

## HSA TECHNICAL CORRECTIONS ACT

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NOVEMBER 16, 2015.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. MCCAUL, from the Committee on Homeland Security,  
submitted the following

### R E P O R T

[To accompany H.R. 3859]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 3859) to make technical corrections to the Homeland Security Act of 2002, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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#### PURPOSE AND SUMMARY

The purpose of H.R. 3859 is to make technical corrections to the Homeland Security Act of 2002 (HSA).

## BACKGROUND AND NEED FOR LEGISLATION

In the aftermath of September 11, 2001, Congress passed the HSA, the organizing document of the Department of Homeland Security (DHS), to enhance the ability of the Federal Government to prevent future acts of domestic terrorism. Passage of this legislation marked one of the most dramatic reorganizations of the federal government in decades and introduced a number of new offices and reporting requirements. In the intervening years, agencies have changed names, roles and responsibilities have shifted, and a number of the required reports have been completed. This legislation updates the HSA to ensure it more accurately reflects the current organization and mission of DHS and thereby allows Congress to conduct more effective oversight of the Department.

## HEARINGS

No Committee hearings were held on H.R. 3859.

## COMMITTEE CONSIDERATION

The Committee met on November 4, 2015, to consider H.R. 3859, and ordered the measure to be reported to the House with a favorable recommendation, without amendment, by voice vote.

## COMMITTEE VOTES

Clause 3(b) of Rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

No recorded votes were requested during consideration of H.R. 3859.

## COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

The Committee did not conduct any oversight hearings specific to this legislation. However, various oversight efforts by the Committee have demonstrated a lack of consistency between the HSA and the current organization and mission of the Department. Discrepancies in the HSA can cause confusion within DHS and make it more difficult for Congress to effectively conduct oversight of the Department.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 3859, the HSA Technical Corrections Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, November 13, 2015.*

Hon. MICHAEL MCCAUL,  
*Chairman, Committee on Homeland Security,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3859, HSA Technical Corrections Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

KEITH HALL.

Enclosure.

*H.R. 3859—HSA Technical Corrections Act*

H.R. 3859 would amend the Homeland Security Act of 2002 by making technical corrections to that act, including striking provisions related to obsolete offices and outdated reporting requirements. CBO estimates that implementing H.R. 3859 would have no significant cost to the federal government.

Because enacting the legislation would not affect direct spending or revenues, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 3859 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2026.

H.R. 3859 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

## STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, H.R. 3859 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

This legislation updates the HSA to ensure it more accurately reflects the current organization and mission of DHS.

## DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of Rule XIII, the Committee finds that H.R. 3859 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED  
TARIFF BENEFITS

In compliance with Rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or Tribal law, the Committee finds that H.R. 3859 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 3859 would require no directed rule makings.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Short title.*

This section provides that this bill may be cited as the “HSA Technical Corrections Act”.

*Sec. 2. References to the Homeland Security Act of 2002.*

This section provides, unless otherwise stated, that any amendment or repeal in this Act shall be made to a section or other provision of the HSA.

*Sec. 3. Technical amendments to the Homeland Security Act of 2002.*

This section amends the HSA by updating obsolete language and striking outdated offices and reporting requirements.

Subsection (a) makes revisions to the HSA Table of Contents.

Subsection (b) amends Title I of the HSA. This subsection strikes obsolete language, updates the list of Deputy and Under Secretaries within the Department, and corrects formatting.

Subsection (c) amends Title II of the HSA. This subsection strikes obsolete language, eliminates two outdated one-time reporting requirements, updates references to the Director of Central Intelligence to read as the Director of National Intelligence, and redesignates the second Section 226 of the HSA as Section 227.

Subsection (d) amends Title III of the HSA. This subsection strikes two erroneous commas from Title III.

Subsection (e) amends Title IV of the HSA. This subsection revises, and removes where necessary, outdated language, strikes two obsolete offices and one non-operational Director position, eliminates 13 outdated one-time reporting requirements, and updates references to the agencies now known as U.S. Customs and Border Protection, U.S. Citizenship and Immigration Services, and U.S. Immigration and Customs Enforcement.

Subsection (f) amends Title V of the HSA. This subsection corrects a citation to the National Response Plan and strikes language previously stricken in a prior public law.

Subsection (g) amends Title VI of the HSA. This subsection updates references to the Director of Central Intelligence to read as the Director of National Intelligence.

Subsection (h) amends Title VII of the HSA. This subsection updates references to the agencies now known as U.S. Citizenship and Immigration Services and U.S. Immigration and Customs Enforcement with the proper titles for these agencies each place the former name appears, updates other references to such agencies, and strikes an outdated one-time requirement for the Secretary to submit a plan to Congress.

Subsection (i) amends Title VIII of the HSA. This subsection revises outdated language, strikes the obsolete Office of Counternarcotics Enforcement, eliminates six outdated one-time reporting requirements, and updates references to the Director of Central Intelligence to read as the Director of National Intelligence.

Subsection (j) amends Title IX of the HSA. This subsection corrects the punctuation in a subsection heading.

Subsection (k) amends Title X of the HSA. This subsection updates a reference to the Director of Central Intelligence to read as the Director of National Intelligence.

Subsection (l) amends Title XII of the HSA. This subsection eliminates an outdated one-time reporting requirement.

Subsection (m) amends Title XIV of the HSA. This subsection strikes the entirety of Title XIV.

Subsection (n) amends Title XV of the HSA. This subsection strikes an outdated one-time reorganization plan.

Subsection (o) amends Title XVIII of the HSA. This subsection revises outdated language.

Subsection (p) amends Title XIX of the HSA. This subsection revises the term “Hawaiian native-serving” to read as “Native Hawaiian-serving”.

Subsection (q) amends Title XX of the HSA. This subsection eliminates two outdated one-time reporting requirements.



Subtitle C—Miscellaneous Provisions

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【Sec. 430. Office for Domestic Preparedness.  
 【Sec. 431. Office of Cargo Security Policy.】

\* \* \* \* \*

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. 441. Transfer of functions.*

*Sec. 442. United States Immigration and Customs Enforcement.*

\* \* \* \* \*

【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.】

*Sec. 451. Establishment of United States Citizenship and Immigration Services.*

\* \* \* \* \*

【Sec. 455. Effective date.

【Sec. 456. Transition.】

\* \* \* \* \*

【Sec. 459. Report on improving immigration services.

【Sec. 460. Report on responding to fluctuating needs.

【Sec. 461. Application of Internet-based technologies.】

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Subtitle F—General Immigration Provisions

\* \* \* \* \*

【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.】

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TITLE VII—MANAGEMENT

Sec. 701. Under Secretary for Management.

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【Sec. 706. Consolidation and co-location of offices.】

\* \* \* \* \*

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

\* \* \* \* \*

Subtitle F—Federal Emergency Procurement Flexibility

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【Sec. 857. Review and report by Comptroller General.】

\* \* \* \* \*

Subtitle H—Miscellaneous Provisions

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【Sec. 878. Counternarcotics officer.】

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**[Sec. 881. Review of pay and benefit plans.]**

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Subtitle I—Information Sharing

\* \* \* \* \*

**[Sec. 893. Report.]**

\* \* \* \* \*

TITLE XII—AIRLINE WAR RISK INSURANCE LEGISLATION

\* \* \* \* \*

**[Sec. 1204. Report.]**

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**[TITLE XIV—ARMING PILOTS AGAINST TERRORISM**

**[Sec. 1401. Short title.**

**[Sec. 1402. Federal Flight Deck Officer Program.**

**[Sec. 1403. Crew training.**

**[Sec. 1404. Commercial airline security study.**

**[Sec. 1405. Authority to arm flight deck crew with less-than-lethal weapons.**

**[Sec. 1406. Technical amendments.]**

TITLE XV—TRANSITION

Subtitle A—Reorganization Plan

Sec. 1501. Definitions.

**[Sec. 1502. Reorganization plan.]**

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TITLE XXI—CHEMICAL FACILITY ANTI-TERRORISM STANDARDS

\* \* \* \* \*

**[Sec. 2103. Protection and sharing of information.—]**

*Sec. 2103. Protection and sharing of information.*

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**TITLE I—DEPARTMENT OF HOMELAND SECURITY**

\* \* \* \* \*

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

(a) SECRETARY.—

(1) IN GENERAL.—There is a Secretary of Homeland Security, appointed by the President, by and with the advice and consent of the Senate.

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

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

(b) FUNCTIONS.—The Secretary—

(1) except as otherwise provided by this Act, may delegate any of the Secretary's functions to any officer, employee, or organizational unit of the Department;

(2) shall have the authority to make contracts, grants, and cooperative agreements, and to enter into agreements with other executive agencies, as may be necessary and proper to

carry out the Secretary's responsibilities under this Act or otherwise provided by law; and

(3) shall take reasonable steps to ensure that information systems and databases of the Department are compatible with each other and with appropriate databases of other Departments.

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

(1) coordinating with State and local government personnel, agencies, and authorities, and with the private sector, to ensure adequate planning, equipment, training, and exercise activities;

(2) coordinating and, as appropriate, consolidating, the Federal Government's communications and systems of communications relating to homeland security with State and local government personnel, agencies, and authorities, the private sector, other entities, and the public; and

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

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

(e) ISSUANCE OF REGULATIONS.—The issuance of regulations by the Secretary shall be governed by the provisions of chapter 5 of title 5, United States Code, except as specifically provided in this Act, in laws granting regulatory authorities that are transferred by this Act, and in laws enacted after the date of enactment of this Act.

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

(1) creating and fostering strategic communications with the private sector to enhance the primary mission of the Department to protect the American homeland;

(2) advising the Secretary on the impact of the Department's policies, regulations, processes, and actions on the private sector;

(3) interfacing with other relevant Federal agencies with homeland security missions to assess the impact of these agencies' actions on the private sector;

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

(A) advise the Secretary on private sector products, applications, and solutions as they relate to homeland security challenges;

(B) advise the Secretary on homeland security policies, regulations, processes, and actions that affect the participating industries and associations; and

(C) advise the Secretary on private sector preparedness issues, including effective methods for—

- (i) promoting voluntary preparedness standards to the private sector; and
  - (ii) assisting the private sector in adopting voluntary preparedness standards;
- (5) working with Federal laboratories, federally funded research and development centers, other federally funded organizations, academia, and the private sector to develop innovative approaches to address homeland security challenges to produce and deploy the best available technologies for homeland security missions;
- (6) promoting existing public-private partnerships and developing new public-private partnerships to provide for collaboration and mutual support to address homeland security challenges;
- (7) assisting in the development and promotion of private sector best practices to secure critical infrastructure;
- (8) providing information to the private sector regarding voluntary preparedness standards and the business justification for preparedness and promoting to the private sector the adoption of voluntary preparedness standards;
- (9) coordinating industry efforts, with respect to functions of the Department of Homeland Security, to identify private sector resources and capabilities that could be effective in supplementing Federal, State, and local government agency efforts to prevent or respond to a terrorist attack;
- (10) coordinating with the **Directorate of Border and Transportation Security** *Commissioner of United States Customs and Border Protection* and the Assistant Secretary for Trade Development of the Department of Commerce on issues related to the travel and tourism industries; and
- (11) consulting with the Office of State and Local Government Coordination and Preparedness on all matters of concern to the private sector, including the tourism industry.

(g) STANDARDS POLICY.—All standards activities of the Department shall be conducted in accordance with section 12(d) of the National Technology Transfer Advancement Act of 1995 (15 U.S.C. 272 note) and Office of Management and Budget Circular A-119.

**SEC. 103. OTHER OFFICERS.**

(a) DEPUTY SECRETARY; UNDER SECRETARIES.—**[(1) IN GENERAL.—Except as provided under paragraph (2), there are the following officers, appointed by the President, by and with the advice and consent of the Senate:]**

*(1) IN GENERAL.—Except as provided under 16 paragraph (2), there are the following officers, appointed by the President, by and with the advice and consent of the Senate:*

(A) A Deputy Secretary of Homeland Security, who shall be the Secretary's first assistant for purposes of subchapter III of chapter 33 of title 5, United States Code.

(B) An Under Secretary for Science and Technology.

(C) **[An Under Secretary for Border and Transportation Security]** *A Commissioner of United States Customs and Border Protection.*

(D) An Administrator of the Federal Emergency Management Agency.

(E) A Director of **the Bureau of** *United States* Citizenship and Immigration Services.

(F) An Under Secretary for Management.

(G) **A Director of the Office of Counternarcotics Enforcement** *A Director of United States Immigration and Customs Enforcement.*

*(H) An Administrator of the Transportation Security Administration.*

*(I) A Commandant of the Coast Guard.*

**[(H)]** *(J)* An Under Secretary responsible for overseeing critical infrastructure protection, cybersecurity, and other related programs of the Department.

**[(I)]** *(K)* Not more than 12 Assistant Secretaries.

**[(J)]** *(L)* A General Counsel, who shall be the chief legal officer of the Department.

(2) ASSISTANT SECRETARIES.—If any of the Assistant Secretaries referred to under paragraph (1)(I) is designated to be the Assistant Secretary for Health Affairs, the Assistant Secretary for Legislative Affairs, or the Assistant Secretary for Public Affairs, that Assistant Secretary shall be appointed by the President without the advice and consent of the Senate.

(b) INSPECTOR GENERAL.—There shall be in the Department an Office of Inspector General and an Inspector General at the head of such office, as provided in the Inspector General Act of 1978 (5 U.S.C. App.).

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

(d) OTHER OFFICERS.—To assist the Secretary in the performance of the Secretary's functions, there are the following officers, appointed by the President:

(1) A Director of the Secret Service.

(2) A Chief Information Officer.

(3) An Officer for Civil Rights and Civil Liberties.

(4) A Director for Domestic Nuclear Detection.

(f) PERFORMANCE OF SPECIFIC FUNCTIONS.—Subject to the provisions of this Act, every officer of the Department shall perform the functions specified by law for the official's office or prescribed by the Secretary.

(e) CHIEF FINANCIAL OFFICER.—There shall be in the Department a Chief Financial Officer, as provided in chapter 9 of title 31, United States Code.

## TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

### Subtitle A—Information and Analysis and Infrastructure Protection; Access to In- formation

\* \* \* \* \*

#### SEC. 202. ACCESS TO INFORMATION.

(a) IN GENERAL.—

(1) THREAT AND VULNERABILITY INFORMATION.—Except as otherwise directed by the President, the Secretary shall have such access as the Secretary considers necessary to all information, including reports, assessments, analyses, and unevaluated intelligence relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary, and to all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed, that may be collected, possessed, or prepared by any agency of the Federal Government.

(2) OTHER INFORMATION.—The Secretary shall also have access to other information relating to matters under the responsibility of the Secretary that may be collected, possessed, or prepared by an agency of the Federal Government as the President may further provide.

(b) MANNER OF ACCESS.—Except as otherwise directed by the President, with respect to information to which the Secretary has access pursuant to this section—

(1) the Secretary may obtain such material upon request, and may enter into cooperative arrangements with other executive agencies to provide such material or provide Department officials with access to it on a regular or routine basis, including requests or arrangements involving broad categories of material, access to electronic databases, or both; and

(2) regardless of whether the Secretary has made any request or entered into any cooperative arrangement pursuant to paragraph (1), all agencies of the Federal Government shall promptly provide to the Secretary—

(A) all reports (including information reports containing intelligence which has not been fully evaluated), assessments, and analytical information relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary;

(B) all information concerning the vulnerability of the infrastructure of the United States, or other vulnerabilities of the United States, to terrorism, whether or not such information has been analyzed;

(C) all other information relating to significant and credible threats of terrorism against the United States, whether or not such information has been analyzed; and

- (D) such other information or material as the President may direct.
- (c) TREATMENT UNDER CERTAIN LAWS.—The Secretary shall be deemed to be a Federal law enforcement, intelligence, protective, national defense, immigration, or national security official, and shall be provided with all information from law enforcement agencies that is required to be given to the [Director of Central Intelligence] *Director of National Intelligence*, under any provision of the following:
- (1) The USA PATRIOT Act of 2001 (Public Law 107–56).
  - (2) Section 2517(6) of title 18, United States Code.
  - (3) Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure.
- (d) ACCESS TO INTELLIGENCE AND OTHER INFORMATION.—
- (1) ACCESS BY ELEMENTS OF FEDERAL GOVERNMENT.—Nothing in this title shall preclude any element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)), or any other element of the Federal Government with responsibility for analyzing terrorist threat information, from receiving any intelligence or other information relating to terrorism.
  - (2) SHARING OF INFORMATION.—The Secretary, in consultation with the [Director of Central Intelligence] *Director of National Intelligence*, shall work to ensure that intelligence or other information relating to terrorism to which the Department has access is appropriately shared with the elements of the Federal Government referred to in paragraph (1), as well as with State and local governments, as appropriate.

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**SEC. 210E. NATIONAL ASSET DATABASE.**

- (a) ESTABLISHMENT.—
- (1) NATIONAL ASSET DATABASE.—The Secretary shall establish and maintain a national database of each system or asset that—
    - (A) the Secretary, in consultation with appropriate homeland security officials of the States, determines to be vital and the loss, interruption, incapacity, or destruction of which would have a negative or debilitating effect on the economic security, public health, or safety of the United States, any State, or any local government; or
    - (B) the Secretary determines is appropriate for inclusion in the database.
  - (2) PRIORITIZED CRITICAL INFRASTRUCTURE LIST.—In accordance with Homeland Security Presidential Directive–7, as in effect on January 1, 2007, the Secretary shall establish and maintain a single classified prioritized list of systems and assets included in the database under paragraph (1) that the Secretary determines would, if destroyed or disrupted, cause national or regional catastrophic effects.
- (b) USE OF DATABASE.—The Secretary shall use the database established under subsection (a)(1) in the development and implementation of Department plans and programs as appropriate.
- (c) MAINTENANCE OF DATABASE.—

(1) IN GENERAL.—The Secretary shall maintain and annually update the database established under subsection (a)(1) and the list established under subsection (a)(2), including—

(A) establishing data collection guidelines and providing such guidelines to the appropriate homeland security official of each State;

(B) regularly reviewing the guidelines established under subparagraph (A), including by consulting with the appropriate homeland security officials of States, to solicit feedback about the guidelines, as appropriate;

(C) after providing the homeland security official of a State with the guidelines under subparagraph (A), allowing the official a reasonable amount of time to submit to the Secretary any data submissions recommended by the official for inclusion in the database established under subsection (a)(1);

(D) examining the contents and identifying any submissions made by such an official that are described incorrectly or that do not meet the guidelines established under subparagraph (A); and

(E) providing to the appropriate homeland security official of each relevant State a list of submissions identified under subparagraph (D) for review and possible correction before the Secretary finalizes the decision of which submissions will be included in the database established under subsection (a)(1).

(2) ORGANIZATION OF INFORMATION IN DATABASE.—The Secretary shall organize the contents of the database established under subsection (a)(1) and the list established under subsection (a)(2) as the Secretary determines is appropriate. Any organizational structure of such contents shall include the categorization of the contents—

(A) according to the sectors listed in National Infrastructure Protection Plan developed pursuant to Homeland Security Presidential Directive–7; and

(B) by the State and county of their location.

(3) PRIVATE SECTOR INTEGRATION.—The Secretary shall identify and evaluate methods, including the Department’s Protected Critical Infrastructure Information Program, to acquire relevant private sector information for the purpose of using that information to generate any database or list, including the database established under subsection (a)(1) and the list established under subsection (a)(2).

(4) RETENTION OF CLASSIFICATION.—The classification of information required to be provided to Congress, the Department, or any other department or agency under this section by a sector-specific agency, including the assignment of a level of classification of such information, shall be binding on Congress, the Department, and that other Federal agency.

(d) REPORTS.—

(1) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007, and annually thereafter, the Secretary shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Com-

mittee on Homeland Security of the House of Representatives a report on the database established under subsection (a)(1) and the list established under subsection (a)(2).

(2) CONTENTS OF REPORT.—Each such report shall include the following:

(A) The name, location, and sector classification of each of the systems and assets on the list established under subsection (a)(2).

(B) The name, location, and sector classification of each of the systems and assets on such list that are determined by the Secretary to be most at risk to terrorism.

(C) Any significant challenges in compiling the list of the systems and assets included on such list or in the database established under subsection (a)(1).

(D) Any significant changes from the preceding report in the systems and assets included on such list or in such database.

(E) If appropriate, the extent to which such database and such list have been used, individually or jointly, for allocating funds by the Federal Government to prevent, reduce, mitigate, or respond to acts of terrorism.

(F) The amount of coordination between the Department and the private sector, through any entity of the Department that meets with representatives of private sector industries for purposes of such coordination, for the purpose of ensuring the accuracy of such database and such list.

(G) Any other information the Secretary deems relevant.

(3) CLASSIFIED INFORMATION.—The report shall be submitted in unclassified form but may contain a classified annex.

[(e) INSPECTOR GENERAL STUDY.—By not later than two years after the date of enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007, the Inspector General of the Department shall conduct a study of the implementation of this section.]

[(f)] (e) NATIONAL INFRASTRUCTURE PROTECTION CONSORTIUM.—The Secretary may establish a consortium to be known as the “National Infrastructure Protection Consortium”. The Consortium may advise the Secretary on the best way to identify, generate, organize, and maintain any database or list of systems and assets established by the Secretary, including the database established under subsection (a)(1) and the list established under subsection (a)(2). If the Secretary establishes the National Infrastructure Protection Consortium, the Consortium may—

(1) be composed of national laboratories, Federal agencies, State and local homeland security organizations, academic institutions, or national Centers of Excellence that have demonstrated experience working with and identifying critical infrastructure and key resources; and

(2) provide input to the Secretary on any request pertaining to the contents of such database or such list.

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## Subtitle C—Information Security

\* \* \* \* \*

### SEC. 223. ENHANCEMENT OF FEDERAL AND NON-FEDERAL CYBERSECURITY.

In carrying out the responsibilities under section 201, the Under Secretary appointed under section 103(a)(1)(H) shall—

(1) as appropriate, provide to State and local government entities, and upon request to private entities that own or operate critical information systems—

(A) analysis and warnings related to threats to, and vulnerabilities of, critical information systems; and

(B) **in coordination with the Under Secretary for Emergency Preparedness and Response,** crisis management support in response to threats to, or attacks on, critical information systems**;** and**;**

(2) as appropriate, provide technical assistance, upon request, to the private sector and other government entities**,** in coordination with the Under Secretary for Emergency Preparedness and Response**,** with respect to emergency recovery plans to respond to major failures of critical information systems; and

(3) fulfill the responsibilities of the Secretary to protect Federal information systems under subchapter II of chapter 35 of title 44, United States Code.

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### SEC. 225. CYBER SECURITY ENHANCEMENT ACT OF 2002.

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

(b) **AMENDMENT OF SENTENCING GUIDELINES RELATING TO CERTAIN COMPUTER CRIMES.**—

(1) **DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.**—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this subsection, the United States Sentencing Commission shall review and, if appropriate, amend its guidelines and its policy statements applicable to persons convicted of an offense under section 1030 of title 18, United States Code.

(2) **REQUIREMENTS.**—In carrying out this subsection, the Sentencing Commission shall—

(A) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses described in paragraph (1), the growing incidence of such offenses, and the need for an effective deterrent and appropriate punishment to prevent such offenses;

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

(i) the potential and actual loss resulting from the offense;

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

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

(iv) whether the defendant acted with malicious intent to cause harm in committing the offense;

(v) the extent to which the offense violated the privacy rights of individuals harmed;

(vi) whether the offense involved a computer used by the government in furtherance of national defense, national security, or the administration of justice;

(vii) whether the violation was intended to or had the effect of significantly interfering with or disrupting a critical infrastructure; and

(viii) whether the violation was intended to or had the effect of creating a threat to public health or safety, or injury to any person;

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

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

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

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

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

**[(d)] (c) EMERGENCY DISCLOSURE EXCEPTION.—**

(1) \* \* \*

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(2) **REPORTING OF DISCLOSURES.—**A government entity that receives a disclosure under section 2702(b) of title 18, United States Code, shall file, not later than 90 days after such disclosure, a report to the Attorney General stating the paragraph of that section under which the disclosure was made, the date of the disclosure, the entity to which the disclosure was made, the number of customers or subscribers to whom the information disclosed pertained, and the number of communications, if any, that were disclosed. The Attorney General shall publish all such reports into a single report to be submitted to Congress 1 year after the date of enactment of this Act.

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**SEC. [226.] 227. NATIONAL CYBERSECURITY AND COMMUNICATIONS INTEGRATION CENTER.**

(a) **DEFINITIONS.—**In this section—

(1) the term “cybersecurity risk” means threats to and vulnerabilities of information or information systems and any related consequences caused by or resulting from unauthorized access, use, disclosure, degradation, disruption, modification, or destruction of information or information systems, including such related consequences caused by an act of terrorism;

(2) the term “incident” means an occurrence that—

(A) actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information on an information system; or

(B) constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable use policies;

(3) the term “information sharing and analysis organization” has the meaning given that term in section 212(5); and

(4) the term “information system” has the meaning given that term in section 3502(8) of title 44, United States Code.

(b) CENTER.—There is in the Department a national cybersecurity and communications integration center (referred to in this section as the “Center”) to carry out certain responsibilities of the Under Secretary appointed under section 103(a)(1)(H).

(c) FUNCTIONS.—The cybersecurity functions of the Center shall include—

(1) being a Federal civilian interface for the multi-directional and cross-sector sharing of information related to cybersecurity risks, incidents, analysis, and warnings for Federal and non-Federal entities;

(2) providing shared situational awareness to enable real-time, integrated, and operational actions across the Federal Government and non-Federal entities to address cybersecurity risks and incidents to Federal and non-Federal entities;

(3) coordinating the sharing of information related to cybersecurity risks and incidents across the Federal Government;

(4) facilitating cross-sector coordination to address cybersecurity risks and incidents, including cybersecurity risks and incidents that may be related or could have consequential impacts across multiple sectors;

(5)(A) conducting integration and analysis, including cross-sector integration and analysis, of cybersecurity risks and incidents; and

(B) sharing the analysis conducted under subparagraph (A) with Federal and non-Federal entities;

(6) upon request, providing timely technical assistance, risk management support, and incident response capabilities to Federal and non-Federal entities with respect to cybersecurity risks and incidents, which may include attribution, mitigation, and remediation; and

(7) providing information and recommendations on security and resilience measures to Federal and non-Federal entities, including information and recommendations to—

(A) facilitate information security; and

(B) strengthen information systems against cybersecurity risks and incidents.

(d) COMPOSITION.—

(1) IN GENERAL.—The Center shall be composed of—

(A) appropriate representatives of Federal entities, such as—

(i) sector-specific agencies;

(ii) civilian and law enforcement agencies; and

- (iii) elements of the intelligence community, as that term is defined under section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4));
- (B) appropriate representatives of non-Federal entities, such as—
  - (i) State and local governments;
  - (ii) information sharing and analysis organizations;
  - and
  - (iii) owners and operators of critical information systems;
- (C) components within the Center that carry out cybersecurity and communications activities;
- (D) a designated Federal official for operational coordination with and across each sector; and
- (E) other appropriate representatives or entities, as determined by the Secretary.
- (2) INCIDENTS.—In the event of an incident, during exigent circumstances the Secretary may grant a Federal or non-Federal entity immediate temporary access to the Center.
- (e) PRINCIPLES.—In carrying out the functions under subsection (c), the Center shall ensure—
  - (1) to the extent practicable, that—
    - (A) timely, actionable, and relevant information related to cybersecurity risks, incidents, and analysis is shared;
    - (B) when appropriate, information related to cybersecurity risks, incidents, and analysis is integrated with other relevant information and tailored to the specific characteristics of a sector;
    - (C) activities are prioritized and conducted based on the level of risk;
    - (D) industry sector-specific, academic, and national laboratory expertise is sought and receives appropriate consideration;
    - (E) continuous, collaborative, and inclusive coordination occurs—
      - (i) across sectors; and
      - (ii) with—
        - (I) sector coordinating councils;
        - (II) information sharing and analysis organizations; and
        - (III) other appropriate non-Federal partners;
    - (F) as appropriate, the Center works to develop and use mechanisms for sharing information related to cybersecurity risks and incidents that are technology-neutral, interoperable, real-time, cost-effective, and resilient; and
    - (G) the Center works with other agencies to reduce unnecessarily duplicative sharing of information related to cybersecurity risks and incidents;
  - (2) that information related to cybersecurity risks and incidents is appropriately safeguarded against unauthorized access; and
  - (3) that activities conducted by the Center comply with all policies, regulations, and laws that protect the privacy and civil liberties of United States persons.
- (f) NO RIGHT OR BENEFIT.—

(1) IN GENERAL.—The provision of assistance or information to, and inclusion in the Center of, governmental or private entities under this section shall be at the sole and unreviewable discretion of the Under Secretary appointed under section 103(a)(1)(H).

(2) CERTAIN ASSISTANCE OR INFORMATION.—The provision of certain assistance or information to, or inclusion in the Center of, one governmental or private entity pursuant to this section shall not create a right or benefit, substantive or procedural, to similar assistance or information for any other governmental or private entity.

**SEC. [227.] 228. CYBER INCIDENT RESPONSE PLAN.**

The Under Secretary appointed under section 103(a)(1)(H) shall, in coordination with appropriate Federal departments and agencies, State and local governments, sector coordinating councils, information sharing and analysis organizations (as defined in section 212(5)), owners and operators of critical infrastructure, and other appropriate entities and individuals, develop, regularly update, maintain, and exercise adaptable cyber incident response plans to address cybersecurity risks (as defined in [section 226] 227(a)(1)) to critical infrastructure.

**SEC. [228.] 229. CLEARANCES.**

The Secretary shall make available the process of application for security clearances under Executive Order 13549 (75 Fed. Reg. 162; relating to a classified national security information program) or any successor Executive Order to appropriate representatives of sector coordinating councils, sector information sharing and analysis organizations (as defined in section 212(5)), owners and operators of critical infrastructure, and any other person that the Secretary determines appropriate.

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

\* \* \* \* \*

**SEC. 302. RESPONSIBILITIES AND AUTHORITIES OF THE UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.**

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

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

(2) developing, in consultation with other appropriate executive agencies, a national policy and strategic plan for, identifying priorities, goals, objectives and policies for, and coordinating the Federal Government’s civilian efforts to identify and develop countermeasures to chemical, [biological,] *biological*, and other emerging terrorist threats, including the development of comprehensive, research-based definable goals for such efforts and development of annual measurable objectives and specific targets to accomplish and evaluate the goals for such efforts;

(3) supporting the Under Secretary for Intelligence and Analysis and the Assistant Secretary for Infrastructure Protection, by assessing and testing homeland security vulnerabilities and possible threats;

(4) conducting basic and applied research, development, demonstration, testing, and evaluation activities that are relevant to any or all elements of the Department, through both intramural and extramural programs, except that such responsibility does not extend to human health-related research and development activities;

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

(A) preventing the importation of chemical, **[biological,,]** *biological*, and related weapons and material; and

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

(6) establishing a system for transferring homeland security developments or technologies to Federal, State, local government, and private sector entities;

(7) entering into work agreements, joint sponsorships, contracts, or any other agreements with the Department of Energy regarding the use of the national laboratories or sites and support of the science and technology base at those facilities;

(8) collaborating with the Secretary of Agriculture and the Attorney General as provided in section 212 of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401), as amended by section 1709(b);

(9) collaborating with the Secretary of Health and Human Services and the Attorney General in determining any new biological agents and toxins that shall be listed as “select agents” in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act (42 U.S.C. 262a);

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

(11) establishing and administering the primary research and development activities of the Department, including the long-term research and development needs and capabilities for all elements of the Department;

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

(13) coordinating with other appropriate executive agencies in developing and carrying out the science and technology agenda of the Department to reduce duplication and identify unmet needs; and

(14) developing and overseeing the administration of guidelines for merit review of research and development projects throughout the Department, and for the dissemination of research conducted or sponsored by the Department.

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**[TITLE IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY]**

***TITLE IV—BORDER, MARITIME, AND TRANSPORTATION SECURITY***

**[Subtitle A—Under Secretary for Border and Transportation Security]**

***Subtitle A—Border, Maritime, and Transportation Security Responsibilities and Functions***

**[SEC. 401. UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.]**

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

**SEC. 402. [RESPONSIBILITIES.] *BORDER, MARITIME, AND TRANSPORTATION RESPONSIBILITIES***

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

- (1) Preventing the entry of terrorists and the instruments of terrorism into the United States.
- (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.
- (3) Carrying out the immigration enforcement functions vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the date on which the transfer of functions specified under section 441 takes effect.
- (4) Establishing and administering rules, in accordance with section 428, governing the granting of visas or other forms of permission, including parole, to enter the United States to individuals who are not a citizen or an alien lawfully admitted for permanent residence in the United States.
- (5) Establishing national immigration enforcement policies and priorities.
- (6) Except as provided in subtitle C, administering the customs laws of the United States.
- (7) Conducting the inspection and related administrative functions of the Department of Agriculture transferred to the Secretary of Homeland Security under section 421.
- (8) In carrying out the foregoing responsibilities, ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce.

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**[Subtitle B—United States Customs  
Service]**

***Subtitle B—United States Customs and  
Border Protection***

**SEC. 411. [ESTABLISHMENT; COMMISSIONER OF CUSTOMS.] *ESTABLISHMENT OF UNITED STATES CUSTOMS AND BORDER PROTECTION***

(a) **ESTABLISHMENT.**—There is established in the Department **[the United States Customs Service]** *an agency to be known as “United States Customs and Border Protection”*, under the authority of **[the Under Secretary for Border and Transportation Security]** *the Secretary*, which shall be vested with those functions including, but not limited to those set forth in section 415(7), and the personnel, assets, and liabilities attributable to those functions.

(b) **COMMISSIONER [OF CUSTOMS].**—

(1) **IN GENERAL.**—There shall be at the head of **[the Customs Service a Commissioner of Customs]** *United States Customs and Border Protection a Commissioner*, who shall be appointed by the President, by and with the advice and consent of the Senate.

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

**SEC. 412. RETENTION OF CUSTOMS REVENUE FUNCTIONS BY SECRETARY OF THE TREASURY.**

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

(1) **RETENTION OF AUTHORITY.**—Notwithstanding section 403(a)(1), authority related to Customs revenue functions that was vested in the Secretary of the Treasury by law before the effective date of this Act under those provisions of law set forth in paragraph (2) shall not be transferred to the Secretary by reason of this Act, and on and after the effective date of this Act, the Secretary of the Treasury may delegate any such authority to the Secretary at the discretion of the Secretary of the Treasury. The Secretary of the Treasury shall consult with the Secretary regarding the exercise of any such authority not delegated to the Secretary.

(2) **STATUTES.**—The provisions of law referred to in paragraph (1) are the following: the Tariff Act of 1930; section 249 of the Revised Statutes of the United States (19 U.S.C. 3); section 2 of the Act of March 4, 1923 (19 U.S.C. 6); section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c); section 251 of the Revised Statutes of the United States (19 U.S.C. 66); section 1 of the Act of June 26, 1930 (19 U.S.C. 68); the Foreign Trade Zones Act (19 U.S.C. 81a et seq.); section 1 of the Act of March 2, 1911 (19 U.S.C. 198); the Trade Act of 1974; the Trade Agreements Act of 1979;

the North American Free Trade Area Implementation Act; the Uruguay Round Agreements Act; the Caribbean Basin Economic Recovery Act; the Andean Trade Preference Act; the African Growth and Opportunity Act; and any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(b) MAINTENANCE OF CUSTOMS REVENUE FUNCTIONS.—

(1) MAINTENANCE OF FUNCTIONS.—Notwithstanding any other provision of this Act, the Secretary may not consolidate, discontinue, or diminish those functions described in paragraph (2) performed by the [United States Customs Service] *United States Customs and Border Protection* (as established under section 411) on or after the effective date of this Act, reduce the staffing level, or reduce the resources attributable to such functions, and the Secretary shall ensure that an appropriate management structure is implemented to carry out such functions.

(2) FUNCTIONS.—The functions referred to in paragraph (1) are those functions performed by the following personnel, and associated support staff, of the United States Customs Service on the day before the effective date of this Act: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

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

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

Notwithstanding any other provision of this Act, no funds [available to the United States Customs Service or] collected under paragraphs (1) through (8) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 may be transferred for use by any other agency or office in the Department.

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

The President shall include in each budget transmitted to Congress under section 1105 of title 31, United States Code, a separate budget request for [the United States Customs Service] *United States Customs and Border Protection*.

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

[Not later than 3 months after the effective date of this Act, the Comptroller General of the United States shall submit to Congress a report that sets forth all trade functions performed by the executive branch, specifying each agency that performs each such function.]

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

[(a) CONTINUING REPORTS.—]The United States Customs Service shall, on and after the effective date of this Act, continue to submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate any report re-

quired, on the day before such the effective date of this Act, to be so submitted under any provision of law.

[(b) REPORT ON CONFORMING AMENDMENTS.—Not later than 60 days after the date of enactment of this Act, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of proposed conforming amendments to the statutes set forth under section 412(a)(2) in order to determine the appropriate allocation of legal authorities described under this subsection. The Secretary of the Treasury shall also identify those authorities vested in the Secretary of the Treasury that are exercised by the Commissioner of Customs on or before the effective date of this section.]

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### Subtitle C—Miscellaneous Provisions

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#### SEC. 423. FUNCTIONS OF TRANSPORTATION SECURITY ADMINISTRATION.

(a) CONSULTATION WITH FEDERAL AVIATION ADMINISTRATION.—The Secretary and other officials in the Department shall consult with the Administrator of the Federal Aviation Administration before taking any action that might affect aviation safety, air carrier operations, aircraft airworthiness, or the use of airspace. The Secretary shall establish a liaison office within the Department for the purpose of consulting with the Administrator of the Federal Aviation Administration.

[(b) REPORT TO CONGRESS.—Not later than 60 days after the date of enactment of this Act, the Secretary of Transportation shall transmit to Congress a report containing a plan for complying with the requirements of section 44901(d) of title 49, United States Code, as amended by section 425 of this Act.]

[(c)] (b) LIMITATIONS ON STATUTORY CONSTRUCTION.—

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

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

#### SEC. 424. PRESERVATION OF TRANSPORTATION SECURITY ADMINISTRATION AS A DISTINCT ENTITY.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, and subject to subsection (b), the Transportation Security Administration shall be maintained as a distinct entity within the Department under the [Under Secretary for Border Transportation and Security] *Secretary*.

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

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**SEC. 427. COORDINATION OF INFORMATION AND INFORMATION TECHNOLOGY.**

(a) DEFINITION OF AFFECTED AGENCY.—In this section, the term “affected agency” means—

- (1) the Department;
- (2) the Department of Agriculture;
- (3) the Department of Health and Human Services; and
- (4) any other department or agency determined to be appropriate by the Secretary.

(b) COORDINATION.—The Secretary, in coordination with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary, shall ensure that appropriate information (as determined by the Secretary) concerning inspections of articles that are imported or entered into the United States, and are inspected or regulated by 1 or more affected agencies, is timely and efficiently exchanged between the affected agencies.

[(c) REPORT AND PLAN.—Not later than 18 months after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary, shall submit to Congress—

- [(1) a report on the progress made in implementing this section; and
- [(2) a plan to complete implementation of this section.]

**SEC. 428. VISA ISSUANCE.**

(a) DEFINITION.—In this subsection, the term “consular office” has the meaning given that term under section 101(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(9)).

(b) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided in subsection (c) of this section, the Secretary—

- (1) shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas, and shall have the authority to refuse visas in accordance with law and to develop programs of homeland security training for consular officers (in addition to consular training provided by the Secretary of State), which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien; and
- (2) shall have authority to confer or impose upon any officer or employee of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in paragraph (1).

(c) AUTHORITY OF THE SECRETARY OF STATE.—

(1) IN GENERAL.—Notwithstanding subsection (b), the Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State deems such refusal necessary or advisable in the foreign policy or security interests of the United States.

(2) CONSTRUCTION REGARDING AUTHORITY.—Nothing in this section, consistent with the Secretary of Homeland Security's authority to refuse visas in accordance with law, shall be construed as affecting the authorities of the Secretary of State under the following provisions of law:

(A) Section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)).

(B) Section 204(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1154) (as it will take effect upon the entry into force of the Convention on Protection of Children and Cooperation in Respect to Inter-Country adoption).

(C) Section 212(a)(3)(B)(i)(IV)(bb) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(IV)(bb)).

(D) Section 212(a)(3)(B)(i)(VI) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(VI)).

(E) Section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)(II)).

(F) Section 212(a)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

(G) Section 212(a)(10)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(C)).

(H) Section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(I) Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).

(J) Section 237(a)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(C)).

(K) Section 401 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6034; Public Law 104–114).

(L) Section 613 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1999 (as contained in section 101(b) of division A of Public Law 105–277) (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999); 112 Stat. 2681; H.R. 4328 (originally H.R. 4276) as amended by section 617 of Public Law 106–553.

(M) Section 103(f) of the Chemical Weapon Convention Implementation Act of 1998 (112 Stat. 2681–865).

(N) Section 801 of H.R. 3427, the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, as enacted by reference in Public Law 106–113.

(O) Section 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115).

(P) Section 51 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2723).

(d) CONSULAR OFFICERS AND CHIEFS OF MISSIONS.—

(1) IN GENERAL.—Nothing in this section may be construed to alter or affect—

(A) the employment status of consular officers as employees of the Department of State; or

(B) the authority of a chief of mission under section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

(2) CONSTRUCTION REGARDING DELEGATION OF AUTHORITY.—Nothing in this section shall be construed to affect any delegation of authority to the Secretary of State by the President pursuant to any proclamation issued under section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)), consistent with the Secretary of Homeland Security's authority to refuse visas in accordance with law.

(e) ASSIGNMENT OF HOMELAND SECURITY EMPLOYEES TO DIPLOMATIC AND CONSULAR POSTS.—

(1) IN GENERAL.—The Secretary is authorized to assign employees of the Department to each diplomatic and consular post at which visas are issued, unless the Secretary determines that such an assignment at a particular post would not promote homeland security.

(2) FUNCTIONS.—Employees assigned under paragraph (1) shall perform the following functions:

(A) Provide expert advice and training to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications.

(B) Review any such applications, either on the initiative of the employee of the Department or upon request by a consular officer or other person charged with adjudicating such applications.

(C) Conduct investigations with respect to consular matters under the jurisdiction of the Secretary.

(3) EVALUATION OF CONSULAR OFFICERS.—The Secretary of State shall evaluate, in consultation with the Secretary, as deemed appropriate by the Secretary, the performance of consular officers with respect to the processing and adjudication of applications for visas in accordance with performance standards developed by the Secretary for these procedures.

(4) REPORT.—The Secretary shall, on an annual basis, submit a report to Congress that describes the basis for each determination under paragraph (1) that the assignment of an employee of the Department at a particular diplomatic post would not promote homeland security.

(5) PERMANENT ASSIGNMENT; PARTICIPATION IN TERRORIST LOOKOUT COMMITTEE.—When appropriate, employees of the Department assigned to perform functions described in paragraph (2) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

(6) TRAINING AND HIRING.—

(A) **IN GENERAL.**—The Secretary shall ensure, to the extent possible, that any employees of the Department assigned to perform functions under paragraph (2) and, as appropriate, consular officers, shall be provided the necessary training to enable them to carry out such functions, including training in foreign languages, interview techniques, and fraud detection techniques, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.

(B) **USE OF CENTER.**—The Secretary is authorized to use the National Foreign Affairs Training Center, on a reimbursable basis, to obtain the training described in subparagraph (A).

[(7) **REPORT.**—Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of State shall submit to Congress—

[(A) a report on the implementation of this subsection; and

[(B) any legislative proposals necessary to further the objectives of this subsection.

[(8) **EFFECTIVE DATE.**—This subsection shall take effect on the earlier of—

[(A) the date on which the President publishes notice in the Federal Register that the President has submitted a report to Congress setting forth a memorandum of understanding between the Secretary and the Secretary of State governing the implementation of this section; or

[(B) the date occurring 1 year after the date of enactment of this Act.]

(f) **NO CREATION OF PRIVATE RIGHT OF ACTION.**—Nothing in this section shall be construed to create or authorize a private right of action to challenge a decision of a consular officer or other United States official or employee to grant or deny a visa.

[(g) **STUDY REGARDING USE OF FOREIGN NATIONALS.**—

[(1) **IN GENERAL.**—The Secretary of Homeland Security shall conduct a study of the role of foreign nationals in the granting or refusal of visas and other documents authorizing entry of aliens into the United States. The study shall address the following:

[(A) The proper role, if any, of foreign nationals in the process of rendering decisions on such grants and refusals.

[(B) Any security concerns involving the employment of foreign nationals.

[(C) Whether there are cost-effective alternatives to the use of foreign nationals.

[(2) **REPORT.**—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report containing the findings of the study conducted under paragraph (1) to the Committee on the Judiciary, the Committee on International Relations, and the Committee on Government Reform of the House of Representatives, and the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Government Affairs of the Senate.

[(h) **REPORT.**—Not later than 120 days after the date of the enactment of this Act, the Director of the Office of Science and Tech-

nology Policy shall submit to Congress a report on how the provisions of this section will affect procedures for the issuance of student visas.]

[(i)] (g) VISA ISSUANCE PROGRAM FOR SAUDI ARABIA.—Notwithstanding any other provision of law, after the date of the enactment of this Act all third party screening programs in Saudi Arabia shall be terminated. On-site personnel of the Department of Homeland Security shall review all visa applications prior to adjudication.

\* \* \* \* \*

**[SEC. 430. OFFICE FOR DOMESTIC PREPAREDNESS.**

[(a)] IN GENERAL.—The Office for Domestic Preparedness shall be within the Directorate of Border and Transportation Security.

[(b)] DIRECTOR.—There shall be a Director of the Office for Domestic Preparedness, who shall be appointed by the President. The Director of the Office for Domestic Preparedness shall report directly to the Under Secretary for Border and Transportation Security.

[(c)] RESPONSIBILITIES.—The Office for Domestic Preparedness shall have the primary responsibility within the executive branch of Government for the preparedness of the United States for acts of terrorism, including—

[(1)] coordinating preparedness efforts at the Federal level, and working with all State, local, tribal, parish, and private sector emergency response providers on all matters pertaining to combating terrorism, including training, exercises, and equipment support;

[(2)] coordinating or, as appropriate, consolidating communications and systems of communications relating to homeland security at all levels of government;

[(3)] directing and supervising terrorism preparedness grant programs of the Federal Government (other than those programs administered by the Department of Health and Human Services) for all emergency response providers;

[(4)] incorporating the Strategy priorities into planning guidance on an agency level for the preparedness efforts of the Office for Domestic Preparedness;

[(5)] providing agency-specific training for agents and analysts within the Department, other agencies, and State and local agencies and international entities;

[(6)] as the lead executive branch agency for preparedness of the United States for acts of terrorism, cooperating closely with the Federal Emergency Management Agency, which shall have the primary responsibility within the executive branch to prepare for and mitigate the effects of nonterrorist-related disasters in the United States;

[(7)] assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities of State, local, and tribal governments consistent with the mission and functions of the Directorate;

[(8)] those elements of the Office of National Preparedness of the Federal Emergency Management Agency which relate to terrorism, which shall be consolidated within the Department

in the Office for Domestic Preparedness established under this section; and

[(9) helping to ensure the acquisition of interoperable communication technology by State and local governments and emergency response providers.

[(d) FISCAL YEARS 2003 and 2004.—During fiscal year 2003 and fiscal year 2004, the Director of the Office for Domestic Preparedness established under this section shall manage and carry out those functions of the Office for Domestic Preparedness of the Department of Justice (transferred under this section) before September 11, 2001, under the same terms, conditions, policies, and authorities, and with the required level of personnel, assets, and budget before September 11, 2001.

**[SEC. 431. OFFICE OF CARGO SECURITY POLICY.**

[(a) ESTABLISHMENT.—There is established within the Department an Office of Cargo Security Policy (referred to in this section as the “Office”).

[(b) PURPOSE.—The Office shall—

[(1) coordinate all Department policies relating to cargo security; and

[(2) consult with stakeholders and coordinate with other Federal agencies in the establishment of standards and regulations and to promote best practices.

[(c) DIRECTOR.—

[(1) APPOINTMENT.—The Office shall be headed by a Director, who shall—

[(A) be appointed by the Secretary; and

[(B) report to the Assistant Secretary for Policy.

[(2) RESPONSIBILITIES.—The Director shall—

[(A) advise the Assistant Secretary for Policy in the development of Department-wide policies regarding cargo security;

[(B) coordinate all policies relating to cargo security among the agencies and offices within the Department relating to cargo security; and

[(C) coordinate the cargo security policies of the Department with the policies of other executive agencies.]

\* \* \* \* \*

## **Subtitle D—Immigration Enforcement Functions**

**SEC. 441. TRANSFER OF FUNCTIONS [TO UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY].**

In accordance with title XV (relating to transition provisions), there shall be transferred from the Commissioner of Immigration and Naturalization to [the Under Secretary for Border and Transportation Security] *the Secretary* all functions performed under the following programs, and all personnel, assets, and liabilities pertaining to such programs, immediately before such transfer occurs:

- (1) The Border Patrol program.
- (2) The detention and removal program.
- (3) The intelligence program.

- (4) The investigations program.
- (5) The inspections program.

**SEC. 442. [ESTABLISHMENT OF BUREAU OF BORDER SECURITY]  
UNITED STATES IMMIGRATION AND CUSTOMS ENFORCE-  
MENT.**

(a) **ESTABLISHMENT [OF BUREAU].—**

(1) **IN GENERAL.**—There shall be in the Department of Homeland Security [a bureau] *an agency* to be known as the “[Bureau of Border Security] *United States Immigration and Customs Enforcement*”.

(2) **[ASSISTANT SECRETARY] DIRECTOR.**—The head of [the Bureau of Border Security] *United States Immigration and Customs Enforcement* shall be the [Assistant Secretary] *Director* of [the Bureau of Border Security] *United States Immigration and Customs Enforcement*, who—

(A) shall report directly to the [Under Secretary for Border and Transportation Security] *Secretary*; and

(B) shall have a minimum of 5 years professional experience in law enforcement, and a minimum of 5 years of management experience.

(3) **FUNCTIONS.**—The [Assistant Secretary] *Director* of [the Bureau of Border Security] *United States Immigration and Customs Enforcement*—

(A) shall establish the policies for performing such functions as are—

(i) transferred to the [Under Secretary for Border and Transportation Security] *Secretary* by section 441 and delegated to the [Assistant Secretary] *Director* by the [Under Secretary for Border and Transportation Security] *Secretary*; or

(ii) otherwise vested in the [Assistant Secretary] *Director* by law;

(B) shall oversee the administration of such policies; and

(C) shall advise the [Under Secretary for Border and Transportation Security] *Secretary* with respect to any policy or operation of [the Bureau of Border Security] *United States Immigration and Customs Enforcement* that may affect [the Bureau of Citizenship and Immigration Services] *United States Citizenship and Immigration Services* established under subtitle E, including potentially conflicting policies or operations.

(4) **PROGRAM TO COLLECT INFORMATION RELATING TO FOREIGN STUDENTS.**—The [Assistant Secretary] *Director* of [the Bureau of Border Security] *United States Immigration and Customs Enforcement* shall be responsible for administering the program to collect information relating to nonimmigrant foreign students and other exchange program participants described in section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372), including the Student and Exchange Visitor Information System established under that section, and shall use such information to carry out the enforcement functions of [the Bureau] *United States Immigration and Customs Enforcement*.

**[5] MANAGERIAL ROTATION PROGRAM.—**

[(A) IN GENERAL.—Not later than 1 year after the date on which the transfer of functions specified under section 441 takes effect, the Assistant Secretary of the Bureau of Border Security shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS-14 or above, shall—

[(i) gain some experience in all the major functions performed by such bureau; and

[(ii) work in at least one local office of such bureau.

[(B) REPORT.—Not later than 2 years after the date on which the transfer of functions specified under section 441 takes effect, the Secretary shall submit a report to the Congress on the implementation of such program.]

(5) *MANAGERIAL ROTATION PROGRAM.*—*Not later than 1 year after the date on which the transfer of functions specified under section 441 takes effect, the Director of United States Immigration and Customs Enforcement shall design and implement a managerial rotation program under which employees of United States Immigration and Customs Enforcement holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS-14 or above, shall—*

*(A) gain some experience in all the major functions performed by United States Immigration and Customs Enforcement; and*

*(B) work in at least one local office of United States Immigration and Customs Enforcement.*

(b) CHIEF OF POLICY AND STRATEGY.—

(1) IN GENERAL.—There shall be a position of Chief of Policy and Strategy for [the Bureau of Border Security] *United States Immigration and Customs Enforcement*.

(2) FUNCTIONS.—In consultation with [Bureau of Border Security] *United States Immigration and Customs Enforcement* personnel in local offices, the Chief of Policy and Strategy shall be responsible for—

(A) making policy recommendations and performing policy research and analysis on immigration enforcement issues; and

(B) coordinating immigration policy issues with the Chief of Policy and Strategy for [the Bureau of Citizenship and Immigration Services] *United States Citizenship and Immigration Services* (established under subtitle E), as appropriate.

(c) LEGAL ADVISOR.—There shall be a principal legal advisor to the [Assistant Secretary] *Director* of [the Bureau of Border Security] *United States Immigration and Customs Enforcement*. The legal advisor shall provide specialized legal advice to the [Assistant Secretary] *Director* of [the Bureau of Border Security] *United States Immigration and Customs Enforcement* and shall represent the bureau in all exclusion, deportation, and removal proceedings before the Executive Office for Immigration Review.

**SEC. 443. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.**

The [Under Secretary for Border and Transportation Security] Secretary shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of [the Bureau of Border Security] *United States Immigration and Customs Enforcement* that are not subject to investigation by the Inspector General for the Department;

(2) inspecting the operations of [the Bureau of Border Security] *United States Immigration and Customs Enforcement* and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of [the Bureau of Border Security] *United States Immigration and Customs Enforcement*.

**SEC. 444. EMPLOYEE DISCIPLINE.**

The [Under Secretary for Border and Transportation Security] Secretary may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, [pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation,] on any employee of [the Bureau of Border Security] *United States Customs and Border Protection* who willfully deceives the Congress or agency leadership on any matter.

**[SEC. 445. REPORT ON IMPROVING ENFORCEMENT FUNCTIONS.**

[(a) IN GENERAL.—The Secretary, not later than 1 year after being sworn into office, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report with a plan detailing how the Bureau of Border Security, after the transfer of functions specified under section 441 takes effect, will enforce comprehensively, effectively, and fairly all the enforcement provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) relating to such functions.

[(b) CONSULTATION.—In carrying out subsection (a), the Secretary of Homeland Security shall consult with the Attorney General, the Secretary of State, the Director of the Federal Bureau of Investigation, the Secretary of the Treasury, the Secretary of Labor, the Commissioner of Social Security, the Director of the Executive Office for Immigration Review, and the heads of State and local law enforcement agencies to determine how to most effectively conduct enforcement operations.

**[SEC. 446. SENSE OF CONGRESS REGARDING CONSTRUCTION OF FENCING NEAR SAN DIEGO, CALIFORNIA.**

[[It is the sense of the Congress that completing the 14-mile border fence project required to be carried out under section 102(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) should be a priority for the Secretary.]

## **Subtitle E—Citizenship and Immigration Services**

**SEC. 451. ESTABLISHMENT OF [BUREAU OF] UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES.**

(a) ESTABLISHMENT [OF BUREAU].—

(1) IN GENERAL.—There shall be in the Department [a bureau] *an agency* to be known as [the “Bureau of Citizenship and Immigration Services ”] “*United States Citizenship and Immigration Services*”.

(2) DIRECTOR.—The head of [the Bureau of Citizenship and Immigration Services] *United States Citizenship and Immigration Services* shall be the Director of [the Bureau of Citizenship and Immigration Services] *United States Citizenship and Immigration Services*, who—

(A) shall report directly to the Deputy Secretary;

(B) shall have a minimum of 5 years of management experience; and

(C) shall be paid at the same level as the [Assistant Secretary] *Director* of [the Bureau of Border Security] *United States Customs and Border Protection*.

(3) FUNCTIONS.—The Director of [the Bureau of Citizenship and Immigration Services] *United States Citizenship and Immigration Services*—

(A) shall establish the policies for performing such functions as are transferred to the Director by this section or this Act or otherwise vested in the Director by law;

(B) shall oversee the administration of such policies;

(C) shall advise the Deputy Secretary with respect to any policy or operation of [the Bureau of Citizenship and Immigration Services] *United States Citizenship and Immigration Services* that may affect [the Bureau of Border Security] *United States Customs and Border Protection* of the Department, including potentially conflicting policies or operations;

(D) shall establish national immigration services policies and priorities;

(E) shall meet regularly with the Ombudsman described in section 452 to correct serious service problems identified by the Ombudsman; and

(F) shall establish procedures requiring a formal response to any recommendations submitted in the Ombudsman’s annual report to Congress within 3 months after its submission to Congress.

[(4) MANAGERIAL ROTATION PROGRAM.—

[(A) IN GENERAL.—Not later than 1 year after the effective date specified in section 455, the Director of the Bureau of Citizenship and Immigration Services shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS–14 or above, shall—

[(i) gain some experience in all the major functions performed by such bureau; and

[(ii) work in at least one field office and one service center of such bureau.

[(B) REPORT.—Not later than 2 years after the effective date specified in section 455, the Secretary shall submit a report to Congress on the implementation of such program.]

(4) *MANAGERIAL ROTATION PROGRAM.*—Not later than 1 year after the effective date specified in section 455, the Director of United States Citizenship and Immigration Services shall design and implement a managerial rotation program under which employees of United States Citizenship and Immigration Services holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS-14 or above, shall—

(A) gain some experience in all the major functions performed by United States Citizenship and Immigration Services; and

(B) work in at least one field office and one service center of United States Citizenship and Immigration Services.

(5) *PILOT INITIATIVES FOR BACKLOG ELIMINATION.*—The Director of [the Bureau of Citizenship and Immigration Services] *United States Citizenship and Immigration Services* is authorized to implement innovative pilot initiatives to eliminate any remaining backlog in the processing of immigration benefit applications, and to prevent any backlog in the processing of such applications from recurring, in accordance with section 204(a) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)). Such initiatives may include measures such as increasing personnel, transferring personnel to focus on areas with the largest potential for backlog, and streamlining paperwork.

(b) *TRANSFER OF FUNCTIONS FROM COMMISSIONER.*—In accordance with title XV (relating to transition provisions), there are transferred from the Commissioner of Immigration and Naturalization to the Director of [the Bureau of Citizenship and Immigration Services] *United States Citizenship and Immigration Services* the following functions, and all personnel, infrastructure, and funding provided to the Commissioner in support of such functions immediately before the effective date specified in section 455:

(1) Adjudications of immigrant visa petitions.

(2) Adjudications of naturalization petitions.

(3) Adjudications of asylum and refugee applications.

(4) Adjudications performed at service centers.

(5) All other adjudications performed by the Immigration and Naturalization Service immediately before the effective date specified in section 455.

(c) *CHIEF OF POLICY AND STRATEGY.*—

(1) *IN GENERAL.*—There shall be a position of Chief of Policy and Strategy for [the Bureau of Citizenship and Immigration Services] *United States Citizenship and Immigration Services*.

(2) *FUNCTIONS.*—In consultation with [Bureau of Citizenship and Immigration Services] *United States Citizenship and Immigration Services* personnel in field offices, the Chief of Policy and Strategy shall be responsible for—

(A) making policy recommendations and performing policy research and analysis on immigration services issues; and

(B) coordinating immigration policy issues with the Chief of Policy and Strategy for [the Bureau of Border Security] *United States Customs and Border Protection* of the Department.

## (d) LEGAL ADVISOR.—

(1) IN GENERAL.—There shall be a principal legal advisor to the Director of **【the Bureau of Citizenship and Immigration Services】** *United States Citizenship and Immigration Services*.

(2) FUNCTIONS.—The legal advisor shall be responsible for—

(A) providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Director of **【the Bureau of Citizenship and Immigration Services】** *United States Citizenship and Immigration Services* with respect to legal matters affecting **【the Bureau of Citizenship and Immigration Services】** *United States Citizenship and Immigration Services*; and

(B) representing **【the Bureau of Citizenship and Immigration Services】** *United States Citizenship and Immigration Services* in visa petition appeal proceedings before the Executive Office for Immigration Review.

## (e) BUDGET OFFICER.—

(1) IN GENERAL.—There shall be a Budget Officer for **【the Bureau of Citizenship and Immigration Services】** *United States Citizenship and Immigration Services*.

(2) FUNCTIONS.—

(A) IN GENERAL.—The Budget Officer shall be responsible for—

(i) formulating and executing the budget of **【the Bureau of Citizenship and Immigration Services】** *United States Citizenship and Immigration Services*;

(ii) financial management of **【the Bureau of Citizenship and Immigration Services】** *United States Citizenship and Immigration Services*; and

(iii) collecting all payments, fines, and other debts for **【the Bureau of Citizenship and Immigration Services】** *United States Citizenship and Immigration Services*.

## (f) CHIEF OF OFFICE OF CITIZENSHIP.—

(1) IN GENERAL.—There shall be a position of Chief of the Office of Citizenship for **【the Bureau of Citizenship and Immigration Services】** *United States Citizenship and Immigration Services*.

(2) FUNCTIONS.—The Chief of the Office of Citizenship for **【the Bureau of Citizenship and Immigration Services】** *United States Citizenship and Immigration Services* shall be responsible for promoting instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens of the United States, including the development of educational materials.

**【(g) OFFICE OF THE FBI LIAISON.—**

**【(1) IN GENERAL.—**There shall be an Office of the FBI Liaison in the Department of Homeland Security.

**【(2) FUNCTIONS.—**The Office of the FBI Liaison shall monitor the progress of the functions of the Federal Bureau of Investigation in the naturalization process to assist in the expeditious completion of all such functions pertaining to naturalization applications filed by, or on behalf of—

[(A) current or former members of the Armed Forces under section 328 or 329 of the Immigration and Nationality Act (8 U.S.C. 1439 and 1440);

[(B) current spouses of United States citizens who are currently serving on active duty in the Armed Forces, who qualify for naturalization under section 319(b) of the Immigration and Nationality Act (8 U.S.C. 1430(b)), and surviving spouses and children who qualify for naturalization under section 319(d) of such Act; or

[(C) a deceased individual who is eligible for posthumous citizenship under section 329A of the Immigration and Nationality Act (8 U.S.C. 1440-1).

[(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection.]

**SEC. 452. CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN.**

(a) IN GENERAL.—Within the Department, there shall be a position of Citizenship and Immigration Services Ombudsman (in this section referred to as the “Ombudsman”). The Ombudsman shall report directly to the Deputy Secretary. The Ombudsman shall have a background in customer service as well as immigration law.

(b) FUNCTIONS.—It shall be the function of the Ombudsman—

(1) to assist individuals and employers in resolving problems with [the Bureau of] *United States* Citizenship and Immigration Services;

(2) to identify areas in which individuals and employers have problems in dealing with [the Bureau of] *United States* Citizenship and Immigration Services; and

(3) to the extent possible, to propose changes in the administrative practices of [the Bureau of] *United States* Citizenship and Immigration Services to mitigate problems identified under paragraph (2).

(c) ANNUAL REPORTS.—

(1) OBJECTIVES.—Not later than June 30 of each calendar year, the Ombudsman shall report to the Committee on the Judiciary of the House of Representatives and the Senate on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and—

(A) shall identify the recommendations the Office of the Ombudsman has made on improving services and responsiveness of [the Bureau of] *United States* Citizenship and Immigration Services;

(B) shall contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems;

(C) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action has been taken and the result of such action;

(D) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action remains to be completed and the period during which each item has remained on such inventory;

(E) shall contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and shall identify any official of **[the Bureau of]** *United States* Citizenship and Immigration Services who is responsible for such inaction;

(F) shall contain recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications; and

(G) shall include such other information as the Ombudsman may deem advisable.

(2) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subsection shall be provided directly to the committees described in paragraph (1) without any prior comment or amendment from the Secretary, Deputy Secretary, Director of **[the Bureau of]** *United States* Citizenship and Immigration Services, or any other officer or employee of the Department or the Office of Management and Budget.

(d) OTHER RESPONSIBILITIES.—The Ombudsman—

(1) shall monitor the coverage and geographic allocation of local offices of the Ombudsman;

(2) shall develop guidance to be distributed to all officers and employees of **[the Bureau of]** *United States* Citizenship and Immigration Services outlining the criteria for referral of inquiries to local offices of the Ombudsman;

(3) shall ensure that the local telephone number for each local office of the Ombudsman is published and available to individuals and employers served by the office; and

(4) shall meet regularly with the Director of **[the Bureau of]** *United States* Citizenship and Immigration Services to identify serious service problems and to present recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers.

(e) PERSONNEL ACTIONS.—

(1) IN GENERAL.—The Ombudsman shall have the responsibility and authority—

(A) to appoint local ombudsmen and make available at least 1 such ombudsman for each State; and

(B) to evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of the Ombudsman.

(2) CONSULTATION.—The Ombudsman may consult with the appropriate supervisory personnel of **[the Bureau of]** *United States* Citizenship and Immigration Services in carrying out the Ombudsman's responsibilities under this subsection.

(f) RESPONSIBILITIES OF **[BUREAU OF]** *UNITED STATES* CITIZENSHIP AND IMMIGRATION SERVICES.—The Director of **[the Bureau of]** *United States* Citizenship and Immigration Services shall establish procedures requiring a formal response to all recommendations submitted to such director by the Ombudsman within 3 months after submission to such director.

## (g) OPERATION OF LOCAL OFFICES.—

## (1) IN GENERAL.—Each local ombudsman—

(A) shall report to the Ombudsman or the delegate thereof;

(B) may consult with the appropriate supervisory personnel of [the Bureau of] *United States* Citizenship and Immigration Services regarding the daily operation of the local office of such ombudsman;

(C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or employer that the local offices of the Ombudsman operate independently of any other component of the Department and report directly to Congress through the Ombudsman; and

(D) at the local ombudsman's discretion, may determine not to disclose to [the Bureau of] *United States* Citizenship and Immigration Services contact with, or information provided by, such individual or employer.

(2) MAINTENANCE OF INDEPENDENT COMMUNICATIONS.—Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office address, that is separate from those maintained by [the Bureau of] *United States* Citizenship and Immigration Services, or any component of [the Bureau of] *United States* Citizenship and Immigration Services.

**SEC. 453. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.**

(a) IN GENERAL.—The Director of [the Bureau of] *United States* Citizenship and Immigration Services shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of [the Bureau of] *United States* Citizenship and Immigration Services that are not subject to investigation by the Inspector General for the Department;

(2) inspecting the operations of [the Bureau of] *United States* Citizenship and Immigration Services and providing assessments of the quality of the operations of [such bureau] *United States* Citizenship and Immigration Services as a whole and each of its components; and

(3) providing an analysis of the management of [the Bureau of] *United States* Citizenship and Immigration Services.

(b) SPECIAL CONSIDERATIONS.—In providing assessments in accordance with subsection (a)(2) with respect to a decision of [the Bureau of] *United States* Citizenship and Immigration Services, or any of its components, consideration shall be given to—

(1) the accuracy of the findings of fact and conclusions of law used in rendering the decision;

(2) any fraud or misrepresentation associated with the decision; and

(3) the efficiency with which the decision was rendered.

**SEC. 454. EMPLOYEE DISCIPLINE.**

The Director of [the Bureau of] *United States* Citizenship and Immigration Services may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, [pursuant to policies and procedures applicable to employees

of the Federal Bureau of Investigation,] on any employee of [the Bureau of] *United States* Citizenship and Immigration Services who willfully deceives Congress or agency leadership on any matter.

**[SEC. 455. EFFECTIVE DATE.**

[Notwithstanding section 4, sections 451 through 456, and the amendments made by such sections, shall take effect on the date on which the transfer of functions specified under section 441 takes effect.

**[SEC. 456. TRANSITION.**

[(a) REFERENCES.—With respect to any function transferred by this subtitle to, and exercised on or after the effective date specified in section 455 by, the Director of the Bureau of Citizenship and Immigration Services, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

[(1) to the head of such component is deemed to refer to the Director of the Bureau of Citizenship and Immigration Services; or

[(2) to such component is deemed to refer to the Bureau of Citizenship and Immigration Services.

[(b) OTHER TRANSITION ISSUES.—

[(1) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this subtitle may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in section 455.

[(2) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel of the Department of Justice employed in connection with the functions transferred by this subtitle (and functions that the Secretary determines are properly related to the functions of the Bureau of Citizenship and Immigration Services), and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this subtitle, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Director of the Bureau of Citizenship and Immigration Services for allocation to the appropriate component of the Department. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated. The Secretary shall have the right to adjust or realign transfers of funds and personnel effected pursuant to this subtitle for a period of 2 years after the effective date specified in section 455.]

\* \* \* \* \*

**[SEC. 459. REPORT ON IMPROVING IMMIGRATION SERVICES.**

[(a) IN GENERAL.—The Secretary, not later than 1 year after the effective date of this Act, shall submit to the Committees on the Judiciary and Appropriations of the House of Representatives and of the Senate a report with a plan detailing how the Bureau of Citizenship and Immigration Services, after the transfer of functions specified in this subtitle takes effect, will complete efficiently, fairly, and within a reasonable time, the adjudications described in paragraphs (1) through (5) of section 451(b).

[(b) CONTENTS.—For each type of adjudication to be undertaken by the Director of the Bureau of Citizenship and Immigration Services, the report shall include the following:

[(1) Any potential savings of resources that may be implemented without affecting the quality of the adjudication.

[(2) The goal for processing time with respect to the application.

[(3) Any statutory modifications with respect to the adjudication that the Secretary considers advisable.

[(c) CONSULTATION.—In carrying out subsection (a), the Secretary shall consult with the Secretary of State, the Secretary of Labor, the Assistant Secretary of the Bureau of Border Security of the Department, and the Director of the Executive Office for Immigration Review to determine how to streamline and improve the process for applying for and making adjudications described in section 451(b) and related processes.

**[SEC. 460. REPORT ON RESPONDING TO FLUCTUATING NEEDS.**

[Not later than 30 days after the date of the enactment of this Act, the Attorney General shall submit to Congress a report on changes in law, including changes in authorizations of appropriations and in appropriations, that are needed to permit the Immigration and Naturalization Service, and, after the transfer of functions specified in this subtitle takes effect, the Bureau of Citizenship and Immigration Services of the Department, to ensure a prompt and timely response to emergent, unforeseen, or impending changes in the number of applications for immigration benefits, and otherwise to ensure the accommodation of changing immigration service needs.

**[SEC. 461. APPLICATION OF INTERNET-BASED TECHNOLOGIES.**

[(a) ESTABLISHMENT OF TRACKING SYSTEM.—The Secretary, not later than 1 year after the effective date of this Act, in consultation with the Technology Advisory Committee established under subsection (c), shall establish an Internet-based system, that will permit a person, employer, immigrant, or nonimmigrant who has filings with the Secretary for any benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), access to online information about the processing status of the filing involved.

[(b) FEASIBILITY STUDY FOR ONLINE FILING AND IMPROVED PROCESSING.—

[(1) ONLINE FILING.—The Secretary, in consultation with the Technology Advisory Committee established under subsection (c), shall conduct a feasibility study on the online filing of the filings described in subsection (a). The study shall include a review of computerization and technology of the Immigration and Naturalization Service relating to the immigration services and

processing of filings related to immigrant services. The study shall also include an estimate of the timeframe and cost and shall consider other factors in implementing such a filing system, including the feasibility of fee payment online.

[(2) REPORT.—A report on the study under this subsection shall be submitted to the Committees on the Judiciary of the House of Representatives and the Senate not later than 1 year after the effective date of this Act.

[(c) TECHNOLOGY ADVISORY COMMITTEE.—

[(1) ESTABLISHMENT.—The Secretary shall establish, not later than 60 days after the effective date of this Act, an advisory committee (in this section referred to as the “Technology Advisory Committee”) to assist the Secretary in—

[(A) establishing the tracking system under subsection (a); and

[(B) conducting the study under subsection (b).

The Technology Advisory Committee shall be established after consultation with the Committees on the Judiciary of the House of Representatives and the Senate.

[(2) COMPOSITION.—The Technology Advisory Committee shall be composed of representatives from high technology companies capable of establishing and implementing the system in an expeditious manner, and representatives of persons who may use the tracking system described in subsection (a) and the online filing system described in subsection (b)(1).]

**SEC. 462. CHILDREN’S AFFAIRS.**

(a) TRANSFER OF FUNCTIONS.—There are transferred to the Director of the Office of Refugee Resettlement of the Department of Health and Human Services functions under the immigration laws of the United States with respect to the care of unaccompanied alien children that were vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the effective date specified in subsection (d).

(b) FUNCTIONS.—

(1) IN GENERAL.—Pursuant to the transfer made by subsection (a), the Director of the Office of Refugee Resettlement shall be responsible for—

(A) coordinating and implementing the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status, including developing a plan to be submitted to Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child, consistent with the law regarding appointment of counsel that is in effect on the date of the enactment of this Act;

(B) ensuring that the interests of the child are considered in decisions and actions relating to the care and custody of an unaccompanied alien child;

(C) making placement determinations for all unaccompanied alien children who are in Federal custody by reason of their immigration status;

(D) implementing the placement determinations;

- (E) implementing policies with respect to the care and placement of unaccompanied alien children;
  - (F) identifying a sufficient number of qualified individuals, entities, and facilities to house unaccompanied alien children;
  - (G) overseeing the infrastructure and personnel of facilities in which unaccompanied alien children reside;
  - (H) reuniting unaccompanied alien children with a parent abroad in appropriate cases;
  - (I) compiling, updating, and publishing at least annually a state-by-state list of professionals or other entities qualified to provide guardian and attorney representation services for unaccompanied alien children;
  - (J) maintaining statistical information and other data on unaccompanied alien children for whose care and placement the Director is responsible, which shall include—
    - (i) biographical information, such as a child's name, gender, date of birth, country of birth, and country of habitual residence;
    - (ii) the date on which the child came into Federal custody by reason of his or her immigration status;
    - (iii) information relating to the child's placement, removal, or release from each facility in which the child has resided;
    - (iv) in any case in which the child is placed in detention or released, an explanation relating to the detention or release; and
    - (v) the disposition of any actions in which the child is the subject;
  - (K) collecting and compiling statistical information from the Department of Justice, the Department of Homeland Security, and the Department of State on each department's actions relating to unaccompanied alien children; and
  - (L) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside, including regular follow-up visits to such facilities, placements, and other entities, to assess the continued suitability of such placements.
- (2) COORDINATION WITH OTHER ENTITIES; NO RELEASE ON OWN RECOGNIZANCE.—In making determinations described in paragraph (1)(C), the Director of the Office of Refugee Resettlement—
- (A) shall consult with appropriate juvenile justice professionals, the Director of [the Bureau of Citizenship and Immigration Services] *United States Citizenship and Immigration Services*, and the [Assistant Secretary] *Director of [the Bureau of Border Security] United States Immigration and Customs Enforcement* to ensure that such determinations ensure that unaccompanied alien children described in such subparagraph—
    - (i) are likely to appear for all hearings or proceedings in which they are involved;

(ii) are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity; and  
 (iii) are placed in a setting in which they are not likely to pose a danger to themselves or others; and

(B) shall not release such children upon their own recognition.

(3) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in paragraph (1), the Director of the Office of Refugee Resettlement is encouraged to use the refugee children foster care system established pursuant to section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)) for the placement of unaccompanied alien children.

(4) RULE OF CONSTRUCTION.—Nothing in paragraph (2)(B) may be construed to require that a bond be posted for an unaccompanied alien child who is released to a qualified sponsor.

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) from the authority of any official of the Department of Justice, the Department of Homeland Security, or the Department of State.

(d) EFFECTIVE DATE.—Notwithstanding section 4, this section shall take effect on the date on which the transfer of functions specified under section 441 takes effect.

(e) REFERENCES.—With respect to any function transferred by this section, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Office of Refugee Resettlement; or

(2) to such component is deemed to refer to the Office of Refugee Resettlement of the Department of Health and Human Services.

(f) OTHER TRANSITION ISSUES.—

(1) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this section may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in subsection (d).

(2) SAVINGS PROVISIONS.—Subsections (a), (b), and (c) of section 1512 shall apply to a transfer of functions under this section in the same manner as such provisions apply to a transfer of functions under this Act to the Department of Homeland Security.

(3) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel of the Department of Justice employed in connection with the functions transferred by this section, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and

Naturalization Service in connection with the functions transferred by this section, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Director of the Office of Refugee Resettlement for allocation to the appropriate component of the Department of Health and Human Services. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated.

(g) DEFINITIONS.—As used in this section—

(1) the term “placement” means the placement of an unaccompanied alien child in either a detention facility or an alternative to such a facility; and

(2) the term “unaccompanied alien child” means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained 18 years of age; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

## **Subtitle F—General Immigration Provisions**

\* \* \* \* \*

### **ISEC. 472. VOLUNTARY SEPARATION INCENTIVE PAYMENTS.**

[(a) DEFINITIONS.—For purposes of this section—

[(1) the term “employee” means an employee (as defined by section 2105 of title 5, United States Code) who—

[(A) has completed at least 3 years of current continuous service with 1 or more covered entities; and

[(B) is serving under an appointment without time limitation,

but does not include any person under subparagraphs (A)–(G) of section 663(a)(2) of Public Law 104–208 (5 U.S.C. 5597 note);

[(2) the term “covered entity” means—

[(A) the Immigration and Naturalization Service;

[(B) the Bureau of Border Security of the Department of Homeland Security; and

[(C) the Bureau of Citizenship and Immigration Services of the Department of Homeland Security; and

[(3) the term “transfer date” means the date on which the transfer of functions specified under section 441 takes effect.

[(b) STRATEGIC RESTRUCTURING PLAN.—Before the Attorney General or the Secretary obligates any resources for voluntary separation incentive payments under this section, such official shall submit to the appropriate committees of Congress a strategic restructuring plan, which shall include—

[(1) an organizational chart depicting the covered entities after their restructuring pursuant to this Act;

[(2) a summary description of how the authority under this section will be used to help carry out that restructuring; and

[(3) the information specified in section 663(b)(2) of Public Law 104–208 (5 U.S.C. 5597 note).

As used in the preceding sentence, the “appropriate committees of Congress” are the Committees on Appropriations, Government Reform, and the Judiciary of the House of Representatives, and the Committees on Appropriations, Governmental Affairs, and the Judiciary of the Senate.

[(c) **AUTHORITY.**—The Attorney General and the Secretary may, to the extent necessary to help carry out their respective strategic restructuring plan described in subsection (b), make voluntary separation incentive payments to employees. Any such payment—

[(1) shall be paid to the employee, in a lump sum, after the employee has separated from service;

[(2) shall be paid from appropriations or funds available for the payment of basic pay of the employee;

[(3) shall be equal to the lesser of—

[(A) the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code; or

[(B) an amount not to exceed \$25,000, as determined by the Attorney General or the Secretary;

[(4) may not be made except in the case of any qualifying employee who voluntarily separates (whether by retirement or resignation) before the end of—

[(A) the 3-month period beginning on the date on which such payment is offered or made available to such employee; or

[(B) the 3-year period beginning on the date of the enactment of this Act, whichever occurs first;

[(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and

[(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595 of title 5, United States Code, based on any other separation.

[(d) **ADDITIONAL AGENCY CONTRIBUTIONS TO THE RETIREMENT FUND.**—

[(1) **IN GENERAL.**—In addition to any payments which it is otherwise required to make, the Department of Justice and the Department of Homeland Security shall, for each fiscal year with respect to which it makes any voluntary separation incentive payments under this section, remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund the amount required under paragraph (2).

[(2) **AMOUNT REQUIRED.**—The amount required under this paragraph shall, for any fiscal year, be the amount under subparagraph (A) or (B), whichever is greater.

[(A) **FIRST METHOD.**—The amount under this subparagraph shall, for any fiscal year, be equal to the minimum amount necessary to offset the additional costs to the re-

irement systems under title 5, United States Code (payable out of the Civil Service Retirement and Disability Fund) resulting from the voluntary separation of the employees described in paragraph (3), as determined under regulations of the Office of Personnel Management.

[(B) SECOND METHOD.—The amount under this subparagraph shall, for any fiscal year, be equal to 45 percent of the sum total of the final basic pay of the employees described in paragraph (3).

[(3) COMPUTATIONS TO BE BASED ON SEPARATIONS OCCURRING IN THE FISCAL YEAR INVOLVED.—The employees described in this paragraph are those employees who receive a voluntary separation incentive payment under this section based on their separating from service during the fiscal year with respect to which the payment under this subsection relates.

[(4) FINAL BASIC PAY DEFINED.—In this subsection, the term “final basic pay” means, with respect to an employee, the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee’s final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefor.

[(e) EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT.—An individual who receives a voluntary separation incentive payment under this section and who, within 5 years after the date of the separation on which the payment is based, accepts any compensated employment with the Government or works for any agency of the Government 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 a demonstration project for the purpose of determining whether one or more changes in the policies or procedures relating to methods for disciplining employees would result in improved personnel management.

[(b) SCOPE.—A demonstration project under this section—

[(1) may not cover any employees apart from those employed in or under a covered entity; and

[(2) shall not be limited by any provision of chapter 43, 75, or 77 of title 5, United States Code.

[(c) PROCEDURES.—Under the demonstration project—

[(1) the use of alternative means of dispute resolution (as defined in section 571 of title 5, United States Code) shall be encouraged, whenever appropriate; and

[(2) each covered entity under the jurisdiction of the official conducting the project shall be required to provide for the expeditious, fair, and independent review of any action to which section 4303 or subchapter II of chapter 75 of such title 5 would otherwise apply (except an action described in section 7512(5) of such title 5).

[(d) ACTIONS INVOLVING DISCRIMINATION.—Notwithstanding any other provision of this section, if, in the case of any matter described in section 7702(a)(1)(B) of title 5, United States Code, there is no judicially reviewable action under the demonstration project within 120 days after the filing of an appeal or other formal request for review (referred to in subsection (c)(2)), an employee shall be entitled to file a civil action to the same extent and in the same manner as provided in section 7702(e)(1) of such title 5 (in the matter following subparagraph (C) thereof).

[(e) CERTAIN EMPLOYEES.—Employees shall not be included within any project under this section if such employees are—

[(1) neither managers nor supervisors; and

[(2) within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 71 of title 5, United States Code.

Notwithstanding the preceding sentence, an aggrieved employee within a unit (referred to in paragraph (2)) may elect to participate in a complaint procedure developed under the demonstration project in lieu of any negotiated grievance procedure and any statutory procedure (as such term is used in section 7121 of such title 5).

[(f) REPORTS.—The General Accounting Office shall prepare and submit to the Committees on Government Reform and the Judiciary of the House of Representatives and the Committees on Governmental Affairs and the Judiciary of the Senate periodic reports on any demonstration project conducted under this section, such reports to be submitted after the second and fourth years of its operation. Upon request, the Attorney General or the Secretary shall furnish such information as the General Accounting Office may require to carry out this subsection.

[(g) DEFINITION.—In this section, the term “covered entity” has the meaning given such term in section 472(a)(2).

**[SEC. 474. SENSE OF CONGRESS.**

[It is the sense of Congress that—

[(1) the missions of the Bureau of Border Security and the Bureau of Citizenship and Immigration Services are equally important and, accordingly, they each should be adequately funded; and

[(2) the functions transferred under this subtitle should not, after such transfers take effect, operate at levels below those in effect prior to the enactment of this Act.

**SEC. 475. DIRECTOR OF SHARED SERVICES.**

[(a) IN GENERAL.—Within the Office of Deputy Secretary, there shall be a Director of Shared Services.]

[(b) FUNCTIONS.—The Director of Shared Services shall be responsible for the coordination of resources for the Bureau of Border Security and the Bureau of Citizenship and Immigration Services, including—

[(1) information resources management, including computer databases and information technology;

[(2) records and file management; and

[(3) forms management.]

**SEC. 476. SEPARATION OF FUNDING.**

(a) IN GENERAL.—There shall be established separate accounts in the Treasury of the United States for appropriated funds and other deposits available for [the Bureau of Citizenship and Immigration Services] *United States Citizenship and Immigration Services* and [the Bureau of Border Security] *United States Immigration and Customs Enforcement*.

(b) SEPARATE BUDGETS.—To ensure that [the Bureau of Citizenship and Immigration Services] *United States Citizenship and Immigration Services* and [the Bureau of Border Security] *United States Immigration and Customs Enforcement* are funded to the extent necessary to fully carry out their respective functions, the Director of the Office of Management and Budget shall separate the budget requests for each such entity.

(c) FEES.—Fees imposed for a particular service, application, or benefit shall be deposited into the account established under subsection (a) that is for the bureau with jurisdiction over the function to which the fee relates.

(d) FEES NOT TRANSFERABLE.—No fee may be transferred between [the Bureau of Citizenship and Immigration Services] *United States Citizenship and Immigration Services* and [the Bureau of Border Security] *United States Immigration and Customs Enforcement* for purposes not authorized by section 286 of the Immigration and Nationality Act (8 U.S.C. 1356).

**SEC. 477. REPORTS AND IMPLEMENTATION PLANS.**

[(a) DIVISION OF FUNDS.—The Secretary, not later than 120 days after the effective date of this Act, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report on the proposed division and transfer of funds, including unexpended funds, appropriations, and fees, between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.]

[(b) DIVISION OF PERSONNEL.—The Secretary, not later than 120 days after the effective date of this Act, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report on the proposed division of personnel between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.]

[(c) IMPLEMENTATION PLAN.—

[(1) IN GENERAL.—The Secretary, not later than 120 days after the effective date of this Act, and every 6 months thereafter until the termination of fiscal year 2005, shall submit to the Committees on Appropriations and the Judiciary of the

House of Representatives and of the Senate an implementation plan to carry out this Act.

[(2) CONTENTS.—The implementation plan should include details concerning the separation of the Bureau of Citizenship and Immigration Services and the Bureau of Border Security, including the following:

[(A) Organizational structure, including the field structure.

[(B) Chain of command.

[(C) Procedures for interaction among such bureaus.

[(D) Fraud detection and investigation.

[(E) The processing and handling of removal proceedings, including expedited removal and applications for relief from removal.

[(F) Recommendations for conforming amendments to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

[(G) Establishment of a transition team.

[(H) Methods to phase in the costs of separating the administrative support systems of the Immigration and Naturalization Service in order to provide for separate administrative support systems for the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

[(d) COMPTROLLER GENERAL STUDIES AND REPORTS.—

[(1) STATUS REPORTS ON TRANSITION.—Not later than 18 months after the date on which the transfer of functions specified under section 441 takes effect, and every 6 months thereafter, until full implementation of this subtitle has been completed, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the House of Representatives and the Senate a report containing the following:

[(A) A determination of whether the transfers of functions made by subtitles D and E have been completed, and if a transfer of functions has not taken place, identifying the reasons why the transfer has not taken place.

[(B) If the transfers of functions made by subtitles D and E have been completed, an identification of any issues that have arisen due to the completed transfers.

[(C) An identification of any issues that may arise due to any future transfer of functions.

[(2) REPORT ON MANAGEMENT.—Not later than 4 years after the date on which the transfer of functions specified under section 441 takes effect, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the House of Representatives and the Senate a report, following a study, containing the following:

[(A) Determinations of whether the transfer of functions from the Immigration and Naturalization Service to the Bureau of Citizenship and Immigration Services and the Bureau of Border Security have improved, with respect to each function transferred, the following:

[(i) Operations.

[(ii) Management, including accountability and communication.

[(iii) Financial administration.

[(iv) Recordkeeping, including information management and technology.

[(B) A statement of the reasons for the determinations under subparagraph (A).

[(C) Any recommendations for further improvements to the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

[(3) REPORT ON FEES.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report examining whether the Bureau of Citizenship and Immigration Services is likely to derive sufficient funds from fees to carry out its functions in the absence of appropriated funds.

**[SEC. 478. IMMIGRATION FUNCTIONS.**

[(a) ANNUAL REPORT.—

[(1) IN GENERAL.—One year after the date of the enactment of this Act, and each year thereafter, the Secretary shall submit a report to the President, to the Committees on the Judiciary and Government Reform of the House of Representatives, and to the Committees on the Judiciary and Government Affairs of the Senate, on the impact the transfers made by this subtitle has had on immigration functions.

[(2) MATTER INCLUDED.—The report shall address the following with respect to the period covered by the report:

[(A) The aggregate number of all immigration applications and petitions received, and processed, by the Department.

[(B) Region-by-region statistics on the aggregate number of immigration applications and petitions filed by an alien (or filed on behalf of an alien) and denied, disaggregated by category of denial and application or petition type.

[(C) The quantity of backlogged immigration applications and petitions that have been processed, the aggregate number awaiting processing, and a detailed plan for eliminating the backlog.

[(D) The average processing period for immigration applications and petitions, disaggregated by application or petition type.

[(E) The number and types of immigration-related grievances filed with any official of the Department of Justice, and if those grievances were resolved.

[(F) Plans to address grievances and improve immigration services.

[(G) Whether immigration-related fees were used consistent with legal requirements regarding such use.

[(H) Whether immigration-related questions conveyed by customers to the Department (whether conveyed in person, by telephone, or by means of the Internet) were answered effectively and efficiently.

[(b) SENSE OF CONGRESS REGARDING IMMIGRATION SERVICES.—It is the sense of Congress that—

【(1) the quality and efficiency of immigration services rendered by the Federal Government should be improved after the transfers made by this subtitle take effect; and

【(2) the Secretary should undertake efforts to guarantee that concerns regarding the quality and efficiency of immigration services are addressed after such effective date.】

**SEC. 478. IMMIGRATION FUNCTIONS.**

(a) *IN GENERAL.*—One year after the date of the enactment of this Act, and each year thereafter, the Secretary shall submit a report to the President, to the Committees on the Judiciary and Oversight and Government Reform of the House of Representatives, and to the Committees on the Judiciary and Homeland Security and Governmental Affairs of the Senate, on the impact the transfers made by this subtitle has had on immigration functions.

(b) *MATTER INCLUDED.*—The report shall address the following with respect to the period covered by the report:

(1) *The aggregate number of all immigration applications and petitions received, and processed, by the Department.*

(2) *Region-by-region statistics on the aggregate number of immigration applications and petitions filed by an alien (or filed on behalf of an alien) and denied, disaggregated by category of denial and application or petition type.*

(3) *The quantity of backlogged immigration applications and petitions that have been processed, the aggregate number awaiting processing, and a detailed plan for eliminating the backlog.*

(4) *The average processing period for immigration applications and petitions, disaggregated by application or petition type.*

(5) *The number and types of immigration-related grievances filed with any official of the Department of Justice, and if those grievances were resolved.*

(6) *Plans to address grievances and improve immigration services.*

(7) *Whether immigration-related fees were used consistent with legal requirements regarding such use.*

(8) *Whether immigration-related questions conveyed by customers to the Department (whether conveyed in person, by telephone, or by means of the Internet) were answered effectively and efficiently.*

## **TITLE V—NATIONAL EMERGENCY MANAGEMENT**

**SEC. 501. DEFINITIONS.**

In this title—

(1) the term “Administrator” means the Administrator of the Agency;

(2) the term “Agency” means the Federal Emergency Management Agency;

(3) the term “catastrophic incident” means any natural disaster, act of terrorism, or other man-made disaster that results in extraordinary levels of casualties or damage or disruption severely affecting the population (including mass evacuations),

infrastructure, environment, economy, national morale, or government functions in an area;

(4) the terms “credentialed” and “credentialing” mean having provided, or providing, respectively, documentation that identifies personnel and authenticates and verifies the qualifications of such personnel by ensuring that such personnel possess a minimum common level of training, experience, physical and medical fitness, and capability appropriate for a particular position in accordance with standards created under section 510;

(5) the term “Federal coordinating officer” means a Federal coordinating officer as described in section 302 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5143);

(6) the term “interoperable” has the meaning given the term “interoperable communications” under section 7303(g)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 194(g)(1));

(7) the term “National Incident Management System” means a system to enable effective, efficient, and collaborative incident management;

(8) the term “National Response Plan” means the National Response Plan or any successor plan prepared under [section 502(a)(6)] *section 504(a)(6)*;

(9) the term “Regional Administrator” means a Regional Administrator appointed under section 507;

(10) the term “Regional Office” means a Regional Office established under section 507;

(11) the term “resources” means personnel and major items of equipment, supplies, and facilities available or potentially available for responding to a natural disaster, act of terrorism, or other man-made disaster;

(12) the term “surge capacity” means the ability to rapidly and substantially increase the provision of search and rescue capabilities, food, water, medicine, shelter and housing, medical care, evacuation capacity, staffing (including disaster assistance employees), and other resources necessary to save lives and protect property during a catastrophic incident;

(13) the term “tribal government” means the government of any entity described in section 2(11)(B); and

(14) the terms “typed” and “typing” mean having evaluated, or evaluating, respectively, a resource in accordance with standards created under section 510.

\* \* \* \* \*

#### **SEC. 504. AUTHORITY AND RESPONSIBILITIES.**

(a) IN GENERAL.—The Administrator shall provide Federal leadership necessary to prepare for, protect against, respond to, recover from, or mitigate against a natural disaster, act of terrorism, or other man-made disaster, including—

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

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

- (A) establishing standards and certifying when those standards have been met;
  - (B) conducting joint and other exercises and training and evaluating performance; and
  - (C) providing funds to the Department of Energy and the Environmental Protection Agency, as appropriate, for homeland security planning, exercises and training, and equipment;
- (3) providing the Federal Government's response to terrorist attacks and major disasters, including—
- (A) managing such response;
  - (B) directing the Domestic Emergency Support Team<sup>1</sup>, the National Disaster Medical System,<sup>2</sup> and (when operating as an organizational unit of the Department pursuant to this title) the Nuclear Incident Response Team;
  - (C) overseeing the Metropolitan Medical Response System; and
  - (D) coordinating other Federal response resources, including requiring deployment of the Strategic National Stockpile, in the event of a terrorist attack or major disaster;
- (4) aiding the recovery from terrorist attacks and major disasters;
- (5) building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and disasters;
- (6) consolidating existing Federal Government emergency response plans into a single, coordinated national response plan;
- (7) helping ensure the acquisition of operable and interoperable communications capabilities by Federal, State, local, and tribal governments and emergency response providers;
- (8) assisting the President in carrying out the functions under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) and carrying out all functions and authorities given to the Administrator under that Act;
- (9) carrying out the mission of the Agency to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a risk-based, comprehensive emergency management system of—
- (A) mitigation, by taking sustained actions to reduce or eliminate long-term risks to people and property from hazards and their effects;
  - (B) preparedness, by planning, training, and building the emergency management profession to prepare effectively for, mitigate against, respond to, and recover from any hazard;
  - (C) response, by conducting emergency operations to save lives and property through positioning emergency equipment, personnel, and supplies, through evacuating potential victims, through providing food, water, shelter, and medical care to those in need, and through restoring critical public services; and

(D) recovery, by rebuilding communities so individuals, businesses, and governments can function on their own, return to normal life, and protect against future hazards;

(10) increasing efficiencies, by coordinating efforts relating to preparedness, protection, response, recovery, and mitigation;

(11) helping to ensure the effectiveness of emergency response providers in responding to a natural disaster, act of terrorism, or other man-made disaster;

(12) supervising grant programs administered by the Agency;

(13) administering and ensuring the implementation of the National Response Plan, including coordinating and ensuring the readiness of each emergency support function under the National Response Plan;

(14) coordinating with the National Advisory Council established under section 508;

(15) preparing and implementing the plans and programs of the Federal Government for—

(A) continuity of operations;

(B) continuity of government; and

(C) continuity of plans;

(16) minimizing, to the extent practicable, overlapping planning and reporting requirements applicable to State, local, and tribal governments and the private sector;

(17) maintaining and operating within the Agency the National Response Coordination Center or its successor;

(18) developing a national emergency management system that is capable of preparing for, protecting against, responding to, recovering from, and mitigating against catastrophic incidents;

(19) assisting the President in carrying out the functions under the national preparedness goal and the national preparedness system and carrying out all functions and authorities of the Administrator under the national preparedness System;

(20) carrying out all authorities of the Federal Emergency Management Agency and the Directorate of Preparedness of the Department as transferred under section 505; and

(21) otherwise carrying out the mission of the Agency as described in section 503(b).

(b) ALL-HAZARDS APPROACH.—In carrying out the responsibilities under this section, the Administrator shall coordinate the implementation of a risk-based, all-hazards strategy that builds those common capabilities necessary to prepare for, protect against, respond to, recover from, or mitigate against natural disasters, acts of terrorism, and other man-made disasters, while also building the unique capabilities necessary to prepare for, protect against, respond to, recover from, or mitigate against the risks of specific types of incidents that pose the greatest risk to the Nation.

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## **TITLE VI—TREATMENT OF CHARITABLE TRUSTS FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES AND OTHER GOVERNMENTAL ORGANIZATIONS**

### **SEC. 601. TREATMENT OF CHARITABLE TRUSTS FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES AND OTHER GOVERNMENTAL ORGANIZATIONS.**

(a) FINDINGS.—Congress finds the following:

(1) Members of the Armed Forces of the United States defend the freedom and security of our Nation.

(2) Members of the Armed Forces of the United States have lost their lives while battling the evils of terrorism around the world.

(3) Personnel of the Central Intelligence Agency (CIA) charged with the responsibility of covert observation of terrorists around the world are often put in harm's way during their service to the United States.

(4) Personnel of the Central Intelligence Agency have also lost their lives while battling the evils of terrorism around the world.

(5) Employees of the Federal Bureau of Investigation (FBI) and other Federal agencies charged with domestic protection of the United States put their lives at risk on a daily basis for the freedom and security of our Nation.

(6) United States military personnel, CIA personnel, FBI personnel, and other Federal agents in the service of the United States are patriots of the highest order.

(7) CIA officer Johnny Micheal Spann became the first American to give his life for his country in the War on Terrorism declared by President George W. Bush following the terrorist attacks of September 11, 2001.

(8) Johnny Micheal Spann left behind a wife and children who are very proud of the heroic actions of their patriot father.

(9) Surviving dependents of members of the Armed Forces of the United States who lose their lives as a result of terrorist attacks or military operations abroad receive a \$6,000 death benefit, plus a small monthly benefit.

(10) The current system of compensating spouses and children of American patriots is inequitable and needs improvement.

(b) DESIGNATION OF JOHNNY MICHEAL SPANN PATRIOT TRUSTS.—Any charitable corporation, fund, foundation, or trust (or separate fund or account thereof) which otherwise meets all applicable requirements under law with respect to charitable entities and meets the requirements described in subsection (c) shall be eligible to characterize itself as a “Johnny Micheal Spann Patriot Trust”.

(c) REQUIREMENTS FOR THE DESIGNATION OF JOHNNY MICHEAL SPANN PATRIOT TRUSTS.—The requirements described in this subsection are as follows:

(1) Not taking into account funds or donations reasonably necessary to establish a trust, at least 85 percent of all funds

or donations (including any earnings on the investment of such funds or donations) received or collected by any Johnny Micheal Spann Patriot Trust must be distributed to (or, if placed in a private foundation, held in trust for) surviving spouses, children, or dependent parents, grandparents, or siblings of 1 or more of the following:

- (A) members of the Armed Forces of the United States;
- (B) personnel, including contractors, of elements of the intelligence community, as defined in section 3(4) of the National Security Act of 1947;
- (C) employees of the Federal Bureau of Investigation;
- and
- (D) officers, employees, or contract employees of the United States Government,

whose deaths occur in the line of duty and arise out of terrorist attacks, military operations, intelligence operations, or law enforcement operations or accidents connected with activities occurring after September 11, 2001, and related to domestic or foreign efforts to curb international terrorism, including the Authorization for Use of Military Force (Public Law 107-40; 115 Stat. 224).

(2) Other than funds or donations reasonably necessary to establish a trust, not more than 15 percent of all funds or donations (or 15 percent of annual earnings on funds invested in a private foundation) may be used for administrative purposes.

(3) No part of the net earnings of any Johnny Micheal Spann Patriot Trust may inure to the benefit of any individual based solely on the position of such individual as a shareholder, an officer or employee of such Trust.

(4) None of the activities of any Johnny Micheal Spann Patriot Trust shall be conducted in a manner inconsistent with any law that prohibits attempting to influence legislation.

(5) No Johnny Micheal Spann Patriot Trust may participate in or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office, including by publication or distribution of statements.

(6) Each Johnny Micheal Spann Patriot Trust shall comply with the instructions and directions of the [Director of Central Intelligence] *Director of National Intelligence*, the Attorney General, or the Secretary of Defense relating to the protection of intelligence sources and methods, sensitive law enforcement information, or other sensitive national security information, including methods for confidentially disbursing funds.

(7) Each Johnny Micheal Spann Patriot Trust that receives annual contributions totaling more than \$1,000,000 must be audited annually by an independent certified public accounting firm. Such audits shall be filed with the Internal Revenue Service, and shall be open to public inspection, except that the conduct, filing, and availability of the audit shall be consistent with the protection of intelligence sources and methods, of sensitive law enforcement information, and of other sensitive national security information.

(8) Each Johnny Micheal Spann Patriot Trust shall make distributions to beneficiaries described in paragraph (1) at least once every calendar year, beginning not later than 12

months after the formation of such Trust, and all funds and donations received and earnings not placed in a private foundation dedicated to such beneficiaries must be distributed within 36 months after the end of the fiscal year in which such funds, donations, and earnings are received.

(9)(A) When determining the amount of a distribution to any beneficiary described in paragraph (1), a Johnny Micheal Spann Patriot Trust should take into account the amount of any collateral source compensation that the beneficiary has received or is entitled to receive as a result of the death of an individual described in paragraph (1).

(B) Collateral source compensation includes all compensation from collateral sources, including life insurance, pension funds, death benefit programs, and payments by Federal, State, or local governments related to the death of an individual described in paragraph (1).

(d) TREATMENT OF JOHNNY MICHEAL SPANN PATRIOT TRUSTS.—Each Johnny Micheal Spann Patriot Trust shall refrain from conducting the activities described in clauses (i) and (ii) of section 301(20)(A) of the Federal Election Campaign Act of 1971 so that a general solicitation of funds by an individual described in paragraph (1) of section 323(e) of such Act will be permissible if such solicitation meets the requirements of paragraph (4)(A) of such section.

(e) NOTIFICATION OF TRUST BENEFICIARIES.—Notwithstanding any other provision of law, and in a manner consistent with the protection of intelligence sources and methods and sensitive law enforcement information, and other sensitive national security information, the Secretary of Defense, the Director of the Federal Bureau of Investigation, or the [Director of Central Intelligence] *Director of National Intelligence*, or their designees, as applicable, may forward information received from an executor, administrator, or other legal representative of the estate of a decedent described in subparagraph (A), (B), (C), or (D) of subsection (c)(1), to a Johnny Micheal Spann Patriot Trust on how to contact individuals eligible for a distribution under subsection (c)(1) for the purpose of providing assistance from such Trust: *Provided*, That, neither forwarding nor failing to forward any information under this subsection shall create any cause of action against any Federal department, agency, officer, agent, or employee.

(f) REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Secretary of Defense, in coordination with the Attorney General, the Director of the Federal Bureau of Investigation, and the [Director of Central Intelligence] *Director of National Intelligence*, shall prescribe regulations to carry out this section.

## TITLE VII—MANAGEMENT

### SEC. 701. UNDER SECRETARY FOR MANAGEMENT.

(a) IN GENERAL.—The Under Secretary for Management shall serve as the Chief Management Officer and principal advisor to the Secretary on matters related to the management of the Department, including management integration and transformation in support of homeland security operations and programs. The Sec-

retary, acting through the Under Secretary for Management, shall be responsible for the management and administration of the Department, including the following:

(1) The budget, appropriations, expenditures of funds, accounting, and finance.

(2) Procurement.

(3) Human resources and personnel.

(4) Information technology and communications systems, including policies and directives to achieve and maintain interoperable communications among the components of the Department.

(5) Facilities, property, equipment, and other material resources.

(6) Security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources.

(7) Strategic management planning and annual performance planning and identification and tracking of performance measures relating to the responsibilities of the Department.

(8) Grants and other assistance management programs.

(9) The management integration and transformation process, as well as the transition process, to ensure an efficient and orderly consolidation of functions and personnel in the Department and transition, including—

(A) the development of a management integration strategy for the Department, and

(B) before December 1 of any year in which a Presidential election is held, the development of a transition and succession plan, to be made available to the incoming Secretary and Under Secretary for Management, to guide the transition of management functions to a new Administration.

(10) The conduct of internal audits and management analyses of the programs and activities of the Department.

(11) Any other management duties that the Secretary may designate.

(b) IMMIGRATION.—

(1) IN GENERAL.—In addition to the responsibilities described in subsection (a), the Under Secretary for Management shall be responsible for the following:

(A) Maintenance of all immigration statistical information of [the Bureau of Border Security and the Bureau of Citizenship and Immigration Services] *United States Citizenship and Immigration Services and United States Immigration and Customs Enforcement*. Such statistical information shall include information and statistics of the type contained in the publication entitled “Statistical Yearbook of the Immigration and Naturalization Service” prepared by the Immigration and Naturalization Service (as in effect immediately before the date on which the transfer of functions specified under section 441 takes effect), including region-by-region statistics on the aggregate number of applications and petitions filed by an alien (or filed on behalf of an alien) and denied by [such bureau] *United States Citizenship and Immigration Services*, and the rea-

sons for such denials, disaggregated by category of denial and application or petition type.

(B) Establishment of standards of reliability and validity for immigration statistics collected by [such bureaus] *United States Citizenship and Immigration Services and United States Immigration and Customs Enforcement.*

(2) TRANSFER OF FUNCTIONS.—In accordance with title XV, there shall be transferred to the Under Secretary for Management all functions performed immediately before such transfer occurs by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service with respect to the following programs:

- (A) The Border Patrol program.
- (B) The detention and removal program.
- (C) The intelligence program.
- (D) The investigations program.
- (E) The inspections program.
- (F) Adjudication of immigrant visa petitions.
- (G) Adjudication of naturalization petitions.
- (H) Adjudication of asylum and refugee applications.
- (I) Adjudications performed at service centers.
- (J) All other adjudications performed by the Immigration and Naturalization Service.

(c) APPOINTMENT AND EVALUATION.—The Under Secretary for Management shall—

(1) be appointed by the President, by and with the advice and consent of the Senate, from among persons who have—

- (A) extensive executive level leadership and management experience in the public or private sector;
- (B) strong leadership skills;
- (C) a demonstrated ability to manage large and complex organizations; and
- (D) a proven record in achieving positive operational results;

(2) enter into an annual performance agreement with the Secretary that shall set forth measurable individual and organizational goals; and

(3) be subject to an annual performance evaluation by the Secretary, who shall determine as part of each such evaluation whether the Under Secretary for Management has made satisfactory progress toward achieving the goals set out in the performance agreement required under paragraph (2).

(d) INTEROPERABLE COMMUNICATIONS DEFINED.—In this section, the term “interoperable communications” has the meaning given that term in section 7303(g) of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 194(g)).

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**[SEC. 706. CONSOLIDATION AND CO-LOCATION OF OFFICES.**

[Not later than 1 year after the date of the enactment of this Act, the Secretary shall develop and submit to Congress a plan for consolidating and co-locating—

- [(1) any regional offices or field offices of agencies that are transferred to the Department under this Act, if such officers are located in the same municipality; and

[(2) portions of regional and field offices of other Federal agencies, to the extent such offices perform functions that are transferred to the Secretary under this Act.]

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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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**Subtitle D—Acquisitions**

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**SEC. 833. SPECIAL STREAMLINED ACQUISITION AUTHORITY.**

(a) **AUTHORITY.—**

(1) **IN GENERAL.—**The Secretary may use the authorities set forth in this section with respect to any procurement made during the period beginning on the effective date of this Act and ending September 30, 2007, if the Secretary determines in writing that the mission of the Department (as described in section 101) would be seriously impaired without the use of such authorities.

(2) **DELEGATION.—**The authority to make the determination described in paragraph (1) may not be delegated by the Secretary to an officer of the Department who is not appointed by the President with the advice and consent of the Senate.

(3) **NOTIFICATION.—**Not later than the date that is 7 days after the date of any determination under paragraph (1), the Secretary shall submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate—

- (A) notification of such determination; and
- (B) the justification for such determination.

(b) **INCREASED MICRO-PURCHASE THRESHOLD FOR CERTAIN PROCUREMENTS.—**

(1) **IN GENERAL.—**The Secretary may designate certain employees of the Department to make procurements described in subsection (a) for which in the administration of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be \$7,500.

(2) **NUMBER OF EMPLOYEES.—**The number of employees designated under paragraph (1) shall be—

- (A) fewer than the number of employees of the Department who are authorized to make purchases without obtaining competitive quotations, pursuant to section 32(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(c));

- (B) sufficient to ensure the geographic dispersal of the availability of the use of the procurement authority under such paragraph at locations reasonably considered to be potential terrorist targets; and
- (C) sufficiently limited to allow for the careful monitoring of employees designated under such paragraph.
- (3) REVIEW.—Procurements made under the authority of this subsection shall be subject to review by a designated supervisor on not less than a monthly basis. The supervisor responsible for the review shall be responsible for no more than 7 employees making procurements under this subsection.
- (c) SIMPLIFIED ACQUISITION PROCEDURES.—
- (1) IN GENERAL.—With respect to a procurement described in subsection (a), the Secretary may deem the simplified acquisition threshold referred to in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)) to be—
- (A) in the case of a contract to be awarded and performed, or purchase to be made, within the United States, \$200,000; and
- (B) in the case of a contract to be awarded and performed, or purchase to be made, outside of the United States, \$300,000.
- (2) [Omitted—amends other Act]
- (d) APPLICATION OF CERTAIN COMMERCIAL ITEMS AUTHORITIES.—
- (1) IN GENERAL.—With respect to a procurement described in subsection (a), the Secretary may deem any item or service to be a commercial item for the purpose of Federal procurement laws.
- (2) LIMITATION.—The \$5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)) and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall be deemed to be \$7,500,000 for purposes of property or services under the authority of this subsection.
- (3) CERTAIN AUTHORITY.—Authority under a provision of law referred to in paragraph (2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for a procurement described in subsection (a).
- [(e) REPORT.—Not later than 180 days after the end of fiscal year 2005, the Comptroller General shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives a report on the use of the authorities provided in this section. The report shall contain the following:
- [(1) An assessment of the extent to which property and services acquired using authorities provided under this section contributed to the capacity of the Federal workforce to facilitate the mission of the Department as described in section 101.
- [(2) An assessment of the extent to which prices for property and services acquired using authorities provided under this section reflected the best value.
- [(3) The number of employees designated by each executive agency under subsection (b)(1).

[(4) An assessment of the extent to which the Department has implemented subsections (b)(2) and (b)(3) to monitor the use of procurement authority by employees designated under subsection (b)(1).

[(5) Any recommendations of the Comptroller General for improving the effectiveness of the implementation of the provisions of this section.]

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## Subtitle E—Human Resources Management

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### SEC. 843. USE OF COUNTERNARCOTICS ENFORCEMENT ACTIVITIES IN CERTAIN EMPLOYEE PERFORMANCE APPRAISALS.

(a) IN GENERAL.—Each subdivision of the Department that is a National Drug Control Program Agency shall include as one of the criteria in its performance appraisal system, for each employee directly or indirectly involved in the enforcement of Federal, State, or local narcotics laws, the performance of that employee with respect to the enforcement of Federal, State, or local narcotics laws, relying to the greatest extent practicable on objective performance measures, including—

(1) the contribution of that employee to seizures of narcotics and arrests of violators of Federal, State, or local narcotics laws; and

(2) the degree to which that employee cooperated with or contributed to the efforts of other employees, either within the Department or other Federal, State, or local agencies, in counternarcotics enforcement.

(b) DEFINITIONS.—For purposes of this section—

(1) the term “National Drug Control Program Agency” means—

(A) a National Drug Control Program Agency, as defined in section 702(7) of the Office of National Drug Control Policy Reauthorization Act of 1998 (as last in effect); and

(B) any subdivision of the Department that has a significant counternarcotics responsibility, [as determined by—]

[(i) the counternarcotics officer, appointed under section 878; or]

[(ii) if applicable, the counternarcotics officer’s successor in function (as determined by the Secretary); and] *as determined by the Secretary; and*

(2) the term “performance appraisal system” means a system under which periodic appraisals of job performance of employees are made, whether under chapter 43 of title 5, United States Code, or otherwise.

### SEC. 844. HOMELAND SECURITY ROTATION PROGRAM.

[(a) ESTABLISHMENT.—

[(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary shall establish the Homeland Security Rotation Program (in this section referred to as the “Rotation Program”) for employees of the Depart-

ment. The Rotation Program shall use applicable best practices, including those from the Chief Human Capital Officers Council.

【(2) GOALS.—The Rotation Program established by the Secretary shall—

【(A) be established in accordance with the Human Capital Strategic Plan of the Department;

【(B) provide middle and senior level employees in the Department the opportunity to broaden their knowledge through exposure to other components of the Department;

【(C) expand the knowledge base of the Department by providing for rotational assignments of employees to other components;

【(D) build professional relationships and contacts among the employees in the Department;

【(E) invigorate the workforce with exciting and professionally rewarding opportunities;

【(F) incorporate Department human capital strategic plans and activities, and address critical human capital deficiencies, recruitment and retention efforts, and succession planning within the Federal workforce of the Department; and

【(G) complement and incorporate (but not replace) rotational programs within the Department in effect on the date of enactment of this section.

【(3) ADMINISTRATION.—

【(A) IN GENERAL.—The Chief Human Capital Officer shall administer the Rotation Program.

【(B) RESPONSIBILITIES.—The Chief Human Capital Officer shall—

【(i) provide oversight of the establishment and implementation of the Rotation Program;

【(ii) establish a framework that supports the goals of the Rotation Program and promotes cross-disciplinary rotational opportunities;

【(iii) establish eligibility for employees to participate in the Rotation Program and select participants from employees who apply;

【(iv) establish incentives for employees to participate in the Rotation Program, including promotions and employment preferences;

【(v) ensure that the Rotation Program provides professional education and training;

【(vi) ensure that the Rotation Program develops qualified employees and future leaders with broad-based experience throughout the Department;

【(vii) provide for greater interaction among employees in components of the Department; and

【(viii) coordinate with rotational programs within the Department in effect on the date of enactment of this section.

【(4) ALLOWANCES, PRIVILEGES, AND BENEFITS.—All allowances, privileges, rights, seniority, and other benefits of employees participating in the Rotation Program shall be preserved.

【(5) REPORTING.—Not later than 180 days after the date of the establishment of the Rotation Program, the Secretary shall submit a report on the status of the Rotation Program, including a description of the Rotation Program, the number of employees participating, and how the Rotation Program is used in succession planning and leadership development to the appropriate committees of Congress.】

**SEC. 844. HOMELAND SECURITY ROTATION PROGRAM.**

(a) *IN GENERAL.*—Not later than 180 days after the date of enactment of this section, the Secretary shall establish the Homeland Security Rotation Program (in this section referred to as the “Rotation Program”) for employees of the Department. The Rotation Program shall use applicable best practices, including those from the Chief Human Capital Officers Council.

(b) *GOALS.*—The Rotation Program established by the Secretary shall—

(1) be established in accordance with the Human Capital Strategic Plan of the Department;

(2) provide middle and senior level employees in the Department the opportunity to broaden their knowledge through exposure to other components of the Department;

(3) expand the knowledge base of the Department by providing for rotational assignments of employees to other components;

(4) build professional relationships and contacts among the employees in the Department;

(5) invigorate the workforce with exciting and professionally rewarding opportunities;

(6) incorporate Department human capital strategic plans and activities, and address critical human capital deficiencies, recruitment and retention efforts, and succession planning within the Federal workforce of the Department; and

(7) complement and incorporate (but not replace) rotational programs within the Department in effect on the date of enactment of this section.

(c) *ADMINISTRATION.*—

(1) *IN GENERAL.*—The Chief Human Capital Officer shall administer the Rotation Program.

(2) *RESPONSIBILITIES.*—The Chief Human Capital Officer shall—

(A) provide oversight of the establishment and implementation of the Rotation Program;

(B) establish a framework that supports the goals of the Rotation Program and promotes cross-disciplinary rotational opportunities;

(C) establish eligibility for employees to participate in the Rotation Program and select participants from employees who apply;

(D) establish incentives for employees to participate in the Rotation Program, including promotions and employment preferences;

(E) ensure that the Rotation Program provides professional education and training;

- (F) ensure that the Rotation Program develops qualified employees and future leaders with broadbased experience throughout the Department;*
- (G) provide for greater interaction among employees in components of the Department; and*
- (H) coordinate with rotational programs within the Department in effect on the date of enactment of this section.*
- (d) ALLOWANCES, PRIVILEGES, AND BENEFITS.—All allowances, privileges, rights, seniority, and other benefits of employees participating in the Rotation Program shall be preserved.*

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### Subtitle F—Federal Emergency Procurement Flexibility

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#### **[SEC. 857. REVIEW AND REPORT BY COMPTROLLER GENERAL.**

**[(a) REQUIREMENTS.—Not later than March 31, 2004, the Comptroller General shall—**

**[(1) complete a review of the extent to which procurements of property and services have been made in accordance with this subtitle; and**

**[(2) submit a report on the results of the review to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.**

**[(b) CONTENT OF REPORT.—The report under subsection (a)(2) shall include the following matters:**

**[(1) ASSESSMENT.—The Comptroller General’s assessment of—**

**[(A) the extent to which property and services procured in accordance with this title have contributed to the capacity of the workforce of Federal Government employees within each executive agency to carry out the mission of the executive agency; and**

**[(B) the extent to which Federal Government employees have been trained on the use of technology.**

**[(2) RECOMMENDATIONS.—Any recommendations of the Comptroller General resulting from the assessment described in paragraph (1).**

**[(c) CONSULTATION.—In preparing for the review under subsection (a)(1), the Comptroller shall consult with the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives on the specific issues and topics to be reviewed. The extent of coverage needed in areas such as technology integration, employee training, and human capital management, as well as the data requirements of the study, shall be included as part of the consultation.]**

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### Subtitle H—Miscellaneous Provisions

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**[SEC. 878. OFFICE OF COUNTERNARCOTICS ENFORCEMENT.**

**[(a) OFFICE.—**There is established in the Department an Office of Counternarcotics Enforcement, which shall be headed by a Director appointed by the President.

**[(b) ASSIGNMENT OF PERSONNEL.—**

**[(1) IN GENERAL.—**The Secretary shall assign permanent staff to the Office, consistent with effective management of Department resources.

**[(2) LIAISONS.—**The Secretary shall designate senior employees from each appropriate subdivision of the Department that has significant counternarcotics responsibilities to act as a liaison between that subdivision and the Office of Counternarcotics Enforcement.

**[(c) LIMITATION ON CONCURRENT EMPLOYMENT.—**The Director of the Office of Counternarcotics Enforcement shall not be employed by, assigned to, or serve as the head of, any other branch of the Federal Government, any State or local government, or any subdivision of the Department other than the Office of Counternarcotics Enforcement.

**[(d) RESPONSIBILITIES.—**The Secretary shall direct the Director of the Office of Counternarcotics Enforcement—

**[(1)** to coordinate policy and operations within the Department, between the Department and other Federal departments and agencies, and between the Department and State and local agencies with respect to stopping the entry of illegal drugs into the United States;

**[(2)** to ensure the adequacy of resources within the Department for stopping the entry of illegal drugs into the United States;

**[(3)** to recommend the appropriate financial and personnel resources necessary to help the Department better fulfill its responsibility to stop the entry of illegal drugs into the United States;

**[(4)** within the Joint Terrorism Task Force construct to track and sever connections between illegal drug trafficking and terrorism; and

**[(5)** to be a representative of the Department on all task forces, committees, or other entities whose purpose is to coordinate the counternarcotics enforcement activities of the Department and other Federal, State or local agencies.

**[(e) SAVINGS CLAUSE.—**Nothing in this section shall be construed to authorize direct control of the operations conducted by the Directorate of Border and Transportation Security, the Coast Guard, or joint terrorism task forces.

**[(f) REPORTS TO CONGRESS.—**

**[(1) ANNUAL BUDGET REVIEW.—**The Director of the Office of Counternarcotics Enforcement shall, not later than 30 days after the submission by the President to Congress of any request for expenditures for the Department, submit to the Committees on Appropriations and the authorizing committees of jurisdiction of the House of Representatives and the Senate a review and evaluation of such request. The review and evaluation shall—

**[(A)** identify any request or subpart of any request that affects or may affect the counternarcotics activities of the

Department or any of its subdivisions, or that affects the ability of the Department or any subdivision of the Department to meet its responsibility to stop the entry of illegal drugs into the United States;

[(B) describe with particularity how such requested funds would be or could be expended in furtherance of counternarcotics activities; and

[(C) compare such requests with requests for expenditures and amounts appropriated by Congress in the previous fiscal year.

[(2) EVALUATION OF COUNTERNARCOTICS ACTIVITIES.—The Director of the Office of Counternarcotics Enforcement shall, not later than February 1 of each year, submit to the Committees on Appropriations and the authorizing committees of jurisdiction of the House of Representatives and the Senate a review and evaluation of the counternarcotics activities of the Department for the previous fiscal year. The review and evaluation shall—

[(A) describe the counternarcotics activities of the Department and each subdivision of the Department (whether individually or in cooperation with other subdivisions of the Department, or in cooperation with other branches of the Federal Government or with State or local agencies), including the methods, procedures, and systems (including computer systems) for collecting, analyzing, sharing, and disseminating information concerning narcotics activity within the Department and between the Department and other Federal, State, and local agencies;

[(B) describe the results of those activities, using quantifiable data whenever possible;

[(C) state whether those activities were sufficient to meet the responsibility of the Department to stop the entry of illegal drugs into the United States, including a description of the performance measures of effectiveness that were used in making that determination; and

[(D) recommend, where appropriate, changes to those activities to improve the performance of the Department in meeting its responsibility to stop the entry of illegal drugs into the United States.

[(3) CLASSIFIED OR LAW ENFORCEMENT SENSITIVE INFORMATION.—Any content of a review and evaluation described in the reports required in this subsection that involves information classified under criteria established by an Executive order, or whose public disclosure, as determined by the Secretary, would be detrimental to the law enforcement or national security activities of the Department or any other Federal, State, or local agency, shall be presented to Congress separately from the rest of the review and evaluation.]

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**[SEC. 881. REVIEW OF PAY AND BENEFIT PLANS.**

[(Notwithstanding any other provision of this Act, the Secretary shall, in consultation with the Director of the Office of Personnel Management, review the pay and benefit plans of each agency whose functions are transferred under this Act to the Department

and, within 90 days after the date of enactment, submit a plan to the President of the Senate and the Speaker of the House of Representatives and the appropriate committees and subcommittees of Congress, for ensuring, to the maximum extent practicable, the elimination of disparities in pay and benefits throughout the Department, especially among law enforcement personnel, that are inconsistent with merit system principles set forth in section 2301 of title 5, United States Code.】

**SEC. 882. OFFICE FOR NATIONAL CAPITAL REGION COORDINATION.**

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established within the 【Office of the Secretary】 *Federal Emergency Management Agency* the Office of National Capital Region Coordination, to oversee and coordinate Federal programs for and relationships with State, local, and regional authorities in the National Capital Region, as defined under section 2674(f)(2) of title 10, United States Code.

(2) DIRECTOR.—The Office established under paragraph (1) shall be headed by a Director, who shall be appointed by the Secretary.

(3) COOPERATION.—The Secretary shall cooperate with the Mayor of the District of Columbia, the Governors of Maryland and Virginia, and other State, local, and regional officers in the National Capital Region to integrate the District of Columbia, Maryland, and Virginia into the planning, coordination, and execution of the activities of the Federal Government for the enhancement of domestic preparedness against the consequences of terrorist attacks.

(b) RESPONSIBILITIES.—The Office established under subsection (a)(1) shall—

(1) coordinate the activities of the Department relating to the National Capital Region, including cooperation with the Office for State and Local Government Coordination;

(2) assess, and advocate for, the resources needed by State, local, and regional authorities in the National Capital Region to implement efforts to secure the homeland;

(3) provide State, local, and regional authorities in the National Capital Region with regular information, research, and technical support to assist the efforts of State, local, and regional authorities in the National Capital Region in securing the homeland;

(4) develop a process for receiving meaningful input from State, local, and regional authorities and the private sector in the National Capital Region to assist in the development of the homeland security plans and activities of the Federal Government;

(5) coordinate with Federal agencies in the National Capital Region on terrorism preparedness, to ensure adequate planning, information sharing, training, and execution of the Federal role in domestic preparedness activities;

(6) coordinate with Federal, State, local, and regional agencies, and the private sector in the National Capital Region on terrorism preparedness to ensure adequate planning, information sharing, training, and execution of domestic preparedness activities among these agencies and entities; and

(7) serve as a liaison between the Federal Government and State, local, and regional authorities, and private sector entities in the National Capital Region to facilitate access to Federal grants and other programs.

(c) ANNUAL REPORT.—The Office established under subsection (a) shall submit an annual report to Congress that includes—

(1) the identification of the resources required to fully implement homeland security efforts in the National Capital Region;

(2) an assessment of the progress made by the National Capital Region in implementing homeland security efforts; and

(3) recommendations to Congress regarding the additional resources needed to fully implement homeland security efforts in the National Capital Region.

(d) LIMITATION.—Nothing contained in this section shall be construed as limiting the power of State and local governments.

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**SEC. 888. PRESERVING COAST GUARD MISSION PERFORMANCE.**

(a) DEFINITIONS.—In this section:

(1) NON-HOMELAND SECURITY MISSIONS.—The term “non-homeland security missions” means the following missions of the Coast Guard:

(A) Marine safety.

(B) Search and rescue.

(C) Aids to navigation.

(D) Living marine resources (fisheries law enforcement).

(E) Marine environmental protection.

(F) Ice operations.

(2) HOMELAND SECURITY MISSIONS.—The term “homeland security missions” means the following missions of the Coast Guard:

(A) Ports, waterways and coastal security.

(B) Drug interdiction.

(C) Migrant interdiction.

(D) Defense readiness.

(E) Other law enforcement.

(b) TRANSFER.—There are transferred to the Department the authorities, functions, personnel, and assets of the Coast Guard, which shall be maintained as a distinct entity within the Department, including the authorities and functions of the Secretary of Transportation relating thereto.

(c) MAINTENANCE OF STATUS OF FUNCTIONS AND ASSETS.—Notwithstanding any other provision of this Act, the authorities, functions, and capabilities of the Coast Guard to perform its missions shall be maintained intact and without significant reduction after the transfer of the Coast Guard to the Department, except as specified in subsequent Acts.

(d) CERTAIN TRANSFERS PROHIBITED.—No mission, function, or asset (including for purposes of this subsection any ship, aircraft, or helicopter) of the Coast Guard may be diverted to the principal and continuing use of any other organization, unit, or entity of the Department, except for details or assignments that do not reduce the Coast Guard’s capability to perform its missions.

(e) CHANGES TO MISSIONS.—

(1) PROHIBITION.—The Secretary may not substantially or significantly reduce the missions of the Coast Guard or the Coast Guard’s capability to perform those missions, except as specified in subsequent Acts.

(2) WAIVER.—The Secretary may waive the restrictions under paragraph (1) for a period of not to exceed 90 days upon a declaration and certification by the Secretary to Congress that a clear, compelling, and immediate need exists for such a waiver. A certification under this paragraph shall include a detailed justification for the declaration and certification, including the reasons and specific information that demonstrate that the Nation and the Coast Guard cannot respond effectively if the restrictions under paragraph (1) are not waived.

(f) DIRECT REPORTING TO SECRETARY.—Upon the transfer of the Coast Guard to the Department, the Commandant shall report directly to the Secretary without being required to report through any other official of the Department.

(g) OPERATION AS A SERVICE IN THE NAVY.—None of the conditions and restrictions in this section shall apply when the Coast Guard operates as a service in the Navy under section 3 of title 14, United States Code.

[(h) REPORT ON ACCELERATING THE INTEGRATED DEEPWATER SYSTEM.—Not later than 90 days after the date of enactment of this Act, the Secretary, in consultation with the Commandant of the Coast Guard, shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives that—

[(1) analyzes the feasibility of accelerating the rate of procurement in the Coast Guard’s Integrated Deepwater System from 20 years to 10 years;

[(2) includes an estimate of additional resources required;

[(3) describes the resulting increased capabilities;

[(4) outlines any increases in the Coast Guard’s homeland security readiness;

[(5) describes any increases in operational efficiencies; and

[(6) provides a revised asset phase-in time line.]

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## Subtitle I—Information Sharing

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### SEC. 892. FACILITATING HOMELAND SECURITY INFORMATION SHARING PROCEDURES.

(a) PROCEDURES FOR DETERMINING EXTENT OF SHARING OF HOMELAND SECURITY INFORMATION.—

(1) The President shall prescribe and implement procedures under which relevant Federal agencies—

(A) share relevant and appropriate homeland security information with other Federal agencies, including the Department, and appropriate State and local personnel;

(B) identify and safeguard homeland security information that is sensitive but unclassified; and

(C) to the extent such information is in classified form, determine whether, how, and to what extent to remove classified information, as appropriate, and with which such personnel it may be shared after such information is removed.

(2) The President shall ensure that such procedures apply to all agencies of the Federal Government.

(3) Such procedures shall not change the substantive requirements for the classification and safeguarding of classified information.

(4) Such procedures shall not change the requirements and authorities to protect sources and methods.

(b) PROCEDURES FOR SHARING OF HOMELAND SECURITY INFORMATION.—

(1) Under procedures prescribed by the President, all appropriate agencies, including the intelligence community, shall, through information sharing systems, share homeland security information with Federal agencies and appropriate State and local personnel to the extent such information may be shared, as determined in accordance with subsection (a), together with assessments of the credibility of such information.

(2) Each information sharing system through which information is shared under paragraph (1) shall—

(A) have the capability to transmit unclassified or classified information, though the procedures and recipients for each capability may differ;

(B) have the capability to restrict delivery of information to specified subgroups by geographic location, type of organization, position of a recipient within an organization, or a recipient's need to know such information;

(C) be configured to allow the efficient and effective sharing of information; and

(D) be accessible to appropriate State and local personnel.

(3) The procedures prescribed under paragraph (1) shall establish conditions on the use of information shared under paragraph (1)—

(A) to limit the redissemination of such information to ensure that such information is not used for an unauthorized purpose;

(B) to ensure the security and confidentiality of such information;

(C) to protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(D) to provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

(4) The procedures prescribed under paragraph (1) shall ensure, to the greatest extent practicable, that the information sharing system through which information is shared under such paragraph include existing information sharing systems, including, but not limited to, the National Law Enforcement Telecommunications System, the Regional Information Sharing System, and the Terrorist Threat Warning System of the Federal Bureau of Investigation.

(5) Each appropriate Federal agency, as determined by the President, shall have access to each information sharing system through which information is shared under paragraph (1), and shall therefore have access to all information, as appropriate, shared under such paragraph.

(6) The procedures prescribed under paragraph (1) shall ensure that appropriate State and local personnel are authorized to use such information sharing systems—

(A) to access information shared with such personnel; and

(B) to share, with others who have access to such information sharing systems, the homeland security information of their own jurisdictions, which shall be marked appropriately as pertaining to potential terrorist activity.

(7) Under procedures prescribed jointly by the [Director of Central Intelligence] *Director of National Intelligence* and the Attorney General, each appropriate Federal agency, as determined by the President, shall review and assess the information shared under paragraph (6) and integrate such information with existing intelligence.

(c) SHARING OF CLASSIFIED INFORMATION AND SENSITIVE BUT UNCLASSIFIED INFORMATION WITH STATE AND LOCAL PERSONNEL.—

(1) The President shall prescribe procedures under which Federal agencies may, to the extent the President considers necessary, share with appropriate State and local personnel homeland security information that remains classified or otherwise protected after the determinations prescribed under the procedures set forth in subsection (a).

(2) It is the sense of Congress that such procedures may include 1 or more of the following means:

(A) Carrying out security clearance investigations with respect to appropriate State and local personnel.

(B) With respect to information that is sensitive but unclassified, entering into nondisclosure agreements with appropriate State and local personnel.

(C) Increased use of information-sharing partnerships that include appropriate State and local personnel, such as the Joint Terrorism Task Forces of the Federal Bureau of Investigation, the Anti-Terrorism Task Forces of the Department of Justice, and regional Terrorism Early Warning Groups.

(3)(A) The Secretary shall establish a program to provide appropriate training to officials described in subparagraph (B) in order to assist such officials in—

(i) identifying sources of potential terrorist threats through such methods as the Secretary determines appropriate;

(ii) reporting information relating to such potential terrorist threats to the appropriate Federal agencies in the appropriate form and manner;

(iii) assuring that all reported information is systematically submitted to and passed on by the Department for use by appropriate Federal agencies; and

(iv) understanding the mission and roles of the intelligence community to promote more effective information

sharing among Federal, State, and local officials and representatives of the private sector to prevent terrorist attacks against the United States.

(B) The officials referred to in subparagraph (A) are officials of State and local government agencies and representatives of private sector entities with responsibilities relating to the oversight and management of first responders, counterterrorism activities, or critical infrastructure.

(C) The Secretary shall consult with the Attorney General to ensure that the training program established in subparagraph (A) does not duplicate the training program established in section 908 of the USA PATRIOT Act (Public Law 107–56; 28 U.S.C. 509 note).

(D) The Secretary shall carry out this paragraph in consultation with the [Director of Central Intelligence] *Director of National Intelligence* and the Attorney General.

(d) RESPONSIBLE OFFICIALS.—For each affected Federal agency, the head of such agency shall designate an official to administer this Act with respect to such agency.

(e) FEDERAL CONTROL OF INFORMATION.—Under procedures prescribed under this section, information obtained by a State or local government from a Federal agency under this section shall remain under the control of the Federal agency, and a State or local law authorizing or requiring such a government to disclose information shall not apply to such information.

(f) DEFINITIONS.—As used in this section:

(1) The term “homeland security information” means any information possessed by a Federal, State, or local agency that—

(A) relates to the threat of terrorist activity;

(B) relates to the ability to prevent, interdict, or disrupt terrorist activity;

(C) would improve the identification or investigation of a suspected terrorist or terrorist organization; or

(D) would improve the response to a terrorist act.

(2) The term “intelligence community” has the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(3) The term “State and local personnel” means any of the following persons involved in prevention, preparation, or response for terrorist attack:

(A) State Governors, mayors, and other locally elected officials.

(B) State and local law enforcement personnel and firefighters.

(C) Public health and medical professionals.

(D) Regional, State, and local emergency management agency personnel, including State adjutant generals.

(E) Other appropriate emergency response agency personnel.

(F) Employees of private-sector entities that affect critical infrastructure, cyber, economic, or public health security, as designated by the Federal Government in procedures developed pursuant to this section.

(4) The term "State" includes the District of Columbia and any commonwealth, territory, or possession of the United States.

(g) CONSTRUCTION.—Nothing in this Act shall be construed as authorizing any department, bureau, agency, officer, or employee of the Federal Government to request, receive, or transmit to any other Government entity or personnel, or transmit to any State or local entity or personnel otherwise authorized by this Act to receive homeland security information, any information collected by the Federal Government solely for statistical purposes in violation of any other provision of law relating to the confidentiality of such information.

**[SEC. 893. REPORT.**

[(a) REPORT REQUIRED.—Not later than 12 months after the date of the enactment of this Act, the President shall submit to the congressional committees specified in subsection (b) a report on the implementation of section 892. The report shall include any recommendations for additional measures or appropriation requests, beyond the requirements of section 892, to increase the effectiveness of sharing of information between and among Federal, State, and local entities.

[(b) SPECIFIED CONGRESSIONAL COMMITTEES.—The congressional committees referred to in subsection (a) are the following committees:

[(1) The Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.

[(2) The Select Committee on Intelligence and the Committee on the Judiciary of the Senate.]

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## **TITLE IX—NATIONAL HOMELAND SECURITY COUNCIL**

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**SEC. 903. MEMBERSHIP.**

(a) MEMBERS.—The members of the Council shall be the following:

- (1) The President.
- (2) The Vice President.
- (3) The Secretary of Homeland Security.
- (4) The Attorney General.
- (5) The Secretary of Defense.
- (6) Such other individuals as may be designated by the President.

(b) ATTENDANCE OF CHAIRMAN OF JOINT CHIEFS OF STAFF AT MEETINGS.—The Chairman of the Joint Chiefs of Staff (or, in the absence of the Chairman, the Vice Chairman of the Joint Chiefs of Staff) may, in the role of the Chairman of the Joint Chiefs of Staff as principal military adviser to the Council and subject to the di-

rection of the President, attend and participate in meetings of the Council.

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## TITLE X—INFORMATION SECURITY

### SEC. 1001. INFORMATION SECURITY.

(a) SHORT TITLE.—This title may be cited as the “Federal Information Security Management Act of 2002”.

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(c) INFORMATION SECURITY RESPONSIBILITIES OF CERTAIN AGENCIES.—

(1) NATIONAL SECURITY RESPONSIBILITIES.—(A) Nothing in this Act (including any amendment made by this Act) shall supersede any authority of the Secretary of Defense, the [Director of Central Intelligence] *Director of National Intelligence*, or other agency head, as authorized by law and as directed by the President, with regard to the operation, control, or management of national security systems, as defined by section 3552(b)(5) of title 44, United States Code.

(2) ATOMIC ENERGY ACT OF 1954.—Nothing in this Act shall supersede any requirement made by or under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.). Restricted Data or Formerly Restricted Data shall be handled, protected, classified, downgraded, and declassified in conformity with the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

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## TITLE XII—AIRLINE WAR RISK INSURANCE LEGISLATION

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### [SEC. 1204. REPORT.

[Not later than 90 days after the date of enactment of this Act, the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that—

[(A) evaluates the availability and cost of commercial war risk insurance for air carriers and other aviation entities for passengers and third parties;

[(B) analyzes the economic effect upon air carriers and other aviation entities of available commercial war risk insurance; and

[(C) describes the manner in which the Department could provide an alternative means of providing aviation war risk reinsurance covering passengers, crew, and third parties through use of a risk-retention group or by other means.]

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## [TITLE XIV—ARMING PILOTS AGAINST TERRORISM

### [SEC. 1401. SHORT TITLE.

[(This title may be cited as the “Arming Pilots Against Terrorism Act”.

### [SEC. 1402. FEDERAL FLIGHT DECK OFFICER PROGRAM.

[(a) Omitted—amends another Act.

[(b) Omitted—amends another Act.

[(c) FEDERAL AIR MARSHAL PROGRAM.—

[(1) SENSE OF CONGRESS.—It is the sense of Congress that the Federal air marshal program is critical to aviation security.

[(2) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this Act, including any amendment made by this Act, shall be construed as preventing the Under Secretary of Transportation for Security from implementing and training Federal air marshals.

### [SEC. 1403. CREW TRAINING.

[(a) Omitted—amends another Act.

[(b) Omitted—amends another Act.

[(c) BENEFITS AND RISKS OF PROVIDING FLIGHT ATTENDANTS WITH NONLETHAL WEAPONS.—

[(1) STUDY.—The Under Secretary of Transportation for Security shall conduct a study to evaluate the benefits and risks of providing flight attendants with nonlethal weapons to aide in combating air piracy and criminal violence on commercial airlines.

[(2) REPORT.—Not later than 6 months after the date of enactment of this Act, the Under Secretary shall transmit to Congress a report on the results of the study.

### [SEC. 1404. COMMERCIAL AIRLINE SECURITY STUDY.

[(a) STUDY.—The Secretary of Transportation shall conduct a study of the following:

[(1) The number of armed Federal law enforcement officers (other than Federal air marshals), who travel on commercial airliners annually and the frequency of their travel.

[(2) The cost and resources necessary to provide such officers with supplemental training in aircraft anti-terrorism training that is comparable to the training that Federal air marshals are provided.

[(3) The cost of establishing a program at a Federal law enforcement training center for the purpose of providing new Federal law enforcement recruits with standardized training comparable to the training that Federal air marshals are provided.

[(4) The feasibility of implementing a certification program designed for the purpose of ensuring Federal law enforcement officers have completed the training described in paragraph (2) and track their travel over a 6-month period.

[(5) The feasibility of staggering the flights of such officers to ensure the maximum amount of flights have a certified trained Federal officer on board.

[(b) REPORT.—Not later than 6 months after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study. The report may be submitted in classified and redacted form.]

**[SEC. 1405. AUTHORITY TO ARM FLIGHT DECK CREW WITH LESS-THAN-LETHAL WEAPONS.]**

[(a) IN GENERAL.—Section 44903(i) of title 49, United States Code (as redesignated by section 6 of this Act) is amended by adding at the end the following:

[(3) REQUEST OF AIR CARRIERS TO USE LESS-THAN-LETHAL WEAPONS If, after the date of enactment of this paragraph, the Under Secretary receives a request from an air carrier for authorization to allow pilots of the air carrier to carry less-than-lethal weapons, the Under Secretary shall respond to that request within 90 days.”.]

[(b) CONFORMING AMENDMENTS.—Such section is further amended—

[(1) in paragraph (1) by striking “Secretary” the first and third places it appears and inserting “Under Secretary”; and

[(2) in paragraph (2) by striking “Secretary” each place it appears and inserting “Under Secretary”.]

**[SEC. 1406. TECHNICAL AMENDMENTS.]**

[Section 44903 of title 49, United States Code, is amended—

[(1) by redesignating subsection (i) (relating to short-term assessment and deployment of emerging security technologies and procedures) as subsection (j);

[(2) by redesignating the second subsection (h) (relating to authority to arm flight deck crew with less-than-lethal weapons) as subsection (i); and

[(3) by redesignating the third subsection (h) (relating to limitation on liability for acts to thwart criminal violence for aircraft piracy) as subsection (k).]

## TITLE XV—TRANSITION

### Subtitle A—Reorganization Plan

\* \* \* \* \*

**[SEC. 1502. REORGANIZATION PLAN.]**

[(a) SUBMISSION OF PLAN.—Not later than 60 days after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a reorganization plan regarding the following:

[(1) The transfer of agencies, personnel, assets, and obligations to the Department pursuant to this Act.

[(2) Any consolidation, reorganization, or streamlining of agencies transferred to the Department pursuant to this Act.

[(b) PLAN ELEMENTS.—The plan transmitted under subsection (a) shall contain, consistent with this Act, such elements as the President deems appropriate, including the following:

[(1) Identification of any functions of agencies transferred to the Department pursuant to this Act that will not be transferred to the Department under the plan.]

【(2) Specification of the steps to be taken by the Secretary to organize the Department, including the delegation or assignment of functions transferred to the Department among officers of the Department in order to permit the Department to carry out the functions transferred under the plan.

【(3) Specification of the funds available to each agency that will be transferred to the Department as a result of transfers under the plan.

【(4) Specification of the proposed allocations within the Department of unexpended funds transferred in connection with transfers under the plan.

【(5) Specification of any proposed disposition of property, facilities, contracts, records, and other assets and obligations of agencies transferred under the plan.

【(6) Specification of the proposed allocations within the Department of the functions of the agencies and subdivisions that are not related directly to securing the homeland.

【(c) MODIFICATION OF PLAN.—The President may, on the basis of consultations with the appropriate congressional committees, modify or revise any part of the plan until that part of the plan becomes effective in accordance with subsection (d).

【(d) EFFECTIVE DATE.—

【(1) IN GENERAL.—The reorganization plan described in this section, including any modifications or revisions of the plan under subsection (d), shall become effective for an agency on the earlier of—

【(A) the date specified in the plan (or the plan as modified pursuant to subsection (d)), except that such date may not be earlier than 90 days after the date the President has transmitted the reorganization plan to the appropriate congressional committees pursuant to subsection (a); or

【(B) the end of the transition period.

【(2) STATUTORY CONSTRUCTION.—Nothing in this subsection may be construed to require the transfer of functions, personnel, records, balances of appropriations, or other assets of an agency on a single date.

【(3) SUPERSEDES EXISTING LAW.—Paragraph (1) shall apply notwithstanding section 905(b) of title 5, United States Code.】

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## TITLE XVIII—EMERGENCY COMMUNICATIONS

### SEC. 1801. OFFICE OF EMERGENCY COMMUNICATIONS.

(a) IN GENERAL.—There is established in the Department an Office of Emergency Communications.

(b) DIRECTOR.—The head of the office shall be the Director for Emergency Communications. The Director shall report to the Assistant Secretary for Cybersecurity and Communications.

(c) RESPONSIBILITIES.—The Director for Emergency Communications shall—

(1) assist the Secretary in developing and implementing the program described in section 7303(a)(1) of the Intelligence Re-

form and Terrorism Prevention Act of 2004 (6 U.S.C. 194(a)(1)), except as provided in section 314;

(2) administer the Department's responsibilities and authorities relating to the SAFECOM Program, excluding elements related to research, development, testing, and evaluation and standards;

(3) administer the Department's responsibilities and authorities relating to the Integrated Wireless Network program;

(4) conduct extensive, nationwide outreach to support and promote the ability of emergency response providers and relevant government officials to continue to communicate in the event of natural disasters, acts of terrorism, and other man-made disasters;

(5) conduct extensive, nationwide outreach and foster the development of interoperable emergency communications capabilities by State, regional, local, and tribal governments and public safety agencies, and by regional consortia thereof;

(6) provide technical assistance to State, regional, local, and tribal government officials with respect to use of interoperable emergency communications capabilities;

(7) coordinate with the Regional Administrators regarding the activities of Regional Emergency Communications Coordination Working Groups under section 1805;

(8) promote the development of standard operating procedures and best practices with respect to use of interoperable emergency communications capabilities for incident response, and facilitate the sharing of information on such best practices for achieving, maintaining, and enhancing interoperable emergency communications capabilities for such response;

(9) coordinate, in cooperation with the National Communications System, the establishment of a national response capability with initial and ongoing planning, implementation, and training for the deployment of communications equipment for relevant State, local, and tribal governments and emergency response providers in the event of a catastrophic loss of local and regional emergency communications services;

(10) assist the President, the National Security Council, the Homeland Security Council, and the Director of the Office of Management and Budget in ensuring the continued operation of the telecommunications functions and responsibilities of the Federal Government, excluding spectrum management;

(11) establish, in coordination with the Director of the Office for Interoperability and Compatibility, requirements for interoperable emergency communications capabilities, which shall be nonproprietary where standards for such capabilities exist, for all public safety radio and data communications systems and equipment purchased using homeland security assistance administered by the Department, excluding any alert and warning device, technology, or system;

(12) review, in consultation with the [Assistant Secretary for Grants and Training] *Administrator of the Federal Emergency Management Agency*, all interoperable emergency communications plans of Federal, State, local, and tribal governments, including Statewide and tactical interoperability plans, developed pursuant to homeland security assistance administered by the

Department, but excluding spectrum allocation and management related to such plans;

(13) develop and update periodically, as appropriate, a National Emergency Communications Plan under section 1802;

(14) perform such other duties of the Department necessary to support and promote the ability of emergency response providers and relevant government officials to continue to communicate in the event of natural disasters, acts of terrorism, and other man-made disasters; and

(15) perform other duties of the Department necessary to achieve the goal of and maintain and enhance interoperable emergency communications capabilities.

(d) PERFORMANCE OF PREVIOUSLY TRANSFERRED FUNCTIONS.—The Secretary shall transfer to, and administer through, the Director for Emergency Communications the following programs and responsibilities:

(1) The SAFECOM Program, excluding elements related to research, development, testing, and evaluation and standards.

(2) The responsibilities of the Chief Information Officer related to the implementation of the Integrated Wireless Network.

(3) The Interoperable Communications Technical Assistance Program.

(e) COORDINATION.—The Director for Emergency Communications shall coordinate—

(1) as appropriate, with the Director of the Office for Interoperability and Compatibility with respect to the responsibilities described in section 314; and

(2) with the Administrator of the Federal Emergency Management Agency with respect to the responsibilities described in this title.

(f) SUFFICIENCY OF RESOURCES PLAN.—

(1) REPORT.—Not later than 120 days after the date of enactment of this section, the Secretary shall submit to Congress a report on the resources and staff necessary to carry out fully the responsibilities under this title.

(2) COMPTROLLER GENERAL REVIEW.—The Comptroller General shall review the validity of the report submitted by the Secretary under paragraph (1). Not later than 60 days after the date on which such report is submitted, the Comptroller General shall submit to Congress a report containing the findings of such review.

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**SEC. 1804. COORDINATION OF DEPARTMENT EMERGENCY COMMUNICATIONS GRANT PROGRAMS.**

(a) COORDINATION OF GRANTS AND STANDARDS PROGRAMS.—The Secretary, acting through the Director for Emergency Communications, shall ensure that grant guidelines for the use of homeland security assistance administered by the Department relating to interoperable emergency communications are coordinated and consistent with the goals and recommendations in the National Emergency Communications Plan under section 1802.

(b) DENIAL OF ELIGIBILITY FOR GRANTS.—

(1) IN GENERAL.—The Secretary, acting through the [Assistant Secretary for Grants and Planning] *Administrator of the Federal Emergency Management Agency*, and in consultation with the Director for Emergency Communications, may prohibit any State, local, or tribal government from using homeland security assistance administered by the Department to achieve, maintain, or enhance emergency communications capabilities, if—

(A) such government has not complied with the requirement to submit a Statewide Interoperable Communications Plan as required by section 7303(f) of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 194(f));

(B) such government has proposed to upgrade or purchase new equipment or systems that do not meet or exceed any applicable national voluntary consensus standards and has not provided a reasonable explanation of why such equipment or systems will serve the needs of the applicant better than equipment or systems that meet or exceed such standards; and

(C) as of the date that is 3 years after the date of the completion of the initial National Emergency Communications Plan under section 1802, national voluntary consensus standards for interoperable emergency communications capabilities have not been developed and promulgated.

(2) STANDARDS.—The Secretary, in coordination with the Federal Communications Commission, the National Institute of Standards and Technology, and other Federal departments and agencies with responsibility for standards, shall support the development, promulgation, and updating as necessary of national voluntary consensus standards for interoperable emergency communications.

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## TITLE XIX—DOMESTIC NUCLEAR DETECTION OFFICE

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### SEC. 1902. MISSION OF OFFICE.

(a) MISSION.—The Office shall be responsible for coordinating Federal efforts to detect and protect against the unauthorized importation, possession, storage, transportation, development, or use of a nuclear explosive device, fissile material, or radiological material in the United States, and to protect against attack using such devices or materials against the people, territory, or interests of the United States and, to this end, shall—

(1) serve as the primary entity of the United States Government to further develop, acquire, and support the deployment of an enhanced domestic system to detect and report on attempts to import, possess, store, transport, develop, or use an unauthorized nuclear explosive device, fissile material, or radi-

ological material in the United States, and improve that system over time;

(2) enhance and coordinate the nuclear detection efforts of Federal, State, local, and tribal governments and the private sector to ensure a managed, coordinated response;

(3) establish, with the approval of the Secretary and in coordination with the Attorney General, the Secretary of Defense, and the Secretary of Energy, additional protocols and procedures for use within the United States to ensure that the detection of unauthorized nuclear explosive devices, fissile material, or radiological material is promptly reported to the Attorney General, the Secretary, the Secretary of Defense, the Secretary of Energy, and other appropriate officials or their respective designees for appropriate action by law enforcement, military, emergency response, or other authorities;

(4) develop, with the approval of the Secretary and in coordination with the Attorney General, the Secretary of State, the Secretary of Defense, and the Secretary of Energy, an enhanced global nuclear detection architecture with implementation under which—

(A) the Office will be responsible for the implementation of the domestic portion of the global architecture;

(B) the Secretary of Defense will retain responsibility for implementation of Department of Defense requirements within and outside the United States; and

(C) the Secretary of State, the Secretary of Defense, and the Secretary of Energy will maintain their respective responsibilities for policy guidance and implementation of the portion of the global architecture outside the United States, which will be implemented consistent with applicable law and relevant international arrangements;

(5) ensure that the expertise necessary to accurately interpret detection data is made available in a timely manner for all technology deployed by the Office to implement the global nuclear detection architecture;

(6) conduct, support, coordinate, and encourage an aggressive, expedited, evolutionary, and transformational program of research and development to generate and improve technologies to detect and prevent the illicit entry, transport, assembly, or potential use within the United States of a nuclear explosive device or fissile or radiological material, and coordinate with the Under Secretary for Science and Technology on basic and advanced or transformational research and development efforts relevant to the mission of both organizations;

(7) carry out a program to test and evaluate technology for detecting a nuclear explosive device and fissile or radiological material, in coordination with the Secretary of Defense and the Secretary of Energy, as appropriate, and establish performance metrics for evaluating the effectiveness of individual detectors and detection systems in detecting such devices or material—

(A) under realistic operational and environmental conditions; and

(B) against realistic adversary tactics and countermeasures;

(8) support and enhance the effective sharing and use of appropriate information generated by the intelligence community, law enforcement agencies, counterterrorism community, other government agencies, and foreign governments, as well as provide appropriate information to such entities;

(9) further enhance and maintain continuous awareness by analyzing information from all Office mission-related detection systems;

(10) lead the development and implementation of the national strategic five-year plan for improving the nuclear forensic and attribution capabilities of the United States required under section 1036 of the National Defense Authorization Act for Fiscal Year 2010;

(11) establish, within the Domestic Nuclear Detection Office, the National Technical Nuclear Forensics Center to provide centralized stewardship, planning, assessment, gap analysis, exercises, improvement, and integration for all Federal nuclear forensics and attribution activities—

(A) to ensure an enduring national technical nuclear forensics capability to strengthen the collective response of the United States to nuclear terrorism or other nuclear attacks; and

(B) to coordinate and implement the national strategic five-year plan referred to in paragraph (10);

(12) establish a National Nuclear Forensics Expertise Development Program, which—

(A) is devoted to developing and maintaining a vibrant and enduring academic pathway from undergraduate to post-doctorate study in nuclear and geochemical science specialties directly relevant to technical nuclear forensics, including radiochemistry, geochemistry, nuclear physics, nuclear engineering, materials science, and analytical chemistry;

(B) shall—

(i) make available for undergraduate study student scholarships, with a duration of up to 4 years per student, which shall include, if possible, at least 1 summer internship at a national laboratory or appropriate Federal agency in the field of technical nuclear forensics during the course of the student's undergraduate career;

(ii) make available for doctoral study student fellowships, with a duration of up to 5 years per student, which shall—

(I) include, if possible, at least 2 summer internships at a national laboratory or appropriate Federal agency in the field of technical nuclear forensics during the course of the student's graduate career; and

(II) require each recipient to commit to serve for 2 years in a post-doctoral position in a technical nuclear forensics-related specialty at a national laboratory or appropriate Federal agency after graduation;

(iii) make available to faculty awards, with a duration of 3 to 5 years each, to ensure faculty and their graduate students have a sustained funding stream; and

(iv) place a particular emphasis on reinvigorating technical nuclear forensics programs while encouraging the participation of undergraduate students, graduate students, and university faculty from historically Black colleges and universities, Hispanic-serving institutions, Tribal Colleges and Universities, Asian American and Native American Pacific Islander-serving institutions, Alaska Native-serving institutions, and Hawaiian Native-serving institutions; and

(C) shall—

(i) provide for the selection of individuals to receive scholarships or fellowships under this section through a competitive process primarily on the basis of academic merit and the nuclear forensics and attribution needs of the United States Government;

(ii) provide for the setting aside of up to 10 percent of the scholarships or fellowships awarded under this section for individuals who are Federal employees to enhance the education of such employees in areas of critical nuclear forensics and attribution needs of the United States Government, for doctoral education under the scholarship on a full-time or part-time basis;

(iii) provide that the Secretary may enter into a contractual agreement with an institution of higher education under which the amounts provided for a scholarship under this section for tuition, fees, and other authorized expenses are paid directly to the institution with respect to which such scholarship is awarded;

(iv) require scholarship recipients to maintain satisfactory academic progress; and

(v) require that—

(I) a scholarship recipient who fails to maintain a high level of academic standing, as defined by the Secretary, who is dismissed for disciplinary reasons from the educational institution such recipient is attending, or who voluntarily terminates academic training before graduation from the educational program for which the scholarship was awarded shall be liable to the United States for repayment within 1 year after the date of such default of all scholarship funds paid to such recipient and to the institution of higher education on the behalf of such recipient, provided that the repayment period may be extended by the Secretary if the Secretary determines it necessary, as established by regulation; and

(II) a scholarship recipient who, for any reason except death or disability, fails to begin or complete the post-doctoral service requirements in a technical nuclear forensics-related specialty at a

national laboratory or appropriate Federal agency after completion of academic training shall be liable to the United States for an amount equal to—

(aa) the total amount of the scholarship received by such recipient under this section; and

(bb) the interest on such amounts which would be payable if at the time the scholarship was received such scholarship was a loan bearing interest at the maximum legally prevailing rate;

(13) provide an annual report to Congress on the activities carried out under paragraphs (10), (11), and (12); and

(14) perform other duties as assigned by the Secretary.

(b) DEFINITIONS.—In this section:

(1) ALASKA NATIVE-SERVING INSTITUTION.—The term “Alaska Native-serving institution” has the meaning given the term in section 317 of the Higher Education Act of 1965 (20 U.S.C. 1059d).

(2) ASIAN AMERICAN AND NATIVE AMERICAN PACIFIC ISLANDER-SERVING INSTITUTION.—The term “Asian American and Native American Pacific Islander-serving institution” has the meaning given the term in section 320 of the Higher Education Act of 1965 (20 U.S.C. 1059g).

(3) ~~【HAWAIIAN NATIVE-SERVING】~~ NATIVE HAWAIIAN-SERVING INSTITUTION.—The term “~~【Hawaiian native-serving】~~ *Native Hawaiian-serving* institution” has the meaning given the term in section 317 of the Higher Education Act of 1965 (20 U.S.C. 1059d).

(4) HISPANIC-SERVING INSTITUTION.—The term “Hispanic-serving institution” has the meaning given that term in section 502 of the Higher Education Act of 1965 (20 U.S.C. 1101a).

(5) HISTORICALLY BLACK COLLEGE OR UNIVERSITY.—The term “historically Black college or university” has the meaning given the term “part B institution” in section 322(2) of the Higher Education Act of 1965 (20 U.S.C. 1061(2)).

(6) TRIBAL COLLEGE OR UNIVERSITY.—The term “Tribal College or University” has the meaning given that term in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)).

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**TITLE XX—HOMELAND SECURITY GRANTS**

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**Subtitle A—Grants to States and High-Risk Urban Areas**

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**SEC. 2006. TERRORISM PREVENTION.****(a) LAW ENFORCEMENT TERRORISM PREVENTION PROGRAM.—**

(1) **IN GENERAL.**—The Administrator shall ensure that not less than 25 percent of the total combined funds appropriated for grants under sections 2003 and 2004 is used for law enforcement terrorism prevention activities.

(2) **LAW ENFORCEMENT TERRORISM PREVENTION ACTIVITIES.**—Law enforcement terrorism prevention activities include—

(A) information sharing and analysis;

(B) target hardening;

(C) threat recognition;

(D) terrorist interdiction;

(E) overtime expenses consistent with a State homeland security plan, including for the provision of enhanced law enforcement operations in support of Federal agencies, including for increased border security and border crossing enforcement;

(F) establishing, enhancing, and staffing with appropriately qualified personnel State, local, and regional fusion centers that comply with the guidelines established under section 210A(i);

(G) paying salaries and benefits for personnel, including individuals employed by the grant recipient on the date of the relevant grant application, to serve as qualified intelligence analysts;

(H) any other activity permitted under the Fiscal Year 2007 Program Guidance of the Department for the Law Enforcement Terrorism Prevention Program; and

(I) any other terrorism prevention activity authorized by the Administrator.

(3) **PARTICIPATION OF UNDERREPRESENTED COMMUNITIES IN FUSION CENTERS.**—The Administrator shall ensure that grant funds described in paragraph (1) are used to support the participation, as appropriate, of law enforcement and other emergency response providers from rural and other underrepresented communities at risk from acts of terrorism in fusion centers.

**(b) OFFICE FOR STATE AND LOCAL LAW ENFORCEMENT.—**

(1) **ESTABLISHMENT.**—There is established in the Policy Directorate of the Department an Office for State and Local Law Enforcement, which shall be headed by an Assistant Secretary for State and Local Law Enforcement.

(2) **QUALIFICATIONS.**—The Assistant Secretary for State and Local Law Enforcement shall have an appropriate background with experience in law enforcement, intelligence, and other counterterrorism functions.

(3) **ASSIGNMENT OF PERSONNEL.**—The Secretary shall assign to the Office for State and Local Law Enforcement permanent staff and, as appropriate and consistent with sections 506(c)(2), 821, and 888(d), other appropriate personnel detailed from other components of the Department to carry out the responsibilities under this subsection.

(4) **RESPONSIBILITIES.**—The Assistant Secretary for State and Local Law Enforcement shall—

(A) lead the coordination of Department-wide policies relating to the role of State and local law enforcement in preventing, preparing for, protecting against, and responding to natural disasters, acts of terrorism, and other man-made disasters within the United States;

(B) serve as a liaison between State, local, and tribal law enforcement agencies and the Department;

(C) coordinate with the Office of Intelligence and Analysis to ensure the intelligence and information sharing requirements of State, local, and tribal law enforcement agencies are being addressed;

(D) work with the Administrator to ensure that law enforcement and terrorism-focused grants to State, local, and tribal government agencies, including grants under sections 2003 and 2004, the Commercial Equipment Direct Assistance Program, and other grants administered by the Department to support fusion centers and law enforcement-oriented programs, are appropriately focused on terrorism prevention activities; *and*

(E) coordinate with the Science and Technology Directorate, the Federal Emergency Management Agency, the Department of Justice, the National Institute of Justice, law enforcement organizations, and other appropriate entities to support the development, promulgation, and updating, as necessary, of national voluntary consensus standards for training and personal protective equipment to be used in a tactical environment by law enforcement officers[; and].

[(F) conduct, jointly with the Administrator, a study to determine the efficacy and feasibility of establishing specialized law enforcement deployment teams to assist State, local, and tribal governments in responding to natural disasters, acts of terrorism, or other man-made disasters and report on the results of that study to the appropriate committees of Congress.]

(5) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to diminish, supercede, or replace the responsibilities, authorities, or role of the Administrator.

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## Subtitle B—Grants Administration

### SEC. 2021. ADMINISTRATION AND COORDINATION.

(a) REGIONAL COORDINATION.—The Administrator shall ensure that—

(1) all recipients of grants administered by the Department to prevent, prepare for, protect against, or respond to natural disasters, acts of terrorism, or other man-made disasters (excluding assistance provided under section 203, title IV, or title V of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5133, 5170 et seq., and 5191 et seq.)) coordinate, as appropriate, their prevention, preparedness, and protection efforts with neighboring State, local, and tribal governments; and

(2) all high-risk urban areas and other recipients of grants administered by the Department to prevent, prepare for, protect against, or respond to natural disasters, acts of terrorism, or other man-made disasters (excluding assistance provided under section 203, title IV, or title V of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5133, 5170 et seq., and 5191 et seq.)) that include or substantially affect parts or all of more than 1 State coordinate, as appropriate, across State boundaries, including, where appropriate, through the use of regional working groups and requirements for regional plans.

(b) PLANNING COMMITTEES.—

(1) IN GENERAL.—Any State or high-risk urban area receiving a grant under section 2003 or 2004 shall establish a planning committee to assist in preparation and revision of the State, regional, or local homeland security plan and to assist in determining effective funding priorities for grants under sections 2003 and 2004.

(2) COMPOSITION.—

(A) IN GENERAL.—The planning committee shall include representatives of significant stakeholders, including—

- (i) local and tribal government officials; and
- (ii) emergency response providers, which shall include representatives of the fire service, law enforcement, emergency medical response, and emergency managers.

(B) GEOGRAPHIC REPRESENTATION.—The members of the planning committee shall be a representative group of individuals from the counties, cities, towns, and Indian tribes within the State or high-risk urban area, including, as appropriate, representatives of rural, high-population, and high-threat jurisdictions.

(3) EXISTING PLANNING COMMITTEES.—Nothing in this subsection may be construed to require that any State or high-risk urban area create a planning committee if that State or high-risk urban area has established and uses a multijurisdictional planning committee or commission that meets the requirements of this subsection.

[(c) INTERAGENCY COORDINATION.—

[(1) IN GENERAL.—Not later than 12 months after the date of enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007, the Secretary (acting through the Administrator), the Attorney General, the Secretary of Health and Human Services, and the heads of other agencies providing assistance to State, local, and tribal governments for preventing, preparing for, protecting against, and responding to natural disasters, acts of terrorism, and other man-made disasters, shall jointly—

[(A) compile a comprehensive list of Federal grant programs for State, local, and tribal governments for preventing, preparing for, protecting against, and responding to natural disasters, acts of terrorism, and other man-made disasters;

[(B) compile the planning, reporting, application, and other requirements and guidance for the grant programs described in subparagraph (A);

[(C) develop recommendations, as appropriate, to—

[(i) eliminate redundant and duplicative requirements for State, local, and tribal governments, including onerous application and ongoing reporting requirements;

[(ii) ensure accountability of the programs to the intended purposes of such programs;

[(iii) coordinate allocation of grant funds to avoid duplicative or inconsistent purchases by the recipients;

[(iv) make the programs more accessible and user friendly to applicants; and

[(v) ensure the programs are coordinated to enhance the overall preparedness of the Nation;

[(D) submit the information and recommendations under subparagraphs (A), (B), and (C) to the appropriate committees of Congress; and

[(E) provide the appropriate committees of Congress, the Comptroller General, and any officer or employee of the Government Accountability Office with full access to any information collected or reviewed in preparing the submission under subparagraph (D).

[(2) SCOPE OF TASK.—Nothing in this subsection shall authorize the elimination, or the alteration of the purposes, as delineated by statute, regulation, or guidance, of any grant program that exists on the date of the enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007, nor authorize the review or preparation of proposals on the elimination, or the alteration of such purposes, of any such grant program.]

[(d)] (c) SENSE OF CONGRESS.—It is the sense of Congress that, in order to ensure that the Nation is most effectively able to prevent, prepare for, protect against, and respond to all hazards, including natural disasters, acts of terrorism, and other man-made disasters—

(1) the Department should administer a coherent and coordinated system of both terrorism-focused and all-hazards grants;

(2) there should be a continuing and appropriate balance between funding for terrorism-focused and all-hazards preparedness, as reflected in the authorizations of appropriations for grants under the amendments made by titles I and II, as applicable, of the Implementing Recommendations of the 9/11 Commission Act of 2007; and

(3) with respect to terrorism-focused grants, it is necessary to ensure both that the target capabilities of the highest risk areas are achieved quickly and that basic levels of preparedness, as measured by the attainment of target capabilities, are achieved nationwide.

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