro-*
 5 *priated funds.*

6 **SEC. 478. IMMIGRATION FUNCTIONS.**

7 *(a) ANNUAL REPORT.—*

8 *(1) IN GENERAL.—One year after the date of the*
 9 *enactment of this Act, and each year thereafter, the*
 10 *Secretary shall submit a report to the President, to*
 11 *the Committees on the Judiciary and Government Re-*
 12 *form of the House of Representatives, and to the Com-*
 13 *mittees on the Judiciary and Government Affairs of*
 14 *the Senate, on the impact the transfers made by this*
 15 *subtitle has had on immigration functions.*

16 *(2) MATTER INCLUDED.—The report shall ad-*
 17 *dress the following with respect to the period covered*
 18 *by the report:*

19 *(A) The aggregate number of all immigra-*
 20 *tion applications and petitions received, and*
 21 *processed, by the Department;*

22 *(B) Region-by-region statistics on the aggre-*
 23 *gate number of immigration applications and*
 24 *petitions filed by an alien (or filed on behalf of*

1 *an alien) and denied, disaggregated by category*
2 *of denial and application or petition type.*

3 *(C) The quantity of backlogged immigration*
4 *applications and petitions that have been proc-*
5 *essed, the aggregate number awaiting processing,*
6 *and a detailed plan for eliminating the backlog.*

7 *(D) The average processing period for im-*
8 *migration applications and petitions,*
9 *disaggregated by application or petition type.*

10 *(E) The number and types of immigration-*
11 *related grievances filed with any official of the*
12 *Department of Justice, and if those grievances*
13 *were resolved.*

14 *(F) Plans to address grievances and im-*
15 *prove immigration services.*

16 *(G) Whether immigration-related fees were*
17 *used consistent with legal requirements regarding*
18 *such use.*

19 *(H) Whether immigration-related questions*
20 *conveyed by customers to the Department*
21 *(whether conveyed in person, by telephone, or by*
22 *means of the Internet) were answered effectively*
23 *and efficiently.*

24 *(b) SENSE OF CONGRESS REGARDING IMMIGRATION*

25 *SERVICES.—It is the sense of Congress that—*

1 (1) *the quality and efficiency of immigration*
 2 *services rendered by the Federal Government should*
 3 *be improved after the transfers made by this subtitle*
 4 *take effect; and*

5 (2) *the Secretary should undertake efforts to*
 6 *guarantee that concerns regarding the quality and ef-*
 7 *iciency of immigration services are addressed after*
 8 *such effective date.*

9 **TITLE V—EMERGENCY**
 10 **PREPAREDNESS AND RESPONSE**

11 **SEC. 501. UNDER SECRETARY FOR EMERGENCY PREPARED-**
 12 **NESS AND RESPONSE.**

13 *There shall be in the Department a Directorate of*
 14 *Emergency Preparedness and Response headed by an Under*
 15 *Secretary for Emergency Preparedness and Response.*

16 **SEC. 502. RESPONSIBILITIES.**

17 *The Secretary, acting through the Under Secretary for*
 18 *Emergency Preparedness and Response, shall include—*

19 (1) *helping to ensure the effectiveness of emer-*
 20 *gency response providers to terrorist attacks, major*
 21 *disasters, and other emergencies;*

22 (2) *with respect to the Nuclear Incident Response*
 23 *Team (regardless of whether it is operating as an or-*
 24 *ganizational unit of the Department pursuant to this*
 25 *title)—*

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

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

5 (C) providing funds to the Department of
6 Energy and the Environmental Protection Agen-
7 cy, as appropriate, for homeland security plan-
8 ning, exercises and training, and equipment;

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

11 (A) managing such response;

12 (B) directing the Domestic Emergency Sup-
13 port Team, the Strategic National Stockpile, the
14 National Disaster Medical System, and (when
15 operating as an organizational unit of the De-
16 partment pursuant to this title) the Nuclear In-
17 cident Response Team;

18 (C) overseeing the Metropolitan Medical Re-
19 sponse System; and

20 (D) coordinating other Federal response re-
21 sources in the event of a terrorist attack or major
22 disaster;

23 (4) aiding the recovery from terrorist attacks
24 and major disasters;

1 (5) *building a comprehensive national incident*
2 *management system with Federal, State, and local*
3 *government personnel, agencies, and authorities, to*
4 *respond to such attacks and disasters;*

5 (6) *consolidating existing Federal Government*
6 *emergency response plans into a single, coordinated*
7 *national response plan; and*

8 (7) *developing comprehensive programs for devel-*
9 *oping interoperative communications technology, and*
10 *helping to ensure that emergency response providers*
11 *acquire such technology.*

12 **SEC. 503. FUNCTIONS TRANSFERRED.**

13 *In accordance with title XV, there shall be transferred*
14 *to the Secretary the functions, personnel, assets, and liabil-*
15 *ities of the following entities:*

16 (1) *The Federal Emergency Management Agency,*
17 *including the functions of the Director of the Federal*
18 *Emergency Management Agency relating thereto.*

19 (2) *The Integrated Hazard Information System*
20 *of the National Oceanic and Atmospheric Administra-*
21 *tion, which shall be renamed “FIRESAT”.*

22 (3) *The National Domestic Preparedness Office*
23 *of the Federal Bureau of Investigation, including the*
24 *functions of the Attorney General relating thereto.*

1 (4) *The Domestic Emergency Support Teams of*
 2 *the Department of Justice, including the functions of*
 3 *the Attorney General relating thereto.*

4 (5) *The Office of Emergency Preparedness, the*
 5 *National Disaster Medical System, and the Metropoli-*
 6 *tan Medical Response System of the Department of*
 7 *Health and Human Services, including the functions*
 8 *of the Secretary of Health and Human Services and*
 9 *the Assistant Secretary for Public Health Emergency*
 10 *Preparedness relating thereto.*

11 (6) *The Strategic National Stockpile of the De-*
 12 *partment of Health and Human Services, including*
 13 *the functions of the Secretary of Health and Human*
 14 *Services relating thereto.*

15 **SEC. 504. NUCLEAR INCIDENT RESPONSE.**

16 (a) *IN GENERAL.*—*At the direction of the Secretary*
 17 *(in connection with an actual or threatened terrorist attack,*
 18 *major disaster, or other emergency in the United States),*
 19 *the Nuclear Incident Response Team shall operate as an*
 20 *organizational unit of the Department. While so operating,*
 21 *the Nuclear Incident Response Team shall be subject to the*
 22 *direction, authority, and control of the Secretary.*

23 (b) *RULE OF CONSTRUCTION.*—*Nothing in this title*
 24 *shall be construed to limit the ordinary responsibility of*
 25 *the Secretary of Energy and the Administrator of the Envi-*

1 *ronmental Protection Agency for organizing, training,*
 2 *equipping, and utilizing their respective entities in the Nu-*
 3 *clear Incident Response Team, or (subject to the provisions*
 4 *of this title) from exercising direction, authority, and con-*
 5 *trol over them when they are not operating as a unit of*
 6 *the Department.*

7 **SEC. 505. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED**
 8 **ACTIVITIES.**

9 (a) *IN GENERAL.*—With respect to all public health-
 10 *related activities to improve State, local, and hospital pre-*
 11 *paredness and response to chemical, biological, radiological,*
 12 *and nuclear and other emerging terrorist threats carried out*
 13 *by the Department of Health and Human Services (includ-*
 14 *ing the Public Health Service), the Secretary of Health and*
 15 *Human Services shall set priorities and preparedness goals*
 16 *and further develop a coordinated strategy for such activi-*
 17 *ties in collaboration with the Secretary.*

18 (b) *EVALUATION OF PROGRESS.*—In carrying out sub-
 19 *section (a), the Secretary of Health and Human Services*
 20 *shall collaborate with the Secretary in developing specific*
 21 *benchmarks and outcome measurements for evaluating*
 22 *progress toward achieving the priorities and goals described*
 23 *in such subsection.*

1 **SEC. 506. DEFINITION.**

2 *In this title, the term “Nuclear Incident Response*
 3 *Team” means a resource that includes—*

4 *(1) those entities of the Department of Energy*
 5 *that perform nuclear or radiological emergency sup-*
 6 *port functions (including accident response, search re-*
 7 *sponse, advisory, and technical operations functions),*
 8 *radiation exposure functions at the medical assistance*
 9 *facility known as the Radiation Emergency Assist-*
 10 *ance Center/Training Site (REAC/TS), radiological*
 11 *assistance functions, and related functions; and*

12 *(2) those entities of the Environmental Protec-*
 13 *tion Agency that perform such support functions (in-*
 14 *cluding radiological emergency response functions)*
 15 *and related functions.*

16 **SEC. 507. ROLE OF FEDERAL EMERGENCY MANAGEMENT**
 17 **AGENCY.**

18 *(a) IN GENERAL.—The functions of the Federal Emer-*
 19 *gency Management Agency include the following:*

20 *(1) All functions and authorities prescribed by*
 21 *the Robert T. Stafford Disaster Relief and Emergency*
 22 *Assistance Act (42 U.S.C. 5121 et seq.).*

23 *(2) Carrying out its mission to reduce the loss*
 24 *of life and property and protect the Nation from all*
 25 *hazards by leading and supporting the Nation in a*

1 *comprehensive, risk-based emergency management*
2 *program—*

3 *(A) of mitigation, by taking sustained ac-*
4 *tions to reduce or eliminate long-term risk to*
5 *people and property from hazards and their ef-*
6 *fects;*

7 *(B) of planning for building the emergency*
8 *management profession to prepare effectively for,*
9 *mitigate against, respond to, and recover from*
10 *any hazard;*

11 *(C) of response, by conducting emergency*
12 *operations to save lives and property through po-*
13 *sitioning emergency equipment and supplies,*
14 *through evacuating potential victims, through*
15 *providing food, water, shelter, and medical care*
16 *to those in need, and through restoring critical*
17 *public services;*

18 *(D) of recovery, by rebuilding communities*
19 *so individuals, businesses, and governments can*
20 *function on their own, return to normal life, and*
21 *protect against future hazards; and*

22 *(E) of increased efficiencies, by coordinating*
23 *efforts relating to mitigation, planning, response,*
24 *and recovery.*

25 *(b) FEDERAL RESPONSE PLAN.—*

1 (1) *ROLE OF FEMA.*—Notwithstanding any other
 2 provision of this Act, the Federal Emergency Manage-
 3 ment Agency shall remain the lead agency for the
 4 Federal Response Plan established under Executive
 5 Order 12148 (44 Fed. Reg. 43239) and Executive
 6 Order 12656 (53 Fed. Reg. 47491).

7 (2) *REVISION OF RESPONSE PLAN.*—Not later
 8 than 60 days after the date of enactment of this Act,
 9 the Director of the Federal Emergency Management
 10 Agency shall revise the Federal Response Plan to re-
 11 flect the establishment of and incorporate the Depart-
 12 ment.

13 **SEC. 508. USE OF NATIONAL PRIVATE SECTOR NETWORKS**
 14 **IN EMERGENCY RESPONSE.**

15 To the maximum extent practicable, the Secretary
 16 shall use national private sector networks and infrastruc-
 17 ture for emergency response to chemical, biological, radio-
 18 logical, nuclear, or explosive disasters, and other major dis-
 19 asters.

20 **SEC. 509. USE OF COMMERCIALLY AVAILABLE TECH-**
 21 **NOLOGY, GOODS, AND SERVICES.**

22 It is the sense of Congress that—

23 (1) the Secretary should, to the maximum extent
 24 possible, use off-the-shelf commercially developed tech-
 25 nologies to ensure that the Department's information

1 *technology systems allow the Department to collect,*
 2 *manage, share, analyze, and disseminate information*
 3 *securely over multiple channels of communication;*
 4 *and*

5 *(2) in order to further the policy of the United*
 6 *States to avoid competing commercially with the pri-*
 7 *vate sector, the Secretary should rely on commercial*
 8 *sources to supply the goods and services needed by the*
 9 *Department.*

10 ***TITLE VI—TREATMENT OF CHAR-***
 11 ***ITABLE TRUSTS FOR MEM-***
 12 ***BERS OF THE ARMED FORCES***
 13 ***OF THE UNITED STATES AND***
 14 ***OTHER GOVERNMENTAL OR-***
 15 ***GANIZATIONS***

16 ***SEC. 601. TREATMENT OF CHARITABLE TRUSTS FOR MEM-***
 17 ***BERS OF THE ARMED FORCES OF THE***
 18 ***UNITED STATES AND OTHER GOVERNMENTAL***
 19 ***ORGANIZATIONS.***

20 *(a) FINDINGS.—Congress finds the following:*

21 *(1) Members of the Armed Forces of the United*
 22 *States defend the freedom and security of our Nation.*

23 *(2) Members of the Armed Forces of the United*
 24 *States have lost their lives while battling the evils of*
 25 *terrorism around the world.*

1 (3) *Personnel of the Central Intelligence Agency*
2 (CIA) *charged with the responsibility of covert obser-*
3 *vation of terrorists around the world are often put in*
4 *harm's way during their service to the United States.*

5 (4) *Personnel of the Central Intelligence Agency*
6 *have also lost their lives while battling the evils of ter-*
7 *rorism around the world.*

8 (5) *Employees of the Federal Bureau of Inves-*
9 *tigation (FBI) and other Federal agencies charged*
10 *with domestic protection of the United States put*
11 *their lives at risk on a daily basis for the freedom and*
12 *security of our Nation.*

13 (6) *United States military personnel, CIA per-*
14 *sonnel, FBI personnel, and other Federal agents in*
15 *the service of the United States are patriots of the*
16 *highest order.*

17 (7) *CIA officer Johnny Micheal Spann became*
18 *the first American to give his life for his country in*
19 *the War on Terrorism declared by President George*
20 *W. Bush following the terrorist attacks of September*
21 *11, 2001.*

22 (8) *Johnny Micheal Spann left behind a wife*
23 *and children who are very proud of the heroic actions*
24 *of their patriot father.*

1 (9) *Surviving dependents of members of the*
2 *Armed Forces of the United States who lose their lives*
3 *as a result of terrorist attacks or military operations*
4 *abroad receive a \$6,000 death benefit, plus a small*
5 *monthly benefit.*

6 (10) *The current system of compensating spouses*
7 *and children of American patriots is inequitable and*
8 *needs improvement.*

9 (b) *DESIGNATION OF JOHNNY MICHEAL SPANN PA-*
10 *TRIO T TRUSTS.—Any charitable corporation, fund, founda-*
11 *tion, or trust (or separate fund or account thereof) which*
12 *otherwise meets all applicable requirements under law with*
13 *respect to charitable entities and meets the requirements de-*
14 *scribed in subsection (c) shall be eligible to characterize*
15 *itself as a “Johnny Micheal Spann Patriot Trust”.*

16 (c) *REQUIREMENTS FOR THE DESIGNATION OF JOHN-*
17 *NY MICHEAL SPANN PATRIOT TRUSTS.—The requirements*
18 *described in this subsection are as follows:*

19 (1) *Not taking into account funds or donations*
20 *reasonably necessary to establish a trust, at least 85*
21 *percent of all funds or donations (including any earn-*
22 *ings on the investment of such funds or donations) re-*
23 *ceived or collected by any Johnny Micheal Spann Pa-*
24 *triot Trust must be distributed to (or, if placed in a*
25 *private foundation, held in trust for) surviving*

1 spouses, children, or dependent parents, grandparents,
2 or siblings of 1 or more of the following:

3 (A) members of the Armed Forces of the
4 United States;

5 (B) personnel, including contractors, of ele-
6 ments of the intelligence community, as defined
7 in section 3(4) of the National Security Act of
8 1947;

9 (C) employees of the Federal Bureau of In-
10 vestigation; and

11 (D) officers, employees, or contract employ-
12 ees of the United States Government,

13 whose deaths occur in the line of duty and arise out
14 of terrorist attacks, military operations, intelligence
15 operations, or law enforcement operations or acci-
16 dents connected with activities occurring after Sep-
17 tember 11, 2001, and related to domestic or foreign ef-
18 forts to curb international terrorism, including the
19 Authorization for Use of Military Force (Public Law
20 107–40; 115 Stat. 224).

21 (2) Other than funds or donations reasonably
22 necessary to establish a trust, not more than 15 per-
23 cent of all funds or donations (or 15 percent of an-
24 nual earnings on funds invested in a private founda-
25 tion) may be used for administrative purposes.

1 (3) *No part of the net earnings of any Johnny*
2 *Micheal Spann Patriot Trust may inure to the benefit*
3 *of any individual based solely on the position of such*
4 *individual as a shareholder, an officer or employee of*
5 *such Trust.*

6 (4) *None of the activities of any Johnny Micheal*
7 *Spann Patriot Trust shall be conducted in a manner*
8 *inconsistent with any law that prohibits attempting*
9 *to influence legislation.*

10 (5) *No Johnny Micheal Spann Patriot Trust*
11 *may participate in or intervene in any political cam-*
12 *paign on behalf of (or in opposition to) any can-*
13 *didate for public office, including by publication or*
14 *distribution of statements.*

15 (6) *Each Johnny Micheal Spann Patriot Trust*
16 *shall comply with the instructions and directions of*
17 *the Director of Central Intelligence, the Attorney Gen-*
18 *eral, or the Secretary of Defense relating to the pro-*
19 *tection of intelligence sources and methods, sensitive*
20 *law enforcement information, or other sensitive na-*
21 *tional security information, including methods for*
22 *confidentially disbursing funds.*

23 (7) *Each Johnny Micheal Spann Patriot Trust*
24 *that receives annual contributions totaling more than*
25 *\$1,000,000 must be audited annually by an inde-*

1 *pendent certified public accounting firm. Such audits*
2 *shall be filed with the Internal Revenue Service, and*
3 *shall be open to public inspection, except that the con-*
4 *duct, filing, and availability of the audit shall be con-*
5 *sistent with the protection of intelligence sources and*
6 *methods, of sensitive law enforcement information,*
7 *and of other sensitive national security information.*

8 *(8) Each Johnny Micheal Spann Patriot Trust*
9 *shall make distributions to beneficiaries described in*
10 *paragraph (1) at least once every calendar year, be-*
11 *ginning not later than 12 months after the formation*
12 *of such Trust, and all funds and donations received*
13 *and earnings not placed in a private foundation*
14 *dedicated to such beneficiaries must be distributed*
15 *within 36 months after the end of the fiscal year in*
16 *which such funds, donations, and earnings are re-*
17 *ceived.*

18 *(9)(A) When determining the amount of a dis-*
19 *tribution to any beneficiary described in paragraph*
20 *(1), a Johnny Micheal Spann Patriot Trust should*
21 *take into account the amount of any collateral source*
22 *compensation that the beneficiary has received or is*
23 *entitled to receive as a result of the death of an indi-*
24 *vidual described in paragraph (1).*

1 (B) Collateral source compensation includes all
2 compensation from collateral sources, including life
3 insurance, pension funds, death benefit programs, and
4 payments by Federal, State, or local governments re-
5 lated to the death of an individual described in para-
6 graph (1).

7 (d) TREATMENT OF JOHNNY MICHEAL SPANN PATRIOT
8 TRUSTS.—Each Johnny Micheal Spann Patriot Trust shall
9 refrain from conducting the activities described in clauses
10 (i) and (ii) of section 301(20)(A) of the Federal Election
11 Campaign Act of 1971 so that a general solicitation of
12 funds by an individual described in paragraph (1) of sec-
13 tion 323(e) of such Act will be permissible if such solicita-
14 tion meets the requirements of paragraph (4)(A) of such sec-
15 tion.

16 (e) NOTIFICATION OF TRUST BENEFICIARIES.—Not-
17 withstanding any other provision of law, and in a manner
18 consistent with the protection of intelligence sources and
19 methods and sensitive law enforcement information, and
20 other sensitive national security information, the Secretary
21 of Defense, the Director of the Federal Bureau of Investiga-
22 tion, or the Director of Central Intelligence, or their des-
23 ignees, as applicable, may forward information received
24 from an executor, administrator, or other legal representa-
25 tive of the estate of a decedent described in subparagraph

1 (A), (B), (C), or (D) of subsection (c)(1), to a Johnny
 2 Micheal Spann Patriot Trust on how to contact individuals
 3 eligible for a distribution under subsection (c)(1) for the
 4 purpose of providing assistance from such Trust; provided
 5 that, neither forwarding nor failing to forward any infor-
 6 mation under this subsection shall create any cause of ac-
 7 tion against any Federal department, agency, officer, agent,
 8 or employee.

9 (f) *REGULATIONS.*—Not later than 90 days after the
 10 date of enactment of this Act, the Secretary of Defense, in
 11 coordination with the Attorney General, the Director of the
 12 Federal Bureau of Investigation, and the Director of Cen-
 13 tral Intelligence, shall prescribe regulations to carry out
 14 this section.

15 ***TITLE VII—MANAGEMENT***

16 ***SEC. 701. UNDER SECRETARY FOR MANAGEMENT.***

17 (a) *IN GENERAL.*—The Secretary, acting through the
 18 Under Secretary for Management, shall be responsible for
 19 the management and administration of the Department, in-
 20 cluding the following:

- 21 (1) *The budget, appropriations, expenditures of*
- 22 *funds, accounting, and finance.*
- 23 (2) *Procurement.*
- 24 (3) *Human resources and personnel.*

1 (4) *Information technology and communications*
2 *systems.*

3 (5) *Facilities, property, equipment, and other*
4 *material resources.*

5 (6) *Security for personnel, information tech-*
6 *nology and communications systems, facilities, prop-*
7 *erty, equipment, and other material resources.*

8 (7) *Identification and tracking of performance*
9 *measures relating to the responsibilities of the Depart-*
10 *ment.*

11 (8) *Grants and other assistance management*
12 *programs.*

13 (9) *The transition and reorganization process, to*
14 *ensure an efficient and orderly transfer of functions*
15 *and personnel to the Department, including the devel-*
16 *opment of a transition plan.*

17 (10) *The conduct of internal audits and manage-*
18 *ment analyses of the programs and activities of the*
19 *Department.*

20 (11) *Any other management duties that the Sec-*
21 *retary may designate.*

22 (b) *IMMIGRATION.—*

23 (1) *IN GENERAL.—In addition to the responsibil-*
24 *ities described in subsection (a), the Under Secretary*
25 *for Management shall be responsible for the following:*

1 (A) *Maintenance of all immigration statis-*
2 *tical information of the Bureau of Border Secu-*
3 *rity and the Bureau of Citizenship and Immi-*
4 *gration Services. Such statistical information*
5 *shall include information and statistics of the*
6 *type contained in the publication entitled “Sta-*
7 *tistical Yearbook of the Immigration and Natu-*
8 *ralization Service” prepared by the Immigration*
9 *and Naturalization Service (as in effect imme-*
10 *diately before the date on which the transfer of*
11 *functions specified under section 441 takes ef-*
12 *fect), including region-by-region statistics on the*
13 *aggregate number of applications and petitions*
14 *filed by an alien (or filed on behalf of an alien)*
15 *and denied by such bureau, and the reasons for*
16 *such denials, disaggregated by category of denial*
17 *and application or petition type.*

18 (B) *Establishment of standards of reli-*
19 *ability and validity for immigration statistics*
20 *collected by such bureaus.*

21 (2) *TRANSFER OF FUNCTIONS.—In accordance*
22 *with title XV, there shall be transferred to the Under*
23 *Secretary for Management all functions performed*
24 *immediately before such transfer occurs by the Statis-*
25 *tics Branch of the Office of Policy and Planning of*

1 *the Immigration and Naturalization Service with re-*
2 *spect to the following programs:*

3 *(A) The Border Patrol program.*

4 *(B) The detention and removal program.*

5 *(C) The intelligence program.*

6 *(D) The investigations program.*

7 *(E) The inspections program.*

8 *(F) Adjudication of immigrant visa peti-*
9 *tions.*

10 *(G) Adjudication of naturalization peti-*
11 *tions.*

12 *(H) Adjudication of asylum and refugee ap-*
13 *plications.*

14 *(I) Adjudications performed at service cen-*
15 *ters.*

16 *(J) All other adjudications performed by the*
17 *Immigration and Naturalization Service.*

18 **SEC. 702. CHIEF FINANCIAL OFFICER.**

19 *The Chief Financial Officer shall report to the Sec-*
20 *retary, or to another official of the Department, as the Sec-*
21 *retary may direct.*

22 **SEC. 703. CHIEF INFORMATION OFFICER.**

23 *The Chief Information Officer shall report to the Sec-*
24 *retary, or to another official of the Department, as the Sec-*
25 *retary may direct.*

1 **SEC. 704. CHIEF HUMAN CAPITAL OFFICER.**

2 *The Chief Human Capital Officer shall report to the*
 3 *Secretary, or to another official of the Department, as the*
 4 *Secretary may direct and shall ensure that all employees*
 5 *of the Department are informed of their rights and remedies*
 6 *under chapters 12 and 23 of title 5, United States Code,*
 7 *by—*

8 *(1) participating in the 2302(c) Certification*
 9 *Program of the Office of Special Counsel;*

10 *(2) achieving certification from the Office of Spe-*
 11 *cial Counsel of the Department's compliance with sec-*
 12 *tion 2302(c) of title 5, United States Code; and*

13 *(3) informing Congress of such certification not*
 14 *later than 24 months after the date of enactment of*
 15 *this Act.*

16 **SEC. 705. ESTABLISHMENT OF OFFICER FOR CIVIL RIGHTS**
 17 **AND CIVIL LIBERTIES.**

18 *(a) IN GENERAL.—The Secretary shall appoint in the*
 19 *Department an Officer for Civil Rights and Civil Liberties,*
 20 *who shall—*

21 *(1) review and assess information alleging*
 22 *abuses of civil rights, civil liberties, and racial and*
 23 *ethnic profiling by employees and officials of the De-*
 24 *partment; and*

25 *(2) make public through the Internet, radio, tele-*
 26 *vision, or newspaper advertisements information on*

1 *the responsibilities and functions of, and how to con-*
2 *tact, the Officer.*

3 (b) *REPORT.*—*The Secretary shall submit to the*
4 *President of the Senate, the Speaker of the House of*
5 *Representatives, and the appropriate committees and*
6 *subcommittees of Congress on an annual basis a re-*
7 *port on the implementation of this section, including*
8 *the use of funds appropriated to carry out this sec-*
9 *tion, and detailing any allegations of abuses described*
10 *under subsection (a)(1) and any actions taken by the*
11 *Department in response to such allegations.*

12 **SEC. 706. CONSOLIDATION AND CO-LOCATION OF OFFICES.**

13 *Not later than 1 year after the date of the enactment*
14 *of this Act, the Secretary shall develop and submit to Con-*
15 *gress a plan for consolidating and co-locating—*

16 (1) *any regional offices or field offices of agencies*
17 *that are transferred to the Department under this Act,*
18 *if such officers are located in the same municipality;*
19 *and*

20 (2) *portions of regional and field offices of other*
21 *Federal agencies, to the extent such offices perform*
22 *functions that are transferred to the Secretary under*
23 *this Act.*

1 **TITLE VIII—COORDINATION**
 2 **WITH NON-FEDERAL ENTI-**
 3 **TIES; INSPECTOR GENERAL;**
 4 **UNITED STATES SECRET**
 5 **SERVICE; COAST GUARD; GEN-**
 6 **ERAL PROVISIONS**

7 **Subtitle A—Coordination with Non-**
 8 **Federal Entities**

9 **SEC. 801. OFFICE FOR STATE AND LOCAL GOVERNMENT CO-**
 10 **ORDINATION.**

11 (a) *ESTABLISHMENT.*—There is established within the
 12 Office of the Secretary the Office for State and Local Gov-
 13 ernment Coordination, to oversee and coordinate depart-
 14 mental programs for and relationships with State and local
 15 governments.

16 (b) *RESPONSIBILITIES.*—The Office established under
 17 subsection (a) shall—

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

20 (2) assess, and advocate for, the resources needed
 21 by State and local government to implement the na-
 22 tional strategy for combating terrorism;

23 (3) provide State and local government with reg-
 24 ular information, research, and technical support to
 25 assist local efforts at securing the homeland; and

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

5 ***Subtitle B—Inspector General***

6 **SEC. 811. AUTHORITY OF THE SECRETARY.**

7 (a) *IN GENERAL.*—Notwithstanding the last two sen-
 8 tences of section 3(a) of the Inspector General Act of 1978,
 9 the Inspector General shall be under the authority, direc-
 10 tion, and control of the Secretary with respect to audits or
 11 investigations, or the issuance of subpoenas, that require ac-
 12 cess to sensitive information concerning—

13 (1) intelligence, counterintelligence, or
 14 counterterrorism matters;

15 (2) ongoing criminal investigations or pro-
 16 ceedings;

17 (3) undercover operations;

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

20 (5) other matters the disclosure of which would,
 21 in the Secretary's judgment, constitute a serious
 22 threat to the protection of any person or property au-
 23 thorized protection by section 3056 of title 18, United
 24 States Code, section 202 of title 3 of such Code, or

1 any provision of the Presidential Protection Assist-
2 ance Act of 1976; or

3 (6) other matters the disclosure of which would,
4 in the Secretary's judgment, constitute a serious
5 threat to national security.

6 (b) *PROHIBITION OF CERTAIN INVESTIGATIONS.*—With
7 respect to the information described in subsection (a), the
8 Secretary may prohibit the Inspector General from car-
9 rying out or completing any audit or investigation, or from
10 issuing any subpoena, after such Inspector General has de-
11 cided to initiate, carry out, or complete such audit or inves-
12 tigation or to issue such subpoena, if the Secretary deter-
13 mines that such prohibition is necessary to prevent the dis-
14 closure of any information described in subsection (a), to
15 preserve the national security, or to prevent a significant
16 impairment to the interests of the United States.

17 (c) *NOTIFICATION REQUIRED.*—If the Secretary exer-
18 cises any power under subsection (a) or (b), the Secretary
19 shall notify the Inspector General of the Department in
20 writing stating the reasons for such exercise. Within 30
21 days after receipt of any such notice, the Inspector General
22 shall transmit a copy of such notice and a written response
23 thereto that includes—

24 (1) a statement as to whether the Inspector Gen-
25 eral agrees or disagrees with such exercise; and

10 (e) *OVERSIGHT RESPONSIBILITY—The Inspector Gen-*
11 *eral Act of 1978 (5 U.S.C. App.) is amended by inserting*
12 *after section 8I the following:*

15 “SEC. 8J. Notwithstanding any other provision of law,
16 in carrying out the duties and responsibilities specified in
17 this Act, the Inspector General of the Department of Home-
18 land Security shall have oversight responsibility for the in-
19 ternal investigations performed by the Office of Internal Af-
20 fairs of the United States Customs Service and the Office
21 of Inspections of the United States Secret Service. The head
22 of each such office shall promptly report to the Inspector
23 General the significant activities being carried out by such
24 office.”.

1 **SEC. 812. LAW ENFORCEMENT POWERS OF INSPECTOR GEN-**
2 **ERAL AGENTS.**

3 (a) *IN GENERAL.*—Section 6 of the Inspector General
4 Act of 1978 (5 U.S.C. App.) is amended by adding at the
5 end the following:

6 “(e)(1) *In addition to the authority otherwise provided*
7 *by this Act, each Inspector General appointed under section*
8 *3, any Assistant Inspector General for Investigations under*
9 *such an Inspector General, and any special agent super-*
10 *vised by such an Assistant Inspector General may be au-*
11 *thorized by the Attorney General to—*

12 “(A) *carry a firearm while engaged in official*
13 *duties as authorized under this Act or other statute,*
14 *or as expressly authorized by the Attorney General;*

15 “(B) *make an arrest without a warrant while*
16 *engaged in official duties as authorized under this Act*
17 *or other statute, or as expressly authorized by the At-*
18 *torney General, for any offense against the United*
19 *States committed in the presence of such Inspector*
20 *General, Assistant Inspector General, or agent, or for*
21 *any felony cognizable under the laws of the United*
22 *States if such Inspector General, Assistant Inspector*
23 *General, or agent has reasonable grounds to believe*
24 *that the person to be arrested has committed or is*
25 *committing such felony; and*

1 “(C) seek and execute warrants for arrest, search
2 of a premises, or seizure of evidence issued under the
3 authority of the United States upon probable cause to
4 believe that a violation has been committed.

5 “(2) The Attorney General may authorize exercise of
6 the powers under this subsection only upon an initial deter-
7 mination that—

8 “(A) the affected Office of Inspector General is
9 significantly hampered in the performance of respon-
10 sibilities established by this Act as a result of the lack
11 of such powers;

12 “(B) available assistance from other law enforce-
13 ment agencies is insufficient to meet the need for such
14 powers; and

15 “(C) adequate internal safeguards and manage-
16 ment procedures exist to ensure proper exercise of
17 such powers.

18 “(3) The Inspector General offices of the Department
19 of Commerce, Department of Education, Department of En-
20 ergy, Department of Health and Human Services, Depart-
21 ment of Homeland Security, Department of Housing and
22 Urban Development, Department of the Interior, Depart-
23 ment of Justice, Department of Labor, Department of State,
24 Department of Transportation, Department of the Treas-
25 ury, Department of Veterans Affairs, Agency for Inter-

1 *national Development, Environmental Protection Agency,*
 2 *Federal Deposit Insurance Corporation, Federal Emergency*
 3 *Management Agency, General Services Administration, Na-*
 4 *tional Aeronautics and Space Administration, Nuclear*
 5 *Regulatory Commission, Office of Personnel Management,*
 6 *Railroad Retirement Board, Small Business Administra-*
 7 *tion, Social Security Administration, and the Tennessee*
 8 *Valley Authority are exempt from the requirement of para-*
 9 *graph (2) of an initial determination of eligibility by the*
 10 *Attorney General.*

11 “(4) *The Attorney General shall promulgate, and re-*
 12 *vise as appropriate, guidelines which shall govern the exer-*
 13 *cise of the law enforcement powers established under para-*
 14 *graph (1).*

15 “(5)(A) *Powers authorized for an Office of Inspector*
 16 *General under paragraph (1) may be rescinded or sus-*
 17 *pended upon a determination by the Attorney General that*
 18 *any of the requirements under paragraph (2) is no longer*
 19 *satisfied or that the exercise of authorized powers by that*
 20 *Office of Inspector General has not complied with the guide-*
 21 *lines promulgated by the Attorney General under para-*
 22 *graph (4).*

23 “(B) *Powers authorized to be exercised by any indi-*
 24 *vidual under paragraph (1) may be rescinded or suspended*
 25 *with respect to that individual upon a determination by*

1 *the Attorney General that such individual has not complied*
2 *with guidelines promulgated by the Attorney General under*
3 *paragraph (4).*

4 “(6) *A determination by the Attorney General under*
5 *paragraph (2) or (5) shall not be reviewable in or by any*
6 *court.*

7 “(7) *To ensure the proper exercise of the law enforce-*
8 *ment powers authorized by this subsection, the Offices of*
9 *Inspector General described under paragraph (3) shall, not*
10 *later than 180 days after the date of enactment of this sub-*
11 *section, collectively enter into a memorandum of under-*
12 *standing to establish an external review process for ensur-*
13 *ing that adequate internal safeguards and management*
14 *procedures continue to exist within each Office and within*
15 *any Office that later receives an authorization under para-*
16 *graph (2). The review process shall be established in con-*
17 *sultation with the Attorney General, who shall be provided*
18 *with a copy of the memorandum of understanding that es-*
19 *tablishes the review process. Under the review process, the*
20 *exercise of the law enforcement powers by each Office of In-*
21 *spector General shall be reviewed periodically by another*
22 *Office of Inspector General or by a committee of Inspectors*
23 *General. The results of each review shall be communicated*
24 *in writing to the applicable Inspector General and to the*
25 *Attorney General.*

1 “(8) No provision of this subsection shall limit the ex-
 2 ercise of law enforcement powers established under any
 3 other statutory authority, including United States Marshals
 4 Service special deputation.”.

5 (b) *PROMULGATION OF INITIAL GUIDELINES.*—

6 (1) *DEFINITION.*—In this subsection, the term
 7 “memoranda of understanding” means the agreements
 8 between the Department of Justice and the Inspector
 9 General offices described under section 6(e)(3) of the
 10 Inspector General Act of 1978 (5 U.S.C. App) (as
 11 added by subsection (a) of this section) that—

12 (A) are in effect on the date of enactment of
 13 this Act; and

14 (B) authorize such offices to exercise author-
 15 ity that is the same or similar to the authority
 16 under section 6(e)(1) of such Act.

17 (2) *IN GENERAL.*—Not later than 180 days after
 18 the date of enactment of this Act, the Attorney Gen-
 19 eral shall promulgate guidelines under section 6(e)(4)
 20 of the Inspector General Act of 1978 (5 U.S.C. App)
 21 (as added by subsection (a) of this section) applicable
 22 to the Inspector General offices described under sec-
 23 tion 6(e)(3) of that Act.

24 (3) *MINIMUM REQUIREMENTS.*—The guidelines
 25 promulgated under this subsection shall include, at a

1 *minimum, the operational and training requirements*
 2 *in the memoranda of understanding.*

3 (4) *NO LAPSE OF AUTHORITY.*—*The memoranda*
 4 *of understanding in effect on the date of enactment of*
 5 *this Act shall remain in effect until the guidelines*
 6 *promulgated under this subsection take effect.*

7 (c) *EFFECTIVE DATES.*—

8 (1) *IN GENERAL.*—*Subsection (a) shall take effect*
 9 *180 days after the date of enactment of this Act.*

10 (2) *INITIAL GUIDELINES.*—*Subsection (b) shall*
 11 *take effect on the date of enactment of this Act.*

12 ***Subtitle C—United States Secret*** 13 ***Service***

14 ***SEC. 821. FUNCTIONS TRANSFERRED.***

15 *In accordance with title XV, there shall be transferred*
 16 *to the Secretary the functions, personnel, assets, and obliga-*
 17 *tions of the United States Secret Service, which shall be*
 18 *maintained as a distinct entity within the Department, in-*
 19 *cluding the functions of the Secretary of the Treasury relat-*
 20 *ing thereto.*

21 ***Subtitle D—Acquisitions***

22 ***SEC. 831. RESEARCH AND DEVELOPMENT PROJECTS.***

23 (a) *AUTHORITY.*—*During the 5-year period following*
 24 *the effective date of this Act, the Secretary may carry out*

1 *a pilot program under which the Secretary may exercise*
2 *the following authorities:*

3 (1) *IN GENERAL.*—*When the Secretary carries*
4 *out basic, applied, and advanced research and devel-*
5 *opment projects, including the expenditure of funds*
6 *for such projects, the Secretary may exercise the same*
7 *authority (subject to the same limitations and condi-*
8 *tions) with respect to such research and projects as*
9 *the Secretary of Defense may exercise under section*
10 *2371 of title 10, United States Code (except for sub-*
11 *sections (b) and (f)), after making a determination*
12 *that the use of a contract, grant, or cooperative agree-*
13 *ment for such project is not feasible or appropriate.*
14 *The annual report required under subsection (b) of*
15 *this section, as applied to the Secretary by this para-*
16 *graph, shall be submitted to the President of the Sen-*
17 *ate and the Speaker of the House of Representatives.*

18 (2) *PROTOTYPE PROJECTS.*—*The Secretary may,*
19 *under the authority of paragraph (1), carry out pro-*
20 *totype projects in accordance with the requirements*
21 *and conditions provided for carrying out prototype*
22 *projects under section 845 of the National Defense Au-*
23 *thorization Act for Fiscal Year 1994 (Public Law*
24 *103–160). In applying the authorities of that section*
25 *845, subsection (c) of that section shall apply with re-*

1 *spect to prototype projects under this paragraph, and*
 2 *the Secretary shall perform the functions of the Sec-*
 3 *retary of Defense under subsection (d) thereof.*

4 *(b) REPORT.—Not later than 2 years after the effective*
 5 *date of this Act, and annually thereafter, the Comptroller*
 6 *General shall report to the Committee on Government Re-*
 7 *form of the House of Representatives and the Committee*
 8 *on Governmental Affairs of the Senate on—*

9 *(1) whether use of the authorities described in*
 10 *subsection (a) attracts nontraditional Government*
 11 *contractors and results in the acquisition of needed*
 12 *technologies; and*

13 *(2) if such authorities were to be made perma-*
 14 *nent, whether additional safeguards are needed with*
 15 *respect to the use of such authorities.*

16 *(c) PROCUREMENT OF TEMPORARY AND INTERMIT-*
 17 *TENT SERVICES.—The Secretary may—*

18 *(1) procure the temporary or intermittent serv-*
 19 *ices of experts or consultants (or organizations there-*
 20 *of) in accordance with section 3109(b) of title 5,*
 21 *United States Code; and*

22 *(2) whenever necessary due to an urgent home-*
 23 *land security need, procure temporary (not to exceed*
 24 *1 year) or intermittent personal services, including*
 25 *the services of experts or consultants (or organizations*

1 *thereof), without regard to the pay limitations of such*
 2 *section 3109.*

3 (d) *DEFINITION OF NONTRADITIONAL GOVERNMENT*
 4 *CONTRACTOR.—In this section, the term “nontraditional*
 5 *Government contractor” has the same meaning as the term*
 6 *“nontraditional defense contractor” as defined in section*
 7 *845(e) of the National Defense Authorization Act for Fiscal*
 8 *Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).*

9 **SEC. 832. PERSONAL SERVICES.**

10 *The Secretary—*

11 (1) *may procure the temporary or intermittent*
 12 *services of experts or consultants (or organizations*
 13 *thereof) in accordance with section 3109 of title 5,*
 14 *United States Code; and*

15 (2) *may, whenever necessary due to an urgent*
 16 *homeland security need, procure temporary (not to*
 17 *exceed 1 year) or intermittent personal services, in-*
 18 *cluding the services of experts or consultants (or orga-*
 19 *nizations thereof), without regard to the pay limita-*
 20 *tions of such section 3109.*

21 **SEC. 833. SPECIAL STREAMLINED ACQUISITION AUTHOR-**
 22 **ITY.**

23 (a) *AUTHORITY.—*

24 (1) *IN GENERAL.—The Secretary may use the*
 25 *authorities set forth in this section with respect to*

1 *any procurement made during the period beginning*
 2 *on the effective date of this Act and ending September*
 3 *30, 2007, if the Secretary determines in writing that*
 4 *the mission of the Department (as described in section*
 5 *101) would be seriously impaired without the use of*
 6 *such authorities.*

7 (2) *DELEGATION.*—*The authority to make the*
 8 *determination described in paragraph (1) may not be*
 9 *delegated by the Secretary to an officer of the Depart-*
 10 *ment who is not appointed by the President with the*
 11 *advice and consent of the Senate.*

12 (3) *NOTIFICATION.*—*Not later than the date that*
 13 *is 7 days after the date of any determination under*
 14 *paragraph (1), the Secretary shall submit to the Com-*
 15 *mittee on Government Reform of the House of Rep-*
 16 *resentatives and the Committee on Governmental Af-*
 17 *fairs of the Senate—*

18 (A) *notification of such determination; and*

19 (B) *the justification for such determination.*

20 (b) *INCREASED MICRO-PURCHASE THRESHOLD FOR*
 21 *CERTAIN PROCUREMENTS.*—

22 (1) *IN GENERAL.*—*The Secretary may designate*
 23 *certain employees of the Department to make procure-*
 24 *ments described in subsection (a) for which in the ad-*
 25 *ministration of section 32 of the Office of Federal*

1 *Procurement Policy Act (41 U.S.C. 428) the amount*
2 *specified in subsections (c), (d), and (f) of such section*
3 *32 shall be deemed to be \$7,500.*

4 (2) *NUMBER OF EMPLOYEES.*—*The number of*
5 *employees designated under paragraph (1) shall be—*

6 (A) *fewer than the number of employees of*
7 *the Department who are authorized to make pur-*
8 *chases without obtaining competitive quotations,*
9 *pursuant to section 32(c) of the Office of Federal*
10 *Procurement Policy Act (41 U.S.C. 428(c));*

11 (B) *sufficient to ensure the geographic dis-*
12 *persal of the availability of the use of the pro-*
13 *curement authority under such paragraph at lo-*
14 *cations reasonably considered to be potential ter-*
15 *rorist targets; and*

16 (C) *sufficiently limited to allow for the*
17 *careful monitoring of employees designated*
18 *under such paragraph.*

19 (3) *REVIEW.*—*Procurements made under the au-*
20 *thority of this subsection shall be subject to review by*
21 *a designated supervisor on not less than a monthly*
22 *basis. The supervisor responsible for the review shall*
23 *be responsible for no more than 7 employees making*
24 *procurements under this subsection.*

25 (c) *SIMPLIFIED ACQUISITION PROCEDURES.*—

1 (1) *IN GENERAL.*—*With respect to a procurement*
 2 *described in subsection (a), the Secretary may deem*
 3 *the simplified acquisition threshold referred to in sec-*
 4 *tion 4(11) of the Office of Federal Procurement Policy*
 5 *Act (41 U.S.C. 403(11)) to be—*

6 *(A) in the case of a contract to be awarded*
 7 *and performed, or purchase to be made, within*
 8 *the United States, \$200,000; and*

9 *(B) in the case of a contract to be awarded*
 10 *and performed, or purchase to be made, outside*
 11 *of the United States, \$300,000.*

12 (2) *CONFORMING AMENDMENTS.*—*Section*
 13 *18(c)(1) of the Office of Federal Procurement Policy*
 14 *Act is amended—*

15 *(A) by striking “or” at the end of subpara-*
 16 *graph (F);*

17 *(B) by striking the period at the end of sub-*
 18 *paragraph (G) and inserting “; or”; and*

19 *(C) by adding at the end the following:*

20 *“(H) the procurement is by the Secretary of*
 21 *Homeland Security pursuant to the special proce-*
 22 *dures provided in section 833(c) of the Homeland Se-*
 23 *curity Act of 2002.”.*

24 *(d) APPLICATION OF CERTAIN COMMERCIAL ITEMS*

25 *AUTHORITIES.*—

1 (1) *IN GENERAL.*—*With respect to a procurement*
 2 *described in subsection (a), the Secretary may deem*
 3 *any item or service to be a commercial item for the*
 4 *purpose of Federal procurement laws.*

5 (2) *LIMITATION.*—*The \$5,000,000 limitation*
 6 *provided in section 31(a)(2) of the Office of Federal*
 7 *Procurement Policy Act (41 U.S.C. 427(a)(2)) and*
 8 *section 303(g)(1)(B) of the Federal Property and Ad-*
 9 *ministrative Services Act of 1949 (41 U.S.C.*
 10 *253(g)(1)(B)) shall be deemed to be \$7,500,000 for*
 11 *purposes of property or services under the authority*
 12 *of this subsection.*

13 (3) *CERTAIN AUTHORITY.*—*Authority under a*
 14 *provision of law referred to in paragraph (2) that ex-*
 15 *pires under section 4202(e) of the Clinger-Cohen Act*
 16 *of 1996 (divisions D and E of Public Law 104–106;*
 17 *10 U.S.C. 2304 note) shall, notwithstanding such sec-*
 18 *tion, continue to apply for a procurement described*
 19 *in subsection (a).*

20 (e) *REPORT.*—*Not later than 180 days after the end*
 21 *of fiscal year 2005, the Comptroller General shall submit*
 22 *to the Committee on Governmental Affairs of the Senate*
 23 *and the Committee on Government Reform of the House of*
 24 *Representatives a report on the use of the authorities pro-*
 25 *vided in this section. The report shall contain the following:*

1 (1) *An assessment of the extent to which property*
 2 *and services acquired using authorities provided*
 3 *under this section contributed to the capacity of the*
 4 *Federal workforce to facilitate the mission of the De-*
 5 *partment as described in section 101.*

6 (2) *An assessment of the extent to which prices*
 7 *for property and services acquired using authorities*
 8 *provided under this section reflected the best value.*

9 (3) *The number of employees designated by each*
 10 *executive agency under subsection (b)(1).*

11 (4) *An assessment of the extent to which the De-*
 12 *partment has implemented subsections (b)(2) and*
 13 *(b)(3) to monitor the use of procurement authority by*
 14 *employees designated under subsection (b)(1).*

15 (5) *Any recommendations of the Comptroller*
 16 *General for improving the effectiveness of the imple-*
 17 *mentation of the provisions of this section.*

18 **SEC. 834. UNSOLICITED PROPOSALS.**

19 (a) *REGULATIONS REQUIRED.*—*Within 1 year of the*
 20 *date of enactment of this Act, the Federal Acquisition Regu-*
 21 *lation shall be revised to include regulations with regard*
 22 *to unsolicited proposals.*

23 (b) *CONTENT OF REGULATIONS.*—*The regulations pre-*
 24 *scribed under subsection (a) shall require that before initi-*

1 *ating a comprehensive evaluation, an agency contact point*
 2 *shall consider, among other factors, that the proposal—*

3 *(1) is not submitted in response to a previously*
 4 *published agency requirement; and*

5 *(2) contains technical and cost information for*
 6 *evaluation and overall scientific, technical or socio-*
 7 *economic merit, or cost-related or price-related fac-*
 8 *tors.*

9 **SEC. 835. PROHIBITION ON CONTRACTS WITH CORPORATE**
 10 **EXPATRIATES.**

11 *(a) IN GENERAL.—The Secretary may not enter into*
 12 *any contract with a foreign incorporated entity which is*
 13 *treated as an inverted domestic corporation under sub-*
 14 *section (b).*

15 *(b) INVERTED DOMESTIC CORPORATION.—For pur-*
 16 *poses of this section, a foreign incorporated entity shall be*
 17 *treated as an inverted domestic corporation if, pursuant to*
 18 *a plan (or a series of related transactions)—*

19 *(1) the entity completes after the date of enact-*
 20 *ment of this Act, the direct or indirect acquisition of*
 21 *substantially all of the properties held directly or in-*
 22 *directly by a domestic corporation or substantially all*
 23 *of the properties constituting a trade or business of a*
 24 *domestic partnership;*

(2) *after the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—*

(A) *in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation; or*

(B) *in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership; and*

(3) *the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.*

(c) *DEFINITIONS AND SPECIAL RULES.—*

(1) *RULES FOR APPLICATION OF SUBSECTION (b).—In applying subsection (b) for purposes of subsection (a), the following rules shall apply:*

(A) *CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership for purposes of subsection (b)(2)—*

1 (i) stock held by members of the ex-
 2 panded affiliated group which includes the
 3 foreign incorporated entity; or

4 (ii) stock of such entity which is sold
 5 in a public offering related to the acquisi-
 6 tion described in subsection (b)(1).

7 (B) *PLAN DEEMED IN CERTAIN CASES.*—If
 8 a foreign incorporated entity acquires directly or
 9 indirectly substantially all of the properties of a
 10 domestic corporation or partnership during the
 11 4-year period beginning on the date which is
 12 after the date of enactment of this Act and which
 13 is 2 years before the ownership requirements of
 14 subsection (b)(2) are met, such actions shall be
 15 treated as pursuant to a plan.

16 (C) *CERTAIN TRANSFERS DISREGARDED.*—
 17 The transfer of properties or liabilities (includ-
 18 ing by contribution or distribution) shall be dis-
 19 regarded if such transfers are part of a plan a
 20 principal purpose of which is to avoid the pur-
 21 poses of this section.

22 (D) *SPECIAL RULE FOR RELATED PARTNER-*
 23 *SHIPS.*—For purposes of applying subsection (b)
 24 to the acquisition of a domestic partnership, ex-
 25 cept as provided in regulations, all domestic

1 *partnerships which are under common control*
 2 *(within the meaning of section 482 of the Inter-*
 3 *nal Revenue Code of 1986) shall be treated as I*
 4 *partnership.*

5 *(E) TREATMENT OF CERTAIN RIGHTS.—The*
 6 *Secretary shall prescribe such regulations as*
 7 *may be necessary to—*

8 *(i) treat warrants, options, contracts to*
 9 *acquire stock, convertible debt instruments,*
 10 *and other similar interests as stock; and*

11 *(ii) treat stock as not stock.*

12 *(2) EXPANDED AFFILIATED GROUP.—The term*
 13 *“expanded affiliated group” means an affiliated*
 14 *group as defined in section 1504(a) of the Internal*
 15 *Revenue Code of 1986 (without regard to section*
 16 *1504(b) of such Code), except that section 1504 of*
 17 *such Code shall be applied by substituting “more than*
 18 *50 percent” for “at least 80 percent” each place it ap-*
 19 *pears.*

20 *(3) FOREIGN INCORPORATED ENTITY.—The term*
 21 *“foreign incorporated entity” means any entity which*
 22 *is, or but for subsection (b) would be, treated as a for-*
 23 *foreign corporation for purposes of the Internal Revenue*
 24 *Code of 1986.*

1 (4) *OTHER DEFINITIONS.*—*The terms “person”,*
 2 *“domestic”, and “foreign” have the meanings given*
 3 *such terms by paragraphs (1), (4), and (5) of section*
 4 *7701 (a) of the Internal Revenue Code of 1986, re-*
 5 *spectively.*

6 (d) *WAIVERS.*—*The Secretary shall waive subsection*
 7 *(a) with respect to any specific contract if the Secretary*
 8 *determines that the waiver is required in the interest of*
 9 *homeland security, or to prevent the loss of any jobs in the*
 10 *United States or prevent the Government from incurring*
 11 *any additional costs that otherwise would not occur.*

12 ***Subtitle E—Human Resources***
 13 ***Management***

14 ***SEC. 841. ESTABLISHMENT OF HUMAN RESOURCES MAN-***
 15 ***AGEMENT SYSTEM.***

16 (a) *AUTHORITY.*—

17 (1) *SENSE OF CONGRESS.*—*It is the sense of*
 18 *Congress that—*

19 (A) *it is extremely important that employ-*
 20 *ees of the Department be allowed to participate*
 21 *in a meaningful way in the creation of any*
 22 *human resources management system affecting*
 23 *them;*

24 (B) *such employees have the most direct*
 25 *knowledge of the demands of their jobs and have*

1 *a direct interest in ensuring that their human*
 2 *resources management system is conducive to*
 3 *achieving optimal operational efficiencies;*

4 *(C) the 21st century human resources man-*
 5 *agement system envisioned for the Department*
 6 *should be one that benefits from the input of its*
 7 *employees; and*

8 *(D) this collaborative effort will help secure*
 9 *our homeland.*

10 (2) *IN GENERAL.*—*Subpart I of part III of title*
 11 *5, United States Code, is amended by adding at the*
 12 *end the following:*

13 **“CHAPTER 97—DEPARTMENT OF**
 14 **HOMELAND SECURITY**

“*Sec.*

“9701. *Establishment of human resources management system.*

15 **“§9701. Establishment of human resources manage-**
 16 **ment system**

17 “(a) *IN GENERAL.*—*Notwithstanding any other provi-*
 18 *sion of this part, the Secretary of Homeland Security may,*
 19 *in regulations prescribed jointly with the Director of the*
 20 *Office of Personnel Management, establish, and from time*
 21 *to time adjust, a human resources management system for*
 22 *some or all of the organizational units of the Department*
 23 *of Homeland Security.*

1 “(b) *SYSTEM REQUIREMENTS.*—*Any system estab-*
2 *lished under subsection (a) shall—*

3 “(1) *be flexible;*

4 “(2) *be contemporary;*

5 “(3) *not waive, modify, or otherwise affect—*

6 “(A) *the public employment principles of*
7 *merit and fitness set forth in section 2301, in-*
8 *cluding the principles of hiring based on merit,*
9 *fair treatment without regard to political affili-*
10 *ation or other nonmerit considerations, equal*
11 *pay for equal work, and protection of employees*
12 *against reprisal for whistleblowing;*

13 “(B) *any provision of section 2302, relating*
14 *to prohibited personnel practices;*

15 “(C)(i) *any provision of law referred to in*
16 *section 2302(b)(1), (8), and (9); or*

17 “(ii) *any provision of law implementing*
18 *any provision of law referred to in section*
19 *2302(b)(1), (8), and (9) by—*

20 “(I) *providing for equal employment*
21 *opportunity through affirmative action; or*

22 “(II) *providing any right or remedy*
23 *available to any employee or applicant for*
24 *employment in the civil service;*

1 “(D) any other provision of this part (as
2 described in subsection (c)); or

3 “(E) any rule or regulation prescribed
4 under any provision of law referred to in any of
5 the preceding subparagraphs of this paragraph;

6 “(4) ensure that employees may organize, bar-
7 gain collectively, and participate through labor orga-
8 nizations of their own choosing in decisions which af-
9 fect them, subject to any exclusion from coverage or
10 limitation on negotiability established by law; and

11 “(5) permit the use of a category rating system
12 for evaluating applicants for positions in the competi-
13 tive service.

14 “(c) *OTHER NONWAIVABLE PROVISIONS.*—The other
15 provisions of this part as referred to in subsection (b)(3)(D),
16 are (to the extent not otherwise specified in subparagraph
17 (A), (B), (C), or (D) of subsection (b)(3))—

18 “(1) subparts A, B, E, G, and H of this part;
19 and

20 “(2) chapters 41, 45, 47, 55, 57, 59, 72, 73, and
21 79, and this chapter.

22 “(d) *LIMITATIONS RELATING TO PAY.*—Nothing in
23 this section shall constitute authority—

24 “(1) to modify the pay of any employee who
25 serves in—

1 “(A) *an Executive Schedule position under*
2 *subchapter II of chapter 53 of title 5, United*
3 *States Code; or*

4 “(B) *a position for which the rate of basic*
5 *pay is fixed in statute by reference to a section*
6 *or level under subchapter II of chapter 53 of such*
7 *title 5;*

8 “(2) *to fix pay for any employee or position at*
9 *an annual rate greater than the maximum amount of*
10 *cash compensation allowable under section 5307 of*
11 *such title 5 in a year; or*

12 “(3) *to exempt any employee from the applica-*
13 *tion of such section 5307.*

14 “(e) *PROVISIONS TO ENSURE COLLABORATION WITH*
15 *EMPLOYEE REPRESENTATIVES.—*

16 “(1) *IN GENERAL.—In order to ensure that the*
17 *authority of this section is exercised in collaboration*
18 *with, and in a manner that ensures the participation*
19 *of employee representatives in the planning, develop-*
20 *ment, and implementation of any human resources*
21 *management system or adjustments to such system*
22 *under this section, the Secretary of Homeland Secu-*
23 *rity and the Director of the Office of Personnel Man-*
24 *agement shall provide for the following:*

1 “(A) *NOTICE OF PROPOSAL.*—*The Secretary*
2 *and the Director shall, with respect to any pro-*
3 *posed system or adjustment—*

4 “(i) *provide to each employee rep-*
5 *resentative representing any employees who*
6 *might be affected, a written description of*
7 *the proposed system or adjustment (includ-*
8 *ing the reasons why it is considered nec-*
9 *essary);*

10 “(ii) *give each representative 30 cal-*
11 *endar days (unless extraordinary cir-*
12 *cumstances require earlier action) to review*
13 *and make recommendations with respect to*
14 *the proposal; and*

15 “(iii) *give any recommendations re-*
16 *ceived from any such representatives under*
17 *clause (ii) full and fair consideration in de-*
18 *ciding whether or how to proceed with the*
19 *proposal.*

20 “(B) *PRE-IMPLEMENTATION CONGRES-*
21 *SIONAL NOTIFICATION, CONSULTATION, AND ME-*
22 *DIATION.*—*Following receipt of recommenda-*
23 *tions, if any, from employee representatives with*
24 *respect to a proposal described in subparagraph*
25 *(A), the Secretary and the Director shall accept*

1 *such modifications to the proposal in response to*
2 *the recommendations as they determine advisable*
3 *and shall, with respect to any parts of the pro-*
4 *posal as to which they have not accepted the*
5 *recommendations—*

6 *“(i) notify Congress of those parts of*
7 *the proposal, together with the recommenda-*
8 *tions of employee representatives;*

9 *“(ii) meet and confer for not less than*
10 *30 calendar days with any representatives*
11 *who have made recommendations, in order*
12 *to attempt to reach agreement on whether or*
13 *how to proceed with those parts of the pro-*
14 *posal; and*

15 *“(iii) at the Secretary’s option, or if*
16 *requested by a majority of the employee rep-*
17 *resentatives who have made recommenda-*
18 *tions, use the services of the Federal Medi-*
19 *ation and Conciliation Service during such*
20 *meet and confer period to facilitate the*
21 *process of attempting to reach agreement.*

22 *“(C) IMPLEMENTATION.—*

23 *“(i) Any part of the proposal as to*
24 *which the representatives do not make a rec-*
25 *ommendation, or as to which their rec-*

1 *ommendations are accepted by the Secretary*
2 *and the Director, may be implemented im-*
3 *mediately.*

4 “(ii) *With respect to any parts of the*
5 *proposal as to which recommendations have*
6 *been made but not accepted by the Secretary*
7 *and the Director, at any time after 30 cal-*
8 *endar days have elapsed since the initiation*
9 *of the congressional notification, consulta-*
10 *tion, and mediation procedures set forth in*
11 *subparagraph (B), if the Secretary deter-*
12 *mines, in the Secretary’s sole and*
13 *unreviewable discretion, that further con-*
14 *sultation and mediation is unlikely to*
15 *produce agreement, the Secretary may im-*
16 *plement any or all of such parts, including*
17 *any modifications made in response to the*
18 *recommendations as the Secretary deter-*
19 *mines advisable.*

20 “(iii) *The Secretary shall promptly no-*
21 *tify Congress of the implementation of any*
22 *part of the proposal and shall furnish with*
23 *such notice an explanation of the proposal,*
24 *any changes made to the proposal as a re-*
25 *sult of recommendations from employee rep-*

1 representatives, and of the reasons why imple-
2 mentation is appropriate under this sub-
3 paragraph.

4 “(D) *CONTINUING COLLABORATION.*—If a
5 proposal described in subparagraph (A) is imple-
6 mented, the Secretary and the Director shall—

7 “(i) develop a method for each em-
8 ployee representative to participate in any
9 further planning or development which
10 might become necessary; and

11 “(ii) give each employee representative
12 adequate access to information to make that
13 participation productive.

14 “(2) *PROCEDURES.*—Any procedures necessary
15 to carry out this subsection shall be established by the
16 Secretary and the Director jointly as internal rules of
17 departmental procedure which shall not be subject to
18 review. Such procedures shall include measures to
19 ensure—

20 “(A) in the case of employees within a unit
21 with respect to which a labor organization is ac-
22 corded exclusive recognition, representation by
23 individuals designated or from among individ-
24 uals nominated by such organization;

1 “(B) in the case of any employees who are
 2 not within such a unit, representation by any
 3 appropriate organization which represents a sub-
 4 stantial percentage of those employees or, if none,
 5 in such other manner as may be appropriate,
 6 consistent with the purposes of the subsection;

7 “(C) the fair and expeditious handling of
 8 the consultation and mediation process described
 9 in subparagraph (B) of paragraph (1), including
 10 procedures by which, if the number of employee
 11 representatives providing recommendations ex-
 12 ceeds 5, such representatives select a committee
 13 or other unified representative with which the
 14 Secretary and Director may meet and confer;
 15 and

16 “(D) the selection of representatives in a
 17 manner consistent with the relative number of
 18 employees represented by the organizations or
 19 other representatives involved.

20 “(f) PROVISIONS RELATING TO APPELLATE PROCE-
 21 DURES.—

22 (1) SENSE OF CONGRESS.—It is the sense of
 23 Congress that—

24 “(A) employees of the Department are enti-
 25 tled to fair treatment in any appeals that they

1 *bring in decisions relating to their employment;*
 2 *and*

3 “(B) in prescribing regulations for any such
 4 *appeals procedures, the Secretary and the Direc-*
 5 *tor of the Office of Personnel Management—*

6 “(i) should ensure that employees of the
 7 *Department are afforded the protections of*
 8 *due process; and*

9 “(ii) toward that end, should be re-
 10 *quired to consult with the Merit Systems*
 11 *Protection Board before issuing any such*
 12 *regulations.*

13 “(2) *REQUIREMENTS.—Any regulations under*
 14 *this section which relate to any matters within the*
 15 *purview of chapter 77—*

16 “(A) shall be issued only after consultation
 17 *with the Merit Systems Protection Board;*

18 “(B) shall ensure the availability of proce-
 19 *dures which shall—*

20 “(i) be consistent with requirements of
 21 *due process; and*

22 “(ii) provide, to the maximum extent
 23 *practicable, for the expeditious handling of*
 24 *any matters involving the Department; and*

1 “(C) shall modify procedures under chapter
 2 77 only insofar as such modifications are de-
 3 signed to further the fair, efficient, and expedi-
 4 tious resolution of matters involving the employ-
 5 ees of the Department.

6 “(g) PROVISIONS RELATING TO LABOR-MANAGEMENT
 7 RELATIONS.—Nothing in this section shall be construed as
 8 conferring authority on the Secretary of Homeland Security
 9 to modify any of the provisions of section 842 of the Home-
 10 land Security Act of 2002.

11 “(h) SUNSET PROVISION.—Effective 5 years after the
 12 conclusion of the transition period defined under section
 13 1501 of the Homeland Security Act of 2002, all authority
 14 to issue regulations under this section (including regula-
 15 tions which would modify, supersede, or terminate any reg-
 16 ulations previously issued under this section) shall cease to
 17 be available.”.

18 (3) TECHNICAL AND CONFORMING AMEND-
 19 MENT.—The table of chapters for part III of title 5,
 20 United States Code, is amended by adding at the end
 21 of the following:

“97. Department of Homeland Security 9701”.

22 (b) EFFECT ON PERSONNEL.—

23 (1) NONSEPARATION OR NONREDUCTION IN
 24 GRADE OR COMPENSATION OF FULL-TIME PERSONNEL
 25 AND PART-TIME PERSONNEL HOLDING PERMANENT

1 POSITIONS.—*Except as otherwise provided in this*
2 *Act, the transfer under this Act of full-time personnel*
3 *(except special Government employees) and part-time*
4 *personnel holding permanent positions shall not cause*
5 *any such employee to be separated or reduced in*
6 *grade or compensation for 1 year after the date of*
7 *transfer to the Department.*

8 (2) *POSITIONS COMPENSATED IN ACCORDANCE*
9 *WITH EXECUTIVE SCHEDULE.—Any person who, on*
10 *the day preceding such person's date of transfer pur-*
11 *suant to this Act, held a position compensated in ac-*
12 *cordance with the Executive Schedule prescribed in*
13 *chapter 53 of title 5, United States Code, and who,*
14 *without a break in service, is appointed in the De-*
15 *partment to a position having duties comparable to*
16 *the duties performed immediately preceding such ap-*
17 *pointment shall continue to be compensated in such*
18 *new position at not less than the rate provided for*
19 *such position, for the duration of the service of such*
20 *person in such new position.*

21 (3) *COORDINATION RULE.—Any exercise of au-*
22 *thority under chapter 97 of title 5, United States*
23 *Code (as amended by subsection (a)), including under*
24 *any system established under such chapter, shall be in*
25 *conformance with the requirements of this subsection.*

1 **SEC. 842. LABOR-MANAGEMENT RELATIONS.**

2 *(a) LIMITATION ON EXCLUSIONARY AUTHORITY.—*

3 *(1) IN GENERAL.—No agency or subdivision of*
4 *an agency which is transferred to the Department*
5 *pursuant to this Act shall be excluded from the cov-*
6 *erage of chapter 71 of title 5, United States Code, as*
7 *a result of any order issued under section 7103(b)(1)*
8 *of such title 5 after June 18, 2002, unless—*

9 *(A) the mission and responsibilities of the*
10 *agency (or subdivision) materially change; and*

11 *(B) a majority of the employees within such*
12 *agency (or subdivision) have as their primary*
13 *duty intelligence, counterintelligence, or inves-*
14 *tigative work directly related to terrorism inves-*
15 *tigation.*

16 *(2) EXCLUSIONS ALLOWABLE.—Nothing in para-*
17 *graph (1) shall affect the effectiveness of any order to*
18 *the extent that such order excludes any portion of an*
19 *agency or subdivision of an agency as to which—*

20 *(A) recognition as an appropriate unit has*
21 *never been conferred for purposes of chapter 71*
22 *of such title 5; or*

23 *(B) any such recognition has been revoked*
24 *or otherwise terminated as a result of a deter-*
25 *mination under subsection (b)(1).*

26 *(b) PROVISIONS RELATING TO BARGAINING UNITS.—*

1 (1) *LIMITATION RELATING TO APPROPRIATE*
 2 *UNITS.*—*Each unit which is recognized as an appro-*
 3 *priate unit for purposes of chapter 71 of title 5,*
 4 *United States Code, as of the day before the effective*
 5 *date of this Act (and any subdivision of any such*
 6 *unit) shall, if such unit (or subdivision) is transferred*
 7 *to the Department pursuant to this Act, continue to*
 8 *be so recognized for such purposes, unless—*

9 (A) *the mission and responsibilities of such*
 10 *unit (or subdivision) materially change; and*

11 (B) *a majority of the employees within such*
 12 *unit (or subdivision) have as their primary duty*
 13 *intelligence, counterintelligence, or investigative*
 14 *work directly related to terrorism investigation.*

15 (2) *LIMITATION RELATING TO POSITIONS OR EM-*
 16 *PLOYEES.*—*No position or employee within a unit (or*
 17 *subdivision of a unit) as to which continued recogni-*
 18 *tion is given in accordance with paragraph (1) shall*
 19 *be excluded from such unit (or subdivision), for pur-*
 20 *poses of chapter 71 of such title 5, unless the primary*
 21 *job duty of such position or employee—*

22 (A) *materially changes; and*

23 (B) *consists of intelligence, counterintel-*
 24 *ligence, or investigative work directly related to*
 25 *terrorism investigation.*

1 *In the case of any positions within a unit (or sub-*
2 *division) which are first established on or after the ef-*
3 *fective date of this Act and any employees first ap-*
4 *pointed on or after such date, the preceding sentence*
5 *shall be applied disregarding subparagraph (A).*

6 (c) *WAIVER.—If the President determines that the ap-*
7 *plication of subsections (a), (b), and (d) would have a sub-*
8 *stantial adverse impact on the ability of the Department*
9 *to protect homeland security, the President may waive the*
10 *application of such subsections 10 days after the President*
11 *has submitted to Congress a written explanation of the rea-*
12 *sons for such determination.*

13 (d) *COORDINATION RULE.—No other provision of this*
14 *Act or of any amendment made by this Act may be con-*
15 *strued or applied in a manner so as to limit, supersede,*
16 *or otherwise affect the provisions of this section, except to*
17 *the extent that it does so by specific reference to this section.*

18 (e) *RULE OF CONSTRUCTION.—Nothing in section*
19 *9701(e) of title 5, United States Code, shall be considered*
20 *to apply with respect to any agency or subdivision of any*
21 *agency, which is excluded from the coverage of chapter 71*
22 *of title 5, United States Code, by virtue of an order issued*
23 *in accordance with section 7103(b) of such title and the pre-*
24 *ceding provisions of this section (as applicable), or to any*
25 *employees of any such agency or subdivision or to any indi-*

1 *vidual or entity representing any such employees or any*
 2 *representatives thereof.*

3 ***Subtitle F—Federal Emergency***
 4 ***Procurement Flexibility***

5 ***SEC. 851. DEFINITION.***

6 *In this subtitle, the term “executive agency” has the*
 7 *meaning given that term under section 4(1) of the Office*
 8 *of Federal Procurement Policy Act (41 U.S.C. 403(1)).*

9 ***SEC. 852. PROCUREMENTS FOR DEFENSE AGAINST OR RE-***
 10 ***COVERY FROM TERRORISM OR NUCLEAR, BIO-***
 11 ***LOGICAL, CHEMICAL, OR RADIOLOGICAL AT-***
 12 ***TACK.***

13 *The authorities provided in this subtitle apply to any*
 14 *procurement of property or services by or for an executive*
 15 *agency that, as determined by the head of the executive*
 16 *agency, are to be used to facilitate defense against or recov-*
 17 *ery from terrorism or nuclear, biological, chemical, or radi-*
 18 *ological attack, but only if a solicitation of offers for the*
 19 *procurement is issued during the 1-year period beginning*
 20 *on the date of the enactment of this Act.*

1 **SEC. 853. INCREASED SIMPLIFIED ACQUISITION THRESH-**
 2 **OLD FOR PROCUREMENTS IN SUPPORT OF**
 3 **HUMANITARIAN OR PEACEKEEPING OPER-**
 4 **ATIONS OR CONTINGENCY OPERATIONS.**

5 (a) *TEMPORARY THRESHOLD AMOUNTS.*—For a pro-
 6 curement referred to in section 852 that is carried out in
 7 support of a humanitarian or peacekeeping operation or
 8 a contingency operation, the simplified acquisition thresh-
 9 old definitions shall be applied as if the amount determined
 10 under the exception provided for such an operation in those
 11 definitions were—

12 (1) *in the case of a contract to be awarded and*
 13 *performed, or purchase to be made, inside the United*
 14 *States, \$200,000; or*

15 (2) *in the case of a contract to be awarded and*
 16 *performed, or purchase to be made, outside the United*
 17 *States, \$300,000.*

18 (b) *SIMPLIFIED ACQUISITION THRESHOLD DEFINI-*
 19 *TIONS.*—In this section, the term “simplified acquisition
 20 threshold definitions” means the following:

21 (1) *Section 4(11) of the Office of Federal Pro-*
 22 *curement Policy Act (41 U.S.C. 403(11)).*

23 (2) *Section 309(d) of the Federal Property and*
 24 *Administrative Services Act of 1949 (41 U.S.C.*
 25 *259(d)).*

1 (3) *Section 2302(7) of title 10, United States*
 2 *Code.*

3 (c) *SMALL BUSINESS RESERVE.—For a procurement*
 4 *carried out pursuant to subsection (a), section 15(j) of the*
 5 *Small Business Act (15 U.S.C. 644(j)) shall be applied as*
 6 *if the maximum anticipated value identified therein is*
 7 *equal to the amounts referred to in subsection (a).*

8 **SEC. 854. INCREASED MICRO-PURCHASE THRESHOLD FOR**
 9 **CERTAIN PROCUREMENTS.**

10 *In the administration of section 32 of the Office of Fed-*
 11 *eral Procurement Policy Act (41 U.S.C. 428) with respect*
 12 *to a procurement referred to in section 852, the amount*
 13 *specified in subsections (c), (d), and (f) of such section 32*
 14 *shall be deemed to be \$7,500.*

15 **SEC. 855. APPLICATION OF CERTAIN COMMERCIAL ITEMS**
 16 **AUTHORITIES TO CERTAIN PROCUREMENTS.**

17 (a) *AUTHORITY.—*

18 (1) *IN GENERAL.—The head of an executive*
 19 *agency may apply the provisions of law listed in*
 20 *paragraph (2) to a procurement referred to in section*
 21 *852 without regard to whether the property or services*
 22 *are commercial items.*

23 (2) *COMMERCIAL ITEM LAWS.—The provisions of*
 24 *law referred to in paragraph (1) are as follows:*

1 (A) Sections 31 and 34 of the Office of Fed-
 2 eral Procurement Policy Act (41 U.S.C. 427,
 3 430).

4 (B) Section 2304(g) of title 10, United
 5 States Code.

6 (C) Section 303(g) of the Federal Property
 7 and Administrative Services Act of 1949 (41
 8 U.S.C. 253(g)).

9 (b) INAPPLICABILITY OF LIMITATION ON USE OF SIM-
 10 PLIFIED ACQUISITION PROCEDURES.—

11 (1) IN GENERAL.—The \$5,000,000 limitation
 12 provided in section 31(a)(2) of the Office of Federal
 13 Procurement Policy Act (41 U.S.C. 427(a)(2)), section
 14 2304(g)(1)(B) of title 10, United States Code, and
 15 section 303(g)(1)(B) of the Federal Property and Ad-
 16 ministrative Services Act of 1949 (41 U.S.C.
 17 253(g)(1)(B)) shall not apply to purchases of property
 18 or services to which any of the provisions of law re-
 19 ferred to in subsection (a) are applied under the au-
 20 thority of this section.

21 (2) OMB GUIDANCE.—The Director of the Office
 22 of Management and Budget shall issue guidance and
 23 procedures for the use of simplified acquisition proce-
 24 dures for a purchase of property or services in excess
 25 of \$5,000,000 under the authority of this section.

1 (c) *CONTINUATION OF AUTHORITY FOR SIMPLIFIED*
 2 *PURCHASE PROCEDURES.*—*Authority under a provision of*
 3 *law referred to in subsection (a)(2) that expires under sec-*
 4 *tion 4202(e) of the Clinger-Cohen Act of 1996 (divisions D*
 5 *and E of Public Law 104–106; 10 U.S.C. 2304 note) shall,*
 6 *notwithstanding such section, continue to apply for use by*
 7 *the head of an executive agency as provided in subsections*
 8 *(a) and (b).*

9 **SEC. 856. USE OF STREAMLINED PROCEDURES.**

10 (a) *REQUIRED USE.*—*The head of an executive agency*
 11 *shall, when appropriate, use streamlined acquisition au-*
 12 *thorities and procedures authorized by law for a procure-*
 13 *ment referred to in section 852, including authorities and*
 14 *procedures that are provided under the following provisions*
 15 *of law:*

16 (1) *FEDERAL PROPERTY AND ADMINISTRATIVE*
 17 *SERVICES ACT OF 1949.*—*In title III of the Federal*
 18 *Property and Administrative Services Act of 1949:*

19 (A) *Paragraphs (1), (2), (6), and (7) of sub-*
 20 *section (c) of section 303 (41 U.S.C. 253), relat-*
 21 *ing to use of procedures other than competitive*
 22 *procedures under certain circumstances (subject*
 23 *to subsection (e) of such section).*

1 (B) *Section 303J (41 U.S.C. 253j), relating*
 2 *to orders under task and delivery order con-*
 3 *tracts.*

4 (2) *TITLE 10, UNITED STATES CODE.—In chapter*
 5 *137 of title 10, United States Code:*

6 (A) *Paragraphs (1), (2), (6), and (7) of sub-*
 7 *section (c) of section 2304, relating to use of pro-*
 8 *cedures other than competitive procedures under*
 9 *certain circumstances (subject to subsection (e) of*
 10 *such section).*

11 (B) *Section 2304c, relating to orders under*
 12 *task and delivery order contracts.*

13 (3) *OFFICE OF FEDERAL PROCUREMENT POLICY*
 14 *ACT.—Paragraphs (1)(B), (1)(D), and (2) of section*
 15 *18(c) of the Office of Federal Procurement Policy Act*
 16 *(41 U.S.C. 416(c)), relating to inapplicability of a re-*
 17 *quirement for procurement notice.*

18 (b) *WAIVER OF CERTAIN SMALL BUSINESS THRESH-*
 19 *OLD REQUIREMENTS.—Subclause (II) of section*
 20 *8(a)(1)(D)(i) of the Small Business Act (15 U.S.C.*
 21 *637(a)(1)(D)(i)) and clause (ii) of section 31(b)(2)(A) of*
 22 *such Act (15 U.S.C. 657a(b)(2)(A)) shall not apply in the*
 23 *use of streamlined acquisition authorities and procedures*
 24 *referred to in paragraphs (1)(A) and (2)(A) of subsection*
 25 *(a) for a procurement referred to in section 852.*

1 **SEC. 857. REVIEW AND REPORT BY COMPTROLLER GEN-**
2 **ERAL.**

3 (a) *REQUIREMENTS.*—Not later than March 31, 2004,
4 the Comptroller General shall—

5 (1) complete a review of the extent to which pro-
6 curements of property and services have been made in
7 accordance with this subtitle; and

8 (2) submit a report on the results of the review
9 to the Committee on Governmental Affairs of the Sen-
10 ate and the Committee on Government Reform of the
11 House of Representatives.

12 (b) *CONTENT OF REPORT.*—The report under sub-
13 section (a)(2) shall include the following matters:

14 (1) *ASSESSMENT.*—The Comptroller General's
15 assessment of—

16 (A) the extent to which property and serv-
17 ices procured in accordance with this title have
18 contributed to the capacity of the workforce of
19 Federal Government employees within each exec-
20 utive agency to carry out the mission of the exec-
21 utive agency; and

22 (B) the extent to which Federal Government
23 employees have been trained on the use of tech-
24 nology.

1 (2) *RECOMMENDATIONS.*—Any recommendations
 2 of the Comptroller General resulting from the assess-
 3 ment described in paragraph (1).

4 (c) *CONSULTATION.*—In preparing for the review
 5 under subsection (a)(1), the Comptroller shall consult with
 6 the Committee on Governmental Affairs of the Senate and
 7 the Committee on Government Reform of the House of Rep-
 8 resentatives on the specific issues and topics to be reviewed.
 9 The extent of coverage needed in areas such as technology
 10 integration, employee training, and human capital man-
 11 agement, as well as the data requirements of the study, shall
 12 be included as part of the consultation.

13 **SEC. 858. IDENTIFICATION OF NEW ENTRANTS INTO THE**
 14 **FEDERAL MARKETPLACE.**

15 The head of each executive agency shall conduct market
 16 research on an ongoing basis to identify effectively the capa-
 17 bilities, including the capabilities of small businesses and
 18 new entrants into Federal contracting, that are available
 19 in the marketplace for meeting the requirements of the exec-
 20 utive agency in furtherance of defense against or recovery
 21 from terrorism or nuclear, biological, chemical, or radio-
 22 logical attack. The head of the executive agency shall, to
 23 the maximum extent practicable, take advantage of com-
 24 mercially available market research methods, including use
 25 of commercial databases, to carry out the research.

1 ***Subtitle G—Support Anti-terrorism***
 2 ***by Fostering Effective Tech-***
 3 ***nologies Act of 2002***

4 ***SEC. 861. SHORT TITLE.***

5 *This subtitle may be cited as the “Support Anti-ter-*
 6 *rorism by Fostering Effective Technologies Act of 2002” or*
 7 *the “SAFETY Act”.*

8 ***SEC. 862. ADMINISTRATION.***

9 *(a) IN GENERAL.—The Secretary shall be responsible*
 10 *for the administration of this subtitle.*

11 *(b) DESIGNATION OF QUALIFIED ANTI-TERRORISM*
 12 *TECHNOLOGIES.—The Secretary may designate anti-ter-*
 13 *rorism technologies that qualify for protection under the*
 14 *system of risk management set forth in this subtitle in ac-*
 15 *cordance with criteria that shall include, but not be limited*
 16 *to, the following:*

17 *(1) Prior United States government use or dem-*
 18 *onstrated substantial utility and effectiveness.*

19 *(2) Availability of the technology for immediate*
 20 *deployment in public and private settings.*

21 *(3) Existence of extraordinarily large or extraor-*
 22 *dinarily unquantifiable potential third party liability*
 23 *risk exposure to the Seller or other provider of such*
 24 *anti-terrorism technology.*

1 (4) *Substantial likelihood that such anti-ter-*
 2 *rorism technology will not be deployed unless protec-*
 3 *tions under the system of risk management provided*
 4 *under this subtitle are extended.*

5 (5) *Magnitude of risk exposure to the public if*
 6 *such anti-terrorism technology is not deployed.*

7 (6) *Evaluation of all scientific studies that can*
 8 *be feasibly conducted in order to assess the capability*
 9 *of the technology to substantially reduce risks of*
 10 *harm.*

11 (7) *Anti-terrorism technology that would be effec-*
 12 *tive in facilitating the defense against acts of ter-*
 13 *rorism, including technologies that prevent, defeat or*
 14 *respond to such acts.*

15 (c) *REGULATIONS.—The Secretary may issue such reg-*
 16 *ulations, after notice and comment in accordance with sec-*
 17 *tion 553 of title 5, United States, Code, as may be necessary*
 18 *to carry out this subtitle.*

19 **SEC. 863. LITIGATION MANAGEMENT.**

20 (a) *FEDERAL CAUSE OF ACTION.—*

21 (1) *IN GENERAL.—There shall exist a Federal*
 22 *cause of action for claims arising out of, relating to,*
 23 *or resulting from an act of terrorism when qualified*
 24 *anti-terrorism technologies have been deployed in de-*
 25 *fense against or response or recovery from such act*

1 *and such claims result or may result in loss to the*
2 *Seller. The substantive law for decision in any such*
3 *action shall be derived from the law, including choice*
4 *of law principles, of the State in which such acts of*
5 *terrorism occurred, unless such law is inconsistent*
6 *with or preempted by Federal law. Such Federal*
7 *cause of action shall be brought only for claims for in-*
8 *juries that are proximately caused by sellers that pro-*
9 *vide qualified anti-terrorism technology to Federal*
10 *and non-Federal government customers.*

11 (2) *JURISDICTION.*—*Such appropriate district*
12 *court of the United States shall have original and ex-*
13 *clusive jurisdiction over all actions for any claim for*
14 *loss of property, personal injury, or death arising out*
15 *of, relating to, or resulting from an act of terrorism*
16 *when qualified anti-terrorism technologies have been*
17 *deployed in defense against or response or recovery*
18 *from such act and such claims result or may result*
19 *in loss to the Seller.*

20 (b) *SPECIAL RULES.*—*In an action brought under this*
21 *section for damages the following provisions apply:*

22 (1) *PUNITIVE DAMAGES.*—*No punitive damages*
23 *intended to punish or deter, exemplary damages, or*
24 *other damages not intended to compensate a plaintiff*

1 *for actual losses may be awarded, nor shall any party*
2 *be liable for interest prior to the judgment.*

3 (2) *NONECONOMIC DAMAGES.*—

4 (A) *IN GENERAL.*—Noneconomic damages
5 *may be awarded against a defendant only in an*
6 *amount directly proportional to the percentage of*
7 *responsibility of such defendant for the harm to*
8 *the plaintiff, and no plaintiff may recover non-*
9 *economic damages unless the plaintiff suffered*
10 *physical harm.*

11 (B) *DEFINITION.*—For purposes of subpara-
12 *graph (A), the term “noneconomic damages”*
13 *means damages for losses for physical and emo-*
14 *tional pain, suffering, inconvenience, physical*
15 *impairment, mental anguish, disfigurement, loss*
16 *of enjoyment of life, loss of society and compan-*
17 *ionship, loss of consortium, hedonic damages, in-*
18 *jury to reputation, and any other nonpecuniary*
19 *losses.*

20 (c) *COLLATERAL SOURCES.*—Any recovery by a plain-
21 *tiff in an action under this section shall be reduced by the*
22 *amount of collateral source compensation, if any, that the*
23 *plaintiff has received or is entitled to receive as a result*
24 *of such acts of terrorism that result or may result in loss*
25 *to the Seller.*

1 (d) *GOVERNMENT CONTRACTOR DEFENSE.*—

2 (1) *IN GENERAL.*—*Should a product liability or*
3 *other lawsuit be filed for claims arising out of, relat-*
4 *ing to, or resulting from an act of terrorism when*
5 *qualified anti-terrorism technologies approved by the*
6 *Secretary, as provided in paragraphs (2) and (3) of*
7 *this subsection, have been deployed in defense against*
8 *or response or recovery from such act and such claims*
9 *result or may result in loss to the Seller, there shall*
10 *be a rebuttable presumption that the government con-*
11 *tractor defense applies in such lawsuit. This presump-*
12 *tion shall only be overcome by evidence showing that*
13 *the Seller acted fraudulently or with willful mis-*
14 *conduct in submitting information to the Secretary*
15 *during the course of the Secretary's consideration of*
16 *such technology under this subsection. This presump-*
17 *tion of the government contractor defense shall apply*
18 *regardless of whether the claim against the Seller*
19 *arises from a sale of the product to Federal Govern-*
20 *ment or non-Federal Government customers.*

21 (2) *EXCLUSIVE RESPONSIBILITY.*—*The Secretary*
22 *will be exclusively responsible for the review and ap-*
23 *proval of anti-terrorism technology for purposes of es-*
24 *tablishing a government contractor defense in any*
25 *product liability lawsuit for claims arising out of, re-*

1 *lating to, or resulting from an act of terrorism when*
2 *qualified anti-terrorism technologies approved by the*
3 *Secretary, as provided in this paragraph and para-*
4 *graph (3), have been deployed in defense against or*
5 *response or recovery from such act and such claims*
6 *result or may result in loss to the Seller. Upon the*
7 *Seller's submission to the Secretary for approval of*
8 *anti-terrorism technology, the Secretary will conduct*
9 *a comprehensive review of the design of such tech-*
10 *nology and determine whether it will perform as in-*
11 *tended, conforms to the Seller's specifications, and is*
12 *safe for use as intended. The Seller will conduct safety*
13 *and hazard analyses on such technology and will sup-*
14 *ply the Secretary with all such information.*

15 (3) *CERTIFICATE.—For anti-terrorism tech-*
16 *nology reviewed and approved by the Secretary, the*
17 *Secretary will issue a certificate of conformance to the*
18 *Seller and place the anti-terrorism technology on an*
19 *Approved Product List for Homeland Security.*

20 (e) *EXCLUSION.—Nothing in this section shall in any*
21 *way limit the ability of any person to seek any form of*
22 *recovery from any person, government, or other entity*
23 *that—*

24 (1) *attempts to commit, knowingly participates*
25 *in, aids and abets, or commits any act of terrorism,*

1 *or any criminal act related to or resulting from such*
 2 *act of terrorism; or*

3 *(2) participates in a conspiracy to commit any*
 4 *such act of terrorism or any such criminal act.*

5 **SEC. 864. RISK MANAGEMENT.**

6 *(a) IN GENERAL.—*

7 *(1) LIABILITY INSURANCE REQUIRED.—Any per-*
 8 *son or entity that sells or otherwise provides a quali-*
 9 *fied anti-terrorism technology to Federal and non-*
 10 *Federal government customers (“Seller”) shall obtain*
 11 *liability insurance of such types and in such amounts*
 12 *as shall be required in accordance with this section*
 13 *and certified by the Secretary to satisfy otherwise*
 14 *compensable third-party claims arising out of, relat-*
 15 *ing to, or resulting from an act of terrorism when*
 16 *qualified anti-terrorism technologies have been de-*
 17 *ployed in defense against or response or recovery from*
 18 *such act.*

19 *(2) MAXIMUM AMOUNT.—For the total claims re-*
 20 *lated to 1 such act of terrorism, the Seller is not re-*
 21 *quired to obtain liability insurance of more than the*
 22 *maximum amount of liability insurance reasonably*
 23 *available from private sources on the world market at*
 24 *prices and terms that will not unreasonably distort*
 25 *the sales price of Seller’s anti-terrorism technologies.*

1 (3) *SCOPE OF COVERAGE.*—*Liability insurance*
 2 *obtained pursuant to this subsection shall, in addition*
 3 *to the Seller, protect the following, to the extent of*
 4 *their potential liability for involvement in the manu-*
 5 *facture, qualification, sale, use, or operation of quali-*
 6 *fied anti-terrorism technologies deployed in defense*
 7 *against or response or recovery from an act of ter-*
 8 *rorism:*

9 (A) *contractors, subcontractors, suppliers,*
 10 *vendors and customers of the Seller.*

11 (B) *contractors, subcontractors, suppliers,*
 12 *and vendors of the customer.*

13 (4) *THIRD PARTY CLAIMS.*—*Such liability insur-*
 14 *ance under this section shall provide coverage against*
 15 *third party claims arising out of, relating to, or re-*
 16 *sulting from the sale or use of anti-terrorism tech-*
 17 *nologies.*

18 (b) *RECIPROCAL WAIVER OF CLAIMS.*—*The Seller shall*
 19 *enter into a reciprocal waiver of claims with its contractors,*
 20 *subcontractors, suppliers, vendors and customers, and con-*
 21 *tractors and subcontractors of the customers, involved in the*
 22 *manufacture, sale, use or operation of qualified anti-ter-*
 23 *rorism technologies, under which each party to the waiver*
 24 *agrees to be responsible for losses, including business inter-*
 25 *ruption losses, that it sustains, or for losses sustained by*

1 *its own employees resulting from an activity resulting from*
 2 *an act of terrorism when qualified anti-terrorism tech-*
 3 *nologies have been deployed in defense against or response*
 4 *or recovery from such act.*

5 (c) *EXTENT OF LIABILITY.*—*Notwithstanding any*
 6 *other provision of law, liability for all claims against a*
 7 *Seller arising out of, relating to, or resulting from an act*
 8 *of terrorism when qualified anti-terrorism technologies have*
 9 *been deployed in defense against or response or recovery*
 10 *from such act and such claims result or may result in loss*
 11 *to the Seller, whether for compensatory or punitive damages*
 12 *or for contribution or indemnity, shall not be in an amount*
 13 *greater than the limits of liability insurance coverage re-*
 14 *quired to be maintained by the Seller under this section.*

15 **SEC. 865. DEFINITIONS.**

16 *For purposes of this subtitle, the following definitions*
 17 *apply:*

18 (1) *QUALIFIED ANTI-TERRORISM TECHNOLOGY.*—
 19 *For purposes of this subtitle, the term “qualified anti-*
 20 *terrorism technology” means any product, equipment,*
 21 *service (including support services), device, or tech-*
 22 *nology (including information technology) designed,*
 23 *developed, modified, or procured for the specific pur-*
 24 *pose of preventing, detecting, identifying, or deterring*
 25 *acts of terrorism or limiting the harm such acts*

1 *might otherwise cause, that is designated as such by*
2 *the Secretary.*

3 (2) *ACT OF TERRORISM.*—(A) *The term “act of*
4 *terrorism” means any act that the Secretary deter-*
5 *mines meets the requirements under subparagraph*
6 *(B), as such requirements are further defined and*
7 *specified by the Secretary.*

8 (B) *REQUIREMENTS.*—*An act meets the require-*
9 *ments of this subparagraph if the act—*

10 (i) *is unlawful;*

11 (ii) *causes harm to a person, property, or*
12 *entity, in the United States, or in the case of a*
13 *domestic United States air carrier or a United*
14 *States-flag vessel (or a vessel based principally*
15 *in the United States on which United States in-*
16 *come tax is paid and whose insurance coverage*
17 *is subject to regulation in the United States), in*
18 *or outside the United States; and*

19 (iii) *uses or attempts to use instrumental-*
20 *ities, weapons or other methods designed or in-*
21 *tended to cause mass destruction, injury or other*
22 *loss to citizens or institutions of the United*
23 *States.*

24 (3) *INSURANCE CARRIER.*—*The term “insurance*
25 *carrier” means any corporation, association, society,*

1 *order, firm, company, mutual, partnership, indi-*
 2 *vidual aggregation of individuals, or any other legal*
 3 *entity that provides commercial property and cas-*
 4 *ualty insurance. Such term includes any affiliates of*
 5 *a commercial insurance carrier.*

6 (4) *LIABILITY INSURANCE.*—

7 (A) *IN GENERAL.*—*The term “liability in-*
 8 *surance” means insurance for legal liabilities in-*
 9 *curring by the insured resulting from—*

10 (i) *loss of or damage to property of*
 11 *others;*

12 (ii) *ensuing loss of income or extra ex-*
 13 *pense incurred because of loss of or damage*
 14 *to property of others;*

15 (iii) *bodily injury (including) to per-*
 16 *sons other than the insured or its employees;*
 17 *or*

18 (iv) *loss resulting from debt or default*
 19 *of another.*

20 (5) *LOSS.*—*The term “loss” means death, bodily*
 21 *injury, or loss of or damage to property, including*
 22 *business interruption loss.*

23 (6) *NON-FEDERAL GOVERNMENT CUSTOMERS.*—
 24 *The term “non-Federal Government customers” means*
 25 *any customer of a Seller that is not an agency or in-*

1 *strumentality of the United States Government with*
 2 *authority under Public Law 85-804 to provide for in-*
 3 *demnification under certain circumstances for third-*
 4 *party claims against its contractors, including but*
 5 *not limited to State and local authorities and com-*
 6 *mercial entities.*

7 ***Subtitle H—Miscellaneous***
 8 ***Provisions***

9 **SEC. 871. ADVISORY COMMITTEES.**

10 *(a) IN GENERAL.—The Secretary may establish, ap-*
 11 *point members of, and use the services of, advisory commit-*
 12 *tees, as the Secretary may deem necessary. An advisory*
 13 *committee established under this section may be exempted*
 14 *by the Secretary from Public Law 92-463, but the Sec-*
 15 *retary shall publish notice in the Federal Register announc-*
 16 *ing the establishment of such a committee and identifying*
 17 *its purpose and membership. Notwithstanding the pre-*
 18 *ceding sentence, members of an advisory committee that is*
 19 *exempted by the Secretary under the preceding sentence who*
 20 *are special Government employees (as that term is defined*
 21 *in section 202 of title 18, United States Code) shall be eligi-*
 22 *ble for certifications under subsection (b)(3) of section 208*
 23 *of title 18, United States Code, for official actions taken*
 24 *as a member of such advisory committee.*

1 (b) *TERMINATION.*—Any advisory committee estab-
 2 lished by the Secretary shall terminate 2 years after the
 3 date of its establishment, unless the Secretary makes a writ-
 4 ten determination to extend the advisory committee to a
 5 specified date, which shall not be more than 2 years after
 6 the date on which such determination is made. The Sec-
 7 retary may make any number of subsequent extensions con-
 8 sistent with this subsection.

9 **SEC. 872. REORGANIZATION.**

10 (a) *REORGANIZATION.*—The Secretary may allocate or
 11 reallocate functions among the officers of the Department,
 12 and may establish, consolidate, alter, or discontinue organi-
 13 zational units within the Department, but only—

14 (1) pursuant to section 1502(b); or

15 (2) after the expiration of 60 days after pro-
 16 viding notice of such action to the appropriate con-
 17 gressional committees, which shall include an expla-
 18 nation of the rationale for the action.

19 (b) *LIMITATIONS.*—

20 (1) *IN GENERAL.*—Authority under subsection
 21 (a)(1) does not extend to the abolition of any agency,
 22 entity, organizational unit, program, or function es-
 23 tablished or required to be maintained by this Act.

24 (2) *ABOLITIONS.*—Authority under subsection
 25 (a)(2) does not extend to the abolition of any agency,

1 *entity, organizational unit, program, or function es-*
2 *tablished or required to be maintained by statute.*

3 **SEC. 873. USE OF APPROPRIATED FUNDS.**

4 *(a) DISPOSAL OF PROPERTY.—*

5 *(1) STRICT COMPLIANCE.—If specifically author-*
6 *ized to dispose of real property in this or any other*
7 *Act, the Secretary shall exercise this authority in*
8 *strict compliance with section 204 of the Federal*
9 *Property and Administrative Services Act of 1949 (40*
10 *U.S.C. 485).*

11 *(2) DEPOSIT OF PROCEEDS.—The Secretary*
12 *shall deposit the proceeds of any exercise of property*
13 *disposal authority into the miscellaneous receipts of*
14 *the Treasury in accordance with section 3302(b) of*
15 *title 31, United States Code.*

16 *(b) GIFTS.—Gifts or donations of services or property*
17 *of or for the Department may not be accepted, used, or dis-*
18 *posed of unless specifically permitted in advance in an ap-*
19 *propriations Act and only under the conditions and for the*
20 *purposes specified in such appropriations Act.*

21 *(c) BUDGET REQUEST.—Under section 1105 of title*
22 *31, United States Code, the President shall submit to Con-*
23 *gress a detailed budget request for the Department for fiscal*
24 *year 2004, and for each subsequent fiscal year.*

1 **SEC. 874. FUTURE YEAR HOMELAND SECURITY PROGRAM.**

2 (a) *IN GENERAL.*—Each budget request submitted to
3 Congress for the Department under section 1105 of title 31,
4 United States Code, shall, at or about the same time, be
5 accompanied by a Future Years Homeland Security Pro-
6 gram.

7 (b) *CONTENTS.*—The Future Years Homeland Security
8 Program under subsection (a) shall be structured, and in-
9 clude the same type of information and level of detail, as
10 the Future Years Defense Program submitted to Congress
11 by the Department of Defense under section 221 of title 10,
12 United States Code.

13 (c) *EFFECTIVE DATE.*—This section shall take effect
14 with respect to the preparation and submission of the fiscal
15 year 2005 budget request for the Department and for any
16 subsequent fiscal year, except that the first Future Years
17 Homeland Security Program shall be submitted not later
18 than 90 days after the Department's fiscal year 2005 budget
19 request is submitted to Congress.

20 **SEC. 875. MISCELLANEOUS AUTHORITIES.**

21 (a) *SEAL.*—The Department shall have a seal, whose
22 design is subject to the approval of the President.

23 (b) *PARTICIPATION OF MEMBERS OF THE ARMED*
24 *FORCES.*—With respect to the Department, the Secretary
25 shall have the same authorities that the Secretary of Trans-

1 *portation has with respect to the Department of Transpor-*
2 *tation under section 324 of title 49, United States Code.*

3 *(c) REDELEGATION OF FUNCTIONS.—Unless otherwise*
4 *provided in the delegation or by law, any function delegated*
5 *under this Act may be redelegated to any subordinate.*

6 **SEC. 876. MILITARY ACTIVITIES.**

7 *Nothing in this Act shall confer upon the Secretary*
8 *any authority to engage in warfighting, the military de-*
9 *fense of the United States, or other military activities, nor*
10 *shall anything in this Act limit the existing authority of*
11 *the Department of Defense or the Armed Forces to engage*
12 *in warfighting, the military defense of the United States,*
13 *or other military activities.*

14 **SEC. 877. REGULATORY AUTHORITY AND PREEMPTION.**

15 *(a) REGULATORY AUTHORITY.—Except as otherwise*
16 *provided in sections 306(c), 862(c), and 1706(b), this Act*
17 *vests no new regulatory authority in the Secretary or any*
18 *other Federal official, and transfers to the Secretary or an-*
19 *other Federal official only such regulatory authority as ex-*
20 *ists on the date of enactment of this Act within any agency,*
21 *program, or function transferred to the Department pursu-*
22 *ant to this Act, or that on such date of enactment is exer-*
23 *cised by another official of the executive branch with respect*
24 *to such agency, program, or function. Any such transferred*
25 *authority may not be exercised by an official from whom*

1 *it is transferred upon transfer of such agency, program, or*
 2 *function to the Secretary or another Federal official pursu-*
 3 *ant to this Act. This Act may not be construed as altering*
 4 *or diminishing the regulatory authority of any other execu-*
 5 *tive agency, except to the extent that this Act transfers such*
 6 *authority from the agency.*

7 (b) *PREEMPTION OF STATE OR LOCAL LAW.—Except*
 8 *as otherwise provided in this Act, this Act preempts no*
 9 *State or local law, except that any authority to preempt*
 10 *State or local law vested in any Federal agency or official*
 11 *transferred to the Department pursuant to this Act shall*
 12 *be transferred to the Department effective on the date of the*
 13 *transfer to the Department of that Federal agency or offi-*
 14 *cial.*

15 **SEC. 878. COUNTERNARCOTICS OFFICER.**

16 *The Secretary shall appoint a senior official in the De-*
 17 *partment to assume primary responsibility for coordi-*
 18 *nating policy and operations within the Department and*
 19 *between the Department and other Federal departments and*
 20 *agencies with respect to interdicting the entry of illegal*
 21 *drugs into the United States, and tracking and severing*
 22 *connections between illegal drug trafficking and terrorism.*
 23 *Such official shall—*

24 (1) *ensure the adequacy of resources within the*
 25 *Department for illicit drug interdiction; and*

1 (2) *serve as the United States Interdiction Coord-*
 2 *inator for the Director of National Drug Control*
 3 *Policy.*

4 **SEC. 879. OFFICE OF INTERNATIONAL AFFAIRS.**

5 (a) *ESTABLISHMENT.*—*There is established within the*
 6 *Office of the Secretary an Office of International Affairs.*
 7 *The Office shall be headed by a Director, who shall be a*
 8 *senior official appointed by the Secretary.*

9 (b) *DUTIES OF THE DIRECTOR.*—*The Director shall*
 10 *have the following duties:*

11 (1) *To promote information and education ex-*
 12 *change with nations friendly to the United States in*
 13 *order to promote sharing of best practices and tech-*
 14 *nologies relating to homeland security. Such exchange*
 15 *shall include the following:*

16 (A) *Exchange of information on research*
 17 *and development on homeland security tech-*
 18 *nologies.*

19 (B) *Joint training exercises of first respond-*
 20 *ers.*

21 (C) *Exchange of expertise on terrorism pre-*
 22 *vention, response, and crisis management.*

23 (2) *To identify areas for homeland security in-*
 24 *formation and training exchange where the United*
 25 *States has a demonstrated weakness and another*

1 *friendly nation or nations have a demonstrated exper-*
 2 *tise.*

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

5 *(4) To manage international activities within*
 6 *the Department in coordination with other Federal*
 7 *officials with responsibility for counter-terrorism*
 8 *matters.*

9 **SEC. 880. PROHIBITION OF THE TERRORISM INFORMATION**
 10 **AND PREVENTION SYSTEM.**

11 *Any and all activities of the Federal Government to*
 12 *implement the proposed component program of the Citizen*
 13 *Corps known as Operation TIPS (Terrorism Information*
 14 *and Prevention System) are hereby prohibited.*

15 **SEC. 881. REVIEW OF PAY AND BENEFIT PLANS.**

16 *Notwithstanding any other provision of this Act, the*
 17 *Secretary shall, in consultation with the Director of the Of-*
 18 *fice of Personnel Management, review the pay and benefit*
 19 *plans of each agency whose functions are transferred under*
 20 *this Act to the Department and, within 90 days after the*
 21 *date of enactment, submit a plan to the President of the*
 22 *Senate and the Speaker of the House of Representatives and*
 23 *the appropriate committees and subcommittees of Congress,*
 24 *for ensuring, to the maximum extent practicable, the elimi-*
 25 *nation of disparities in pay and benefits throughout the De-*

1 *partment, especially among law enforcement personnel, that*
 2 *are inconsistent with merit system principles set forth in*
 3 *section 2301 of title 5, United States Code.*

4 **SEC. 882. OFFICE FOR NATIONAL CAPITAL REGION COORDI-**
 5 **NATION.**

6 *(a) ESTABLISHMENT.—*

7 *(1) IN GENERAL.—There is established within*
 8 *the Office of the Secretary the Office of National Cap-*
 9 *ital Region Coordination, to oversee and coordinate*
 10 *Federal programs for and relationships with State,*
 11 *local, and regional authorities in the National Cap-*
 12 *ital Region, as defined under section 2674(f)(2) of*
 13 *title 10, United States Code.*

14 *(2) DIRECTOR.—The Office established under*
 15 *paragraph (1) shall be headed by a Director, who*
 16 *shall be appointed by the Secretary.*

17 *(3) COOPERATION.—The Secretary shall cooper-*
 18 *ate with the Mayor of the District of Columbia, the*
 19 *Governors of Maryland and Virginia, and other*
 20 *State, local, and regional officers in the National*
 21 *Capital Region to integrate the District of Columbia,*
 22 *Maryland, and Virginia into the planning, coordina-*
 23 *tion, and execution of the activities of the Federal*
 24 *Government for the enhancement of domestic pre-*

1 paredness against the consequences of terrorist at-
2 tacks.

3 (b) *RESPONSIBILITIES.*—The Office established under
4 subsection (a)(1) shall—

5 (1) coordinate the activities of the Department
6 relating to the National Capital Region, including co-
7 operation with the Office for State and Local Govern-
8 ment Coordination;

9 (2) assess, and advocate for, the resources needed
10 by State, local, and regional authorities in the Na-
11 tional Capital Region to implement efforts to secure
12 the homeland;

13 (3) provide State, local, and regional authorities
14 in the National Capital Region with regular informa-
15 tion, research, and technical support to assist the ef-
16 forts of State, local, and regional authorities in the
17 National Capital Region in securing the homeland;

18 (4) develop a process for receiving meaningful
19 input from State, local, and regional authorities and
20 the private sector in the National Capital Region to
21 assist in the development of the homeland security
22 plans and activities of the Federal Government;

23 (5) coordinate with Federal agencies in the Na-
24 tional Capital Region on terrorism preparedness, to
25 ensure adequate planning, information sharing,

1 *training, and execution of the Federal role in domes-*
2 *tic preparedness activities;*

3 *(6) coordinate with Federal, State, local, and re-*
4 *gional agencies, and the private sector in the National*
5 *Capital Region on terrorism preparedness to ensure*
6 *adequate planning, information sharing, training,*
7 *and execution of domestic preparedness activities*
8 *among these agencies and entities; and*

9 *(7) serve as a liaison between the Federal Gov-*
10 *ernment and State, local, and regional authorities,*
11 *and private sector entities in the National Capital*
12 *Region to facilitate access to Federal grants and other*
13 *programs.*

14 *(c) ANNUAL REPORT.—The Office established under*
15 *subsection (a) shall submit an annual report to Congress*
16 *that includes—*

17 *(1) the identification of the resources required to*
18 *fully implement homeland security efforts in the Na-*
19 *tional Capital Region;*

20 *(2) an assessment of the progress made by the*
21 *National Capital Region in implementing homeland*
22 *security efforts; and*

23 *(3) recommendations to Congress regarding the*
24 *additional resources needed to fully implement home-*
25 *land security efforts in the National Capital Region.*

1 (d) *LIMITATION.*—*Nothing contained in this section*
 2 *shall be construed as limiting the power of State and local*
 3 *governments.*

4 **SEC. 883. REQUIREMENT TO COMPLY WITH LAWS PRO-**
 5 **TECTING EQUAL EMPLOYMENT OPPOR-**
 6 **TUNITY AND PROVIDING WHISTLEBLOWER**
 7 **PROTECTIONS.**

8 *Nothing in this Act shall be construed as exempting*
 9 *the Department from requirements applicable with respect*
 10 *to executive agencies—*

11 (1) *to provide equal employment protection for*
 12 *employees of the Department (including pursuant to*
 13 *the provisions in section 2302(b)(1) of title 5, United*
 14 *States Code, and the Notification and Federal Em-*
 15 *ployee Antidiscrimination and Retaliation Act of*
 16 *2002 (Pub. L. 107–174)); or*

17 (2) *to provide whistleblower protections for em-*
 18 *ployees of the Department (including pursuant to the*
 19 *provisions in section 2302(b)(8) and (9) of such title*
 20 *and the Notification and Federal Employee Anti-*
 21 *discrimination and Retaliation Act of 2002).*

22 **SEC. 884. FEDERAL LAW ENFORCEMENT TRAINING CENTER.**

23 (a) *IN GENERAL.*—*The transfer of an authority or an*
 24 *agency under this Act to the Department of Homeland Se-*
 25 *curity does not affect training agreements already entered*

1 *into with the Federal Law Enforcement Training Center*
2 *with respect to the training of personnel to carry out that*
3 *authority or the duties of that transferred agency.*

4 (b) *CONTINUITY OF OPERATIONS.*—*All activities of the*
5 *Federal Law Enforcement Training Center transferred to*
6 *the Department of Homeland Security under this Act shall*
7 *continue to be carried out at the locations such activities*
8 *were carried out before such transfer.*

9 **SEC. 885. JOINT INTERAGENCY TASK FORCE.**

10 (a) *ESTABLISHMENT.*—*The Secretary may establish*
11 *and operate a permanent Joint Interagency Homeland Se-*
12 *curity Task Force composed of representatives from mili-*
13 *tary and civilian agencies of the United States Government*
14 *for the purposes of anticipating terrorist threats against the*
15 *United States and taking appropriate actions to prevent*
16 *harm to the United States.*

17 (b) *STRUCTURE.*—*It is the sense of Congress that the*
18 *Secretary should model the Joint Interagency Homeland*
19 *Security Task Force on the approach taken by the Joint*
20 *Interagency Task Forces for drug interdiction at Key West,*
21 *Florida and Alameda, California, to the maximum extent*
22 *feasible and appropriate.*

1 **SEC. 886. SENSE OF CONGRESS REAFFIRMING THE CONTIN-**
2 **UED IMPORTANCE AND APPLICABILITY OF**
3 **THE POSSE COMITATUS ACT.**

4 *(a) FINDINGS.—Congress finds the following:*

5 *(1) Section 1385 of title 18, United States Code*
6 *(commonly known as the “Posse Comitatus Act”),*
7 *prohibits the use of the Armed Forces as a posse com-*
8 *itatus to execute the laws except in cases and under*
9 *circumstances expressly authorized by the Constitu-*
10 *tion or Act of Congress.*

11 *(2) Enacted in 1878, the Posse Comitatus Act*
12 *was expressly intended to prevent United States Mar-*
13 *shals, on their own initiative, from calling on the*
14 *Army for assistance in enforcing Federal law.*

15 *(3) The Posse Comitatus Act has served the Na-*
16 *tion well in limiting the use of the Armed Forces to*
17 *enforce the law.*

18 *(4) Nevertheless, by its express terms, the Posse*
19 *Comitatus Act is not a complete barrier to the use of*
20 *the Armed Forces for a range of domestic purposes,*
21 *including law enforcement functions, when the use of*
22 *the Armed Forces is authorized by Act of Congress or*
23 *the President determines that the use of the Armed*
24 *Forces is required to fulfill the President’s obligations*
25 *under the Constitution to respond promptly in time*
26 *of war, insurrection, or other serious emergency.*

1 (5) *Existing laws, including chapter 15 of title*
 2 *10, United States Code (commonly known as the “In-*
 3 *surrection Act”), and the Robert T. Stafford Disaster*
 4 *Relief and Emergency Assistance Act (42 U.S.C. 5121*
 5 *et seq.), grant the President broad powers that may*
 6 *be invoked in the event of domestic emergencies, in-*
 7 *cluding an attack against the Nation using weapons*
 8 *of mass destruction, and these laws specifically au-*
 9 *thorize the President to use the Armed Forces to help*
 10 *restore public order.*

11 (b) *SENSE OF CONGRESS.*—*Congress reaffirms the con-*
 12 *tinued importance of section 1385 of title 18, United States*
 13 *Code, and it is the sense of Congress that nothing in this*
 14 *Act should be construed to alter the applicability of such*
 15 *section to any use of the Armed Forces as a posse comitatus*
 16 *to execute the laws.*

17 **SEC. 887. COORDINATION WITH THE DEPARTMENT OF**
 18 **HEALTH AND HUMAN SERVICES UNDER THE**
 19 **PUBLIC HEALTH SERVICE ACT.**

20 (a) *IN GENERAL.*—*The annual Federal response plan*
 21 *developed by the Department shall be consistent with section*
 22 *319 of the Public Health Service Act (42 U.S.C. 247d).*

23 (b) *DISCLOSURES AMONG RELEVANT AGENCIES.*—

1 (1) *IN GENERAL.*—*Full disclosure among rel-*
2 *evant agencies shall be made in accordance with this*
3 *subsection.*

4 (2) *PUBLIC HEALTH EMERGENCY.*—*During the*
5 *period in which the Secretary of Health and Human*
6 *Services has declared the existence of a public health*
7 *emergency under section 319(a) of the Public Health*
8 *Service Act (42 U.S.C. 247d(a)), the Secretary of*
9 *Health and Human Services shall keep relevant agen-*
10 *cies, including the Department of Homeland Security,*
11 *the Department of Justice, and the Federal Bureau of*
12 *Investigation, fully and currently informed.*

13 (3) *POTENTIAL PUBLIC HEALTH EMERGENCY.*—
14 *In cases involving, or potentially involving, a public*
15 *health emergency, but in which no determination of*
16 *an emergency by the Secretary of Health and Human*
17 *Services under section 319(a) of the Public Health*
18 *Service Act (42 U.S.C. 247d(a)), has been made, all*
19 *relevant agencies, including the Department of Home-*
20 *land Security, the Department of Justice, and the*
21 *Federal Bureau of Investigation, shall keep the Sec-*
22 *retary of Health and Human Services and the Direc-*
23 *tor of the Centers for Disease Control and Prevention*
24 *fully and currently informed.*

1 **SEC. 888. PRESERVING COAST GUARD MISSION PERFORM-**
 2 **ANCE.**

3 (a) *DEFINITIONS.—In this section:*

4 (1) *NON-HOMELAND SECURITY MISSIONS.—The*
 5 *term “non-homeland security missions” means the*
 6 *following missions of the Coast Guard:*

7 (A) *Marine safety.*

8 (B) *Search and rescue.*

9 (C) *Aids to navigation.*

10 (D) *Living marine resources (fisheries law*
 11 *enforcement).*

12 (E) *Marine environmental protection.*

13 (F) *Ice operations.*

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

17 (A) *Ports, waterways and coastal security.*

18 (B) *Drug interdiction.*

19 (C) *Migrant interdiction.*

20 (D) *Defense readiness.*

21 (E) *Other law enforcement.*

22 (b) *TRANSFER.—There are transferred to the Depart-*
 23 *ment the authorities, functions, personnel, and assets of the*
 24 *Coast Guard, which shall be maintained as a distinct entity*
 25 *within the Department, including the authorities and func-*
 26 *tions of the Secretary of Transportation relating thereto.*

1 (c) *MAINTENANCE OF STATUS OF FUNCTIONS AND AS-*
2 *SETS.*—*Notwithstanding any other provision of this Act,*
3 *the authorities, functions, and capabilities of the Coast*
4 *Guard to perform its missions shall be maintained intact*
5 *and without significant reduction after the transfer of the*
6 *Coast Guard to the Department, except as specified in sub-*
7 *sequent Acts.*

8 (d) *CERTAIN TRANSFERS PROHIBITED.*—*No mission,*
9 *function, or asset (including for purposes of this subsection*
10 *any ship, aircraft, or helicopter) of the Coast Guard may*
11 *be diverted to the principal and continuing use of any other*
12 *organization, unit, or entity of the Department, except for*
13 *details or assignments that do not reduce the Coast Guard’s*
14 *capability to perform its missions.*

15 (e) *CHANGES TO MISSIONS.*—

16 (1) *PROHIBITION.*—*The Secretary may not sub-*
17 *stantially or significantly reduce the missions of the*
18 *Coast Guard or the Coast Guard’s capability to per-*
19 *form those missions, except as specified in subsequent*
20 *Acts.*

21 (2) *WAIVER.*—*The Secretary may waive the re-*
22 *strictions under paragraph (1) for a period of not to*
23 *exceed 90 days upon a declaration and certification*
24 *by the Secretary to Congress that a clear, compelling,*
25 *and immediate need exists for such a waiver. A cer-*

1 *tification under this paragraph shall include a de-*
2 *tailed justification for the declaration and certifi-*
3 *cation, including the reasons and specific information*
4 *that demonstrate that the Nation and the Coast*
5 *Guard cannot respond effectively if the restrictions*
6 *under paragraph (1) are not waived.*

7 *(f) ANNUAL REVIEW.—*

8 *(1) IN GENERAL.—The Inspector General of the*
9 *Department shall conduct an annual review that shall*
10 *assess thoroughly the performance by the Coast Guard*
11 *of all missions of the Coast Guard (including non-*
12 *homeland security missions and homeland security*
13 *missions) with a particular emphasis on examining*
14 *the non-homeland security missions.*

15 *(2) REPORT.—The report under this paragraph*
16 *shall be submitted to—*

17 *(A) the Committee on Governmental Affairs*
18 *of the Senate;*

19 *(B) the Committee on Government Reform*
20 *of the House of Representatives;*

21 *(C) the Committees on Appropriations of*
22 *the Senate and the House of Representatives;*

23 *(D) the Committee on Commerce, Science,*
24 *and Transportation of the Senate; and*

1 (E) *the Committee on Transportation and*
 2 *Infrastructure of the House of Representatives.*

3 (g) *DIRECT REPORTING TO SECRETARY.*—*Upon the*
 4 *transfer of the Coast Guard to the Department, the Com-*
 5 *mandant shall report directly to the Secretary without*
 6 *being required to report through any other official of the*
 7 *Department.*

8 (h) *OPERATION AS A SERVICE IN THE NAVY.*—*None*
 9 *of the conditions and restrictions in this section shall apply*
 10 *when the Coast Guard operates as a service in the Navy*
 11 *under section 3 of title 14, United States Code.*

12 (i) *REPORT ON ACCELERATING THE INTEGRATED*
 13 *DEEPWATER SYSTEM.*—*Not later than 90 days after the*
 14 *date of enactment of this Act, the Secretary, in consultation*
 15 *with the Commandant of the Coast Guard, shall submit a*
 16 *report to the Committee on Commerce, Science, and Trans-*
 17 *portation of the Senate, the Committee on Transportation*
 18 *and Infrastructure of the House of Representatives, and the*
 19 *Committees on Appropriations of the Senate and the House*
 20 *of Representatives that—*

21 (1) *analyzes the feasibility of accelerating the*
 22 *rate of procurement in the Coast Guard's Integrated*
 23 *Deepwater System from 20 years to 10 years;*

24 (2) *includes an estimate of additional resources*
 25 *required;*

1 (3) describes the resulting increased capabilities;

2 (4) outlines any increases in the Coast Guard's

3 homeland security readiness;

4 (5) describes any increases in operational effi-

5 ciencies; and

6 (6) provides a revised asset phase-in time line.

7 **SEC. 889. HOMELAND SECURITY FUNDING ANALYSIS IN**

8 **PRESIDENT'S BUDGET.**

9 (a) *IN GENERAL.*—Section 1105(a) of title 31, United
10 States Code, is amended by adding at the end the following:

11 “(33)(A)(i) a detailed, separate analysis, by
12 budget function, by agency, and by initiative area (as
13 determined by the administration) for the prior fiscal
14 year, the current fiscal year, the fiscal years for which
15 the budget is submitted, and the ensuing fiscal year
16 identifying the amounts of gross and net appropria-
17 tions or obligational authority and outlays that con-
18 tribute to homeland security, with separate displays
19 for mandatory and discretionary amounts,
20 including—

21 “(I) summaries of the total amount of such
22 appropriations or new obligational authority
23 and outlays requested for homeland security;

24 “(II) an estimate of the current service lev-
25 els of homeland security spending;

1 “(III) the most recent risk assessment and
2 summary of homeland security needs in each
3 initiative area (as determined by the adminis-
4 tration); and

5 “(IV) an estimate of user fees collected by
6 the Federal Government on behalf of homeland
7 security activities;

8 “(ii) with respect to subclauses (I) through (IV)
9 of clause (i), amounts shall be provided by account for
10 each program, project and activity; and

11 “(iii) an estimate of expenditures for homeland
12 security activities by State and local governments and
13 the private sector for the prior fiscal year and the
14 current fiscal year.

15 “(B) In this paragraph, consistent with the Of-
16 fice of Management and Budget’s June 2002 ‘Annual
17 Report to Congress on Combatting Terrorism’, the
18 term ‘homeland security’ refers to those activities that
19 detect, deter, protect against, and respond to terrorist
20 attacks occurring within the United States and its
21 territories.

22 “(C) In implementing this paragraph, including
23 determining what Federal activities or accounts con-
24 stitute homeland security for purposes of budgetary
25 classification, the Office of Management and Budget

1 *is directed to consult periodically, but at least annu-*
 2 *ally, with the House and Senate Budget Committees,*
 3 *the House and Senate Appropriations Committees,*
 4 *and the Congressional Budget Office.”.*

5 *(b) REPEAL OF DUPLICATIVE REPORTS.—The fol-*
 6 *lowing sections are repealed:*

7 *(1) Section 1051 of Public Law 105–85.*

8 *(2) Section 1403 of Public Law 105–261.*

9 *(c) EFFECTIVE DATE.—This section and the amend-*
 10 *ment made by this section shall apply beginning with re-*
 11 *spect to the fiscal year 2005 budget submission.*

12 **SEC. 890. AIR TRANSPORTATION SAFETY AND SYSTEM STA-**
 13 **BILIZATION ACT.**

14 *The Air Transportation Safety and System Stabiliza-*
 15 *tion Act (49 U.S.C. 40101 note) is amended—*

16 *(1) in section 408 by striking the last sentence*
 17 *of subsection (c); and*

18 *(2) in section 402 by striking paragraph (1) and*
 19 *inserting the following:*

20 *“(1) AIR CARRIER.—The term ‘air carrier’*
 21 *means a citizen of the United States undertaking by*
 22 *any means, directly or indirectly, to provide air*
 23 *transportation and includes employees and agents*
 24 *(including persons engaged in the business of pro-*
 25 *viding air transportation security and their affili-*

1 *ates) of such citizen. For purposes of the preceding*
 2 *sentence, the term ‘agent’, as applied to persons en-*
 3 *gaged in the business of providing air transportation*
 4 *security, shall only include persons that have con-*
 5 *tracted directly with the Federal Aviation Adminis-*
 6 *tration on or after and commenced services no later*
 7 *than February 17, 2002, to provide such security, and*
 8 *had not been or are not debarred for any period with-*
 9 *in 6 months from that date.”.*

10 ***Subtitle I—Information Sharing***

11 ***SEC. 891. SHORT TITLE; FINDINGS; AND SENSE OF CON-*** 12 ***GRESS.***

13 *(a) SHORT TITLE.—This subtitle may be cited as the*
 14 *“Homeland Security Information Sharing Act”.*

15 *(b) FINDINGS.—Congress finds the following:*

16 *(1) The Federal Government is required by the*
 17 *Constitution to provide for the common defense, which*
 18 *includes terrorist attack.*

19 *(2) The Federal Government relies on State and*
 20 *local personnel to protect against terrorist attack.*

21 *(3) The Federal Government collects, creates,*
 22 *manages, and protects classified and sensitive but un-*
 23 *classified information to enhance homeland security.*

1 (4) *Some homeland security information is need-*
2 *ed by the State and local personnel to prevent and*
3 *prepare for terrorist attack.*

4 (5) *The needs of State and local personnel to*
5 *have access to relevant homeland security information*
6 *to combat terrorism must be reconciled with the need*
7 *to preserve the protected status of such information*
8 *and to protect the sources and methods used to ac-*
9 *quire such information.*

10 (6) *Granting security clearances to certain State*
11 *and local personnel is one way to facilitate the shar-*
12 *ing of information regarding specific terrorist threats*
13 *among Federal, State, and local levels of government.*

14 (7) *Methods exist to declassify, redact, or other-*
15 *wise adapt classified information so it may be shared*
16 *with State and local personnel without the need for*
17 *granting additional security clearances.*

18 (8) *State and local personnel have capabilities*
19 *and opportunities to gather information on suspicious*
20 *activities and terrorist threats not possessed by Fed-*
21 *eral agencies.*

22 (9) *The Federal Government and State and local*
23 *governments and agencies in other jurisdictions may*
24 *benefit from such information.*

(12) Increased efforts to share homeland security information should avoid duplicating existing information systems.

21 *SEC. 892. FACILITATING HOMELAND SECURITY INFORMA-*
22 *TION SHARING PROCEDURES.*

23 (a) PROCEDURES FOR DETERMINING EXTENT OF
24 SHARING OF HOMELAND SECURITY INFORMATION.—

1 (1) *The President shall prescribe and implement*
2 *procedures under which relevant Federal agencies—*

3 (A) *share relevant and appropriate home-*
4 *land security information with other Federal*
5 *agencies, including the Department, and appro-*
6 *priate State and local personnel;*

7 (B) *identify and safeguard homeland secu-*
8 *rity information that is sensitive but unclassi-*
9 *fied; and*

10 (C) *to the extent such information is in*
11 *classified form, determine whether, how, and to*
12 *what extent to remove classified information, as*
13 *appropriate, and with which such personnel it*
14 *may be shared after such information is re-*
15 *moved.*

16 (2) *The President shall ensure that such proce-*
17 *dures apply to all agencies of the Federal Govern-*
18 *ment.*

19 (3) *Such procedures shall not change the sub-*
20 *stantive requirements for the classification and safe-*
21 *guarding of classified information.*

22 (4) *Such procedures shall not change the require-*
23 *ments and authorities to protect sources and methods.*

24 (b) *PROCEDURES FOR SHARING OF HOMELAND SECU-*
25 *RITY INFORMATION.—*

1 (1) *Under procedures prescribed by the Presi-*
2 *dent, all appropriate agencies, including the intel-*
3 *ligence community, shall, through information shar-*
4 *ing systems, share homeland security information*
5 *with Federal agencies and appropriate State and*
6 *local personnel to the extent such information may be*
7 *shared, as determined in accordance with subsection*
8 *(a), together with assessments of the credibility of*
9 *such information.*

10 (2) *Each information sharing system through*
11 *which information is shared under paragraph (1)*
12 *shall—*

13 (A) *have the capability to transmit unclas-*
14 *sified or classified information, though the proce-*
15 *dures and recipients for each capability may dif-*
16 *fer;*

17 (B) *have the capability to restrict delivery*
18 *of information to specified subgroups by geo-*
19 *graphic location, type of organization, position*
20 *of a recipient within an organization, or a re-*
21 *cipient's need to know such information;*

22 (C) *be configured to allow the efficient and*
23 *effective sharing of information; and*

24 (D) *be accessible to appropriate State and*
25 *local personnel.*

1 (3) *The procedures prescribed under paragraph*
2 (1) *shall establish conditions on the use of informa-*
3 *tion shared under paragraph (1)—*

4 (A) *to limit the redissemination of such in-*
5 *formation to ensure that such information is not*
6 *used for an unauthorized purpose;*

7 (B) *to ensure the security and confiden-*
8 *tiality of such information;*

9 (C) *to protect the constitutional and statu-*
10 *tory rights of any individuals who are subjects*
11 *of such information; and*

12 (D) *to provide data integrity through the*
13 *timely removal and destruction of obsolete or er-*
14 *roneous names and information.*

15 (4) *The procedures prescribed under paragraph*
16 (1) *shall ensure, to the greatest extent practicable,*
17 *that the information sharing system through which*
18 *information is shared under such paragraph include*
19 *existing information sharing systems, including, but*
20 *not limited to, the National Law Enforcement Tele-*
21 *communications System, the Regional Information*
22 *Sharing System, and the Terrorist Threat Warning*
23 *System of the Federal Bureau of Investigation.*

24 (5) *Each appropriate Federal agency, as deter-*
25 *mined by the President, shall have access to each in-*

1 *formation sharing system through which information*
2 *is shared under paragraph (1), and shall therefore*
3 *have access to all information, as appropriate, shared*
4 *under such paragraph.*

5 *(6) The procedures prescribed under paragraph*
6 *(1) shall ensure that appropriate State and local per-*
7 *sonnel are authorized to use such information sharing*
8 *systems—*

9 *(A) to access information shared with such*
10 *personnel; and*

11 *(B) to share, with others who have access to*
12 *such information sharing systems, the homeland*
13 *security information of their own jurisdictions,*
14 *which shall be marked appropriately as per-*
15 *taining to potential terrorist activity.*

16 *(7) Under procedures prescribed jointly by the*
17 *Director of Central Intelligence and the Attorney Gen-*
18 *eral, each appropriate Federal agency, as determined*
19 *by the President, shall review and assess the informa-*
20 *tion shared under paragraph (6) and integrate such*
21 *information with existing intelligence.*

22 *(c) SHARING OF CLASSIFIED INFORMATION AND SEN-*
23 *SITIVE BUT UNCLASSIFIED INFORMATION WITH STATE AND*
24 *LOCAL PERSONNEL.—*

1 (1) *The President shall prescribe procedures*
2 *under which Federal agencies may, to the extent the*
3 *President considers necessary, share with appropriate*
4 *State and local personnel homeland security informa-*
5 *tion that remains classified or otherwise protected*
6 *after the determinations prescribed under the proce-*
7 *dures set forth in subsection (a).*

8 (2) *It is the sense of Congress that such proce-*
9 *dures may include 1 or more of the following means:*

10 (A) *Carrying out security clearance inves-*
11 *tigations with respect to appropriate State and*
12 *local personnel.*

13 (B) *With respect to information that is sen-*
14 *sitive but unclassified, entering into nondisclo-*
15 *sure agreements with appropriate State and*
16 *local personnel.*

17 (C) *Increased use of information-sharing*
18 *partnerships that include appropriate State and*
19 *local personnel, such as the Joint Terrorism*
20 *Task Forces of the Federal Bureau of Investiga-*
21 *tion, the Anti-Terrorism Task Forces of the De-*
22 *partment of Justice, and regional Terrorism*
23 *Early Warning Groups.*

1 (d) *RESPONSIBLE OFFICIALS.*—For each affected Fed-
 2 eral agency, the head of such agency shall designate an offi-
 3 cial to administer this Act with respect to such agency.

4 (e) *FEDERAL CONTROL OF INFORMATION.*—Under pro-
 5 cedures prescribed under this section, information obtained
 6 by a State or local government from a Federal agency under
 7 this section shall remain under the control of the Federal
 8 agency, and a State or local law authorizing or requiring
 9 such a government to disclose information shall not apply
 10 to such information.

11 (f) *DEFINITIONS.*—As used in this section:

12 (1) The term “homeland security information”
 13 means any information possessed by a Federal, State,
 14 or local agency that—

15 (A) relates to the threat of terrorist activity;

16 (B) relates to the ability to prevent, inter-
 17 dict, or disrupt terrorist activity;

18 (C) would improve the identification or in-
 19 vestigation of a suspected terrorist or terrorist
 20 organization; or

21 (D) would improve the response to a ter-
 22 rorist act.

23 (2) The term “intelligence community” has the
 24 meaning given such term in section 3(4) of the Na-
 25 tional Security Act of 1947 (50 U.S.C. 401a(4)).

1 (3) *The term “State and local personnel” means*
2 *any of the following persons involved in prevention,*
3 *preparation, or response for terrorist attack:*

4 (A) *State Governors, mayors, and other lo-*
5 *cally elected officials.*

6 (B) *State and local law enforcement per-*
7 *sonnel and firefighters.*

8 (C) *Public health and medical professionals.*

9 (D) *Regional, State, and local emergency*
10 *management agency personnel, including State*
11 *adjutant generals.*

12 (E) *Other appropriate emergency response*
13 *agency personnel.*

14 (F) *Employees of private-sector entities that*
15 *affect critical infrastructure, cyber, economic, or*
16 *public health security, as designated by the Fed-*
17 *eral government in procedures developed pursu-*
18 *ant to this section.*

19 (4) *The term “State” includes the District of Co-*
20 *lumbia and any commonwealth, territory, or posses-*
21 *sion of the United States.*

22 (g) *CONSTRUCTION.—Nothing in this Act shall be con-*
23 *strued as authorizing any department, bureau, agency, offi-*
24 *cer, or employee of the Federal Government to request, re-*
25 *ceive, or transmit to any other Government entity or per-*

1 *sonnel, or transmit to any State or local entity or personnel*
 2 *otherwise authorized by this Act to receive homeland secu-*
 3 *rity information, any information collected by the Federal*
 4 *Government solely for statistical purposes in violation of*
 5 *any other provision of law relating to the confidentiality*
 6 *of such information.*

7 **SEC. 893. REPORT.**

8 *(a) REPORT REQUIRED.—Not later than 12 months*
 9 *after the date of the enactment of this Act, the President*
 10 *shall submit to the congressional committees specified in*
 11 *subsection (b) a report on the implementation of section*
 12 *892. The report shall include any recommendations for ad-*
 13 *ditional measures or appropriation requests, beyond the re-*
 14 *quirements of section 892, to increase the effectiveness of*
 15 *sharing of information between and among Federal, State,*
 16 *and local entities.*

17 *(b) SPECIFIED CONGRESSIONAL COMMITTEES.—The*
 18 *congressional committees referred to in subsection (a) are*
 19 *the following committees:*

20 *(1) The Permanent Select Committee on Intel-*
 21 *ligence and the Committee on the Judiciary of the*
 22 *House of Representatives.*

23 *(2) The Select Committee on Intelligence and the*
 24 *Committee on the Judiciary of the Senate.*

1 **SEC. 894. AUTHORIZATION OF APPROPRIATIONS.**

2 *There are authorized to be appropriated such sums as*
 3 *may be necessary to carry out section 892.*

4 **SEC. 895. AUTHORITY TO SHARE GRAND JURY INFORMA-**
 5 **TION.**

6 *Rule 6(e) of the Federal Rules of Criminal Procedure*
 7 *is amended—*

8 *(1) in paragraph (2), by inserting “, or of guide-*
 9 *lines jointly issued by the Attorney General and Di-*
 10 *rector of Central Intelligence pursuant to Rule 6,”*
 11 *after “Rule 6”; and*

12 *(2) in paragraph (3)—*

13 *(A) in subparagraph (A)(ii), by inserting*
 14 *“or of a foreign government” after “(including*
 15 *personnel of a state or subdivision of a state”;*

16 *(B) in subparagraph (C)(i)—*

17 *(i) in subclause (I), by inserting before*
 18 *the semicolon the following: “or, upon a re-*
 19 *quest by an attorney for the government,*
 20 *when sought by a foreign court or pros-*
 21 *ecutor for use in an official criminal inves-*
 22 *tigation”;*

23 *(ii) in subclause (IV)—*

24 *(I) by inserting “or foreign” after*
 25 *“may disclose a violation of State”;*

1 (II) by inserting “or of a foreign
2 government” after “to an appropriate
3 official of a State or subdivision of a
4 State”; and

5 (III) by striking “or” at the end;

6 (iii) by striking the period at the end
7 of subclause (V) and inserting “; or”; and

8 (iv) by adding at the end the following:

9 “(VI) when matters involve a threat of
10 actual or potential attack or other grave
11 hostile acts of a foreign power or an agent
12 of a foreign power, domestic or inter-
13 national sabotage, domestic or international
14 terrorism, or clandestine intelligence gath-
15 ering activities by an intelligence service or
16 network of a foreign power or by an agent
17 of a foreign power, within the United States
18 or elsewhere, to any appropriate federal,
19 state, local, or foreign government official
20 for the purpose of preventing or responding
21 to such a threat.”; and

22 (C) in subparagraph (C)(iii)—

23 (i) by striking “Federal”;

24 (ii) by inserting “or clause (i)(VI)”
25 after “clause (i)(V)”; and

1 (iii) by adding at the end the fol-
 2 lowing: “Any state, local, or foreign official
 3 who receives information pursuant to clause
 4 (i)(VI) shall use that information only con-
 5 sistent with such guidelines as the Attorney
 6 General and Director of Central Intelligence
 7 shall jointly issue.”.

8 **SEC. 896. AUTHORITY TO SHARE ELECTRONIC, WIRE, AND**
 9 **ORAL INTERCEPTION INFORMATION.**

10 Section 2517 of title 18, United States Code, is amend-
 11 ed by adding at the end the following:

12 “(7) Any investigative or law enforcement officer, or
 13 other Federal official in carrying out official duties as such
 14 Federal official, who by any means authorized by this chap-
 15 ter, has obtained knowledge of the contents of any wire, oral,
 16 or electronic communication, or evidence derived therefrom,
 17 may disclose such contents or derivative evidence to a for-
 18 eign investigative or law enforcement officer to the extent
 19 that such disclosure is appropriate to the proper perform-
 20 ance of the official duties of the officer making or receiving
 21 the disclosure, and foreign investigative or law enforcement
 22 officers may use or disclose such contents or derivative evi-
 23 dence to the extent such use or disclosure is appropriate
 24 to the proper performance of their official duties.

1 “(8) *Any investigative or law enforcement officer, or*
2 *other Federal official in carrying out official duties as such*
3 *Federal official, who by any means authorized by this chap-*
4 *ter, has obtained knowledge of the contents of any wire, oral,*
5 *or electronic communication, or evidence derived therefrom,*
6 *may disclose such contents or derivative evidence to any*
7 *appropriate Federal, State, local, or foreign government of-*
8 *ficial to the extent that such contents or derivative evidence*
9 *reveals a threat of actual or potential attack or other grave*
10 *hostile acts of a foreign power or an agent of a foreign*
11 *power, domestic or international sabotage, domestic or*
12 *international terrorism, or clandestine intelligence gath-*
13 *ering activities by an intelligence service or network of a*
14 *foreign power or by an agent of a foreign power, within*
15 *the United States or elsewhere, for the purpose of preventing*
16 *or responding to such a threat. Any official who receives*
17 *information pursuant to this provision may use that infor-*
18 *mation only as necessary in the conduct of that person’s*
19 *official duties subject to any limitations on the unauthor-*
20 *ized disclosure of such information, and any State, local,*
21 *or foreign official who receives information pursuant to this*
22 *provision may use that information only consistent with*
23 *such guidelines as the Attorney General and Director of*
24 *Central Intelligence shall jointly issue.”.*

1 **SEC. 897. FOREIGN INTELLIGENCE INFORMATION.**

2 (a) *DISSEMINATION AUTHORIZED.*—Section 203(d)(1)
3 *of the Uniting and Strengthening America by Providing*
4 *Appropriate Tools Required to Intercept and Obstruct Ter-*
5 *rorism (USA PATRIOT ACT) Act of 2001 (Public Law*
6 *107–56; 50 U.S.C. 403–5d) is amended by adding at the*
7 *end the following: “Consistent with the responsibility of the*
8 *Director of Central Intelligence to protect intelligence*
9 *sources and methods, and the responsibility of the Attorney*
10 *General to protect sensitive law enforcement information,*
11 *it shall be lawful for information revealing a threat of ac-*
12 *tual or potential attack or other grave hostile acts of a for-*
13 *ign power or an agent of a foreign power, domestic or*
14 *international sabotage, domestic or international terrorism,*
15 *or clandestine intelligence gathering activities by an intel-*
16 *ligence service or network of a foreign power or by an agent*
17 *of a foreign power, within the United States or elsewhere,*
18 *obtained as part of a criminal investigation to be disclosed*
19 *to any appropriate Federal, State, local, or foreign govern-*
20 *ment official for the purpose of preventing or responding*
21 *to such a threat. Any official who receives information pur-*
22 *suant to this provision may use that information only as*
23 *necessary in the conduct of that person’s official duties sub-*
24 *ject to any limitations on the unauthorized disclosure of*
25 *such information, and any State, local, or foreign official*
26 *who receives information pursuant to this provision may*

1 *use that information only consistent with such guidelines*
 2 *as the Attorney General and Director of Central Intelligence*
 3 *shall jointly issue.”.*

4 (b) *CONFORMING AMENDMENTS.—Section 203(c) of*
 5 *that Act is amended—*

6 (1) *by striking “section 2517(6)” and inserting*
 7 *“paragraphs (6) and (8) of section 2517 of title 18,*
 8 *United States Code,”; and*

9 (2) *by inserting “and (VI)” after “Rule*
 10 *6(e)(3)(C)(i)(V)”.*

11 **SEC. 898. INFORMATION ACQUIRED FROM AN ELECTRONIC**
 12 **SURVEILLANCE.**

13 *Section 106(k)(1) of the Foreign Intelligence Surveil-*
 14 *lance Act of 1978 (50 U.S.C. 1806) is amended by inserting*
 15 *after “law enforcement officers” the following: “or law en-*
 16 *forcement personnel of a State or political subdivision of*
 17 *a State (including the chief executive officer of that State*
 18 *or political subdivision who has the authority to appoint*
 19 *or direct the chief law enforcement officer of that State or*
 20 *political subdivision)”.*

21 **SEC. 899. INFORMATION ACQUIRED FROM A PHYSICAL**
 22 **SEARCH.**

23 *Section 305(k)(1) of the Foreign Intelligence Surveil-*
 24 *lance Act of 1978 (50 U.S.C. 1825) is amended by inserting*
 25 *after “law enforcement officers” the following: “or law en-*

1 *forcement personnel of a State or political subdivision of*
 2 *a State (including the chief executive officer of that State*
 3 *or political subdivision who has the authority to appoint*
 4 *or direct the chief law enforcement officer of that State or*
 5 *political subdivision)”.*

6 ***TITLE IX—NATIONAL HOMELAND*** 7 ***SECURITY COUNCIL***

8 ***SEC. 901. NATIONAL HOMELAND SECURITY COUNCIL.***

9 *There is established within the Executive Office of the*
 10 *President a council to be known as the “Homeland Security*
 11 *Council” (in this title referred to as the “Council”).*

12 ***SEC. 902. FUNCTION.***

13 *The function of the Council shall be to advise the Presi-*
 14 *dent on homeland security matters.*

15 ***SEC. 903. MEMBERSHIP.***

16 *The members of the Council shall be the following:*

17 *(1) The President.*

18 *(2) The Vice President.*

19 *(3) The Secretary of Homeland Security.*

20 *(4) The Attorney General.*

21 *(5) The Secretary of Defense.*

22 *(6) Such other individuals as may be designated*
 23 *by the President.*

1 **SEC. 904. OTHER FUNCTIONS AND ACTIVITIES.**

2 *For the purpose of more effectively coordinating the*
3 *policies and functions of the United States Government re-*
4 *lating to homeland security, the Council shall—*

5 *(1) assess the objectives, commitments, and risks*
6 *of the United States in the interest of homeland secu-*
7 *rity and to make resulting recommendations to the*
8 *President;*

9 *(2) oversee and review homeland security policies*
10 *of the Federal Government and to make resulting rec-*
11 *ommendations to the President; and*

12 *(3) perform such other functions as the President*
13 *may direct.*

14 **SEC. 905. STAFF COMPOSITION.**

15 *The Council shall have a staff, the head of which shall*
16 *be a civilian Executive Secretary, who shall be appointed*
17 *by the President. The President is authorized to fix the pay*
18 *of the Executive Secretary at a rate not to exceed the rate*
19 *of pay payable to the Executive Secretary of the National*
20 *Security Council.*

21 **SEC. 906. RELATION TO THE NATIONAL SECURITY COUNCIL.**

22 *The President may convene joint meetings of the*
23 *Homeland Security Council and the National Security*
24 *Council with participation by members of either Council*
25 *or as the President may otherwise direct.*

1 ***TITLE X—INFORMATION***
 2 ***SECURITY***

3 ***SEC. 1001. INFORMATION SECURITY.***

4 (a) *SHORT TITLE.*—*This title may be cited as the*
 5 *“Federal Information Security Management Act of 2002”.*

6 (b) *INFORMATION SECURITY.*—

7 (1) *IN GENERAL.*—*Subchapter II of chapter 35 of*
 8 *title 44, United States Code, is amended to read as*
 9 *follows:*

10 ***“SUBCHAPTER II—INFORMATION***
 11 ***SECURITY***

12 ***“§ 3531. Purposes***

13 *“The purposes of this subchapter are to—*

14 *“(1) provide a comprehensive framework for en-*
 15 *sur- ing the effectiveness of information security con-*
 16 *trols over information resources that support Federal*
 17 *operations and assets;*

18 *“(2) recognize the highly networked nature of the*
 19 *current Federal computing environment and provide*
 20 *effective governmentwide management and oversight*
 21 *of the related information security risks, including co-*
 22 *ordination of information security efforts throughout*
 23 *the civilian, national security, and law enforcement*
 24 *communities;*

1 “(3) provide for development and maintenance of
2 minimum controls required to protect Federal infor-
3 mation and information systems;

4 “(4) provide a mechanism for improved oversight
5 of Federal agency information security programs;

6 “(5) acknowledge that commercially developed
7 information security products offer advanced, dy-
8 namic, robust, and effective information security solu-
9 tions, reflecting market solutions for the protection of
10 critical information infrastructures important to the
11 national defense and economic security of the nation
12 that are designed, built, and operated by the private
13 sector; and

14 “(6) recognize that the selection of specific tech-
15 nical hardware and software information security so-
16 lutions should be left to individual agencies from
17 among commercially developed products.”.

18 **“§ 3532. Definitions**

19 “(a) *IN GENERAL.*—Except as provided under sub-
20 section (b), the definitions under section 3502 shall apply
21 to this subchapter.

22 “(b) *ADDITIONAL DEFINITIONS.*—As used in this
23 subchapter—

24 “(1) the term ‘information security’ means pro-
25 tecting information and information systems from

1 *unauthorized access, use, disclosure, disruption, modi-*
2 *fication, or destruction in order to provide—*

3 “(A) *integrity, which means guarding*
4 *against improper information modification or*
5 *destruction, and includes ensuring information*
6 *nonrepudiation and authenticity;*

7 “(B) *confidentiality, which means pre-*
8 *serving authorized restrictions on access and dis-*
9 *closure, including means for protecting personal*
10 *privacy and proprietary information;*

11 “(C) *availability, which means ensuring*
12 *timely and reliable access to and use of informa-*
13 *tion; and*

14 “(D) *authentication, which means utilizing*
15 *digital credentials to assure the identity of users*
16 *and validate their access;*

17 “(2) *the term ‘national security system’ means*
18 *any information system (including any telecommuni-*
19 *cations system) used or operated by an agency or by*
20 *a contractor of an agency, or other organization on*
21 *behalf of an agency, the function, operation, or use of*
22 *which—*

23 “(A) *involves intelligence activities;*

24 “(B) *involves cryptologic activities related*
25 *to national security;*

1 “(C) involves command and control of mili-
2 tary forces;

3 “(D) involves equipment that is an integral
4 part of a weapon or weapons system; or

5 “(E) is critical to the direct fulfillment of
6 military or intelligence missions provided that
7 this definition does not apply to a system that
8 is used for routine administrative and business
9 applications (including payroll, finance, logis-
10 tics, and personnel management applications);

11 “(3) the term ‘information technology’ has the
12 meaning given that term in section 11101 of title 40;
13 and

14 “(4) the term ‘information system’ means any
15 equipment or interconnected system or subsystems of
16 equipment that is used in the automatic acquisition,
17 storage, manipulation, management, movement, con-
18 trol, display, switching, interchange, transmission, or
19 reception of data or information, and includes—

20 “(A) computers and computer networks;

21 “(B) ancillary equipment;

22 “(C) software, firmware, and related proce-
23 dures;

24 “(D) services, including support services;

25 and

1 “(E) related resources.”.

2 **“§ 3533. Authority and functions of the Director**

3 “(a) *The Director shall oversee agency information se-*
4 *curity policies and practices, by—*

5 “(1) *promulgating information security stand-*
6 *ards under section 11331 of title 40;*

7 “(2) *overseeing the implementation of policies,*
8 *principles, standards, and guidelines on information*
9 *security;*

10 “(3) *requiring agencies, consistent with the*
11 *standards promulgated under such section 11331 and*
12 *the requirements of this subchapter, to identify and*
13 *provide information security protections commensu-*
14 *rate with the risk and magnitude of the harm result-*
15 *ing from the unauthorized access, use, disclosure, dis-*
16 *ruption, modification, or destruction of—*

17 “(A) *information collected or maintained by*
18 *or on behalf of an agency; or*

19 “(B) *information systems used or operated*
20 *by an agency or by a contractor of an agency or*
21 *other organization on behalf of an agency;*

22 “(4) *coordinating the development of standards*
23 *and guidelines under section 20 of the National Insti-*
24 *tute of Standards and Technology Act (15 U.S.C.*
25 *278g–3) with agencies and offices operating or exer-*

1 *cising control of national security systems (including*
2 *the National Security Agency) to assure, to the max-*
3 *imum extent feasible, that such standards and guide-*
4 *lines are complementary with standards and guide-*
5 *lines developed for national security systems;*

6 *“(5) overseeing agency compliance with the re-*
7 *quirements of this subchapter, including through any*
8 *authorized action under section 11303(b)(5) of title*
9 *40, to enforce accountability for compliance with such*
10 *requirements;*

11 *“(6) reviewing at least annually, and approving*
12 *or disapproving, agency information security pro-*
13 *grams required under section 3534(b);*

14 *“(7) coordinating information security policies*
15 *and procedures with related information resources*
16 *management policies and procedures; and*

17 *“(8) reporting to Congress no later than March*
18 *1 of each year on agency compliance with the require-*
19 *ments of this subchapter, including—*

20 *“(A) a summary of the findings of evalua-*
21 *tions required by section 3535;*

22 *“(B) significant deficiencies in agency in-*
23 *formation security practices;*

24 *“(C) planned remedial action to address*
25 *such deficiencies; and*

1 “(D) a summary of, and the views of the
2 Director on, the report prepared by the National
3 Institute of Standards and Technology under
4 section 20(d)(9) of the National Institute of
5 Standards and Technology Act (15 U.S.C. 278g–
6 3).”.

7 “(b) Except for the authorities described in paragraphs
8 (4) and (7) of subsection (a), the authorities of the Director
9 under this section shall not apply to national security sys-
10 tems.

11 **“§ 3534. Federal agency responsibilities**

12 “(a) The head of each agency shall—

13 “(1) be responsible for—

14 “(A) providing information security protec-
15 tions commensurate with the risk and magnitude
16 of the harm resulting from unauthorized access,
17 use, disclosure, disruption, modification, or de-
18 struction of—

19 “(i) information collected or main-
20 tained by or on behalf of the agency; and

21 “(ii) information systems used or oper-
22 ated by an agency or by a contractor of an
23 agency or other organization on behalf of an
24 agency;

1 “(B) complying with the requirements of
2 this subchapter and related policies, procedures,
3 standards, and guidelines, including—

4 “(i) information security standards
5 promulgated by the Director under section
6 11331 of title 40; and

7 “(ii) information security standards
8 and guidelines for national security systems
9 issued in accordance with law and as di-
10 rected by the President; and

11 “(C) ensuring that information security
12 management processes are integrated with agen-
13 cy strategic and operational planning processes;

14 “(2) ensure that senior agency officials provide
15 information security for the information and infor-
16 mation systems that support the operations and assets
17 under their control, including through—

18 “(A) assessing the risk and magnitude of
19 the harm that could result from the unauthorized
20 access, use, disclosure, disruption, modification,
21 or destruction of such information or informa-
22 tion systems;

23 “(B) determining the levels of information
24 security appropriate to protect such information
25 and information systems in accordance with

1 *standards promulgated under section 11331 of*
2 *title 40 for information security classifications*
3 *and related requirements;*

4 *“(C) implementing policies and procedures*
5 *to cost-effectively reduce risks to an acceptable*
6 *level; and*

7 *“(D) periodically testing and evaluating in-*
8 *formation security controls and techniques to en-*
9 *sure that they are effectively implemented;*

10 *“(3) delegate to the agency Chief Information Of-*
11 *ficer established under section 3506 (or comparable*
12 *official in an agency not covered by such section) the*
13 *authority to ensure compliance with the requirements*
14 *imposed on the agency under this subchapter,*
15 *including—*

16 *“(A) designating a senior agency informa-*
17 *tion security officer who shall—*

18 *“(i) carry out the Chief Information*
19 *Officer’s responsibilities under this section;*

20 *“(ii) possess professional qualifica-*
21 *tions, including training and experience, re-*
22 *quired to administer the functions described*
23 *under this section;*

24 *“(iii) have information security duties*
25 *as that official’s primary duty; and*

1 “(iv) head an office with the mission
2 and resources to assist in ensuring agency
3 compliance with this section;

4 “(B) developing and maintaining an agen-
5 cywide information security program as required
6 by subsection (b);

7 “(C) developing and maintaining informa-
8 tion security policies, procedures, and control
9 techniques to address all applicable requirements,
10 including those issued under section 3533 of this
11 title, and section 11331 of title 40;

12 “(D) training and overseeing personnel
13 with significant responsibilities for information
14 security with respect to such responsibilities; and

15 “(E) assisting senior agency officials con-
16 cerning their responsibilities under paragraph
17 (2);

18 “(4) ensure that the agency has trained per-
19 sonnel sufficient to assist the agency in complying
20 with the requirements of this subchapter and related
21 policies, procedures, standards, and guidelines; and

22 “(5) ensure that the agency Chief Information
23 Officer, in coordination with other senior agency offi-
24 cials, reports annually to the agency head on the ef-

1 *fectiveness of the agency information security pro-*
2 *gram, including progress of remedial actions.*

3 *“(b) Each agency shall develop, document, and imple-*
4 *ment an agencywide information security program, ap-*
5 *proved by the Director under section 3533(a)(5), to provide*
6 *information security for the information and information*
7 *systems that support the operations and assets of the agen-*
8 *cy, including those provided or managed by another agency,*
9 *contractor, or other source, that includes—*

10 *“(1) periodic assessments of the risk and mag-*
11 *nitude of the harm that could result from the unau-*
12 *thorized access, use, disclosure, disruption, modifica-*
13 *tion, or destruction of information and information*
14 *systems that support the operations and assets of the*
15 *agency;*

16 *“(2) policies and procedures that—*

17 *“(A) are based on the risk assessments re-*
18 *quired by paragraph (1);*

19 *“(B) cost-effectively reduce information se-*
20 *curity risks to an acceptable level;*

21 *“(C) ensure that information security is ad-*
22 *dressed throughout the life cycle of each agency*
23 *information system; and*

24 *“(D) ensure compliance with—*

1 “(i) the requirements of this sub-
2 chapter;

3 “(ii) policies and procedures as may be
4 prescribed by the Director, and information
5 security standards promulgated under sec-
6 tion 11331 of title 40;

7 “(iii) minimally acceptable system
8 configuration requirements, as determined
9 by the agency; and

10 “(iv) any other applicable require-
11 ments, including standards and guidelines
12 for national security systems issued in ac-
13 cordance with law and as directed by the
14 President;

15 “(3) subordinate plans for providing adequate
16 information security for networks, facilities, and sys-
17 tems or groups of information systems, as appro-
18 priate;

19 “(4) security awareness training to inform per-
20 sonnel, including contractors and other users of infor-
21 mation systems that support the operations and assets
22 of the agency, of—

23 “(A) information security risks associated
24 with their activities; and

1 “(B) their responsibilities in complying
2 with agency policies and procedures designed to
3 reduce these risks;

4 “(5) periodic testing and evaluation of the effec-
5 tiveness of information security policies, procedures,
6 and practices, to be performed with a frequency de-
7 pending on risk, but no less than annually, of which
8 such testing—

9 “(A) shall include testing of management,
10 operational, and technical controls of every in-
11 formation system identified in the inventory re-
12 quired under section 3505(c); and

13 “(B) may include testing relied on in a
14 evaluation under section 3535;

15 “(6) a process for planning, implementing, eval-
16 uating, and documenting remedial action to address
17 any deficiencies in the information security policies,
18 procedures, and practices of the agency;

19 “(7) procedures for detecting, reporting, and re-
20 sponding to security incidents, including—

21 “(A) mitigating risks associated with such
22 incidents before substantial damage is done; and

23 “(B) notifying and consulting with, as
24 appropriate—

1 “(i) law enforcement agencies and rel-
2 evant Offices of Inspector General;

3 “(ii) an office designated by the Presi-
4 dent for any incident involving a national
5 security system; and

6 “(iii) any other agency or office, in ac-
7 cordance with law or as directed by the
8 President; and

9 “(8) plans and procedures to ensure continuity
10 of operations for information systems that support the
11 operations and assets of the agency.

12 “(c) Each agency shall—

13 “(1) report annually to the Director, the Com-
14 mittees on Government Reform and Science of the
15 House of Representatives, the Committees on Govern-
16 mental Affairs and Commerce, Science, and Trans-
17 portation of the Senate, the appropriate authorization
18 and appropriations committees of Congress, and the
19 Comptroller General on the adequacy and effectiveness
20 of information security policies, procedures, and prac-
21 tices, and compliance with the requirements of this
22 subchapter, including compliance with each require-
23 ment of subsection (b);

1 “(2) address the adequacy and effectiveness of in-
2 formation security policies, procedures, and practices
3 in plans and reports relating to—

4 “(A) annual agency budgets;

5 “(B) information resources management
6 under subchapter 1 of this chapter;

7 “(C) information technology management
8 under subtitle III of title 40;

9 “(D) program performance under sections
10 1105 and 1115 through 1119 of title 31, and sec-
11 tions 2801 and 2805 of title 39;

12 “(E) financial management under chapter
13 9 of title 31, and the Chief Financial Officers
14 Act of 1990 (31 U.S.C. 501 note; Public Law
15 101–576) (and the amendments made by that
16 Act);

17 “(F) financial management systems under
18 the Federal Financial Management Improvement
19 Act (31 U.S.C. 3512 note); and

20 “(G) internal accounting and administra-
21 tive controls under section 3512 of title 31,
22 United States Code, (known as the ‘Federal
23 Managers Financial Integrity Act’); and

1 “(3) report any significant deficiency in a pol-
2 icy, procedure, or practice identified under paragraph
3 (1) or (2)—

4 “(A) as a material weakness in reporting
5 under section 3512 of title 31; and

6 “(B) if relating to financial management
7 systems, as an instance of a lack of substantial
8 compliance under the Federal Financial Man-
9 agement Improvement Act (31 U.S.C. 3512
10 note).

11 “(d)(1) In addition to the requirements of subsection
12 (c), each agency, in consultation with the Director, shall
13 include as part of the performance plan required under sec-
14 tion 1115 of title 31 a description of—

15 “(A) the time periods, and

16 “(B) the resources, including budget, staffing,
17 and training,

18 that are necessary to implement the program required
19 under subsection (b).

20 “(2) The description under paragraph (1) shall be
21 based on the risk assessments required under subsection
22 (b)(2)(1).

23 “(e) Each agency shall provide the public with timely
24 notice and opportunities for comment on proposed informa-
25 tion security policies and procedures to the extent that such

1 *policies and procedures affect communication with the pub-*
 2 *lic.*

3 **“§ 3535. Annual independent evaluation**

4 “(a)(1) *Each year each agency shall have performed*
 5 *an independent evaluation of the information security pro-*
 6 *gram and practices of that agency to determine the effective-*
 7 *ness of such program and practices.*

8 “(2) *Each evaluation by an agency under this section*
 9 *shall include—*

10 “(A) *testing of the effectiveness of information se-*
 11 *curity policies, procedures, and practices of a rep-*
 12 *resentative subset of the agency’s information systems;*

13 “(B) *an assessment (made on the basis of the re-*
 14 *sults of the testing) of compliance with—*

15 “(i) *the requirements of this subchapter;*
 16 *and*

17 “(ii) *related information security policies,*
 18 *procedures, standards, and guidelines; and*

19 “(C) *separate presentations, as appropriate, re-*
 20 *garding information security relating to national se-*
 21 *curity systems.*

22 “(b) *Subject to subsection (c)—*

23 “(1) *for each agency with an Inspector General*
 24 *appointed under the Inspector General Act of 1978,*
 25 *the annual evaluation required by this section shall be*

1 *performed by the Inspector General or by an inde-*
2 *pendent external auditor, as determined by the In-*
3 *pector General of the agency; and*

4 *“(2) for each agency to which paragraph (1) does*
5 *not apply, the head of the agency shall engage an*
6 *independent external auditor to perform the evalua-*
7 *tion.*

8 *“(c) For each agency operating or exercising control*
9 *of a national security system, that portion of the evaluation*
10 *required by this section directly relating to a national secu-*
11 *rity system shall be performed—*

12 *“(1) only by an entity designated by the agency*
13 *head; and*

14 *“(2) in such a manner as to ensure appropriate*
15 *protection for information associated with any infor-*
16 *mation security vulnerability in such system com-*
17 *mensurate with the risk and in accordance with all*
18 *applicable laws.*

19 *“(d) The evaluation required by this section—*

20 *“(1) shall be performed in accordance with gen-*
21 *erally accepted government auditing standards; and*

22 *“(2) may be based in whole or in part on an*
23 *audit, evaluation, or report relating to programs or*
24 *practices of the applicable agency.*

1 “(e) Each year, not later than such date established
2 by the Director, the head of each agency shall submit to
3 the Director the results of the evaluation required under this
4 section.

5 “(f) Agencies and evaluators shall take appropriate
6 steps to ensure the protection of information which, if dis-
7 closed, may adversely affect information security. Such pro-
8 tections shall be commensurate with the risk and comply
9 with all applicable laws and regulations.

10 “(g)(1) The Director shall summarize the results of the
11 evaluations conducted under this section in the report to
12 Congress required under section 3533(a)(8).

13 “(2) The Director’s report to Congress under this sub-
14 section shall summarize information regarding information
15 security relating to national security systems in such a
16 manner as to ensure appropriate protection for information
17 associated with any information security vulnerability in
18 such system commensurate with the risk and in accordance
19 with all applicable laws.

20 “(3) Evaluations and any other descriptions of infor-
21 mation systems under the authority and control of the Di-
22 rector of Central Intelligence or of National Foreign Intel-
23 ligence Programs systems under the authority and control
24 of the Secretary of Defense shall be made available to Con-

gress only through the appropriate oversight committees of Congress, in accordance with applicable laws.

“(h) The Comptroller General shall periodically evaluate and report to Congress on—

“(1) the adequacy and effectiveness of agency information security policies and practices; and

“(2) implementation of the requirements of this subchapter.

§ 3536. National security systems

“The head of each agency operating or exercising control of a national security system shall be responsible for ensuring that the agency—

“(1) provides information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of the information contained in such system;

“(2) implements information security policies and practices as required by standards and guidelines for national security systems, issued in accordance with law and as directed by the President; and

“(3) complies with the requirements of this subchapter.

1 **“§ 3537. Authorization of appropriations**

2 *“There are authorized to be appropriated to carry out*
 3 *the provisions of this subchapter such sums as may be nec-*
 4 *essary for each of fiscal years 2003 through 2007.*

5 **“§ 3538. Effect on existing law**

6 *“Nothing in this subchapter, section 11331 of title 40,*
 7 *or section 20 of the National Standards and Technology Act*
 8 *(15 U.S.C. 278g–3) may be construed as affecting the au-*
 9 *thority of the President, the Office of Management and*
 10 *Budget or the Director thereof, the National Institute of*
 11 *Standards and Technology, or the head of any agency, with*
 12 *respect to the authorized use or disclosure of information,*
 13 *including with regard to the protection of personal privacy*
 14 *under section 552a of title 5, the disclosure of information*
 15 *under section 552 of title 5, the management and disposi-*
 16 *tion of records under chapters 29, 31, or 33 of title 44, the*
 17 *management of information resources under subchapter I*
 18 *of chapter 35 of this title, or the disclosure of information*
 19 *to Congress or the Comptroller General of the United*
 20 *States.”.*

21 (2) *CLERICAL AMENDMENT.—The items in the*
 22 *table of sections at the beginning of such chapter 35*
 23 *under the heading “SUBCHAPTER II” are amended*
 24 *to read as follows:*

“3531. Purposes.

“3532. Definitions.

“3533. Authority and functions of the Director.

“3534. *Federal agency responsibilities.*

“3535. *Annual independent evaluation.*

“3536. *National security systems.*

“3537. *Authorization of appropriations.*

“3538. *Effect on existing law.*”.

1 (c) *INFORMATION SECURITY RESPONSIBILITIES OF*
2 *CERTAIN AGENCIES.—*

3 (1) *NATIONAL SECURITY RESPONSIBILITIES.—*

4 (A) *Nothing in this Act (including any amendment*
5 *made by this Act) shall supersede any authority of the*
6 *Secretary of Defense, the Director of Central Intel-*
7 *ligence, or other agency head, as authorized by law*
8 *and as directed by the President, with regard to the*
9 *operation, control, or management of national secu-*
10 *urity systems, as defined by section 3532(3) of title 44,*
11 *United States Code.*

12 (B) *Section 2224 of title 10, United States Code,*
13 *is amended—*

14 (i) *in subsection 2224(b), by striking “(b)*
15 *OBJECTIVES AND MINIMUM REQUIREMENTS.—*
16 *(1)” and inserting “(b) OBJECTIVES OF THE*
17 *PROGRAM.—”;*

18 (ii) *in subsection 2224(b), by striking “(2)*
19 *the program shall at a minimum meet the re-*
20 *quirements of section 3534 and 3535 of title 44,*
21 *United States Code.”; and*

1 (iii) in subsection 2224(c), by inserting “,
2 including through compliance with subtitle II of
3 chapter 35 of title 44” after “infrastructure”.

4 (2) *ATOMIC ENERGY ACT OF 1954*.—Nothing in
5 this Act shall supersede any requirement made by or
6 under the Atomic Energy Act of 1954 (42 U.S.C.
7 2011 et seq.). *Restricted Data or Formerly Restricted*
8 *Data shall be handled, protected, classified, down-*
9 *graded, and declassified in conformity with the Atom-*
10 *ic Energy Act of 1954 (42 U.S.C. 2011 et seq.).*

11 **SEC. 1002. MANAGEMENT OF INFORMATION TECHNOLOGY.**

12 (a) *IN GENERAL*.—Section 11331 of title 40, United
13 *States Code, is amended to read as follows:*

14 **“§ 11331. Responsibilities for Federal information sys-**
15 ***tems standards***

16 “(a) *DEFINITION*.—In this section, the term ‘informa-

17 *tion security’ has the meaning given that term in section*
18 *3532(b)(1) of title 44.*

19 “(b) *REQUIREMENT TO PRESCRIBE STANDARDS*.—

20 “(1) *IN GENERAL*.—

21 “(A) *REQUIREMENT*.—Except as provided
22 under paragraph (2), the Director of the Office
23 of Management and Budget shall, on the basis of
24 proposed standards developed by the National
25 Institute of Standards and Technology pursuant

to paragraphs (2) and (3) of section 20(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(a)) and in consultation with the Secretary of Homeland Security, promulgate information security standards pertaining to Federal information systems.

“(B) *REQUIRED STANDARDS.*—Standards promulgated under subparagraph (A) shall include—

“(i) standards that provide minimum information security requirements as determined under section 20(b) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(b)); and

“(ii) such standards that are otherwise necessary to improve the efficiency of operation or security of Federal information systems.

“(C) *REQUIRED STANDARDS BINDING.*—Information security standards described under subparagraph (B) shall be compulsory and binding.

“(2) *STANDARDS AND GUIDELINES FOR NATIONAL SECURITY SYSTEMS.*—Standards and guidelines for national security systems, as defined under

1 *section 3532(3) of title 44, shall be developed, promul-*
2 *gated, enforced, and overseen as otherwise authorized*
3 *by law and as directed by the President.*

4 “(c) *APPLICATION OF MORE STRINGENT STAND-*
5 *ARDS.—The head of an agency may employ standards for*
6 *the cost-effective information security for all operations and*
7 *assets within or under the supervision of that agency that*
8 *are more stringent than the standards promulgated by the*
9 *Director under this section, if such standards—*

10 “(1) *contain, at a minimum, the provisions of*
11 *those applicable standards made compulsory and*
12 *binding by the Director; and*

13 “(2) *are otherwise consistent with policies and*
14 *guidelines issued under section 3533 of title 44.*

15 “(d) *REQUIREMENTS REGARDING DECISIONS BY DI-*
16 *RECTOR.—*

17 “(1) *DEADLINE.—The decision regarding the*
18 *promulgation of any standard by the Director under*
19 *subsection (b) shall occur not later than 6 months*
20 *after the submission of the proposed standard to the*
21 *Director by the National Institute of Standards and*
22 *Technology, as provided under section 20 of the Na-*
23 *tional Institute of Standards and Technology Act (15*
24 *U.S.C. 278g–3).*

1 “(2) *NOTICE AND COMMENT.*—A decision by the
 2 *Director to significantly modify, or not promulgate,*
 3 *a proposed standard submitted to the Director by the*
 4 *National Institute of Standards and Technology, as*
 5 *provided under section 20 of the National Institute of*
 6 *Standards and Technology Act (15 U.S.C. 278g–3),*
 7 *shall be made after the public is given an opportunity*
 8 *to comment on the Director’s proposed decision.”.*

9 (b) *CLERICAL AMENDMENT.*—*The table of sections at*
 10 *the beginning of chapter 113 of title 40, United States Code,*
 11 *is amended by striking the item relating to section 11331*
 12 *and inserting the following:*

 “11331. *Responsibilities for Federal information systems standards.*”.

13 **SEC. 1003. NATIONAL INSTITUTE OF STANDARDS AND**
 14 **TECHNOLOGY.**

15 *Section 20 of the National Institute of Standards and*
 16 *Technology Act (15 U.S.C. 278g–3), is amended by striking*
 17 *the text and inserting the following:*

18 “(a) *The Institute shall—*

19 “(1) *have the mission of developing standards,*
 20 *guidelines, and associated methods and techniques for*
 21 *information systems;*

22 “(2) *develop standards and guidelines, including*
 23 *minimum requirements, for information systems used*
 24 *or operated by an agency or by a contractor of an*
 25 *agency or other organization on behalf of an agency,*

1 *other than national security systems (as defined in*
2 *section 3532(b)(2) of title 44, United States Code);*

3 *“(3) develop standards and guidelines, including*
4 *minimum requirements, for providing adequate infor-*
5 *mation security for all agency operations and assets,*
6 *but such standards and guidelines shall not apply to*
7 *national security systems; and*

8 *“(4) carry out the responsibilities described in*
9 *paragraph (3) through the Computer Security Divi-*
10 *sion.*

11 *“(b) The standards and guidelines required by sub-*
12 *section (a) shall include, at a minimum—*

13 *“(1)(A) standards to be used by all agencies to*
14 *categorize all information and information systems*
15 *collected or maintained by or on behalf of each agency*
16 *based on the objectives of providing appropriate levels*
17 *of information security according to a range of risk*
18 *levels;*

19 *“(B) guidelines recommending the types of infor-*
20 *mation and information systems to be included in*
21 *each such category; and*

22 *“(C) minimum information security require-*
23 *ments for information and information systems in*
24 *each such category;*

1 “(2) a definition of and guidelines concerning
2 detection and handling of information security inci-
3 dents; and

4 “(3) guidelines developed in coordination with
5 the National Security Agency for identifying an in-
6 formation system as a national security system con-
7 sistent with applicable requirements for national se-
8 curity systems, issued in accordance with law and as
9 directed by the President.

10 “(c) In developing standards and guidelines required
11 by subsections (a) and (b), the Institute shall—

12 “(1) consult with other agencies and offices (in-
13 cluding, but not limited to, the Director of the Office
14 of Management and Budget, the Departments of De-
15 fense and Energy, the National Security Agency, the
16 General Accounting Office, and the Secretary of
17 Homeland Security) to assure—

18 “(A) use of appropriate information secu-
19 rity policies, procedures, and techniques, in
20 order to improve information security and avoid
21 unnecessary and costly duplication of effort; and

22 “(B) that such standards and guidelines are
23 complementary with standards and guidelines
24 employed for the protection of national security

1 *systems and information contained in such sys-*
2 *tems;*

3 “(2) *provide the public with an opportunity to*
4 *comment on proposed standards and guidelines;*

5 “(3) *submit to the Director of the Office of Man-*
6 *agement and Budget for promulgation under section*
7 *11331 of title 40, United States Code—*

8 “(A) *standards, as required under sub-*
9 *section (b)(1)(A), no later than 12 months after*
10 *the date of the enactment of this section; and*

11 “(B) *minimum information security re-*
12 *quirements for each category, as required under*
13 *subsection (b)(1)(C), no later than 36 months*
14 *after the date of the enactment of this section;*

15 “(4) *issue guidelines as required under sub-*
16 *section (b)(1)(B), no later than 18 months after the*
17 *date of the enactment of this Act;*

18 “(5) *ensure that such standards and guidelines*
19 *do not require specific technological solutions or prod-*
20 *ucts, including any specific hardware or software se-*
21 *curity solutions;*

22 “(6) *ensure that such standards and guidelines*
23 *provide for sufficient flexibility to permit alternative*
24 *solutions to provide equivalent levels of protection for*
25 *identified information security risks; and*

1 “(7) use flexible, performance-based standards
2 and guidelines that, to the greatest extent possible,
3 permit the use of off-the-shelf commercially developed
4 information security products.

5 “(d) The Institute shall—

6 “(1) submit standards developed pursuant to
7 subsection (a), along with recommendations as to the
8 extent to which these should be made compulsory and
9 binding, to the Director of the Office of Management
10 and Budget for promulgation under section 11331 of
11 title 40, United States Code;

12 “(2) provide assistance to agencies regarding—

13 “(A) compliance with the standards and
14 guidelines developed under subsection (a);

15 “(B) detecting and handling information
16 security incidents; and

17 “(C) information security policies, proce-
18 dures, and practices;

19 “(3) conduct research, as needed, to determine
20 the nature and extent of information security
21 vulnerabilities and techniques for providing cost-effec-
22 tive information security;

23 “(4) develop and periodically revise performance
24 indicators and measures for agency information secu-
25 rity policies and practices;

1 “(5) evaluate private sector information security
2 policies and practices and commercially available in-
3 formation technologies to assess potential application
4 by agencies to strengthen information security;

5 “(6) evaluate security policies and practices de-
6 veloped for national security systems to assess poten-
7 tial application by agencies to strengthen information
8 security;

9 “(7) periodically assess the effectiveness of stand-
10 ards and guidelines developed under this section and
11 undertake revisions as appropriate;

12 “(8) solicit and consider the recommendations of
13 the Information Security and Privacy Advisory
14 Board, established by section 21, regarding standards
15 and guidelines developed under subsection (a) and
16 submit such recommendations to the Director of the
17 Office of Management and Budget with such stand-
18 ards submitted to the Director; and

19 “(9) prepare an annual public report on activi-
20 ties undertaken in the previous year, and planned for
21 the coming year, to carry out responsibilities under
22 this section.

23 “(e) As used in this section—

1 “(1) the term ‘agency’ has the same meaning as
2 provided in section 3502(1) of title 44, United States
3 Code;

4 “(2) the term ‘information security’ has the same
5 meaning as provided in section 3532(1) of such title;

6 “(3) the term ‘information system’ has the same
7 meaning as provided in section 3502(8) of such title;

8 “(4) the term ‘information technology’ has the
9 same meaning as provided in section 11101 of title
10 40, United States Code; and

11 “(5) the term ‘national security system’ has the
12 same meaning as provided in section 3532(b)(2) of
13 such title.”.

14 **SEC. 1004. INFORMATION SECURITY AND PRIVACY ADVI-**
15 **SORY BOARD.**

16 Section 21 of the National Institute of Standards and
17 Technology Act (15 U.S.C. 278g-4), is amended—

18 (1) in subsection (a), by striking “Computer
19 System Security and Privacy Advisory Board” and
20 inserting “Information Security and Privacy Advi-
21 sory Board”;

22 (2) in subsection (a)(1), by striking “computer
23 or telecommunications” and inserting “information
24 technology”;

25 (3) in subsection (a)(2)—

1 (A) by striking “computer or telecommuni-
2 cations technology” and inserting “information
3 technology”; and

4 (B) by striking “computer or telecommuni-
5 cations equipment” and inserting “information
6 technology”;

7 (4) in subsection (a)(3)—

8 (A) by striking “computer systems” and in-
9 serting “information system”; and

10 (B) by striking “computer systems security”
11 and inserting “information security”;

12 (5) in subsection (b)(1) by striking “computer
13 systems security” and inserting “information secu-
14 rity”;

15 (6) in subsection (b) by striking paragraph (2)
16 and inserting the following:

17 “(2) to advise the Institute and the Director of
18 the Office of Management and Budget on information
19 security and privacy issues pertaining to Federal
20 Government information systems, including through
21 review of proposed standards and guidelines developed
22 under section 20; and”;

23 (7) in subsection (b)(3) by inserting “annually”
24 after “report”;

1 (8) *by inserting after subsection (e) the following*
 2 *new subsection:*

3 “(f) *The Board shall hold meetings at such locations*
 4 *and at such time and place as determined by a majority*
 5 *of the Board.*”;

6 (9) *by redesignating subsections (f) and (g) as*
 7 *subsections (g) and (h), respectively; and*

8 (10) *by striking subsection (h), as redesignated*
 9 *by paragraph (9), and inserting the following:*
 10 “(h) *As used in this section, the terms “information*
 11 *system” and “information technology” have the meanings*
 12 *given in section 20.*”.

13 **SEC. 1005. TECHNICAL AND CONFORMING AMENDMENTS.**

14 (a) *FEDERAL COMPUTER SYSTEM SECURITY TRAINING*
 15 *AND PLAN.—*

16 (1) *REPEAL.—Section 11332 of title 40, United*
 17 *States Code, is repealed.*

18 (2) *CLERICAL AMENDMENT.—The table of sec-*
 19 *tions at the beginning of chapter 113 of title 40,*
 20 *United States Code, as amended by striking the item*
 21 *relating to section 11332.*

22 (b) *FLOYD D. SPENCE NATIONAL DEFENSE AUTHOR-*
 23 *IZATION ACT FOR FISCAL YEAR 2001.—The Floyd D.*
 24 *Spence National Defense Authorization Act for Fiscal Year*

1 *2001 (Public Law 106–398) is amended by striking subtitle*
 2 *G of title X (44 U.S.C. 3531 note).*

3 (c) *PAPERWORK REDUCTION ACT.—(1) Section*
 4 *3504(g) of title 44, United States Code, is amended—*

5 (A) *by adding “and” at the end of paragraph*
 6 *(1);*

7 (B) *in paragraph (2)—*

8 (i) *by striking “sections 11331 and*
 9 *11332(b) and (c) of title 40” and inserting “sec-*
 10 *tion 11331 of title 40 and subchapter II of this*
 11 *title”; and*

12 (ii) *by striking the semicolon and inserting*
 13 *a period; and*

14 (C) *by striking paragraph (3).*

15 (2) *Section 3505 of such title is amended by adding*
 16 *at the end the following:*

17 “(c) *INVENTORY OF INFORMATION SYSTEMS.—(1) The*
 18 *head of each agency shall develop and maintain an inven-*
 19 *tory of the information systems (including national secu-*
 20 *rity systems) operated by or under the control of such agen-*
 21 *cy;*

22 “(2) *The identification of information systems in an*
 23 *inventory under this subsection shall include an identifica-*
 24 *tion of the interfaces between each such system and all other*

1 *systems or networks, including those not operated by or*
2 *under the control of the agency;*

3 “(3) *Such inventory shall be—*

4 “(A) *updated at least annually;*

5 “(B) *made available to the Comptroller General;*

6 *and*

7 “(C) *used to support information resources man-*
8 *agement, including—*

9 “(i) *preparation and maintenance of the in-*
10 *ventory of information resources under section*
11 *3506(b)(4);*

12 “(ii) *information technology planning,*
13 *budgeting, acquisition, and management under*
14 *section 3506(h), subtitle III of title 40, and re-*
15 *lated laws and guidance;*

16 “(iii) *monitoring, testing, and evaluation of*
17 *information security controls under subchapter*
18 *II;*

19 “(iv) *preparation of the index of major in-*
20 *formation systems required under section 552(g)*
21 *of title 5, United States Code; and*

22 “(v) *preparation of information system in-*
23 *ventories required for records management under*
24 *chapters 21, 29, 31, and 33.*

1 “(4) *The Director shall issue guidance for and oversee*
 2 *the implementation of the requirements of this subsection.*”.

3 (3) *Section 3506(g) of such title is amended—*

4 (A) *by adding “and” at the end of paragraph*
 5 *(1);*

6 (B) *in paragraph (2)—*

7 (i) *by striking “section 11332 of title 40”*
 8 *and inserting “subchapter II of this chapter”;*
 9 *and*

10 (ii) *by striking “; and” and inserting a pe-*
 11 *riod; and*

12 (C) *by striking paragraph (3).*

13 **SEC. 1006. CONSTRUCTION.**

14 *Nothing in this Act, or the amendments made by this*
 15 *Act, affects the authority of the National Institute of Stand-*
 16 *ards and Technology or the Department of Commerce relat-*
 17 *ing to the development and promulgation of standards or*
 18 *guidelines under paragraphs (1) and (2) of section 20(a)*
 19 *of the National Institute of Standards and Technology Act*
 20 *(15 U.S.C. 278g–3(a)).*

1 ***TITLE XI—DEPARTMENT OF***
 2 ***JUSTICE DIVISIONS***
 3 ***Subtitle A—Executive Office for***
 4 ***Immigration Review***

5 ***SEC. 1101. LEGAL STATUS OF EOIR.***

6 (a) *EXISTENCE OF EOIR.*—*There is in the Depart-*
 7 *ment of Justice the Executive Office for Immigration Re-*
 8 *view, which shall be subject to the direction and regulation*
 9 *of the Attorney General under section 103(g) of the Immi-*
 10 *gration and Nationality Act, as added by section 1102.*

11 ***SEC. 1102. AUTHORITIES OF THE ATTORNEY GENERAL.***

12 *Section 103 of the Immigration and Nationality Act*
 13 *(8 U.S.C. 1103) as amended by this Act, is further amended*
 14 *by—*

15 (1) *amending the heading to read as follows:*

16 “*POWERS AND DUTIES OF THE SECRETARY, THE UNDER*
 17 *SECRETARY, AND THE ATTORNEY GENERAL*”;

18 (2) *in subsection (a)—*

19 (A) *by inserting “Attorney General,” after*
 20 *“President,”; and*

21 (B) *by redesignating paragraphs (8), (9),*
 22 *(8) (as added by section 372 of Public Law 104–*
 23 *208), and (9) (as added by section 372 of Public*
 24 *Law 104–208) as paragraphs (8), (9), (10), and*
 25 *(11), respectively; and*

1 (3) *by adding at the end the following new sub-*
2 *section:*

3 “(g) *ATTORNEY GENERAL.*—

4 “(1) *IN GENERAL.*—*The Attorney General shall*
5 *have such authorities and functions under this Act*
6 *and all other laws relating to the immigration and*
7 *naturalization of aliens as were exercised by the Exec-*
8 *utive Office for Immigration Review, or by the Attor-*
9 *ney General with respect to the Executive Office for*
10 *Immigration Review, on the day before the effective*
11 *date of the Immigration Reform, Accountability and*
12 *Security Enhancement Act of 2002.*

13 “(2) *POWERS.*—*The Attorney General shall es-*
14 *tablish such regulations, prescribe such forms of bond,*
15 *reports, entries, and other papers, issue such instruc-*
16 *tions, review such administrative determinations in*
17 *immigration proceedings, delegate such authority,*
18 *and perform such other acts as the Attorney General*
19 *determines to be necessary for carrying out this sec-*
20 *tion.”.*

21 **SEC. 1103. STATUTORY CONSTRUCTION.**

22 *Nothing in this Act, any amendment made by this Act,*
23 *or in section 103 of the Immigration and Nationality Act,*
24 *as amended by section 1102, shall be construed to limit ju-*
25 *dicial deference to regulations, adjudications, interpreta-*

1 tions, orders, decisions, judgments, or any other actions of
 2 the Secretary of Homeland Security or the Attorney Gen-
 3 eral.

4 ***Subtitle B—Transfer of the Bureau***
 5 ***of Alcohol, Tobacco and Fire-***
 6 ***arms to the Department of Jus-***
 7 ***tice***

8 ***SEC. 1111. BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND***
 9 ***EXPLOSIVES.***

10 (a) *ESTABLISHMENT.*—

11 (1) *IN GENERAL.*—*There is established within*
 12 *the Department of Justice under the general authority*
 13 *of the Attorney General the Bureau of Alcohol, To-*
 14 *bacco, Firearms, and Explosives (in this section re-*
 15 *ferred to as the “Bureau”).*

16 (2) *DIRECTOR.*—*There shall be at the head of the*
 17 *Bureau a Director, Bureau of Alcohol, Tobacco, Fire-*
 18 *arms, and Explosives (in this subtitle referred to as*
 19 *the “Director”). The Director shall be appointed by*
 20 *the Attorney General and shall perform such func-*
 21 *tions as the Attorney General shall direct. The Direc-*
 22 *tor shall receive compensation at the rate prescribed*
 23 *by law under section 5314 of title V, United States*
 24 *Code, for positions at level III of the Executive Sched-*
 25 *ule.*

1 (3) *COORDINATION.*—*The Attorney General, act-*
2 *ing through the Director and such other officials of*
3 *the Department of Justice as the Attorney General*
4 *may designate, shall provide for the coordination of*
5 *all firearms, explosives, tobacco enforcement, and*
6 *arson enforcement functions vested in the Attorney*
7 *General so as to assure maximum cooperation be-*
8 *tween and among any officer, employee, or agency of*
9 *the Department of Justice involved in the perform-*
10 *ance of these and related functions.*

11 (4) *PERFORMANCE OF TRANSFERRED FUNC-*
12 *TIONS.*—*The Attorney General may make such provi-*
13 *sions as the Attorney General determines appropriate*
14 *to authorize the performance by any officer, employee,*
15 *or agency of the Department of Justice of any func-*
16 *tion transferred to the Attorney General under this*
17 *section.*

18 (b) *RESPONSIBILITIES.*—*Subject to the direction of the*
19 *Attorney General, the Bureau shall be responsible for*
20 *investigating—*

21 (1) *criminal and regulatory violations of the*
22 *Federal firearms, explosives, arson, alcohol, and to-*
23 *bacco smuggling laws;*

24 (2) *the functions transferred by subsection (c);*
25 *and*

1 (3) *any other function related to the investiga-*
 2 *tion of violent crime or domestic terrorism that is del-*
 3 *egated to the Bureau by the Attorney General.*

4 (c) *TRANSFER OF AUTHORITIES, FUNCTIONS, PER-*
 5 *SONNEL, AND ASSETS TO THE DEPARTMENT OF JUSTICE.—*

6 (1) *IN GENERAL.—Subject to paragraph (2), but*
 7 *notwithstanding any other provision of law, there are*
 8 *transferred to the Department of Justice the authori-*
 9 *ties, functions, personnel, and assets of the Bureau of*
 10 *Alcohol, Tobacco and Firearms, which shall be main-*
 11 *tained as a distinct entity within the Department of*
 12 *Justice, including the related functions of the Sec-*
 13 *retary of the Treasury.*

14 (2) *ADMINISTRATION AND REVENUE COLLECTION*
 15 *FUNCTIONS.—There shall be retained within the De-*
 16 *partment of the Treasury the authorities, functions,*
 17 *personnel, and assets of the Bureau of Alcohol, To-*
 18 *bacco and Firearms relating to the administration*
 19 *and enforcement of chapters 51 and 52 of the Internal*
 20 *Revenue Code of 1986, sections 4181 and 4182 of the*
 21 *Internal Revenue Code of 1986, and title 27, United*
 22 *States Code.*

23 (3) *BUILDING PROSPECTUS.—Prospectus PDC-*
 24 *98W10, giving the General Services Administration*
 25 *the authority for site acquisition, design, and con-*

1 *struction of a new headquarters building for the Bu-*
 2 *reau of Alcohol, Tobacco and Firearms, is transferred,*
 3 *and deemed to apply, to the Bureau of Alcohol, To-*
 4 *bacco, Firearms, and Explosives established in the*
 5 *Department of Justice under subsection (a).*

6 *(d) TAX AND TRADE BUREAU.—*

7 *(1) ESTABLISHMENT.—There is established with-*
 8 *in the Department of the Treasury the Tax and Trade*
 9 *Bureau.*

10 *(2) ADMINISTRATOR.—The Tax and Trade Bu-*
 11 *reau shall be headed by an Administrator, who shall*
 12 *perform such duties as assigned by the Under Sec-*
 13 *retary for Enforcement of the Department of the*
 14 *Treasury. The Administrator shall occupy a career-*
 15 *reserved position within the Senior Executive Service.*

16 *(3) RESPONSIBILITIES.—The authorities, func-*
 17 *tions, personnel, and assets of the Bureau of Alcohol,*
 18 *Tobacco and Firearms that are not transferred to the*
 19 *Department of Justice under this section shall be re-*
 20 *tained and administered by the Tax and Trade Bu-*
 21 *reau.*

22 **SEC. 1112. TECHNICAL AND CONFORMING AMENDMENTS.**

23 *(a) The Inspector General Act of 1978 (5 U.S.C. App.)*
 24 *is amended—*

1 (1) in section 8D(b)(1) by striking “Bureau of
2 Alcohol, Tobacco and Firearms” and inserting “Tax
3 and Trade Bureau”; and

4 (2) in section 9(a)(1)(L)(i), by striking “Bureau
5 of Alcohol, Tobacco, and Firearms” and inserting
6 “Tax and Trade Bureau”.

7 (b) Section 1109(c)(2)(A)(i) of the Consolidated Omni-
8 bus Budget Reconciliation Act of 1985 (7 U.S.C. 1445-
9 3(c)(2)(A)(i)) is amended by striking “(on ATF Form
10 3068) by manufacturers of tobacco products to the Bureau
11 of Alcohol, Tobacco and Firearms” and inserting “by man-
12 ufacturers of tobacco products to the Tax and Trade Bu-
13 reau”.

14 (c) Section 2(4)(J) of the Enhanced Border Security
15 and Visa Entry Reform Act of 2002 (Public Law 107-173;
16 8 U.S.C.A. 1701(4)(J)) is amended by striking “Bureau of
17 Alcohol, Tobacco, and Firearms” and inserting “Bureau of
18 Alcohol, Tobacco, Firearms, and Explosives, Department of
19 Justice”.

20 (d) Section 3(1)(E) of the Firefighters’ Safety Study
21 Act (15 U.S.C. 2223b(1)(E)) is amended by striking “the
22 Bureau of Alcohol, Tobacco, and Firearms,” and inserting
23 “the Bureau of Alcohol, Tobacco, Firearms, and Explosives,
24 Department of Justice,”.

1 (e) Chapter 40 of title 18, United States Code, is
2 amended—

3 (1) by striking section 841(k) and inserting the
4 following:

5 “(k) ‘Attorney General’ means the Attorney General of
6 the United States.”;

7 (2) in section 846(a), by striking “the Attorney Gen-
8 eral and the Federal Bureau of Investigation, together with
9 the Secretary” and inserting “the Federal Bureau of Inves-
10 tigation, together with the Bureau of Alcohol, Tobacco, Fire-
11 arms, and Explosives”; and

12 (3) by striking “Secretary” each place it appears
13 and inserting “Attorney General”.

14 (f) Chapter 44 of title 18, United States Code, is
15 amended—

16 (1) in section 921(a)(4)(B), by striking “Sec-
17 retary” and inserting “Attorney General”;

18 (2) in section 921(a)(4), by striking “Secretary
19 of the Treasury” and inserting “Attorney General”;

20 (3) in section 921(a), by striking paragraph (18)
21 and inserting the following:

22 “(18) The term ‘Attorney General’ means the At-
23 torney General of the United States”;

1 (4) in section 922(p)(5)(A), by striking “after
2 consultation with the Secretary” and inserting “after
3 consultation with the Attorney General”;

4 (5) in section 923(l), by striking “Secretary of
5 the Treasury” and inserting “Attorney General”; and

6 (6) by striking “Secretary” each place it ap-
7 pears, except before “of the Army” in section
8 921(a)(4) and before “of Defense” in section
9 922(p)(5)(A), and inserting the term “Attorney Gen-
10 eral”.

11 (g) Section 1261(a) of title 18, United States Code, is
12 amended to read as follows:

13 “(a) The Attorney General—

14 “(1) shall enforce the provisions of this chapter;
15 and

16 “(2) has the authority to issue regulations to
17 carry out the provisions of this chapter.”.

18 (h) Section 1952(c) of title 18, United States Code, is
19 amended by striking “Secretary of the Treasury” and in-
20 serting “Attorney General”.

21 (i) Chapter 114 of title 18, United States Code, is
22 amended—

23 (1) by striking section 2341(5), and inserting the
24 following:

1 “(5) the term ‘Attorney General’ means the At-
 2 torney General of the United States”; and

3 (2) by striking “Secretary” each place it appears
 4 and inserting “Attorney General”.

5 (j) Section 6103(i)(8)(A)(i) of the Internal Revenue
 6 Code of 1986 (relating to confidentiality and disclosure of
 7 returns and return information) is amended by striking “or
 8 the Bureau of Alcohol, Tobacco and Firearms” and insert-
 9 ing “, the Bureau of Alcohol, Tobacco, Firearms, and Ex-
 10 plosives, Department of Justice, or the Tax and Trade Bu-
 11 reau, Department of the Treasury,”.

12 (k) Section 7801(a) of the Internal Revenue Code of
 13 1986 (relating to the authority of the Department of the
 14 Treasury) is amended—

15 (1) by striking “SECRETARY.—Except” and in-
 16 serting “SECRETARY.—

17 “(1) IN GENERAL.—Except”; and

18 (2) by adding at the end the following:

19 “(2) ADMINISTRATION AND ENFORCEMENT OF
 20 CERTAIN PROVISIONS BY ATTORNEY GENERAL.—

21 “(A) IN GENERAL.—The administration
 22 and enforcement of the following provisions of
 23 this title shall be performed by or under the su-
 24 pervision of the Attorney General; and the term
 25 ‘Secretary’ or ‘Secretary of the Treasury’ shall,

when applied to those provisions, mean the Attorney General; and the term ‘internal revenue officer’ shall, when applied to those provisions, mean any officer of the Bureau of Alcohol, Tobacco, Firearms, and Explosives so designated by the Attorney General:

“(i) Chapter 53.

“(ii) Chapters 61 through 80, to the extent such chapters relate to the enforcement and administration of the provisions referred to in clause (i).

“(B) *USE OF EXISTING RULINGS AND INTERPRETATIONS.*—Nothing in this Act alters or repeals the rulings and interpretations of the Bureau of Alcohol, Tobacco, and Firearms in effect on the effective date of the Homeland Security Act of 2002, which concern the provisions of this title referred to in subparagraph (A). The Attorney General shall consult with the Secretary to achieve uniformity and consistency in administering provisions under chapter 53 of title 26, United States Code.”.

(l) Section 2006(2) of title 28, United States Code, is amended by inserting “, the Director, Bureau of Alcohol,

1 *Tobacco, Firearms, and Explosives, Department of Justice,”*
 2 *after “the Secretary of the Treasury”.*

3 (m) *Section 713 of title 31, United States Code, is*
 4 *amended—*

5 (1) *by striking the section heading and inserting*
 6 *the following:*

7 **“§ 713. Audit of Internal Revenue Service, Tax and**
 8 **Trade Bureau, and Bureau of Alcohol, To-**
 9 **bacco, Firearms, and Explosives”;**

10 (2) *in subsection (a), by striking “Bureau of Al-*
 11 *cohol, Tobacco, and Firearms,” and inserting “Tax*
 12 *and Trade Bureau, Department of the Treasury, and*
 13 *the Bureau of Alcohol, Tobacco, Firearms, and Explo-*
 14 *sives, Department of Justice”; and*

15 (3) *in subsection (b)*

16 (A) *in paragraph (1)(B), by striking “or*
 17 *the Bureau” and inserting “or either Bureau”;*

18 (B) *in paragraph (2)—*

19 (i) *by striking “or the Bureau” and*
 20 *inserting “or either Bureau”; and*

21 (ii) *by striking “and the Director of*
 22 *the Bureau” and inserting “the Tax and*
 23 *Trade Bureau, Department of the Treasury,*
 24 *and the Director of the Bureau of Alcohol,*

1 *Tobacco, Firearms, and Explosives, Depart-*
 2 *ment of Justice*”; and

3 (C) in paragraph (3), by striking “or the
 4 Bureau” and inserting “or either Bureau”.

5 (n) Section 9703 of title 31, United States Code, is
 6 amended—

7 (1) in subsection (a)(2)(B)—

8 (A) in clause (iii)(III), by inserting “and”
 9 after the semicolon;

10 (B) in clause (iv), by striking “; and” and
 11 inserting a period; and

12 (C) by striking clause (v);

13 (2) by striking subsection (o);

14 (3) by redesignating existing subsection (p) as
 15 subsection (o); and

16 (4) in subsection (o)(1), as redesignated by para-
 17 graph (3), by striking “Bureau of Alcohol, Tobacco
 18 and Firearms” and inserting “Tax and Trade Bu-
 19 reau”.

20 (o) Section 609N(2)(L) of the Justice Assistance Act
 21 of 1984 (42 U.S.C. 10502(2)(L)) is amended by striking
 22 “Bureau of Alcohol, Tobacco, and Firearms” and inserting
 23 “Bureau of Alcohol, Tobacco, Firearms, and Explosives, De-
 24 partment of Justice”.

1 (p) *Section 32401(a) of the Violent Crime Control and*
2 *Law Enforcement Act of 1994 (42 U.S.C. 13921(a)) is*
3 *amended—*

4 (1) *by striking “Secretary of the Treasury” each*
5 *place it appears and inserting “Attorney General”;*
6 *and*

7 (2) *in subparagraph (3)(B), by striking “Bureau*
8 *of Alcohol, Tobacco and Firearms” and inserting*
9 *“Bureau of Alcohol, Tobacco, Firearms, and Explo-*
10 *sives, Department of Justice”.*

11 (q) *Section 80303 of title 49, United States Code, is*
12 *amended—*

13 (1) *by inserting “or, when the violation of this*
14 *chapter involves contraband described in paragraph*
15 *(2) or (5) of section 80302(a), the Attorney General”*
16 *after “section 80304 of this title.”; and*

17 (2) *by inserting “, the Attorney General,” after*
18 *“by the Secretary”.*

19 (r) *Section 80304 of title 49, United States Code, is*
20 *amended—*

21 (1) *in subsection (a), by striking “(b) and (c)”*
22 *and inserting “(b), (c), and (d)”;*

23 (2) *by redesignating subsection (d) as subsection*
24 *(e); and*

1 (3) by inserting after subsection (c), the fol-
 2 lowing:

3 “(d) *ATTORNEY GENERAL.*—*The Attorney General, or*
 4 *officers, employees, or agents of the Bureau of Alcohol, To-*
 5 *bacco, Firearms, and Explosives, Department of Justice*
 6 *designated by the Attorney General, shall carry out the laws*
 7 *referred to in section 80306(b) of this title to the extent that*
 8 *the violation of this chapter involves contraband described*
 9 *in section 80302 (a)(2) or (a)(5).”.*

10 (s) *Section 103 of the Gun Control Act of 1968 (Public*
 11 *Law 90–618; 82 Stat. 1226) is amended by striking “Sec-*
 12 *retary of the Treasury” and inserting “Attorney General”.*

13 **SEC. 1113. POWERS OF AGENTS OF THE BUREAU OF ALCO-**
 14 **HOL, TOBACCO, FIREARMS, AND EXPLOSIVES.**

15 Chapter 203 of title 18, United States Code, is amend-
 16 ed by adding the following:

17 **“§ 3051. Powers of Special Agents of Bureau of Alco-**
 18 **hol, Tobacco, Firearms, and Explosives.**

19 “(a) *Special agents of the Bureau of Alcohol, Tobacco,*
 20 *Firearms, and Explosives, as well as any other investigator*
 21 *or officer charged by the Attorney General with the duty*
 22 *of enforcing any of the criminal, seizure, or forfeiture provi-*
 23 *sions of the laws of the United States, may carry firearms,*
 24 *serve warrants and subpoenas issued under the authority*
 25 *of the United States and make arrests without warrant for*

1 *any offense against the United States committed in their*
2 *presence, or for any felony cognizable under the laws of the*
3 *United States if they have reasonable grounds to believe that*
4 *the person to be arrested has committed or is committing*
5 *such felony.*

6 “(b) *Any special agent of the Bureau of Alcohol, To-*
7 *bacco, Firearms, and Explosives may, in respect to the per-*
8 *formance of his or her duties, make seizures of property sub-*
9 *ject to forfeiture to the United States.*

10 “(c)(1) *Except as provided in paragraphs (2) and (3),*
11 *and except to the extent that such provisions conflict with*
12 *the provisions of section 983 of title 18, United States Code,*
13 *insofar as section 983 applies, the provisions of the Customs*
14 *laws relating to—*

15 “(A) *the seizure, summary and judicial for-*
16 *feiture, and condemnation of property;*

17 “(B) *the disposition of such property;*

18 “(C) *the remission or mitigation of such for-*
19 *feiture; and*

20 “(D) *the compromise of claims,*
21 *shall apply to seizures and forfeitures incurred, or alleged*
22 *to have been incurred, under any applicable provision of*
23 *law enforced or administered by the Bureau of Alcohol, To-*
24 *bacco, Firearms, and Explosives.*

1 “(2) *For purposes of paragraph (1), duties that are*
 2 *imposed upon a customs officer or any other person with*
 3 *respect to the seizure and forfeiture of property under the*
 4 *customs laws of the United States shall be performed with*
 5 *respect to seizures and forfeitures of property under this sec-*
 6 *tion by such officers, agents, or any other person as may*
 7 *be authorized or designated for that purpose by the Attorney*
 8 *General.*

9 “(3) *Notwithstanding any other provision of law, the*
 10 *disposition of firearms forfeited by reason of a violation of*
 11 *any law of the United States shall be governed by the provi-*
 12 *sions of section 5872(b) of the Internal Revenue Code of*
 13 *1986.”.*

14 **SEC. 1114. EXPLOSIVES TRAINING AND RESEARCH FACIL-**
 15 **ITY.**

16 (a) *ESTABLISHMENT.*—*There is established within the*
 17 *Bureau an Explosives Training and Research Facility at*
 18 *Fort AP Hill, Fredericksburg, Virginia.*

19 (b) *PURPOSE.*—*The facility established under sub-*
 20 *section (a) shall be utilized to train Federal, State, and*
 21 *local law enforcement officers to—*

- 22 (1) *investigate bombings and explosions;*
- 23 (2) *properly handle, utilize, and dispose of explo-*
 24 *sive materials and devices;*
- 25 (3) *train canines on explosive detection; and*

1 (4) *conduct research on explosives.*

2 (c) *AUTHORIZATION OF APPROPRIATIONS.—*

3 (1) *IN GENERAL.—There are authorized to be ap-*
 4 *propriated such sums as may be necessary to establish*
 5 *and maintain the facility established under subsection*
 6 *(a).*

7 (2) *AVAILABILITY OF FUNDS.—Any amounts ap-*
 8 *propriated pursuant to paragraph (1) shall remain*
 9 *available until expended.*

10 **SEC. 1115. PERSONNEL MANAGEMENT DEMONSTRATION**
 11 **PROJECT.**

12 *Notwithstanding any other provision of law, the Per-*
 13 *sonnel Management Demonstration Project established*
 14 *under section 102 of title I of Division C of the Omnibus*
 15 *Consolidated and Emergency Supplemental Appropriations*
 16 *Act for Fiscal Year 1999 (Pub. L. 105–277; 122 Stat. 2681–*
 17 *585) shall be transferred to the Attorney General of the*
 18 *United States for continued use by the Bureau of Alcohol,*
 19 *Tobacco, Firearms, and Explosives, Department of Justice,*
 20 *and the Secretary of the Treasury for continued use by the*
 21 *Tax and Trade Bureau.*

22 **Subtitle C—Explosives**

23 **SEC. 1121. SHORT TITLE.**

24 *This subtitle may be referred to as the “Safe Explosives*
 25 *Act”.*

1 **SEC. 1122. PERMITS FOR PURCHASERS OF EXPLOSIVES.**

2 (a) *DEFINITIONS.*—Section 841 of title 18, United
3 States Code, is amended—

4 (1) by striking subsection (j) and inserting the
5 following:

6 “(j) ‘Permittee’ means any user of explosives for
7 a lawful purpose, who has obtained either a user per-
8 mit or a limited permit under the provisions of this
9 chapter.”; and

10 (2) by adding at the end the following:

11 “(r) ‘Alien’ means any person who is not a cit-
12 izen or national of the United States.

13 “(s) ‘Responsible person’ means an individual
14 who has the power to direct the management and
15 policies of the applicant pertaining to explosive mate-
16 rials.”.

17 (b) *PERMITS FOR PURCHASE OF EXPLOSIVES.*—Sec-
18 tion 842 of title 18, United States Code, is amended—

19 (1) in subsection (a)(2), by striking “and” at the
20 end;

21 (2) by striking subsection (a)(3) and inserting
22 the following:

23 “(3) other than a licensee or permittee
24 knowingly—

25 “(A) to transport, ship, cause to be trans-
26 ported, or receive any explosive materials; or

1 “(B) to distribute explosive materials to
 2 any person other than a licensee or permittee; or
 3 “(4) who is a holder of a limited permit—

4 “(A) to transport, ship, cause to be trans-
 5 ported, or receive in interstate or foreign com-
 6 merce any explosive materials; or

7 “(B) to receive explosive materials from a
 8 licensee or permittee, whose premises are located
 9 outside the State of residence of the limited per-
 10 mit holder, or on more than 6 separate occasions,
 11 during the period of the permit, to receive explo-
 12 sive materials from 1 or more licensees or per-
 13 mittees whose premises are located within the
 14 State of residence of the limited permit holder.”;
 15 and

16 (3) by striking subsection (b) and inserting the
 17 following:

18 “(b) It shall be unlawful for any licensee or permittee
 19 to knowingly distribute any explosive materials to any per-
 20 son other than—

21 “(1) a licensee;

22 “(2) a holder of a user permit; or

23 “(3) a holder of a limited permit who is a resi-
 24 dent of the State where distribution is made and in
 25 which the premises of the transferor are located.”.

1 (c) *LICENSES AND USER PERMITS.*—Section 843(a) of
2 *title 18, United States Code, is amended—*

3 (1) *in the first sentence—*

4 (A) *by inserting “or limited permit” after*
5 *“user permit”; and*

6 (B) *by inserting before the period at the end*
7 *the following: “, including the names of and ap-*
8 *propriate identifying information regarding all*
9 *employees who will be authorized by the appli-*
10 *cant to possess explosive materials, as well as*
11 *fingerprints and a photograph of each respon-*
12 *sible person”;*

13 (2) *in the second sentence, by striking “\$200 for*
14 *each” and inserting “\$50 for a limited permit and*
15 *\$200 for any other”;* and

16 (3) *by striking the third sentence and inserting*
17 *“Each license or user permit shall be valid for not*
18 *longer than 3 years from the date of issuance and*
19 *each limited permit shall be valid for not longer than*
20 *1 year from the date of issuance. Each license or per-*
21 *mit shall be renewable upon the same conditions and*
22 *subject to the same restrictions as the original license*
23 *or permit, and upon payment of a renewal fee not to*
24 *exceed one-half of the original fee.”.*

1 (d) *CRITERIA FOR APPROVING LICENSES AND PER-*
2 *MITs.—Section 843(b) of title 18, United States Code, is*
3 *amended—*

4 (1) *by striking paragraph (1) and inserting the*
5 *following:*

6 “(1) *the applicant (or, if the applicant is a corpora-*
7 *tion, partnership, or association, each responsible person*
8 *with respect to the applicant) is not a person described in*
9 *section 842(i);”;*

10 (2) *in paragraph (4)—*

11 (A) *by inserting “(A) the Secretary verifies*
12 *by inspection or, if the application is for an*
13 *original limited permit or the first or second re-*
14 *newal of such a permit, by such other means as*
15 *the Secretary determines appropriate, that” be-*
16 *fore “the applicant”; and*

17 (B) *by adding at the end the following:*

18 “(B) *subparagraph (A) shall not apply to*
19 *an applicant for the renewal of a limited permit*
20 *if the Secretary has verified, by inspection with-*
21 *in the preceding 3 years, the matters described in*
22 *subparagraph (A) with respect to the applicant;*
23 *and”;*

24 (3) *in paragraph (5), by striking the period at*
25 *the end and inserting a semicolon; and*

1 (4) *by adding at the end the following:*

2 “(6) *none of the employees of the applicant who*
 3 *will be authorized by the applicant to possess explo-*
 4 *sive materials is any person described in section*
 5 *842(i); and*

6 “(7) *in the case of a limited permit, the appli-*
 7 *cant has certified in writing that the applicant will*
 8 *not receive explosive materials on more than 6 sepa-*
 9 *rate occasions during the 12-month period for which*
 10 *the limited permit is valid.”.*

11 (e) *APPLICATION APPROVAL.*—Section 843(c) of title
 12 18, *United States Code*, is amended by striking “*forty-five*
 13 *days*” and inserting “*90 days for licenses and permits,*”.

14 (f) *INSPECTION AUTHORITY.*—Section 843(f) of title
 15 18, *United States Code*, is amended—

16 (1) *in the first sentence—*

17 (A) *by striking “permittees” and inserting*
 18 *“holders of user permits”; and*

19 (B) *by inserting “licensees and permittees”*
 20 *before “shall submit”;*

21 (2) *in the second sentence, by striking “per-*
 22 *mittee” the first time it appears and inserting “hold-*
 23 *er of a user permit”; and*

24 (3) *by adding at the end the following: “The Sec-*
 25 *retary may inspect the places of storage for explosive*

1 *materials of an applicant for a limited permit or, at*
2 *the time of renewal of such permit, a holder of a lim-*
3 *ited permit, only as provided in subsection (b)(4).*

4 *(g) POSTING OF PERMITS.—Section 843(g) of title 18,*
5 *United States Code, is amended by inserting “user” before*
6 *“permits”.*

7 *(h) BACKGROUND CHECKS; CLEARANCES.—Section*
8 *843 of title 18, United States Code, is amended by adding*
9 *at the end the following:*

10 *“(h)(1) If the Secretary receives, from an employer, the*
11 *name and other identifying information of a responsible*
12 *person or an employee who will be authorized by the em-*
13 *ployer to possess explosive materials in the course of em-*
14 *ployment with the employer, the Secretary shall determine*
15 *whether the responsible person or employee is one of the per-*
16 *sons described in any paragraph of section 842(i). In mak-*
17 *ing the determination, the Secretary may take into account*
18 *a letter or document issued under paragraph (2).*

19 *“(2)(A) If the Secretary determines that the responsible*
20 *person or the employee is not one of the persons described*
21 *in any paragraph of section 842(i), the Secretary shall no-*
22 *tify the employer in writing or electronically of the deter-*
23 *mination and issue, to the responsible person or employee,*
24 *a letter of clearance, which confirms the determination.*

1 “(B) *If the Secretary determines that the responsible*
 2 *person or employee is one of the persons described in any*
 3 *paragraph of section 842(i), the Secretary shall notify the*
 4 *employer in writing or electronically of the determination*
 5 *and issue to the responsible person or the employee, as the*
 6 *case may be, a document that—*

7 “(i) *confirms the determination;*

8 “(ii) *explains the grounds for the determination;*

9 “(iii) *provides information on how the disability*
 10 *may be relieved; and*

11 “(iv) *explains how the determination may be ap-*
 12 *pealed.”.*

13 (i) *EFFECTIVE DATE.—*

14 (1) *IN GENERAL.—The amendments made by*
 15 *this section shall take effect 180 days after the date*
 16 *of enactment of this Act.*

17 (2) *EXCEPTION.—Notwithstanding any provision*
 18 *of this Act, a license or permit issued under section*
 19 *843 of title 18, United States Code, before the date of*
 20 *enactment of this Act, shall remain valid until that*
 21 *license or permit is revoked under section 843(d) or*
 22 *expires, or until a timely application for renewal is*
 23 *acted upon.*

1 **SEC. 1123. PERSONS PROHIBITED FROM RECEIVING OR**
2 **POSSESSING EXPLOSIVE MATERIALS.**

3 (a) *DISTRIBUTION OF EXPLOSIVES.*—Section 842(d) of
4 title 18, United States Code, is amended—

5 (1) in paragraph (5), by striking “or” at the
6 end;

7 (2) in paragraph (6), by striking the period at
8 the end and inserting “or who has been committed to
9 a mental institution;”; and

10 (3) by adding at the end the following:

11 “(7) is an alien, other than an alien who—

12 “(A) is lawfully admitted for permanent
13 residence (as defined in section 101 (a)(20) of the
14 Immigration and Nationality Act); or

15 “(B) is in lawful nonimmigrant status, is a
16 refugee admitted under section 207 of the Immi-
17 gration and Nationality Act (8 U.S.C. 1157), or
18 is in asylum status under section 208 of the Im-
19 migration and Nationality Act (8 U.S.C. 1158),
20 and—

21 “(i) is a foreign law enforcement offi-
22 cer of a friendly foreign government, as de-
23 termined by the Secretary in consultation
24 with the Secretary of State, entering the
25 United States on official law enforcement
26 business, and the shipping, transporting,

1 *possession, or receipt of explosive materials*
2 *is in furtherance of this official law enforce-*
3 *ment business;*

4 “(ii) is a person having the power to
5 *direct or cause the direction of the manage-*
6 *ment and policies of a corporation, partner-*
7 *ship, or association licensed pursuant to*
8 *section 843(a), and the shipping, trans-*
9 *porting, possession, or receipt of explosive*
10 *materials is in furtherance of such power;*

11 “(iii) is a member of a North Atlantic
12 *Treaty Organization (NATO) or other*
13 *friendly foreign military force, as deter-*
14 *mined by the Secretary in consultation with*
15 *the Secretary of Defense, (whether or not*
16 *admitted in a nonimmigrant status) who is*
17 *present in the United States under military*
18 *orders for training or other military pur-*
19 *pose authorized by the United States, and*
20 *the shipping, transporting, possession, or*
21 *receipt of explosive materials is in further-*
22 *ance of the military purpose; or*

23 “(iv) is lawfully present in the United
24 *States in cooperation with the Director of*
25 *Central Intelligence, and the shipment,*

1 *transportation, receipt, or possession of the*
 2 *explosive materials is in furtherance of such*
 3 *cooperation;*

4 “(8) *has been discharged from the armed forces*
 5 *under dishonorable conditions;*

6 “(9) *having been a citizen of the United States,*
 7 *has renounced the citizenship of that person.*”.

8 (b) *POSSESSION OF EXPLOSIVE MATERIALS.*—Section
 9 842(i) of title 18, United States Code, is amended—

10 (1) *in paragraph (3), by striking “or” at the*
 11 *end; and*

12 (2) *by inserting after paragraph (4) the fol-*
 13 *lowing:*

14 “(5) *who is an alien, other than an alien who—*

15 “(A) *is lawfully admitted for permanent*
 16 *residence (as that term is defined in section*
 17 *101(a)(20) of the Immigration and Nationality*
 18 *Act); or*

19 “(B) *is in lawful nonimmigrant status, is a*
 20 *refugee admitted under section 207 of the Immi-*
 21 *gration and Nationality Act (8 U.S.C. 1157), or*
 22 *is in asylum status under section 208 of the Im-*
 23 *migration and Nationality Act (8 U.S.C. 1158),*
 24 *and—*

1 “(i) is a foreign law enforcement offi-
2 cer of a friendly foreign government, as de-
3 termined by the Secretary in consultation
4 with the Secretary of State, entering the
5 United States on official law enforcement
6 business, and the shipping, transporting,
7 possession, or receipt of explosive materials
8 is in furtherance of this official law enforce-
9 ment business;

10 “(ii) is a person having the power to
11 direct or cause the direction of the manage-
12 ment and policies of a corporation, partner-
13 ship, or association licensed pursuant to
14 section 843(a), and the shipping, trans-
15 porting, possession, or receipt of explosive
16 materials is in furtherance of such power;

17 “(iii) is a member of a North Atlantic
18 Treaty Organization (NATO) or other
19 friendly foreign military force, as deter-
20 mined by the Secretary in consultation with
21 the Secretary of Defense, (whether or not
22 admitted in a nonimmigrant status) who is
23 present in the United States under military
24 orders for training or other military pur-
25 pose authorized by the United States, and

1 *the shipping, transporting, possession, or*
 2 *receipt of explosive materials is in further-*
 3 *ance of the military purpose; or*

4 “(iv) *is lawfully present in the United*
 5 *States in cooperation with the Director of*
 6 *Central Intelligence, and the shipment,*
 7 *transportation, receipt, or possession of the*
 8 *explosive materials is in furtherance of such*
 9 *cooperation;*

10 “(6) *who has been discharged from the armed*
 11 *forces under dishonorable conditions;*

12 “(7) *who, having been a citizen of the United*
 13 *States, has renounced the citizenship of that person”;*
 14 *and*

15 (3) *by inserting “or affecting” before “interstate”*
 16 *each place that term appears.*

17 **SEC. 1124. REQUIREMENT TO PROVIDE SAMPLES OF EXPLO-**
 18 **SIVE MATERIALS AND AMMONIUM NITRATE.**

19 *Section 843 of title 18, United States Code, as amend-*
 20 *ed by this Act, is amended by adding at the end the fol-*
 21 *lowing:*

22 “(i) *FURNISHING OF SAMPLES.—*

23 “(1) *IN GENERAL.—Licensed manufacturers and*
 24 *licensed importers and persons who manufacture or*
 25 *import explosive materials or ammonium nitrate*

1 *shall, when required by letter issued by the Secretary,*
 2 *furnish—*

3 “(A) *samples of such explosive materials or*
 4 *ammonium nitrate;*

5 “(B) *information on chemical composition*
 6 *of those products; and*

7 “(C) *any other information that the Sec-*
 8 *retary determines is relevant to the identification*
 9 *of the explosive materials or to identification of*
 10 *the ammonium nitrate.*

11 “(2) *REIMBURSEMENT.—The Secretary shall, by*
 12 *regulation, authorize reimbursement of the fair mar-*
 13 *ket value of samples furnished pursuant to this sub-*
 14 *section, as well as the reasonable costs of shipment.”.*

15 **SEC. 1125. DESTRUCTION OF PROPERTY OF INSTITUTIONS**
 16 **RECEIVING FEDERAL FINANCIAL ASSIST-**
 17 **ANCE.**

18 *Section 844(f)(1) of title 18, United States Code, is*
 19 *amended by inserting before the word “shall” the following:*
 20 *“or any institution or organization receiving Federal fi-*
 21 *nancial assistance,”.*

22 **SEC. 1126. RELIEF FROM DISABILITIES.**

23 *Section 845(b) of title 18, United States Code, is*
 24 *amended to read as follows:*

1 “(b)(1) *A person who is prohibited from shipping,*
 2 *transporting, receiving, or possessing any explosive under*
 3 *section 842(i) may apply to the Secretary for relief from*
 4 *such prohibition.*

5 “(2) *The Secretary may grant the relief requested*
 6 *under paragraph (1) if the Secretary determines that the*
 7 *circumstances regarding the applicability of section 842(i),*
 8 *and the applicant’s record and reputation, are such that*
 9 *the applicant will not be likely to act in a manner dan-*
 10 *gerous to public safety and that the granting of such relief*
 11 *is not contrary to the public interest.*

12 “(3) *A licensee or permittee who applies for relief,*
 13 *under this subsection, from the disabilities incurred under*
 14 *this chapter as a result of an indictment for or conviction*
 15 *of a crime punishable by imprisonment for a term exceeding*
 16 *1 year shall not be barred by such disability from further*
 17 *operations under the license or permit pending final action*
 18 *on an application for relief filed pursuant to this section.”.*

19 **SEC. 1127. THEFT REPORTING REQUIREMENT.**

20 *Section 844 of title 18, United States Code, is amended*
 21 *by adding at the end the following:*

22 “(p) **THEFT REPORTING REQUIREMENT.**—

23 “(1) **IN GENERAL.**—*A holder of a license or per-*
 24 *mit who knows that explosive materials have been sto-*
 25 *len from that licensee or permittee, shall report the*

1 *theft to the Secretary not later than 24 hours after the*
 2 *discovery of the theft.*

3 “(2) *PENALTY.*—*A holder of a license or permit*
 4 *who does not report a theft in accordance with para-*
 5 *graph (1), shall be fined not more than \$10,000, im-*
 6 *prisoned not more than 5 years, or both.*”.

7 **SEC. 1128. AUTHORIZATION OF APPROPRIATIONS.**

8 *There is authorized to be appropriated such sums as*
 9 *necessary to carry out this subtitle and the amendments*
 10 *made by this subtitle.*

11 **TITLE XII—AIRLINE WAR RISK**
 12 **INSURANCE LEGISLATION**

13 **SEC. 1201. AIR CARRIER LIABILITY FOR THIRD PARTY**
 14 **CLAIMS ARISING OUT OF ACTS OF TER-**
 15 **RORISM.**

16 *Section 44303 of title 49, United States Code, is*
 17 *amended—*

18 (1) *by inserting “(a) IN GENERAL.—” before “The Sec-*
 19 *retary of Transportation”;*

20 (2) *by moving the text of paragraph (2) of sec-*
 21 *tion 201(b) of the Air Transportation Safety and*
 22 *System Stabilization Act (115 Stat. 235) to the end*
 23 *and redesignating such paragraph as subsection (b);*

24 (3) *in subsection (b) (as so redesignated)—*

1 (A) by striking the subsection heading and
 2 inserting “AIR CARRIER LIABILITY FOR THIRD
 3 PARTY CLAIMS ARISING OUT OF ACTS OF TER-
 4 RORISM.—”;

5 (B) in the first sentence by striking “the
 6 180-day period following the date of enactment
 7 of this Act, the Secretary of Transportation” and
 8 inserting “the period beginning on September
 9 22, 2001, and ending on December 31, 2003, the
 10 Secretary”; and

11 (C) in the last sentence by striking “this
 12 paragraph” and inserting “this subsection”.

13 **SEC. 1202. EXTENSION OF INSURANCE POLICIES.**

14 Section 44302 of title 49, United States Code, is
 15 amended by adding at the end the following:

16 “(f) *EXTENSION OF POLICIES.*—

17 “(1) *IN GENERAL.*—The Secretary shall extend
 18 through August 31, 2003, and may extend through
 19 December 31, 2003, the termination date of any in-
 20 surance policy that the Department of Transportation
 21 issued to an air carrier under subsection (a) and that
 22 is in effect on the date of enactment of this subsection
 23 on no less favorable terms to the air carrier than ex-
 24 isted on June 19, 2002; except that the Secretary shall
 25 amend the insurance policy, subject to such terms and

1 *conditions as the Secretary may prescribe, to add cov-*
 2 *erage for losses or injuries to aircraft hulls, pas-*
 3 *sengers, and crew at the limits carried by air carriers*
 4 *for such losses and injuries as of such date of enact-*
 5 *ment and at an additional premium comparable to*
 6 *the premium charged for third-party casualty cov-*
 7 *erage under such policy.*

8 “(2) *SPECIAL RULES.*—Notwithstanding para-
 9 *graph (1)*—

10 “(A) *in no event shall the total premium*
 11 *paid by the air carrier for the policy, as amend-*
 12 *ed, be more than twice the premium that the air*
 13 *carrier was paying to the Department of Trans-*
 14 *portation for its third party policy as of June*
 15 *19, 2002; and*

16 “(B) *the coverage in such policy shall begin*
 17 *with the first dollar of any covered loss that is*
 18 *incurred.”.*

19 **SEC. 1203. CORRECTION OF REFERENCE.**

20 *Effective November 19, 2001, section 147 of the Avia-*
 21 *tion and Transportation Security Act (Public Law 107–*
 22 *71) is amended by striking “(b)” and inserting “(c)”.*

23 **SEC. 1204. REPORT.**

24 *Not later than 90 days after the date of enactment of*
 25 *this Act, the Secretary shall transmit to the Committee on*

1 *Commerce, Science, and Transportation of the Senate and*
 2 *the Committee on Transportation and Infrastructure of the*
 3 *House of Representatives a report that—*

4 *(A) evaluates the availability and cost of*
 5 *commercial war risk insurance for air carriers*
 6 *and other aviation entities for passengers and*
 7 *third parties;*

8 *(B) analyzes the economic effect upon air*
 9 *carriers and other aviation entities of available*
 10 *commercial war risk insurance; and*

11 *(C) describes the manner in which the De-*
 12 *partment could provide an alternative means of*
 13 *providing aviation war risk reinsurance covering*
 14 *passengers, crew, and third parties through use*
 15 *of a risk-retention group or by other means.*

16 ***TITLE XIII—FEDERAL***
 17 ***WORKFORCE IMPROVEMENT***
 18 ***Subtitle A—Chief Human Capital***
 19 ***Officers***

20 ***SEC. 1301. SHORT TITLE.***

21 *This title may be cited as the “Chief Human Capital*
 22 *Officers Act of 2002”.*

1 **SEC. 1302. AGENCY CHIEF HUMAN CAPITAL OFFICERS.**

2 (a) *IN GENERAL.*—Part II of title 5, United States
3 Code, is amended by inserting after chapter 13 the fol-
4 lowing:

5 **“CHAPTER 14—AGENCY CHIEF HUMAN**
6 **CAPITAL OFFICERS**

“Sec.

“1401. *Establishment of agency Chief Human Capital Officers.*

“1402. *Authority and functions of agency Chief Human Capital Officers.*

7 **“§ 1401. Establishment of agency Chief Human Cap-**
8 **ital Officers**

9 “The head of each agency referred to under paragraphs
10 (1) and (2) of section 901(b) of title 31 shall appoint or
11 designate a Chief Human Capital Officer, who shall—

12 “(1) advise and assist the head of the agency and
13 other agency officials in carrying out the agency’s re-
14 sponsibilities for selecting, developing, training, and
15 managing a high-quality, productive workforce in ac-
16 cordance with merit system principles;

17 “(2) implement the rules and regulations of the
18 President and the Office of Personnel Management
19 and the laws governing the civil service within the
20 agency; and

21 “(3) carry out such functions as the primary
22 duty of the Chief Human Capital Officer.

1 **“§ 1402. Authority and functions of agency Chief**
2 **Human Capital Officers**

3 “(a) *The functions of each Chief Human Capital Offi-*
4 *cer shall include—*

5 “(1) *setting the workforce development strategy*
6 *of the agency;*

7 “(2) *assessing workforce characteristics and fu-*
8 *ture needs based on the agency’s mission and strategic*
9 *plan;*

10 “(3) *aligning the agency’s human resources poli-*
11 *cies and programs with organization mission, stra-*
12 *tegic goals, and performance outcomes;*

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

16 “(5) *identifying best practices and benchmarking*
17 *studies, and*

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

21 “(b) *In addition to the authority otherwise provided*
22 *by this section, each agency Chief Human Capital Officer—*

23 “(1) *shall have access to all records, reports, au-*
24 *dits, reviews, documents, papers, recommendations, or*
25 *other material that—*

1 “(A) are the property of the agency or are
2 available to the agency; and

3 “(B) relate to programs and operations
4 with respect to which that agency Chief Human
5 Capital Officer has responsibilities under this
6 chapter; and

7 “(2) may request such information or assistance
8 as may be necessary for carrying out the duties and
9 responsibilities provided by this chapter from any
10 Federal, State, or local governmental entity.”.

11 (b) *TECHNICAL AND CONFORMING AMENDMENT.*—The
12 table of chapters for chapters for part II of title 5, United
13 States Code, is amended by inserting after the item relating
14 to chapter 13 the following:

“14. Agency Chief Human Capital Officers 1401”.

15 **SEC. 1303. CHIEF HUMAN CAPITAL OFFICERS COUNCIL.**

16 (a) *ESTABLISHMENT.*—There is established a Chief
17 Human Capital Officers Council, consisting of—

18 (1) the Director of the Office of Personnel Man-
19 agement, who shall act as chairperson of the Council;

20 (2) the Deputy Director for Management of the
21 Office of Management and Budget, who shall act as
22 vice chairperson of the Council; and

23 (3) the Chief Human Capital Officers of Execu-
24 tive departments and any other members who are des-

1 *igned by the Director of the Office of Personnel*
 2 *Management.*

3 (b) *FUNCTIONS.—The Chief Human Capital Officers*
 4 *Council shall meet periodically to advise and coordinate the*
 5 *activities of the agencies of its members on such matters*
 6 *as modernization of human resources systems, improved*
 7 *quality of human resources information, and legislation af-*
 8 *fecting human resources operations and organizations.*

9 (c) *EMPLOYEE LABOR ORGANIZATIONS AT MEET-*
 10 *INGS.—The Chief Human Capital Officers Council shall en-*
 11 *sure that representatives of Federal employee labor organi-*
 12 *zations are present at a minimum of 1 meeting of the Coun-*
 13 *cil each year. Such representatives shall not be members of*
 14 *the Council.*

15 (d) *ANNUAL REPORT.—Each year the Chief Human*
 16 *Capital Officers Council shall submit a report to Congress*
 17 *on the activities of the Council.*

18 **SEC. 1304. STRATEGIC HUMAN CAPITAL MANAGEMENT.**

19 *Section 1103 of title 5, United States Code, is amended*
 20 *by adding at the end the following:*

21 “(c)(1) *The Office of Personnel Management shall de-*
 22 *sign a set of systems, including appropriate metrics, for as-*
 23 *sessing the management of human capital by Federal agen-*
 24 *cies.*

1 “(2) *The systems referred to under paragraph (1) shall*
 2 *be defined in regulations of the Office of Personnel Manage-*
 3 *ment and include standards for—*

4 “(A)(i) *aligning human capital strategies of*
 5 *agencies with the missions, goals, and organizational*
 6 *objectives of those agencies; and*

7 “(ii) *integrating those strategies into the budget*
 8 *and strategic plans of those agencies;*

9 “(B) *closing skill gaps in mission critical occu-*
 10 *pations;*

11 “(C) *ensuring continuity of effective leadership*
 12 *through implementation of recruitment, development,*
 13 *and succession plans;*

14 “(D) *sustaining a culture that cultivates and de-*
 15 *velops a high performing workforce;*

16 “(E) *developing and implementing a knowledge*
 17 *management strategy supported by appropriate in-*
 18 *vestment in training and technology; and*

19 “(F) *holding managers and human resources of-*
 20 *ficers accountable for efficient and effective human re-*
 21 *sources management in support of agency missions in*
 22 *accordance with merit system principles.”.*

23 **SEC. 1305. EFFECTIVE DATE.**

24 *This subtitle shall take effect 180 days after the date*
 25 *of enactment of this Act.*

1 ***Subtitle B—Reforms Relating to***
 2 ***Federal Human Capital Man-***
 3 ***agement***

4 ***SEC. 1311. INCLUSION OF AGENCY HUMAN CAPITAL STRA-***
 5 ***TEGIC PLANNING IN PERFORMANCE PLANS***
 6 ***AND PROGRAMS PERFORMANCE REPORTS.***

7 *(a) PERFORMANCE PLANS.—Section 1115 of title 31,*
 8 *United States Code, is amended—*

9 *(1) in subsection (a), by striking paragraph (3)*
 10 *and inserting the following:*

11 *“(3) provide a description of how the perform-*
 12 *ance goals and objectives are to be achieved, including*
 13 *the operation processes, training, skills and tech-*
 14 *nology, and the human, capital, information, and*
 15 *other resources and strategies required to meet those*
 16 *performance goals and objectives.”;*

17 *(2) by redesignating subsection (f) as subsection*
 18 *(g); and*

19 *(3) by inserting after subsection (e) the following:*

20 *“(f) With respect to each agency with a Chief Human*
 21 *Capital Officer, the Chief Human Capital Officer shall pre-*
 22 *pare that portion of the annual performance plan described*
 23 *under subsection (a)(3).”.*

24 *(b) PROGRAM PERFORMANCE REPORTS.—Section*
 25 *1116(d) of title 31, United States Code, is amended—*

1 (1) in paragraph (4), by striking “and” after the
2 *semicolon;*

3 (2) by redesignating paragraph (5) as para-
4 *graph (6); and*

5 (3) by inserting after paragraph (4) the fol-
6 *lowing:*

7 “(5) include a review of the performance goals
8 *and evaluation of the performance plan relative to the*
9 *agency’s strategic human capital management; and”.*

10 **SEC. 1312. REFORM OF THE COMPETITIVE SERVICE HIRING**
11 **PROCESS.**

12 (a) *IN GENERAL.*—Chapter 33 of title 5, United States
13 *Code, is amended—*

14 (1) in section 3304(a)—

15 (A) in paragraph (1), by striking “and”
16 *after the semicolon;*

17 (B) in paragraph (2), by striking the period
18 *and inserting “; and”; and*

19 (C) by adding at the end of the following:

20 “(3) authority for agencies to appoint, without
21 *regard to the provision of sections 3309 through 3318,*
22 *candidates directly to positions for which—*

23 “(A) public notice has been given; and

1 “(B) the Office of Personnel Management
2 has determined that there exists a severe shortage
3 of candidates or there is a critical hiring need.
4 The Office shall prescribe, by regulation, criteria for identi-
5 fying such positions and may delegate authority to make
6 determinations under such criteria.”; and

7 (2) by inserting after section 3318 the following:

8 **“§ 3319. Alternative ranking and selection procedures**

9 “(a) The Office, in exercising its authority under sec-
10 tion 3304, or an agency to which the Office has delegated
11 examining authority under section 1104(a)(2), may estab-
12 lish category rating systems for evaluating applicants for
13 positions in the competitive service, under 2 or more quality
14 categories based on merit consistent with regulations pre-
15 scribed by the Office of Personnel Management, rather than
16 assigned individual numerical ratings.

17 “(b) Within each quality category established under
18 subsection (a), preference-eligibles shall be listed ahead of
19 individuals who are not preference eligibles. For other than
20 scientific and professional positions at GS–9 of the General
21 Schedule (equivalent or higher), qualified preference-eli-
22 gibles who have a compensable service-connected disability of
23 10 percent or more shall be listed in the highest quality
24 category.

1 “(c)(1) *An appointing official may select any appli-*
2 *cant in the highest quality category or, if fewer than 3 can-*
3 *didates have been assigned to the highest quality category,*
4 *in a merged category consisting of the highest and the sec-*
5 *ond highest quality categories.*

6 “(2) *Notwithstanding paragraph (1), the appointing*
7 *official may not pass over a preference-eligible in the same*
8 *category from which selection is made, unless the require-*
9 *ments of section 3317(b) or 3318(b), as applicable, are satis-*
10 *fied.*

11 “(d) *Each agency that establishes a category rating*
12 *system under this section shall submit in each of the 3 years*
13 *following that establishment, a report to Congress on that*
14 *system including information on—*

15 “(1) *the number of employees hired under that*
16 *system;*

17 “(2) *the impact that system has had on the hir-*
18 *ing of veterans and minorities, including those who*
19 *are American Indian or Alaska Natives, Asian, Black*
20 *or African American, and native Hawaiian or other*
21 *Pacific Islanders; and*

22 “(3) *the way in which managers were trained in*
23 *the administration of that system.*

1 “(e) *The Office of Personnel Management may pre-*
 2 *scribe such regulations as it considers necessary to carry*
 3 *out the provisions of this section.*”.

4 (b) *TECHNICAL AND CONFORMING AMENDMENT.—The*
 5 *table of sections for chapter 33 of title 5, United States*
 6 *Code, is amended by striking the item relating to section*
 7 *3319 and inserting the following:*

“3319. Alternative ranking and selection procedures.”.

8 **SEC. 1313. PERMANENT EXTENSION, REVISION, AND EXPAN-**
 9 **SION OF AUTHORITIES FOR USE OF VOL-**
 10 **UNTARY SEPARATION INCENTIVE PAY AND**
 11 **VOLUNTARY EARLY RETIREMENT.**

12 (a) *VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—*

13 (1) *IN GENERAL.—*

14 (A) *AMENDMENT TO TITLE 5, UNITED*
 15 *STATES CODE.—Chapter 35 of title 5, United*
 16 *States Code, is amended by inserting after sub-*
 17 *chapter I the following:*

18 **“SUBCHAPTER II—VOLUNTARY SEPARATION**
 19 **INCENTIVE PAYMENTS**

20 **“§ 3521. Definitions**

21 *“In this subchapter, the term—*

22 *“(1) ‘agency’ means an Executive agency as de-*
 23 *fined under section 105; and*

24 *“(2) ‘employee’—*

1 “(A) means an employee as defined under
2 section 2105 employed by an agency and an in-
3 dividual employed by a county committee estab-
4 lished under section 8(b)(5) of the Soil Conserva-
5 tion and Domestic Allotment Act (16 U.S.C.
6 590h(b)(5)) who—

7 “(i) is serving under an appointment
8 without time limitation; and

9 “(ii) has been currently employed for a
10 continuous period of at least 3 years; and

11 “(B) shall not include—

12 “(i) a reemployed annuitant under
13 subchapter III of chapter 83 or 84 or an-
14 other retirement system for employees of the
15 Government;

16 “(ii) an employee having a disability
17 on the basis of which such employee is or
18 would be eligible for disability retirement
19 under subchapter III of chapter 83 or 84 or
20 another retirement system for employees of
21 the Government.

22 “(iii) an employee who is in receipt of
23 a decision notice of involuntary separation
24 for misconduct or unacceptable perform-
25 ance;

1 “(iv) an employee who has previously
2 received any voluntary separation incentive
3 payment from the Federal Government
4 under this subchapter or any other author-
5 ity;

6 “(v) an employee covered by statutory
7 reemployment rights who is on transfer em-
8 ployment with another organization; or

9 “(vi) any employee who—

10 “(I) during the 36-month period
11 preceding the date of separation of that
12 employee, performed service for which
13 a student loan repayment benefit was
14 or is to be paid under section 5379;

15 “(II) during the 24-month period
16 preceding the date of separation of that
17 employee, performed service for which
18 a recruitment or relocation bonus was
19 or is to be paid under section 5753; or

20 “(III) during the 12-month period
21 preceding the date of separation of that
22 employee, performed service for which
23 a retention bonus was or is to be paid
24 under section 5754.

1 **“§ 3522. Agency plans; approval**

2 “(a) *Before obligating any resources for voluntary sep-*
3 *aration incentive payments, the head of each agency shall*
4 *submit to the Office of Personnel Management a plan out-*
5 *lining the intended use of such incentive payments and a*
6 *proposed organizational chart for the agency once such in-*
7 *centive payments have been completed.*

8 “(b) *The plan of an agency under subsection (a) shall*
9 *include—*

10 “(1) *the specific positions and functions to be re-*
11 *duced or eliminated;*

12 “(2) *a description of which categories of employ-*
13 *ees will be offered incentives;*

14 “(3) *the time period during which incentives*
15 *may be paid;*

16 “(4) *the number and amounts of voluntary sepa-*
17 *ration incentive payments to be offered; and*

18 “(5) *a description of how the agency will operate*
19 *without the eliminated positions and functions.*

20 “(c) *The Director of the Office of Personnel Manage-*
21 *ment shall review each agency’s plan and may make any*
22 *appropriate modifications in the plan, in consultation with*
23 *the Director of the Office of Management and Budget. A*
24 *plan under this section may not be implemented without*
25 *the approval of the Director of the Office of Personnel Man-*
26 *agement.*

1 **“§ 3523. Authority to provide voluntary separation in-**
 2 **centive payments**

3 “(a) *A voluntary separation incentive payment under*
 4 *this subchapter may be paid to an employee only as pro-*
 5 *vided in the plan of an agency established under section*
 6 *3522.*

7 “(b) *A voluntary incentive payment—*

8 “(1) *shall be offered to agency employees on the*
 9 *basis of—*

10 “(A) *1 or more organizational units;*

11 “(B) *1 or more occupational series or levels;*

12 “(C) *1 or more geographical locations;*

13 “(D) *skills, knowledge, or other factors re-*
 14 *lated to a position;*

15 “(E) *specific periods of time during which*
 16 *eligible employees may elect a voluntary incen-*
 17 *tive payment; or*

18 “(F) *any appropriate combination of such*
 19 *factors;*

20 “(2) *shall be paid in a lump sum after the em-*
 21 *ployee’s separation;*

22 “(3) *shall be equal to the lesser of—*

23 “(A) *an amount equal to the amount the*
 24 *employee would be entitled to receive under sec-*
 25 *tion 5595(c) if the employee were entitled to pay-*

1 *ment under such section (without adjustment for*
 2 *any previous payment made); or*

3 *“(B) an amount determined by the agency*
 4 *head, not to exceed \$25,000;*

5 *“(4) may be made only in the case of an em-*
 6 *ployee who voluntarily separates (whether by retire-*
 7 *ment or resignation) under this subchapter;*

8 *“(5) shall not be a basis for payment, and shall*
 9 *not be included in the computation, of any other type*
 10 *of Government benefit;*

11 *“(6) shall not be taken into account in deter-*
 12 *mining the amount of any severance pay to which the*
 13 *employee may be entitled under section 5595, based*
 14 *on another other separation; and*

15 *“(7) shall be paid from appropriations or funds*
 16 *available for the payment of the basic pay of the em-*
 17 *ployee.*

18 **“§ 3524. Effect of subsequent employment with the**
 19 **Government**

20 *“(a) The term ‘employment’—*

21 *“(1) in subsection (b) includes employment*
 22 *under a personal services contract (or other direct*
 23 *contract) with the United States Government (other*
 24 *than an entity in the legislative branch); and*

1 “(2) in subsection (c) does not include employ-
2 ment under such a contract.

3 “(b) An individual who has received a voluntary separa-
4 tion incentive payment under this subchapter and accepts
5 any employment for compensation with the Government of
6 the United States with 5 years after the date of the separa-
7 tion on which the payment is based shall be required to
8 pay, before the individual’s first day of employment, the
9 entire amount of the incentive payment to the agency that
10 paid the incentive payment.

11 “(c)(1) If the employment under this section is with
12 an agency, other than the General Accounting Office, the
13 United States Postal Service, or the Postal Rate Commis-
14 sion, the Director of the Office of Personnel Management
15 may, at the request of the head of the agency, may waive
16 the repayment if—

17 “(A) the individual involved possesses unique
18 abilities and is the only qualified applicant available
19 for the position; or

20 “(B) in case of an emergency involving a direct
21 threat to life or property, the individual—

22 “(i) has skills directly related to resolving
23 the emergency; and

1 “(ii) will serve on a temporary basis only
 2 so long as that individual’s services are made
 3 necessary by the emergency.

4 “(2) If the employment under this section is with an
 5 entity in the legislative branch, the head of the entity or
 6 the appointing official may waive the repayment if the in-
 7 dividual involved possesses unique abilities and is the only
 8 qualified applicant available for the position.

9 “(3) If the employment under this section is with the
 10 judicial branch, the Director of the Administrative Office
 11 of the United States Courts may waive the repayment if
 12 the individual involved possesses unique abilities and is the
 13 only qualified applicant available for the position.

14 **“§ 3525. Regulations**

15 “The Office of Personnel Management may prescribe
 16 regulations to carry out this subchapter.”.

17 (B) TECHNICAL AND CONFORMING AMEND-
 18 MENTS.—Chapter 35 of title 5, United States
 19 Code, is amended—

20 (i) by striking the chapter heading and
 21 inserting the following:

1 **“CHAPTER 35—RETENTION PREFERENCE,**
 2 **VOLUNTARY SEPARATION INCENTIVE**
 3 **PAYMENTS, RESTORATION, AND REEM-**
 4 **PLOYMENT”;**

5 *and*

6 *(ii) in the table of sections by inserting*
 7 *after the item relating to section 3504 the*
 8 *following:*

“SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

“3521. Definitions.

“3522. Agency plans; approval.

“3523. Authority to provide voluntary separation incentive pay-
 ments.

“3524. Effect of subsequent employment with the Government.

“3525. Regulations.”.

9 (2) ADMINISTRATIVE OFFICE OF THE UNITED
 10 STATES COURTS.—*The Director of the Administrative*
 11 *Office of the United States Courts may, by regulation,*
 12 *establish a program substantially similar to the pro-*
 13 *gram established under paragraph (1) for individuals*
 14 *serving in the judicial branch.*

15 (3) CONTINUATION OF OTHER AUTHORITY.—*Any*
 16 *agency exercising any voluntary separation incentive*
 17 *authority in effect on the effective date of this sub-*
 18 *section may continue to offer voluntary separation in-*
 19 *centives consistent with that authority until that au-*
 20 *thority expires.*

21 (4) EFFECTIVE DATE.—*This subsection shall take*
 22 *effect 60 days after the date of enactment of this Act.*

1 (b) *FEDERAL EMPLOYEE VOLUNTARY EARLY RETIRE-*
2 *MENT.*—

3 (1) *CIVIL SERVICE RETIREMENT SYSTEM.*—*Sec-*
4 *tion 8336(d)(2) of title 5, United States Code, is*
5 *amended to read as follows:*

6 “(2)(A) *has been employed continuously, by the*
7 *agency in which the employee is serving, for at least*
8 *the 31-day period ending on the date on which such*
9 *agency requests the determination referred to in sub-*
10 *paragraph (D);*

11 “(B) *is serving under an appointment that is*
12 *not time limited;*

13 “(C) *has not been duly notified that such em-*
14 *ployee is to be involuntarily separated for misconduct*
15 *or unacceptable performance;*

16 “(D) *is separated from the service voluntarily*
17 *during a period in which, as determined by the office*
18 *of Personnel Management (upon request of the agen-*
19 *cy) under regulations prescribed by the Office—*

20 “(i) *such agency (or, if applicable, the com-*
21 *ponent in which the employee is serving) is un-*
22 *dergoing substantial delayering, substantial reor-*
23 *ganization, substantial reductions in force, sub-*
24 *stantial transfer of function, or other substantial*
25 *workforce restructuring (or shaping);*

1 “(ii) a significant percentage of employees
 2 servicing in such agency (or component) are like-
 3 ly to be separated or subject to an immediate re-
 4 duction in the rate of basic pay (without regard
 5 to subchapter VI of chapter 53, or comparable
 6 provisions); or

7 “(iii) identified as being in positions which
 8 are becoming surplus or excess to the agency’s fu-
 9 ture ability to carry out its mission effectively;
 10 and

11 “(E) as determined by the agency under regula-
 12 tions prescribed by the Office, is within the scope of
 13 the offer of voluntary early retirement, which may be
 14 made on the basis of—

15 “(i) 1 or more organizational units;

16 “(ii) 1 or more occupational series or levels;

17 “(iii) 1 or more geographical locations;

18 “(iv) specific periods;

19 “(v) skills, knowledge, or other factors re-
 20 lated to a position; or

21 “(vi) any appropriate combination of such
 22 factors;”.

23 (2) *FEDERAL EMPLOYEES’ RETIREMENT SYS-*
 24 *TEM.—Section 8414(b)(1) of title 5, United States*

1 *Code, is amended by striking subparagraph (B) and*
2 *inserting the following:*

3 “(B)(i) *has been employed continuously, by*
4 *the agency in which the employee is serving, for*
5 *at least the 31-day period ending on the date on*
6 *which such agency requests the determination re-*
7 *ferred to in clause (iv);*

8 “(ii) *is serving under an appointment that*
9 *is not time limited;*

10 “(iii) *has not been duly notified that such*
11 *employee is to be involuntarily separated for*
12 *misconduct or unacceptable performance;*

13 “(iv) *is separate from the service volun-*
14 *tarily during a period in which, as determined*
15 *by the Office of Personnel Management (upon re-*
16 *quest of the agency) under regulations prescribed*
17 *by the Office—*

18 “(I) *such agency (or, if applicable, the*
19 *component in which the employee is serv-*
20 *ing) is undergoing substantial layering,*
21 *substantial reorganization, substantial re-*
22 *ductions in force, substantial transfer of*
23 *function, or other substantial workforce re-*
24 *structuring (or shaping);*

1 “(II) a significant percentage of em-
 2 ployees serving in such agency (or compo-
 3 nent) are likely to be separated or subject to
 4 an immediate reduction in the rate of basic
 5 pay (without regard to subchapter VI of
 6 chapter 53, or comparable provisions); or

7 “(III) identified as being in positions
 8 which are becoming surplus or excess to the
 9 agency’s future ability to carry out its mis-
 10 sion effectively; and

11 “(v) as determined by the agency under reg-
 12 ulations prescribed by the Office, is within the
 13 scope of the offer of voluntary early retirement,
 14 which may be made on the basis of—

15 “(I) 1 or more organizational units;

16 “(II) 1 or more occupational series or
 17 levels;

18 “(III) 1 or more geographical loca-
 19 tions;

20 “(IV) specific periods;

21 “(V) skills, knowledge, or other factors
 22 related to a position; or

23 “(VI) any appropriate combination of
 24 such factors.”.

1 (3) *GENERAL ACCOUNTING OFFICE AUTHORITY.*—*The amendments made by this subsection shall*
 2 *not be construed to affect the authority under section*
 3 *1 of Public Law 106–303 (5 U.S.C. 8336 note; 114*
 4 *State. 1063).*

6 (4) *TECHNICAL AND CONFORMING AMENDMENTS.*—*Section 7001 of the 1998 Supplemental Ap-*
 7 *propriations and Rescissions Act (Public Law 105–*
 8 *174; 112 Stat. 91) is repealed.*

10 (5) *REGULATIONS.*—*The Office of Personnel*
 11 *Management may prescribe regulations to carry out*
 12 *this subsection.*

13 (c) *SENSE OF CONGRESS.*—*It is the sense of Congress*
 14 *that the implementation of this section is intended to re-*
 15 *shape the Federal workforce and not downsize the Federal*
 16 *workforce.*

17 **SEC. 1314. STUDENT VOLUNTEER TRANSIT SUBSIDY.**

18 (a) *IN GENERAL.*—*Section 7905(a)(1) of title 5,*
 19 *United States Code, is amended by striking “and a member*
 20 *of a uniformed service” and inserting “, a member of a*
 21 *uniformed service, and a student who provides voluntary*
 22 *services under section 3111”.*

23 (b) *TECHNICAL AND CONFORMING AMENDMENT.*—*Sec-*
 24 *tion 3111(c)(1) of title 5, United States Code, is amended*
 25 *by striking “chapter 81 of this title” and inserting “section*

1 7905 (relating to commuting by means other than single-
 2 occupancy motor vehicles), chapter 81”.

3 ***Subtitle C—Reforms Relating to the***
 4 ***Senior Executive Service***

5 ***SEC. 1321. REPEAL OF RECERTIFICATION REQUIREMENTS***
 6 ***OF SENIOR EXECUTIVES.***

7 (a) *IN GENERAL.*—Title 5, United States Code, is
 8 amended—

9 (1) *in chapter 33—*

10 (A) *in section 3393(g) by striking “3393a”;*

11 (B) *by repealing section 3393a; and*

12 (C) *in the table of sections by striking the*
 13 *item relating to section 3393a;*

14 (2) *in chapter 35—*

15 (A) *in section 3592(a)—*

16 (i) *in paragraph (1), by inserting “or”*
 17 *at the end;*

18 (ii) *in paragraph (2), by striking “or”*
 19 *at the end;*

20 (iii) *by striking paragraph (3); and*

21 (iv) *by striking the last sentence;*

22 (B) *in section 3593(a), by striking para-*
 23 *graph (2) and inserting the following:*

24 “(2) *the appointee left the Senior Executive*
 25 *Service for reasons other than misconduct, neglect of*

1 *duty, malfeasance, or less than fully successful execu-*
 2 *tive performance as determined under subchapter II*
 3 *of chapter 43.”; and*

4 *(C) in section 3594(b)—*

5 *(i) in paragraph (1), by inserting “or”*
 6 *at the end;*

7 *(ii) in paragraph (2), by striking “or”*
 8 *at the end; and*

9 *(iii) by striking paragraph (3);*

10 *(3) in section 7701(c)(1)(A), by striking “or re-*
 11 *moval from the Senior Executive Service for failure*
 12 *to be recertified under section 3393a”;*

13 *(4) in chapter 83—*

14 *(A) in section 8336(h)(1), by striking “for*
 15 *failure to be recertified as a senior executive*
 16 *under section 3393a or”;* and

17 *(B) in section 8339(h), in the first sentence,*
 18 *by striking “, except that such reduction shall*
 19 *not apply in the case of an employee retiring*
 20 *under section 8336(h) for failure to be recertified*
 21 *as a senior executive”;* and

22 *(5) in chapter 84—*

23 *(A) in section 8414(a)(1), by striking “for*
 24 *failure to be recertified as a senior executive*
 25 *under section 3393a or”;* and

1 (B) in section 8421(a)(2), by striking “, ex-
 2 cept that an individual entitled to an annuity
 3 under section 8414(a) for failure to be recertified
 4 as a senior executive shall be entitled to an an-
 5 nuity supplement without regard to such appli-
 6 cable retirement age”.

7 (b) SAVINGS PROVISION.—Notwithstanding the
 8 amendments made by subsection (a)(2)(A), an appeal under
 9 the final sentence of section 3592(a) of title 5, United States
 10 Code, that is pending on the day before the effective date
 11 of this section—

12 (1) shall not abate by reason of the enactment of
 13 the amendments made by subsection (a)(2)(A); and

14 (2) shall continue as if such amendments had
 15 not been enacted.

16 (c) APPLICATION.—The amendment made by sub-
 17 section (a)(2)(B) shall not apply with respect to an indi-
 18 vidual who, before the effective date of this section, leaves
 19 the Senior Executive Service for failure to be recertified as
 20 a senior executive under section 3393a of title 5, United
 21 States Code.

22 **SEC. 1322. ADJUSTMENT OF LIMITATION ON TOTAL AN-**
 23 **NUAL COMPENSATION.**

24 (a) IN GENERAL.—Section 5307 of title 5, United
 25 States Code, is amended by adding at the end the following:

1 “(d)(1) Notwithstanding any other provision of this
2 section, subsection (a)(1) shall be applied by substituting
3 ‘the total annual compensation payable to the Vice Presi-
4 dent under section 104 of title 3’ for ‘the annual rate of
5 basic pay payable for level I of the Executive Schedule’ in
6 the case of any employee who—

7 “(A) is paid under section 5376 or 5383 of this
8 title or section 332(f), 603, or 604 of title 28; and

9 “(B) holds a position in or under an agency
10 which is described in paragraph (2).

11 “(2) An agency described in this paragraph is any
12 agency which, for purposes of the calendar year involved,
13 has been certified under this subsection as having a per-
14 formance appraisal system which (as designed and applied)
15 makes meaningful distinctions based on relative perform-
16 ance.

17 “(3)(A) The Office of Personnel Management and the
18 Office of Management and Budget jointly shall promulgate
19 such regulations as may be necessary to carry out this sub-
20 section, including the criteria and procedures in accordance
21 with which any determinations under this subsection shall
22 be made.

23 “(B) An agency’s certification under this subsection
24 shall be for a period of 2 calendar years, except that such
25 certification may be terminated at any time, for purposes

1 of either or both of those years, upon a finding that the
 2 actions of such agency have not remained in conformance
 3 with applicable requirements.

4 “(C) Any certification or decertification under this
 5 subsection shall be made by the Office of Personnel Manage-
 6 ment, with the concurrence of the Office of Management and
 7 Budget.

8 “(4) Notwithstanding any provision of paragraph (3),
 9 any regulations, certifications, or other measures necessary
 10 to carry out this subsection with respect to employees within
 11 the judicial branch shall be the responsibility of the Director
 12 of the Administrative Office of the United States Courts.
 13 However, the regulations under this paragraph shall be con-
 14 sistent with those promulgated under paragraph (3).”.

15 (b) CONFORMING AMENDMENTS.—(1) Section 5307(a)
 16 of title 5, United States Code, is amended by inserting “or
 17 as otherwise provided under subsection (d),” after “under
 18 law,”.

19 (2) Section 5307(c) of such title is amended by striking
 20 “this section,” and inserting “this section (subject to sub-
 21 section (d)),”.

22 ***Subtitle D—Academic Training***

23 **SEC. 1331. ACADEMIC TRAINING.**

24 (a) ACADEMIC DEGREE TRAINING.—Section 4107 of
 25 title 5, United States Code, is amended to read as follows:

1 **“§ 4107. Academic degree training**

2 “(a) Subject to subsection (b), an agency may select
3 and assign an employee to academic degree training and
4 may pay or reimburse the costs of academic degree training
5 from appropriated or other available funds if such
6 training—

7 “(1) contributes significantly to—

8 “(A) meeting an identified agency training
9 need;

10 “(B) resolving an identified agency staffing
11 problem; or

12 “(C) accomplishing goals in the strategic
13 plan of the agency;

14 “(2) is part of a planned, systemic, and coordi-
15 nated agency employee development program linked
16 to accomplishing the strategic goals of the agency; and

17 “(3) is accredited and is provided by a college or
18 university that is accredited by a nationally recog-
19 nized body.

20 “(b) In exercising authority under subsection (a), an
21 agency shall—

22 “(1) consistent with the merit system principles
23 set forth in paragraphs (2) and (7) of section 2301(b),
24 take into consideration the need to—

25 “(A) maintain a balanced workforce in
26 which women, members of racial and ethnic mi-

1 *nority groups, and persons with disabilities are*
 2 *appropriately represented in Government service;*
 3 *and*

4 *“(B) provide employees effective education*
 5 *and training to improve organizational and in-*
 6 *dividual performance;*

7 *“(2) assure that the training is not for the sole*
 8 *purpose of providing an employee an opportunity to*
 9 *obtain an academic degree or qualify for appointment*
 10 *to a particular position for which the academic degree*
 11 *is a basic requirement;*

12 *“(3) assure that no authority under this sub-*
 13 *section is exercised on behalf of any employee occu-*
 14 *pying or seeking to qualify for—*

15 *“(A) a noncareer appointment in the senior*
 16 *Executive Service; or*

17 *“(B) appointment to any position that is*
 18 *excepted from the competitive service because of*
 19 *its confidential policy-determining, policy-mak-*
 20 *ing or policy-advocating character; and*

21 *“(4) to the greatest extent practicable, facilitate*
 22 *the use of online degree training.”.*

23 *(b) TECHNICAL AND CONFORMING AMENDMENT.—The*
 24 *table of sections for chapter 41 of title 5, United States*

1 *Code, is amended by striking the item relating to section*
 2 *4107 and inserting the following:*

“4107. Academic degree training.”.

3 **SEC. 1332. MODIFICATIONS TO NATIONAL SECURITY EDU-**
 4 **CATION PROGRAM.**

5 *(a) FINDINGS AND POLICIES.—*

6 *(1) FINDINGS.—Congress finds that—*

7 *(A) the United States Government actively*
 8 *encourages and financially supports the train-*
 9 *ing, education, and development of many United*
 10 *States citizens;*

11 *(B) as a condition of some of those sup-*
 12 *ports, many of those citizens have an obligation*
 13 *to seek either compensated or uncompensated em-*
 14 *ployment in the Federal sector; and*

15 *(C) it is in the United States national in-*
 16 *terest to maximize the return to the Nation of*
 17 *funds invested in the development of such citi-*
 18 *zens by seeking to employ them in the Federal*
 19 *sector.*

20 *(2) POLICY.—It shall be the policy of the United*
 21 *States Government to—*

22 *(A) establish procedures for ensuring that*
 23 *United States citizens who have incurred service*
 24 *obligations as the result of receiving financial*
 25 *support for education and training from the*

1 *United States Government and have applied for*
 2 *Federal positions are considered in all recruit-*
 3 *ment and hiring initiatives of Federal depart-*
 4 *ments, bureaus, agencies, and offices; and*

5 *(B) advertise and open all Federal positions*
 6 *to United States citizens who have incurred serv-*
 7 *ice obligations with the United States Govern-*
 8 *ment as the result of receiving financial support*
 9 *for education and training from the United*
 10 *States Government.*

11 *(b) FULFILLMENT OF SERVICE REQUIREMENT IF NA-*
 12 *TIONAL SECURITY POSITIONS ARE UNAVAILABLE.—Section*
 13 *802(b)(2) of the David L. Boren National Security Edu-*
 14 *cation Act of 1991 (50 U.S.C. 1902) is amended—*

15 *(1) in subparagraph (A), by striking clause (ii)*
 16 *and inserting the following:*

17 *“(ii) if the recipient demonstrates to*
 18 *the Secretary (in accordance with such reg-*
 19 *ulations) that no national security position*
 20 *in an agency or office of the Federal Gov-*
 21 *ernment having national security respon-*
 22 *sibilities is available, work in other offices*
 23 *or agencies of the Federal Government or in*
 24 *the field of higher education in a discipline*
 25 *relating to the foreign country, foreign lan-*

1 *guage, area study, or international field of*
 2 *study for which the scholarship was award-*
 3 *ed, for a period specified by the Secretary,*
 4 *which period shall be determined in accord-*
 5 *ance with clause (i); or”; and*

6 *(2) in subparagraph (B), by striking clause (ii)*
 7 *and inserting the following:*

8 *“(ii) if the recipient demonstrates to*
 9 *the Secretary (in accordance with such reg-*
 10 *ulations) that no national security position*
 11 *is available upon the completion of the de-*
 12 *gree, work in other offices or agencies of the*
 13 *Federal Government or in the field of higher*
 14 *education in a discipline relating to foreign*
 15 *country, foreign language, area study, or*
 16 *international field of study for which the*
 17 *fellowship was awarded, for a period speci-*
 18 *fied by the Secretary, which period shall be*
 19 *determined in accordance with clause (i);*
 20 *and”.*

21 ***TITLE XIV—ARMING PILOTS***
 22 ***AGAINST TERRORISM***

23 ***SEC. 1401. SHORT TITLE.***

24 *This title may be cited as the “Arming Pilots Against*
 25 *Terrorism Act”.*

1 **SEC. 1402. FEDERAL FLIGHT DECK OFFICER PROGRAM.**

2 (a) *IN GENERAL.*—Subchapter I of chapter 449 of title
3 49, United States Code, is amended by adding at the end
4 the following:

5 **“§ 44921. Federal flight deck officer program**

6 “(a) *ESTABLISHMENT.*—The Under Secretary of
7 Transportation for Security shall establish a program to
8 deputize volunteer pilots of air carriers providing passenger
9 air transportation or intrastate passenger air transpor-
10 tation as Federal law enforcement officers to defend the
11 flight decks of aircraft of such air carriers against acts of
12 criminal violence or air piracy. Such officers shall be
13 known as ‘Federal flight deck officers’.

14 “(b) *PROCEDURAL REQUIREMENTS.*—

15 “(1) *IN GENERAL.*—Not later than 3 months
16 after the date of enactment of this section, the Under
17 Secretary shall establish procedural requirements to
18 carry out the program under this section.

19 “(2) *COMMENCEMENT OF PROGRAM.*—Beginning
20 3 months after the date of enactment of this section,
21 the Under Secretary shall begin the process of train-
22 ing and deputizing pilots who are qualified to be Fed-
23 eral flight deck officers as Federal flight deck officers
24 under the program.

1 “(3) *ISSUES TO BE ADDRESSED.*—*The proce-*
2 *dural requirements established under paragraph (1)*
3 *shall address the following issues:*

4 “(A) *The type of firearm to be used by a*
5 *Federal flight deck officer.*

6 “(B) *The type of ammunition to be used by*
7 *a Federal flight deck officer.*

8 “(C) *The standards and training needed to*
9 *qualify and requalify as a Federal flight deck of-*
10 *ficer.*

11 “(D) *The placement of the firearm of a Fed-*
12 *eral flight deck officer on board the aircraft to*
13 *ensure both its security and its ease of retrieval*
14 *in an emergency.*

15 “(E) *An analysis of the risk of catastrophic*
16 *failure of an aircraft as a result of the discharge*
17 *(including an accidental discharge) of a firearm*
18 *to be used in the program into the avionics, elec-*
19 *trical systems, or other sensitive areas of the air-*
20 *craft.*

21 “(F) *The division of responsibility between*
22 *pilots in the event of an act of criminal violence*
23 *or air piracy if only 1 pilot is a Federal flight*
24 *deck officer and if both pilots are Federal flight*
25 *deck officers.*

1 “(G) *Procedures for ensuring that the fire-*
2 *arm of a Federal flight deck officer does not leave*
3 *the cockpit if there is a disturbance in the pas-*
4 *senger cabin of the aircraft or if the pilot leaves*
5 *the cockpit for personal reasons.*

6 “(H) *Interaction between a Federal flight*
7 *deck officer and a Federal air marshal on board*
8 *the aircraft.*

9 “(I) *The process for selection of pilots to*
10 *participate in the program based on their fitness*
11 *to participate in the program, including whether*
12 *an additional background check should be re-*
13 *quired beyond that required by section*
14 *44936(a)(1).*

15 “(J) *Storage and transportation of firearms*
16 *between flights, including international flights,*
17 *to ensure the security of the firearms, focusing*
18 *particularly on whether such security would be*
19 *enhanced by requiring storage of the firearm at*
20 *the airport when the pilot leaves the airport to*
21 *remain overnight away from the pilot’s base air-*
22 *port.*

23 “(K) *Methods for ensuring that security*
24 *personnel will be able to identify whether a pilot*

1 *is authorized to carry a firearm under the pro-*
2 *gram.*

3 “(L) *Methods for ensuring that pilots (in-*
4 *cluding Federal flight deck officers) will be able*
5 *to identify whether a passenger is a law enforce-*
6 *ment officer who is authorized to carry a firearm*
7 *aboard the aircraft.*

8 “(M) *Any other issues that the Under Sec-*
9 *retary considers necessary.*

10 “(N) *The Under Secretary’s decisions re-*
11 *garding the methods for implementing each of*
12 *the foregoing procedural requirements shall be*
13 *subject to review only for abuse of discretion.*

14 “(4) *PREFERENCE.—In selecting pilots to par-*
15 *ticipate in the program, the Under Secretary shall*
16 *give preference to pilots who are former military or*
17 *law enforcement personnel.*

18 “(5) *CLASSIFIED INFORMATION.—Notwith-*
19 *standing section 552 of title 5 but subject to section*
20 *40119 of this title, information developed under para-*
21 *graph (3)(E) shall not be disclosed.*

22 “(6) *NOTICE TO CONGRESS.—The Under Sec-*
23 *retary shall provide notice to the Committee on*
24 *Transportation and Infrastructure of the House of*
25 *Representatives and the Committee on Commerce,*

1 *Science, and Transportation of the Senate after com-*
 2 *pleting the analysis required by paragraph (3)(E).*

3 “(7) *MINIMIZATION OF RISK.*—*If the Under Sec-*
 4 *retary determines as a result of the analysis under*
 5 *paragraph (3)(E) that there is a significant risk of*
 6 *the catastrophic failure of an aircraft as a result of*
 7 *the discharge of a firearm, the Under Secretary shall*
 8 *take such actions as may be necessary to minimize*
 9 *that risk.*

10 “(c) *TRAINING, SUPERVISION, AND EQUIPMENT.*—

11 “(1) *IN GENERAL.*—*The Under Secretary shall*
 12 *only be obligated to provide the training, supervision,*
 13 *and equipment necessary for a pilot to be a Federal*
 14 *flight deck officer under this section at no expense to*
 15 *the pilot or the air carrier employing the pilot.*

16 “(2) *TRAINING.*—

17 “(A) *IN GENERAL.*—*The Under Secretary*
 18 *shall base the requirements for the training of*
 19 *Federal flight deck officers under subsection (b)*
 20 *on the training standards applicable to Federal*
 21 *air marshals; except that the Under Secretary*
 22 *shall take into account the differing roles and re-*
 23 *sponsibilities of Federal flight deck officers and*
 24 *Federal air marshals.*

1 “(B) *ELEMENTS.*—*The training of a Fed-*
 2 *eral flight deck officer shall include, at a min-*
 3 *imum, the following elements:*

4 “(i) *Training to ensure that the officer*
 5 *achieves the level of proficiency with a fire-*
 6 *arm required under subparagraph (C)(i).*

7 “(ii) *Training to ensure that the officer*
 8 *maintains exclusive control over the officer’s*
 9 *firearm at all times, including training in*
 10 *defensive maneuvers.*

11 “(iii) *Training to assist the officer in*
 12 *determining when it is appropriate to use*
 13 *the officer’s firearm and when it is appro-*
 14 *priate to use less than lethal force.*

15 “(C) *TRAINING IN USE OF FIREARMS.*—

16 “(i) *STANDARD.*—*In order to be depu-*
 17 *tized as a Federal flight deck officer, a pilot*
 18 *must achieve a level of proficiency with a*
 19 *firearm that is required by the Under Sec-*
 20 *retary. Such level shall be comparable to the*
 21 *level of proficiency required of Federal air*
 22 *marshals.*

23 “(ii) *CONDUCT OF TRAINING.*—*The*
 24 *training of a Federal flight deck officer in*
 25 *the use of a firearm may be conducted by*

1 the Under Secretary or by a firearms train-
 2 ing facility approved by the Under Sec-
 3 retary.

4 “(iii) *REQUALIFICATION.*—The Under
 5 Secretary shall require a Federal flight deck
 6 officer to requalify to carry a firearm under
 7 the program. Such requalification shall
 8 occur at an interval required by the Under
 9 Secretary.

10 “(d) *DEPUTIZATION.*—

11 “(1) *IN GENERAL.*—The Under Secretary may
 12 deputize, as a Federal flight deck officer under this
 13 section, a pilot who submits to the Under Secretary
 14 a request to be such an officer and whom the Under
 15 Secretary determines is qualified to be such an officer.

16 “(2) *QUALIFICATION.*—A pilot is qualified to be
 17 a Federal flight deck officer under this section if—

18 “(A) the pilot is employed by an air car-
 19 rier;

20 “(B) the Under Secretary determines (in the
 21 Under Secretary’s discretion) that the pilot meets
 22 the standards established by the Under Secretary
 23 for being such an officer; and

1 “(C) *the Under Secretary determines that*
 2 *the pilot has completed the training required by*
 3 *the Under Secretary.*

4 “(3) *DEPUTIZATION BY OTHER FEDERAL AGEN-*
 5 *CIES.—The Under Secretary may request another*
 6 *Federal agency to deputize, as Federal flight deck offi-*
 7 *cers under this section, those pilots that the Under*
 8 *Secretary determines are qualified to be such officers.*

9 “(4) *REVOCATION.—The Under Secretary may,*
 10 *(in the Under Secretary’s discretion) revoke the depu-*
 11 *tization of a pilot as a Federal flight deck officer if*
 12 *the Under Secretary finds that the pilot is no longer*
 13 *qualified to be such an officer.*

14 “(e) *COMPENSATION.—Pilots participating in the pro-*
 15 *gram under this section shall not be eligible for compensa-*
 16 *tion from the Federal Government for services provided as*
 17 *a Federal flight deck officer. The Federal Government and*
 18 *air carriers shall not be obligated to compensate a pilot for*
 19 *participating in the program or for the pilot’s training or*
 20 *qualification and requalification to carry firearms under*
 21 *the program.*

22 “(f) *AUTHORITY TO CARRY FIREARMS.—*

23 “(1) *IN GENERAL.—The Under Secretary shall*
 24 *authorize a Federal flight deck officer to carry a fire-*
 25 *arm while engaged in providing air transportation or*

1 *intrastate air transportation. Notwithstanding sub-*
 2 *section (c)(1), the officer may purchase a firearm and*
 3 *carry that firearm aboard an aircraft of which the of-*
 4 *ficer is the pilot in accordance with this section if the*
 5 *firearm is of a type that may be used under the pro-*
 6 *gram.*

7 “(2) *PREEMPTION.*—*Notwithstanding any other*
 8 *provision of Federal or State law, a Federal flight*
 9 *deck officer, whenever necessary to participate in the*
 10 *program, may carry a firearm in any State and from*
 11 *1 State to another State.*

12 “(3) *CARRYING FIREARMS OUTSIDE UNITED*
 13 *STATES.*—*In consultation with the Secretary of State,*
 14 *the Under Secretary may take such action as may be*
 15 *necessary to ensure that a Federal flight deck officer*
 16 *may carry a firearm in a foreign country whenever*
 17 *necessary to participate in the program.*

18 “(g) *AUTHORITY TO USE FORCE.*—*Notwithstanding*
 19 *section 44903(d), the Under Secretary shall prescribe the*
 20 *standards and circumstances under which a Federal flight*
 21 *deck officer may use, while the program under this section*
 22 *is in effect, force (including lethal force) against an indi-*
 23 *vidual in the defense of the flight deck of an aircraft in*
 24 *air transportation or intrastate air transportation.*

25 “(h) *LIMITATION ON LIABILITY.*—

1 “(1) *LIABILITY OF AIR CARRIERS.*—*An air car-*
 2 *rier shall not be liable for damages in any action*
 3 *brought in a Federal or State court arising out of a*
 4 *Federal flight deck officer’s use of or failure to use a*
 5 *firearm.*

6 “(2) *LIABILITY OF FEDERAL FLIGHT DECK OFFI-*
 7 *CERS.*—*A Federal flight deck officer shall not be liable*
 8 *for damages in any action brought in a Federal or*
 9 *State court arising out of the acts or omissions of the*
 10 *officer in defending the flight deck of an aircraft*
 11 *against acts of criminal violence or air piracy unless*
 12 *the officer is guilty of gross negligence or willful mis-*
 13 *conduct.*

14 “(3) *LIABILITY OF FEDERAL GOVERNMENT.*—*For*
 15 *purposes of an action against the United States with*
 16 *respect to an act or omission of a Federal flight deck*
 17 *officer in defending the flight deck of an aircraft, the*
 18 *officer shall be treated as an employee of the Federal*
 19 *Government under chapter 171 of title 28, relating to*
 20 *tort claims procedure.*

21 “(i) *PROCEDURES FOLLOWING ACCIDENTAL DIS-*
 22 *CHARGES.*—*If an accidental discharge of a firearm under*
 23 *the pilot program results in the injury or death of a pas-*
 24 *senger or crew member on an aircraft, the Under*
 25 *Secretary—*

1 “(1) shall revoke the deputization of the Federal
 2 *flight deck officer responsible for that firearm if the*
 3 *Under Secretary determines that the discharge was*
 4 *attributable to the negligence of the officer; and*

5 “(2) if the Under Secretary determines that a
 6 *shortcoming in standards, training, or procedures*
 7 *was responsible for the accidental discharge, the*
 8 *Under Secretary may temporarily suspend the pro-*
 9 *gram until the shortcoming is corrected.*

10 “(j) *LIMITATION ON AUTHORITY OF AIR CARRIERS.—*
 11 *No air carrier shall prohibit or threaten any retaliatory*
 12 *action against a pilot employed by the air carrier from be-*
 13 *coming a Federal flight deck officer under this section. No*
 14 *air carrier shall—*

15 “(1) *prohibit a Federal flight deck officer from*
 16 *piloting an aircraft operated by the air carrier, or*

17 “(2) *terminate the employment of a Federal*
 18 *flight deck officer, solely on the basis of his or her vol-*
 19 *unteering for or participating in the program under*
 20 *this section.*

21 “(k) *APPLICABILITY.—*

22 “(1) *EXEMPTION.—This section shall not apply*
 23 *to air carriers operating under part 135 of title 14,*
 24 *Code of Federal Regulations, and to pilots employed*
 25 *by such carriers to the extent that such carriers and*

1 *pilots are covered by section 135.119 of such title or*
 2 *any successor to such section.*

3 “(2) *PILOT DEFINED.*—*The term ‘pilot’ means*
 4 *an individual who has final authority and responsi-*
 5 *bility for the operation and safety of the flight or, if*
 6 *more than 1 pilot is required for the operation of the*
 7 *aircraft or by the regulations under which the flight*
 8 *is being conducted, the individual designated as sec-*
 9 *ond in command.”.*

10 *(b) CONFORMING AMENDMENTS.*—

11 *(1) CHAPTER ANALYSIS.*—*The analysis for such*
 12 *chapter is amended by inserting after the item relat-*
 13 *ing to section 44920 the following:*

“44921. Federal flight deck officer program.”.

14 *(2) FLIGHT DECK SECURITY.*—*Section 128 of the*
 15 *Aviation and Transportation Security Act (Public*
 16 *Law 107–71) is repealed.*

17 *(c) FEDERAL AIR MARSHAL PROGRAM.*—

18 *(1) SENSE OF CONGRESS.*—*It is the sense of*
 19 *Congress that the Federal air marshal program is*
 20 *critical to aviation security.*

21 *(2) LIMITATION ON STATUTORY CONSTRU-*
 22 *CTION.*—*Nothing in this Act, including any amend-*
 23 *ment made by this Act, shall be construed as pre-*
 24 *venting the Under Secretary of Transportation for Se-*

1 curity from implementing and training Federal air
2 marshals.

3 **SEC. 1403. CREW TRAINING.**

4 (a) *IN GENERAL.*—Section 44918(e) of title 49, United
5 States Code, is amended—

6 (1) by striking “The Administrator” and insert-
7 ing the following:

8 “(1) *IN GENERAL.*—The Under Secretary”;

9 (2) by adding at the end the following:

10 “(2) *ADDITIONAL REQUIREMENTS.*—In updating
11 the training guidance, the Under Secretary, in con-
12 sultation with the Administrator, shall issue a rule
13 to—

14 “(A) require both classroom and effective
15 hands-on situational training in the following
16 elements of self defense:

17 “(i) recognizing suspicious activities
18 and determining the seriousness of an oc-
19 currence;

20 “(ii) deterring a passenger who might
21 present a problem;

22 “(iii) crew communication and coordi-
23 nation;

24 “(iv) the proper commands to give to
25 passengers and attackers;

1 “(v) *methods to subdue and restrain an*
2 *attacker;*

3 “(vi) *use of available items aboard the*
4 *aircraft for self-defense;*

5 “(vii) *appropriate and effective re-*
6 *sponses to defend oneself, including the use*
7 *of force against an attacker;*

8 “(viii) *use of protective devices as-*
9 *signed to crew members (to the extent such*
10 *devices are approved by the Administrator*
11 *or Under Secretary);*

12 “(ix) *the psychology of terrorists to*
13 *cope with their behavior and passenger re-*
14 *sponses to that behavior;*

15 “(x) *how to respond to aircraft maneu-*
16 *vers that may be authorized to defend*
17 *against an act of criminal violence or air*
18 *piracy;*

19 “(B) *require training in the proper conduct*
20 *of a cabin search, including the duty time re-*
21 *quired to conduct the search;*

22 “(C) *establish the required number of hours*
23 *of training and the qualifications for the train-*
24 *ing instructors;*

1 “(D) establish the intervals, number of
2 hours, and elements of recurrent training;

3 “(E) ensure that air carriers provide the
4 initial training required by this paragraph
5 within 24 months of the date of enactment of this
6 subparagraph; and

7 “(F) ensure that no person is required to
8 participate in any hands-on training activity
9 that that person believes will have an adverse
10 impact on his or her health or safety.

11 “(3) *RESPONSIBILITY OF UNDER SECRETARY.—*

12 (A) *CONSULTATION.—In developing the rule under*
13 *paragraph (2), the Under Secretary shall consult with*
14 *law enforcement personnel and security experts who*
15 *have expertise in self-defense training, terrorism ex-*
16 *perts, and representatives of air carriers, the provider*
17 *of self-defense training for Federal air marshals, flight*
18 *attendants, labor organizations representing flight at-*
19 *tendants, and educational institutions offering law*
20 *enforcement training programs.*

21 “(B) *DESIGNATION OF OFFICIAL.—The*
22 *Under Secretary shall designate an official in*
23 *the Transportation Security Administration to*
24 *be responsible for overseeing the implementation*
25 *of the training program under this subsection.*

1 “(C) *NECESSARY RESOURCES AND KNOWL-*
 2 *EDGE.—The Under Secretary shall ensure that*
 3 *employees of the Administration responsible for*
 4 *monitoring the training program have the nec-*
 5 *essary resources and knowledge.”; and*

6 (3) *by aligning the remainder of the text of*
 7 *paragraph (1) (as designated by paragraph (1) of this*
 8 *section) with paragraphs (2) and (3) (as added by*
 9 *paragraph (2) of this section).*

10 (b) *ENHANCE SECURITY MEASURES.—Section 109(a)*
 11 *of the Aviation and Transportation Security Act (49 U.S.C.*
 12 *114 note; 115 Stat. 613–614) is amended by adding at the*
 13 *end the following:*

14 “(9) *Require that air carriers provide flight at-*
 15 *tendants with a discreet, hands-free, wireless method*
 16 *of communicating with the pilots.”.*

17 (c) *BENEFITS AND RISKS OF PROVIDING FLIGHT AT-*
 18 *TENDANTS WITH NONLETHAL WEAPONS.—*

19 (1) *STUDY.—The Under Secretary of Transpor-*
 20 *tation for Security shall conduct a study to evaluate*
 21 *the benefits and risks of providing flight attendants*
 22 *with nonlethal weapons to aide in combating air pi-*
 23 *racy and criminal violence on commercial airlines.*

24 (2) *REPORT.—Not later than 6 months after the*
 25 *date of enactment of this Act, the Under Secretary*

1 *shall transmit to Congress a report on the results of*
2 *the study.*

3 **SEC. 1404. COMMERCIAL AIRLINE SECURITY STUDY.**

4 (a) *STUDY.*—*The Secretary of Transportation shall*
5 *conduct a study of the following:*

6 (1) *The number of armed Federal law enforce-*
7 *ment officers (other than Federal air marshals), who*
8 *travel on commercial airliners annually and the fre-*
9 *quency of their travel.*

10 (2) *The cost and resources necessary to provide*
11 *such officers with supplemental training in aircraft*
12 *anti-terrorism training that is comparable to the*
13 *training that Federal air marshals are provided.*

14 (3) *The cost of establishing a program at a Fed-*
15 *eral law enforcement training center for the purpose*
16 *of providing new Federal law enforcement recruits*
17 *with standardized training comparable to the train-*
18 *ing that Federal air marshals are provided.*

19 (4) *The feasibility of implementing a certifi-*
20 *cation program designed for the purpose of ensuring*
21 *Federal law enforcement officers have completed the*
22 *training described in paragraph (2) and track their*
23 *travel over a 6-month period.*

1 (5) *The feasibility of staggering the flights of*
 2 *such officers to ensure the maximum amount of flights*
 3 *have a certified trained Federal officer on board.*

4 (b) *REPORT.*—*Not later than 6 months after the date*
 5 *of enactment of this Act, the Secretary shall transmit to*
 6 *Congress a report on the results of the study. The report*
 7 *may be submitted in classified and redacted form.*

8 **SEC. 1405. AUTHORITY TO ARM FLIGHT DECK CREW WITH**
 9 **LESS-THAN-LETHAL WEAPONS.**

10 (a) *IN GENERAL.*—*Section 44903(i) of title 49, United*
 11 *States Code (as redesignated by section 6 of this Act) is*
 12 *amended by adding at the end the following:*

13 “(3) *REQUEST OF AIR CARRIERS TO USE LESS-*
 14 *THAN-LETHAL WEAPONS.*—*If, after the date of enact-*
 15 *ment of this paragraph, the Under Secretary receives*
 16 *a request from an air carrier for authorization to*
 17 *allow pilots of the air carrier to carry less-than-lethal*
 18 *weapons, the Under Secretary shall respond to that*
 19 *request within 90 days.”.*

20 (b) *CONFORMING AMENDMENTS.*—*Such section is fur-*
 21 *ther amended—*

22 (1) *in paragraph (1) by striking “Secretary” the*
 23 *first and third places it appears and inserting*
 24 *“Under Secretary”; and*

1 (2) in paragraph (2) by striking “Secretary”
 2 each place it appears and inserting “Under Sec-
 3 retary”.

4 **SEC. 1406. TECHNICAL AMENDMENTS.**

5 Section 44903 of title 49, United States Code, is
 6 amended—

7 (1) by redesignating subsection (i) (relating to
 8 short-term assessment and deployment of emerging se-
 9 curity technologies and procedures) as subsection (j);

10 (2) by redesignating the second subsection (h)
 11 (relating to authority to arm flight deck crew with
 12 less-than-lethal weapons) as subsection (i); and

13 (3) by redesignating the third subsection (h) (re-
 14 lating to limitation on liability for acts to thwart
 15 criminal violence for aircraft piracy) as subsection
 16 (k).

17 **TITLE XV—TRANSITION**

18 **Subtitle A—Reorganization Plan**

19 **SEC. 1501. DEFINITIONS.**

20 For purposes of this title:

21 (1) The term “agency” includes any entity, orga-
 22 nizational unit, program, or function.

23 (2) The term “transition period” means the 12-
 24 month period beginning on the effective date of this
 25 Act.

1 **SEC. 1502. REORGANIZATION PLAN.**

2 (a) *SUBMISSION OF PLAN.*—Not later than 60 days
3 after the date of the enactment of this Act, the President
4 shall transmit to the appropriate congressional committees
5 a reorganization plan regarding the following:

6 (1) *The transfer of agencies, personnel, assets,*
7 *and obligations to the Department pursuant to this*
8 *Act.*

9 (2) *Any consolidation, reorganization, or stream-*
10 *lining of agencies transferred to the Department pur-*
11 *suant to this Act.*

12 (b) *PLAN ELEMENTS.*—The plan transmitted under
13 subsection (a) shall contain, consistent with this Act, such
14 elements as the President deems appropriate, including the
15 following:

16 (1) *Identification of any functions of agencies*
17 *transferred to the Department pursuant to this Act*
18 *that will not be transferred to the Department under*
19 *the plan.*

20 (2) *Specification of the steps to be taken by the*
21 *Secretary to organize the Department, including the*
22 *delegation or assignment of functions transferred to*
23 *the Department among officers of the Department in*
24 *order to permit the Department to carry out the func-*
25 *tions transferred under the plan.*

1 (3) *Specification of the funds available to each*
2 *agency that will be transferred to the Department as*
3 *a result of transfers under the plan.*

4 (4) *Specification of the proposed allocations*
5 *within the Department of unexpended funds trans-*
6 *ferred in connection with transfers under the plan.*

7 (5) *Specification of any proposed disposition of*
8 *property, facilities, contracts, records, and other assets*
9 *and obligations of agencies transferred under the*
10 *plan.*

11 (6) *Specification of the proposed allocations*
12 *within the Department of the functions of the agencies*
13 *and subdivisions that are not related directly to se-*
14 *curing the homeland.*

15 (c) *MODIFICATION OF PLAN.—The President may, on*
16 *the basis of consultations with the appropriate congres-*
17 *sional committees, modify or revise any part of the plan*
18 *until that part of the plan becomes effective in accordance*
19 *with subsection (d).*

20 (d) *EFFECTIVE DATE.—*

21 (1) *IN GENERAL.—The reorganization plan de-*
22 *scribed in this section, including any modifications or*
23 *revisions of the plan under subsection (d), shall be-*
24 *come effective for an agency on the earlier of—*

1 (A) the date specified in the plan (or the
 2 plan as modified pursuant to subsection (d)), ex-
 3 cept that such date may not be earlier than 90
 4 days after the date the President has transmitted
 5 the reorganization plan to the appropriate con-
 6 gressional committees pursuant to subsection (a);
 7 or

8 (B) the end of the transition period.

9 (2) *STATUTORY CONSTRUCTION.*—Nothing in this
 10 subsection may be construed to require the transfer of
 11 functions, personnel, records, balances of appropria-
 12 tions, or other assets of an agency on a single date.

13 (3) *SUPERSEDES EXISTING LAW.*—Paragraph (1)
 14 shall apply notwithstanding section 905(b) of title 5,
 15 United States Code.

16 **SEC. 1503. REVIEW OF CONGRESSIONAL COMMITTEE**
 17 **STRUCTURES.**

18 *It is the sense of Congress that each House of Congress*
 19 *should review its committee structure in light of the reorga-*
 20 *nization of responsibilities within the executive branch by*
 21 *the establishment of the Department.*

22 ***Subtitle B—Transitional Provisions***

23 **SEC. 1511. TRANSITIONAL AUTHORITIES.**

24 (a) *PROVISION OF ASSISTANCE BY OFFICIALS.*—Until
 25 the transfer of an agency to the Department, any official

1 *having authority over or functions relating to the agency*
 2 *immediately before the effective date of this Act shall pro-*
 3 *vide to the Secretary such assistance, including the use of*
 4 *personnel and assets, as the Secretary may request in pre-*
 5 *paring for the transfer and integration of the agency into*
 6 *the Department.*

7 (b) *SERVICES AND PERSONNEL.*—*During the transi-*
 8 *tion period, upon the request of the Secretary, the head of*
 9 *any executive agency may, on a reimbursable basis, provide*
 10 *services or detail personnel to assist with the transition.*

11 (c) *ACTING OFFICIALS.*—(1) *During the transition pe-*
 12 *riod, pending the advice and consent of the Senate to the*
 13 *appointment of an officer required by this Act to be ap-*
 14 *pointed by and with such advice and consent, the President*
 15 *may designate any officer whose appointment was required*
 16 *to be made by and with such advice and consent and who*
 17 *was such an officer immediately before the effective date of*
 18 *this Act (and who continues in office) or immediately before*
 19 *such designation, to act in such office until the same is filled*
 20 *as provided in this Act. While so acting, such officers shall*
 21 *receive compensation at the higher of—*

22 (A) *the rates provided by this Act for the respec-*
 23 *tive offices in which they act; or*

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

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

7 (d) *TRANSFER OF PERSONNEL, ASSETS, OBLIGATIONS,*
 8 *AND FUNCTIONS.—Upon the transfer of an agency to the*
 9 *Department—*

10 (1) *the personnel, assets, and obligations held by*
 11 *or available in connection with the agency shall be*
 12 *transferred to the Secretary for appropriate alloca-*
 13 *tion, subject to the approval of the Director of the Of-*
 14 *fice of Management and Budget and in accordance*
 15 *with the provisions of section 1531(a)(2) of title 31,*
 16 *United States Code; and*

17 (2) *the Secretary shall have all functions relating*
 18 *to the agency that any other official could by law ex-*
 19 *ercise in relation to the agency immediately before*
 20 *such transfer, and shall have in addition all functions*
 21 *vested in the Secretary by this Act or other law.*

22 (e) *PROHIBITION ON USE OF TRANSPORTATION TRUST*
 23 *FUNDS.—*

24 (1) *IN GENERAL.—Notwithstanding any other*
 25 *provision of this Act, no funds derived from the High-*

1 *way Trust Fund, Airport and Airway Trust Fund,*
 2 *Inland Waterway Trust Fund, or Harbor Mainte-*
 3 *nance Trust Fund, may be transferred to, made avail-*
 4 *able to, or obligated by the Secretary or any other of-*
 5 *ficial in the Department.*

6 (2) *LIMITATION.—This subsection shall not*
 7 *apply to security-related funds provided to the Fed-*
 8 *eral Aviation Administration for fiscal years pre-*
 9 *ceding fiscal year 2003 for (A) operations, (B) facili-*
 10 *ties and equipment, or (C) research, engineering, and*
 11 *development.*

12 **SEC. 1512. SAVINGS PROVISIONS.**

13 (a) *COMPLETED ADMINISTRATIVE ACTIONS.—(1)*
 14 *Completed administrative actions of an agency shall not be*
 15 *affected by the enactment of this Act or the transfer of such*
 16 *agency to the Department, but shall continue in effect ac-*
 17 *cording to their terms until amended, modified, superseded,*
 18 *terminated, set aside, or revoked in accordance with law*
 19 *by an officer of the United States or a court of competent*
 20 *jurisdiction, or by operation of law.*

21 (2) *For purposes of paragraph (1), the term “com-*
 22 *pleted administrative action” includes orders, determina-*
 23 *tions, rules, regulations, personnel actions, permits, agree-*
 24 *ments, grants, contracts, certificates, licenses, registrations,*
 25 *and privileges.*

1 (b) *PENDING PROCEEDINGS.*—*Subject to the authority*
2 *of the Secretary under this Act—*

3 (1) *pending proceedings in an agency, including*
4 *notices of proposed rulemaking, and applications for*
5 *licenses, permits, certificates, grants, and financial*
6 *assistance, shall continue notwithstanding the enact-*
7 *ment of this Act or the transfer of the agency to the*
8 *Department, unless discontinued or modified under*
9 *the same terms and conditions and to the same extent*
10 *that such discontinuance could have occurred if such*
11 *enactment or transfer had not occurred; and*

12 (2) *orders issued in such proceedings, and ap-*
13 *peals therefrom, and payments made pursuant to*
14 *such orders, shall issue in the same manner and on*
15 *the same terms as if this Act had not been enacted or*
16 *the agency had not been transferred, and any such or-*
17 *ders shall continue in effect until amended, modified,*
18 *superseded, terminated, set aside, or revoked by an of-*
19 *ficer of the United States or a court of competent ju-*
20 *risdiction, or by operation of law.*

21 (c) *PENDING CIVIL ACTIONS.*—*Subject to the authority*
22 *of the Secretary under this Act, pending civil actions shall*
23 *continue notwithstanding the enactment of this Act or the*
24 *transfer of an agency to the Department, and in such civil*
25 *actions, proceedings shall be had, appeals taken, and judg-*

1 *ments rendered and enforced in the same manner and with*
2 *the same effect as if such enactment or transfer had not*
3 *occurred.*

4 (d) *REFERENCES.—References relating to an agency*
5 *that is transferred to the Department in statutes, Executive*
6 *orders, rules, regulations, directives, or delegations of au-*
7 *thority that precede such transfer or the effective date of*
8 *this Act shall be deemed to refer, as appropriate, to the De-*
9 *partment, to its officers, employees, or agents, or to its cor-*
10 *responding organizational units or functions. Statutory re-*
11 *porting requirements that applied in relation to such an*
12 *agency immediately before the effective date of this Act shall*
13 *continue to apply following such transfer if they refer to*
14 *the agency by name.*

15 (e) *EMPLOYMENT PROVISIONS.—(1) Notwithstanding*
16 *the generality of the foregoing (including subsections (a)*
17 *and (d)), in and for the Department the Secretary may,*
18 *in regulations prescribed jointly with the Director of the*
19 *Office of Personnel Management, adopt the rules, proce-*
20 *dures, terms, and conditions, established by statute, rule,*
21 *or regulation before the effective date of this Act, relating*
22 *to employment in any agency transferred to the Depart-*
23 *ment pursuant to this Act; and*

24 (2) *except as otherwise provided in this Act, or under*
25 *authority granted by this Act, the transfer pursuant to this*

1 *Act of personnel shall not alter the terms and conditions*
2 *of employment, including compensation, of any employee*
3 *so transferred.*

4 (f) *STATUTORY REPORTING REQUIREMENTS.—Any*
5 *statutory reporting requirement that applied to an agency,*
6 *transferred to the Department under this Act, immediately*
7 *before the effective date of this Act shall continue to apply*
8 *following that transfer if the statutory requirement refers*
9 *to the agency by name.*

10 **SEC. 1513. TERMINATIONS.**

11 *Except as otherwise provided in this Act, whenever all*
12 *the functions vested by law in any agency have been trans-*
13 *ferred pursuant to this Act, each position and office the in-*
14 *cumbent of which was authorized to receive compensation*
15 *at the rates prescribed for an office or position at level II,*
16 *III, IV, or V, of the Executive Schedule, shall terminate.*

17 **SEC. 1514. NATIONAL IDENTIFICATION SYSTEM NOT AU-**
18 **THORIZED.**

19 *Nothing in this Act shall be construed to authorize the*
20 *development of a national identification system or card.*

21 **SEC. 1515. CONTINUITY OF INSPECTOR GENERAL OVER-**
22 **SIGHT.**

23 *Notwithstanding the transfer of an agency to the De-*
24 *partment pursuant to this Act, the Inspector General that*
25 *exercised oversight of such agency prior to such transfer*

1 *shall continue to exercise oversight of such agency during*
2 *the period of time, if any, between the transfer of such agen-*
3 *cy to the Department pursuant to this Act and the appoint-*
4 *ment of the Inspector General of the Department of Home-*
5 *land Security in accordance with section 103(b).*

6 **SEC. 1516. INCIDENTAL TRANSFERS.**

7 *The Director of the Office of Management and Budget,*
8 *in consultation with the Secretary, is authorized and di-*
9 *rected to make such additional incidental dispositions of*
10 *personnel, assets, and liabilities held, used, arising from,*
11 *available, or to be made available, in connection with the*
12 *functions transferred by this Act, as the Director may deter-*
13 *mine necessary to accomplish the purposes of this Act.*

14 **SEC. 1517. REFERENCE.**

15 *With respect to any function transferred by or under*
16 *this Act (including under a reorganization plan that be-*
17 *comes effective under section 1502) and exercised on or after*
18 *the effective date of this Act, reference in any other Federal*
19 *law to any department, commission, or agency or any offi-*
20 *cer or office the functions of which are so transferred shall*
21 *be deemed to refer to the Secretary, other official, or compo-*
22 *nent of the Department to which such function is so trans-*
23 *ferred.*

1 **TITLE XVI—CORRECTIONS TO**
 2 **EXISTING LAW RELATING TO**
 3 **AIRLINE TRANSPORTATION**
 4 **SECURITY**

5 **SEC. 1601. RETENTION OF SECURITY SENSITIVE INFORMA-**
 6 **TION AUTHORITY AT DEPARTMENT OF**
 7 **TRANSPORTATION.**

8 *(a) Section 40119 of title 49, United States Code, is*
 9 *amended—*

10 *(1) in subsection (a)—*

11 *(A) by inserting “and the Administrator of*
 12 *the Federal Aviation Administration each” after*
 13 *“for Security”; and*

14 *(B) by striking “criminal violence and air-*
 15 *craft piracy” and inserting “criminal violence,*
 16 *aircraft piracy, and terrorism and to ensure se-*
 17 *curity”; and*

18 *(2) in subsection (b)(1)—*

19 *(A) by striking “, the Under Secretary” and*
 20 *inserting “and the establishment of a Depart-*
 21 *ment of Homeland Security, the Secretary of*
 22 *Transportation”;*

23 *(B) by striking “carrying out” and all that*
 24 *follows through “if the Under Secretary” and in-*

1 serting “ensuring security under this title if the
2 Secretary of Transportation”; and

3 (C) in subparagraph (C) by striking “the
4 safety of passengers in transportation” and in-
5 serting “transportation safety”.

6 (b) Section 114 of title 49, United States Code, is
7 amended by adding at the end the following:

8 “(s) *NONDISCLOSURE OF SECURITY ACTIVITIES.*—

9 “(1) *IN GENERAL.*—Notwithstanding section 552
10 of title 5, the Under Secretary shall prescribe regula-
11 tions prohibiting the disclosure of information ob-
12 tained or developed in carrying out security under
13 authority of the Aviation and Transportation Secu-
14 rity Act (Public Law 107–71) or under chapter 449
15 of this title if the Under Secretary decides that dis-
16 closing the information would—

17 “(A) be an unwarranted invasion of per-
18 sonal privacy;

19 “(B) reveal a trade secret or privileged or
20 confidential commercial or financial informa-
21 tion; or

22 “(C) be detrimental to the security of trans-
23 portation.

24 “(2) *AVAILABILITY OF INFORMATION TO CON-*
25 *GRESS.*—Paragraph (1) does not authorize informa-

1 *tion to be withheld from a committee of Congress au-*
 2 *thorized to have the information.*

3 “(3) *LIMITATION ON TRANSFERABILITY OF DU-*
 4 *TIES.—Except as otherwise provided by law, the*
 5 *Under Secretary may not transfer a duty or power*
 6 *under this subsection to another department, agency,*
 7 *or instrumentality of the United States.”.*

8 **SEC. 1602. INCREASE IN CIVIL PENALTIES.**

9 *Section 46301(a) of title 49, United States Code, is*
 10 *amended by adding at the end the following:*

11 “(8) *AVIATION SECURITY VIOLATIONS.—Notwith-*
 12 *standing paragraphs (1) and (2) of this subsection,*
 13 *the maximum civil penalty for violating chapter 449*
 14 *or another requirement under this title administered*
 15 *by the Under Secretary of Transportation for Secu-*
 16 *rity shall be \$10,000; except that the maximum civil*
 17 *penalty shall be \$25,000 in the case of a person oper-*
 18 *ating an aircraft for the transportation of passengers*
 19 *or property for compensation (except an individual*
 20 *serving as an airman).”.*

21 **SEC. 1603. ALLOWING UNITED STATES CITIZENS AND**
 22 **UNITED STATES NATIONALS AS SCREENERS.**

23 *Section 44935(e)(2)(A)(ii) of title 49, United States*
 24 *Code, is amended by striking “citizen of the United States”*
 25 *and inserting “citizen of the United States or a national*

1 *of the United States, as defined in section 1101(a)(22) of*
 2 *the Immigration and Nationality Act (8 U.S.C.*
 3 *1101(a)(22))”.*

4 ***TITLE XVII—CONFORMING AND***
 5 ***TECHNICAL AMENDMENTS***

6 ***SEC. 1701. INSPECTOR GENERAL ACT OF 1978.***

7 *Section 11 of the Inspector General Act of 1978 (Public*
 8 *Law 95–452) is amended—*

9 *(1) by inserting “Homeland Security,” after*
 10 *“Transportation,” each place it appears; and*

11 *(2) by striking “; and” each place it appears in*
 12 *paragraph (1) and inserting “;”;*

13 ***SEC. 1702. EXECUTIVE SCHEDULE.***

14 *(a) IN GENERAL.—Title 5, United States Code, is*
 15 *amended—*

16 *(1) in section 5312, by inserting “Secretary of*
 17 *Homeland Security.” as a new item after “Affairs.”;*

18 *(2) in section 5313, by inserting “Deputy Sec-*
 19 *retary of Homeland Security.” as a new item after*
 20 *“Affairs.”;*

21 *(3) in section 5314, by inserting “Under Secre-*
 22 *taries, Department of Homeland Security.”, “Director*
 23 *of the Bureau of Citizenship and Immigration Serv-*
 24 *ices.” as new items after “Affairs.” the third place it*
 25 *appears;*

1 (4) *in section 5315, by inserting “Assistant Sec-*
 2 *retaries, Department of Homeland Security.”, “Gen-*
 3 *eral Counsel, Department of Homeland Security.”,*
 4 *“Officer for Civil Rights and Civil Liberties, Depart-*
 5 *ment of Homeland Security.”, “Chief Financial Offi-*
 6 *cer, Department of Homeland Security.”, “Chief In-*
 7 *formation Officer, Department of Homeland Secu-*
 8 *urity.”, and “Inspector General, Department of Home-*
 9 *land Security.” as new items after “Affairs.” the first*
 10 *place it appears; and*

11 (5) *in section 5315, by striking “Commissioner*
 12 *of Immigration and Naturalization, Department of*
 13 *Justice.”.*

14 (b) *SPECIAL EFFECTIVE DATE.—Notwithstanding sec-*
 15 *tion 4, the amendment made by subsection (a)(5) shall take*
 16 *effect on the date on which the transfer of functions specified*
 17 *under section 441 takes effect.*

18 **SEC. 1703. UNITED STATES SECRET SERVICE.**

19 (a) *IN GENERAL.—(1) The United States Code is*
 20 *amended in section 202 of title 3, and in section 3056 of*
 21 *title 18, by striking “of the Treasury”, each place it appears*
 22 *and inserting “of Homeland Security”.*

23 (2) *Section 208 of title 3, United States Code, is*
 24 *amended by striking “of Treasury” each place it appears*
 25 *and inserting “of Homeland Security”.*

1 (b) *EFFECTIVE DATE.*—*The amendments made by this*
 2 *section shall take effect on the date of transfer of the United*
 3 *States Secret Service to the Department.*

4 **SEC. 1704. COAST GUARD.**

5 (a) *TITLE 14, U.S.C.*—*Title 14, United States Code,*
 6 *is amended in sections 1, 3, 53, 95, 145, 516, 666, 669,*
 7 *673, 673a (as redesignated by subsection (e)(1)), 674, 687,*
 8 *and 688 by striking “of Transportation” each place it ap-*
 9 *pears and inserting “of Homeland Security”.*

10 (b) *TITLE 10, U.S.C.*—(1) *Title 10, United States*
 11 *Code, is amended in sections 101(9), 130b(a), 130b(c)(4),*
 12 *130c(h)(1), 379, 513(d), 575(b)(2), 580(e)(6), 580a(e),*
 13 *651(a), 671(c)(2), 708(a), 716(a), 717, 806(d)(2), 815(e),*
 14 *888, 946(c)(1), 973(d), 978(d), 983(b)(1), 985(a),*
 15 *1033(b)(1), 1033(d), 1034, 1037(c), 1044d(f), 1058(c),*
 16 *1059(a), 1059(k)(1), 1073(a), 1074(c)(1), 1089(g)(2), 1090,*
 17 *1091(a), 1124, 1143, 1143a(h), 1144, 1145(e), 1148, 1149,*
 18 *1150(c), 1152(a), 1152(d)(1), 1153, 1175, 1212(a),*
 19 *1408(h)(2), 1408(h)(8), 1463(a)(2), 1482a(b), 1510,*
 20 *1552(a)(1), 1565(f), 1588(f)(4), 1589, 2002(a), 2302(1),*
 21 *2306b(b), 2323(j)(2), 2376(2), 2396(b)(1), 2410a(a),*
 22 *2572(a), 2575(a), 2578, 2601(b)(4), 2634(e), 2635(a),*
 23 *2734(g), 2734a, 2775, 2830(b)(2), 2835, 2836, 4745(a),*
 24 *5013a(a), 7361(b), 10143(b)(2), 10146(a), 10147(a),*
 25 *10149(b), 10150, 10202(b), 10203(d), 10205(b), 10301(b),*

1 12103(b), 12103(d), 12304, 12311(c), 12522(c),
 2 12527(a)(2), 12731(b), 12731a(e), 16131(a), 16136(a),
 3 16301(g), and 18501 by striking “of Transportation” each
 4 place it appears and inserting “of Homeland Security”.

5 (2) Section 801(1) of such title is amended by striking
 6 “the General Counsel of the Department of Transportation”
 7 and inserting “an official designated to serve as Judge Ad-
 8 vocate General of the Coast Guard by the Secretary of
 9 Homeland Security”.

10 (3) Section 983(d)(2)(B) of such title is amended by
 11 striking “Department of Transportation” and inserting
 12 “Department of Homeland Security”.

13 (4) Section 2665(b) of such title is amended by striking
 14 “Department of Transportation” and inserting “Depart-
 15 ment in which the Coast Guard is operating”.

16 (5) Section 7045 of such title is amended—

17 (A) in subsections (a)(1) and (b), by striking
 18 “Secretaries of the Army, Air Force, and Transpor-
 19 tation” both places it appears and inserting “Sec-
 20 retary of the Army, the Secretary of the Air Force,
 21 and the Secretary of Homeland Security”; and

22 (B) in subsection (b), by striking “Department of
 23 Transportation” and inserting “Department of
 24 Homeland Security”.

1 (6) Section 7361(b) of such title is amended in the sub-
2 section heading by striking “TRANSPORTATION” and insert-
3 ing “HOMELAND SECURITY”.

(7) Section 12522(c) of such title is amended in the subsection heading by striking “TRANSPORTATION” and inserting “HOMELAND SECURITY”.

(c) TITLE 37, U.S.C.—Title 37, United States Code, is amended in sections 101(5), 204(i)(4), 301a(a)(3), 306(d), 307(c), 308(a)(1), 308(d)(2), 308(f), 308b(e), 308c(c), 308d(a), 308e(f), 308g(g), 308h(f), 308i(e), 309(d), 316(d), 323(b), 323(g)(1), 325(i), 402(d), 402a(g)(1), 403(f)(3), 403(l)(1), 403b(i)(5), 406(b)(1), 417(a), 417(b), 418(a), 703, 1001(c), 1006(f), 1007(a), and 1011(d) by striking “of Transportation” each place it appears and inserting “of Homeland Security”.

(d) *TITLE 38, U.S.C.—Title 38, United States Code, is amended in sections 101(25)(d), 1560(a), 3002(5), 3011(a)(1)(A)(ii)(I), 3011(a)(1)(A)(ii)(II), 3011(a)(1)(B)(ii)(III), 3011(a)(1)(C)(iii)(II)(cc), 3012(b)(1)(A)(v), 3012(b)(1)(B)(ii)(V), 3018(b)(3)(B)(iv), 3018A(a)(3), 3018B(a)(1)(C), 3018B(a)(2)(C), 3018C(a)(5), 3020(m), 3035(b)(2), 3035(c), 3035(d), 3035(e), 3680A(g), and 6105(c) by striking “of Transportation” each place it appears and inserting “of Homeland Security”.*

1 (e) *OTHER DEFENSE-RELATED LAWS.*—(1) *Section*
2 *363 of Public Law 104–193 (110 Stat. 2247) is amended—*

3 (A) *in subsection (a)(1) (10 U.S.C. 113 note), by*
4 *striking “of Transportation” and inserting “of Home-*
5 *land Security”;* and

6 (B) *in subsection (b)(1) (10 U.S.C. 704 note), by*
7 *striking “of Transportation” and inserting “of Home-*
8 *land Security”.*

9 (2) *Section 721(1) of Public Law 104–201 (10 U.S.C.*
10 *1073 note) is amended by striking “of Transportation” and*
11 *inserting “of Homeland Security”.*

12 (3) *Section 4463(a) of Public Law 102–484 (10 U.S.C.*
13 *1143a note) is amended by striking “after consultation with*
14 *the Secretary of Transportation”.*

15 (4) *Section 4466(h) of Public Law 102–484 (10 U.S.C.*
16 *1143 note) is amended by striking “of Transportation” and*
17 *inserting “of Homeland Security”.*

18 (5) *Section 542(d) of Public Law 103–337 (10 U.S.C.*
19 *1293 note) is amended by striking “of Transportation” and*
20 *inserting “of Homeland Security”.*

21 (6) *Section 740 of Public Law 106–181 (10 U.S.C.*
22 *2576 note) is amended in subsections (b)(2), (c), and (d)(1)*
23 *by striking “of Transportation” each place it appears and*
24 *inserting “of Homeland Security”.*

1 (7) *Section 1407(b)(2) of the Defense Dependents’ Edu-*
 2 *cation Act of 1978 (20 U.S.C. 926(b)) is amended by strik-*
 3 *ing “of Transportation” both places it appears and insert-*
 4 *ing “of Homeland Security”.*

5 (8) *Section 2301(5)(D) of the Elementary and Sec-*
 6 *ondary Education Act of 1965 (20 U.S.C. 6671(5)(D)) is*
 7 *amended by striking “of Transportation” and inserting “of*
 8 *Homeland Security”.*

9 (9) *Section 2307(a) of the Elementary and Secondary*
 10 *Education Act of 1965 (20 U.S.C. 6677(a)) is amended by*
 11 *striking “of Transportation” and inserting “of Homeland*
 12 *Security”.*

13 (10) *Section 1034(a) of Public Law 105–85 (21 U.S.C.*
 14 *1505a(a)) is amended by striking “of Transportation” and*
 15 *inserting “of Homeland Security”.*

16 (11) *The Military Selective Service Act is amended—*
 17 (A) *in section 4(a) (50 U.S.C. App. 454(a)), by*
 18 *striking “of Transportation” in the fourth paragraph*
 19 *and inserting “of Homeland Security”;*

20 (B) *in section 4(b) (50 U.S.C. App. 454(b)), by*
 21 *striking “of Transportation” both places it appears*
 22 *and inserting “of Homeland Security”;*

23 (C) *in section 6(d)(1) (50 U.S.C. App.*
 24 *456(d)(1)), by striking “of Transportation” both*

1 *places it appears and inserting “of Homeland Secu-*
 2 *rity”;*

3 *(D) in section 9(c) (50 U.S.C. App. 459(c)), by*
 4 *striking “Secretaries of Army, Navy, Air Force, or*
 5 *Transportation” and inserting “Secretary of a mili-*
 6 *tary department, and the Secretary of Homeland Se-*
 7 *curity with respect to the Coast Guard,”; and*

8 *(E) in section 15(e) (50 U.S.C. App. 465(e)), by*
 9 *striking “of Transportation” both places it appears*
 10 *and inserting “of Homeland Security”.*

11 *(f) TECHNICAL CORRECTION.—(1) Title 14, United*
 12 *States Code, is amended by redesignating section 673 (as*
 13 *added by section 309 of Public Law 104–324) as section*
 14 *673a.*

15 *(2) The table of sections at the beginning of chapter*
 16 *17 of such title is amended by redesignating the item relat-*
 17 *ing to such section as section 673a.*

18 *(g) EFFECTIVE DATE.—The amendments made by this*
 19 *section (other than subsection (f)) shall take effect on the*
 20 *date of transfer of the Coast Guard to the Department.*

21 **SEC. 1705. STRATEGIC NATIONAL STOCKPILE AND SMALL-**
 22 **POX VACCINE DEVELOPMENT.**

23 *(a) IN GENERAL.—Section 121 of the Public Health*
 24 *Security and Bioterrorism Preparedness and Response Act*

1 of 2002 (Public Law 107–188; 42 U.S.C. 300hh–12) is
 2 amended—

3 (1) in subsection (a)(1)—

4 (A) by striking “Secretary of Health and
 5 Human Services” and inserting “Secretary of
 6 Homeland Security”;

7 (B) by inserting “the Secretary of Health
 8 and Human Services and” between “in coordi-
 9 nation with” and “the Secretary of Veterans Af-
 10 fairs”; and

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

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

17 (b) *EFFECTIVE DATE.*—The amendments made by this
 18 section shall take effect on the date of transfer of the Stra-
 19 tegic National Stockpile of the Department of Health and
 20 Human Services to the Department.

21 **SEC. 1706. TRANSFER OF CERTAIN SECURITY AND LAW EN-**
 22 **FORCEMENT FUNCTIONS AND AUTHORITIES.**

23 (a) *AMENDMENT TO TITLE 40.*—Section 581 of title
 24 40, United States Code, is amended—

25 (1) by striking subsection (a); and

1 (2) *in subsection (b)—*

2 (A) *by inserting “and” after the semicolon*
3 *at the end of paragraph (1);*

4 (B) *by striking “; and” at the end of para-*
5 *graph (2) and inserting a period; and*

6 (C) *by striking paragraph (3).*

7 (b) *LAW ENFORCEMENT AUTHORITY.—*

8 (1) *IN GENERAL.—Section 1315 of title 40,*
9 *United States Code, is amended to read as follows:*

10 **“§1315. Law enforcement authority of Secretary of**
11 **Homeland Security for protection of pub-**
12 **lic property**

13 “(a) *IN GENERAL.—To the extent provided for by*
14 *transfers made pursuant to the Homeland Security Act of*
15 *2002, the Secretary of Homeland Security (in this section*
16 *referred to as the ‘Secretary’) shall protect the buildings,*
17 *grounds, and property that are owned, occupied, or secured*
18 *by the Federal Government (including any agency, instru-*
19 *mentality, or wholly owned or mixed-ownership corporation*
20 *thereof) and the persons on the property.*

21 “(b) *OFFICERS AND AGENTS.—*

22 “(1) *DESIGNATION.—The Secretary may des-*
23 *ignate employees of the Department of Homeland Se-*
24 *curity, including employees transferred to the Depart-*
25 *ment from the Office of the Federal Protective Service*

1 *of the General Services Administration pursuant to*
2 *the Homeland Security Act of 2002, as officers and*
3 *agents for duty in connection with the protection of*
4 *property owned or occupied by the Federal Govern-*
5 *ment and persons on the property, including duty in*
6 *areas outside the property to the extent necessary to*
7 *protect the property and persons on the property.*

8 “(2) *POWERS.*—While engaged in the perform-
9 *ance of official duties, an officer or agent designated*
10 *under this subsection may—*

11 “(A) *enforce Federal laws and regulations*
12 *for the protection of persons and property;*

13 “(B) *carry firearms;*

14 “(C) *make arrests without a warrant for*
15 *any offense against the United States committed*
16 *in the presence of the officer or agent or for any*
17 *felony cognizable under the laws of the United*
18 *States if the officer or agent has reasonable*
19 *grounds to believe that the person to be arrested*
20 *has committed or is committing a felony;*

21 “(D) *serve warrants and subpoenas issued*
22 *under the authority of the United States; and*

23 “(E) *conduct investigations, on and off the*
24 *property in question, of offenses that may have*
25 *been committed against property owned or occu-*

1 *pied by the Federal Government or persons on*
 2 *the property.*

3 “(F) *carry out such other activities for the*
 4 *promotion of homeland security as the Secretary*
 5 *may prescribe.*

6 “(c) *REGULATIONS.—*

7 “(1) *IN GENERAL.—The Secretary, in consulta-*
 8 *tion with the Administrator of General Services, may*
 9 *prescribe regulations necessary for the protection and*
 10 *administration of property owned or occupied by the*
 11 *Federal Government and persons on the property. The*
 12 *regulations may include reasonable penalties, within*
 13 *the limits prescribed in paragraph (2), for violations*
 14 *of the regulations. The regulations shall be posted and*
 15 *remain posted in a conspicuous place on the property.*

16 “(2) *PENALTIES.—A person violating a regula-*
 17 *tion prescribed under this subsection shall be fined*
 18 *under title 18, United States Code, imprisoned for not*
 19 *more than 30 days, or both.*

20 “(d) *DETAILS.—*

21 “(1) *REQUESTS OF AGENCIES.—On the request*
 22 *of the head of a Federal agency having charge or con-*
 23 *trol of property owned or occupied by the Federal*
 24 *Government, the Secretary may detail officers and*

1 *agents designated under this section for the protection*
2 *of the property and persons on the property.*

3 “(2) *APPLICABILITY OF REGULATIONS.*—*The Sec-*
4 *retary may—*

5 “(A) *extend to property referred to in para-*
6 *graph (1) the applicability of regulations pre-*
7 *scribed under this section and enforce the regula-*
8 *tions as provided in this section; or*

9 “(B) *utilize the authority and regulations of*
10 *the requesting agency if agreed to in writing by*
11 *the agencies.*

12 “(3) *FACILITIES AND SERVICES OF OTHER AGEN-*
13 *CIES.*—*When the Secretary determines it to be eco-*
14 *nomical and in the public interest, the Secretary may*
15 *utilize the facilities and services of Federal, State,*
16 *and local law enforcement agencies, with the consent*
17 *of the agencies.*

18 “(e) *AUTHORITY OUTSIDE FEDERAL PROPERTY.*—*For*
19 *the protection of property owned or occupied by the Federal*
20 *Government and persons on the property, the Secretary*
21 *may enter into agreements with Federal agencies and with*
22 *State and local governments to obtain authority for officers*
23 *and agents designated under this section to enforce Federal*
24 *laws and State and local laws concurrently with other Fed-*

1 eral law enforcement officers and with State and local law
2 enforcement officers.

3 “(f) *SECRETARY AND ATTORNEY GENERAL AP-*
4 *PROVAL.*—The powers granted to officers and agents des-
5 ignated under this section shall be exercised in accordance
6 with guidelines approved by the Secretary and the Attorney
7 General.

8 “(g) *LIMITATION ON STATUTORY CONSTRUCTION.*—
9 Nothing in this section shall be construed to—

10 “(1) preclude or limit the authority of any Fed-
11 eral law enforcement agency; or

12 “(2) restrict the authority of the Administrator
13 of General Services to promulgate regulations affect-
14 ing property under the Administrator’s custody and
15 control.”.

16 (2) *DELEGATION OF AUTHORITY.*—The Secretary
17 may delegate authority for the protection of specific
18 buildings to another Federal agency where, in the
19 Secretary’s discretion, the Secretary determines it
20 necessary for the protection of that building.

21 (3) *CLERICAL AMENDMENT.*—The table of sec-
22 tions at the beginning of chapter 13 of title 40,
23 United States Code, is amended by striking the item
24 relating to section 1315 and inserting the following:

“1315. Law enforcement authority of Secretary of Homeland Security for protec-
tion of public property.”.

1 **SEC. 1707. TRANSPORTATION SECURITY REGULATIONS.**

2 *Title 49, United States Code, is amended—*

3 *(1) in section 114(l)(2)(B), by inserting “for a*
 4 *period not to exceed 90 days” after “effective”; and*

5 *(2) in section 114(l)(2)(B), by inserting “ratified*
 6 *or” after “unless”.*

7 **SEC. 1708. NATIONAL BIO-WEAPONS DEFENSE ANALYSIS**
 8 **CENTER.**

9 *There is established in the Department of Defense a*
 10 *National Bio-Weapons Defense Analysis Center, whose mis-*
 11 *sion is to develop countermeasures to potential attacks by*
 12 *terrorists using weapons of mass destruction.*

13 **SEC. 1709. COLLABORATION WITH THE SECRETARY OF**
 14 **HOMELAND SECURITY.**

15 *(a) DEPARTMENT OF HEALTH AND HUMAN SERV-*
 16 *ICES.—The second sentence of section 351A(e)(1) of the Pub-*
 17 *lic Health Service Act (42 U.S.C. 262A(e)(1)) is amended*
 18 *by striking “consultation with” and inserting “collabora-*
 19 *tion with the Secretary of Homeland Security and”.*

20 *(b) DEPARTMENT OF AGRICULTURE.—The second sen-*
 21 *tence of section 212(e)(1) of the Agricultural Bioterrorism*
 22 *Protection Act of 2002 (7 U.S.C. 8401) is amended by strik-*
 23 *ing “consultation with” and inserting “collaboration with*
 24 *the Secretary of Homeland Security and”.*

1 **SEC. 1710. RAILROAD SAFETY TO INCLUDE RAILROAD SECU-**
 2 **RITY.**

3 (a) *INVESTIGATION AND SURVEILLANCE ACTIVITIES.*—

4 *Section 20105 of title 49, United States Code, is amended—*

5 (1) *by striking “Secretary of Transportation” in*
 6 *the first sentence of subsection (a) and inserting “Sec-*
 7 *retary concerned”;*

8 (2) *by striking “Secretary” each place it appears*
 9 *(except the first sentence of subsection (a)) and insert-*
 10 *ing “Secretary concerned”;*

11 (3) *by striking “Secretary’s duties under chap-*
 12 *ters 203–213 of this title” in subsection (d) and in-*
 13 *serting “duties under chapters 203–213 of this title*
 14 *(in the case of the Secretary of Transportation) and*
 15 *duties under section 114 of this title (in the case of*
 16 *the Secretary of Homeland Security)”;*

17 (4) *by striking “chapter.” in subsection (f) and*
 18 *inserting “chapter (in the case of the Secretary of*
 19 *Transportation) and duties under section 114 of this*
 20 *title (in the case of the Secretary of Homeland Secu-*
 21 *rity).”;* and

22 (5) *by adding at the end the following new sub-*
 23 *section:*

24 “(g) *DEFINITIONS.*—*In this section—*

25 “(1) *the term ‘safety’ includes security; and*

26 “(2) *the term ‘Secretary concerned’ means—*

1 “(A) the Secretary of Transportation, with
 2 respect to railroad safety matters concerning
 3 such Secretary under laws administered by that
 4 Secretary; and

5 “(B) the Secretary of Homeland Security,
 6 with respect to railroad safety matters con-
 7 cerning such Secretary under laws administered
 8 by that Secretary.”.

9 (b) *REGULATIONS AND ORDERS*.—Section 20103(a) of
 10 such title is amended by inserting after “1970.” the fol-
 11 lowing: “When prescribing a security regulation or issuing
 12 a security order that affects the safety of railroad oper-
 13 ations, the Secretary of Homeland Security shall consult
 14 with the Secretary.”.

15 (c) *NATIONAL UNIFORMITY OF REGULATION*.—Section
 16 20106 of such title is amended—

17 (1) by inserting “and laws, regulations, and or-
 18 ders related to railroad security” after “safety” in the
 19 first sentence;

20 (2) by inserting “or security” after “safety” each
 21 place it appears after the first sentence; and

22 (3) by striking “Transportation” in the second
 23 sentence and inserting “Transportation (with respect
 24 to railroad safety matters), or the Secretary of Home-

3 SEC. 1711. HAZMAT SAFETY TO INCLUDE HAZMAT SECU-
4 RITY.

(a) *GENERAL REGULATORY AUTHORITY.*—Section 5103 of title 49, United States Code, is amended—

7 (1) by striking “transportation” the first place it
8 appears in subsection (b)(1) and inserting “transportation,
9 including security,”;

10 (2) by striking “aspects” in subsection (b)(1)(B)
11 and inserting “aspects, including security,”; and

12 (3) by adding at the end the following:

13 “(C) CONSULTATION.—When prescribing a
14 security regulation or issuing a security order
15 that affects the safety of the transportation of
16 hazardous material, the Secretary of Homeland
17 Security shall consult with the Secretary.”.

18 (b) *PREEMPTION.*—Section 5125 of that title is
19 amended—

(1) by striking “chapter or a regulation prescribed under this chapter” in subsection (a)(1) and inserting “chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security”;

1 (2) by striking “chapter or a regulation pre-
 2 scribed under this chapter.” in subsection (a)(2) and
 3 inserting “chapter, a regulation prescribed under this
 4 chapter, or a hazardous materials transportation se-
 5 curity regulation or directive issued by the Secretary
 6 of Homeland Security.”; and

7 (3) by striking “chapter or a regulation pre-
 8 scribed under this chapter,” in subsection (b)(1) and
 9 inserting “chapter, a regulation prescribed under this
 10 chapter, or a hazardous materials transportation se-
 11 curity regulation or directive issued by the Secretary
 12 of Homeland Security,”.

13 **SEC. 1712. OFFICE OF SCIENCE AND TECHNOLOGY POLICY.**

14 *The National Science and Technology Policy, Organi-*
 15 *zation, and Priorities Act of 1976 is amended—*

16 (1) in section 204(b)(1) (42 U.S.C. 6613(b)(1)),
 17 by inserting “homeland security,” after “national se-
 18 curity,”; and

19 (2) in section 208(a)(1) (42 U.S.C. 6617(a)(1)),
 20 by inserting “the Office of Homeland Security,” after
 21 “National Security Council,”.

1 **SEC. 1713. NATIONAL OCEANOGRAPHIC PARTNERSHIP PRO-**
 2 **GRAM.**

3 *Section 7902(b) of title 10, United States Code, is*
 4 *amended by adding at the end the following new para-*
 5 *graphs:*

6 *“(13) The Under Secretary for Science and Tech-*
 7 *nology of the Department of Homeland Security.*

8 *“(14) Other Federal officials the Council con-*
 9 *siders appropriate.”.*

10 **SEC. 1714. CLARIFICATION OF DEFINITION OF MANUFAC-**
 11 **TURER.**

12 *Section 2133(3) of the Public Health Service Act (42*
 13 *U.S.C. 300aa–33(3)) is amended—*

14 *(1) in the first sentence, by striking “under its*
 15 *label any vaccine set forth in the Vaccine Injury*
 16 *Table” and inserting “any vaccine set forth in the*
 17 *Vaccine Injury table, including any component or in-*
 18 *gredient of any such vaccine”; and*

19 *(2) in the second sentence, by inserting “includ-*
 20 *ing any component or ingredient of any such vac-*
 21 *cine” before the period.*

22 **SEC. 1715. CLARIFICATION OF DEFINITION OF VACCINE-RE-**
 23 **LATED INJURY OR DEATH.**

24 *Section 2133(5) of the Public Health Service Act (42*
 25 *U.S.C. 300aa–33(5)) is amended by adding at the end the*
 26 *following: “For purposes of the preceding sentence, an*

1 *adulterant or contaminant shall not include any component*
2 *or ingredient listed in a vaccine’s product license applica-*
3 *tion or product label.”.*

4 **SEC. 1716. CLARIFICATION OF DEFINITION OF VACCINE.**

5 *Section 2133 of the Public Health Service Act (42*
6 *U.S.C. 300aa–33) is amended by adding at the end the fol-*
7 *lowing:*

8 *“(7) The term ‘vaccine’ means any preparation*
9 *or suspension, including but not limited to a prepa-*
10 *ration or suspension containing an attenuated or in-*
11 *active microorganism or subunit thereof or toxin, de-*
12 *veloped or administered to produce or enhance the*
13 *body’s immune response to a disease or diseases and*
14 *includes all components and ingredients listed in the*
15 *vaccines’s product license application and product*
16 *label.”.*

17 **SEC. 1717. EFFECTIVE DATE.**

18 *The amendments made by sections 1714, 1715, and*
19 *1716 shall apply to all actions or proceedings pending on*
20 *or after the date of enactment of this Act, unless a court*
21 *of competent jurisdiction has entered judgment (regardless*

- 1 *of whether the time for appeal has expired) in such action*
- 2 *or proceeding disposing of the entire action or proceeding.*

Attest:

Secretary.

107TH CONGRESS
2D SESSION

H. R. 5005

AMENDMENT