To require the Secretary of Homeland Security to develop a strategy to prevent the over-classification of homeland security and other information and to promote the sharing of unclassified homeland security and other information, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Reducing Over-Classification Act of 2009”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) A key conclusion in the Final Report of the National Commission on Terrorist Attacks Upon the United States (commonly known as the “9/11 Commission”) was the need to prevent over-classification by the Federal Government.

(2) The 9/11 Commission and others have observed that the over-classification of homeland security information interferes with accurate, actionable, and timely homeland security information sharing, increases the cost of information security, and needlessly limits public access to information.

(3) The over-classification problem, which has worsened since the 9/11 attacks, causes considerable confusion about what information can be shared with whom both internally at the Department of Homeland Security and with its external partners. This problem negatively impacts the dissemination of homeland security information to the Department’s State, local, tribal, and territorial homeland security and law enforcement partners, private sector customers, and the public.
(4) Excessive government secrecy stands in the way of a safer and more secure homeland. This trend is antithetical to the creation and operation of the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485), and must be halted and reversed.

(5) To do so, the Department should start with the understanding that all departmental information that is not properly classified, or marked as controlled unclassified information and otherwise exempt from disclosure, should be made available to members of the public pursuant to section 552 of title 5, United States Code (commonly referred to as the “Freedom of Information Act”).

(6) The Department should also develop and administer policies, procedures, and programs that promote compliance with applicable laws, executive orders, and other authorities pertaining to the proper use of classification markings and the United States National Archives and Records Administration policies implementing them.
SEC. 3. OVER-CLASSIFICATION PREVENTION WITHIN THE DEPARTMENT OF HOMELAND SECURITY.

Subtitle A of title II of the Homeland Security Act of 2002 (6 U.S.C. 121 et seq.) is amended by adding at the end the following new section:

“SEC. 210F. OVER-CLASSIFICATION PREVENTION PROGRAM.

“(a) IN GENERAL.—The Secretary shall develop and administer policies, procedures, and programs within the Department to prevent the over-classification of homeland security information, terrorism information, weapons of mass destruction information, and other information within the scope of the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485) that must be disseminated to prevent and to collectively respond to acts of terrorism. The Secretary shall coordinate with the Archivist of the United States and consult with representatives of State, local, tribal, and territorial government and law enforcement, organizations with expertise in civil rights, civil liberties, and government oversight, and the private sector, as appropriate, to develop such policies, procedures, and programs.

“(b) REQUIREMENTS.—Not later than one year after the date of the enactment of the Reducing Over-Classification Act of 2009, the Secretary, in administering the poli-
cies, procedures, and programs required under subsection (a), shall—

“(1) create, in consultation with the Archivist of the United States, standard classified and unclassified formats for finished intelligence products created by the Department, consistent with any government-wide standards, practices or procedures for similar products;

“(2) require that all finished intelligence products created by the Department be simultaneously prepared in the standard unclassified format, provided that such an unclassified product would reasonably be expected to be of any benefit to a State, local, tribal or territorial government, law enforcement agency or other emergency response provider, or the private sector, based on input provided by the Interagency Threat Assessment and Coordination Group Detail established under section 210D;

“(3) ensure that such policies, procedures, and programs protect the national security as well as the information privacy rights and legal rights of United States persons pursuant to all applicable law and policy, including the privacy guidelines for the information sharing environment established pursuant to section 1016 of the Intelligence Reform and Ter-
rorism Prevention Act of 2004 (6 U.S.C. 485), as appropriate;

“(4) establish an ongoing auditing mechanism administered by the Inspector General of the Department or other appropriate senior Department official that randomly selects, on a periodic basis, classified information from each component of the Department that generates finished intelligence products to—

“(A) assess whether applicable classification policies, procedures, rules, and regulations have been followed;

“(B) describe any problems with the administration of the applicable classification policies, procedures, rules, and regulations, including specific non-compliance issues;

“(C) recommend improvements in awareness and training to address any problems identified in subparagraph (B); and

“(D) report at least annually to the Committee on Homeland Security of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the public, in an appropriate format,
on the findings of the Inspector General’s audits under this section;

“(5) establish a process whereby employees may challenge original classification decisions made by Department employees or contractors and be rewarded with specific incentives for successful challenges resulting in the removal of classification markings or the downgrading of them;

“(6) inform employees and contractors that failure to comply with the policies, procedures, and programs established under this section could subject them to a series of penalties; and

“(7) institute a series of penalties for employees and contractors who repeatedly fail to comply with the policies, procedures, and programs established under this section after having received both notice of their noncompliance and appropriate training or re-training to address such noncompliance.

“(c) Finished Intelligence Product Defined.—The term ‘finished intelligence product’ means a document in which an intelligence analyst has evaluated, interpreted, integrated, or placed into context raw intelligence or information.”.
SEC. 4. ENFORCEMENT OF OVER-CLASSIFICATION PREVENTION WITHIN THE DEPARTMENT OF HOMELAND SECURITY.

Subtitle A of title II of the Homeland Security Act of 2002 (6 U.S.C. 121 et seq.) is further amended by adding at the end the following new section:

“SEC. 210G. ENFORCEMENT OF OVER-CLASSIFICATION PREVENTION PROGRAMS.

“(a) PERSONAL IDENTIFIERS.—The Secretary shall—

“(1) assess the technologies available or in use at the Department by which an electronic personal identification number or other electronic identifying marker can be assigned to each Department employee and contractor with original classification authority in order to—

“(A) track which documents have been classified by a particular employee or contractor;

“(B) determine the circumstances when such documents have been shared;

“(C) identify and address over-classification problems, including the misapplication of classification markings to documents that do not merit such markings; and
“(D) assess the information sharing impact of any such problems or misuse;

“(2) develop an implementation plan for a Department standard for such technology with appropriate benchmarks, a timetable for its completion, and cost estimate for the creation and implementation of a system of electronic personal identification numbers or other electronic identifying markers for all relevant Department employees and contractors; and

“(3) upon completion of the implementation plan described in paragraph (2), or not later than 180 days after the date of the enactment of the Reducing Over-Classification Act of 2009, whichever is earlier, the Secretary shall provide a copy of the plan to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate.

“(b) TRAINING.—The Secretary, in coordination with the Archivist of the United States, shall—

“(1) require annual training for each Department employee and contractor with classification authority or those responsible for analysis, dissemination, preparation, production, receiving, publishing,
or otherwise communicating written classified infor-
ination, including training to—

“(A) educate each employee and contractor
about—

“(i) the Department’s requirement
that all classified finished intelligence prod-
ucts that they create be simultaneously
prepared in unclassified form in a standard
format prescribed by the Department, pro-
vided that the unclassified product would
reasonably be expected to be of any benefit
to a State, local, tribal, or territorial gov-
ernment, law enforcement agency, or other
emergency response provider, or the pri-
ivate sector, based on input provided by the
Interagency Threat Assessment and Co-
ordination Group Detail established under
section 210D;

“(ii) the proper use of classification
markings, including portion markings; and

“(iii) the consequences of over-classi-
ification and other improper uses of classi-
fication markings, including the
misapplication of classification markings to
documents that do not merit such mark-
ings, and of failing to comply with the Department’s policies and procedures established under or pursuant to this section, including the negative consequences for the individual’s personnel evaluation, homeland security, information sharing, and the overall success of the Department’s missions;

“(B) serve as a prerequisite, once completed successfully, as evidenced by an appropriate certificate, for—

“(i) obtaining classification authority;

and

“(ii) renewing such authority annually; and

“(C) count as a positive factor, once completed successfully, in the Department’s employment, evaluation, and promotion decisions; and

“(2) ensure that such program is conducted efficiently, in conjunction with any other security, intelligence, or other training programs required by the Department to reduce the costs and administrative burdens associated with the additional training required by this section.

“(c) DETAILEE PROGRAM.—The Secretary shall—
“(1) implement a Departmental detaillee program to detail Departmental personnel to the National Archives and Records Administration for one year, for the purpose of—

“(A) training and educational benefit for the Department personnel assigned so that they may better understand the policies, procedures and laws governing original classification authorities;

“(B) bolstering the ability of the National Archives and Records Administration to conduct its oversight authorities over the Department and other Departments and agencies; and

“(C) ensuring that the policies and procedures established by the Secretary remain consistent with those established by the Archivist of the United States;

“(2) ensure that the program established under paragraph (1) includes at least one individual for each Department office with delegated original classification authority; and

“(3) in coordination with the Archivist of the United States, report to Congress not later than 90 days after the conclusion of the first year of the program established under paragraph (1), on—
“(A) the advisability of expanding the program on a government-wide basis, whereby other departments and agencies would send detailees to the National Archives and Records Administration; and

“(B) the administrative and monetary costs of full compliance with this section.

“(d) SUNSET OF DETAILEE PROGRAM.—Except as otherwise provided by law, subsection (e) shall cease to have effect on December 31, 2012.

“(e) FINISHED INTELLIGENCE PRODUCT DEFINED.—The term ‘finished intelligence product’ has the meaning given the term in section 210F(e).”.

SEC. 5. TECHNICAL AMENDMENT.

The table of contents in section 1(b) of the Homeland Security Act of 2002 (6 U.S.C. 101(b)) is amended by adding after the item relating to section 210E the following new items:

“Sec. 210F. Over-classification prevention program.

“Sec. 210G. Enforcement of over-classification prevention programs.”.

Passed the House of Representatives February 3, 2009.

Attest:

Clerk.
111TH CONGRESS
1ST SESSION
H. R. 553
AN ACT

To require the Secretary of Homeland Security to develop a strategy to prevent the over-classification of homeland security and other information and to promote the sharing of unclassified homeland security and other information, and for other purposes.