

108TH CONGRESS  
2D SESSION

# H. R. 5291

To win the war on terror.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 8, 2004

Mr. TURNER of Texas (for himself, Ms. LORETTA SANCHEZ of California, Ms. NORTON, Ms. MCCARTHY of Missouri, Ms. JACKSON-LEE of Texas, Mrs. CHRISTENSEN, and Mr. LANGEVIN) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committees on Armed Services, International Relations, Judiciary, Ways and Means, Select Intelligence (Permanent Select), Energy and Commerce, Government Reform, Science, and Select Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To win the war on terror.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

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

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Winning the War on Terror Act of 2004”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

## TITLE I—INCREASING SPECIAL FORCES

- Sec. 2. Increase in special operations forces assigned to special operations command.
- Sec. 3. Annual report on special operations forces retention.
- Sec. 4. Report on active and reserve mix for special operations forces and special forces transformation.

## TITLE II—STRENGTHENING COUNTER-PROLIFERATION

- Sec. 11. Sense of Congress on counterproliferation programs.
- Sec. 12. Global Threat Reduction Initiative.
- Sec. 13. Cooperative Threat Reduction Initiative.
- Sec. 14. Sense of Congress on Proliferation Security Initiative.
- Sec. 15. Threat assessments on sources of radiological materials.
- Sec. 16. Elimination of United States chemical stockpile.

## TITLE III—IMPROVING THE TERRORIST SCREENING CENTER

- Sec. 21. Targeting terrorist travel.

## TITLE IV—IMPROVING BORDER SECURITY

- Sec. 30. Short title.

### Subtitle A—Securing Our Borders

#### CHAPTER 1—INFRASTRUCTURE ENHANCEMENTS

- Sec. 31. Establishment of Land Border Infrastructure Improvement Fund.
- Sec. 32. Requiring a vulnerability assessment of land ports of entry.
- Sec. 33. Enhancing SENTRI, FAST, and NEXUS preenrollment programs.

#### CHAPTER 2—ENHANCING BORDER MONITORING TECHNOLOGY

- Sec. 35. Deployment of surveillance systems along the U.S.-Mexico border.
- Sec. 36. Deployment of surveillance systems along the U.S.-Canadian border.
- Sec. 37. Level of K-9 units.

#### CHAPTER 3—ENSURING SUFFICIENT WELL-TRAINED PERSONNEL AT OUR BORDERS

- Sec. 41. Double the number of CBP personnel.
- Sec. 42. Assessing staffing needs at our borders.
- Sec. 43. Additional and continuous training for inspectors.
- Sec. 44. Requiring report on the “One Face at the Border Initiative”.

#### CHAPTER 4—ESTABLISHING A COMPREHENSIVE BORDER SECURITY STRATEGY

- Sec. 51. Land border security strategy.
- Sec. 52. Improved information sharing.
- Sec. 53. Creation of northern and southern border coordinators.
- Sec. 54. Smart Border Accord implementation.
- Sec. 55. Sense of Congress on the period of admission for border crossing card holders.

#### CHAPTER 5—ENHANCING BORDER SECURITY PROGRAMS

- Sec. 61. Creating a more effective entry-exit system.
- Sec. 62. Transportation worker identification card.
- Sec. 63. Standards and verification procedures for the security of intermodal cargo containers.
- Sec. 64. Sense of Congress on the need for additional staff for the United States Consulate-General in Mexico.

#### CHAPTER 6—SECURING OUR TRIBAL AND FEDERAL LANDS AND TERRITORIES

- Sec. 65. Office of Tribal Security.
- Sec. 66. Transfer of “Shadow Wolves” from CPB to ICE.
- Sec. 67. DHS and DOI coordination on border security; provision of temporary authority to DHS to transfer funds.

##### Subtitle B—Securing Identification Documents

- Sec. 71. State identification document standards.
- Sec. 72. Training in fraud detection and prevention for officers in divisions of motor vehicles.

##### Subtitle C—Securing the Interior; Tools for Border Security

#### CHAPTER 1—INCREASE IN STAFF FOR ICE

- Sec. 81. Personnel increase.
- Sec. 82. ICE strategy and staffing assessment.

#### CHAPTER 2—INCREASE IN DETENTION SPACE

- Sec. 85. Increase in detention space.
- Sec. 86. Sense of Congress regarding processing of criminal aliens while incarcerated.
- Sec. 87. Sense of Congress regarding increase in prosecutors and immigration judges.

#### CHAPTER 3—ENHANCING LAW ENFORCEMENT ACCESS TO INFORMANTS

- Sec. 91. New class of nonimmigrant aliens.
- Sec. 92. Adjustment of status of nonimmigrant to that of person admitted for permanent residence.

#### CHAPTER 4—INCREASED PENALTIES FOR SMUGGLING

- Sec. 95. Combating aggravated alien smuggling.
- Sec. 96. Increased criminal sentences and fines for alien smuggling.
- Sec. 97. Increased penalty for smuggling.

##### Subtitle D—Beyond our Borders (International)

#### CHAPTER 1—COORDINATING DHS MISSION OVERSEAS

- Sec. 101. Office of International Affairs; effective and efficient management and coordination of international assignments.
- Sec. 102. Creation of an Office of Overseas Service.

#### CHAPTER 2—IMPLEMENTING A MORE EFFECTIVE VISA SECURITY PROGRAM

- Sec. 105. Implementing a more effective visa security program.

## CHAPTER 3—SECURING THE VISA WAIVER PROGRAM

- Sec. 106. Visa waiver program passenger screening; biographical checks.
- Sec. 107. Defining security responsibilities of the Visa Waiver Program Office.
- Sec. 108. Additional and continuous training for inspectors in fraud and imposter detection.
- Sec. 109. Authorization of funds.

## Subtitle E—Securing the Immigration Benefits Process

- Sec. 111. Immigration ombudsman.
- Sec. 112. CIS workflow, technology, and staffing assessment.
- Sec. 113. Study on biometrics.
- Sec. 114. Digitizing immigration functions.
- Sec. 115. Study on digitizing immigration benefit applications.

## TITLE V—STRENGTHENING RAIL SECURITY

- Sec. 121. Public transportation system grants and training.
- Sec. 122. Public transportation security plan, best practices, and awareness.
- Sec. 123. Memorandum of Agreement.

## TITLE VI—STRENGTHENING PORT SECURITY

- Sec. 130. Short title.

## Subtitle A—Bureau of Customs and Border Protection security programs

- Sec. 131. Amendments to the Homeland Security Act of 2002.

## Subtitle B—Port Security

- Sec. 135. Port security grant funding.
- Sec. 136. Funding for collaborative program for development of maritime information sharing and analysis capability.
- Sec. 137. Appropriate congressional committees defined.

## Subtitle C—Strengthening the Coast Guard

- Sec. 141. Acceleration of integrated deepwater program.
- Sec. 142. Increase in authorized Coast Guard personnel.
- Sec. 143. Sense of the Congress regarding naming new vessels under the Deepwater Program for cities of the United States.

## TITLE VII—STRENGTHENING AVIATION SECURITY

- Sec. 151. Passenger and baggage screening operations.
- Sec. 152. Checked baggage security screening.
- Sec. 153. Aviation security capital fund.
- Sec. 154. Elimination of bag-match program as acceptable alternative for checked baggage.
- Sec. 155. Aviation security technologies.
- Sec. 156. Inspection of cargo carried aboard passenger aircraft.
- Sec. 157. Database on known shipping companies.
- Sec. 158. Flight crew communication systems.
- Sec. 159. National Strategy for Transportation Security.
- Sec. 160. Use of watchlists for passenger air transportation screening.

## TITLE VIII—IMPROVING PRIVATE SECTOR PREPAREDNESS

- Sec. 161. Short title.
- Sec. 162. Findings.
- Sec. 163. Private sector emergency preparedness program.

#### TITLE IX—INCREASING INFORMATION SHARING

- Sec. 165. Information sharing.

#### TITLE X—PROTECTING CRITICAL INFRASTRUCTURE

- Sec. 171. Critical infrastructure evaluation and prioritization program.
- Sec. 172. Deadline for comprehensive national plan to secure critical infrastructure and key assets.
- Sec. 173. Regulatory authority.
- Sec. 174. Best practices.

#### TITLE XI—DEFENDING AGAINST BIOTERRORISM

##### Subtitle A—National Biodefense Strategy

- Sec. 181. National biodefense strategy.

##### Subtitle B—Development of Medical Countermeasures

- Sec. 184. Short title.
- Sec. 185. Findings and policy.
- Sec. 186. Rapid biodefense countermeasures development national strategy.
- Sec. 187. Clinical research under emergency conditions.
- Sec. 188. Interagency working group.
- Sec. 189. Developing the capability for rapid biodefense countermeasure development.

#### TITLE XII—CHEMICAL SECURITY IMPROVEMENT

- Sec. 191. Short title.
- Sec. 192. Definitions.
- Sec. 193. Vulnerability assessments and site security plans.
- Sec. 194. Whistleblower protection.
- Sec. 195. Enforcement.
- Sec. 196. Interagency technical support and cooperation.
- Sec. 197. Penalties.
- Sec. 198. No effect on requirements under other law.

#### TITLE XIII—IMPROVING CYBERSECURITY

- Sec. 201. Cybersecurity training programs and equipment.
- Sec. 202. Assistant Secretary for Cybersecurity.

#### TITLE XIV—ENABLING COMMUNICATIONS INTEROPERABILITY

- Sec. 211. Short title.
- Sec. 212. Findings; purposes.
- Sec. 213. Establishment of the Office of Wireless Public Safety Interoperable Communications.
- Sec. 214. Interoperable communications technology grant program.

#### TITLE XV—STRENGTHENING PRIVACY PROTECTIONS WITHIN THE DEPARTMENT OF HOMELAND SECURITY

- ## Subtitle B—Civil Rights and Civil Liberties

- ## TITLE XVI—PREVENTING THE RISE OF FUTURE TERRORISTS

By the end of fiscal year 2014, the number of special operations forces in the Armed Forces shall be increased by 50,000, which represents a 50-percent increase over the number of special operations forces in effect on September 30, 2004. Of the increased number of personnel, half shall be active or reserve members who are directly assigned

1 to the unified combatant command for special operations  
2 required by section 167 of title 10, United States Code,  
3 and the other half shall be members of the Marine Corps  
4 who have completed special operations training. There are  
5 authorized to be appropriated such sums as are necessary  
6 to carry out this section.

7 **SEC. 3. ANNUAL REPORT ON SPECIAL OPERATIONS**  
8 **FORCES RETENTION.**

9 Section 167 of title 10, United States Code, is  
10 amended by adding at the end the following new sub-  
11 section:

12 “(1) ANNUAL REPORT ON SPECIAL OPERATIONS  
13 FORCES RETENTION.—Not later than March 1 of each  
14 year, the Secretary of Defense shall submit to Congress  
15 a report specifying retention levels for members of the  
16 armed forces serving as special operations forces and con-  
17 taining the strategy of the Department of Defense for im-  
18 proving retention rates, in particular among members who  
19 have completed between 10 and 14 years of service and  
20 members with more than 20 years of service.”.

21 **SEC. 4. REPORT ON ACTIVE AND RESERVE MIX FOR SPE-**  
22 **CIAL OPERATIONS FORCES AND SPECIAL**  
23 **FORCES TRANSFORMATION.**

24 Not later than one year after the date of the enact-  
25 ment of this Act, the Secretary of Defense shall submit

1 to Congress a report containing the recommendations of  
 2 the Secretary regarding—

3 (1) the appropriate mix of active and reserve  
 4 forces for special operations forces, including civil af-  
 5 fairs forces and psychological operations forces, to  
 6 reduce the need for long-term deployments of reserv-  
 7 ists; and

8 (2) the transformation of the special operations  
 9 forces to develop a more ethnically diverse intel-  
 10 ligence cadre capable of locating and infiltrating so-  
 11 phisticated terrorist networks.

## 12 **TITLE II—STRENGTHENING** 13 **COUNTER-PROLIFERATION**

### 14 **SEC. 11. SENSE OF CONGRESS ON** 15 **COUNTERPROLIFERATION PROGRAMS.**

16 (a) IN GENERAL.—It is the sense of Congress that  
 17 the United States must strengthen the nonproliferation  
 18 programs of the Department of Energy, expand the Pro-  
 19 liferation Security Initiative of the Department of State,  
 20 and support Cooperative Threat Reduction programs of  
 21 the Department of Defense.

22 (b) FUNDING.—It is the sense of Congress that the  
 23 United States should increase its spending on the  
 24 counterproliferation programs described in subsection (a)  
 25 such that, as of fiscal year 2010, the aggregate annual



1 spending of the United States on those  
2 counterproliferation programs is not less than  
3 \$3,000,000,000.

4 **SEC. 12. GLOBAL THREAT REDUCTION INITIATIVE.**

5 (a) INITIATIVE REQUIRED.—From amounts made  
6 available to carry out this section, the Secretary of Energy  
7 shall carry out a program, to be known as the Global  
8 Threat Reduction Initiative, under which the Secretary  
9 provides for the securing, removing, or disposing of nu-  
10 clear and radiological materials outside the United States  
11 that are vulnerable to theft. In carrying out the program,  
12 the Secretary shall seek to secure, remove, or dispose of  
13 nuclear and radiological materials at the 24 most vulner-  
14 able reactor sites in foreign countries, as determined by  
15 the Secretary of State, by 2009.

16 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
17 are authorized to be appropriated to the Secretary of En-  
18 ergy to carry out this section \$4,500,000,000 for each of  
19 fiscal years 2005 through 2014.

20 **SEC. 13. COOPERATIVE THREAT REDUCTION INITIATIVE.**

21 (a) RESOLUTION OF LIABILITY AND ACCESS PROB-  
22 LEMS.—The President shall work to resolve the liability  
23 and access problems that continue to be roadblocks to the  
24 Cooperative Threat Reduction programs.

1 (b) DEFINITION.—In this section, the term “Cooper-  
2 ative Threat Reduction programs” means programs speci-  
3 fied in section 1501(b) of the National Defense Authoriza-  
4 tion Act of Fiscal year 1997 (Public Law 104–201; 110  
5 Stat. 2731; 50 U.S.C. 2362 note).

6 **SEC. 14. SENSE OF CONGRESS ON PROLIFERATION SECU-**  
7 **RITY INITIATIVE.**

8 It is the sense of Congress that the People’s Republic  
9 of China should be encouraged to participate in the Pro-  
10 liferation Security Initiative of the Department of State  
11 in order to assist in efforts to prevent the export of weap-  
12 ons of mass destruction by the Government of North  
13 Korea.

14 **SEC. 15. THREAT ASSESSMENTS ON SOURCES OF RADIO-**  
15 **LOGICAL MATERIALS.**

16 (a) ASSESSMENTS REQUIRED.—The Secretary of En-  
17 ergy shall carry out threat assessments on the most likely  
18 sources of radiological material that could be used in mak-  
19 ing a “dirty bomb”.

20 (b) REPORT.—Not later than 6 months after the date  
21 of the enactment of this Act, the Secretary shall submit  
22 to Congress a report on the threat assessments carried  
23 out under subsection (a).

1 **SEC. 16. ELIMINATION OF UNITED STATES CHEMICAL**  
2 **STOCKPILE.**

3 The President shall ensure that the chemical stock-  
4 pile of the United States is eliminated not later than the  
5 end of 2012.

6 **TITLE III—IMPROVING THE**  
7 **TERRORIST SCREENING CENTER**

8 **SEC. 21. TARGETING TERRORIST TRAVEL.**

9 (a) CODIFICATION OF THE ESTABLISHMENT OF THE  
10 TERRORIST SCREENING CENTER.—There is established  
11 within the Federal Bureau of Investigation the Terrorist  
12 Screening Center under the direction of the Director of  
13 the Federal Bureau of Investigation.

14 (b) MISSION.—The Terrorist Screening Center  
15 shall—

16 (1) establish and operate a single consolidated  
17 terrorist database consisting of terrorist information  
18 from all watchlists compiled by the agencies and de-  
19 partments of the United States;

20 (2) provide operational support for terrorist  
21 screeners throughout the United States and around  
22 the world 24 hours of each day;

23 (3) ensure that terrorist screeners use the same  
24 unified, comprehensive set of anti-terrorist informa-  
25 tion; and

1           (4) ensure that terrorist screeners have access  
2           to information and expertise that will permit rapid  
3           response when a suspected terrorist is screened or  
4           stopped.

5           (c) DEADLINE FOR OPERATION OF DATABASE.—The  
6           Terrorist Screening Center shall complete and begin oper-  
7           ation of a comprehensive terrorist screening database by  
8           not later than December 31, 2004.

9           (d) ACCESS TO DATABASE.—(1) The Terrorist  
10          Screening Center shall take such steps as are required to  
11          provide electronic access to the comprehensive terrorist  
12          screening database as soon as possible.

13          (2) The Director of the Federal Bureau of Investiga-  
14          tion shall submit to Congress semiannual reports on the  
15          progress made to carry out paragraph (1).

16          (e) ASSISTANCE FROM NCTC.—The head of the Na-  
17          tional Counterterrorism Center shall expand existing pro-  
18          grams relating to terrorist travel intelligence collection  
19          and analysis to assist the Terrorist Screening Center.

20          (f) TERRORIST SCREENER DEFINED.—In this sec-  
21          tion, the term “terrorist screener” means individuals who  
22          are investigators, screeners, and agents with an official  
23          duty related to the identification, tracking, or apprehen-  
24          sion of suspected terrorists, including the following:

25                 (1) Personnel of the intelligence community.

1           (2) Federal personnel who screen individuals  
2           entering the United States.

3           (3) Federal, State and local law enforcement  
4           personnel.

5           (4) Federal personnel that consider visa appli-  
6           cations.

7           (5) Personnel of authorized private sector oper-  
8           ators of critical infrastructure.

9           (6) Authorized personnel of certain foreign gov-  
10          ernments that have entered into immigration agree-  
11          ments with the United States or that are engaged in  
12          the global war on terrorism as partners of the  
13          United States.

14          (7) Any other individuals whose duties and re-  
15          sponsibilities reasonably require timely access to the  
16          terrorist screening database, as determined by the  
17          Director of the Federal Bureau of Investigation.

## 18       **TITLE IV—IMPROVING BORDER** 19                               **SECURITY**

### 20       **SEC. 30. SHORT TITLE.**

21          This title may be cited as the “Secure Borders Act”.

1     **Subtitle A—Securing Our Borders**

2             **CHAPTER 1—INFRASTRUCTURE**

3                     **ENHANCEMENTS**

4     **SEC. 31. ESTABLISHMENT OF LAND BORDER INFRASTRUC-**  
5             **TURE IMPROVEMENT FUND.**

6             (a) IN GENERAL.—There is established in the general  
7 fund of the Treasury a separate account which shall be  
8 known as the “Land Border Infrastructure Improvement  
9 Fund”. Amounts deposited in such fund shall remain  
10 available to the Secretary of Homeland Security until ex-  
11 pended, subject to the provisions of appropriations Acts,  
12 to carry out infrastructure and technology improvement  
13 projects at our nation’s ports of entry, as assessed in sec-  
14 tion 32, to reduce and prevent the nation’s land border  
15 vulnerability to terrorist attack, and penetration by terror-  
16 ists and criminals, while effectively facilitating the move-  
17 ment of goods, services, and legitimate travelers.

18             (b) AUTHORIZATION OF APPROPRIATIONS.—There  
19 are authorized to be appropriated \$1,000,000,000 to carry  
20 out the projects described in subsection (c).

21             (c) PROJECTS DESCRIBED.—The Secretary of Home-  
22 land Security may carry out infrastructure and technology  
23 improvement projects recommended in the report sub-  
24 mitted under section 32 in order to reduce the vulner-  
25 ability of ports of entry.

1 **SEC. 32. REQUIRING A VULNERABILITY ASSESSMENT OF**  
2 **LAND PORTS OF ENTRY.**

3 (a) INITIAL ASSESSMENT.—

4 (1) IN GENERAL.—The Secretary of Homeland  
5 Security shall conduct an assessment of the vulner-  
6 ability of each United States land port of entry to  
7 penetration by terrorists and criminals or terrorist  
8 attack. In carrying out assessments under this para-  
9 graph, the Secretary shall categorize the vulner-  
10 ability of each port of entry as “high”, “medium”,  
11 or “low” and shall prioritize the vulnerability of each  
12 port of entry within each such category. In con-  
13 ducting the assessment, the Secretary of Homeland  
14 Security shall consult with appropriate State, local,  
15 and private sector representatives.

16 (2) REPORT.—Not later than one year after the  
17 date of the enactment of this Act, the Secretary  
18 shall prepare and submit to the appropriate congres-  
19 sional committees (as that term is defined in section  
20 2 of the Homeland Security Act of 2002 (6 U.S.C.  
21 101)) a report that contains—

22 (A) the results of the assessment con-  
23 ducted under paragraph (1);

24 (B) with respect to each port of entry cat-  
25 egorized under paragraph (1) as either a

1 “high” or “medium” vulnerability port of entry,  
2 descriptions of—

3 (i) infrastructure and technology im-  
4 provement projects required for the port of  
5 entry in order to reduce its vulnerability;

6 (ii) the resources required to make  
7 such improvements; and

8 (C) a description of how the funds will be  
9 used to implement technology and infrastruc-  
10 ture improvement projects.

11 (b) FOLLOW-UP ASSESSMENTS.—The Secretary of  
12 Homeland Security shall conduct follow-up assessments of  
13 land border ports of entry every 2 years and shall submit  
14 such reports to the appropriate congressional committees  
15 (as defined in section 2 of the Homeland Security Act of  
16 2002 (6 U.S.C. 101)).

17 **SEC. 33. ENHANCING SENTRI, FAST, AND NEXUS**  
18 **PREENROLLMENT PROGRAMS.**

19 (a) SENSE OF CONGRESS.—It is the sense of the Con-  
20 gress that preenrollment programs should be expanded to  
21 all major ports of entry because these programs assist our  
22 frontline officers in the fight against terrorism. These pro-  
23 grams allow inspectors to focus more closely on unknown  
24 travelers by subjecting participants to in depth back-  
25 ground and watch list checks.



1 (b) PERMANENT AUTHORIZATION.—

2 (1) IN GENERAL.—The Secretary of Homeland  
3 Security shall make permanent pre-enrollment pro-  
4 grams that subject participants who are aliens, and  
5 citizens of the United States, to criminal and watch  
6 list screenings and fingerprint checks prior to enroll-  
7 ing in order to gain expedited inspections at ports  
8 of entry.

9 (2) SPECIFIC PROGRAMS.—The programs de-  
10 scribed in paragraph (1) shall include, at a min-  
11 imum, the following:

12 (A) The Free and Secure Trade, or  
13 “FAST”, program authorized under subpart B  
14 of title IV of the Tariff Act of 1930 (19 U.S.C  
15 1411 et seq).

16 (B) The Secure Electronic Network for  
17 Travelers Rapid Inspection, or “SENTRI”, pro-  
18 gram authorized under section 286(q) of the  
19 Immigration and Nationality Act (8 U.S.C.  
20 1356(q)).

21 (C) The “NEXUS” program authorized  
22 under section 286(q) of the Immigration and  
23 Nationality Act (8 U.S.C. 1356(q)).

24 (D) Successor programs to the programs  
25 described in subparagraphs (A) through (C).

1       (c) AUTHORIZATION OF FUNDS NECESSARY TO  
2 BUILD ADEQUATE INFRASTRUCTURE TO RENDER PRO-  
3 GRAMS EFFECTIVE.—There are authorized to be appro-  
4 priated such funds as may be necessary to improve infra-  
5 structure to enhance access to pre-enrollment lanes, and  
6 to accomplish all the other purposes outlined in this sec-  
7 tion, in order to facilitate inspections and expedite the flow  
8 of travel and commerce.

9       (d) REDUCTION OF PROGRAM FEES.—The Secretary  
10 of Homeland Security may reduce the enrollment fees for  
11 the programs described in subsection (a) if necessary to  
12 encourage participation.

13       (e) CREATION OF REMOTE ENROLLMENT CEN-  
14 TERS.—The Secretary shall create a minimum of 4 remote  
15 enrollment centers, away from the borders of the United  
16 States, for such programs in major population centers  
17 where there is a demand for such a service.

18       (f) CREATION OF APPEALS PROCESS.—The Sec-  
19 retary of Homeland Security must establish a process to  
20 review actions that terminate the participation of travelers  
21 in pre-enrollment programs.

22       (g) REPORT ON BUDGET, PROGRAM USE, AND EN-  
23 FORCEMENT.—The Secretary of Homeland Security annu-  
24 ally shall submit to the appropriate congressional commit-  
25 tees (as defined in section 2 of the Homeland Security

1 Act of 2002 (6 U.S.C. 101)) a report on the programs  
2 described in subsection (a). The report should include a  
3 review of costs associated with the programs, including—

4 (1) areas of program expansion within a port-  
5 of-entry, to other ports-of-entry and to other modes  
6 of travel including air, mass transit, bicycle and pe-  
7 destrians;

8 (2) the cost of upgrade and maintenance needs;

9 (3) update on status and expansion of enroll-  
10 ment centers;

11 (4) infrastructure needs on the US, Canadian,  
12 and Mexican sides of the border to enhance the pro-  
13 grams;

14 (5) universal access through ports;

15 (6) technology and database enhancements to  
16 link watch lists to the programs;

17 (7) the feasibility of incorporating radio fre-  
18 quency enabled travel documents into the programs,  
19 such as passports, alien registration cards, and other  
20 documents;

21 (8) the cost of enabling all inspection lanes with  
22 pre-enrollment technology;

23 (9) public information campaign and relevant  
24 associated costs; and

25 (10) for each pre-enrollment location—

- 1 (A) total vehicles processed per month;
- 2 (B) total pre-enrolled vehicles processed
- 3 per month;
- 4 (C) total pre-enrolled vehicles processed
- 5 per day;
- 6 (D) total nonenrolled vehicles processed
- 7 per month;
- 8 (E) total nonenrolled vehicles processed
- 9 per day;
- 10 (F) completed compliance checks per-
- 11 formed per month;
- 12 (G) duration of inspections;
- 13 (H) number of passengers per vehicle;
- 14 (I) basis for apprehension of violator;
- 15 (J) types of violation; and
- 16 (K) enforcement actions.

## 17 **CHAPTER 2—ENHANCING BORDER**

### 18 **MONITORING TECHNOLOGY**

#### 19 **SEC. 35. DEPLOYMENT OF SURVEILLANCE SYSTEMS ALONG**

#### 20 **THE U.S.-MEXICO BORDER.**

21 (a) PLAN.—Not later than September 30, 2005, the

22 Secretary of Homeland Security shall develop a com-

23 prehensive plan to fully deploy technological surveillance

24 systems along the U.S.-Mexico border. Surveillance sys-

25 tems included in the deployment plan must—

1           (1) ensure continuous monitoring of every mile  
2           of the U.S.-Mexico border;

3           (2) to the extent practicable, be fully interoper-  
4           able with existing surveillance systems, such as the  
5           Integrated Surveillance Intelligence Systems already  
6           in use by the Department of Homeland Security.

7   Additionally, the deployment plan should include, but not  
8   be limited to, the following elements:

9           (3) A description of the specific technology to  
10          be deployed.

11          (4) An assessment of the success of existing  
12          technologies to determine if one technology is better  
13          than another, or whether there is a way to combine  
14          the capabilities of various detection devices into a  
15          single device.

16          (5) A description of the technological features  
17          of surveillance systems allowing for compatibility, if  
18          practicable, with existing surveillance technologies.

19          (6) A description of how the U.S. Border Patrol  
20          is working, or will work, with the Directorate of  
21          Science and Technology to analyze high altitude  
22          monitoring technologies (such as unmanned aerial  
23          vehicles and tethered aerostat radar systems) for use  
24          with land-based monitoring technologies.

1           (7) A description of how radiation portal mon-  
2       itors will be deployed to ports of entry along the  
3       U.S.-Mexico border, and other border locations, con-  
4       sistent with section 39.

5           (8) A description of how K–9 detection units  
6       will be increased along the U.S.-Mexico border, con-  
7       sistent with section 37.

8           (9) A description of how surveillance technology  
9       will provide for continuous monitoring of the border.

10          (10) The identification of any obstacles that  
11       may impede full implementation of the deployment  
12       plan.

13          (11) A detailed estimate of all costs associated  
14       with the implementation of the deployment plan.

15       (b) DEPLOYMENT.—Not later than September 30,  
16 2006, the Secretary of Homeland Security shall fully im-  
17 plement the plan described in subsection (a).

18       (c) REPORT.—Not later than September 30, 2005,  
19 the Secretary of Homeland Security shall submit the plan  
20 described in subsection (a) to the appropriate congres-  
21 sional committee (as defined in section 2 of the Homeland  
22 Security Act of 2002 (6 U.S.C. 101)).

23       (d) AUTHORIZATION OF APPROPRIATIONS.—There  
24 are authorized to be appropriated to carry out this section  
25 \$200,000,000 for each of fiscal years 2005 and 2006, and

1 such sums as may be necessary for each succeeding fiscal  
2 year.

3 **SEC. 36. DEPLOYMENT OF SURVEILLANCE SYSTEMS ALONG**  
4 **THE U.S.-CANADIAN BORDER.**

5 Not later than September 30, 2005, the Secretary of  
6 Homeland Security shall develop a plan to install surveil-  
7 lance systems along the U.S.-Canadian border and provide  
8 the appropriate congressional committees (as defined by  
9 section 2 of the Homeland Security Act of 2002 (6 U.S.C.  
10 101)) with a cost estimate and deployment schedule de-  
11 signed to implement such plan.

12 **SEC. 37. LEVEL OF K-9 UNITS.**

13 (a) IN GENERAL.—The Secretary of Homeland Secu-  
14 rity shall increase the number of K-9 units working within  
15 U.S. Customs and Border Protection, including adding in-  
16 frastructure, officers ,and support staff necessary for each  
17 unit, by 20 percent above levels in existence at the end  
18 of fiscal year 2004.

19 (b) USE OF NEW UNITS.—The K-9 units added  
20 under subsection (a) shall be distributed proportionately  
21 to both the U.S.-Mexico border and the U.S.-Canadian  
22 border, and be used only for bomb, passenger, and cur-  
23 rency detection purposes.

1 (c) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated such sums as may be  
3 necessary to carry out this section.

4 **CHAPTER 3—ENSURING SUFFICIENT**  
5 **WELL-TRAINED PERSONNEL AT OUR**  
6 **BORDERS**

7 **SEC. 41. DOUBLE THE NUMBER OF CBP PERSONNEL.**

8 (a) TEMPORARY INCREASE IN PERSONNEL.—Pend-  
9 ing congressional consideration of the study described in  
10 section 42, there are authorized to be appropriated to the  
11 Secretary of Homeland Security such sums as may be nec-  
12 essary—

13 (1) to double, as compared to the number of  
14 such positions which existed at the end of fiscal year  
15 2004, the number of positions for U.S. Customs and  
16 Border Protection personnel (including support per-  
17 sonnel) at and between our nation's ports of entry;

18 (2) to establish, not later than September 30,  
19 2005, at least one Border Patrol unit for the Virgin  
20 Islands of the United States; and

21 (3) to establish facilities in which the additional  
22 personnel described in paragraph (1) may work.

23 (b) WAIVER OF LIMITATION.—The Secretary of  
24 Homeland Security is authorized to waive any limitation  
25 on the number of full-time equivalent personnel assigned



1 to the Department of Homeland Security to fulfill the re-  
2 quirements of subsection (a).

3 **SEC. 42. ASSESSING STAFFING NEEDS AT OUR BORDERS.**

4       The Secretary of Homeland Security shall contract  
5 with an independent entity to undertake a study to deter-  
6 mine the necessary level and allocation of personnel, in-  
7 cluding support staff, at United States ports of entry and  
8 border patrol sectors. The study shall take into account,  
9 at a minimum, the overall mission of U.S. Customs and  
10 Border Protection, threat and vulnerability information  
11 pertaining to the nation's borders and ports of entry, the  
12 impact of new border security programs, policies and tech-  
13 nologies, and an analysis of traffic volumes and wait times  
14 at ports of entry. The study is to be provided to the appro-  
15 priate congressional committees, as defined in section 2  
16 of the Homeland Security Act of 2002 (6 U.S.C. 101),  
17 not later than 1 year after the date of the enactment of  
18 this Act.

19 **SEC. 43. ADDITIONAL AND CONTINUOUS TRAINING FOR IN-**  
20 **SPECTORS.**

21       (a) IN GENERAL.—The Secretary of Homeland Secu-  
22 rity shall provide appropriate training for inspectors, and  
23 associated support staff on an ongoing basis to utilize new  
24 technologies and to ensure that the proficiency levels of

1 such personnel are acceptable to protect the borders of the  
2 United States.

3 (b) LANGUAGE TRAINING.—The Secretary of Home-  
4 land Security ensure that inspectors assigned to the south-  
5 ern border are proficient in Spanish language, and shall  
6 provide training to inspectors in Spanish and other lan-  
7 guages determined to be necessary in carrying out anti-  
8 terrorism and law enforcement functions. The Secretary  
9 of Homeland Security shall provide, where necessary, ap-  
10 propriate language training to inspectors and border pa-  
11 trol agents on the northern border.

12 (c) RETENTION AND DEVELOPMENT OF EXPERTS.—  
13 Not later than 6 months after the date of the enactment  
14 of this Act, the Secretary of Homeland Security shall  
15 make recommendations to the appropriate congressional  
16 committees (as defined in section 2 of the Homeland Secu-  
17 rity Act of 2002 (6 U.S.C. 101)) on how the current De-  
18 partment of Homeland Security personnel system should  
19 be modified to allow for the retention and development of  
20 immigration and customs experts, to include the creation  
21 of new positions.

22 **SEC. 44. REQUIRING REPORT ON THE “ONE FACE AT THE**  
23 **BORDER INITIATIVE”.**

24 (a) IN GENERAL.—Not later than September 30 of  
25 each of the calendar years 2005 and 2006, the Commis-

1 sioner of Customs shall prepare and submit to Congress  
2 a report—

3 (1) describing and analyzing the goals, success,  
4 and shortfalls of the One Face at the Border Initia-  
5 tive at enhancing security and facilitating travel;

6 (2) providing a breakdown of the number of  
7 personnel of U.S. Customs and Border Protection  
8 that were personnel of the United States Customs  
9 Service prior to the establishment of the Department  
10 of Homeland Security, that were personnel of the  
11 Immigration and Naturalization Service prior to the  
12 establishment of the Department of Homeland Secu-  
13 rity, and that were hired after the establishment of  
14 the Department of Homeland Security;

15 (3) describing the training time provided to  
16 each employee on an annual basis for the various  
17 training components of the One Face at the Border  
18 Initiative;

19 (4) outlining the steps taken by U.S. Customs  
20 and Border Protection to ensure that expertise is re-  
21 tained with respect to customs, immigration, and ag-  
22 riculture inspection functions under the One Face at  
23 the Border Initiative; and

1 (5) reviewing whether the missions of customs,  
 2 agriculture, and immigration are equally empha-  
 3 sized.

4 (b) ASSESSMENT OF REPORT.—The Comptroller  
 5 General of the United States shall the review the reports  
 6 submitted under subsection (a) and shall provide an as-  
 7 sessment to the appropriate congressional committees (as  
 8 defined in section 2 of the Homeland Security Act of 2002  
 9 (6 U.S.C. 101)) regarding the effectiveness of the One  
 10 Face at the Border Initiative.

11 **CHAPTER 4—ESTABLISHING A COM-**  
 12 **PREHENSIVE BORDER SECURITY**  
 13 **STRATEGY**

14 **SEC. 51. LAND BORDER SECURITY STRATEGY.**

15 (a) IN GENERAL.—The Secretary of Homeland Secu-  
 16 rity, in consultation with the heads of all other Federal  
 17 agencies with border-related functions or with facilities or  
 18 lands on or along the border, shall submit to the appro-  
 19 priate congressional committees (as defined in section 2  
 20 of the Homeland Security Act of 2002 (6 U.S.C. 101))  
 21 unclassified and classified versions of a unified, com-  
 22 prehensive strategy to secure the land borders of the  
 23 United States not later than 6 months after the date of  
 24 the enactment of this Act. The submission should include

1 a description of the actions already taken to implement  
2 the strategy.

3 (b) CONTENTS.—The report shall cover the following  
4 areas:

5 (1) Personnel.

6 (2) Infrastructure.

7 (3) Technology.

8 (4) Coordination of intelligence among agencies.

9 (5) Legal responsibilities.

10 (6) Criminal statutes.

11 (7) Apprehension goals.

12 (8) Prosecutorial guidelines.

13 (9) Economic impact.

14 (10) Flow of commerce.

15 (c) CONSULTATION.—In creating the strategy de-  
16 scribed in subsection (a), the Federal agencies described  
17 in such subsection shall consult private sector organiza-  
18 tions and nongovernmental organizations with national se-  
19 curity, privacy, agriculture, immigration, customs, trans-  
20 portation, technology, legal, and business expertise.

21 (d) IMPLEMENTATION.—The Secretary shall imple-  
22 ment the strategy not later than 12 months after the date  
23 of the enactment of this Act.

1 (e) EVALUATION.—The Comptroller General of the  
 2 United States shall track, monitor, and evaluate such  
 3 strategy to secure our borders to determine its efficacy.

4 (f) REPORT.—Not later than 15 months after the  
 5 date of the enactment of this Act, and every year there-  
 6 after for the succeeding 5 years, the Comptroller General  
 7 of the United States shall submit a report to the Congress  
 8 on the results of the activities undertaken under sub-  
 9 section (a) during the previous year. Each such report  
 10 shall include an analysis of the degree to which the border  
 11 security strategy has been effective in securing our bor-  
 12 ders. Each such report shall include a collection and sys-  
 13 tematic analysis of data, including workload indicators, re-  
 14 lated to activities to improve and increase border security.

15 **SEC. 52. IMPROVED INFORMATION SHARING.**

16 The Secretary of Homeland Security shall, not later  
 17 than October 1, 2005—

18 (1) integrate the IDENT and IAFIS databases;

19 and

20 (2) make interoperable databases used by in-  
 21 spectors in secondary inspections.

22 **SEC. 53. CREATION OF NORTHERN AND SOUTHERN BOR-**  
 23 **DER COORDINATORS.**

24 (a) IN GENERAL.—Title IV of the Homeland Secu-  
 25 rity Act of 2002 (6 U.S.C. 201 seq.) is amended—

1           (1) in section 402, by redesignating paragraph  
2           (8) as paragraph (9) and by inserting after para-  
3           graph (7) the following:

4           “(8) Increasing the security of the United  
5           States at the ports of entry located along the north-  
6           ern and southern borders, and improving the coordi-  
7           nation among the agencies responsible for maintain-  
8           ing that security.”; and

9           (2) in subtitle C, by adding at the end the fol-  
10          lowing:

11       **“SEC. 431. BORDER COORDINATORS.**

12          “(a) IN GENERAL.—There shall be within the Direc-  
13       torate of Border and Transportation Security the posi-  
14       tions of Northern Border Coordinator and Southern Bor-  
15       der Coordinator, who shall be appointed by the Secretary  
16       and who shall report directly to the Under Secretary for  
17       Border and Transportation Security.

18          “(b) RESPONSIBILITIES.—The Northern Border Co-  
19       ordinator and the Southern Border Coordinator shall un-  
20       dertake the following responsibilities along the northern  
21       and southern borders, respectively—

22               “(1) serve as the primary official of the Depart-  
23       ment responsible for coordinating all Federal secu-  
24       rity activities along the border, especially at land  
25       border ports of entry;

1           “(2) provide enhanced communication and  
2           data-sharing between Federal, State, local, and trib-  
3           al agencies on law enforcement, emergency response,  
4           or security-related responsibilities for areas on or ad-  
5           jacent to the borders of the United States with Can-  
6           ada or Mexico;

7           “(3) work to improve the communications sys-  
8           tems within the Department to facilitate the integra-  
9           tion of communications of matters relating to border  
10          security;

11          “(4) oversee the implementation of the perti-  
12          nent bilateral agreement (the United States-Canada  
13          ‘Smart Border’ Declaration applicable to the north-  
14          ern border and the United States-Mexico Partner-  
15          ship Agreement applicable to the southern border) to  
16          improve border functions, ensure security, and pro-  
17          mote trade and tourism;

18          “(5) consistent with section 102, assess all land  
19          border ports of entry along the appropriate border  
20          and develop a list of infrastructure and technology  
21          improvement projects for submission to the Sec-  
22          retary based on the ability of a project to fulfill im-  
23          mediate security requirements and facilitate trade  
24          across the borders of the United States; and



1 “(6) serve as a liaison to the foreign agencies  
2 with responsibility for the appropriate border with  
3 the United States.”.

4 (b) CLERICAL AMENDMENT.—Section 1(b) of such  
5 Act is amended in the table of contents by inserting after  
6 the item relating to section 430 the following:

“Sec. 431. Border coordinators.”.

7 **SEC. 54. SMART BORDER ACCORD IMPLEMENTATION.**

8 The President shall submit to the appropriate con-  
9 gressional committees (as defined in section 2 of the  
10 Homeland Security Act of 2002 (6 U.S.C. 101)) informa-  
11 tion about the ongoing progress on implementation of the  
12 Smart Border Accords through quarterly updates on meet-  
13 ings of the Smart Border Working Group.

14 **SEC. 55. SENSE OF CONGRESS ON THE PERIOD OF ADMIS-**  
15 **SION FOR BORDER CROSSING CARD HOLD-**  
16 **ERS.**

17 (a) SENSE OF CONGRESS.—It is the sense of the Con-  
18 gress that citizens and nationals of Mexico should be treat-  
19 ed with parity in relation to citizens and nationals of Can-  
20 ada in establishing the periods of time they are lawfully  
21 permitted to remain in the United States.

22 (b) MODIFICATION TO DOCUMENTARY REQUIRE-  
23 MENTS.—Notwithstanding any other provision of law,  
24 once section 110 of the Illegal Immigration Reform and  
25 Immigrant Responsibility Act of 1996 (8 U.S.C. 1221

1 note) is fully implemented, the period of admission for an  
 2 alien entering the United States under a border crossing  
 3 card shall be 6 months.

4       **CHAPTER 5—ENHANCING BORDER**  
 5               **SECURITY PROGRAMS**

6       **SEC. 61. CREATING A MORE EFFECTIVE ENTRY-EXIT SYS-**  
 7               **TEM.**

8           (a) CREATION OF A US–VISIT OUTREACH OF-  
 9       FICE.—

10               (1) IN GENERAL.—The Secretary of Homeland  
 11       Security shall create an “Office of US–VISIT Out-  
 12       reach” that will inform on a regular basis local bor-  
 13       der officials, residents, and businesses about develop-  
 14       ments in the US–VISIT program. Specifically, this  
 15       office shall provide information to local border offi-  
 16       cials, residents, and businesses, and seek guidance  
 17       from such persons and entities about, the practical  
 18       effects to border communities of the implementation  
 19       of US–VISIT.

20               (2) AUTHORIZATION OF APPROPRIATIONS.—

21       There are authorized to be appropriated such sums  
 22       as may be necessary to carry out this subsection.

23           (b) TASK FORCE ON INTEGRATED ENTRY AND EXIT  
 24       SYSTEM.—

1           (1) SENSE OF CONGRESS.—It is the sense of  
2           the Congress that the work of the task force estab-  
3           lished under section 3 of the Immigration and Natu-  
4           ralization Service Data Management Improvement  
5           Act of 2000 (8 U.S.C. 1365a note) was prematurely  
6           terminated, robbing the Department of Homeland  
7           Security of the very expertise needed to properly set  
8           the requirements for, and validate the work of, con-  
9           tractors on information technology programs, par-  
10          ticularly the US-VISIT program.

11          (2) TERMINATION.—Section 3(i) of the Immi-  
12          gration and Naturalization Service Data Manage-  
13          ment Improvement Act of 2000 (8 U.S.C. 1365a  
14          note) is amended to read as follows:

15          “(i) TERMINATION.—The Task Force shall terminate  
16          on a date designated by the Secretary of Homeland Secu-  
17          rity as the date on which the work of the Task Force has  
18          been completed, except that such designated date may not  
19          be earlier than December 21, 2008.”.

20          (c) ELECTRONIC ARRIVAL/DEPARTURE RECORDS.—

21                (1) Not later than December 31, 2005, the Sec-  
22          retary of Homeland Security—

23                    (A) shall ensure that the functions served  
24                    by Department of Homeland Security paper  
25                    Form Number I-94 (Arrival/Departure Record)

1 and Form Number I-94W (NIV Waiver Ar-  
2 rival/Departure Record) are being carried out  
3 by electronic means; and

4 (B) shall eliminate such forms.

5 (2) IMPLEMENTATION PLAN.—Not later than  
6 December 31, 2004, the Secretary of Homeland Se-  
7 curity shall submit to the appropriate congressional  
8 committees (as defined in section 2 of the Homeland  
9 Security Act of 2002 (6 U.S.C.101)) a plan describ-  
10 ing the measures the Secretary is taking to carry  
11 out subsection (c) before the deadline described in  
12 such subsection.

13 **SEC. 62. TRANSPORTATION WORKER IDENTIFICATION**  
14 **CARD.**

15 (a) IN GENERAL.—The Secretary of Homeland Secu-  
16 rity shall submit a report to the Congress not later than  
17 December 31, 2004, regarding the development and dis-  
18 tribution of a transportation worker identification card.

19 (b) CONTENTS.— The report described in subsection  
20 (a) shall include information on—

21 (1) the plan for distribution of the card;

22 (2) the eligibility of Canadian and Mexican  
23 truck drivers who are certified under the Free and  
24 Secure Trade (“FAST”) initiative;

- 1           (3) selected biometric feature and other security  
2       features of the card; and
- 3           (4) the cost of, and deployment schedule for,  
4       card-reading equipment.

5   **SEC. 63. STANDARDS AND VERIFICATION PROCEDURES**  
6                   **FOR THE SECURITY OF INTERMODAL CARGO**  
7                   **CONTAINERS.**

8       (a) STANDARDS AND VERIFICATION PROCEDURES.—  
9   Not later than 180 days after the date of the enactment  
10 of this Act, the Secretary of Homeland Security, acting  
11 through the Under Secretary for Border and Transpor-  
12 tation Security, shall establish standards and verification  
13 procedures for the security of intermodal cargo containers  
14 moving within the intermodal transportation system, in-  
15 cluding standards for sealing and procedures for seal  
16 verifications for cargo containers at loading.

17       (b) REQUIREMENTS.—The standards and verification  
18 procedures established pursuant to subsection (a) shall be  
19 consistent with the cargo container security recommenda-  
20 tions of the Interagency Container Working Group and  
21 the Smart and Secure Trade Lane program and shall meet  
22 the following additional requirements:

- 23           (1) SEAL STANDARDS.—Intermodal cargo con-  
24       tainers shall at a minimum be affixed with a secu-  
25       rity seal equivalent to the level “D” high security

1 seal (as certified by the International Organization  
2 for Standardization (ISO); Certification No. 17712)  
3 at loading.

4 (2) SEAL VERIFICATION.—Procedures shall be  
5 established for the verification of security seals de-  
6 scribed in paragraph (1), including procedures to de-  
7 termine which individuals and entities in the inter-  
8 modal transportation system are responsible for seal-  
9 ing intermodal cargo containers, recording of seal  
10 numbers, changes to such numbers if a container is  
11 opened, and anomalies to security seals.

12 **SEC. 64. SENSE OF CONGRESS ON THE NEED FOR ADDI-**  
13 **TIONAL STAFF FOR THE UNITED STATES**  
14 **CONSULATE-GENERAL IN MEXICO.**

15 It is the sense of the Congress that—

16 (1) the United States Mission to Mexico plays  
17 an important part in ensuring the security of our  
18 southern border;

19 (2) this mission must have sufficient staff in  
20 order to adequately fulfill their consular responsibil-  
21 ities, an important part of a comprehensive strategy  
22 to secure our border;

23 (3) the level of staffing has not kept pace with  
24 rising consular workloads; and

1           (4) therefore, appropriations should be author-  
2           ized for a 25 percent staff increase for the United  
3           States mission to Mexico.

4   **CHAPTER 6—SECURING OUR TRIBAL AND**  
5   **FEDERAL LANDS AND TERRITORIES**

6   **SEC. 65. OFFICE OF TRIBAL SECURITY.**

7           (a) ESTABLISHMENT.—There is established within  
8   the Department of Homeland Security the Office of Tribal  
9   Security.

10          (b) DIRECTOR.—The Office of Tribal Security shall  
11   be administered by a Director, who shall be appointed by  
12   the President by and with the advice and consent of the  
13   Senate. The Director shall report directly to the Secretary  
14   of Homeland Security.

15          (c) DUTIES.—The Director shall be responsible for  
16   coordinating relations between the Federal Government  
17   and federally recognized Indian tribes on issues relating  
18   to homeland security, which shall include the following du-  
19   ties:

20                (1) Providing a point of contact within Depart-  
21               ment of Homeland Security which shall be respon-  
22               sible for—

23                        (A) meeting the broad and complex Fed-  
24               eral responsibilities owed to federally recognized

1 Indian tribes by the Department of Homeland  
2 Security; and

3 (B) soliciting and, where appropriate, ad-  
4 dressing the homeland security concerns of fed-  
5 erally recognized Indian tribes and other parties  
6 interested in Indian affairs.

7 (2) Communicating relevant policies of the De-  
8 partment of Homeland Security to federally recog-  
9 nized Indian tribes and the public.

10 (3) Promoting internal uniformity of Depart-  
11 ment of Homeland Security policies relating to In-  
12 dian country (as defined in section 1151 of title 18,  
13 United States Code).

14 (4) Coordinating with the Directorate of Border  
15 and Transportation Security and tribal governments  
16 to develop a comprehensive border security policy  
17 that addresses law enforcement, personnel, and  
18 funding issues in Indian country (as defined in sec-  
19 tion 1151 of title 18, United States Code) on the  
20 United States borders with Canada and with Mexico.

21 (5) Coordinating with the Directorate for Infor-  
22 mation Analysis and Infrastructure Protection and  
23 tribal governments to develop appropriate policies  
24 for infrastructure protection on Indian lands, as well



1 as information sharing mechanisms with tribal gov-  
2 ernments.

3 (6) Coordinating with the Directorate of Emer-  
4 gency Preparedness and Response and the Office of  
5 State and Local Government Coordination and Pre-  
6 paredness to help ensure that tribal governments are  
7 fully informed of, have access to, and may apply for  
8 all Department of Homeland Security grant oppor-  
9 tunities for emergency response providers, and to de-  
10 velop and achieve preparedness goals for tribal gov-  
11 ernments that are consistent with national goals for  
12 terrorism preparedness, as determined by the De-  
13 partment.

14 (7) Coordinating with the Director of Science  
15 and Technology to identify opportunities to conduct  
16 research and development of homeland security tech-  
17 nologies or scientific understanding for tribal univer-  
18 sities or private sector entities.

19 (8) Coordinating with the Office of Citizenship  
20 and Immigration Services and other relevant offices  
21 within the Department of Homeland Security with  
22 immigration service and enforcement related func-  
23 tions to develop policies on issues related to citizen-  
24 ship and the movement of members of federally rec-  
25 ognized Indian tribes across the United States bor-

1       der, taking into consideration the unique character-  
2       istics of certain federally recognized Indian tribes  
3       with jurisdiction over lands adjacent to the Canadian  
4       and Mexican borders.

5           (9) Coordinating with other offices within the  
6       Department of Homeland Security to develop and  
7       implement sound policies regarding Indian country  
8       (as defined in section 1151 of title 18, United States  
9       Code) and tribal governments.

10 **SEC. 66. TRANSFER OF “SHADOW WOLVES” FROM CPB TO**  
11 **ICE.**

12       (a) TRANSFER OF EXISTING UNIT.—Not later than  
13 180 days after the date of the enactment of this Act, the  
14 Secretary of Homeland Security shall transfer to the Im-  
15 migration and Customs Enforcement all functions (includ-  
16 ing the personnel, assets, and obligations held by or avail-  
17 able in connection with such functions) of the Customs  
18 Patrol Officers unit of U.S. Customs and Border Protec-  
19 tion operating on the Tohono O’odham Indian reservation  
20 (commonly known as the “Shadow Wolves” unit).

21       (b) ESTABLISHMENT OF NEW UNITS.—The Sec-  
22 retary is authorized to establish within U.S. Immigration  
23 and Customs Enforcement additional units of Customs  
24 Patrol Officers in accordance with this section.

1 (c) DUTIES.—The Customs Patrol Officer unit trans-  
 2 ferred pursuant to subsection (a) and the additional units  
 3 established pursuant to subsection (b) shall enforce the  
 4 customs laws of the United States on Indian lands by pre-  
 5 venting the smuggling of narcotics, weapons of mass de-  
 6 struction, and other contraband.

7 (d) BASIC PAY FOR JOURNEYMAN OFFICERS.—The  
 8 rate of basic pay for a journeyman Customs Patrol Officer  
 9 in a unit described in this section shall be not greater than  
 10 the rate of basic pay for GS–13 of the General Schedule.

11 **SEC. 67. DHS AND DOI COORDINATION ON BORDER SECU-**  
 12 **RITY; PROVISION OF TEMPORARY AUTHOR-**  
 13 **ITY TO DHS TO TRANSFER FUNDS.**

14 (a) IN GENERAL.—Until the completion and imple-  
 15 mentation of the border security strategy described in sec-  
 16 tion 51 of this Act, the Secretary of Homeland Security  
 17 is authorized to transfer appropriated funds to the Sec-  
 18 retary of Interior in accordance with the memorandum of  
 19 understanding described in subsection (b) to support the  
 20 security needs of the Department of the Interior, its bu-  
 21 reaus, and tribal entities, including, the protection of bor-  
 22 der lands, critical infrastructure, and key resources.

23 (b) MEMORANDUM.—The Secretary of Homeland Se-  
 24 curity and the Secretary of Interior shall enter into a

1 memorandum of understanding regarding the funds de-  
2 scribed in subsection (a). This memorandum shall—

3 (1) establish criteria for Department of Interior  
4 projects to receive such funding;

5 (2) establish priorities among such projects;  
6 and

7 (3) include a description of the scope of activi-  
8 ties for such projects, including equipment, recurring  
9 maintenance, construction of facilities, recapitaliza-  
10 tion of facilities, and operations.

11 (c) REPORT.—The appropriate congressional com-  
12 mittees (as defined in section 2 of the Homeland Security  
13 Act of 2002 (6 U.S.C. 101)) shall be notified 15 days prior  
14 to any transfer of funds. Not later than September 30,  
15 2005, the Secretary of Interior shall submit to the appro-  
16 priate congressional committees (as so defined) a copy of  
17 the memorandum of understanding described in sub-  
18 section (b).

## 19 **Subtitle B—Securing Identification** 20 **Documents**

### 21 **SEC. 71. STATE IDENTIFICATION DOCUMENT STANDARDS.**

22 (a) STANDARDS FOR ACCEPTANCE BY FEDERAL  
23 AGENCIES.—

24 (1) IN GENERAL.—A Federal agency may not  
25 accept for any identification-related purpose a driv-

1 er's license or other comparable identification docu-  
2 ment issued by a State or subdivision thereof, in-  
3 cluding a birth certificate, unless the license or docu-  
4 ment is in a form that is consistent with require-  
5 ments set forth in regulations promulgated by the  
6 Secretary of Homeland Security after consultation  
7 with the Department of Transportation, the chief  
8 driver's license officials of each State, and any other  
9 organization determined appropriate by the Sec-  
10 retary that represents the States. The form shall  
11 contain security features designed to limit tam-  
12 pering, counterfeiting, photocopying, or otherwise  
13 duplicating the license or document for fraudulent  
14 purposes and to limit use of the license or document  
15 by impostors. States or subdivisions thereof may use  
16 a biometric identifier in addition to these standards  
17 if they already do so, or choose to do so.

18 (2) NO NATIONAL IDENTIFICATION CARD.—  
19 Nothing in this section shall be construed to author-  
20 ize, directly or indirectly, the establishment,  
21 issuance, or use of a national identification card.

22 (3) DEADLINE.—The Secretary of Homeland  
23 Security shall promulgate the regulations referred to  
24 in paragraph (1) not later than 6 months after the  
25 date of the enactment of this Act.

1 (b) GRANTS TO STATE AND LOCAL GOVERN-  
2 MENTS.—

3 (1) GRANTS TO STATES.—Beginning on the  
4 date final regulations are promulgated under sub-  
5 section (b), the Secretary of Homeland Security  
6 shall make grants to States to assist them in issuing  
7 driver’s licenses and other comparable identification  
8 documents that satisfy the requirements under that  
9 subsection.

10 (2) GRANTS TO LOCAL GOVERNMENTS.—Begin-  
11 ning on the date final regulations are promulgated  
12 under subsection (b), the Secretary of Homeland Se-  
13 curity shall make grants to local governments to as-  
14 sist them in issuing birth certificates and other com-  
15 parable identification documents that satisfy the re-  
16 quirements under that subsection.

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

20 (c) EFFECTIVE DATES AND APPLICATION.—

21 (1) IN GENERAL.—Except as otherwise pro-  
22 vided in this subsection, this section shall take effect  
23 on the date of the enactment of this Act.

24 (2) PROHIBITION ON FEDERAL AGENCIES.—  
25 Subsection (b)(1)—

1 (A) shall take effect beginning on October  
 2 1, 2006; and

3 (B) shall apply only to—

4 (i) a license or document issued to an  
 5 individual for the first time; and

6 (ii) a replacement or renewal license  
 7 or document issued according to State or  
 8 local law.

9 **SEC. 72. TRAINING IN FRAUD DETECTION AND PREVEN-**  
 10 **TION FOR OFFICERS IN DIVISIONS OF MOTOR**  
 11 **VEHICLES.**

12 The Federal Law Enforcement Training Center shall  
 13 create a program to train employees of U.S. Immigration  
 14 and Customs Enforcement to provide, in the States, train-  
 15 ing in fraud detection and prevention to State and local  
 16 law enforcement officers stationed, or intended to be sta-  
 17 tioned, in divisions of motor vehicles.

18 **Subtitle C—Securing the Interior;**  
 19 **Tools for Border Security**

20 **CHAPTER 1—INCREASE IN STAFF FOR ICE**

21 **SEC. 81. PERSONNEL INCREASE.**

22 (a) AUTHORIZATION.—There are authorized to be ap-  
 23 propriated to the Secretary of Homeland Security such  
 24 sums as may be necessary so as to increase by 225 the  
 25 number of positions for full-time special agents of U.S.

1 Immigration and Customs Enforcement carrying out du-  
2 ties related to border security above the number of such  
3 positions which existed at the end of fiscal year 2004.

4 (b) SENSE OF CONGRESS.—It is the sense of the  
5 Congress that—

6 (1) since U.S. Immigration and Customs En-  
7 forcement plays a key role in the fight against ter-  
8 rorism and in securing the borders, the Secretary of  
9 Homeland Security should work expeditiously to en-  
10 sure all special agents and national security analyt-  
11 ical support staff receive a Top Secret security clear-  
12 ance; and

13 (2) maintenance of Top Secret security clear-  
14 ance must be a requirement of continued employ-  
15 ment as a special agent.

16 **SEC. 82. ICE STRATEGY AND STAFFING ASSESSMENT.**

17 (a) IN GENERAL.—Not later than December 31 of  
18 each year, the Secretary of Homeland Security shall sub-  
19 mit to the Government Accountability Office and the ap-  
20 propriate congressional committees (as defined by section  
21 2 of the Homeland Security Act of 2002 (6 U.S.C. 101))  
22 a written report describing its strategy for deploying  
23 human resources (including investigators and support per-  
24 sonnel) to accomplish its border security mission.



1 (b) REVIEW.—Not later than 90 days after receiving  
2 any report under subsection (a), the Government Account-  
3 ability Office shall submit to each appropriate congres-  
4 sional committee (as defined by section 2 of the Homeland  
5 Security Act of 2002 (6 U.S.C. 101)) a written evaluation  
6 of such report, including recommendations pertaining to  
7 how U.S. Immigration and Customs Enforcement could  
8 better deploy human resources to achieve its border secu-  
9 rity mission through legislative or administrative action.

10 **CHAPTER 2—INCREASE IN DETENTION**  
11 **SPACE**

12 **SEC. 85. INCREASE IN DETENTION SPACE.**

13 (a) FUNDING INCREASE.—There are authorized to be  
14 appropriated to the Secretary of Homeland Security such  
15 sums as may be necessary to ensure an average daily bed  
16 occupancy rate of 22,500 for detention and removal oper-  
17 ations of U.S. Immigration and Customs Enforcement.

18 (b) PERSONNEL INCREASE.—There are authorized to  
19 be appropriated to the Secretary of Homeland Security  
20 such sums as may be necessary so as to increase by 541  
21 the number of positions for full-time employees of U.S.  
22 Immigration and Customs Enforcement carrying out du-  
23 ties in detention and removal operations above the number  
24 of such positions which existed at the end of fiscal year  
25 2004.

1       (c) SENSE OF CONGRESS.—It is the sense of the Con-  
2 gress that the Office of Detention and Removal Operation  
3 should be placed under the operational control of the Com-  
4 missioner of U.S. Customs and Border Protection, since  
5 the largest client of such office is the Border Patrol. The  
6 Secretary of Homeland Security is directed to move the  
7 Office of Detention and Removal Operations from U.S.  
8 Immigration and Customs Enforcement to U.S. Customs  
9 and Border Protection.

10       (d) REPORT ON HOMELAND SECURITY DETENTION  
11 NEEDS.—The Secretary of Homeland Security shall sub-  
12 mit to the appropriate congressional committees (as de-  
13 fined in section 2 of the Homeland Security Act of 2002  
14 (6 U.S.C. 101)) a report on detention and removal oper-  
15 ations, detailing the amount of additional detention space  
16 and resources required to detain all persons presenting a  
17 possible threat to homeland security. This report shall in-  
18 clude information on alternatives to detention including  
19 electronic monitoring, telephone and voice recognition pro-  
20 grams for those on bond, and conducting deportation pro-  
21 ceedings prior to prisoners release from Federal, State,  
22 and local prisons. Additionally the report should provide  
23 information on countries to which removal is problematic.

1 **SEC. 86. SENSE OF CONGRESS REGARDING PROCESSING OF**  
2 **CRIMINAL ALIENS WHILE INCARCERATED.**

3 It is the sense of the Congress that immigration cases  
4 involving incarcerated criminal aliens should be processed  
5 while the criminal alien is in prison. In order to maximize  
6 the use of existing detention space, the Department of  
7 Homeland Security should work with prisons in which  
8 criminal aliens are incarcerated to complete their removal  
9 or deportation proceeding before such aliens are released  
10 from prison and sent to Federal detention.

11 **SEC. 87. SENSE OF CONGRESS REGARDING INCREASE IN**  
12 **PROSECUTORS AND IMMIGRATION JUDGES.**

13 It is the sense of the Congress that—

14 (1) prosecutors and immigration judges are  
15 critical for the prompt and proper enforcement of  
16 our immigration laws, and are an important part of  
17 a comprehensive strategy;

18 (2) an insufficient number of prosecutors and  
19 immigration judges currently exists to enforce the  
20 immigration laws of the United States; and

21 (3) therefore, appropriations should be author-  
22 ized for appropriate staff increases for judicial and  
23 prosecutorial offices, commensurate with other per-  
24 sonnel increases directed in this Act.

1           **CHAPTER 3—ENHANCING LAW**  
2           **ENFORCEMENT ACCESS TO INFORMANTS**

3           **SEC. 91. NEW CLASS OF NONIMMIGRANT ALIENS.**

4           (a) IN GENERAL.—Section 101(a)(15)(S) of the Im-  
5 migration and Nationality Act (8 U.S.C. 1101(a)(15)(S))  
6 is amended—

7           (1) in clause (i), by striking “or” at the end;

8           (2) in clause (ii), by striking the comma at the  
9 end and inserting “; or”;

10          (3) by inserting after clause (ii) the following:

11               “(iii) who the Secretary of Homeland Se-  
12 curity, the Secretary of State, or the Attorney  
13 General determines—

14               “(I) is in possession of critical reliable  
15 information concerning a commercial alien  
16 smuggling organization or enterprise;

17               “(II) is willing to supply or has sup-  
18 plied such information to a Federal or  
19 State court; and

20               “(III) whose presence in the United  
21 States the Secretary of Homeland Secu-  
22 rity, the Secretary of State, or the Attor-  
23 ney General determines is essential to the  
24 success of an authorized criminal investiga-  
25 tion, the successful prosecution of an indi-

1                   vidual involved in the commercial alien  
 2                   smuggling organization or enterprise, or  
 3                   the disruption of such organization or en-  
 4                   terprise,”;

5                   (4) by inserting “, or with respect to clause  
 6                   (iii), the Secretary of Homeland Security, the Sec-  
 7                   retary of State, or the Attorney General” after  
 8                   “jointly”; and

9                   (5) by striking “(i) or (ii)” and inserting “(i),  
 10                  (ii), or (iii)”.

11                  (b) ADMISSION OF NONIMMIGRANTS.—Section  
 12                  214(k) of the Immigration and Nationality Act (8 U.S.C.  
 13                  1184(k)) is amended—

14                   (1) by adding at the end of paragraph (1) the  
 15                   following: “The number of aliens who may be pro-  
 16                   vided a visa as nonimmigrants under section  
 17                   101(a)(15)(S)(iii) in any fiscal year may not exceed  
 18                   400.”; and

19                   (2) by adding at the end the following:

20                  “(5) If the Secretary of Homeland Security, the Sec-  
 21                  retary of State, or the Attorney General determines that  
 22                  the identity of a nonimmigrant described in clause (iii) of  
 23                  section 101(a)(15)(S), or that of any family member of  
 24                  such a nonimmigrant who is provided nonimmigrant sta-  
 25                  tus pursuant to such section, must be protected, such offi-

1 cial may take such lawful action as the official considers  
 2 necessary to effect such protection.”.

3 **SEC. 92. ADJUSTMENT OF STATUS OF NONIMMIGRANT TO**  
 4 **THAT OF PERSON ADMITTED FOR PERMA-**  
 5 **NENT RESIDENCE.**

6 Section 245(j) of the Immigration and Nationality  
 7 Act (8 U.S.C. 1255(j)) is amended—

8 (1) in paragraph (3), by striking “(1) or (2),”  
 9 and inserting “(1), (2), (3), or (4),”;

10 (2) by redesignating paragraph (3) as para-  
 11 graph (5);

12 (3) by inserting after paragraph (2) the fol-  
 13 lowing:

14 “(3) If, in the opinion of the Secretary of Homeland  
 15 Security, the Secretary of State, or the Attorney Gen-  
 16 eral—

17 “(A) a nonimmigrant admitted into the United  
 18 States under section 101(a)(15)(S)(iii) has supplied  
 19 information described in subclause (I) of such sec-  
 20 tion; and

21 “(B) the provision of such information has sub-  
 22 stantially contributed to the success of a commercial  
 23 alien smuggling investigation, the disruption of a  
 24 commercial alien smuggling operation, or the pros-

1       ecution of an individual described in subclause (III)  
2       of that section,  
3       the Secretary of Homeland Security may adjust the status  
4       of the alien (and the spouse, married and unmarried sons  
5       and daughters, and parents of the alien if admitted under  
6       that section) to that of an alien lawfully admitted for per-  
7       manent residence if the alien is not described in section  
8       212(a)(3)(E).

9       “(4) The Secretary of Homeland Security may adjust  
10      the status of a nonimmigrant admitted into the United  
11      States under section 101(a)(15)(S)(iii) (and the spouse,  
12      married and unmarried sons and daughters, and parents  
13      of the nonimmigrant if admitted under that section) to  
14      that of an alien lawfully admitted for permanent residence  
15      on the basis of a recommendation of the Secretary of State  
16      or the Attorney General.”; and

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

18       “(6) If the Secretary of Homeland Security, the Sec-  
19      retary of State, or the Attorney General determines that  
20      the identity of a person whose status is adjusted under  
21      this subsection must be protected, such official may take  
22      such lawful action as the official considers necessary to  
23      effect such protection.”.

1   **CHAPTER 4—INCREASED PENALTIES FOR**  
2                                   **SMUGGLING**

3   **SEC. 95. COMBATING AGGRAVATED ALIEN SMUGGLING.**

4           (a) **CRIMINAL PENALTIES.**—Section 274(a) of the  
5   Immigration and Nationality Act (8 U.S.C. 1324(a)) is  
6   amended by adding at the end the following:

7           “(4) In the case of a person who has brought aliens  
8   into the United States in violation of this subsection, the  
9   sentence otherwise provided for may be increased by up  
10   to 10 years if—

11           “(A) the offense was part of an ongoing com-  
12   mercial organization or enterprise;

13           “(B) aliens were transported in groups of 10 or  
14   more;

15           “(C) aliens were transported in a manner that  
16   endangered their lives or the aliens presented a life-  
17   threatening health risk to people in the United  
18   States; or

19           “(D) aliens were transported for purposes of  
20   prostitution or involuntary servitude.”.

21           (b) **REWARDS PROGRAM.**—Section 274 of the Immi-  
22   gration and Nationality Act (8 U.S.C. 1324) is amended  
23   by adding at the end the following:

24           “(e) **REWARDS PROGRAM.**—



1           “(1) PURPOSE.—The rewards program shall be  
2           designed to assist in the elimination of aggravated  
3           alien smuggling.

4           “(2) DEFINITION.—For purposes of this sub-  
5           section, the term ‘aggravated alien smuggling’  
6           means a violation for which increased penalties are  
7           provided under subsection (a)(4).

8           “(3) ADMINISTRATION.—The rewards program  
9           shall be administered by the Secretary of Homeland  
10          Security, in consultation, as appropriate, with the  
11          Attorney General and the Secretary of State.

12          “(4) REWARDS AUTHORIZED.—In the sole dis-  
13          cretion of the Secretary of Homeland Security, such  
14          Secretary, in consultation, as appropriate, with the  
15          Attorney General and the Secretary of State, may  
16          pay a reward to any individual who furnishes infor-  
17          mation or testimony leading to—

18               “(A) the arrest or conviction of any indi-  
19               vidual conspiring or attempting to commit an  
20               act of aggravated alien smuggling;

21               “(B) the arrest or conviction of any indi-  
22               vidual committing such an act;

23               “(C) the arrest or conviction of any indi-  
24               vidual aiding or abetting the commission of  
25               such an act;

1           “(D) the prevention, frustration, or favor-  
2           able resolution of such an act, including the dis-  
3           mantling of an aggravated alien smuggling or-  
4           ganization in whole or in significant part; or

5           “(E) the identification or location of an in-  
6           dividual who holds a key leadership position in  
7           an aggravated alien smuggling operation.

8           “(5) AUTHORIZATION OF APPROPRIATIONS.—  
9           There are authorized to be appropriated such sums  
10          as may be necessary to carry out this subsection.  
11          Amounts appropriated under this paragraph shall  
12          remain available until expended.

13          “(6) INELIGIBILITY.—An officer or employee of  
14          any Federal, State, local, or foreign government  
15          who, while in performance of his or her official du-  
16          ties, furnishes information described in paragraph  
17          (4) shall not be eligible for a reward under this sub-  
18          section for such furnishing.

19          “(7) PROTECTION MEASURES.—If the Secretary  
20          of Homeland Security, the Secretary of State, or the  
21          Attorney General determines that the identity of an  
22          individual who furnishes information or testimony  
23          described in paragraph (4), or the identity of any  
24          spouse, parent, son, or daughter of such an indi-  
25          vidual, must be protected, such official may take

1 such lawful action as the official considers necessary  
2 to effect such protection.

3 “(8) LIMITATIONS AND CERTIFICATION.—

4 “(A) MAXIMUM AMOUNT.—No reward  
5 under this subsection may exceed \$100,000, ex-  
6 cept as personally authorized by the Secretary  
7 of Homeland Security if such Secretary deter-  
8 mines, in consultation, as appropriate, with the  
9 Attorney General and the Secretary of State,  
10 that the offer or payment of an award of a larg-  
11 er amount is necessary to combat a aggravated  
12 alien smuggling operation.

13 “(B) APPROVAL.—Any reward under this  
14 subsection exceeding \$50,000 shall be person-  
15 ally approved by the Secretary of Homeland Se-  
16 curity.

17 “(C) CERTIFICATION FOR PAYMENT.—Any  
18 reward granted under this subsection shall be  
19 certified for payment by the Secretary of Home-  
20 land Security.”.

21 (c) OUTREACH PROGRAM.—Section 274 of the Immi-  
22 gration and Nationality Act (8 U.S.C. 1324), as amended  
23 by subsection (b), is further amended by adding at the  
24 end the following:

1       “(f) OUTREACH PROGRAM.—The Secretary of Home-  
2 land Security, in consultation, as appropriate, with the At-  
3 torney General and the Secretary of State, shall develop  
4 and implement an outreach program to educate the public  
5 in the United States and abroad about—

6               “(1) the penalties for bringing in and harboring  
7 aliens in violation of this section; and

8               “(2) the financial rewards and other incentives  
9 available under subsection (e) for assisting in the in-  
10 vestigation, disruption, or prosecution of an aggra-  
11 vated alien smuggling operation.”.

12 **SEC. 96. INCREASED CRIMINAL SENTENCES AND FINES**  
13 **FOR ALIEN SMUGGLING.**

14       (a) IN GENERAL.—Subject to subsection (b), pursu-  
15 ant to its authority under section 994(p) of title 28,  
16 United States Code, the United States Sentencing Com-  
17 mission shall promulgate sentencing guidelines or amend  
18 existing sentencing guidelines for smuggling, transporting,  
19 harboring, or inducing aliens under sections 274(a)(1)(A)  
20 of the Immigration and Nationality Act (8 U.S.C.  
21 1324(a)(1)(A)) so as to—

22               (1) triple the minimum term of imprisonment  
23 under that section for offenses involving the smug-  
24 gling, transporting, harboring, or inducing of—

1 (A) 1 to 5 aliens from 10 months to 30  
2 months;

3 (B) 6 to 24 aliens from 18 months to 54  
4 months;

5 (C) 25 to 100 aliens from 27 months to 81  
6 months; and

7 (D) 101 aliens or more from 37 months to  
8 111 months;

9 (2) increase the minimum level of fines for each  
10 of the offenses described in subparagraphs (A)  
11 through (D) of paragraph (1) to the greater of  
12 \$25,000 per alien or 3 times the amount the defend-  
13 ant received or expected to receive as compensation  
14 for the illegal activity;

15 (3) increase by at least 2 offense levels above  
16 the applicable enhancement in effect on the date of  
17 the enactment of this Act the sentencing enhance-  
18 ments for intentionally or recklessly creating a sub-  
19 stantial risk of serious bodily injury or causing bod-  
20 ily injury, serious injury, or permanent or life  
21 threatening injury;

22 (4) for actions causing death, increase the of-  
23 fense level to be equivalent to that for involuntary  
24 manslaughter under section 1112 of title 18, United  
25 States Code; and

1           (5) for corporations or other business entities  
2           that knowingly benefit from such offenses, increase  
3           the minimum level of fines for each of the offenses  
4           described in subparagraphs (A) through (D) of para-  
5           graph (1) to \$50,000 per alien employed directly, or  
6           indirectly through contract, by the corporation or  
7           entity.

8           (b) EXCEPTION.—Subsection (a) shall not apply to  
9           an offense that involved the smuggling, transporting, or  
10          harboring only of the defendant’s spouse or child (or both  
11          the defendant’s spouse and child).

12          (c) DEADLINE.—The United States Sentencing Com-  
13          mission shall carry out subsection (a) not later than the  
14          date that is 6 months after the date of the enactment of  
15          this Act.

16       **SEC. 97. INCREASED PENALTY FOR SMUGGLING.**

17          (a) IN GENERAL.—The third undesignated para-  
18          graph of section 545 of title 18, United States Code, is  
19          amended by striking “five years” and inserting “20  
20          years”.

21          (b) ENHANCED PENALTY FOR CAUSING DEATH.—  
22          Pursuant to its authority under section 994 of title 28,  
23          United States Code, the United States Sentencing Com-  
24          mission shall amend the Federal sentencing guidelines to  
25          provide sentencing enhancements for an offense under sec-

tion 545 of title 18, United States Code, as amended by subsection (a), that results in the death of a person.

(c) CONSISTENCY WITH OTHER GUIDELINES.—In carrying out this section, the United States Sentencing Commission—

(1) shall ensure that there is reasonable consistency with other Federal sentencing guidelines; and

(2) shall avoid duplicative punishments for substantially the same offense.

## **Subtitle D—Beyond Our Borders (International)**

### **CHAPTER 1—COORDINATING DHS MISSION OVERSEAS**

#### **SEC. 101. OFFICE OF INTERNATIONAL AFFAIRS; EFFECTIVE AND EFFICIENT MANAGEMENT AND COORDI- NATION OF INTERNATIONAL ASSIGNMENTS.**

Section 879(b) of the Homeland Security Act of 2002 (6 U.S.C. 459(b)) is amended by adding at the end the following:

“(5) To manage all overseas assignments of personnel of the Department, including by coordinating with the Department of State with respect to such assignments and related support matters.”.

1 **SEC. 102. CREATION OF AN OFFICE OF OVERSEAS SERVICE.**

2 Section 879 of the Homeland Security Act of 2002  
3 (6 U.S.C. 459) is amended by adding at the end the fol-  
4 lowing:

5 “(c) OFFICE OF OVERSEAS SERVICE.—

6 “(1) IN GENERAL.—The Secretary shall create  
7 an Office of Overseas Service within the Office of  
8 International Affairs similar to the Foreign Agricul-  
9 tural Service of the Department of Agriculture and  
10 the United States and Foreign Commercial Service  
11 of the Department of Commerce. The Director of  
12 the Office of International Affairs shall be respon-  
13 sible for administering the Office of Overseas Serv-  
14 ice.

15 “(2) FUNCTIONS.—The Office of Overseas  
16 Service shall be responsible for the following func-  
17 tions:

18 “(A) Serving as the contact for the De-  
19 partment of Homeland Security with the State  
20 Department to coordinate overseas assignments.

21 “(B) Recruitment of personnel for overseas  
22 service.

23 “(C) Retention of personnel for overseas  
24 service.

25 “(D) Oversight of training of personnel for  
26 overseas service.



1 “(3) STUDY AND REPORT.—

2 “(A) STUDY.—Prior to creating the Office  
3 of Overseas Service, the Secretary shall direct  
4 the Director of the Office of International Af-  
5 fairs to conduct a study on how best to create  
6 a foreign service component for the Department  
7 for the purpose of adequately recruiting and re-  
8 taining personnel who are willing and able to  
9 serve in the Department in an overseas capac-  
10 ity.

11 “(B) REPORT.—Not later than January 1,  
12 2005, the Director of the Office of Inter-  
13 national Affairs shall prepare and submit to the  
14 appropriate congressional committees (as de-  
15 fined by section 2 of the Homeland Security  
16 Act of 2002 (6 U.S.C. 101)) a report that con-  
17 tains the results of the study on creating an Of-  
18 fice of Overseas Service conducted pursuant to  
19 subparagraph (A) and an implementation plan  
20 for carrying out such study’s recommenda-  
21 tions.”.

1       **CHAPTER 2—IMPLEMENTING A MORE**  
2       **EFFECTIVE VISA SECURITY PROGRAM**

3       **SEC. 105. IMPLEMENTING A MORE EFFECTIVE VISA SECU-**  
4       **RITY PROGRAM.**

5           (a) IN GENERAL.—Not later than 120 days after the  
6       date of the enactment of this Act, the Secretary of Home-  
7       land Security shall submit to the Congress a report—

8               (1) outlining how the Department of Homeland  
9       Security will implement the recommendations of the  
10      report issued in August 2004 by the Office of the  
11      Inspector General of the Department of Homeland  
12      Security entitled “An Evaluation of DHS Activities  
13      to Implement Section 428 of the Homeland Security  
14      Act of 2002”;

15              (2) detailing such department’s progress in im-  
16      plementing each of the recommendations described  
17      in paragraph (1); and

18              (3) examining the visa security program’s effec-  
19      tiveness as a counter-terrorism program.

20           (b) CONSULTATION.—In preparing the report de-  
21      scribed in subsection (a), the Secretary of Homeland Secu-  
22      rity shall consult with the Secretary of State.

23           (c) CONTENTS.—The report shall also include the fol-  
24      lowing:

1           (1) OVERSEAS PLACEMENT OF VISA SECURITY  
2           OFFICERS.—The report shall assess the criteria used  
3           in deciding where to station or not to station visa se-  
4           curity officers

5           (2) QUALIFICATIONS OF VISA SECURITY OFFI-  
6           CERS.—The report shall assess the skills required of  
7           a visa security officer, including required foreign  
8           language skills.

9           (3) DUTIES.—The report shall contain both the  
10          model visa security officer position description and  
11          the current duties of the visa security officers sta-  
12          tioned overseas.

13          (4) PLACEMENT WITHIN DEPARTMENT.—The  
14          report shall contain a recommendation on the proper  
15          location of the program within Department of  
16          Homeland Security to maximize its value as a  
17          counter-terrorism program.

## 18   **CHAPTER 3—SECURING THE VISA WAIVER** 19                                   **PROGRAM**

### 20   **SEC. 106. VISA WAIVER PROGRAM PASSENGER SCREENING;** 21                                   **BIOGRAPHICAL CHECKS.**

22          (a) IN GENERAL.—The Secretary of Homeland Secu-  
23          rity shall establish, as part of the integrated entry and  
24          exit data system required under section 110 of the Illegal  
25          Immigration Reform and Immigrant Responsibility Act of

1 1996 (8 U.S.C. 1365a), an electronic system through  
2 which an alien seeking to enter the United States without  
3 a visa under the visa waiver program described in section  
4 217 of the Immigration and Nationality Act (8 U.S.C.  
5 1187) is required to submit biographical information prior  
6 to embarkation.

7 (b) ELEMENTS.—The electronic system required to  
8 be established under subsection (a) shall satisfy the fol-  
9 lowing requirements:

10 (1) ELECTRONIC DETERMINATION OF ELIGI-  
11 BILITY.—The system shall include a method for an  
12 electronic determination to be made, and an elec-  
13 tronic response to be provided, in 30 minutes or less,  
14 as to whether or not an alien submitting information  
15 as described in subsection (a) is eligible to be admit-  
16 ted to the United States as a nonimmigrant visitor  
17 described in section 101(a)(15)(B) of the Immigra-  
18 tion and Nationality Act (8 U.S.C. 1101(a)(15)(B)).

19 (2) CARRIER OBLIGATIONS.—The system shall  
20 include a method for requiring—

21 (A) carriers and other corporations de-  
22 scribed in section 217(a)(5) of such Act (8  
23 U.S.C. 1187(a)(5)) to inquire electronically,  
24 prior to an alien passenger's embarkation with-  
25 out a visa, whether the alien has been deter-

1           mined, using the system described in this sec-  
2           tion, to be eligible for such an admission; and

3                   (B) the electronic response to such inquiry  
4           to be provided in 90 seconds or less.

5           (3) DEPLOYMENT.—The system shall be de-  
6           ployed as soon as possible after the date of the en-  
7           actment of this Act.

8           (4) FEE.—The Secretary of Homeland Security  
9           shall establish a fee to be charged to aliens described  
10          in subsection (a) that is set at a level that will en-  
11          sure the recovery of the full costs of establishing and  
12          operating the system.

13          (c) CONSULTATION.—In developing the system, the  
14          Secretary of Homeland Security shall consult with, and  
15          allow for the system’s review by, a private sector group  
16          consisting of individuals with expertise in immigration,  
17          travel, tourism, privacy, national security, or computer se-  
18          curity issues.

19   **SEC. 107. DEFINING SECURITY RESPONSIBILITIES OF THE**  
20                   **VISA WAIVER PROGRAM OFFICE.**

21          (a) IN GENERAL.—The Secretary of Homeland Secu-  
22          rity shall create a Visa Waiver Program Office.

23          (b) FUNCTIONS.— The functions of the head of the  
24          Visa Waiver Program Office shall include the following:

1           (1) Developing a plan to submit the annual re-  
2           port required under section 110(e) of the Illegal Im-  
3           migration Reform and Immigrant Responsibility Act  
4           of 1996 (8 U.S.C. 1221 note).

5           (2) Developing protocols and a plan to conduct  
6           biennial country reviews.

7           (3) Determining funding levels necessary to  
8           support the conduct of country reviews and to carry  
9           out the other responsibilities of the office.

10          (4) Developing a process to comprehensively  
11          check all lost and stolen passport data provided  
12          countries designated as visa waiver program coun-  
13          tries under section 217 of the Immigration and Na-  
14          tionality Act (8 U.S.C. 1187) against entry and exit  
15          data in information systems of the United States.

16          (5) Developing procedures to collect and ana-  
17          lyze data concerning the fraudulent use of visa waiv-  
18          er program passports.

19          (6) Including in the country review protocols  
20          provisions to review document manufacturing and  
21          issuing security practices.

22          (7) Coordinating with the Department of State  
23          to establish standard operating procedure for sys-  
24          temic and proactive collection of lost and stolen  
25          passport information.

1           (8) Requiring that inventory control numbers  
2           and passport numbers be queried in lookout systems.

3           (9) Reviewing policies that allow the return of  
4           fraudulent travel documents to those who presented  
5           them when they are sent back to their countries of  
6           origin.

7   **SEC. 108. ADDITIONAL AND CONTINUOUS TRAINING FOR**  
8                   **INSPECTORS IN FRAUD AND IMPOSTER DE-**  
9                   **TECTION.**

10       (a) FRAUD DETECTION.—The Secretary of Home-  
11   land Security shall provide inspectors conducting inspec-  
12   tions of aliens entering the United States pursuant to the  
13   visa waiver program described in section 217 of the Immi-  
14   gration and Nationality Act (8 U.S.C. 1187) with en-  
15   hanced and continuous training in detecting imposters and  
16   in passport and document fraud detection. Additional  
17   training should be provided when any program country  
18   designated under such section makes changes in its pass-  
19   ports. The Secretary shall report to the appropriate con-  
20   gressional committees (as defined in section 2 of the  
21   Homeland Security Act of 2002 (6 U.S.C. 101)) on the  
22   amount and the type of training received such inspectors  
23   on detecting and handling fraudulent documents.

24       (b) FOREIGN LANGUAGES.—The Secretary of Home-  
25   land Security shall provide inspectors described in sub-

1 section (a) with foreign language training in languages de-  
 2 termined to be necessary to carrying out the anti-ter-  
 3 rorism and law enforcement functions of such inspectors.

4 (c) AUTHORIZATION OF APPROPRIATIONS.—There  
 5 are authorized to be appropriated such funds as may be  
 6 necessary to develop the capability to scan fraudulent doc-  
 7 uments and to transmit a high quality color image to the  
 8 forensic document laboratory. The Secretary of Homeland  
 9 Security shall ensure that staff is available in the Forensic  
 10 Document Laboratory on a 24-hour basis to assist in de-  
 11 termining the validity of the scanned document.

12 **SEC. 109. AUTHORIZATION OF FUNDS.**

13 There are authorized to be appropriated such sums  
 14 as may be necessary to carry out the functions described  
 15 in this subchapter.

16 **Subtitle E—Securing the**  
 17 **Immigration Benefits Process**

18 **SEC. 111. IMMIGRATION OMBUDSMAN.**

19 (a) EXTENSION OF AUTHORITY TO ALL IMMIGRA-  
 20 TION FUNCTIONS.—Section 452 of the Homeland Security  
 21 Act of 2002 (6 U.S.C. 272) is amended—

22 (1) in subsection (a), by striking “Citizenship  
 23 and Immigration Services” and inserting “Immigra-  
 24 tion”;

25 (2) in subsection (b)—



1 (A) in paragraph (1), by striking “the Bu-  
2 reau of Citizenship and Immigration Services”  
3 and inserting “U.S. Citizenship and Immigra-  
4 tion Services, U.S. Immigration and Customs  
5 Enforcement, or U.S. Customs and Border Pro-  
6 tection”; and

7 (B) in each of paragraphs (2) and (3), by  
8 striking “the Bureau of Citizenship and Immi-  
9 gration Services” each place such term appears  
10 and inserting “such entities”;

11 (3) in subsection (c)—

12 (A) in paragraph (1), by striking “the Bu-  
13 reau of Citizenship and Immigration Services”  
14 each place such term appears and inserting  
15 “the entities described in subsection (b)”; and

16 (B) in paragraph (2), by striking “Director  
17 of the Bureau of Citizenship and Immigration  
18 Services,” and inserting “Director of U.S. Citi-  
19 zenship and Immigration Services, Assistant  
20 Secretary for U.S. Immigration and Customs  
21 Enforcement, U.S. Customs and Border Protec-  
22 tion Commissioner”;

23 (4) in subsection (d)—

24 (A) in paragraph (2), by striking “the Bu-  
25 reau of Citizenship and Immigration Services”

1 and inserting “the entities described in sub-  
2 section (b)”;

3 (B) in paragraph (4), by striking “Director  
4 of the Bureau of Citizenship and Immigration  
5 Services,” and inserting “Director of U.S. Citi-  
6 zenship and Immigration Services, Assistant  
7 Secretary for U.S. Immigration and Customs  
8 Enforcement, and U.S. Customs and Border  
9 Protection Commissioner”;

10 (5) in subsection (e)(2), by striking “the Bu-  
11 reau of Citizenship and Immigration Services” and  
12 inserting “the entities described in subsection (b)”;

13 (6) in subsection (f)—

14 (A) by amending the subsection heading to  
15 read as follows: “RESPONSIBILITIES.—”;

16 (B) by striking “Director of the Bureau of  
17 Citizenship and Immigration Services,” and in-  
18 serting “Director of U.S. Citizenship and Immi-  
19 gration Services, Assistant Secretary for U.S.  
20 Immigration and Customs Enforcement, and  
21 the U.S. Customs and Border Protection Com-  
22 missioner”;

23 (C) by striking “director” each place such  
24 term appears and inserting “person”; and

1           (7) in subsection (g), by striking “the Bureau  
2           of Citizenship and Immigration Services” each place  
3           such term appears and inserting “the entities de-  
4           scribed in subsection (b)”.

5           (b) PUBLIC INFORMATION CAMPAIGN; PRIVATE SEC-  
6           TOR INPUT.—

7           (1) IN GENERAL.—Section 452(d) of the Home-  
8           land Security Act of 2002 (6 U.S.C. 272(d)) is  
9           amended—

10           (A) in paragraph (3), by striking “and” at  
11           the end;

12           (B) in paragraph (4), by striking the pe-  
13           riod at the end and inserting a semicolon; and

14           (C) by adding at the end the following:

15           “(5) shall launch a public information cam-  
16           paign; and

17           “(6) shall establish a group, which shall consist  
18           of private individuals, and Federal, State, and local  
19           government officials, with expertise in migration,  
20           travel, trade, or national security issues, to provide  
21           the Ombudsman with private sector input.”.

22           (2) AUTHORIZATION OF APPROPRIATIONS.—  
23           There are authorized to be appropriated for such  
24           sums as may be necessary to carry out the amend-  
25           ments made by paragraph (1).

1 (c) ADDITIONAL REPORTING REQUIREMENTS.—Sec-  
2 tion 452(c) of the Homeland Security Act of 2002 (6  
3 U.S.C. 272(c)) is amended—

4 (1) in subparagraph (F), by striking “and” at  
5 the end;

6 (2) by redesignating subparagraph (G) as sub-  
7 paragraph (I); and

8 (3) by inserting after subparagraph (F) the fol-  
9 lowing:

10 “(G) shall state the percentage of com-  
11 plaints that can be traced to delays in benefits  
12 processing; and

13 “(H) shall describe the extent to which  
14 delays in benefits processing are attributable to  
15 entities outside of the Department, particularly  
16 government agencies conducting background  
17 checks.”.

18 **SEC. 112. CIS WORKFLOW, TECHNOLOGY, AND STAFFING**  
19 **ASSESSMENT.**

20 (a) IN GENERAL.—The Comptroller General of the  
21 United States shall conduct a comprehensive assessment  
22 of U.S. Citizenship and Immigration Services within the  
23 Department of Homeland Security. Such assessment shall  
24 include study of personnel, administrative and technical  
25 support positions, technology, training, and facilities.

1       (b) WORKFLOW.—As part of the study, the Comp-  
2 troller General shall examine all elements of such unit’s  
3 workflow, in order to determine the most efficient way to  
4 handle its work without compromising security. Any obsta-  
5 cles associated with security matters should be identified  
6 and recommendations should be made on ways to mini-  
7 mize such obstacles without compromising security. The  
8 Comptroller General should assess the division of work,  
9 adequacy of infrastructure (particularly information tech-  
10 nology), as well as personnel needs.

11       (c) INTERACTIONS WITH OTHER ORGANIZATIONS.—  
12 As part of the study, the Comptroller General shall exam-  
13 ine the unit’s interactions with other government organi-  
14 zations. Specifically, the Comptroller General shall deter-  
15 mine whether existing memoranda of understanding and  
16 divisions of responsibility, especially any which pre-date  
17 the establishment of the Department of Homeland Secu-  
18 rity, need to be revised in order to improve the bureau’s  
19 service delivery.

20       (d) BACKLOG COST.—As part of the study, the  
21 Comptroller General shall assess the current cost of main-  
22 taining the backlog (as defined in section 203 of the Immi-  
23 gration Services and Infrastructure Improvements Act of  
24 2000 (8 U.S.C. 1572)).

1       (e) INTERVIEWS.—The Comptroller General may  
2 interview any front-line personnel, without supervisors  
3 present, to determine priorities and needs.

4       (f) INFORMATION TECHNOLOGY.—Aspects of this  
5 study related to information technology should be coordi-  
6 nated with the Chief Information Officer for the Depart-  
7 ment of Homeland Security and should build on the find-  
8 ings of the task force established by section 3 of the Immi-  
9 gration and Naturalization Service Data Management Im-  
10 provement Act of 2000 (Public Law 106–215).

11       (g) SUBMISSION.—The study should be completed  
12 not later than January 1, 2005, and shall be submitted  
13 to the Secretary of Homeland Security, the Secretary of  
14 State, and the appropriate congressional committees (as  
15 defined in section 2 of the Homeland Security Act of 2002  
16 (6 U.S.C. 101)). It shall include recommendations for re-  
17 source allocation.

18 **SEC. 113. STUDY ON BIOMETRICS.**

19       (a) IN GENERAL.—The Secretary of Homeland Secu-  
20 rity, in consultation with the Director of the National In-  
21 stitute of Standards and Technology, shall conduct a  
22 study of all biometric identifiers that might be collected  
23 for purposes of processing and adjudicating applications  
24 and petitions for immigration benefits, and shall deter-  
25 mine which among these identifiers would be most appro-

1 piate for the purposes described in subsection (b). The  
2 Secretary shall provide the resources necessary properly  
3 to conduct the study.

4 (b) USES.—In carrying out subsection (a), the Sec-  
5 retary shall consider the use of a biometric identifier—

6 (1) to register or catalogue a petition or appli-  
7 cation for an immigration benefit upon submission  
8 to the appropriate Federal agency;

9 (2) to check the petitioner or applicant against  
10 watch lists;

11 (3) as part of the integrated entry and exit data  
12 system required under section 110 of the Illegal Im-  
13 migration Reform and Immigrant Responsibility Act  
14 of 1996 (8 U.S.C. 1365a); and

15 (4) to conduct background checks with Federal  
16 intelligence agencies.

17 (c) FACTORS.—The Secretary shall consider the fol-  
18 lowing factors in making the determination under sub-  
19 section (a):

20 (1) Accuracy

21 (2) The technology available.

22 (3) Economic considerations.

23 (4) Storage.

24 (5) Efficiency.

1 (d) SUBMISSION.—The study should be completed  
2 within one year of enactment, and shall be submitted to  
3 the Secretary of State and the appropriate congressional  
4 committees (as defined in section 2 of the Homeland Secu-  
5 rity Act of 2002 (6 U.S.C. 101)).

6 **SEC. 114. DIGITIZING IMMIGRATION FUNCTIONS.**

7 (a) DIGITIZED FINGERPRINTS.—Not later than Jan-  
8 uary 1, 2005, all fingerprints taken for purposes of adjudi-  
9 cating an application or petition for an immigration ben-  
10 efit shall be digitized.

11 (b) REGISTERING APPLICATIONS BY BIOMETRIC.—  
12 Not later than January 1, 2005, all applications and peti-  
13 tions for an immigration benefit shall be registered or  
14 catalogued by the receiving agency using a biometric iden-  
15 tifier. Initially, such biometric identifier shall be a finger-  
16 print. Subsequently, the Secretary of Homeland Security  
17 may select one or more alternative biometric identifiers to  
18 be used for such purposes, taking into account factors  
19 such as efficiency, accuracy, the technology available, eco-  
20 nomic considerations, and storage requirements.

21 **SEC. 115. STUDY ON DIGITIZING IMMIGRATION BENEFIT**  
22 **APPLICATIONS.**

23 (a) IN GENERAL.—The Comptroller General of the  
24 United States shall conduct a comprehensive study on  
25 digitizing all applications and petitions for an immigration



1 benefit, including digital storage, cataloguing, and the  
2 ability to apply for all types of immigration benefits  
3 through digital means. The study should consider costs for  
4 both the Federal Government and the applicant or peti-  
5 tioner, as well as the feasibility for all types of persons  
6 to apply by digital means.

7 (b) SUBMISSION.—The study should be completed  
8 not later than January 1, 2005, and shall be submitted  
9 to the Secretary of Homeland Security, the Secretary of  
10 State, and the appropriate congressional committees (as  
11 defined in section 2 of the Homeland Security Act of 2002  
12 (6 U.S.C. 101)).

## 13 **TITLE V—STRENGTHENING RAIL** 14 **SECURITY**

### 15 **SEC. 121. PUBLIC TRANSPORTATION SYSTEM GRANTS AND** 16 **TRAINING.**

17 (a) HOMELAND SECURITY PUBLIC TRANSPORTATION  
18 GRANTS.—

19 (1) AUTHORIZATION.—The Secretary of Home-  
20 land Security is authorized to make grants for the  
21 purpose of improving the security of public transpor-  
22 tation systems against acts of terrorism. The grant  
23 program shall be administered by the Under Sec-  
24 retary for Border and Transportation Security—

1 (A) in consultation with the Director of the  
2 Office of Domestic Preparedness, to ensure that  
3 the program is consistent with other Depart-  
4 ment of Homeland Security grant programs;

5 (B) with the Assistant Secretary for Infra-  
6 structure Protection to ensure that grant  
7 awards are consistent with critical infrastruc-  
8 ture risk assessments and protective priorities  
9 as they relate to public transportation; and

10 (C) with the Under Secretary for Science  
11 and Technology to ensure that technology as-  
12 pects of grant proposals are feasible and gen-  
13 erally consistent with existing technologies and  
14 standards.

15 (2) CONSIDERATIONS.—Among the consider-  
16 ations on which grants shall be awarded are the fol-  
17 lowing:

18 (A) Risk of terrorism, including threat as-  
19 sessment, vulnerabilities of public transpor-  
20 tation systems, potential effects of acts of ter-  
21 rorism against public transportation systems,  
22 and past acts of terrorism against modes of  
23 transportation.

1 (B) Merits of the proposed projects to in-  
2 crease national security, based on a consider-  
3 ation of—

4 (i) threats;

5 (ii) vulnerabilities;

6 (iii) consequences, including human  
7 casualties and economic impacts;

8 (iv) consequence management;

9 (v) the likelihood that such projects  
10 would have been pursued in the normal  
11 course of business and in the absence of  
12 national security considerations; and

13 (vi) feasibility, based on the technical  
14 and operational merits of the projects.

15 (3) ALLOWABLE USE OF FUNDS.—Grants made  
16 under this subsection shall be used for the purposes  
17 of—

18 (A) support for increased capital invest-  
19 ments in cameras, close-circuit television, and  
20 other surveillance systems;

21 (B) increased capital investment in com-  
22 mand, control, and communications systems, in-  
23 cluding investments for redundancy and inter-  
24 operability and for improved situational aware-

1           ness, such as emergency call boxes and vehicle  
2           locator systems;

3           (C) increased training, including for car-  
4           rying out exercises under subsection (b), and  
5           technical support for public transportation em-  
6           ployees, especially for security awareness, pre-  
7           vention, emergency response, including evacu-  
8           ation, and decontamination;

9           (D) expanded deployment of equipment  
10          and other measures, including canine detection  
11          teams, for the detection of explosives and chem-  
12          ical, biological, radiological, and nuclear agents;

13          (E) capital improvements and operating  
14          activities, including personnel expenditures, to  
15          increase the physical security of stations, vehi-  
16          cles, bridges, and tunnels;

17          (F) capital improvements and operating  
18          activities to improve passenger survivability in  
19          the event of an attack, including improvements  
20          in ventilation, drainage, fire safety technology,  
21          emergency communications systems, lighting  
22          systems, passenger egress, and accessibility by  
23          emergency response personnel;

1           (G) acquisition of emergency response and  
2           support equipment, including fire suppression  
3           and decontamination equipment; and

4           (H) expansion of employee education and  
5           public awareness campaigns regarding security  
6           on public transportation systems.

7           (4) ELIGIBLE RECIPIENTS.—Grants shall be  
8           made available under this subsection directly to own-  
9           ers, operators, and providers of public transportation  
10          systems. Owners, operators, and providers of infra-  
11          structure over which public transportation operates,  
12          but which is not primarily used for public transpor-  
13          tation, may also be eligible for grants at the discre-  
14          tion of the Secretary.

15          (5) ACCOUNTABILITY.—The Secretary shall  
16          adopt necessary procedures, including audits, to en-  
17          sure that grants made under this subsection are ex-  
18          pended in accordance with the purposes of this sec-  
19          tion and the priorities and other criteria developed  
20          by the Secretary. If the Secretary determines that a  
21          recipient has used any portion of the grant funds re-  
22          ceived under this subsection for a purpose other  
23          than the allowable uses specified for that grant  
24          under this subsection, the grantee shall return any

1 amount so used to the Treasury of the United  
2 States.

3 (6) PROCEDURES FOR GRANT AWARD.—The  
4 Secretary shall prescribe procedures and schedules  
5 for the awarding of grants under this subsection, in-  
6 cluding application and qualification procedures, and  
7 a record of decision on applicant eligibility. The Sec-  
8 retary shall issue a final rule establishing the proce-  
9 dures not later than 90 days after the date of enact-  
10 ment of this Act.

11 (7) COST SHARE.—Grants made under this  
12 subsection shall account for no more than—

13 (A) 85 percent for fiscal year 2005;

14 (B) 80 percent for fiscal year 2006; and

15 (C) 75 percent for fiscal year 2007,

16 of the expense of the purposes for which the grants  
17 are used.

18 (8) AUTHORIZATION OF APPROPRIATIONS.—  
19 There are authorized to be appropriated to the Sec-  
20 retary to carry out the purposes of this subsection—

21 (A) \$1,200,000,000 for fiscal year 2005;

22 (B) \$900,000,000 for fiscal year 2006; and

23 (C) \$700,000,000 for fiscal year 2007.

24 Amounts appropriated pursuant to this paragraph  
25 shall remain available until expended.

1 (b) TRAINING EXERCISES.—

2 (1) GUIDELINES.—Not later than 4 months  
3 after the date of enactment of this Act, the Sec-  
4 retary of Homeland Security shall publish guidelines  
5 for the conduct by recipients of grants under sub-  
6 section (a) of appropriate exercises for emergency  
7 response and public transportation employee train-  
8 ing purposes.

9 (2) PLANS.—Not later than 6 months after re-  
10 ceipt of a grant under subsection (a), the recipient  
11 of such grant shall transmit to the Secretary its  
12 emergency response plan as well as a plan for con-  
13 ducting exercises for emergency response and public  
14 transportation employee training purposes pursuant  
15 to the guidelines published under paragraph (1).

16 (3) EXERCISES.—

17 (A) REQUIREMENT.—Not later than 1  
18 year after receipt of a grant under subsection  
19 (a), the recipient of such grant shall conduct an  
20 exercise pursuant to the plan for conducting ex-  
21 ercises transmitted under paragraph (2).

22 (B) EXEMPTIONS.—The Secretary may ex-  
23 empt a grant recipient from the requirement  
24 under subparagraph (A) if the recipient has re-  
25 cently conducted an equivalent exercise.

1           (C) NOTICE AND REPORT.—Not later than  
2           30 days after conducting an exercise under sub-  
3           paragraph (A) or as described in subparagraph  
4           (B), the recipient shall notify the Secretary that  
5           such exercise has been completed, including a  
6           description of the results of the exercise and  
7           findings and lessons learned from the exercise,  
8           and shall make recommendations for changes, if  
9           necessary, to existing emergency response  
10          plans. If the recipient revises an emergency re-  
11          sponse plan as a result of an exercise under this  
12          paragraph, the recipient shall transmit the re-  
13          vised plan to the Secretary not later than 6  
14          months after the exercise.

15          (4) TECHNICAL ASSISTANCE.—The Secretary  
16          shall provide technical assistance in the design, prep-  
17          aration for, and conduct of emergency response exer-  
18          cises.

19          (5) USE OF PLANS.—The Secretary shall en-  
20          sure that information submitted to the Secretary  
21          under this subsection is protected from any form of  
22          disclosure that might compromise public transpor-  
23          tation security or trade secrets. Notwithstanding the  
24          preceding sentence, the Secretary may use such in-  
25          formation, on a nonattributed basis unless otherwise



1       agreed to by the source of the information, to aid in  
2       developing recommendations, best practices, and ma-  
3       terials for use by public transportation authorities to  
4       improve security practices and emergency response  
5       capabilities.

6       (c) DEFINITION.—For the purposes of this section—

7           (1) the term “public transportation employees”  
8       means security personnel, dispatchers, vehicle and  
9       vessel operators, other onboard employees, mainte-  
10      nance and support personnel, and other appropriate  
11      employees of owners, operators, and providers of  
12      public transportation systems; and

13          (2) the term “public transportation systems”  
14      means passenger, commuter, and light rail, including  
15      Amtrak and subways, buses, commuter ferries, and  
16      other modes of public transit.

17   **SEC. 122. PUBLIC TRANSPORTATION SECURITY PLAN, BEST**  
18                           **PRACTICES, AND AWARENESS.**

19      (a) SECURITY BEST PRACTICES.—The Secretary of  
20   Homeland Security shall, not later than 120 days after  
21   the date of enactment of this Act, develop, disseminate  
22   to appropriate owners, operators, and providers of public  
23   transportation systems, public transportation employees  
24   and employee representatives, and Federal, State, and  
25   local officials, and transmit to the Congress a report con-

1 taining best practices for the security of public transpor-  
2 tation systems. In developing best practices, the Secretary  
3 shall be responsible for consulting with and collecting  
4 input from owners, operators, and providers of public  
5 transportation systems, public transportation employee  
6 representatives, first responders, industry associations,  
7 private sector experts, academic experts, and appropriate  
8 Federal, State, and local officials.

9       (b) PUBLIC AWARENESS.—Not later than 90 days  
10 after the date of enactment of this Act, the Secretary of  
11 Homeland Security shall develop a national plan for public  
12 outreach and awareness. Such plan shall be designed to  
13 increase awareness of measures that the general public,  
14 public transportation passengers, and public transpor-  
15 tation employees can take to increase public transpor-  
16 tation system security. Such plan shall also provide out-  
17 reach to owners, operators, providers, and employees of  
18 public transportation systems to improve their awareness  
19 of available technologies, ongoing research and develop-  
20 ment efforts, and available Federal funding sources to im-  
21 prove public transportation security. Not later than 9  
22 months after the date of enactment of this Act, the Sec-  
23 retary shall implement the plan developed under this sub-  
24 section.

25       (c) SECURITY PLAN.—

1           (1) REQUIREMENT.—Not later than 1 year  
2       after the date of enactment of this Act, the Sec-  
3       retary of Homeland Security, in coordination with  
4       the Secretary of Transportation, shall develop a  
5       strategic plan for the security of the Nation’s public  
6       transportation systems and transmit to Congress a  
7       report containing a summary of that plan. Such plan  
8       shall—

9           (A) include a comprehensive assessment of  
10       risks to the Nation’s public transportation sys-  
11       tems, including an assessment of threats of ter-  
12       rorist attack, vulnerabilities against terrorist at-  
13       tack, and human, economic, and national secu-  
14       rity consequences of terrorist attack;

15          (B) take into account actions taken or  
16       planned by both public and private entities to  
17       address identified security issues;

18          (C) describe measures for prevention, pro-  
19       tection, and preparedness, including rec-  
20       ommended actions and best practices (as de-  
21       scribed in subsection (a));

22          (D) make prioritized recommendations for  
23       improving public transportation system secu-  
24       rity;

1           (E) identify specific actions the Federal  
2           Government should take to provide increased  
3           security support for public transportation sys-  
4           tems, both generally and in periods of high or  
5           severe threat levels of alert;

6           (F) identify measures for coordinating ini-  
7           tiatives undertaken by the public and private  
8           sectors to increase security of public transpor-  
9           tation systems;

10          (G) contain an estimate of the cost to im-  
11          plement measures, recommendations, and best  
12          practices, and other actions contained within  
13          the plan;

14          (H) identify milestones and timeframes for  
15          implementing measures, recommendations, and  
16          best practices, and other actions contained  
17          within the plan; and

18          (I) identify methods for measuring  
19          progress against the plan and communicating  
20          such progress to owners, operators, and pro-  
21          viders of public transportation systems and to  
22          Congress.

23          (2) IMPLEMENTATION.—The Secretary shall  
24          begin implementation of the plan not later than 3  
25          months after its development.

1           (3) CONSULTATION; USE OF EXISTING RE-  
2           SOURCES.—In developing the plan under this sub-  
3           section, the Secretary shall be responsible for con-  
4           sulting with and collecting input from owners, opera-  
5           tors, and providers of public transportation systems,  
6           public transportation employee representatives, first  
7           responders, industry associations, private sector ex-  
8           perts, academic experts, and appropriate Federal,  
9           State, and local officials.

10          (4) FORMAT.—The Secretary may submit the  
11          report in both classified and unclassified formats if  
12          the Secretary considers that such action is appro-  
13          priate or necessary.

14          (5) 2-YEAR UPDATES.—The Secretary, in con-  
15          sultation with the Secretary of Transportation, shall  
16          update the plan every 2 years, as necessary, and  
17          transmit such updated report to Congress.

18          (d) DEFINITION.—For the purposes of this section—

19               (1) the term “public transportation employees”  
20               means security personnel, dispatchers, vehicle and  
21               vessel operators, other onboard employees, mainte-  
22               nance and support personnel, and other appropriate  
23               employees of owners, operators, and providers of  
24               public transportation systems; and

1           (2) the term “public transportation systems”  
2       means passenger, commuter, and light rail, including  
3       Amtrak and subways, buses, commuter ferries, and  
4       other modes of public transit.

5 **SEC. 123. MEMORANDUM OF AGREEMENT.**

6       (a) IN GENERAL.—Not later than 60 days after the  
7       date of enactment of this Act, the Secretary of Homeland  
8       Security and the Secretary of Transportation shall execute  
9       a Memorandum of Agreement governing the roles and re-  
10      sponsibilities of the Department of Homeland Security  
11      and the Department of Transportation, respectively, in ad-  
12      dressing security matters for public transportation sys-  
13      tems, including the process the departments will follow to  
14      promote communications, efficiency, and nonduplication of  
15      effort. Such Memorandum of Agreement shall also estab-  
16      lish a formal mechanism to ensure coordination and the  
17      timely sharing of expertise and information between the  
18      Department of Homeland Security and the Department  
19      of Transportation, as appropriate, in public transportation  
20      security.

21       (b) DEFINITION.—For the purposes of this section  
22      the term “public transportation systems” means pas-  
23      senger, commuter, and light rail, including Amtrak and  
24      subways, buses, commuter ferries, and other modes of  
25      public transit.

1       **TITLE VI—STRENGTHENING**  
 2               **PORT SECURITY**

3   **SEC. 130. SHORT TITLE.**

4       This title may be cited as the “Secure Containers  
 5 from Overseas and Seaports from Terrorism Act” or the  
 6 “Secure COAST Act”.

7   **Subtitle A—Bureau of Customs and**  
 8       **Border Protection Security Pro-**  
 9       **grams**

10   **SEC. 131. AMENDMENTS TO THE HOMELAND SECURITY ACT**  
 11               **OF 2002.**

12       (a) IN GENERAL.—Title IV of the Homeland Secu-  
 13 rity Act of 2002 (6 U.S.C. 201 et seq.) is amended by  
 14 adding at the end the following new subtitle:

15   **“Subtitle G—Bureau of Customs**  
 16       **and Border Protection Security**  
 17       **Programs**

18   **“SEC. 481. STANDARDS AND VERIFICATION PROCEDURES**  
 19               **FOR THE SECURITY OF MARITIME CARGO**  
 20               **CONTAINERS.**

21       “(a) STANDARDS AND VERIFICATION PROCE-  
 22 DURES.—Not later than 180 days after the date of the  
 23 enactment of the Secure COAST Act, the Secretary, act-  
 24 ing through the Under Secretary for Border and Trans-  
 25 portation Security, shall establish standards and

1 verification procedures for the security of maritime cargo  
2 containers moving within the intermodal transportation  
3 system, including standards for sealing and procedures for  
4 seal verifications for cargo containers at loading.

5 “(b) REQUIREMENTS.—The standards and  
6 verification procedures established pursuant to subsection  
7 (a) shall be consistent with the cargo container security  
8 recommendations of Operation Safe Commerce, the inter-  
9 agency Container Working Group, and the Smart and Se-  
10 cure Trade Lane program and shall meet the following  
11 additional requirements:

12 “(1) SEAL STANDARDS.—Maritime cargo con-  
13 tainers shall at a minimum be affixed with a secu-  
14 rity seal equivalent to the level ‘D’ high security seal  
15 (as certified by the International Organization for  
16 Standardization (ISO); Certification No. 17712) at  
17 loading.

18 “(2) SEAL VERIFICATION.—Procedures shall be  
19 established for the verification of security seals de-  
20 scribed in paragraph (1), including procedures to de-  
21 termine which individuals and entities in the inter-  
22 modal transportation system are responsible for seal-  
23 ing maritime cargo containers, recording of seal  
24 numbers, changes to such numbers if a container is  
25 opened, and anomalies relating to security seals.



1       “(c) EVALUATION OF CONTAINER TRACKING TECH-  
2 NOLOGIES, CONTAINER TARGETING, AND SECURITY OF  
3 EMPTY CONTAINERS.—

4           “(1) EVALUATION.—The Secretary, acting  
5 through the Under Secretary for Border and Trans-  
6 portation Security, shall carry out the following:

7           “(A) CONTAINER TRACKING TECH-  
8 NOLOGIES.—The Secretary shall evaluate the  
9 security benefits of existing technology for con-  
10 tainer tracking from the point of loading to its  
11 final destination, such as electronic seals or in-  
12 trusion detection devices that can detect a phys-  
13 ical breach of a container. In addition to deter-  
14 mining the security benefits, the Secretary shall  
15 determine the costs, infrastructure, communica-  
16 tion system, required to deploy such technology  
17 in the intermodal transportation system, includ-  
18 ing incentives for investment in such tech-  
19 nology.

20           “(B) CONTAINER TARGETING.—The Sec-  
21 retary shall evaluate trade information, in addi-  
22 tion to cargo manifest information, such as pur-  
23 chase orders, port of origin data, and trans-  
24 shipment data, which would improve the ability

1 of the Bureau of Customs and Border Protec-  
2 tion to carry out risk analysis of containers.

3 “(2) REPORT.—Not later than 180 days after  
4 the date of the enactment of the Secure COAST  
5 Act, the Secretary shall prepare and submit to the  
6 appropriate congressional committees a report that  
7 contains the results of the evaluations carried out  
8 under paragraph (1), including any recommenda-  
9 tions thereto.

10 **“SEC. 482. VALIDATION OF SECURITY MEASURES UNDER**  
11 **THE C-TPAT PROGRAM.**

12 “(a) GENERAL VALIDATION.—Not later than Sep-  
13 tember 30, 2005, and on an annual basis thereafter, the  
14 Commissioner of the Bureau of Customs and Border Pro-  
15 tection shall conduct on site validations of each individual  
16 and entity participating in the C-TPAT program to en-  
17 sure that the individual or entity is implementing appro-  
18 priate security measures under the program. The Commis-  
19 sioner may certify private security companies to carry out  
20 the validation process described in the preceding sentence.

21 “(b) SPECIFIC VALIDATION.—The Commissioner  
22 shall establish inspection teams under the C-TPAT pro-  
23 gram to evaluate the program’s security requirements and,  
24 as circumstances warrant, to carry out unannounced in-  
25 spections of individuals and entities participating in the

1 program to ensure compliance with the security require-  
2 ments.

3 “(c) PENALTIES FOR NON-COMPLIANCE.—The Com-  
4 missioner shall establish penalties for non-compliance with  
5 the requirements of the C-TPAT program by individuals  
6 and entities participating in the program, including proba-  
7 tion or expulsion from the program, as appropriate.

8 **“SEC. 483. DEPLOYMENT OF RADIATION DETECTION POR-**  
9 **TAL EQUIPMENT; INTEGRATED CARGO IN-**  
10 **SPECTION SYSTEM.**

11 “(a) DEPLOYMENT OF RADIATION DETECTION POR-  
12 TAL EQUIPMENT.—

13 “(1) DEPLOYMENT.—Not later than September  
14 30, 2005, the Commissioner of the Bureau of Cus-  
15 toms and Border Protection shall deploy radiation  
16 detection portal equipment at all United States sea-  
17 ports, other United States ports of entry, and major  
18 facilities as determined by the Secretary.

19 “(2) REPORT.—Not later than December 31,  
20 2004, the Commissioner shall submit to the appro-  
21 priate congressional committees a report on the im-  
22 plementation of the requirement under paragraph  
23 (1).

24 “(3) AUTHORIZATION OF APPROPRIATIONS.—  
25 There is authorized to be appropriated to the Com-

1       missioner \$290,000,000 for fiscal year 2005 to carry  
2       out this subsection.

3       “(b) INTEGRATED CARGO INSPECTION SYSTEM.—

4               “(1) PLAN.—The Commissioner of the Bureau  
5       of Customs and Border Protection shall develop a  
6       plan to integrate radiation detection portal equip-  
7       ment with gamma-ray inspection technology equip-  
8       ment at United States seaports and foreign seaports  
9       that are participating the Container Security Initia-  
10      tive in order to facilitate the detection of nuclear  
11      weapons in maritime cargo containers. Such plan  
12      shall include methods for automatic identification of  
13      containers and vehicles for inspection in a timely  
14      manner and a data sharing network capable of  
15      transmitting gamma-ray images and cargo data  
16      among relevant ports and the National Targeting  
17      Center of the Bureau of Customs and Border Pro-  
18      tection.

19              “(2) REPORT.—Not later than 180 days after  
20      the date of the enactment of the Secure COAST  
21      Act, the Commissioner shall prepare and submit to  
22      the appropriate congressional committees a report  
23      that contains—

24                      “(A) a description of the plan developed  
25                      under paragraph (1), including any infrastruc-

1           ture improvements required at the seaports in-  
2           volved;

3           “(B) an estimate of the costs associated  
4           with implementation of the plan; and

5           “(C) an estimate of the timeframe for im-  
6           plementation of the plan.

7   **“SEC. 484. STAFFING ASSESSMENT OF SEAPORT SECURITY**  
8           **MISSIONS.**

9       “(a) STUDY.—The Commissioner of the Bureau of  
10 Customs and Border Protection shall conduct a study to  
11 determine the number of Bureau inspectors and other ap-  
12 propriate personnel that should be stationed at United  
13 States seaports and foreign seaports that are participating  
14 in the Container Security Initiative (CSI) to support in-  
15 creased inspections of low risk cargo, deployment of per-  
16 sonnel at foreign seaports for a period of at least one year,  
17 and the manning of radiation portal monitors installed at  
18 such seaports. In determining such number of Bureau in-  
19 spectors, the Commissioner shall take into account the re-  
20 quirements contained in the other sections of this subtitle.

21       “(b) REPORT.—Not later than 180 days after the  
22 date of the enactment of the Secure COAST Act, the Com-  
23 missioner shall prepare and submit to the appropriate con-  
24 gressional committees a report that contains the results  
25 of the study conducted under subsection (a).

1   **“SEC. 485. CSI REPORT.**

2           “Not later than 180 days after the date of the enact-  
3   ment of the Secure COAST Act, and on an annual basis  
4   thereafter, the Secretary, acting through the Commis-  
5   sioner of the Bureau of Customs and Border Protection,  
6   shall prepare and submit to the appropriate congressional  
7   committees a report that contains all cargo inspection data  
8   at foreign seaports participating in the Container Security  
9   Initiative (CSI) for the prior year. The initial report shall  
10  include the plan for the ‘strategic port’ phase of the CSI.

11   **“SEC. 486. DEFINITIONS.**

12           “In this subtitle:

13               “(1) APPROPRIATE CONGRESSIONAL COMMIT-  
14   TEES.—The term ‘appropriate congressional com-  
15   mittees’ means—

16               “(A) the Committee on Appropriations, the  
17               Committee on Ways and Means, the Select  
18               Committee on Homeland Security (or any suc-  
19               cessor committee), and the Committee on  
20               Transportation and Infrastructure of the House  
21               of Representatives; and

22               “(B) the Committee on Appropriations, the  
23               Committee on Finance, the Committee on Com-  
24               merce, Science, and Transportation, and the  
25               Committee on Governmental Affairs of the Sen-  
26               ate.

1           “(2) BUREAU OF CUSTOMS AND BORDER PRO-  
2           TECTION OR BUREAU.—The term ‘Bureau of Cus-  
3           toms and Border Protection’ or ‘Bureau’ means the  
4           Bureau of Customs and Border Protection of the  
5           Department.

6           “(3) COMMISSIONER.—The term ‘Commis-  
7           sioner’ means the Commissioner of the Bureau of  
8           Customs and Border Protection.

9           “(4) CONTAINER SECURITY INITIATIVE OR  
10          CSI.—The term ‘Container Security Initiative’ or  
11          ‘CSI’ means the program carried out by the Bureau  
12          of Customs and Border Protection under which Bu-  
13          reau personnel are deployed to major seaports out-  
14          side the United States to work with their host coun-  
15          try counterparts to—

16               “(A) establish security criteria to identify  
17               high-risk maritime cargo containers bound for  
18               the United States based on advance informa-  
19               tion;

20               “(B) identify and pre-screen such maritime  
21               cargo containers for chemical, biological, or nu-  
22               clear weapons through examination or inspec-  
23               tion; and

24               “(C) develop secure or ‘smart’ maritime  
25               cargo containers.

1           “(5) C-TPAT PROGRAM.—The term ‘C-TPAT  
2       program’ means the Customs-Trade Partnership  
3       Against Terrorism program carried out by the Bu-  
4       reau of Customs and Border Protection under which  
5       importers, brokers, air, sea, and land carriers, and  
6       other individuals and entities in the intermodal  
7       transportation system voluntarily enter into partner-  
8       ships with the Bureau to establish and carry out a  
9       validation process to ensure that participants are im-  
10      plementing appropriate security measures to protect  
11      the system from being compromised by individual  
12      terrorists and terrorist organizations.

13           “(6) INTERAGENCY CONTAINER WORKING  
14      GROUP.—The term ‘Interagency Container Working  
15      Group’ means the working group consisting of rep-  
16      resentatives of the former United States Customs  
17      Service and the National Infrastructure Security  
18      Committee of the Department of Transportation  
19      that provided recommendations relating to the secu-  
20      rity of intermodal cargo containers to the Office of  
21      Homeland Security in the Executive Office of the  
22      President.

23           “(7) OPERATION SAFE COMMERCE.—The term  
24      ‘Operation Safe Commerce’ means the program car-  
25      ried out by the Department of Transportation and



1 the Bureau of Customs and Border Protection to  
 2 fund business initiatives designed to enhance secu-  
 3 rity for maritime cargo containers moving within the  
 4 intermodal transportation system.

5 “(8) SMART AND SECURE TRADE LANE PRO-  
 6 GRAM.—The term ‘Smart and Secure Trade Lane  
 7 Program’ means the program carried out by the  
 8 intermodal transportation industry to provide secu-  
 9 rity and ensure efficiency throughout the intermodal  
 10 transportation system, specifically by developing  
 11 technology to improve the security of intermodal  
 12 cargo containers and to improve information sharing  
 13 within the industry relating to such security and ef-  
 14 ficiency.”

15 (b) CLERICAL AMENDMENT.—The table of contents  
 16 in section 1(b) of the Homeland Security Act of 2002 is  
 17 amended by adding after the items relating to subtitle F  
 18 of title IV the following new items:

“Subtitle G—Bureau of Customs and Border Protection Security Programs

“Sec. 481. Standards for the security of maritime cargo containers.

“Sec. 482. Validation of security measures under the C-TPAT program.

“Sec. 483. Deployment of radiation detection portal equipment; integrated  
 cargo inspection system.

“Sec. 484. Staffing assessment of seaport security missions.

“Sec. 485. CSI report.

“Sec. 486. Definitions.”.

1           **Subtitle B—Port Security**

2   **SEC. 135. PORT SECURITY GRANT FUNDING.**

3           Section 70107(h) of title 46, United States Code, is  
4   amended to read as follows:

5           “(h) AUTHORIZATION OF APPROPRIATIONS.—There  
6   is authorized to be appropriated to the Secretary to carry  
7   out subsections (a) through (g)—

8                   “(1) \$537,000,000 for fiscal year 2005; and

9                   “(2) such sums as are necessary for each subse-  
10   quent fiscal year.”.

11   **SEC. 136. FUNDING FOR COLLABORATIVE PROGRAM FOR**  
12                   **DEVELOPMENT OF MARITIME INFORMATION**  
13                   **SHARING AND ANALYSIS CAPABILITY.**

14           (a) FISCAL YEAR 2005.—Of the amounts authorized  
15   to be appropriated to the Department of Homeland Secu-  
16   rity, \$3,000,000 shall be available for a grant to assist  
17   the maritime industry to develop and operare a  
18   colloaborative maritime information sharing and analysis  
19   capability.

20           (b) SENSE OF CONGRESS.—It is the sense of Con-  
21   gress that—

22                   (1) the President should include in budget re-  
23           quests submitted for fiscal years 2006 and 2007 suf-  
24           ficient funds to ensure that such a maritime infor-

1 mation sharing and analysis capability is fully oper-  
2 ational before fiscal year 2008; and

3 (2) the maritime industry should pay at least  
4 half of the operating costs of such capability in-  
5 curred in fiscal year 2008 and thereafter.

6 **SEC. 137. APPROPRIATE CONGRESSIONAL COMMITTEES**  
7 **DEFINED.**

8 In this title the term “appropriate congressional com-  
9 mittees” means the Committee on Transportation and In-  
10 frastructure, the Select Committee on Homeland Security,  
11 and the Committee on Appropriations of the House of  
12 Representatives and the Committee on Commerce, Science  
13 and Transportation and the Committee on Appropriations  
14 of the Senate.

15 **Subtitle C—Strengthening the**  
16 **Coast Guard**

17 **SEC. 141. ACCELERATION OF INTEGRATED DEEPWATER**  
18 **PROGRAM.**

19 In addition to any other amounts authorized, there  
20 is authorized to be appropriated to the Secretary of Home-  
21 land Security \$1,892,000,000 for fiscal year 2005 for the  
22 acquisition and construction of vessels, aircraft, shore and  
23 offshore facilities and other components associated with  
24 the Integrated Deepwater System in accordance with the

1 report required by section 888 of the Homeland Security  
2 Act of 2002 (116 Stat. 2250).

3 **SEC. 142. INCREASE IN AUTHORIZED COAST GUARD PER-**  
4 **SONNEL.**

5 The Coast Guard is authorized an end-of-year  
6 strength for active duty personnel of 50,000 as of Sep-  
7 tember 30 of each of 2005 and 2006.

8 **SEC. 143. SENSE OF THE CONGRESS REGARDING NAMING**  
9 **NEW VESSELS UNDER THE DEEPWATER PRO-**  
10 **GRAM FOR CITIES OF THE UNITED STATES.**

11 It is the sense of the Congress that the Coast Guard  
12 should consider including in its naming protocols for new  
13 vessels constructed under the Deepwater Program the  
14 names of cities of the United States, in recognition of their  
15 support and friendly relationship to the Coast Guard and  
16 the challenge to cities in the United States from terrorism.

17 **TITLE VII—STRENGTHENING**  
18 **AVIATION SECURITY**

19 **SEC. 151. PASSENGER AND BAGGAGE SCREENING OPER-**  
20 **ATIONS.**

21 (a) STUDY.—The Secretary of Homeland Security  
22 shall conduct a study on the workforce size needed to ade-  
23 quately conduct passenger and baggage screening oper-  
24 ations. The study shall include an analysis of the optimal  
25 screener workforce for security purposes, taking into ac-

1 count the following: passenger demand for air travel, num-  
2 ber of airports and screening checkpoints, number of  
3 screeners required to operate each checkpoint, risk assess-  
4 ments, acceptable average peak wait times, and use of cur-  
5 rently existing and near-term technologies (including  
6 inline explosive detection systems for baggage screening).  
7 The study shall cover all screeners, whether employed by  
8 the Transportation Security Administration or private  
9 companies.

10 (b) REPORT.—As soon as practicable, the Secretary  
11 shall transmit to the Congress a report on the results of  
12 the study, including assessments of full time versus part  
13 time screeners, and recommendations on appropriate ratio  
14 of supervisors, lead screeners, and screeners. The Sec-  
15 retary shall include in the report a description of the as-  
16 sumptions used for determining acceptable passenger wait  
17 times at screening checkpoints and how different lengths  
18 of expected wait times would influence the analysis.

19 (c) SENSE OF CONGRESS.—It is the sense of the Con-  
20 gress that following the receipt of the report under sub-  
21 section (b), Congress should provide the Transportation  
22 Security Administration with the resources necessary to  
23 maintain the workforce size required according to the  
24 study in subsection (a).

1 **SEC. 152. CHECKED BAGGAGE SECURITY SCREENING.**

2 (a) IN GENERAL.—Subchapter I of chapter 449 of  
3 title 49 United States Code, is amended by adding at the  
4 end the following:

5 **“§ 44925. Authority to enter into multi-year contracts**  
6 **for the provision of electronic explosive**  
7 **detection system images for checked bag-**  
8 **gage and related items**

9 “(a) GENERAL AUTHORITY.—Not later than 60 days  
10 after the date of enactment of this section, the Assistant  
11 Secretary of Homeland Security (Transportation Security  
12 Administration) shall establish a program to enter into  
13 multi-year contracts of not more than 10 years with air-  
14 port operators or other non-Federal entities to provide  
15 electronic explosive detection system images of checked  
16 baggage for screening purposes.

17 “(b) REQUIRED FINDINGS.—The Assistant Secretary  
18 may enter into a contract for the provision of images  
19 under this section at an airport only if the Assistant Sec-  
20 retary finds that the average annual cost of the contract  
21 is less than the total estimated average annual cost for  
22 the Transportation Security Administration to acquire  
23 such images through the operation of stand alone explosive  
24 detection systems at that airport.

25 “(c) ENDING CONTRACT.—A contract made under  
26 this section shall be contingent on the availability of an-

1 nual appropriations and shall be ended if amounts are not  
2 made available to continue the contract in subsequent fis-  
3 cal years. The Assistant Secretary may not terminate a  
4 contract made under this section to the extent annual ap-  
5 propriations are available, except when the Assistant Sec-  
6 retary finds cause for termination.

7 “(d) CONTRACT PROVISIONS.—A contract made  
8 under this section—

9 “(1) may include any cost associated with pro-  
10 viding electronic explosive detection system images,  
11 including

12 “(A) maintenance;

13 “(B) financing;

14 “(C) reasonable management fees; and

15 “(D) other items or services the Assistant  
16 Secretary deems necessary;

17 “(2) may specify the manner in which the elec-  
18 tronic explosive detection system images may be ac-  
19 quired and any other operational requirements the  
20 Assistant Secretary deems necessary;

21 “(3) may specify ownership rights of the elec-  
22 tronic explosive detection system images; and

23 “(4) may be made with multiple parties.

24 “(e) SYSTEM DESIGN.—Prior to entering into a con-  
25 tract under this section with respect to an airport, the As-

1   sistant Secretary shall consult with the operator and users  
2   of the airport to ensure that the provision of electronic  
3   explosive detection system images under this section takes  
4   into consideration the operational needs of the airport and  
5   its users.

6       “(f) PRIORITY CONSIDERATION.—The Assistant Sec-  
7   retary shall give priority under this section to entering into  
8   contracts that—

9           “(1) will expedite the installation of integrated  
10   in-line explosive detection systems at air carrier air-  
11   ports (as defined in section 47102) that have ap-  
12   proved plans on the date of enactment of this sec-  
13   tion; and

14           “(2) have not met the requirement of section  
15   44901(d) of title 49, United States Code, to screen  
16   all checked baggage with explosive detection systems.

17       “(g) SCORING.—Notwithstanding any other provision  
18   of law, any contract entered into under this section shall  
19   be treated and scored as an operating lease as defined in  
20   the Office of Management and Budget Circular A–11.”.

21       (b) CLERICAL AMENDMENT.—The analysis for such  
22   chapter is amended by inserting after the item relating  
23   to section 44924 the following:

“44925. Authority to enter into multi-year contracts for the provision of elec-  
tronic explosive detection system images for checked baggage  
and related items.”.



1 **SEC. 153. AVIATION SECURITY CAPITAL FUND.**

2 (a) IN GENERAL.—Section 44923(h)(1) of title 49,  
3 United States Code, is amended—

4 (1) by striking “in each of fiscal years 2004”  
5 and inserting “in fiscal year 2004 and the first  
6 \$500,000,000 derived from such fees in each of fis-  
7 cal years 2005”; and

8 (2) by striking “in each of such fiscal years”  
9 and inserting “in fiscal year 2004 and at least  
10 \$500,000,000 in each of fiscal years 2005 through  
11 2007”.

12 (b) DISCRETIONARY GRANTS.—Section 44923(h)(3)  
13 of such title is amended by inserting after  
14 “\$125,000,000” the following: “for fiscal year 2004 and  
15 \$375,000,000 for each of fiscal years 2005 through  
16 2007”.

17 **SEC. 154. ELIMINATION OF BAG-MATCH PROGRAM AS AC-**  
18 **CEPTABLE ALTERNATIVE FOR CHECKED**  
19 **BAGGAGE.**

20 (a) IN GENERAL.—The only approved methods for  
21 ensuring that checked baggage on passenger aircraft do  
22 not contain dangerous materials shall be one or more of  
23 the use explosive detection technology, manual search, and  
24 search by canine explosive units.

25 (b) BAG-MATCH PROGRAM PHASE-OUT.—The reli-  
26 ance on matching baggage to passengers onboard the air-

1 craft shall be phased-out over a 6-month period after the  
2 date of enactment of this Act. The Secretary of Homeland  
3 Security shall develop a plan for the phase-out and may  
4 authorize further use of the bag-match program following  
5 the phase-out period where necessary in case of an emer-  
6 gency or other extenuating circumstance as determined by  
7 the Secretary.

8 (c) LIMITATION ON STATUTORY CONSTRUCTION.—  
9 Nothing in this section shall be construed to prevent the  
10 Transportation Security Administration from using the  
11 bag-match program as a supplemental means of securing  
12 checked baggage.

13 **SEC. 155. AVIATION SECURITY TECHNOLOGIES.**

14 (a) Report- Not later than six months after the date  
15 of the enactment of this section, the Secretary of Home-  
16 land Security shall transmit to the Congress a report on—

17 (1) the status and technical maturity of avia-  
18 tion security technologies (including technologies for  
19 detecting explosive, chemical, biological, or radio-  
20 logical materials on or in passengers, carry-on or  
21 checked baggage, or air cargo; improving resolution  
22 and readability of explosive detection systems; inte-  
23 grating the threat imaging projection system into  
24 checked baggage detection systems; site access secu-

1 rity for airport facilities; and such other technologies  
2 as the Secretary deems appropriate);

3 (2) for those technologies where possible, the  
4 planned schedule for deployment of such tech-  
5 nologies;

6 (3) the expected future costs for development,  
7 testing, evaluation, procurement, and installation,  
8 and projected annual costs for operation and mainte-  
9 nance, of such technologies;

10 (4) potential deployment problems in an airport  
11 setting; and

12 (5) methods of deploying security technologies  
13 to airports in a manner that maximizes the number  
14 of technologies that Federal and airport security  
15 personnel can effectively operate.

16 **SEC. 156. INSPECTION OF CARGO CARRIED ABOARD PAS-**  
17 **SENGER AIRCRAFT.**

18 Subtitle A of title IV of the Homeland Security Act  
19 of 2002 (6 U.S.C. 201–203) is amended by adding at the  
20 end the following:

21 **“SEC. 404. AIR CARGO ON PASSENGER AIRCRAFT.**

22 “(a) IN GENERAL.—Not later than 180 days after  
23 the date of the enactment of this section, the Secretary  
24 shall establish and begin to implement a system to screen  
25 or inspect all cargo that is to be transported in passenger

1 aircraft operated by an air carrier or foreign air carrier  
2 in air transportation or intrastate air transportation (as  
3 such terms are defined in section 40102 of title 49, United  
4 States Code). The system shall require the use of equip-  
5 ment, technology, and personnel to screen and inspect  
6 cargo that meet the same standards as those established  
7 by the Secretary for equipment, technology, and personnel  
8 used to screen passenger baggage.

9 “(b) REPORT.—Not later than 210 days after the  
10 date of the enactment of this section, the Secretary shall  
11 transmit to the Congress a report describing the system  
12 under subsection (a).

13 “(c) AUTHORIZATION OF APPROPRIATIONS.—There  
14 are authorized to be appropriated such sums as may be  
15 necessary to carry out this section.”.

16 **SEC. 157. DATABASE ON KNOWN SHIPPING COMPANIES.**

17 (a) IN GENERAL.—Not later than April 1, 2005, the  
18 Secretary of Homeland Security shall complete, and make  
19 available as appropriate to personnel of the Transpor-  
20 tation Security Administration, freight forwarders, airport  
21 authorities, air carriers, and other relevant entities a data-  
22 base containing the names and other relevant information  
23 of all known shipping companies. In making such database  
24 available to nongovernmental entities, the Secretary shall

1 ensure that sensitive security information and company  
2 proprietary information is adequately protected.

3 (b) REPORT.—Not later than the 30th day following  
4 the date of the completion of the database under sub-  
5 section (a), the Secretary shall transmit to Congress a re-  
6 port on the number of known shipping companies in the  
7 database, the number of known shipping companies for  
8 whom the Administration has conducted physical inspec-  
9 tions of facilities and paperwork of such companies to de-  
10 termine compliance with security regulations that apply to  
11 those companies, the number of companies that have ap-  
12 plied to the Secretary for known shipping company status  
13 and been denied, and the number of known shipping com-  
14 panies that have been removed from the database as a  
15 result of findings by the Administration that such compa-  
16 nies have failed to comply with appropriate security regu-  
17 lations.

18 **SEC. 158. FLIGHT CREW COMMUNICATION SYSTEMS.**

19 (a) IN GENERAL.—Not later than one year after the  
20 date of enactment of this Act, the Secretary of Homeland  
21 Security shall require, to the greatest extent technically  
22 feasible, air carriers (as defined in section 40102 of title  
23 49, United States Code) to provide flight attendants with  
24 a discreet and wireless method of communicating with pi-  
25 lots that meet such standards as the Secretary may estab-

lish by regulation. Such a system must be accessible by any Federal air marshal on a flight of an air carrier and appropriate Government security officials and personnel of the air carrier.

(b) DEADLINE FOR REGULATIONS.—The Secretary shall issue regulations to carry out this section not later than the 90th day following the date of the enactment of this Act.

**SEC. 159. NATIONAL STRATEGY FOR TRANSPORTATION SECURITY.**

(a) REQUIREMENT FOR STRATEGY.—

(1) RESPONSIBILITIES OF SECRETARY OF HOMELAND SECURITY.—The Secretary of Homeland Security shall—

(A) develop and implement a National Strategy for Transportation Security; and

(B) revise such strategy whenever necessary to improve or to maintain the currency of the strategy or whenever the Secretary otherwise considers it appropriate to do so.

(2) CONSULTATION WITH SECRETARY OF TRANSPORTATION.—The Secretary of Homeland Security shall consult with the Secretary of Transportation in developing and revising the National Strategy for Transportation Security under this section.

1 (b) CONTENT.—The National Strategy for Transpor-  
2 tation Security shall include the following matters:

3 (1) An identification and evaluation of the  
4 transportation assets within the United States that,  
5 in the interests of national security, must be pro-  
6 tected from attack or disruption by terrorist or other  
7 hostile forces, including aviation, bridge and tunnel,  
8 commuter rail and ferry, highway, maritime, pipe-  
9 line, rail, urban mass transit, and other public trans-  
10 portation infrastructure assets that could be at risk  
11 of such an attack or disruption.

12 (2) The development of the risk-based prior-  
13 ities, and realistic deadlines, for addressing security  
14 needs associated with those assets.

15 (3) The most practical and cost-effective means  
16 of defending those assets against threats to their se-  
17 curity.

18 (4) A forward-looking strategic plan that as-  
19 signs transportation security roles and missions to  
20 departments and agencies of the Federal Govern-  
21 ment (including the Armed Forces), State govern-  
22 ments (including the Army National Guard and Air  
23 National Guard), local governments, and public utili-  
24 ties, and establishes mechanisms for encouraging

1 private sector cooperation and participation in the  
2 implementation of such plan.

3 (5) A comprehensive delineation of response  
4 and recovery responsibilities and issues regarding  
5 threatened and executed acts of terrorism within the  
6 United States.

7 (6) A prioritization of research and development  
8 objectives that support transportation security  
9 needs, giving a higher priority to research and devel-  
10 opment directed toward protecting vital assets.

11 (7) A budget and recommendations for appro-  
12 priate levels and sources of funding to meet the ob-  
13 jectives set forth in the strategy.

14 (c) SUBMISSIONS TO CONGRESS.—

15 (1) THE NATIONAL STRATEGY.—

16 (A) INITIAL STRATEGY.—The Secretary of  
17 Homeland Security shall submit the National  
18 Strategy for Transportation Security developed  
19 under this section to Congress not later than  
20 April 1, 2005.

21 (B) SUBSEQUENT VERSIONS.—After 2005,  
22 the Secretary of Homeland Security shall sub-  
23 mit the National Strategy for Transportation  
24 Security, including any revisions, to Congress



1 not less frequently than April 1 of each even-  
2 numbered year.

3 (2) PERIODIC PROGRESS REPORT.—

4 (A) REQUIREMENT FOR REPORT.—Each  
5 year, in conjunction with the submission of the  
6 budget to Congress under section 1105(a) of  
7 title 31, United States Code, the Secretary of  
8 Homeland Security shall submit to Congress an  
9 assessment of the progress made on imple-  
10 menting the National Strategy for Transpor-  
11 tation Security.

12 (B) CONTENT.—Each progress report  
13 under this paragraph shall include, at a min-  
14 imum, the following matters:

15 (i) An assessment of the adequacy of  
16 the resources committed to meeting the ob-  
17 jectives of the National Strategy for  
18 Transportation Security.

19 (ii) Any recommendations for improv-  
20 ing and implementing that strategy that  
21 the Secretary, in consultation with the Sec-  
22 retary of Transportation, considers appro-  
23 priate.

24 (3) CLASSIFIED MATERIAL.—Any part of the  
25 National Strategy for Transportation Security that

1 involves information that is properly classified under  
2 criteria established by Executive order shall be sub-  
3 mitted to Congress separately in classified form.

4 (d) PRIORITY STATUS.—

5 (1) IN GENERAL.—The National Strategy for  
6 Transportation Security shall be the governing docu-  
7 ment for Federal transportation security efforts.

8 (2) OTHER PLANS AND REPORTS.—The Na-  
9 tional Strategy for Transportation Security shall in-  
10 clude, as an integral part or as an appendix—

11 (A) the current National Maritime Trans-  
12 portation Security Plan under section 70103 of  
13 title 46, United States Code;

14 (B) the report of the Secretary of Trans-  
15 portation under section 44938 of title 49,  
16 United States Code; and

17 (C) any other transportation security plan  
18 or report that the Secretary of Homeland Secu-  
19 rity determines appropriate for inclusion.

20 **SEC. 160. USE OF WATCHLISTS FOR PASSENGER AIR**  
21 **TRANSPORTATION SCREENING.**

22 (a) IN GENERAL.—The Secretary of Homeland Secu-  
23 rity, acting through the Transportation Security Adminis-  
24 tration, as soon as practicable after the date of the enact-

1 ment of this Act but in no event later than 90 days after  
2 that date, shall—

3           (1) implement a procedure under which the  
4       Transportation Security Administration compares  
5       information about passengers who are to be carried  
6       aboard a passenger aircraft operated by an air car-  
7       rier or foreign air carrier in air transportation or  
8       intrastate air transportation for flights and flight  
9       segments originating in the United States with a  
10      comprehensive, consolidated database containing in-  
11      formation about known or suspected terrorists and  
12      their associates; and

13           (2) use the information obtained by comparing  
14      the passenger information with the information in  
15      the database to prevent known or suspected terror-  
16      ists and their associates from boarding such flights  
17      or flight segments or to subject them to specific ad-  
18      ditional security scrutiny, through the use of “no  
19      fly” and “automatic selectee” lists or other means.

20      (b) AIR CARRIER COOPERATION.—The Secretary of  
21      Homeland Security, in coordination with the Secretary of  
22      Transportation, shall by order require air carriers to pro-  
23      vide the passenger information necessary to implement the  
24      procedure required by subsection (a).

1 (c) MAINTAINING THE ACCURACY AND INTEGRITY OF  
2 THE “NO FLY” AND “AUTOMATIC SELECTEE” LISTS.—

3 (1) WATCHLIST DATABASE.—The Secretary of  
4 Homeland Security, in consultation with the Direc-  
5 tor of the Federal Bureau of Investigation, shall de-  
6 sign guidelines, policies, and operating procedures  
7 for the collection, removal, and updating of data  
8 maintained, or to be maintained, in the watchlist  
9 database described in subsection (a)(1) that are de-  
10 signed to ensure the accuracy and integrity of the  
11 database.

12 (2) ACCURACY OF ENTRIES.—In developing the  
13 “no fly” and “automatic selectee” lists under sub-  
14 section (a)(2), the Secretary of Homeland Security  
15 shall establish a simple and timely method for cor-  
16 recting erroneous entries, for clarifying information  
17 known to cause false hits or misidentification errors,  
18 and for updating relevant information that is dis-  
19 positive in the passenger screening process. The Sec-  
20 retary shall also establish a process to provide indi-  
21 viduals whose names are confused with, or similar  
22 to, names in the database with a means of dem-  
23 onstrating that they are not a person named in the  
24 database.

1 **TITLE VIII—IMPROVING PRI-**  
2 **VATE SECTOR PREPARED-**  
3 **NESS**

4 **SEC. 161. SHORT TITLE.**

5 This title may be cited as the “Private Sector Pre-  
6 paredness Act of 2004”.

7 **SEC. 162. FINDINGS.**

8 Congress finds the following:

9 (1) Private sector organizations own 85 percent  
10 of the Nation’s infrastructure facilities and employ  
11 the vast majority of the Nation’s employees. The re-  
12 sources of these organizations, including property  
13 and personnel, can be coordinated in an emergency  
14 situation more efficiently than the population in gen-  
15 eral.

16 (2) Private sector organizations are often un-  
17 prepared for emergencies, whether resulting from a  
18 natural disaster or a terrorist incident. Although  
19 there have been exemplary efforts by select private  
20 sector organizations, emergency preparedness is not  
21 generally a priority for these organizations.

22 (3) The hearings of and testimony before the  
23 National Commission on Terrorist Attacks Upon the  
24 United States demonstrated that the lack of emer-  
25 gency preparedness and evacuation planning, train-

ing, and exercises by private sector organizations may have contributed to additional casualties at the World Trade Center on September 11, 2001.

(4) Although there may be an interest in promoting emergency preparedness within private sector organizations, there remains uncertainty and confusion as to the definition of appropriate and adequate preparedness and what actions these organizations should take.

(5) Identifying standards and best practices is necessary to promote emergency preparedness by private sector organizations, in addition to educational activities to effectively communicate such standards and best practices.

**SEC. 163. PRIVATE SECTOR EMERGENCY PREPAREDNESS PROGRAM.**

(a) ESTABLISHMENT OF PREPAREDNESS PROGRAM.—Title V of the Homeland Security Act of 2002 (6 U.S.C. 311 et seq.) is amended by adding at the end the following:

**“SEC. 510. PRIVATE SECTOR EMERGENCY PREPAREDNESS PROGRAM.**

“(a) PREPAREDNESS PROGRAM.—Not later than 90 days after the date of enactment of this section, the Secretary shall develop and implement a program to enhance

1 private sector preparedness for emergencies and disasters,  
2 including emergencies resulting from acts of terrorism.

3 “(b) PROGRAM ELEMENTS.—In carrying out the pro-  
4 gram, the Secretary shall develop guidance and identify  
5 best practices to assist or foster action by the private sec-  
6 tor in

7 “(1) identifying hazards and assessing risks  
8 and impacts;

9 “(2) mitigating the impacts of a wide variety of  
10 hazards, including weapons of mass destruction;

11 “(3) managing necessary emergency prepared-  
12 ness and response resources;

13 “(4) developing mutual aid agreements;

14 “(5) developing and maintaining emergency  
15 preparedness and response plans, as well as associ-  
16 ated operational procedures;

17 “(6) developing and maintaining communica-  
18 tions and warning systems;

19 “(7) developing and conducting training and ex-  
20 ercises to support and evaluate emergency prepared-  
21 ness and response plans and operational procedures;

22 “(8) developing and conducting training pro-  
23 grams for security guards to implement emergency  
24 preparedness and response plans and operations pro-  
25 cedures; and

1           “(9) developing procedures to respond to exter-  
2           nal requests for information from the media and the  
3           public.

4           “(c) STANDARDS.—

5           “(1) IN GENERAL.—The Secretary shall sup-  
6           port the development of, promulgate, and regularly  
7           update as necessary national voluntary consensus  
8           standards for private sector emergency preparedness  
9           that will enable private sector organizations to  
10          achieve optimal levels of emergency preparedness as  
11          soon as practicable. Such standards include the Na-  
12          tional Fire Protection Association 1600 Standard on  
13          Disaster/Emergency Management and Business Con-  
14          tinuity Programs.

15          “(2) CONSULTATION.—The Secretary shall  
16          carry out paragraph (1) in consultation with the  
17          Under Secretary for Emergency Preparedness and  
18          Response, the Under Secretary for Science and  
19          Technology, the Under Secretary for Information  
20          Analysis and Infrastructure Protection, and the Spe-  
21          cial Assistant to the Secretary for the Private Sec-  
22          tor.

23          “(d) COORDINATION.—The Secretary shall coordi-  
24          nate the program with, and utilize to the maximum extent  
25          practicable



1 “(1) the voluntary standards for disaster and  
 2 emergency management and business continuity pro-  
 3 grams developed by the American National Stand-  
 4 ards Institute and the National Fire Protection As-  
 5 sociation; and

6 “(2) any existing private sector emergency pre-  
 7 paredness guidance or best practices developed by  
 8 private sector industry associations or other organi-  
 9 zations.”.

10 (b) CONFORMING AMENDMENT.—The table of con-  
 11 tents contained in section 1(b) of such Act (116 Stat.  
 12 2135) is amended by inserting after the item relating to  
 13 section 509 the following:

“Sec. 510. Private sector emergency preparedness program.”.

## 14 **TITLE IX—INCREASING** 15 **INFORMATION SHARING**

### 16 **SEC. 165. INFORMATION SHARING.**

17 (a) DEFINITIONS.—In this section:

18 (1) EXECUTIVE COUNCIL.—The term “Execu-  
 19 tive Council” means the Executive Council on Infor-  
 20 mation Sharing established under subsection (h).

21 (2) HOMELAND SECURITY INFORMATION.—The  
 22 term “homeland security information” means all in-  
 23 formation, whether collected, produced, or distrib-  
 24 uted by intelligence, law enforcement, military,  
 25 homeland security, or other activities relating to—

1 (A) the existence, organization, capabilities,  
2 ties, plans, intentions, vulnerabilities, means of  
3 finance or material support, or activities of foreign  
4 or international terrorist groups or individuals,  
5 or of domestic groups or individuals involved in  
6 transnational terrorism;

7 (B) threats posed by such groups or individuals  
8 to the United States, United States persons,  
9 or United States interests, or to those of  
10 other nations;

11 (C) communications of or by such groups  
12 or individuals; or

13 (D) groups or individuals reasonably believed  
14 to be assisting or associated with such  
15 groups or individuals.

16 (3) NETWORK.—The term “Network” means  
17 the Information Sharing Network described under  
18 subsection (c).

19 (b) FINDINGS.—Consistent with the report of the National  
20 Commission on Terrorist Attacks upon the United  
21 States, Congress makes the following findings:

22 (1) The effective use of information, from all  
23 available sources, is essential to the fight against  
24 terror and the protection of our homeland. The biggest  
25 impediment to all-source analysis, and to a

1 greater likelihood of “connecting the dots”, is resist-  
2 ance to sharing information.

3 (2) The United States Government has access  
4 to a vast amount of information, including not only  
5 traditional intelligence but also other government  
6 databases, such as those containing customs or im-  
7 migration information. However, the United States  
8 Government has a weak system for processing and  
9 using the information it has.

10 (3) In the period preceding September 11,  
11 2001, there were instances of potentially helpful in-  
12 formation that was available but that no person  
13 knew to ask for; information that was distributed  
14 only in compartmented channels, and information  
15 that was requested but could not be shared.

16 (4) Current security requirements nurture over-  
17 classification and excessive compartmentalization of  
18 information among agencies. Each agency’s incen-  
19 tive structure opposes sharing, with risks, including  
20 criminal, civil, and administrative sanctions, but few  
21 rewards for sharing information.

22 (5) The current system, in which each intel-  
23 ligence agency has its own security practices, re-  
24 quires a demonstrated “need to know” before shar-  
25 ing. This approach assumes that it is possible to

1 know, in advance, who will need to use the informa-  
2 tion. An outgrowth of the cold war, such a system  
3 implicitly assumes that the risk of inadvertent dis-  
4 closure outweighs the benefits of wider sharing.  
5 Such assumptions are no longer appropriate. Al-  
6 though counterintelligence concerns are still real, the  
7 costs of not sharing information are also substantial.  
8 The current “need-to-know” culture of information  
9 protection needs to be replaced with a “need-to-  
10 share” culture of integration.

11 (6) A new approach to the sharing of intel-  
12 ligence and homeland security information is ur-  
13 gently needed. An important conceptual model for a  
14 new “trusted information network” is the System-  
15 wide Homeland Analysis and Resource Exchange  
16 (SHARE) Network proposed by a task force of lead-  
17 ing professionals assembled by the Markle Founda-  
18 tion and described in reports issued in October 2002  
19 and December 2003.

20 (7) No single agency can create a meaningful  
21 information sharing system on its own. Alone, each  
22 agency can only modernize stovepipes, not replace  
23 them. Presidential leadership is required to bring  
24 about governmentwide change.

25 (c) INFORMATION SHARING NETWORK.—

1           (1) ESTABLISHMENT.—The President shall es-  
2       tablish a trusted information network and secure in-  
3       formation sharing environment to promote sharing  
4       of intelligence and homeland security information in  
5       a manner consistent with national security and the  
6       protection of privacy and civil liberties, and based on  
7       clearly defined and consistently applied policies and  
8       procedures, and valid investigative, analytical or  
9       operational requirements.

10          (2) ATTRIBUTES.—The Network shall promote  
11       coordination, communication and collaboration of  
12       people and information among all relevant Federal  
13       departments and agencies, State, tribal, and local  
14       authorities, and relevant private sector entities, in-  
15       cluding owners and operators of critical infrastruc-  
16       ture, by using policy guidelines and technologies that  
17       support—

18                (A) a decentralized, distributed, and co-  
19       ordinated environment that connects existing  
20       systems where appropriate and allows users to  
21       share information among agencies, between lev-  
22       els of government, and, as appropriate, with the  
23       private sector;

1 (B) the sharing of information in a form  
2 and manner that facilitates its use in analysis,  
3 investigations and operations;

4 (C) building upon existing systems capa-  
5 bilities currently in use across the Government;

6 (D) utilizing industry best practices, in-  
7 cluding minimizing the centralization of data  
8 and seeking to use common tools and capabili-  
9 ties whenever possible;

10 (E) employing an information access man-  
11 agement approach that controls access to data  
12 rather than to just networks;

13 (F) facilitating the sharing of information  
14 at and across all levels of security by using pol-  
15 icy guidelines and technologies that support  
16 writing information that can be broadly shared;

17 (G) providing directory services for locat-  
18 ing people and information;

19 (H) incorporating protections for individ-  
20 uals' privacy and civil liberties;

21 (I) incorporating strong mechanisms for  
22 information security and privacy and civil lib-  
23 erties guideline enforcement in order to enhance  
24 accountability and facilitate oversight, includ-  
25 ing—

- 1 (i) multifactor authentication and ac-  
2 cess control;
- 3 (ii) strong encryption and data protec-  
4 tion;
- 5 (iii) immutable audit capabilities;
- 6 (iv) automated policy enforcement;
- 7 (v) perpetual, automated screening for  
8 abuses of network and intrusions; and
- 9 (vi) uniform classification and han-  
10 dling procedures;
- 11 (J) compliance with requirements of appli-  
12 cable law and guidance with regard to the plan-  
13 ning, design, acquisition, operation, and man-  
14 agement of information systems; and
- 15 (K) permitting continuous system up-  
16 grades to benefit from advances in technology  
17 while preserving the integrity of stored data.
- 18 (d) IMMEDIATE ACTIONS.—Not later than 90 days  
19 after the date of the enactment of this Act, the Director  
20 of the Office of Management and Budget, in consultation  
21 with the Executive Council, shall—
- 22 (1) submit to the President and to Congress a  
23 description of the technological, legal, and policy  
24 issues presented by the creation of the Network de-

1 scribed in subsection (c), and the way in which these  
2 issues will be addressed;

3 (2) establish electronic directory services to as-  
4 sist in locating in the Federal Government intel-  
5 ligence and homeland security information and peo-  
6 ple with relevant knowledge about intelligence and  
7 homeland security information; and

8 (3) conduct a review of relevant current Federal  
9 agency capabilities, including—

10 (A) a baseline inventory of current Federal  
11 systems that contain intelligence or homeland  
12 security information;

13 (B) the money currently spent to maintain  
14 those systems; and

15 (C) identification of other information that  
16 should be included in the Network.

17 (e) GUIDELINES AND REQUIREMENTS.—As soon as  
18 possible, but in no event later than 180 days after the  
19 date of the enactment of this Act, the President shall—

20 (1) in consultation with the Executive Council,  
21 issue guidelines—

22 (A) for acquiring, accessing, sharing, and  
23 using information, including guidelines to en-  
24 sure that information is provided in its most  
25 shareable form, such as by separating out data



1 from the sources and methods by which that  
2 data are obtained; and

3 (B) on classification policy and handling  
4 procedures across Federal agencies, including  
5 commonly accepted processing and access con-  
6 trols;

7 (2) in consultation with the Privacy and Civil  
8 Liberties Oversight Board established under section  
9 226, that—

10 (A) protect privacy and civil liberties in the  
11 development and use of the Network; and

12 (B) shall be made public, unless, and only  
13 to the extent that, nondisclosure is clearly nec-  
14 essary to protect national security; and

15 (3) require the heads of Federal departments  
16 and agencies to promote a culture of information  
17 sharing by—

18 (A) reducing disincentives to information  
19 sharing, including overclassification of informa-  
20 tion and unnecessary requirements for origi-  
21 nator approval; and

22 (B) providing affirmative incentives for in-  
23 formation sharing, such as the incorporation of  
24 information sharing performance measures into  
25 agency and managerial evaluations, and em-

1            ployee awards for promoting innovative infor-  
2            mation sharing practices.

3            (f) ENTERPRISE ARCHITECTURE AND IMPLEMENTA-  
4            TION PLAN.—Not later than 270 days after the date of  
5            the enactment of this Act, the Director of Management  
6            and Budget shall submit to the President and to Congress  
7            an enterprise architecture and implementation plan for the  
8            Network. The enterprise architecture and implementation  
9            plan shall be prepared by the Director of Management and  
10           Budget, in consultation with the Executive Council, and  
11           shall include—

12                    (1) a description of the parameters of the pro-  
13                    posed Network, including functions, capabilities, and  
14                    resources;

15                    (2) a delineation of the roles of the Federal de-  
16                    partments and agencies that will participate in the  
17                    development of the Network, including identification  
18                    of any agency that will build the infrastructure need-  
19                    ed to operate and manage the Network (as distinct  
20                    from the individual agency components that are to  
21                    be part of the Network), with the delineation of roles  
22                    to be consistent with—

23                            (A) the authority of the National Intel-  
24                            ligence Director under this Act to set standards  
25                            for information sharing and information tech-

1 nology throughout the intelligence community;  
2 and

3 (B) the authority of the Secretary of  
4 Homeland Security and the role of the Depart-  
5 ment of Homeland Security in coordinating  
6 with State, tribal, and local officials and the  
7 private sector;

8 (3) a description of the technological require-  
9 ments to appropriately link and enhance existing  
10 networks and a description of the system design that  
11 will meet these requirements;

12 (4) an enterprise architecture that—

13 (A) is consistent with applicable laws and  
14 guidance with regard to planning, design, acqui-  
15 sition, operation, and management of informa-  
16 tion systems;

17 (B) will be used to guide and define the  
18 development and implementation of the Net-  
19 work; and

20 (C) addresses the existing and planned en-  
21 terprise architectures of the departments and  
22 agencies participating in the Network;

23 (5) a description of how privacy and civil lib-  
24 erties will be protected throughout the design and  
25 implementation of the Network;

1           (6) objective, systemwide performance measures  
2           to enable the assessment of progress toward achiev-  
3           ing full implementation of the Network;

4           (7) a plan, including a time line, for the devel-  
5           opment and phased implementation of the Network;

6           (8) total budget requirements to develop and  
7           implement the Network, including the estimated an-  
8           nual cost for each of the 5 years following the date  
9           of the enactment of this Act; and

10          (9) proposals for any legislation that the Direc-  
11          tor of Management and Budget determines nec-  
12          essary to implement the Network.

13          (g) DIRECTOR OF MANAGEMENT AND BUDGET RE-  
14          SPONSIBLE FOR INFORMATION SHARING ACROSS THE  
15          FEDERAL GOVERNMENT.—

16          (1) ADDITIONAL DUTIES AND RESPONSIBIL-  
17          ITIES.—

18                  (A) IN GENERAL.—The Director of Man-  
19                  agement and Budget, in consultation with the  
20                  Executive Council, shall—

21                          (i) implement and manage the Net-  
22                          work;

23                          (ii) develop and implement policies,  
24                          procedures, guidelines, rules, and stand-  
25                          ards as appropriate to foster the develop-

1 ment and proper operation of the Network;  
2 and

3 (iii) assist, monitor, and assess the  
4 implementation of the Network by Federal  
5 departments and agencies to ensure ade-  
6 quate progress, technological consistency  
7 and policy compliance; and regularly report  
8 the findings to the President and to Con-  
9 gress.

10 (B) CONTENT OF POLICIES, PROCEDURES,  
11 GUIDELINES, RULES, AND STANDARDS.—The  
12 policies, procedures, guidelines, rules, and  
13 standards under subparagraph (A)(ii) shall—

14 (i) take into account the varying mis-  
15 sions and security requirements of agencies  
16 participating in the Network;

17 (ii) address development, implementa-  
18 tion, and oversight of technical standards  
19 and requirements;

20 (iii) address and facilitate information  
21 sharing between and among departments  
22 and agencies of the intelligence community,  
23 the Department of Defense, the homeland  
24 security community and the law enforce-  
25 ment community;

1 (iv) address and facilitate information  
2 sharing between Federal departments and  
3 agencies and State, tribal and local govern-  
4 ments;

5 (v) address and facilitate, as appro-  
6 priate, information sharing between Fed-  
7 eral departments and agencies and the pri-  
8 vate sector;

9 (vi) address and facilitate, as appro-  
10 priate, information sharing between Fed-  
11 eral departments and agencies with foreign  
12 partners and allies; and

13 (vii) ensure the protection of privacy  
14 and civil liberties.

15 (2) APPOINTMENT OF PRINCIPAL OFFICER.—

16 Not later than 30 days after the date of the enact-  
17 ment of this Act, the Director of Management and  
18 Budget shall appoint, with approval of the Presi-  
19 dent, a principal officer in the Office of Management  
20 and Budget whose primary responsibility shall be to  
21 carry out the day-to-day duties of the Director speci-  
22 fied in this section. The officer shall report directly  
23 to the Director of Management and Budget, have  
24 the rank of a Deputy Director and shall be paid at  
25 the rate of pay payable for a position at level III of

1 the Executive Schedule under section 5314 of title  
2 5, United States Code.

3 (h) EXECUTIVE COUNCIL ON INFORMATION SHAR-  
4 ING.—

5 (1) ESTABLISHMENT.—There is established an  
6 Executive Council on Information Sharing that shall  
7 assist the Director of Management and Budget in  
8 the execution of the Director's duties under this Act  
9 concerning information sharing.

10 (2) MEMBERSHIP.—The members of the Execu-  
11 tive Council shall be—

12 (A) the Director of Management and  
13 Budget, who shall serve as Chairman of the Ex-  
14 ecutive Council;

15 (B) the Secretary of Homeland Security or  
16 his designee;

17 (C) the Secretary of Defense or his des-  
18 ignee;

19 (D) the Attorney General or his designee;

20 (E) the Secretary of State or his designee;

21 (F) the Director of the Federal Bureau of  
22 Investigation or his designee;

23 (G) the National Intelligence Director or  
24 his designee;

1 (H) such other Federal officials as the  
2 President shall designate;

3 (I) representatives of State, tribal, and  
4 local governments, to be appointed by the Presi-  
5 dent; and

6 (J) individuals who are employed in private  
7 businesses or nonprofit organizations that own  
8 or operate critical infrastructure, to be ap-  
9 pointed by the President.

10 (3) RESPONSIBILITIES.—The Executive Council  
11 shall assist the Director of Management and Budget  
12 in—

13 (A) implementing and managing the Net-  
14 work;

15 (B) developing policies, procedures, guide-  
16 lines, rules, and standards necessary to estab-  
17 lish and implement the Network;

18 (C) ensuring there is coordination among  
19 departments and agencies participating in the  
20 Network in the development and implementa-  
21 tion of the Network;

22 (D) reviewing, on an ongoing basis, poli-  
23 cies, procedures, guidelines, rules, and stand-  
24 ards related to the implementation of the Net-  
25 work;



1           (E) establishing a dispute resolution proc-  
2           ess to resolve disagreements among depart-  
3           ments and agencies about whether particular  
4           information should be shared and in what man-  
5           ner; and

6           (F) considering such reports as are sub-  
7           mitted by the Advisory Board on Information  
8           Sharing under subsection (i)(2).

9           (4) REPORTS.—Not later than 1 year after the  
10          date of the enactment of this Act, and annually  
11          thereafter, the Director of Management and Budget,  
12          in the capacity of Chair of the Executive Council,  
13          shall submit a report to the President and to Con-  
14          gress that shall include—

15               (A) a description of the activities and ac-  
16               complishments of the Council in the preceding  
17               year; and

18               (B) the number and dates of the meetings  
19               held by the Council and a list of attendees at  
20               each meeting.

21           (5) INFORMING THE PUBLIC.—The Executive  
22          Council shall—

23               (A) make its reports to Congress available  
24               to the public to the greatest extent that is con-

1           sistent with the protection of classified informa-  
2           tion and applicable law; and

3           (B) otherwise inform the public of its ac-  
4           tivities, as appropriate and in a manner con-  
5           sistent with the protection of classified informa-  
6           tion and applicable law.

7       (i) REPORTS.—

8           (1) IN GENERAL.—Not later than 1 year after  
9           the date of the enactment of this Act, and semiannu-  
10          ally thereafter, the President through the Director of  
11          Management and Budget shall submit a report to  
12          Congress on the state of the Network and of infor-  
13          mation sharing across the Federal Government.

14          (2) CONTENT.—Each report under this sub-  
15          section shall include—

16               (A) a progress report on the extent to  
17               which the Network has been implemented, in-  
18               cluding how the Network has fared on the gov-  
19               ernment-wide and agency-specific performance  
20               measures and whether the performance goals  
21               set in the preceding year have been met;

22               (B) objective systemwide performance  
23               goals for the following year;

24               (C) an accounting of how much was spent  
25               on the Network in the preceding year;

1           (D) actions taken to ensure that agencies  
2           procure new technology that is consistent with  
3           the Network and information on whether new  
4           systems and technology are consistent with the  
5           Network;

6           (E) the extent to which, in appropriate cir-  
7           cumstances, all terrorism watch lists are avail-  
8           able for combined searching in real time  
9           through the Network and whether there are  
10          consistent standards for placing individuals on,  
11          and removing individuals from, the watch lists,  
12          including the availability of processes for cor-  
13          recting errors;

14          (F) the extent to which unnecessary road-  
15          blocks, impediments, or disincentives to infor-  
16          mation sharing, including the inappropriate use  
17          of paper-only intelligence products and require-  
18          ments for originator approval, have been elimi-  
19          nated;

20          (G) the extent to which positive incentives  
21          for information sharing have been implemented;

22          (H) the extent to which classified informa-  
23          tion is also made available through the Net-  
24          work, in whole or in part, in unclassified form;

1 (I) the extent to which State, tribal, and  
2 local officials—

3 (i) are participating in the Network;

4 (ii) have systems which have become  
5 integrated into the Network;

6 (iii) are providing as well as receiving  
7 information; and

8 (iv) are using the Network to commu-  
9 nicate with each other;

10 (J) the extent to which—

11 (i) private sector data, including infor-  
12 mation from owners and operators of crit-  
13 ical infrastructure, is incorporated in the  
14 Network; and

15 (ii) the private sector is both pro-  
16 viding and receiving information;

17 (K) where private sector data has been  
18 used by the Government or has been incor-  
19 porated into the Network—

20 (i) the measures taken to protect sen-  
21 sitive business information; and

22 (ii) where the data involves informa-  
23 tion about individuals, the measures taken  
24 to ensure the accuracy of such data;

1 (L) the measures taken by the Federal  
2 Government to ensure the accuracy of other in-  
3 formation on the Network and, in particular,  
4 the accuracy of information about individuals;

5 (M) an assessment of the Network“s pri-  
6 vacy and civil liberties protections, including ac-  
7 tions taken in the preceding year to implement  
8 or enforce privacy and civil liberties protections  
9 and a report of complaints received about inter-  
10 ference with an individual”s privacy or civil lib-  
11 erties; and

12 (N) an assessment of the security protec-  
13 tions of the Network.

14 (j) AGENCY RESPONSIBILITIES.—The head of each  
15 department or agency possessing or using intelligence or  
16 homeland security information or otherwise participating  
17 in the Network shall—

18 (1) ensure full department or agency compli-  
19 ance with information sharing policies, procedures,  
20 guidelines, rules, and standards established for the  
21 Network under subsections (c) and (g);

22 (2) ensure the provision of adequate resources  
23 for systems and activities supporting operation of  
24 and participation in the Network; and

1           (3) ensure full agency or department coopera-  
2           tion in the development of the Network and associ-  
3           ated enterprise architecture to implement govern-  
4           mentwide information sharing, and in the manage-  
5           ment and acquisition of information technology con-  
6           sistent with applicable law.

7           (k) AGENCY PLANS AND REPORTS.—Each Federal  
8           department or agency that possesses or uses intelligence  
9           and homeland security information, operates a system in  
10          the Network or otherwise participates, or expects to par-  
11          ticipate, in the Network, shall submit to the Director of  
12          Management and Budget—

13                (1) not later than 1 year after the date of the  
14          enactment of this Act, a report including—

15                    (A) a strategic plan for implementation of  
16                    the Network’s requirements within the depart-  
17                    ment or agency;

18                    (B) objective performance measures to as-  
19                    sess the progress and adequacy of the depart-  
20                    ment or agency’s information sharing efforts;  
21                    and

22                    (C) budgetary requirements to integrate  
23                    the agency into the Network, including pro-  
24                    jected annual expenditures for each of the fol-

1           lowing 5 years following the submission of the  
2           report; and

3           (2) annually thereafter, reports including—

4                 (A) an assessment of the progress of the  
5                 department or agency in complying with the  
6                 Network's requirements, including how well the  
7                 agency has performed on the objective measures  
8                 developed under paragraph (1)(B);

9                 (B) the agency's expenditures to imple-  
10                ment and comply with the Network's require-  
11                ments in the preceding year; and

12                (C) the agency's or department's plans for  
13                further implementation of the Network in the  
14                year following the submission of the report.

15       (l) PERIODIC ASSESSMENTS.—

16           (1) COMPTROLLER GENERAL.—

17                 (A) IN GENERAL.—Not later than 1 year  
18                 after the date of the enactment of this Act, and  
19                 periodically thereafter, the Comptroller General  
20                 shall evaluate the implementation of the Net-  
21                 work, both generally and, at the discretion of  
22                 the Comptroller General, within specific depart-  
23                 ments and agencies, to determine the extent of  
24                 compliance with the Network's requirements  
25                 and to assess the effectiveness of the Network

1 in improving information sharing and collabora-  
2 tion and in protecting privacy and civil liberties,  
3 and shall report to Congress on the findings of  
4 the Comptroller General.

5 (B) INFORMATION AVAILABLE TO THE  
6 COMPTROLLER GENERAL.—Upon request by the  
7 Comptroller General, information relevant to an  
8 evaluation under subsection (a) shall be made  
9 available to the Comptroller General under sec-  
10 tion 716 of title 31, United States Code.

11 (C) CONSULTATION WITH CONGRESSIONAL  
12 COMMITTEES.—If a record is not made avail-  
13 able to the Comptroller General within a rea-  
14 sonable time, before the Comptroller General  
15 files a report under section 716(b)(1) of title  
16 31, United States Code, the Comptroller Gen-  
17 eral shall consult with the Select Committee on  
18 Intelligence of the Senate, the Permanent Se-  
19 lect Committee on Intelligence of the House of  
20 Representatives, the Committee on Govern-  
21 mental Affairs of the Senate, and the Com-  
22 mittee on Government Reform of the House of  
23 Representatives concerning the Comptroller's  
24 intent to file a report.



1           (2) INSPECTORS GENERAL.—The Inspector  
2       General in any Federal department or agency that  
3       possesses or uses intelligence or homeland security  
4       information or that otherwise participates in the  
5       Network shall, at the discretion of the Inspector  
6       General—

7           (A) conduct audits or investigations to—

8               (i) determine the compliance of that  
9       department or agency with the Network’s  
10      requirements; and

11           (ii) assess the effectiveness of that de-  
12      partment or agency in improving informa-  
13      tion sharing and collaboration and in pro-  
14      tecting privacy and civil liberties; and

15           (B) issue reports on such audits and inves-  
16      tigations.

17       (3) CHIEF PRIVACY OFFICERS.—The Chief Pri-  
18      vacy Officers established under section 5092 in any  
19      Federal department or agency that possesses or uses  
20      intelligence or homeland security information or that  
21      otherwise participates in the Network shall, at the  
22      discretion of the Chief Privacy Officer—

23           (A) conduct audits or investigations to en-  
24      sure that the network, or the use of the net-

1 work by that department or agency, does not  
 2 erode privacy protections; and

3 (B) issue reports on such audits and inves-  
 4 tigations.

5 (m) AUTHORIZATION OF APPROPRIATIONS.—There  
 6 are authorized to be appropriated—

7 (1) \$50,000,000 to the Director of Management  
 8 and Budget to carry out this section for fiscal year  
 9 2005; and

10 (2) such sums as are necessary to carry out this  
 11 section in each fiscal year thereafter, to be disbursed  
 12 and allocated in accordance with the Network imple-  
 13 mentation plan required by subsection (f).

14 (n) SECTION 1017.—Section 1017 of this Act shall  
 15 have no force or effect.

## 16 **TITLE X—PROTECTING** 17 **CRITICAL INFRASTRUCTURE**

### 18 **SEC. 171. CRITICAL INFRASTRUCTURE EVALUATION AND** 19 **PRIORITIZATION PROGRAM.**

20 (a) PROGRAM.—Not later than 90 days after the date  
 21 of the enactment of this Act, the Secretary of Homeland  
 22 Security shall develop, in cooperation with other relevant  
 23 Federal agencies, State and local governments, and the  
 24 private sector, as appropriate, a prioritized list of national  
 25 critical infrastructure and key assets, based on the degree

1 to which destruction or significant disruption of such in-  
2 frastructure or assets would result in—

3 (1) substantial human casualties;

4 (2) a substantial adverse impact on the national  
5 economy; or

6 (3) a substantial adverse impact on national se-  
7 curity.

8 (b) SECURITY PLAN.—

9 (1) REQUIREMENT.—Not later than 180 days  
10 after the date of the enactment of this Act, the Sec-  
11 retary, in coordination with other relevant Federal  
12 agencies, State and local governments, and the pri-  
13 vate sector, as appropriate, shall—

14 (A) review existing plans for securing the  
15 critical infrastructure and key assets included  
16 in the list under subsection (a);

17 (B) recommend changes to existing plans  
18 and develop additional plans for securing such  
19 infrastructure and assets that the Secretary de-  
20 termines necessary; and

21 (C) coordinate or contribute to protective  
22 efforts of other agencies as directed in Home-  
23 land Security Presidential Directive 7.

24 (2) CONTENTS OF PLANS.—Recommendations  
25 under paragraph (1) shall include—

1 (A) recommendations on necessary protec-  
2 tive measures to secure such infrastructure and  
3 assets, including suggested milestones and time-  
4 frames for implementation; and

5 (B) to the extent practicable, performance  
6 measures to evaluate the benefits to national  
7 and economic security from the implementation  
8 of such protective measures.

9 (c) IMPLEMENTATION REPORT.—

10 (1) IN GENERAL.—Within one year after the  
11 date of the enactment of this Act, the Secretary  
12 shall submit a report to the appropriate congres-  
13 sional committees (as that term is defined in section  
14 2 of the Homeland Security Act of 2002 (6 U.S.C.  
15 101)) on the implementation of subsection (b). Such  
16 report shall detail—

17 (A) the Secretary’s review, development,  
18 and coordination of security plans under such  
19 subsection; and

20 (B) the Secretary’s oversight of the execu-  
21 tion and effectiveness of such security plans

22 (2) UPDATE.—The Secretary shall provide an  
23 updated report under this subsection to the appro-  
24 priate congressional committees one year after the  
25 submission of the report under paragraph (1).

1 (d) PROTECTION OF INFORMATION.—Information  
 2 that is generated, compiled, or disseminated by the De-  
 3 partment of Homeland Security in carrying out this sec-  
 4 tion—

5 (1) is exempt from disclosure under section 552  
 6 of title 5, United States Code; and

7 (2) shall not, if provided by the Department to  
 8 a State or local government or government agency—

9 (A) be made available pursuant to any  
 10 State or local law requiring disclosure of infor-  
 11 mation or records;

12 (B) otherwise be disclosed or distributed to  
 13 any person by such State or local government  
 14 or government agency without the written con-  
 15 sent of the Secretary; or

16 (C) be used other than for the purpose of  
 17 protecting critical infrastructure or protected  
 18 systems, or in furtherance of an investigation or  
 19 the prosecution of a criminal act.

20 **SEC. 172. DEADLINE FOR COMPREHENSIVE NATIONAL**  
 21 **PLAN TO SECURE CRITICAL INFRASTRUC-**  
 22 **TURE AND KEY ASSETS.**

23 Within one year after the date of the enactment of  
 24 this Act, the Secretary of Homeland Security shall develop  
 25 a comprehensive national plan for securing critical infra-

1 structure and key assets and recommend protective meas-  
2 ures for such infrastructures and assets, as required by  
3 paragraphs (5) and (6) of subsection 201(d) of the Home-  
4 land Security Act of 2002 (6 U.S.C. 121(d)).

5 **SEC. 173. REGULATORY AUTHORITY.**

6 (a) IN GENERAL.—The Secretary of Homeland Secu-  
7 rity may promulgate such regulations as the Secretary de-  
8 termines to be necessary to enhance protection of critical  
9 infrastructure in accordance with the plans developed  
10 under the sections \_\_171 and \_\_172 of this Act and the  
11 requirements of paragraphs (5) and (6) of section 201(d)  
12 of the Homeland Security Act of 2002 (6 U.S.C. 121(d)).

13 (b) CONFORMING AMENDMENT.—Section 877(a) of  
14 the Homeland Security Act of 2002 (6 U.S.C. 457(a)) is  
15 amended by inserting “paragraphs (5) and (6) of section  
16 201(d) and” after “Except as otherwise provided in”.

17 **SEC. 174. BEST PRACTICES.**

18 Within one year after the date of the enactment of  
19 this Act, the Secretary of Homeland Security shall—

20 (1) develop, in collaboration with the heads of  
21 other appropriate Federal agencies and in consulta-  
22 tion with the private sector, security-related best  
23 practices for each critical infrastructure sector iden-  
24 tified by the President;

(2) ensure the broad dissemination of such best practices to appropriate public and private sector entities and authorities; and

(3) encourage the adoption of such best practices by such entities and authorities.

## **TITLE XI—DEFENDING AGAINST BIOTERRORISM**

### **Subtitle A—National Biodefense Strategy**

#### **SEC. 181. NATIONAL BIODEFENSE STRATEGY.**

(a) STRATEGY.—

(1) IN GENERAL.—Consistent with the provisions of section 505 of the Homeland Security Act of 2002 (6 U.S.C. 315) and subsections (a) and (b) of section 304 of such Act (6 U.S.C. 184), the Secretary of Homeland Security, in consultation with the heads of other appropriate Federal agencies, shall develop a comprehensive national biodefense strategy (in this section referred to as the “biodefense strategy”) for meeting the requirements, responsibilities, and authorities of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.), including sections 201(d)(1), 302(2), and 502(3) of such Act, with respect to the biodefense mission of the Department.

1 (2) DEADLINES.—The Secretary shall

2 (A) develop the biodefense strategy not  
3 later than one year after the date of the enact-  
4 ment of this Act; and

5 (B) regularly update such strategy as nec-  
6 essary, but not less than every four years.

7 (b) CONTENTS.—The biodefense strategy shall set  
8 forth the following:

9 (1) The objectives, missions, and priorities, in-  
10 cluding how such objectives, missions, and priorities  
11 were established and will be updated.

12 (2) A description of the biological threats to  
13 and vulnerabilities of the Nation, including a  
14 prioritization of such threats in terms of risk.

15 (3) A specification of each Federal agency with  
16 research and development responsibilities regarding  
17 such objectives, missions, and priorities, and a de-  
18 scription of such responsibilities.

19 (4) A specification of each Federal agency with  
20 other responsibilities regarding such objectives, mis-  
21 sions, and priorities (including surveillance, threat  
22 and risk analysis, and incident response), and a de-  
23 scription of such responsibilities.



1           (5) The mechanisms by which coordination  
2           among the Federal agencies described in paragraphs  
3           (3) and (4) will be achieved.

4           (6) The role of State and local governments and  
5           private sector institutions in the biodefense strategy,  
6           as identified by the Federal agencies described in  
7           paragraphs (3) and (4) with the responsibility and  
8           mission to coordinate and communicate with State  
9           and local governments and private sector institu-  
10          tions.

11          (7) The mechanisms by which the Federal  
12          agencies referred to in paragraph (6) coordinate and  
13          communicate with State and local governments and  
14          private sector institutions.

15          (8) Performance benchmarks to measure  
16          progress in achieving the objectives of the biodefense  
17          strategy, including a specification of expected time-  
18          frames for implementation.

19          (c) OTHER AGENCY RESPONSIBILITIES.—The Sec-  
20          retary shall obtain the concurrence of the relevant Federal  
21          agency head with respect to such other agency's respon-  
22          sibilities or activities covered by this section.

23          (d) SUBMISSION.—Upon its completion, the Sec-  
24          retary shall transmit a copy of the biodefense strategy to

1 the Congress in an unclassified form with a classified  
2 annex as appropriate.

3           **Subtitle B—Development of**  
4           **Medical Countermeasures**

5 **SEC. 184. SHORT TITLE.**

6           This subtitle may be cited as the “Rapid Pathogen  
7 Identification to Delivery of Cures Act”.

8 **SEC. 185. FINDINGS AND POLICY.**

9           (a) FINDINGS.—The Congress finds as follows:

10               (1) The possibility exists today that terrorists  
11               or others who intend harm to United States forces  
12               deployed abroad or to the homeland will use tech-  
13               niques in biotechnology to enhance the trans-  
14               missibility, stability, virulence, or host range of a bi-  
15               ological agent, or to render existing diagnostic,  
16               therapeutic, and vaccine strategies or innate immune  
17               responses against a biological agent less effective.

18               (2) This possibility will likely grow over time as  
19               such techniques develop, improve, and spread as an  
20               inevitable result of biotechnology innovation.

21               (3) Natural processes can also lead to the emer-  
22               gence of previously unknown and harmful pathogens  
23               or render known pathogens resistant to existing di-  
24               agnostic, therapeutic, or adaptive immune ap-  
25               proaches.

1           (4) Long delays in developing new and effective  
2       responses to pathogens are typical. The discovery,  
3       development, and approval process for new drugs  
4       and vaccines typically requires 10 to 20 years and  
5       costs an average of \$800 million. These constraints  
6       reflect the long, costly research and development  
7       process, including the failure of most drug or vac-  
8       cine candidates to demonstrate favorable characteris-  
9       tics in pre-clinical testing, as well as the expensive,  
10      time-consuming clinical trials required to prove the  
11      safety and effectiveness of new treatments.

12          (5) Congress has already authorized the  
13      abridgement of the long testing and approval process  
14      required to ensure safety and efficacy under the  
15      emergency conditions of a severe outbreak of a  
16      harmful pathogen. However, it will likely still take  
17      years for even an experimental treatment or vaccine  
18      to become available.

19          (6) There is no coordinated, focused research  
20      and development program or overall national strat-  
21      egy to achieve significant and dramatic reductions in  
22      the timeframe from the identification of a pathogen  
23      to the development and emergency approval for  
24      human use of reasonably safe and effective new bio-

1 defense medical countermeasures against a pre-  
2 viously unknown or engineered pathogen or toxin.

3 (7) Even utilizing existing technologies, there is  
4 no organized capability in the public or private sec-  
5 tor to rapidly screen drug candidates for potential  
6 therapeutic activity against pathogens, develop and  
7 manufacture drug, biological, or medical device prod-  
8 ucts, or test already approved treatments for efficacy  
9 against a previously unknown or engineered biologi-  
10 cal threat that puts our deployed armed forces or  
11 the homeland at risk.

12 (8) In the area of infectious disease in par-  
13 ticular, private sector firms are abandoning all types  
14 of innovation and research and development in favor  
15 of investments in more profitable medical markets.

16 (9) Tremendous potential exists for benefits to  
17 health by concerted, targeted public-private invest-  
18 ment to dramatically reduce the timeframe for the  
19 development of new countermeasures. The pharma-  
20 ceutical and biotechnology industries are fundamen-  
21 tally innovative and are quick to integrate new tech-  
22 nologies. Useful and important discoveries and tech-  
23 nological advances will be rapidly absorbed by the  
24 private sector, leading to faster delivery of new

1 medicines and reductions in the costs of drug devel-  
2 opment.

3 (b) POLICY.—The Congress hereby declares it to be  
4 the national policy of the United States to promote techno-  
5 logical advancements that will dramatically reduce the  
6 timeframe for the development of new medical counter-  
7 measures to treat or prevent disease caused by infectious  
8 disease agents or toxins that, through natural processes  
9 or intentional introduction, may pose a significant risk to  
10 public health now or in the future.

11 **SEC. 186. RAPID BIODEFENSE COUNTERMEASURES DEVEL-**  
12 **OPMENT NATIONAL STRATEGY.**

13 Title III of the Homeland Security Act of 2002 (6  
14 U.S.C. 181 et seq.) (Public Law 107–296) is amended by  
15 inserting after section 304 the following section:

16 **“SEC. 304A. RAPID BIODEFENSE COUNTERMEASURES DE-**  
17 **VELOPMENT NATIONAL STRATEGY.**

18 “(a) NATIONAL STRATEGY FOR SHORTENING THE  
19 MEDICAL COUNTERMEASURE DEVELOPMENT TIME-  
20 FRAME.—Not later than 180 days after the date of the  
21 enactment of the Rapid Pathogen Identification to Deliv-  
22 ery of Cures Act, the Secretaries of Homeland Security,  
23 Health and Human Services, and Defense shall submit to  
24 Congress a report setting forth a strategy to achieve dra-  
25 matic reductions in the timeframe from pathogen identi-

1 fication to the development and emergency approval for  
2 human use of reasonably safe and effective priority coun-  
3 termeasure against a novel or unknown pathogen or toxin.

4 “(b) ELEMENTS.—The report under subsection (a)  
5 shall include the following:

6 “(1) The identification of the technical impedi-  
7 ments to reductions in the timeframe from pathogen  
8 identification to priority countermeasure develop-  
9 ment and approval under emergency conditions.

10 “(2) The identification of the research, develop-  
11 ment, and technology needs and clinical research  
12 needs to address these impediments.

13 “(3) The identification of existing research and  
14 development efforts in Federal agencies, academia  
15 and industry that are addressing the needs identified  
16 in subsection (c)(2).

17 “(4) The identification of facilities, programs  
18 and resources that can be utilized to address these  
19 research, development, and technology needs and  
20 clinical research needs among—

21 “(A) Federal agencies;

22 “(B) colleges and universities;

23 “(C) not-for-profit institutions;

24 “(D) industry, including information tech-  
25 nology, software, robotics, pharmaceutical and

1           biotechnology companies and their consortia;  
2           and

3           “(E) foreign research and technological in-  
4           stitutions.

5           “(5) A proposal for the establishment of a co-  
6           ordinated and integrated federal program to address  
7           these research, development, and technology needs,  
8           including—

9           “(A) the application of Federal Govern-  
10          ment resources, including recommendations for  
11          the allocation and prioritization of Federal  
12          funds;

13          “(B) interagency management and coordi-  
14          nation mechanisms;

15          “(C) the establishment of partnerships be-  
16          tween private corporations and Federal agencies  
17          or Federally funded entities;

18          “(D) information and technology sharing  
19          and coordination mechanisms among public,  
20          private, academic, not-for-profit, and inter-  
21          national institutions;

22          “(E) the use of incentives to promote pri-  
23          vate sector participation; and

1           “(F) the adjustment of Federal regulatory  
2           requirements to promote private sector innova-  
3           tion.

4           “(6) The identification of potential liability con-  
5           cerns stemming from distribution of rapidly-devel-  
6           oped priority countermeasures under emergency con-  
7           ditions and a proposal for regulatory or legislative  
8           approaches to eliminating these concerns.

9           “(7) A proposal for managing the transfer of  
10          new technologies and associated intellectual property  
11          rights.

12          “(c) CONSIDERATIONS.—In developing the national  
13          strategy under subsection (a), the Secretaries shall con-  
14          sider—

15               “(1) The research, development, and technology  
16               needs and clinical research needs of the entire  
17               pathogen identification to priority countermeasures  
18               discovery, development, production, and Approval  
19               process, including—

20                       “(A) initial identification and characteriza-  
21                       tion of a pathogen or toxin, including the iden-  
22                       tification of any genetic or other manipulations;

23                       “(B) priority countermeasures discovery;

24                       “(C) pre-clinical testing and evaluation of  
25                       priority countermeasures;



1           “(D) safety and efficacy animal testing, in-  
2           cluding the needs for approval under emergency  
3           conditions and accelerated approval of new pri-  
4           ority countermeasure under the final rule ‘New  
5           Drug and Biological Drug Products; Evidence  
6           Needed to Demonstrate Effectiveness of New  
7           Drugs When Human Efficacy Studies Are Not  
8           Ethical or Feasible’ published in the Federal  
9           Register on May 31, 2002 (67 Fed. Reg.  
10          37988);

11          “(E) safety and efficacy human testing, in-  
12          cluding mechanisms for the conduct of clinical  
13          trials under emergency conditions;

14          “(F) research-scale and full production-  
15          scale manufacturing, including biologics manu-  
16          facturing sciences; and

17          “(G) the approval of priority counter-  
18          measure under emergency conditions;

19          “(2) the potential importance of advanced tech-  
20          nologies such as automation, computer modeling and  
21          simulation, bioinformatics, pharmacogenomics, and  
22          bioengineering techniques for manufacturing;

23          “(3) the availability of sufficient manufacturing  
24          capacity for priority countermeasures production to

1 meet potential public demand under emergency con-  
2 ditions; and

3 “(4) the current state of national and inter-  
4 national collaborative research networks and applica-  
5 tions to facilitate and encourage the rapid and co-  
6 ordinated development and sharing of laboratory and  
7 clinical research planning and results.

8 “(d) AUTHORITY TO CONTRACT.—The Secretary of  
9 Homeland Security, after consultation with the Secre-  
10 taries of Health and Human Services and Defense and  
11 the working group established under section 319F(a) of  
12 the Public Health Service Act, may contract with any one  
13 or more for-profit or non-profit firm or institution to con-  
14 duct the necessary research and analysis needed to com-  
15 plete any one or more of the elements described in sub-  
16 section (b) of the report required in this section, provided  
17 the considerations described in subsection (c) are met.

18 “(e) DEFINITIONS.—In this section:

19 “(1) The term ‘emergency conditions’ refers to  
20 a declaration of emergency under section 564 of the  
21 Federal Food, Drug, and Cosmetic Act.

22 “(2) The term ‘pathogen identification’ means  
23 the point in time in which a specific agent that can  
24 be reasonably assumed to be the cause of (or has the  
25 potential to be the cause of) an infectious disease or

1 toxin-induced syndrome has been identified and par-  
2 tially or wholly characterized scientifically.

3 “(3) The term ‘priority countermeasure’ has  
4 the same meaning given such term in section  
5 319F(h) of the Public Health Service Act.

6 “(f) AUTHORIZATION OF APPROPRIATIONS.—For the  
7 purpose of carrying out this section, there is authorized  
8 to be appropriated \$10,000,000 for fiscal year 2005.”.

9 **SEC. 187. CLINICAL RESEARCH UNDER EMERGENCY CONDI-**  
10 **TIONS.**

11 (a) IN GENERAL.—Not later than 180 days after the  
12 date of the enactment of this Act, the Secretary of Health  
13 and Human Services shall establish a system for the rapid  
14 establishment of clinical research programs to examine the  
15 safety and efficacy of new or existing treatments for novel,  
16 unknown, or bioengineered pathogens or toxins. The Sec-  
17 retary shall also provide the means for rapid dissemination  
18 of results and recommendations to clinicians nationwide.

19 (b) EMERGENCY FUND.—A fund is authorized to be  
20 established for use, at the discretion of the Secretary, sole-  
21 ly for the support of clinical research as described in sub-  
22 section (a).

23 **SEC. 188. INTERAGENCY WORKING GROUP.**

24 Section 319F(a) of the Public Health Service Act, as  
25 amended by Public Law 107–188, is amended—

1           (1) by inserting “the Secretary of Homeland  
2       Security,” after “in coordination with the”;

3           (2) by redesignating subparagraphs (D)  
4       through (L) as subparagraphs (E) through (M), re-  
5       spectively; and

6           (3) by inserting after subparagraph (C) the fol-  
7       lowing subparagraph:

8                       “(D) development of a national strategy to  
9       achieve dramatic reductions in the timeframe  
10      from the identification of a pathogen to the de-  
11      velopment and approval for human use under  
12      emergency conditions of priority counter-  
13      measures against a novel, unknown, or engi-  
14      neered pathogen or toxin;”.

15 **SEC. 189. DEVELOPING THE CAPABILITY FOR RAPID BIO-**  
16 **DEFENSE COUNTERMEASURE DEVELOP-**  
17 **MENT.**

18       (a) RESEARCH.—Section 319F(h)(1) of the Public  
19   Health Service Act, as amended by Public Law 107–188,  
20   is amended

21           (1) in subparagraph (C), by striking “and”  
22      after the semicolon;

23           (2) by redesignating subparagraph (D) as sub-  
24      paragraph (E); and

1           (3) by inserting after subparagraph (C) the fol-  
2       lowing subparagraph:

3           “(D) the development of a capability to  
4       rapidly identify, develop, produce, and approve  
5       for human use under emergency conditions pri-  
6       ority countermeasures against a novel, un-  
7       known, or engineered pathogen or toxin; and”.

8       (b) RESEARCH AND DEVELOPMENT AT THE DEPART-  
9       MENT OF DEFENSE.—Section 1601(a) of the National  
10      Defense Authorization Act for Fiscal Year 2004 (Public  
11      Law 108–136) is amended by adding at the end the fol-  
12      lowing: “The program shall also include research, develop-  
13      ment, and procurement to provide the Federal Govern-  
14      ment with the capability to rapidly identify, develop,  
15      produce, and approve for human use under emergency  
16      conditions priority countermeasures against a novel, un-  
17      known, or engineered pathogen or toxin, and for which no  
18      existing countermeasure has been determined to be safe  
19      or efficacious.”.

20      (c) RESEARCH AND DEVELOPMENT AT THE DEPART-  
21      MENT OF HOMELAND SECURITY.—Title III of the Home-  
22      land Security Act of 2002, as amended by section 186 of  
23      this Act, is amended by inserting after section 304A the  
24      following section:

1 **“SEC. 304B. DEVELOPING THE CAPABILITY FOR RAPID BIO-**  
 2 **DEFENSE COUNTERMEASURE DEVELOP-**  
 3 **MENT.**

4 “The Secretary, in collaboration with the Secretaries  
 5 of Defense and Health and Human Services, shall carry  
 6 out a program for research, development, and procure-  
 7 ment to provide the Federal Government with the capa-  
 8 bility to rapidly identify, develop, produce, and approve for  
 9 human use under emergency conditions priority counter-  
 10 measures against a novel, unknown, or engineered patho-  
 11 gen or toxin, and for which no existing countermeasure  
 12 has been determined to be safe or efficacious.”.

13 **TITLE XII—CHEMICAL SECURITY**  
 14 **IMPROVEMENT**

15 **SEC. 191. SHORT TITLE.**

16 This title may be cited as the “Chemical Security Im-  
 17 provement Act of 2004”.

18 **SEC. 192. DEFINITIONS.**

19 In this title:

20 (1) **ALTERNATIVE APPROACHES.**—The term  
 21 “alternative approach” means an approach that sig-  
 22 nificantly reduces or eliminates the threat or con-  
 23 sequences of a terrorist release from a chemical  
 24 source, including an approach that—

1 (A) uses smaller quantities, nonhazardous  
2 forms, or less hazardous forms of dangerous  
3 substances;

4 (B) replaces a dangerous substance with a  
5 nonhazardous or less hazardous substance; or

6 (C) uses nonhazardous or less hazardous  
7 conditions or processes.

8 (2) CHEMICAL SOURCE.—The term “chemical  
9 source” means a non-Federal facility listed by the  
10 Secretary under section 193(e) as a chemical source.

11 (3) DANGEROUS SUBSTANCE.—The term “dan-  
12 gerous substance” means a substance present at a  
13 chemical source that—

14 (A) can cause death, injury, or serious ad-  
15 verse effects to human health or the environ-  
16 ment; or

17 (B) could harm critical infrastructure or  
18 national security.

19 (4) DEPARTMENT.—The term “Department”  
20 means the Department of Homeland Security.

21 (5) ENVIRONMENT.—The term “environment”  
22 means—

23 (A) the navigable waters, the waters of the  
24 contiguous zone, and the ocean waters of which  
25 the natural resources are under the exclusive

1 management authority of the United States;  
2 and

3 (B) any other surface water, ground water,  
4 drinking water supply, land surface or sub-  
5 surface strata, or ambient air within the United  
6 States or under the jurisdiction of the United  
7 States.

8 (6) FULL CONSIDERATION.—The term “full  
9 consideration” includes an analysis of—

10 (A) alternative approaches, including the  
11 benefits and risks of such approaches;

12 (B) the potential of the alternative ap-  
13 proaches to prevent or reduce the threat or con-  
14 sequences of a terrorist release;

15 (C) the cost and technical feasibility of al-  
16 ternative approaches; and

17 (D) the effect of alternative approaches on  
18 product quality, product cost, and employee  
19 safety.

20 (7) OWNER OR OPERATOR.—The term “owner  
21 or operator” means any person who owns, leases, op-  
22 erates, controls, or supervises a chemical source.

23 (8) RELEASE.—The term “release” means any  
24 spilling, leaking, pumping, pouring, emitting,  
25 emptying, discharging, injecting, escaping, leaching,



1 dumping, or disposing into the environment (includ-  
2 ing the abandonment or discarding of barrels, con-  
3 tainers, and other closed receptacles containing any  
4 hazardous substance or pollutant or contaminant),  
5 but excludes—

6 (A) any release which results in exposure  
7 to persons solely within a workplace, with re-  
8 spect to a claim which such persons may assert  
9 against the employer of such persons;

10 (B) emissions from the engine exhaust of  
11 a motor vehicle, rolling stock, aircraft, vessel, or  
12 pipeline pumping station engine; or

13 (C) the normal application of fertilizer.

14 (9) SECRETARY.—The term “Secretary” means  
15 the Secretary of Homeland Security.

16 (10) SECURITY MEASURE.—

17 (A) IN GENERAL.—The term “security  
18 measure” means an action carried out to ensure  
19 or enhance the security of a chemical source.

20 (B) INCLUSIONS.—The term “security  
21 measure”, with respect to a chemical source, in-  
22 cludes measures such as—

23 (i) employee training and background  
24 checks;

1 (ii) the limitation and prevention of  
2 access to controls of the chemical source;

3 (iii) the protection of the perimeter of  
4 the chemical source, including the deploy-  
5 ment of armed physical security personnel;

6 (iv) the installation and operation of  
7 intrusion detection sensors;

8 (v) the implementation of measures to  
9 increase computer or computer network se-  
10 curity;

11 (vi) the installation of measures to  
12 protect against long-range weapons;

13 (vii) the installation of measures and  
14 controls to protect against or reduce the  
15 consequences of a terrorist attack; and

16 (viii) the implementation of any other  
17 security-related measures or the conduct of  
18 any similar security-related activity, as de-  
19 termined by the Secretary.

20 (11) **TERRORISM.**—The term “terrorism” has  
21 the meaning given to that term in section 2 of the  
22 Homeland Security Act of 2002 (6 U.S.C. 101).

23 (12) **TERRORIST RELEASE.**—The term “ter-  
24 rorist release” means—

1 (A) a release from a chemical source into  
2 the environment of a dangerous substance that  
3 is caused by an act of terrorism; and

4 (B) the theft of a dangerous substance by  
5 a person for off-site release in furtherance of an  
6 act of terrorism.

7 **SEC. 193. VULNERABILITY ASSESSMENTS AND SITE SECU-**  
8 **RITY PLANS.**

9 (a) REQUIREMENT.—

10 (1) IN GENERAL.—Not later than 1 year after  
11 the date of the enactment of this subtitle, the Sec-  
12 retary shall promulgate regulations that—

13 (A) require the owner or operator of each  
14 chemical source—

15 (i) to conduct an assessment of the  
16 vulnerability of the chemical source to a  
17 terrorist release; and

18 (ii) to prepare and implement a site  
19 security plan that addresses the results of  
20 the vulnerability assessment; and

21 (B) establish procedures, protocols, and  
22 standards for vulnerability assessments and site  
23 security plans.

24 (2) CONTENTS OF VULNERABILITY ASSESS-  
25 MENT.—A vulnerability assessment required under

1 the regulations promulgated under paragraph (1) or  
2 any assessment determined substantially equivalent  
3 by the Secretary under subsection (c) shall include  
4 the identification and evaluation of—

5 (A) critical assets and infrastructures;

6 (B) hazards that may result from a ter-  
7 rorist release; and

8 (C) weaknesses in—

9 (i) physical security;

10 (ii) structural integrity of contain-  
11 ment, processing, and other critical infra-  
12 structure;

13 (iii) protection systems;

14 (iv) procedural and employment poli-  
15 cies;

16 (v) communication systems;

17 (vi) transportation infrastructure in  
18 the proximity of the chemical source;

19 (vii) utilities;

20 (viii) contingency response; and

21 (ix) other areas as determined by the  
22 Secretary.

23 (3) CONTENTS OF SITE SECURITY PLAN.—A  
24 site security plan required under the regulations pro-

1       mulgated under paragraph (1) or any plan sub-  
2       mitted to the Secretary under subsection (c)—

3               (A) shall include security measures to sig-  
4               nificantly reduce the vulnerability of the chem-  
5               ical source covered by the plan to a terrorist re-  
6               lease;

7               (B) shall describe, at a minimum, par-  
8               ticular equipment, plans, and procedures that  
9               could be implemented or used by or at the  
10              chemical source in the event of a terrorist re-  
11              lease;

12              (C) shall include full consideration and,  
13              where practicable in the judgment of the owner  
14              or operator of the chemical source, implementa-  
15              tion of options to reduce the threat of a ter-  
16              rorist release through the use of alternative ap-  
17              proaches; and

18              (D) shall be developed in consultation with  
19              local law enforcement and first responders.

20              (4) SECURITY EXERCISES.—Not later than 1  
21              year after the date of the enactment of this subtitle,  
22              the Secretary shall promulgate regulations estab-  
23              lishing procedures, protocols, and standards for the  
24              conduct of security exercises, including—

1 (A) the performance of force-on-force exer-  
2 cises that—

3 (i) involve physical security personnel  
4 employed by the owner or operator of the  
5 chemical source to act as the force des-  
6 ignated to defend the facility;

7 (ii) involve personnel designated by  
8 the Secretary to act as the force des-  
9 ignated to simulate a terrorist attempt to  
10 attack the chemical source to cause a ter-  
11 rorist release;

12 (iii) are designed, overseen, and evalu-  
13 ated by the Department; and

14 (iv) are conducted at least once every  
15 3 years; and

16 (B) the performance of all other such exer-  
17 cises at periodic intervals necessary to ensure  
18 the optimal performance of security measures.

19 (5) GUIDANCE TO SMALL ENTITIES.—Not later  
20 than 1 year after the date of the enactment of this  
21 Act, the Secretary shall publish guidance to assist  
22 small entities in complying with paragraphs (2) and  
23 (3).

24 (6) THREAT INFORMATION.—To the maximum  
25 extent practicable under applicable authority and in

1 the interests of national security, the Secretary shall  
2 provide to an owner or operator of a chemical source  
3 required to prepare a vulnerability assessment and  
4 site security plan threat information that is relevant  
5 to the chemical source.

6 (7) COORDINATED ASSESSMENTS AND PLANS.—

7 The regulations promulgated under paragraph (1)  
8 shall permit the development and implementation of  
9 coordinated vulnerability assessments and site secu-  
10 rity plans in any case in which more than 1 chemical  
11 source is operating at a single location or at contig-  
12 uous locations, including cases in which a chemical  
13 source is under the control of more than 1 owner or  
14 operator.

15 (b) CERTIFICATION AND SUBMISSION.—

16 (1) IN GENERAL.—Except as provided in sub-  
17 section (c), each owner or operator of a chemical  
18 source shall certify in writing to the Secretary that  
19 the owner or operator has completed a vulnerability  
20 assessment and has developed and implemented (or  
21 is implementing) a site security plan in accordance  
22 with this title, including—

23 (A) regulations promulgated under sub-  
24 section (a)(1); and

1 (B) any existing vulnerability assessment  
2 or security plan endorsed by the Secretary  
3 under subsection (c)(1).

4 (2) SUBMISSION.—

5 (A) IN GENERAL.—Not later than 18  
6 months after the date of the promulgation of  
7 regulations under subsection (a)(1), an owner  
8 or operator of a chemical source shall provide to  
9 the Secretary copies of the vulnerability assess-  
10 ment and site security plan of the chemical  
11 source for review.

12 (B) CERTIFICATION.—

13 (i) IN GENERAL.—Not later than 2  
14 years after the date on which the Secretary  
15 receives copies of the vulnerability assess-  
16 ment and site security plan of a chemical  
17 source under subparagraph (A), the Sec-  
18 retary shall determine whether the chem-  
19 ical source is in compliance with the re-  
20 quirements of this title, including—

21 (I) paragraph (1);

22 (II) regulations promulgated  
23 under subsections (a)(1) and (a)(3);  
24 and



1 (III) any existing vulnerability  
2 assessment or site security plan en-  
3 dorsed by the Secretary under sub-  
4 section (c)(1).

5 (ii) CERTIFICATE.—If the Secretary  
6 determines that the chemical source is in  
7 compliance with the requirements of this  
8 title, the Secretary shall provide to the  
9 chemical source and make available for  
10 public inspection a certificate of approval  
11 that contains the following statement (in  
12 which statement the bracketed space shall  
13 be the name of the chemical source):  
14 “[ ] is in compliance with the  
15 Chemical Security Improvement Act of  
16 2004.”.

17 (iii) DETERMINATION OF NONCOMPLI-  
18 ANCE.—If the Secretary determines under  
19 clause (i) that a chemical source is not in  
20 compliance with the requirements of this  
21 title, the Secretary shall exercise the au-  
22 thority provided in section 195.

23 (iv) REPORT TO CONGRESS.—Not  
24 later than 1 year after the promulgation of  
25 regulations in subsection (a)(1) and for

1 every year afterwards, the Secretary shall  
2 submit to the Congress a report outlining  
3 the number of facilities that have provided  
4 vulnerability assessments and site security  
5 plans to the Secretary, what portion of  
6 these submissions have been reviewed by  
7 the Secretary, and what portion of these  
8 submissions are in compliance with clause  
9 (i).

10 (3) OVERSIGHT.—

11 (A) IN GENERAL.—The Secretary shall, at  
12 such times and places as the Secretary deter-  
13 mines to be appropriate, conduct or require the  
14 conduct of vulnerability assessments and other  
15 activities (including qualified third-party audits)  
16 to ensure and evaluate compliance with this  
17 title (including regulations promulgated under  
18 subsection (a)(1) and (c)(1)).

19 (B) RIGHT OF ENTRY.—In carrying out  
20 this title, the Secretary (or a designee), on pres-  
21 entation of credentials, shall have a right of  
22 entry to, on, or through any premises of an  
23 owner or operator of a chemical source.

24 (C) REQUESTS FOR RECORDS.—In car-  
25 rying out this title, the Secretary (or a des-

1           ignee) may require the submission of, or, on  
2           presentation of credentials, may at reasonable  
3           times seek access to and copy any documenta-  
4           tion necessary for—

5                   (i) review or analysis of a vulnerability  
6                   assessment or site security plan; or

7                   (ii) implementation of a site security  
8                   plan.

9           (D) COMPLIANCE.—If the Secretary deter-  
10          mines that an owner or operator of a chemical  
11          source is not maintaining, producing, or permit-  
12          ting access to the premises of a chemical source  
13          or records as required by this paragraph, the  
14          Secretary may issue an order requiring compli-  
15          ance with the relevant provisions of this section.

16          (E) QUALIFIED THIRD-PARTY AUDITS.—  
17          The Secretary shall establish standards as to  
18          the qualifications of third-party auditors. Such  
19          standards shall ensure the qualifications of the  
20          third-party auditor provide sufficient expertise  
21          in—

22                   (i)       chemical       site       security  
23                   vulnerabilities;

24                   (ii) chemical site security measures;  
25                   and

1 (iv) such other areas as the Secretary  
2 determines to be appropriate and nec-  
3 essary.

4 (4) SUBMISSION OF CHANGES.—The owner or  
5 operator of a chemical source shall provide to the  
6 Secretary a description of any significant change  
7 that is made to the vulnerability assessment or site  
8 security plan required for the chemical source under  
9 this section, not later than 90 days after the date  
10 the change is made.

11 (c) EXISTING VULNERABILITY ASSESSMENTS AND  
12 SECURITY PLANS.—Upon submission of a petition by an  
13 owner or operator of a chemical source to the Secretary  
14 in conjunction with a submission under subsection  
15 (b)(2)(A), the Secretary—

16 (1) may endorse any vulnerability assessment or  
17 security plan—

18 (A) that was conducted, developed, or re-  
19 quired by—

20 (i) industry;

21 (ii) State or local authorities; or

22 (iii) other applicable law;

23 (B) that was conducted before, on, or after  
24 the date of enactment of this title; and

1 (C) the contents of which the Secretary de-  
2 termines meet the standards established under  
3 the requirements of subsections (a)(1), (a)(2),  
4 and (a)(3); and

5 (2) may make an endorsement of an existing  
6 vulnerability assessment or security plan under para-  
7 graph (1) contingent on modification of the vulner-  
8 ability assessment or security plan to address—

9 (A) a particular threat or type of threat; or

10 (B) a requirement under (a)(2) or (a)(3).

11 (d) REGULATORY CRITERIA.—In exercising the au-  
12 thority under subsections (a), (b), (c), or (e) with respect  
13 to a chemical source, the Secretary shall consider—

14 (1) the likelihood that a chemical source will be  
15 the target of terrorism;

16 (2) the potential extent of death, injury, or seri-  
17 ous adverse effects to human health or the environ-  
18 ment that would result from a terrorist release;

19 (3) the potential harm to critical infrastructure  
20 and national security from a terrorist release; and

21 (4) such other security-related factors as the  
22 Secretary determines to be appropriate and nec-  
23 essary to protect the public health and welfare, crit-  
24 ical infrastructure, and national security.

25 (e) LIST OF CHEMICAL SOURCES.—

1           (1) IN GENERAL.—Not later than 180 days  
2           after the date of the enactment of this title, the Sec-  
3           retary shall develop a list of chemical sources in ex-  
4           istence as of that date.

5           (2) CONSIDERATIONS.—In developing the list  
6           under paragraph (1), the Secretary shall take into  
7           consideration the criteria specified in subsection (d).

8           (3) PRIORITIZATION.—In developing the list  
9           under paragraph (1), the Secretary shall determine  
10          the potential extent of death, injury, or severe ad-  
11          verse effects to human health that would result from  
12          a terrorist release of dangerous substances from a  
13          chemical source.

14          (4) SCOPE.—In developing the list under para-  
15          graph (1), the Secretary shall include at least those  
16          facilities that pose a risk of potential death, injury,  
17          or severe adverse effects to not fewer than 1000 in-  
18          dividuals.

19          (5) FUTURE DETERMINATIONS.—Not later than  
20          3 years after the date of the promulgation of regula-  
21          tions under subsection (a)(1), and every 3 years  
22          thereafter, the Secretary shall, after considering the  
23          criteria described in subsection (d)—

24                 (A) determine whether additional facilities  
25                 (including, as of the date of the determination,

1 facilities that are operational and facilities that  
2 will become operational in the future) shall be  
3 considered to be a chemical source under this  
4 title;

5 (B) determine whether any chemical source  
6 identified on the most recent list under para-  
7 graph (1) no longer presents a risk sufficient to  
8 justify retention of classification as a chemical  
9 source under this title; and

10 (C) update the list as appropriate.

11 (f) 5-YEAR REVIEW.—Not later than 5 years after  
12 the date of the certification of a vulnerability assessment  
13 and a site security plan under subsection (b)(1), and not  
14 less often than every 5 years thereafter (or on such a  
15 schedule as the Secretary may establish by regulation), the  
16 owner or operator of the chemical source covered by the  
17 vulnerability assessment or site security plan shall—

18 (1) ensure the vulnerability assessment and site  
19 security plan meet the most recent regulatory stand-  
20 ards issued under subsection (a)(1); and

21 (2)(A) certify to the Secretary that the chemical  
22 source has completed the review and implemented  
23 any modifications to the site security plan; and

1           (B) submit to the Secretary a description of  
2           any changes to the vulnerability assessment or site  
3           security plan.

4           (g) PROTECTION OF INFORMATION.—

5           (1) CRITICAL INFRASTRUCTURE INFORMA-  
6           TION.—Except with respect to certifications specified  
7           in subsections (b)(1), (b)(2), and (f)(2)(A), vulner-  
8           ability assessments and site security plans obtained  
9           in accordance with this title, and all information de-  
10          rived from those vulnerability assessments and site  
11          security plans that could pose a risk to a particular  
12          chemical source, shall be deemed critical infrastruc-  
13          ture information as defined in section 212 of the  
14          Homeland Security Act of 2002 (6 U.S.C. 101 et  
15          seq.), and subject to all protections under sections  
16          213 and 214 of that Act.

17          (2) EXCEPTIONS TO PENALTIES.—Section  
18          214(f) of the Homeland Security Act of 2002 (6  
19          U.S.C. 133(f)) shall not apply to a person described  
20          in that section that discloses information described  
21          in paragraph (1)—

22                 (A) for use in any administrative or judi-  
23                 cial proceeding to impose a penalty for failure  
24                 to comply with a requirement of this title; or



1 (B) for the purpose of making a disclosure  
2 evidencing government, owner or operator, or  
3 employee activities that threaten the security of  
4 a chemical source or are inconsistent with the  
5 requirements of this title.

6 (3) RULE OF CONSTRUCTION.—Nothing in this  
7 subsection shall be construed to authorize the with-  
8 holding of information from members of Congress  
9 acting in their official capacity.

10 **SEC. 194. WHISTLEBLOWER PROTECTION.**

11 (a) IN GENERAL.—No person employed at a chemical  
12 source may be discharged, demoted, suspended, threat-  
13 ened, harassed, or in any other manner discriminated  
14 against because of any lawful act done by the person—

15 (1) to provide information, cause information to  
16 be provided, or otherwise assist in an investigation  
17 regarding any conduct which the person reasonably  
18 believes constitutes a violation of any law, rule or  
19 regulation related to the security of the chemical  
20 source, or any other threat to the security of the  
21 chemical source, when the information or assistance  
22 is provided to or the investigation is conducted by—

23 (A) a Federal regulatory or law enforce-  
24 ment agency;

1 (B) any member or committee of the Con-  
2 gress; or

3 (C) a person with supervisory authority  
4 over the person (or such other person who has  
5 the authority to investigate, discover, or termi-  
6 nate misconduct); or

7 (2) to file, cause to be filed, testify in, partici-  
8 pate in, or otherwise assist in a proceeding or action  
9 filed or about to be filed relating to a violation of  
10 any law, rule, or regulation related to the security of  
11 a chemical source or any other threat to the security  
12 of a chemical source; or

13 (3) to refuse to violate or assist in the violation  
14 of any law, rule, or regulation related to the security  
15 of chemical sources.

16 (b) ENFORCEMENT ACTION.—

17 (1) IN GENERAL.—A person who alleges dis-  
18 charge or other discrimination by any person in vio-  
19 lation of subsection (a) may seek relief under sub-  
20 section (c) by—

21 (A) filing a complaint with the Secretary of  
22 Labor; or

23 (B) if the Secretary of Labor has not  
24 issued a final decision within 180 days of the  
25 filing of the complaint and there is no showing

1           that such delay is due to the bad faith of the  
2           claimant, bringing an action at law or equity  
3           for de novo review in the appropriate district  
4           court of the United States, which shall have ju-  
5           risdiction over such an action without regard to  
6           the amount in controversy.

7           (2) PROCEDURE.—

8                 (A) IN GENERAL.—An action under para-  
9           graph (1)(A) shall be governed under the rules  
10          and procedures set forth in section 42121(b) of  
11          title 49, United States Code.

12                (B) EXCEPTION.—Notification made under  
13          section 42121(b)(1) of title 49, United States  
14          Code, shall be made to the person named in the  
15          complaint and to the person's employer.

16                (C) BURDENS OF PROOF.—An action  
17          brought under paragraph (1)(B) shall be gov-  
18          erned by the legal burdens of proof set forth in  
19          section 42121(b) of title 49, United States  
20          Code.

21                (D) STATUTE OF LIMITATIONS.—An action  
22          under paragraph (1) shall be commenced not  
23          later than 90 days after the date on which the  
24          violation occurs.

25          (c) REMEDIES.—

1           (1) IN GENERAL.—A person prevailing in any  
2           action under subsection (b)(1) shall be entitled to all  
3           relief necessary to make the person whole.

4           (2) COMPENSATORY DAMAGES.—Relief for any  
5           action under paragraph (1) shall include—

6                   (A) reinstatement with the same seniority  
7                   status that the person would have had, but for  
8                   the discrimination;

9                   (B) the amount of back pay, with interest;  
10                  and

11                  (C) compensation for any special damages  
12                  sustained as a result of the discrimination, in-  
13                  cluding litigation costs, expert witness fees, and  
14                  reasonable attorney fees.

15          (d) RIGHTS RETAINED BY PERSON.—Nothing in this  
16          section shall be deemed to diminish the rights, privileges,  
17          or remedies of any person under any Federal or State law,  
18          or under any collective bargaining agreement.

19      **SEC. 195. ENFORCEMENT.**

20          (a) FAILURE TO COMPLY.—If an owner or operator  
21          of a chemical source fails to certify or submit a vulner-  
22          ability assessment or site security plan in accordance with  
23          this title, the Secretary may issue an order requiring the  
24          certification and submission of a vulnerability assessment  
25          or site security plan in accordance with section 193(b).

1 (b) DISAPPROVAL.—The Secretary may disapprove  
2 under subsection (a) a vulnerability assessment or site se-  
3 curity plan submitted under section 193(b) or (c) if the  
4 Secretary determines that—

5 (1) the vulnerability assessment or site security  
6 plan does not comply with regulations promulgated  
7 under section 193(a)(1), or the procedure, protocol,  
8 or standard endorsed or recognized under section  
9 193(c); or

10 (2) the site security plan, or the implementation  
11 of the site security plan, is insufficient to address—

12 (A) the results of a vulnerability assess-  
13 ment of a chemical source; or

14 (B) a threat of a terrorist release.

15 (c) COMPLIANCE.—If the Secretary disapproves a  
16 vulnerability assessment or site security plan of a chemical  
17 source under subsection (b), the Secretary shall—

18 (1) provide the owner or operator of the chem-  
19 ical source a written notification of the determina-  
20 tion that includes a clear explanation of deficiencies  
21 in the vulnerability assessment, site security plan, or  
22 implementation of the assessment or plan;

23 (2) consult with the owner or operator of the  
24 chemical source to identify appropriate steps to  
25 achieve compliance; and

1           (3) if, following that consultation, the owner or  
2           operator of the chemical source does not achieve  
3           compliance by such date as the Secretary determines  
4           to be appropriate under the circumstances, issue an  
5           order requiring the owner or operator to correct  
6           specified deficiencies.

7           (d) PROTECTION OF INFORMATION.—Any determina-  
8           tion of disapproval or order made or issued under this sec-  
9           tion shall be exempt from disclosure—

10           (1) under section 552 of title 5, United States  
11           Code;

12           (2) under any State or local law providing for  
13           public access to information; and

14           (3) except as provided in section 193(g)(2), in  
15           any Federal or State civil or administrative pro-  
16           ceeding.

17   **SEC. 196. INTERAGENCY TECHNICAL SUPPORT AND CO-**  
18           **OPERATION.**

19           The Secretary—

20           (1) in addition to such consultation as is re-  
21           quired in this title, shall consult with Federal agen-  
22           cies with relevant expertise, and may request those  
23           Federal agencies to provide technical and analytical  
24           support, in implementing this title; and

1           (2) may provide reimbursement for such tech-  
2           nical and analytical support received as the Sec-  
3           retary determines to be appropriate.

4 **SEC. 197. PENALTIES.**

5           (a) JUDICIAL RELIEF.—In a civil action brought in  
6           United States district court, any owner or operator of a  
7           chemical source that violates or fails to comply with any  
8           order issued by the Secretary under this subtitle or a site  
9           security plan submitted to the Secretary under this sub-  
10          title or recognized by the Secretary, for each day on which  
11          the violation occurs or the failure to comply continues,  
12          may be subject to—

13                 (1) an order for injunctive relief; and

14                 (2) a civil penalty of not more than \$50,000.

15          (b) ADMINISTRATIVE PENALTIES.—

16                 (1) PENALTY ORDERS.—The Secretary may  
17                 issue an administrative penalty of not more than  
18                 \$250,000 for failure to comply with an order issued  
19                 by the Secretary under this subtitle.

20                 (2) NOTICE AND HEARING.—Before issuing an  
21                 order described in paragraph (1), the Secretary shall  
22                 provide to the person against whom the penalty is to  
23                 be assessed—

24                         (A) written notice of the proposed order;

25                         and

1 (B) the opportunity to request, not later  
2 than 30 days after the date on which the per-  
3 son receives the notice, a hearing on the pro-  
4 posed order.

5 (3) PROCEDURES.—The Secretary may promul-  
6 gate regulations outlining the procedures for admin-  
7 istrative hearings and appropriate review under this  
8 subsection, including necessary deadlines.

9 **SEC. 198. NO EFFECT ON REQUIREMENTS UNDER OTHER**  
10 **LAW.**

11 Nothing in this subtitle affects any duty or other re-  
12 quirement imposed under any other Federal or State law.

13 **TITLE XIII—IMPROVING**  
14 **CYBERSECURITY**

15 **SEC. 201. CYBERSECURITY TRAINING PROGRAMS AND**  
16 **EQUIPMENT.**

17 (a) IN GENERAL.—The Secretary of Homeland Secu-  
18 rity, acting through the Assistant Secretary for  
19 Cybersecurity, may establish, in conjunction with the Na-  
20 tional Science Foundation, a program to award grants to  
21 institutions of higher education (and consortia thereof)  
22 for—

23 (1) the establishment or expansion of  
24 cybersecurity professional development programs;



1           (2) the establishment or expansion of associate  
2 degree programs in cybersecurity; and

3           (3) the purchase of equipment to provide train-  
4 ing in cybersecurity for either professional develop-  
5 ment programs or degree programs.

6       (b) ROLES.—

7           (1) DEPARTMENT OF HOMELAND SECURITY.—

8       The Secretary, acting through the Assistant Sec-  
9 retary for Cybersecurity and in consultation with the  
10 Director of the National Science Foundation, shall  
11 establish the goals for the program under this sec-  
12 tion and the criteria for awarding grants under the  
13 program.

14          (2) NATIONAL SCIENCE FOUNDATION.—The Di-  
15 rector of the National Science Foundation shall op-  
16 erate the program established under this section  
17 consistent with the goals and criteria established  
18 under paragraph (1), including soliciting applicants,  
19 reviewing applications, and making and admin-  
20 istering grant awards. The Director may consult  
21 with the Assistant Secretary for Cybersecurity in se-  
22 lecting awardees.

23          (3) FUNDING.—The Secretary shall transfer to  
24 the National Science Foundation the funds nec-  
25 essary to carry out this section.

1 (c) GRANT AWARDS.—

2 (1) PEER REVIEW.—All grant awards under  
3 this section shall be made on a competitive, merit re-  
4 viewed basis.

5 (2) FOCUS.—In making grant awards under  
6 this section, the Director shall, to the extent prac-  
7 ticable, ensure geographic diversity and the partici-  
8 pation of women and underrepresented minorities.

9 (3) PREFERENCE.—In making grant awards  
10 under this section, the Director shall give preference  
11 to applications submitted by consortia of institutions  
12 to encourage as many students and professionals as  
13 possible to benefit from this program.

14 (d) AUTHORIZATION OF APPROPRIATIONS.—There is  
15 authorized to be appropriated to the Secretary for car-  
16 rying out this section \$3,700,000 for fiscal year 2005.

17 (e) DEFINITIONS.—In this section, the term institu-  
18 tion of higher education has the meaning given that term  
19 in section 101(a) of the Higher Education Act of 1965  
20 (20 U.S.C. 1001(a)).

21 **SEC. 202. ASSISTANT SECRETARY FOR CYBERSECURITY.**

22 (a) IN GENERAL.—Subtitle A of title II of the Home-  
23 land Security Act of 2002 (6 U.S.C. 121 et seq.) is amend-  
24 ed by adding at the end the following:

1 **“SEC. 203. ASSISTANT SECRETARY FOR CYBERSECURITY.**

2       “(a) IN GENERAL.—There shall be in the Directorate  
3 for Information Analysis and Infrastructure Protection a  
4 National Cybersecurity Office headed by an Assistant Sec-  
5 retary for Cybersecurity (in this section referred to as the  
6 ‘Assistant Secretary’), who shall assist the Secretary in  
7 promoting cybersecurity for the Nation.

8       “(b) GENERAL AUTHORITY.—The Assistant Sec-  
9 retary, subject to the direction and control of the Sec-  
10 retary, shall have primary authority within the Depart-  
11 ment for all cybersecurity-related critical infrastructure  
12 protection programs of the Department, including with re-  
13 spect to policy formulation and program management.

14       “(c) RESPONSIBILITIES.—The responsibilities of the  
15 Assistant Secretary shall include the following:

16               “(1) To establish and manage—

17                       “(A) a national cybersecurity response sys-  
18 tem that includes the ability to—

19                               “(i) analyze the effect of cybersecurity  
20 threat information on national critical in-  
21 frastructure; and

22                               “(ii) aid in the detection and warning  
23 of attacks on, and in the restoration of,  
24 cybersecurity infrastructure in the after-  
25 math of such attacks;

1           “(B) a national cybersecurity threat and  
2           vulnerability reduction program that identifies  
3           cybersecurity vulnerabilities that would have a  
4           national effect on critical infrastructure, per-  
5           forms vulnerability assessments on information  
6           technologies, and coordinates the mitigation of  
7           such vulnerabilities;

8           “(C) a national cybersecurity awareness  
9           and training program that promotes  
10          cybersecurity awareness among the public and  
11          the private sectors and promotes cybersecurity  
12          training and education programs;

13          “(D) a government cybersecurity program  
14          to coordinate and consult with Federal, State,  
15          and local governments to enhance their  
16          cybersecurity programs; and

17          “(E) a national security and international  
18          cybersecurity cooperation program to help fos-  
19          ter Federal efforts to enhance international  
20          cybersecurity awareness and cooperation.

21          “(2) To coordinate with the private sector on  
22          the program under paragraph (1) as appropriate,  
23          and to promote cybersecurity information sharing,  
24          vulnerability assessment, and threat warning regard-  
25          ing critical infrastructure.

1           “(3) To coordinate with other directorates and  
2           offices within the Department on the cybersecurity  
3           aspects of their missions.

4           “(4) To coordinate with the Under Secretary  
5           for Emergency Preparedness and Response to en-  
6           sure that the National Response Plan developed pur-  
7           suant to section 502(6) of the Homeland Security  
8           Act of 2002 (6 U.S.C. 312(6)) includes appropriate  
9           measures for the recovery of the cybersecurity ele-  
10          ments of critical infrastructure.

11          “(5) To develop processes for information shar-  
12          ing with the private sector, consistent with section  
13          214, that—

14               “(A) promote voluntary cybersecurity best  
15               practices, standards, and benchmarks that are  
16               responsive to rapid technology changes and to  
17               the security needs of critical infrastructure; and

18               “(B) consider roles of Federal, State, local,  
19               and foreign governments and the private sector,  
20               including the insurance industry and auditors.

21          “(6) To coordinate with the Chief Information  
22          Officer of the Department in establishing a secure  
23          information sharing architecture and information  
24          sharing processes, including with respect to the De-  
25          partment’s operation centers.

1           “(7) To consult with the Electronic Crimes  
2           Task Force of the United States Secret Service on  
3           private sector outreach and information activities.

4           “(8) To consult with the Office for Domestic  
5           Preparedness to ensure that realistic cybersecurity  
6           scenarios are incorporated into tabletop and recovery  
7           exercises.

8           “(9) To consult and coordinate, as appropriate,  
9           with other Federal agencies on cybersecurity-related  
10          programs, policies, and operations.

11          “(10) To consult and coordinate within the De-  
12          partment and, where appropriate, with other rel-  
13          evant Federal agencies, on security of digital control  
14          systems, such as Supervisory Control and Data Ac-  
15          quisition (SCADA) systems.

16          “(d) AUTHORITY OVER THE NATIONAL COMMUNICA-  
17          TIONS SYSTEM.—The Assistant Secretary shall have pri-  
18          mary authority within the Department over the National  
19          Communications System.”.

20          (b) CLERICAL AMENDMENTS.—The table of contents  
21          in section 1(b) of such Act is amended by adding at the  
22          end of the items relating to subtitle A of title II the fol-  
23          lowing:

“Sec. 203. Assistant Secretary for Cybersecurity.”.

1       (c) CYBERSECURITY DEFINED.—Section 2 of the  
2 Homeland Security Act of 2002 (6 U.S.C. 101) is amend-  
3 ed by adding at the end the following:

4           “(17)(A) The term ‘cybersecurity’ means the  
5 prevention of damage to, the protection of, and the  
6 restoration of computers, electronic communications  
7 systems, electronic communication services, wire  
8 communication, and electronic communication, in-  
9 cluding information contained therein, to ensure its  
10 availability, integrity, authentication, confidentiality,  
11 and nonrepudiation.

12           “(B) In this paragraph—

13           “(i) each of the terms ‘damage’ and ‘com-  
14 puter’ has the meaning that term has in section  
15 1030 of title 18, United States Code; and

16           “(ii) each of the terms ‘electronic commu-  
17 nications system’, ‘electronic communication’,  
18 ‘wire communication’, and ‘electronic commu-  
19 nication’ has the meaning that term has in sec-  
20 tion 2510 of title 18, United States Code.”.

1 **TITLE XIV—ENABLING COMMU-**  
2 **NICATIONS INTEROPER-**  
3 **ABILITY**

4 **SEC. 211. SHORT TITLE.**

5 This subtitle may be cited as “Connecting the Oper-  
6 ations of National Networks of Emergency Communica-  
7 tions Technologies for First Responders Act of 2004”.

8 **SEC. 212. FINDINGS; PURPOSES.**

9 (a) FINDINGS.—Congress finds the following:

10 (1) Throughout the United States, public safety  
11 agencies—law enforcement, firefighters, emergency  
12 technicians, public health officials, and others—in  
13 the same jurisdictions cannot now communicate ef-  
14 fectively with one another, with agencies in neigh-  
15 boring jurisdictions, or with other public safety  
16 agencies at the Federal and State level, when re-  
17 sponding to emergencies or participating in major  
18 deployment.

19 (2) The inability of public safety agencies in the  
20 United States to communicate with one another  
21 within and across jurisdictions and disciplines is a  
22 long-recognized and complex problem that threatens  
23 the public’s safety and security and often results in  
24 unnecessary loss of lives and property.



1           (3) The lack of interoperability was at least  
2           partially responsible for the deaths of 343 fire-  
3           fighters in New York City on September 11, 2001,  
4           when police could not communicate effectively with  
5           firefighters prior to the collapse of the Twin Towers.

6           (4) In the immediate aftermath of the Okla-  
7           homa City bombing in 1995, studies showed that  
8           emergency responders had to use runners to carry  
9           messages from one command center to another be-  
10          cause the responding agencies used different emer-  
11          gency radio channels, different frequencies, and dif-  
12          ferent radio systems.

13          (5) In Littleton, Colorado, 46 public safety  
14          agencies responded to the shooting spree inside Col-  
15          umbine High School in 1999. Precious minutes were  
16          lost because command personnel were forced to send  
17          runners to communicate crucial information. Incom-  
18          patible radio communication systems were a signifi-  
19          cant factor, according to the Columbine Review  
20          Commission.

21          (6) There are more than 50,000 State and local  
22          public safety agencies. Many of these agencies are  
23          small or volunteer organizations with limited budg-  
24          ets, and little or no engineering expertise. State and

1 local agencies consistently cite lack of funding as a  
2 critical obstacle to interoperability.

3 (7) State and local budget crises have made  
4 funding public safety communications even more dif-  
5 ficult, and competition with other critical homeland  
6 security needs, such as personnel, physical facilities,  
7 protective gear, and other kinds of equipment reduce  
8 the available funding for mission-critical communica-  
9 tions infrastructures and equipment.

10 (8) Funding is needed for all phases of the  
11 communications system life cycle: planning, system  
12 design and engineering, procurement and installa-  
13 tion, operations and maintenance, and testing and  
14 technology development. There is clear need for a  
15 dedicated and consistent Federal funding source  
16 that is sufficient to finance comprehensive interoper-  
17 able communications solutions. The role of Federal,  
18 State, and local governments and agencies in fund-  
19 ing interoperable communications must be clear.

20 (9) Achieving nationwide interoperability will  
21 require a significant financial commitment at all lev-  
22 els of government. In 1998, the Public Safety Wire-  
23 less Network estimated that developing interoperable  
24 communications nationwide could cost  
25 \$18,000,000,000. According to the Office of Wire-

1 less Public Safety Interoperable Communications,  
2 the umbrella program in the Department of Home-  
3 land Security designed to lead and coordinate inter-  
4 operability efforts that is commonly known as  
5 Project SAFECOM, that estimate is now outdated  
6 and includes only part of the total cost of upgrades.

7 (10) An Independent Task Force sponsored by  
8 the Council on Foreign Relations stated that  
9 “among other things, additional funds are des-  
10 perately needed . . . to foster interoperable commu-  
11 nications systems for emergency responders across  
12 the country so that those on the front lines can com-  
13 municate with each other while at the scene of at-  
14 tack”. The Task Force recommended, “conserv-  
15 atively”, that \$6,800,000,000 over 5 years is needed  
16 for interoperability as well as public alert and infor-  
17 mation systems programs.

18 (11) Numerous Federal agencies provide infor-  
19 mation or grants that can be used in the develop-  
20 ment of interoperable communications systems.  
21 However, without common guidance and standards,  
22 funding and grants are often used in isolation of  
23 broader, regional communications needs and capac-  
24 ities. There is a need to better coordinate these dis-  
25 parate grant programs, and to provide unified and

1 consistent leadership and funding from the Federal  
2 Government.

3 (12) The partnership between the private and  
4 public sectors has developed numerous solutions to  
5 significantly improve communications interoper-  
6 ability that can be implemented immediately. These  
7 solutions include deployable vehicles that contain  
8 crosspatch capabilities that allow radio users on sep-  
9 arate frequencies to talk to each other; communica-  
10 tions system overlay software and hardware that  
11 allow multiple disparate communications networks to  
12 act as one network; and the Project 25 standard for  
13 the manufacturing of interoperable digital two-way  
14 wireless communications products.

15 (13) Current approaches to achieving commu-  
16 nications interoperability are also hampered by the  
17 fact that in many jurisdictions—

18 (A) the existing radio communications in-  
19 frastructure is old and outdated;

20 (B) planning for interoperability is limited  
21 and fragmented among multiple agencies;

22 (C) the necessary coordination and co-  
23 operation within and among jurisdictions is dif-  
24 ficult to achieve; and

1           (D) there is limited and fragmented  
2           amount of radio spectrum available to public  
3           safety organizations.

4           (14) The lack of universally recognized, fully  
5           open, and implementable standards for public safety  
6           agency needs has limited the cost efficiencies of  
7           interoperability, and has delayed the adoption of new  
8           technologies by public safety agencies.

9           (15) Solutions can only be achieved through co-  
10          operation among all levels of government, and the  
11          Federal Government, through the Department of  
12          Homeland Security, must provide nationwide leader-  
13          ship, coordination, and a substantial share of re-  
14          sources necessary to purchase appropriate tech-  
15          nologies and create seamless communications among  
16          United States public safety agencies.

17          (16) In April 2004, the General Accounting Of-  
18          fice found that in Project SAFECOM's 2 year his-  
19          tory, the program has made very little progress in  
20          addressing its overall objective of achieving national  
21          wireless communications interoperability among first  
22          responders and public safety systems at all levels of  
23          government, principally due to—

24                 (A) a lack of consistent executive commit-  
25                 ment and support; and

1 (B) an inadequate level of interagency col-  
2 laboration.

3 (17) Project SAFECOM lacks the statutory au-  
4 thority and dedicated resources necessary to coordi-  
5 nate Federal programs or accomplish other tasks re-  
6 quired to make the achievement of interoperability a  
7 national priority, and a realistic goal for the Nation.

8 (b) PURPOSES.—The purposes of this subtitle are  
9 to—

10 (1) require the Department of Homeland Secu-  
11 rity to provide effective leadership, coordination, and  
12 technical assistance for the purposes of enhancing  
13 communications interoperability, and to establish  
14 and implement a strategy to ensure the achievement  
15 of communications interoperability for public safety  
16 agencies throughout the United States;

17 (2) authorize appropriations for interoperable  
18 communications grants to State and local govern-  
19 ments and public safety agencies; and

20 (3) support the effective acquisition, installa-  
21 tion, and maintenance of short-term and long-term  
22 interoperable communications equipment for home-  
23 land security at all levels of government.

1 **SEC. 213. ESTABLISHMENT OF THE OFFICE OF WIRELESS**  
2 **PUBLIC SAFETY INTEROPERABLE COMMU-**  
3 **NICATIONS.**

4 (a) AMENDMENT.—The Homeland Security Act of  
5 2002 (6 U.S.C. 101 et seq.) is amended by adding after  
6 section 313 the following:

7 **“SEC. 314. OFFICE OF WIRELESS PUBLIC SAFETY INTER-**  
8 **OPERABLE COMMUNICATIONS.**

9 “(a) DEFINITIONS.—In this section, the following  
10 definitions shall apply:

11 “(1) COMMUNICATIONS INTEROPERABILITY.—  
12 The term ‘communications interoperability’ means  
13 the ability of public safety service and support pro-  
14 viders, including emergency response providers, to  
15 communicate with other responding agencies and  
16 Federal agencies if necessary, through information  
17 technology systems and radio communications sys-  
18 tems, and to exchange voice, data, or video with one  
19 another on demand, in real time, as necessary.

20 “(2) DIRECTOR.—The term ‘Director’ means  
21 the Director of Wireless Public Safety Interoperable  
22 Communications.

23 “(3) OFFICE.—The term ‘Office’ means the Of-  
24 fice of Wireless Public Safety Interoperable Commu-  
25 nications established under subsection (c).

1           “(4) PUBLIC SAFETY AGENCIES.—The term  
2           ‘public safety agencies’ includes emergency response  
3           providers and any other persons that the Secretary  
4           determines must communicate effectively with one  
5           another to respond to emergencies.

6           “(b) SENSE OF CONGRESS REGARDING PROJECT  
7           SAFECON.—It is the Sense of Congress that—

8           “(1) after more than 2 years, Project  
9           SAFECON has made very limited progress in ad-  
10          dressing its overall objective of achieving commu-  
11          nications interoperability among entities at all levels  
12          of government;

13          “(2) a principal impediment to progress has  
14          been the failure to effectively collaborate with, and  
15          to obtain consistent funding from, other Federal  
16          agencies involved with SAFECON; and

17          “(3) in order to accelerate progress in achieving  
18          communications interoperability among entities at  
19          all levels of government, all Federal funding and  
20          program management to achieve this goal should re-  
21          side within the Department of Homeland Security.

22          “(c) ESTABLISHMENT.—

23          “(1) IN GENERAL.—There is established the  
24          Office of Wireless Public Safety Interoperable Com-  
25          munications within the Directorate of Science and



1 Technology, which shall be headed by a Director of  
2 Wireless Public Safety Interoperable Communica-  
3 tions appointed by the Secretary.

4 “(2) ADMINISTRATION.—The Secretary shall  
5 provide the Office with the resources and staff nec-  
6 essary to carry out the purposes of this section, in-  
7 cluding sufficient staff to provide support to each  
8 State. Support under this paragraph shall include  
9 outreach, coordination, and technical assistance.

10 “(3) DUTIES.—

11 “(A) TECHNICAL ASSISTANCE.—

12 “(i) ASSISTANCE THROUGH DIREC-  
13 TOR.—The Secretary, acting through the  
14 Director, shall—

15 “(I) provide leadership and co-  
16 ordination among all other Federal  
17 agencies that provide funding, re-  
18 search, technology development, or  
19 other support for communications  
20 interoperability;

21 “(II) accelerate, in consultation  
22 with other nationally recognized  
23 standards organizations as appro-  
24 priate, the development of national  
25 voluntary consensus standards for

1 communications interoperability, in-  
2 cluding the Project 25 standard, and  
3 establish a schedule of milestones to  
4 be achieved in developing such stand-  
5 ards;

6 “(III) provide technical assist-  
7 ance to Federal, State, and local gov-  
8 ernments and public safety agencies  
9 on planning, interoperability architec-  
10 tures, acquisition strategies, and other  
11 functions necessary to achieve commu-  
12 nications interoperability;

13 “(IV) participate in the review  
14 and final approval of funding for  
15 grant applications for the purposes of  
16 administering the grant program es-  
17 tablished under section 430(e); and

18 “(V) provide direct technical as-  
19 sistance to State and local govern-  
20 ments and public safety agencies for  
21 the purposes of administering the  
22 grant program established under sec-  
23 tion 430(e).

24 “(ii) ASSISTANCE BY DIRECTOR AND  
25 UNDER SECRETARY FOR SCIENCE AND

1 TECHNOLOGY.—The Director, under the  
2 direction of the Under Secretary for  
3 Science and Technology, shall—

4 “(I) conduct and otherwise pro-  
5 vide for research, development, test-  
6 ing, and evaluation for public safety  
7 communications technologies and  
8 equipment;

9 “(II) evaluate and validate new  
10 technology concepts, including systems  
11 engineering and development, and  
12 promote the deployment of advanced  
13 broadband communications tech-  
14 nologies; and

15 “(III) encourage the development  
16 of flexible and open architectures and  
17 standards, with appropriate levels of  
18 security, for short-term and long-term  
19 solutions to interoperability.

20 “(B) OUTREACH AND COORDINATION.—

21 The Secretary, acting through both the Director  
22 and the Office of State and Local Government  
23 Coordination established under section 801,  
24 shall take such steps as are necessary to enable  
25 public safety agencies to achieve more effective

1 and efficient interoperable communications, and  
2 shall collaborate with other Federal agencies,  
3 the leadership of public safety agencies, and  
4 State and local governments to—

5 “(i) develop and maintain a task force  
6 that represents the broad customer base of  
7 State and local public safety agencies, as  
8 well as Federal agencies, involved in public  
9 safety agency disciplines, in order to re-  
10 ceive input and coordinate efforts to  
11 achieve communications interoperability;

12 “(ii) develop and implement a national  
13 strategy to achieve communications inter-  
14 operability;

15 “(iii) facilitate collaborative planning  
16 and partnerships among local, State, and  
17 Federal government agencies;

18 “(iv) coordinate, execute, and align all  
19 Federal public safety wireless communica-  
20 tions activities, to include the development  
21 of common guidance for grant programs,  
22 and any programs conducting demonstra-  
23 tion projects, technical assistance, out-  
24 reach, testing and evaluation, or research  
25 and development to enhance public safety

1 wireless communications and interoper-  
2 ability;

3 “(v) share best practices, and provide  
4 outreach and coordination to State and  
5 local governments and public safety agen-  
6 cies, to implement short-term and long-  
7 term solutions to achieve communications  
8 interoperability, and to include commer-  
9 cially available equipment that facilitates  
10 interoperability, coordination, and integra-  
11 tion among existing emergency commu-  
12 nications systems;

13 “(vi) identify and work to overcome  
14 the political, institutional, and geographic  
15 barriers within the public safety commu-  
16 nity that can impede interoperability  
17 among public safety agencies, including  
18 among Federal agencies;

19 “(vii) develop appropriate perform-  
20 ance measures and systematically measure  
21 the Nation’s progress towards interoper-  
22 ability; and

23 “(viii) monitor the availability of, and  
24 make recommendations to Congress to ad-  
25 dress problems associated with the avail-

1 ability and more efficient use of, radio  
2 spectrum for public safety.

3 “(d) NATIONAL STRATEGY.—

4 “(1) IN GENERAL.—The Secretary, acting  
5 through the Director, shall, in cooperation with  
6 State and local governments, Federal agencies, pub-  
7 lic safety agencies, the private sector, and the task  
8 force established under subsection (c)(3)(B)(i), de-  
9 velop a national strategy to achieve communications  
10 interoperability, which shall—

11 “(A) provide for the development of na-  
12 tional voluntary standards for the purchase and  
13 use by public safety agencies of interoperable  
14 communications equipment and technologies;

15 “(B) identify the appropriate interoperable  
16 communications capabilities necessary for Fed-  
17 eral, State, and local public safety agencies to  
18 adequately protect the people of the United  
19 States;

20 “(C) address both short-term and long-  
21 term solutions to achieving Federal, State and  
22 local communications interoperability, including  
23 provision of commercially available equipment  
24 that facilitates interoperability, coordination,

1           and integration among existing emergency com-  
2           munications systems;

3           “(D) identify how the Federal Government  
4           can work effectively with State and local gov-  
5           ernments, public safety agencies in all States,  
6           and such other entities as are necessary to im-  
7           plement the strategy;

8           “(E) include measures to identify and  
9           overcome all obstacles to achieving interoper-  
10          ability; and

11          “(F) set goals and establish time frames  
12          for the achievement of communications inter-  
13          operability across the United States, and de-  
14          velop performance measures to determine  
15          whether these goals are being met.

16          “(2) REPORT.—Not later than 6 months after  
17          the date of enactment of the Connecting the Oper-  
18          ations of National Networks of Emergency Commu-  
19          nications Technologies for First Responders Act of  
20          2004, and each year thereafter, the Secretary shall  
21          submit a report to the Congress—

22                 “(A) detailing the progress of the Depart-  
23                 ment in carrying out the purposes of this sec-  
24                 tion;

1           “(B) detailing the progress in achieving  
2           communications interoperability; and

3           “(C) making any recommendations nec-  
4           essary to expedite the fulfillment of the pur-  
5           poses of this section.

6           “(e) AUTHORIZATION OF APPROPRIATIONS.—There  
7           are authorized to be appropriated to the Secretary  
8           \$50,000,000 for fiscal year 2005, and such sums as are  
9           necessary each fiscal year thereafter, for the operations  
10          of the Office, and for other entities within the Department  
11          whose activities facilitate the purposes of the Connecting  
12          the Operations of National Networks of Emergency Com-  
13          munications Technologies for First Responders Act of  
14          2004.”.

15          (b) TECHNICAL AND CONFORMING AMENDMENT.—  
16          The table of contents in section 1(b) of the Homeland Se-  
17          curity Act of 2002 (6 U.S.C. 101) is amended by inserting  
18          after the item relating to section 313 the following:

“314. Office of Wireless Public Safety Interoperable Communications.”.

19       **SEC. 214. INTEROPERABLE COMMUNICATIONS TECH-**  
20       **NOLOGY GRANT PROGRAM.**

21          Section 430 of the Homeland Security Act of 2002  
22          (6 U.S.C. 238) is amended by adding at the end the fol-  
23          lowing:

24          “(e) INTEROPERABLE COMMUNICATIONS GRANTS.—



1           “(1) DEFINITIONS.—In this subsection, the fol-  
2           lowing definitions shall apply:

3                   “(A)     COMMUNICATIONS     INTEROPER-  
4           ABILITY.—The term ‘communications interoper-  
5           ability’ means the ability of public safety service  
6           and support providers, including emergency re-  
7           sponse providers, to communicate with other re-  
8           sponding agencies and Federal agencies if nec-  
9           essary, through information technology systems  
10          and radio communications systems, and to ex-  
11          change voice, data, or video with one another on  
12          demand, in real time, as necessary.

13                   “(B) ELIGIBLE STATE.—The term ‘eligible  
14          State’ means a State that—

15                           “(i) has submitted a plan under para-  
16                           graph (4); and

17                           “(ii) the Secretary determines has not  
18                           achieved adequate statewide communica-  
19                           tions interoperability.

20                   “(C) PUBLIC SAFETY AGENCIES.—The  
21          term ‘public safety agencies’ includes emergency  
22          response providers and any other persons that  
23          the Secretary determines must communicate ef-  
24          fectively with one another to respond to emer-  
25          gencies.

1 “(2) IN GENERAL.—The Secretary shall—

2 “(A) make grants on a competitive basis  
3 directly to local governments (including a con-  
4 sortium of local governments) and public safety  
5 agencies within eligible States, in consultation  
6 with the chief executives of the State or States,  
7 for the purpose of assisting in the development  
8 of interoperable communications systems at any  
9 stage, including—

10 “(i) planning, system design, and en-  
11 gineering;

12 “(ii) procurement and installation of  
13 equipment;

14 “(iii) operations and maintenance of  
15 equipment; and

16 “(iv) testing and technology develop-  
17 ment; and

18 “(B) make grants to eligible States for ini-  
19 tiatives necessary to achieve communications  
20 interoperability within each State, including—

21 “(i) statewide communications plan-  
22 ning;

23 “(ii) system design and engineering;

24 “(iii) procurement and installation of  
25 equipment;

1 “(iv) operations and maintenance of  
2 equipment; and

3 “(v) testing and technology develop-  
4 ment initiatives.

5 “(3) COORDINATION.—

6 “(A) IN GENERAL.—The Secretary shall  
7 ensure that grants administered under this sub-  
8 section are coordinated with the activities of  
9 other entities of the Department and other Fed-  
10 eral entities so that grants awarded under this  
11 subsection, and other grant programs related to  
12 homeland security, facilitate the achievement of  
13 the strategy developed under section 314(c),  
14 and the purposes of the Connecting the Oper-  
15 ations of National Networks of Emergency  
16 Communications Technologies for First Re-  
17 sponders Act of 2004.

18 “(B) RELATIONSHIP TO EXISTING GRANT  
19 PROGRAMS.—Nothing in this Act shall provide  
20 for the combination of grant funds among the  
21 grant program established under this subsection  
22 and any other grant programs administered by  
23 the Department of Homeland Security, includ-  
24 ing the State Homeland Security Grant Pro-  
25 gram of the Department, or any successor to

1 such grant program, and the Urban Area Secu-  
2 rity Initiative of the Department, or any suc-  
3 cessor to such grant program.

4 “(4) ELIGIBILITY.—

5 “(A) SUBMISSION OF PLAN.—To be eligi-  
6 ble to receive a grant under this subsection,  
7 each eligible State, or local governments or pub-  
8 lic safety agencies within an eligible State or  
9 States, shall submit a communications inter-  
10 operability plan to the Secretary that—

11 “(i) addresses any stage of the devel-  
12 opment of interoperable communications  
13 systems, including planning, system design  
14 and engineering, procurement and installa-  
15 tion, operations and maintenance, and test-  
16 ing and technology development;

17 “(ii) if the applicant is not a State,  
18 includes a description of how the applicant  
19 addresses the goals specified in any appli-  
20 cable State plan or plans submitted under  
21 this section; and

22 “(iii) is approved by the Secretary.

23 “(B) INCORPORATION AND CONSIST-  
24 ENCY.—A plan submitted under subparagraph  
25 (A) may be part of, and shall be consistent

1 with, any other homeland security plans re-  
2 quired of the submitting party by the Depart-  
3 ment.

4 “(5) AWARD OF GRANTS.—

5 “(A) CONSIDERATIONS.—In approving  
6 plans and awarding grants under this sub-  
7 section, the Secretary shall consider—

8 “(i) the nature of the threat to the eli-  
9 gible State or local jurisdiction;

10 “(ii) the location, risk, or vulnerability  
11 of critical infrastructure and key national  
12 assets;

13 “(iii) the number, as well as the den-  
14 sity, of persons who will be served by inter-  
15 operable communications systems;

16 “(iv) the extent of the partnerships,  
17 existing or planned, established between  
18 local jurisdictions and agencies partici-  
19 pating in the development of interoperable  
20 communications systems, and their coordi-  
21 nation with Federal and State agencies;

22 “(v) the level of communications  
23 interoperability already achieved by the ju-  
24 risdictions;

1 “(vi) the extent to which the commu-  
2 nications interoperability plan submitted  
3 under paragraph (4) adequately addresses  
4 steps necessary to implement short-term or  
5 long-term solutions to communications  
6 interoperability;

7 “(vii) the extent to which eligible  
8 States and local governments, in light of  
9 their financial capability, demonstrate their  
10 commitment to expeditiously achieving  
11 communications interoperability by  
12 supplementing Federal funds with non-  
13 Federal funds;

14 “(viii) the extent to which grants will  
15 expedite the achievement of interoperability  
16 in the relevant jurisdiction with Federal,  
17 State, and local agencies; and

18 “(ix) the extent to which grants will  
19 be utilized to implement advanced commu-  
20 nications technologies to promote inter-  
21 operability.

22 “(B) COST SHARING.—

23 “(i) IN GENERAL.—The Federal share  
24 of the costs of an activity carried out with

1 a grant to an applicant awarded under this  
2 section shall not exceed 75 percent.

3 “(ii) IN-KIND MATCHING.—Each re-  
4 cipient of a covered grant may meet the  
5 matching requirement under clause (i) by  
6 making in-kind contributions of goods or  
7 services that are directly linked with the  
8 purpose for which the grant is made, in-  
9 cluding personnel overtime, contractor  
10 services, administrative costs, equipment  
11 fuel and maintenance, and rental space.

12 “(6) REIMBURSEMENT.—

13 “(A) IN GENERAL.—Unless otherwise re-  
14 quested by the recipient of a grant under this  
15 subsection, grants shall not be awarded to reim-  
16 burse the recipient for prior expenditures re-  
17 lated to achieving communications interoper-  
18 ability.

19 “(B) EXCEPTION.—The Secretary shall re-  
20 imburse public safety agencies directly for costs  
21 incurred for expenditures related to achieving  
22 communications interoperability, if—

23 “(i) the public safety agency expended  
24 funds after September 11, 2001, and be-

1           fore the date of enactment of this sub-  
2           section; and

3           “(ii) such expenditures are consistent  
4           with and supportive of the communications  
5           interoperability plan approved by the Sec-  
6           retary under paragraph (4)(A)(iii).

7           “(C) TERMINATION OF AUTHORITY.—The  
8           authority of the Secretary under subparagraph  
9           (B) shall terminate one year after the date on  
10          which the Department of Homeland Security  
11          first allocates grant funds for this program.

12          “(7) AUTHORIZATION OF APPROPRIATIONS.—  
13          There are authorized to be appropriated to the Sec-  
14          retary \$500,000,000 for fiscal year 2005,  
15          \$750,000,000 for fiscal year 2006, \$1,000,000,000  
16          for fiscal year 2007, \$1,250,000,000 for fiscal year  
17          2008, \$1,500,000,000 for fiscal year 2009, and such  
18          sums as are necessary each fiscal year thereafter, to  
19          carry out the purposes of this subsection.”.



1 **TITLE XV—STRENGTHENING**  
2 **PRIVACY PROTECTIONS**  
3 **WITHIN THE DEPARTMENT**  
4 **OF HOMELAND SECURITY**  
5 **Subtitle A—SHIELD Privacy Act**

6 **SEC. 221. SHORT TITLE.**

7 This subtitle may be cited as the “Strengthening  
8 Homeland Innovation to Emphasize Liberty, Democracy,  
9 and Privacy Act” or the “SHIELD Privacy Act”.

10 **SEC. 222. FINDINGS.**

11 The Congress finds the following:

12 (1) The protection of our Nation’s civil liberties  
13 and privacy is fundamental to the American way of  
14 life.

15 (2) Strengthening our homeland security en-  
16 sures that our way of life and the rights protected  
17 by the Constitution remain intact.

18 (3) In developing homeland security initiatives,  
19 our Government must take care to protect funda-  
20 mental constitutional rights and strive to minimize  
21 unnecessary impositions on the freedoms and privi-  
22 leges enjoyed in the United States.

23 (4) As governments develop and employ new  
24 technologies and gather information from the private  
25 sector for homeland security efforts, they must en-

1       sure that our society’s constitutional guarantees re-  
2       lating to privacy, due process, and civil liberties are  
3       protected.

4   **SEC. 223. CHIEF PRIVACY OFFICER.**

5       (a) DESIGNATION.—The President shall designate a  
6       senior official within the Office of Management and Budg-  
7       et as the Chief Privacy Officer, who shall have primary  
8       responsibility for privacy policy throughout the Federal  
9       Government.

10      (b) SPECIFIC RESPONSIBILITIES.—The responsibil-  
11      ities of the Chief Privacy Officer shall include the fol-  
12      lowing:

13           (1) Assuring that the technologies procured and  
14           use of technologies by the Federal Government sus-  
15           tain, and do not erode, privacy protections relating  
16           to the use, collection, and disclosure of personally  
17           identifiable information.

18           (2) Assuring that personally identifiable infor-  
19           mation contained in systems of records (as that term  
20           is defined in section 552a of title 5, United States  
21           Code, popularly known as the “Privacy Act of  
22           1974”) is handled in full compliance with fair infor-  
23           mation practices required under that section.

24           (3) Evaluating legislative and regulatory pro-  
25           posals involving collection, use, and disclosure of

1 personally identifiable information by the Federal  
2 Government.

3 (4) Exercising responsibility currently vested in  
4 the Director of the Office of Management and Budget  
5 with respect to privacy impact assessment rules,  
6 regulations, and oversight under section 208 of the  
7 E-Gov Act of 2002 (44 U.S.C. 3501 note).

8 (5) Preparing an annual report to the Congress  
9 containing an agency-by-agency analysis of Federal  
10 activities that affect privacy, including complaints of  
11 privacy violations, implementation of section 552a of  
12 title 5, United States Code, internal controls, and  
13 other matters.

14 (c) AGENCY INFORMATION.—The head of each Fed-  
15 eral agency shall provide to the Chief Privacy Officer such  
16 information as the Chief Privacy Officer considers nec-  
17 essary for the completion of the annual reports under sub-  
18 section (b)(5).

19 (d) REPORT BY SECRETARY OF HOMELAND SECUR-  
20 ITY.—Section 222(5) of the Homeland Security Act of  
21 2002 (6 U.S.C. 142(5)) is amended by striking “Con-  
22 gress” and inserting “the chief Privacy Officer of the Of-  
23 fice of Management and Budget”.

1 **SEC. 224. PRIVACY POLICY OF DEPARTMENTS AND INDE-**  
2 **PENDENT AGENCIES.**

3 (a) OFFICIALS RESPONSIBLE FOR PRIVACY POL-  
4 ICY.—The head of each department and each independent  
5 agency in the executive branch shall appoint a senior offi-  
6 cial of the department or independent agency, respectively,  
7 to assure primary responsibility for privacy policy, includ-  
8 ing the following:

9 (1) Assuring that technologies procured and use  
10 of technologies sustain, and do not erode, privacy  
11 protections relating to the use, collection, and disclo-  
12 sure of personally identifiable information.

13 (2) Assuring that personally identifiable infor-  
14 mation contained in systems of records (as that term  
15 is defined in section 552a of title 5, United States  
16 Code, popularly known as the “Privacy Act of  
17 1974”) is handled in full compliance with fair infor-  
18 mation practices required under that section.

19 (3) Evaluating legislative and regulatory pro-  
20 posals involving collection, use, and disclosure of  
21 personally identifiable information by the Federal  
22 Government.

23 (4) Conducting privacy impact assessments  
24 under subsection (b).

25 (5) Ensuring that the department or agency  
26 protects personally identifiable information and in-

1 formation systems from unauthorized access, use,  
2 disclosure, disruption, modification, or destruction in  
3 order to provide—

4 (A) integrity, by—

5 (i) guarding against improper infor-  
6 mation modification or destruction; and

7 (ii) ensuring information nonrepudi-  
8 ation and authenticity;

9 (B) confidentiality, by preserving author-  
10 ized restrictions on access and disclosure, in-  
11 cluding means for protecting personal privacy  
12 and proprietary information;

13 (C) availability, by ensuring timely and re-  
14 liable access to and use of that information; and

15 (D) authentication, by utilizing digital cre-  
16 dentials to assure the identity of users and vali-  
17 date their access.

18 (6) Submitting an annual report to the Director  
19 of the Office of Management and Budget on activi-  
20 ties of their agencies that affect privacy, including  
21 complaints of privacy violations, implementation of  
22 section 552a of title 5, United States Code, internal  
23 controls, and other matters.

24 (b) PRIVACY IMPACT ASSESSMENTS.—

1           (1) REQUIREMENT.—The official appointed  
2           under subsection (a) for a department or inde-  
3           pendent agency shall—

4                   (A) assess the impact on privacy of each  
5                   proposed action of the Department or agency  
6                   that will require collecting, using, or accessing  
7                   personally identifiable information from 10 or  
8                   more persons; and

9                   (B) make the results of such assessments  
10                  publicly available through the World Wide Web  
11                  site of the Department.

12          (2) MATTERS CONSIDERED.—Each assessment  
13          under this subsection regarding a proposed action  
14          shall consider the following:

15                   (A) The type of any personally identifiable  
16                   information to be collected, used, or accessed by  
17                   the Department.

18                   (B) Why such information will be collected,  
19                   used, or accessed.

20                   (C) The intended use of such information.

21                   (D) The persons with whom such informa-  
22                   tion will be shared.

23                   (E) What notice or consent will be pro-  
24                   vided to individuals regarding such information

1 to be collected or accessed, and how that infor-  
2 mation will be shared.

3 (F) How such information will be secured.

4 (G) Whether a system of records will be  
5 created for purposes of section 552a of title 5,  
6 United States Code.

7 (H) The method by which, extent to which,  
8 and rate at which such collected information  
9 will be destroyed or returned.

10 **SEC. 225. COMMISSION ON PRIVACY, FREEDOM, AND HOME-**  
11 **LAND SECURITY.**

12 (a) ESTABLISHMENT.—There is established a com-  
13 mission to be known as the “Commission on Privacy,  
14 Freedom, and Homeland Security”.

15 (b) DUTIES OF COMMISSION.—

16 (1) IN GENERAL.—The Commission shall con-  
17 duct a comprehensive legal and factual study relat-  
18 ing to United States efforts to further homeland se-  
19 curity in a manner that protects privacy, civil lib-  
20 erties, and individual freedoms.

21 (2) MATTERS TO BE STUDIED.—The matters  
22 studied by the Commission under paragraph (1)  
23 shall at a minimum include the following:

24 (A) A review of whether Federal agencies  
25 are properly assessing the privacy implications

1 of new homeland security technologies before  
2 implementing and deploying such technologies.

3 (B) The impact of existing Federal and  
4 State privacy statutes and regulations, legisla-  
5 tion pending before the Congress, and privacy  
6 protection efforts undertaken by the Federal  
7 Government, State governments, foreign gov-  
8 ernments, and international governing bodies on  
9 homeland security.

10 (C) The impact of Federal legislation en-  
11 acted since September 11, 2001, or pending be-  
12 fore the Congress, on civil liberties.

13 (D) The likely effectiveness of existing  
14 technologies for analyzing public and private  
15 sources of data and information to identify ter-  
16 rorists and prevent terrorist acts.

17 (c) FIELD HEARINGS.—

18 (1) IN GENERAL.—The Commission shall con-  
19 duct at least 2 field hearings in each of the 5 geo-  
20 graphical regions of the United States.

21 (2) DETERMINATION OF REGIONS.—For pur-  
22 poses of this subsection, the Commission may deter-  
23 mine the boundaries of the 5 geographical regions of  
24 the United States.

25 (d) REPORT.—



1           (1) IN GENERAL.—No later than 24 months  
2     after the date on which the Commission first meets,  
3     the Commission shall submit to the President and  
4     the Congress a comprehensive report of the Commis-  
5     sion’s findings, recommendations, and conclusions.  
6     Such report shall include a summary of the report  
7     submitted to the Commission by the National Re-  
8     search Council under subsection (g)(9), and a sum-  
9     mary of any other material relied on by the Commis-  
10    sion in the preparation of its report.

11          (2) RECOMMENDATIONS.—The report under  
12    paragraph (1) shall include recommendations re-  
13    garding the following:

14            (A) Steps Federal agencies should take  
15            when considering new homeland security tech-  
16            nologies to ensure that privacy implications are  
17            adequately considered before such technologies  
18            are implemented.

19            (B) Whether additional legislation is nec-  
20            essary to reform or augment current laws and  
21            regulations relating to privacy and homeland se-  
22            curity, including specific reform proposals and  
23            an analysis of the financial costs of any pro-  
24            posed changes.

1           (C) Safeguards and protection that should  
2           be in place when the Federal Government uses  
3           an individual's personally identifiable informa-  
4           tion obtained from a commercial database or a  
5           list for counterterrorism and homeland security  
6           purposes.

7           (3) ADDITIONAL REPORT.—The Commission  
8           shall submit to the Congress and the President, with  
9           the report under paragraph (1), any additional re-  
10          port of dissenting opinions or minority views by any  
11          member of the Commission.

12          (4) INTERIM REPORT.—The Commission may  
13          submit to the Congress and the President interim  
14          reports approved by a majority of the members of  
15          the Commission.

16          (e) STRUCTURE OF COMMISSION.—

17               (1) MEMBER AND APPOINTMENT.—The Com-  
18               mission shall be composed of 10 members appointed  
19               as follows:

20                       (A) 1 member appointed by the President,  
21                       who shall be the chairperson of the Commis-  
22                       sion.

23                       (B) 1 member appointed jointly by the mi-  
24                       nority leader of the House of Representatives

1           and the minority leader of the Senate, who shall  
2           be the vice chairperson of the Commission.

3           (C) 2 members appointed by the majority  
4           leader of the House of Representatives.

5           (D) 2 members appointed by the minority  
6           leader of the House of Representatives.

7           (E) 2 members appointed by the majority  
8           leader of the Senate.

9           (F) 2 members appointed by the minority  
10          leader of the Senate.

11          (2) QUALIFICATIONS OF MEMBERS.—The ap-  
12          pointing authorities under subsection (1) shall seek  
13          to ensure that the membership of the Commission  
14          has a diversity of views and experiences on the mat-  
15          ters to be studied by the Commission, including  
16          views and knowledge of law, civil rights and liberties,  
17          privacy matters, homeland security, information  
18          technology, security, database integration, and law  
19          enforcement.

20          (3) DATE OF APPOINTMENT.—The appointment  
21          of the members of the Commission shall be made not  
22          later than 30 days after the date of the enactment  
23          of this Act.

24          (4) TERMS.—Each member of the Commission  
25          shall be appointed for the life of the Commission.

1           (5) VACANCIES.—Any vacancy in the Commis-  
2           sion shall be filled in the same manner in which the  
3           original appointment was made.

4           (6) COMPENSATION; TRAVEL EXPENSES.—  
5           Members of the Commission shall serve without pay,  
6           but shall receive travel expenses, including per diem  
7           in lieu of subsistence, in accordance with sections  
8           5702 and 5703 of title 5, United States Code.

9           (7) QUORUM.—A majority of the members of  
10          the Commission shall constitute a quorum for pur-  
11          poses of conducting business, except that 2 members  
12          of the Commission shall constitute a quorum for  
13          purposes of conducting a hearing.

14          (8) MEETINGS.—

15                (A) IN GENERAL.—The Commission shall  
16                meet at the call of the Chairperson or a major-  
17                ity of its members.

18                (B) INITIAL MEETING.—Not later than 45  
19                days after the date of the enactment of this  
20                Act, the Commission shall hold its initial meet-  
21                ing.

22          (f) DIRECTOR; STAFF; EXPERTS AND CONSULT-  
23          ANTS.—

24                (1) DIRECTOR.—

1           (A) APPOINTMENT.—Not later than 60  
2           days after the date of the enactment of this  
3           Act, the Commission shall appoint a Director,  
4           without regard to the provisions of title 5,  
5           United States Code, governing appointments to  
6           the competitive service.

7           (B) PAY.—The Director shall be paid at  
8           the rate payable for level III of the Executive  
9           Schedule established under section 5314 of such  
10          title.

11         (2) STAFF.—

12           (A) APPOINTMENT.—The Director may  
13           appoint such staff as the Director determines  
14           appropriate, without regard to the provisions of  
15           title 5, United States Code, governing appoint-  
16           ments in the competitive service.

17           (B) PAY.—The staff of the Commission  
18           shall be paid in accordance with the provisions  
19           of chapter 51 and subchapter III of chapter 53  
20           of title 5, United States Code, relating to classi-  
21           fication and General Schedule pay rates, but at  
22           rates not in excess of the maximum rate for  
23           grade GS–15 of the General Schedule under  
24           section 5332 of that title.

1           (3) EXPERTS AND CONSULTANTS.—The Direc-  
2           tor may procure temporary and intermittent services  
3           under section 3109(b) of title 5, United States Code.

4           (4) DETAILEES.—

5                 (A) IN GENERAL.—Upon request of the  
6           Director, the head of any Federal department  
7           or agency may detail, on a reimbursable basis,  
8           any of the personnel of that department or  
9           agency to the Commission to assist it in car-  
10          rying out this Act.

11                (B) NOTICE.—Before making a request  
12          under this paragraph, the Director shall give  
13          notice of the request to each member of the  
14          Commission.

15          (g) POWERS OF COMMISSION.—

16                (1) HEARINGS AND SESSIONS.—The Commis-  
17          sion may, for the purpose of carrying out this sub-  
18          title, hold hearings, sit and act at times and places,  
19          take testimony, and receive evidence to carry out its  
20          duties under subsection (b). The Commission may  
21          administer oaths or affirmations to witnesses ap-  
22          pearing before it.

23                (2) POWERS OF MEMBERS AND AGENTS.—Any  
24          member or agent of the Commission may, if author-

1        ized by the Commission, take any action which the  
2        Commission is authorized to take by this section.

3            (3) OBTAINING OFFICIAL INFORMATION.—

4            (A) REQUIREMENT TO FURNISH.—Except  
5        as provided in subparagraph (B), if the Com-  
6        mission submits a request to a Federal depart-  
7        ment or agency for information necessary to en-  
8        able the Commission to carry out this subtitle,  
9        the head of that department or agency shall  
10       furnish that information to the Commission.

11          (B) EXCEPTION FOR NATIONAL SECU-  
12       RITY.—If the head of a Federal department or  
13       agency determines that it is necessary to with-  
14       hold requested information from disclosure to  
15       protect the national security interests of the  
16       United States, the department or agency head  
17       shall not furnish that information to the Com-  
18       mission.

19          (4) MAILS.—The Commission may use the  
20       United States mails in the same manner and under  
21       the same conditions as other departments and agen-  
22       cies of the United States.

23          (5) ADMINISTRATIVE SUPPORT SERVICES.—

24       Upon the request of the Director, the Administrator  
25       of General Services shall provide to the Commission,

1 on a reimbursable basis, the administrative support  
2 services necessary for the Commission to carry out  
3 this section.

4 (6) GIFTS AND DONATIONS.—The Commission  
5 may accept, use, and dispose of gifts or donations of  
6 services or property to carry out this Act, but only  
7 to the extent or in the amounts provided in advance  
8 in appropriation Acts.

9 (7) CONTRACTS.—The Commission may con-  
10 tract with and compensate persons and government  
11 agencies for supplies and services, without regard to  
12 section 3709 of the Revised Statutes (41 U.S.C. 5).

13 (8) SUBPOENA POWER.—

14 (A) IN GENERAL.—If a Federal depart-  
15 ment or agency or any other person fails to  
16 supply information requested by the Commis-  
17 sion, the Commission may require by subpoena  
18 the production of the information. The Commis-  
19 sion shall transmit to the Attorney General a  
20 written notice at least 10 days in advance of  
21 the issuance of any such subpoena. A subpoena  
22 under this paragraph may require the produc-  
23 tion of materials from any place within the  
24 United States.



1 (B) INTERROGATORIES.—The Commission  
2 may, with respect only to information necessary  
3 to understand any materials obtained through a  
4 subpoena under paragraph (A), issue a sub-  
5 poena requiring the person producing such ma-  
6 terials to answer, either through a sworn depo-  
7 sition or through written answers provided  
8 under oath (at the election of the person upon  
9 whom the subpoena is served), interrogatories  
10 from the Commission regarding such informa-  
11 tion. A complete recording or transcription shall  
12 be made of any deposition made under this  
13 paragraph.

14 (C) CERTIFICATION.—Each person who  
15 submits materials or information to the Com-  
16 mission pursuant to a subpoena issued under  
17 subparagraph (A) or (B) shall certify to the  
18 Commission the authenticity and completeness  
19 of all materials or information submitted.

20 (D) TREATMENT OF SUBPOENAS.—Any  
21 subpoena issued by the Commission under sub-  
22 paragraph (A) or (B) shall comply with require-  
23 ments for subpoenas issued by a United States  
24 district court under the Federal Rules of Civil  
25 Procedure.

1           (E) FAILURE TO OBEY A SUBPOENA.—If a  
2           person refuses to obey a subpoena issued by the  
3           Commission under subparagraph (A) or (B),  
4           the Commission may apply to a United States  
5           district court for an order requiring that person  
6           to comply with such subpoena. The application  
7           may be made within the judicial district in  
8           which that person is found, resides, or transacts  
9           business. Any failure to obey the order of the  
10          court may be punished by the court as civil con-  
11          tempt.

12          (9) ARRANGEMENTS WITH NATIONAL RE-  
13          SEARCH COUNCIL.—

14               (A) IN GENERAL.—In carrying out its du-  
15               ties under subsection (b), the Commission shall  
16               arrange with the National Research Council of  
17               the National Academy of Sciences for assist-  
18               ance in conducting the studies required by the  
19               Commission under subsection (b)(2), including  
20               performance of the analysis required under sub-  
21               section (b)(2)(C).

22               (B) REPORT.—The arrangements entered  
23               into under (A) shall require that the National  
24               Research Council submit a report to the Com-  
25               mission detailing the results of its efforts no

1 later than 15 months after the date on which  
2 the Commission first meets.

3 (C) USE OF FUNDS.—Of amounts appro-  
4 priated to carry out this section, up to  
5 \$750,000 shall be available to the Commission  
6 to carry out this paragraph.

7 (h) BUDGET ACT COMPLIANCE.—Any new contract  
8 authority authorized by this section shall be effective only  
9 to the extent or in the amounts provided in advance in  
10 appropriation Acts.

11 (i) PRIVACY PROTECTIONS.—

12 (1) DESTRUCTION OR RETURN OF INFORMA-  
13 TION REQUIRED.—Upon the conclusion of the mat-  
14 ter or need for which individually identifiable infor-  
15 mation was disclosed to the Commission, the Com-  
16 mission shall either destroy the individually identifi-  
17 able information or return it to the person or entity  
18 from which it was obtained, unless the individual  
19 that is the subject of the individually identifiable in-  
20 formation has authorized its disclosure.

21 (2) DISCLOSURE OF INFORMATION PROHIB-  
22 ITED.—Any individual employed by an individual,  
23 entity, or organization under contract to the Com-  
24 mission shall be considered an employee of the Com-

1 mission for the purposes of section 1905 of title 18,  
2 United States Code.

3 (3) PROPRIETARY BUSINESS INFORMATION AND  
4 FINANCIAL INFORMATION.—The Commission shall  
5 protect from improper use, and may not disclose to  
6 any person, proprietary business information and  
7 proprietary financial information that may be viewed  
8 or obtained by the Commission in the course of car-  
9 rying out its duties under this section.

10 (4) INDIVIDUALLY IDENTIFIABLE INFORMATION  
11 DEFINED.—For the purposes of this section, the  
12 term “individually identifiable information” means  
13 any information, whether oral or recorded in any  
14 form or medium, that identifies an individual, or  
15 with respect to which there is a reasonable basis to  
16 believe that the information can be used to identify  
17 an individual.

18 (j) TERMINATION OF COMMISSION.—The Commis-  
19 sion shall terminate 30 days after submitting a report  
20 under subsection (d)(1).

21 (k) AUTHORIZATION OF APPROPRIATIONS.—

22 (1) IN GENERAL.—There is authorized to be  
23 appropriated to the Commission \$4,750,000 to carry  
24 out this Act.

1           (2) AVAILABILITY.—Any sums appropriated  
2           pursuant to the authorization in subsection (a) shall  
3           remain available until expended.

4 **SEC. 226. PRIVACY AND CIVIL LIBERTIES OVERSIGHT**  
5 **BOARD.**

6           (a) IN GENERAL.—There is established within the  
7           Executive Office of the President a Privacy and Civil Lib-  
8           erties Oversight Board (referred to in this title as the  
9           “Board”).

10          (b) FINDINGS.—Consistent with the report of the Na-  
11          tional Commission on Terrorist Attacks Upon the United  
12          States, Congress makes the following findings:

13               (1) In conducting the war on terrorism, the  
14               Government may need additional powers and may  
15               need to enhance the use of its existing powers.

16               (2) This shift of power and authority to the  
17               Government calls for an enhanced system of checks  
18               and balances to protect the precious liberties that  
19               are vital to our way of life and to ensure that the  
20               Government uses its powers for the purposes for  
21               which the powers were given.

22          (c) PURPOSE.—The Board shall—

23               (1) analyze and review actions the Executive  
24               Branch takes to protect the Nation from terrorism;  
25               and

(2) ensure that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to efforts to protect the Nation against terrorism.

(d) FUNCTIONS.—

(1) ADVICE AND COUNSEL ON POLICY DEVELOPMENT AND IMPLEMENTATION.—The Board shall—

(A) review proposed legislation, regulations, and policies related to efforts to protect the Nation from terrorism, including the development and adoption of information sharing guidelines under section 165;

(B) review the implementation of new and existing legislation, regulations, and policies related to efforts to protect the Nation from terrorism, including the implementation of information sharing guidelines under section 165;

(C) advise the President and Federal executive departments and agencies to ensure that privacy and civil liberties are appropriately considered in the development and implementation of such legislation, regulations, policies, and guidelines; and

1 (D) in providing advice on proposals to re-  
2 tain or enhance a particular governmental  
3 power, consider whether the executive depart-  
4 ment or agency has explained—

5 (i) that the power actually materially  
6 enhances security; and

7 (ii) that there is adequate supervision  
8 of the executive's use of the power to en-  
9 sure protection of civil liberties.

10 (2) OVERSIGHT.—The Board shall continually  
11 review—

12 (A) the regulations, policies, and proce-  
13 dures and the implementation of the regula-  
14 tions, policies, procedures, and related laws of  
15 Federal executive departments and agencies to  
16 ensure that privacy and civil liberties are pro-  
17 tected;

18 (B) the information sharing practices of  
19 Federal executive departments and agencies to  
20 determine whether they appropriately protect  
21 privacy and civil liberties and adhere to the in-  
22 formation sharing guidelines promulgated under  
23 section 165 and to other governing laws, regu-  
24 lations, and policies regarding privacy and civil  
25 liberties; and

1 (C) other actions by the Executive Branch  
2 related to efforts to protect the Nation from  
3 terrorism to determine whether such actions—

4 (i) appropriately protect privacy and  
5 civil liberties; and

6 (ii) are consistent with governing  
7 laws, regulations, and policies regarding  
8 privacy and civil liberties.

9 (3) RELATIONSHIP WITH PRIVACY AND CIVIL  
10 LIBERTIES OFFICERS.—The Board shall review and  
11 assess the activities of privacy officers described in  
12 section 224 and, where appropriate, shall coordinate  
13 their activities.

14 (e) REPORTS.—

15 (1) IN GENERAL.—The Board shall—

16 (A) receive and review reports from privacy  
17 officers described in section 224; and

18 (B) periodically submit, not less than semi-  
19 annually, reports to Congress and the Presi-  
20 dent.

21 (2) CONTENTS.—Not less than 2 reports sub-  
22 mitted each year under paragraph (1)(B) shall in-  
23 clude—

24 (A) a description of the major activities of  
25 the Board during the relevant period; and



1 (B) information on the findings, conclu-  
2 sions, and recommendations of the Board re-  
3 sulting from its advice and oversight functions  
4 under subsection (d).

5 (f) INFORMING THE PUBLIC.—The Board shall hold  
6 public hearings, release public reports, and otherwise in-  
7 form the public of its activities, as appropriate and in a  
8 manner consistent with the protection of classified infor-  
9 mation and applicable law.

10 (g) ACCESS TO INFORMATION.—

11 (1) AUTHORIZATION.—If determined by the  
12 Board to be necessary to carry out its responsibil-  
13 ities under this section, the Board may—

14 (A) secure directly from any Federal exec-  
15 utive department or agency, or any Federal of-  
16 ficer or employee, all relevant records, reports,  
17 audits, reviews, documents, papers, or rec-  
18 ommendations, including classified information  
19 consistent with applicable law;

20 (B) interview, take statements from, or  
21 take public testimony from personnel of any  
22 Federal executive department or agency or any  
23 Federal officer or employee;

24 (C) request information or assistance from  
25 any State, tribal, or local government; and

1           (D) require, by subpoena, persons other  
2           than Federal executive departments and agen-  
3           cies to produce any relevant information, docu-  
4           ments, reports, answers, records, accounts, pa-  
5           pers, and other documentary or testimonial evi-  
6           dence.

7           (2) ENFORCEMENT OF SUBPOENA.—In the case  
8           of contumacy or failure to obey a subpoena issued  
9           under paragraph (1)(D), the United States district  
10          court for the judicial district in which the subpoe-  
11          naed person resides, is served, or may be found may  
12          issue an order requiring such person to produce the  
13          evidence required by such subpoena.

14          (h) MEMBERSHIP.—

15          (1) MEMBERS.—The Board shall be composed  
16          of a chairman and 4 additional members, who shall  
17          be appointed by the President, by and with the ad-  
18          vice and consent of the Senate.

19          (2) QUALIFICATIONS.—Members of the Board  
20          shall be selected solely on the basis of their profes-  
21          sional qualifications, achievements, public stature,  
22          and relevant experience, and without regard to polit-  
23          ical affiliation.

24          (3) INCOMPATIBLE OFFICE.—An individual ap-  
25          pointed to the Board may not, while serving on the

1 Board, be an elected official, an officer, or an em-  
2 ployee of the Federal Government, other than in the  
3 capacity as a member of the Board.

4 (i) COMPENSATION AND TRAVEL EXPENSES.—

5 (1) COMPENSATION.—

6 (A) CHAIRMAN.—The chairman shall be  
7 compensated at a rate equal to the daily equiva-  
8 lent of the annual rate of basic pay in effect for  
9 a position at level III of the Executive Schedule  
10 under section 5314 of title 5, United States  
11 Code, for each day during which the chairman  
12 is engaged in the actual performance of the du-  
13 ties of the Board.

14 (B) MEMBERS.—Each member of the  
15 Board shall be compensated at a rate equal to  
16 the daily equivalent of the annual rate of basic  
17 pay in effect for a position at level IV of the  
18 Executive Schedule under section 5315 of title  
19 5, United States Code, for each day during  
20 which that member is engaged in the actual  
21 performance of the duties of the Board.

22 (2) TRAVEL EXPENSES.—Members of the  
23 Board shall be allowed travel expenses, including per  
24 diem in lieu of subsistence, at rates authorized for  
25 persons employed intermittently by the Government

1 under section 5703(b) of title 5, United States Code,  
2 while away from their homes or regular places of  
3 business in the performance of services for the  
4 Board.

5 (j) STAFF.—

6 (1) APPOINTMENT AND COMPENSATION.—The  
7 Chairman, in accordance with rules agreed upon by  
8 the Board, shall appoint and fix the compensation of  
9 an executive director and such other personnel as  
10 may be necessary to enable the Board to carry out  
11 its functions, without regard to the provisions of  
12 title 5, United States Code, governing appointments  
13 in the competitive service, and without regard to the  
14 provisions of chapter 51 and subchapter III of chap-  
15 ter 53 of such title relating to classification and  
16 General Schedule pay rates, except that no rate of  
17 pay fixed under this subsection may exceed the  
18 equivalent of that payable for a position at level V  
19 of the Executive Schedule under section 5316 of title  
20 5, United States Code.

21 (2) DETAILEES.—Any Federal employee may  
22 be detailed to the Board without reimbursement  
23 from the Board, and such detailee shall retain the  
24 rights, status, and privileges of the detailee's regular  
25 employment without interruption.

1           (3) CONSULTANT SERVICES.—The Board may  
2       procure the temporary or intermittent services of ex-  
3       perts and consultants in accordance with section  
4       3109 of title 5, United States Code, at rates that do  
5       not exceed the daily rate paid a person occupying a  
6       position at level IV of the Executive Schedule under  
7       section 5315 of such title.

8       (k) SECURITY CLEARANCES.—The appropriate Fed-  
9       eral executive departments and agencies shall cooperate  
10      with the Board to expeditiously provide the Board mem-  
11      bers and staff with appropriate security clearances to the  
12      extent possible under existing procedures and require-  
13      ments, except that no person shall be provided with access  
14      to classified information under this section without the ap-  
15      propriate security clearances.

16      (l) TREATMENT AS AGENCY, NOT AS ADVISORY COM-  
17      MITTEE.—The Board—

18           (1) is an agency (as defined in section 551(1)  
19       of title 5, United States Code); and

20           (2) is not an advisory committee (as defined in  
21       section 3(2) of the Federal Advisory Committee Act  
22       (5 U.S.C. App.)).

23      (m) AUTHORIZATION OF APPROPRIATIONS.—There  
24      are authorized to be appropriated such sums as may be  
25      necessary to carry out this section.

1     **Subtitle B—Civil Rights and Civil**  
2                     **Liberties**

3     **SEC. 231. SHORT TITLE.**

4             This subtitle may be cited as the “Homeland Security  
5     Civil Rights and Civil Liberties Protection Act of 2004”.

6     **SEC. 232. MISSION OF DEPARTMENT OF HOMELAND SECU-**  
7                     **RITY.**

8             Section 101(b)(1) of the Homeland Security Act of  
9     2002 (6 U.S.C. 111(b)(1)) is amended—

10            (1) in subparagraph (F), by striking “and”  
11            after the semicolon;

12            (2) by redesignating subparagraph (G) as sub-  
13            paragraph (H); and

14            (3) by inserting after subparagraph (F) the fol-  
15            lowing:

16                     “(G) ensure that the civil rights and civil  
17            liberties of persons are not diminished by ef-  
18            forts, activities, and programs aimed at secur-  
19            ing the homeland; and”.

20     **SEC. 233. OFFICER FOR CIVIL RIGHTS AND CIVIL LIB-**  
21                     **ERTIES.**

22             Section 705(a) of the Homeland Security Act of 2002  
23     (6 U.S.C. 345(a)) is amended—

1           (1) in the matter preceding paragraph (1), by  
2           inserting “report directly to the Secretary and shall”  
3           after “who shall”;

4           (2) in paragraph (1)–

5                 (A) by striking “alleging” and inserting  
6                 “concerning”;

7                 (B) by striking “racial and ethnic”;

8                 (C) by inserting “on the basis of race, eth-  
9                 nicity, or religion,” after “profiling”; and

10                (D) by striking “and” after the semicolon  
11                at the end;

12           (3) in paragraph (2), by striking the period at  
13           the end and inserting a semicolon; and

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

15                “(3) assist the Secretary, directorates, and of-  
16                fices of the Department to develop, implement, and  
17                periodically review Department policies and proce-  
18                dures to ensure that the protection of civil rights  
19                and civil liberties is appropriately incorporated into  
20                Department programs and activities;

21                “(4) oversee compliance with constitutional,  
22                statutory, regulatory, policy, and other requirements  
23                relating to the civil rights and civil liberties of indi-  
24                viduals affected by the programs and activities of  
25                the Department;

1 “(5) coordinate with the official appointed  
2 under section 222 to ensure that—

3 “(A) programs, policies, and procedures in-  
4 volving civil rights, civil liberties, and privacy  
5 considerations are addressed in an integrated  
6 and comprehensive manner; and

7 “(B) the Congress receives appropriate re-  
8 ports regarding such programs, policies, and  
9 procedures; and

10 “(6) investigate complaints and information in-  
11 dicating possible abuses of civil rights or civil lib-  
12 erties, unless the Inspector General of the Depart-  
13 ment determines that any such complaint or infor-  
14 mation should be investigated by the Inspector Gen-  
15 eral.”.

16 **SEC. 234. PROTECTION OF CIVIL RIGHTS AND CIVIL LIB-**  
17 **ERTIES BY OFFICE OF INSPECTOR GENERAL.**

18 (a) DESIGNATION AND FUNCTIONS OF SENIOR OFFI-  
19 CIAL.—The Homeland Security Act of 2002 (Public Law  
20 107–296) is amended by inserting after section 812 the  
21 following:

22 **“SEC. 813. PROTECTION OF CIVIL RIGHTS AND CIVIL LIB-**  
23 **ERTIES BY OFFICE OF INSPECTOR GENERAL.**

24 “(a) DESIGNATION OF SENIOR OFFICIAL.—The In-  
25 spector General of the Department of Homeland Security



1 shall designate a senior official within the Office of Inspec-  
2 tor General who is a career member of the civil service  
3 at the equivalent to the GS–15 level or a career member  
4 of the Senior Executive Service, to perform the functions  
5 described in subsection (b).

6 “(b) FUNCTIONS.—The senior official designated  
7 under subsection (a) shall—

8 “(1) coordinate the activities of the Office of  
9 Inspector General with respect to investigations of  
10 abuses of civil rights or civil liberties;

11 “(2) receive and review complaints and infor-  
12 mation from any source alleging abuses of civil  
13 rights and civil liberties by employees or officials of  
14 the Department of Homeland Security or by employ-  
15 ees or officials of independent contractors or grant-  
16 ees of the Department;

17 “(3) initiate investigations of alleged abuses of  
18 civil rights or civil liberties by employees or officials  
19 of the Department of Homeland Security or by em-  
20 ployees or officials of independent contractors or  
21 grantees of the Department;

22 “(4) ensure that personnel within the Office of  
23 Inspector General receive sufficient training to con-  
24 duct effective civil rights and civil liberties investiga-  
25 tions;

1           “(5) consult with the Officer for Civil Rights  
2           and Civil Liberties of the Department of Homeland  
3           Security regarding—

4                   “(A) alleged abuses of civil rights or civil  
5           liberties; and

6                   “(B) any policy recommendations regard-  
7           ing civil rights and civil liberties that may be  
8           founded upon an investigation by the Office of  
9           Inspector General;

10           “(6) provide the Officer for Civil Rights and  
11           Civil Liberties with information regarding the out-  
12           come of investigations of alleged abuses of civil  
13           rights and civil liberties;

14           “(7) refer civil rights and civil liberties matters  
15           that the Inspector General decides not to investigate  
16           to the Officer for Civil Rights and Civil Liberties;

17           “(8) ensure that the Office of the Inspector  
18           General publicizes and provides convenient public ac-  
19           cess to information regarding—

20                   “(A) the procedure to file complaints or  
21           comments concerning civil rights and civil lib-  
22           erties matters; and

23                   “(B) the status of investigations initiated  
24           in response to public complaints; and

“Sec. 813. Protection of civil rights and civil liberties by Office of Inspector General.”.

9           Section 222 of the Homeland Security Act of 2002  
10 (6 U.S.C. 142) is amended—

(2) in paragraph (4), by striking “and” after  
the semicolon at the end;

(3) by redesignating paragraph (5) as paragraph (6); and

(4) by inserting after paragraph (4) the following:

20 “(5) coordinating with the Officer for Civil  
21 Rights and Civil Liberties to ensure that—

“(A) programs, policies, and procedures in-  
volving civil rights, civil liberties, and privacy

1           considerations are addressed in an integrated  
2           and comprehensive manner; and

3           “(B) the Congress receives appropriate re-  
4           ports on such programs, policies, and proce-  
5           dures; and”.

6       **TITLE XVI—PREVENTING THE**  
7       **RISE OF FUTURE TERRORISTS**

8       **SEC. 241. ROLE OF PAKISTAN IN COUNTERING TERRORISM.**

9           (a) FINDINGS.—Consistent with the report of the Na-  
10       tional Commission on Terrorist Attacks Upon the United  
11       States, Congress makes the following findings:

12           (1) The Government of Pakistan has a critical  
13       role to perform in the struggle against Islamist ter-  
14       rorism.

15           (2) The endemic poverty, widespread corrup-  
16       tion, and frequent ineffectiveness of government in  
17       Pakistan create opportunities for Islamist recruit-  
18       ment.

19           (3) The poor quality of education in Pakistan  
20       is particularly worrying, as millions of families send  
21       their children to madrassahs, some of which have  
22       been used as incubators for violent extremism.

23           (4) The vast unpoliced regions in Pakistan  
24       make the country attractive to extremists seeking

1       refuge and recruits and also provide a base for oper-  
2       ations against coalition forces in Afghanistan.

3           (5) A stable Pakistan, with a government advo-  
4       cating “enlightened moderation” in the Muslim  
5       world, is critical to stability in the region.

6           (6) There is a widespread belief among the peo-  
7       ple of Pakistan that the United States has long  
8       treated them as allies of convenience.

9       (b) SENSE OF CONGRESS.—It is the sense of Con-  
10   gress that—

11           (1) the United States should make a long-term  
12       commitment to assisting in ensuring a promising,  
13       stable, and secure future in Pakistan, as long as its  
14       leaders remain committed to combatting extremists  
15       and implementing a strategy of “enlightened mod-  
16       eration”;

17           (2) the United States aid to Pakistan should be  
18       fulsome and, at a minimum, sustained at the fiscal  
19       year 2004 levels;

20           (3) the United States should support the Gov-  
21       ernment of Pakistan with a comprehensive effort  
22       that extends from military aid to support for better  
23       education; and

24           (4) the United States Government should de-  
25       vote particular attention and resources to assisting

1 in the improvement of the quality of education in  
2 Pakistan.

3 (c) REPORT ON SUPPORT FOR PAKISTAN.—

4 (1) REPORT REQUIRED.—Not later than 180  
5 days after the date of the enactment of this Act, the  
6 President shall submit to Congress a report on the  
7 efforts of the United States Government to support  
8 Pakistan and encourage moderation in that country.

9 (2) CONTENT.—The report required under this  
10 section shall include the following:

11 (A) An examination of the desirability of  
12 establishing a Pakistan Education Fund to di-  
13 rect resources toward improving the quality of  
14 secondary schools in Pakistan.

15 (B) Recommendations on the funding nec-  
16 essary to provide various levels of educational  
17 support.

18 (C) An examination of the current com-  
19 position and levels of United States military aid  
20 to Pakistan, together with any recommenda-  
21 tions for changes in such levels and composition  
22 that the President considers appropriate.

23 (D) An examination of other major types  
24 of United States financial support to Pakistan,  
25 together with any recommendations for changes

1           in the levels and composition of such support  
2           that the President considers appropriate.

3 **SEC. 242. AID TO AFGHANISTAN.**

4           (a) FINDINGS.—Consistent with the report of the Na-  
5 tional Commission on Terrorist Attacks Upon the United  
6 States, Congress makes the following findings:

7           (1) The United States and its allies in the  
8 international community have made progress in pro-  
9 moting economic and political reform within Afghan-  
10 istan, including the establishment of a central gov-  
11 ernment with a democratic constitution, a new cur-  
12 rency, and a new army, the increase of personal  
13 freedom, and the elevation of the standard of living  
14 of many Afghans.

15           (2) A number of significant obstacles must be  
16 overcome if Afghanistan is to become a secure and  
17 prosperous democracy, and such a transition de-  
18 pends in particular upon—

19                   (A) improving security throughout the  
20 country;

21                   (B) disarming and demobilizing militias;

22                   (C) curtailing the rule of the warlords;

23                   (D) promoting equitable economic develop-  
24 ment;

1 (E) protecting the human rights of the  
2 people of Afghanistan;

3 (F) holding elections for public office; and

4 (G) ending the cultivation and trafficking  
5 of narcotics.

6 (3) The United States and the international  
7 community must make a long-term commitment to  
8 addressing the deteriorating security situation in Af-  
9 ghanistan and the burgeoning narcotics trade, en-  
10 demic poverty, and other serious problems in Af-  
11 ghanistan in order to prevent that country from re-  
12 lapsing into a sanctuary for international terrorism.

13 (b) POLICY.—It shall be the policy of the United  
14 States to take the following actions with respect to Af-  
15 ghanistan:

16 (1) Working with other nations to obtain long-  
17 term security, political, and financial commitments  
18 and fulfillment of pledges to the Government of Af-  
19 ghanistan to accomplish the objectives of the Af-  
20 ghanistan Freedom Support Act of 2002 (22 U.S.C.  
21 7501 et seq.), especially to ensure a secure, demo-  
22 cratic, and prosperous Afghanistan that respects the  
23 rights of its citizens and is free of international ter-  
24 rorist organizations.



1           (2) Using the voice and vote of the United  
2       States in relevant international organizations, in-  
3       cluding the North Atlantic Treaty Organization and  
4       the United Nations Security Council, to strengthen  
5       international commitments to assist the Government  
6       of Afghanistan in enhancing security, building na-  
7       tional police and military forces, increasing counter-  
8       narcotics efforts, and expanding infrastructure and  
9       public services throughout the country.

10          (3) Taking appropriate steps to increase the as-  
11       sistance provided under programs of the Department  
12       of State and the United States Agency for Inter-  
13       national Development throughout Afghanistan and  
14       to increase the number of personnel of those agen-  
15       cies in Afghanistan as necessary to support the in-  
16       creased assistance.

17       (c) AUTHORIZATION OF APPROPRIATIONS.—

18          (1) FISCAL YEAR 2005.—There are authorized  
19       to be appropriated to the President for fiscal year  
20       2005 for assistance for Afghanistan, in addition to  
21       any amounts otherwise available for the following  
22       purposes, the following amounts:

23                (A) For Development Assistance to carry  
24                out the provisions of sections 103, 105, and  
25                106 of the Foreign Assistance Act of 1961 (22

1 U.S.C. 2151a, 2151c, and 2151d),  
2 \$400,000,000.

3 (B) For the Child Survival and Health  
4 Program Fund to carry out the provisions of  
5 section 104 of the Foreign Assistance Act of  
6 1961 (22 U.S.C. 2151b), \$100,000,000.

7 (C) For the Economic Support Fund to  
8 carry out the provisions of chapter 4 of part II  
9 of the Foreign Assistance Act of 1961 (22  
10 U.S.C. 2346 et seq.), \$550,000,000.

11 (D) For International Narcotics and Law  
12 Enforcement to carry out the provisions of sec-  
13 tion 481 of the Foreign Assistance Act of 1961  
14 (22 U.S.C. 2291), \$360,000,000.

15 (E) For Nonproliferation, Anti-Terrorism,  
16 Demining, and Related Programs, \$50,000,000.

17 (F) For International Military Education  
18 and Training to carry out the provisions of sec-  
19 tion 541 of the Foreign Assistance Act of 1961  
20 (22 U.S.C. 2347), \$2,000,000.

21 (G) For Foreign Military Financing Pro-  
22 gram grants to carry of the provision of section  
23 23 of the Arms Export Control Act (22 U.S.C.  
24 2763), \$880,000,000.

1           (H) For Peacekeeping Operations to carry  
2           out the provisions of section 551 of the Foreign  
3           Assistance Act of 1961 (22 U.S.C. 2348),  
4           \$60,000,000.

5           (2) FISCAL YEARS 2006 THROUGH 2009.—There  
6           are authorized to be appropriated to the President  
7           for each of fiscal years 2006 through 2009 such  
8           sums as may be necessary for financial and other as-  
9           sistance to Afghanistan.

10          (3) CONDITIONS FOR ASSISTANCE.—Assistance  
11          provided by the President under this subsection—

12                (A) shall be consistent with the Afghani-  
13                stan Freedom Support Act of 2002; and

14                (B) shall be provided with reference to the  
15                “Securing Afghanistan’s Future” document  
16                published by the Government of Afghanistan.

17          (d) SENSE OF CONGRESS.—It is the sense of Con-  
18          gress that Congress should, in consultation with the Presi-  
19          dent, update and revise, as appropriate, the Afghanistan  
20          Freedom Support Act of 2002.

21          (e) STRATEGY AND SUPPORT REGARDING UNITED  
22          STATES AID TO AFGHANISTAN.—

23                (1) REQUIREMENT FOR STRATEGY.—Not later  
24                than 180 days after the date of the enactment of

1       this Act, the President shall submit to Congress a  
2       5-year strategy for providing aid to Afghanistan.

3           (2) CONTENT.—The strategy required under  
4       paragraph (1) shall describe the resources that will  
5       be needed during the next 5 years to achieve specific  
6       objectives in Afghanistan, including in the following  
7       areas:

8           (A) Fostering economic development.

9           (B) Curtailing the cultivation of opium.

10          (C) Achieving internal security and sta-  
11       bility.

12          (D) Eliminating terrorist sanctuaries.

13          (E) Increasing governmental capabilities.

14          (F) Improving essential infrastructure and  
15       public services.

16          (G) Improving public health services.

17          (H) Establishing a broad-based edu-  
18       cational system.

19          (I) Promoting democracy and the rule of  
20       law.

21          (J) Building national police and military  
22       forces.

23          (3) UPDATES.—Beginning not later than 1 year  
24       after the strategy is submitted to Congress under

1 paragraph (1), the President shall submit to Con-  
2 gress an annual report—

3 (A) updating the progress made toward  
4 achieving the goals outlined in the strategy  
5 under this subsection; and

6 (B) identifying shortfalls in meeting those  
7 goals and the resources needed to fully achieve  
8 them.

9 **SEC. 243. THE UNITED STATES-SAUDI ARABIA RELATION-**  
10 **SHIP.**

11 (a) FINDINGS.—Consistent with the report of the Na-  
12 tional Commission on Terrorist Attacks Upon the United  
13 States, Congress makes the following findings:

14 (1) Despite a long history of friendly relations  
15 with the United States, Saudi Arabia has been a  
16 problematic ally in combating Islamic extremism.

17 (2) Cooperation between the Governments of  
18 the United States and Saudi Arabia has traditionally  
19 been carried out in private.

20 (3) The Government of Saudi Arabia has not  
21 always responded promptly and fully to United  
22 States requests for assistance in the global war on  
23 Islamist terrorism.

24 (4) Counterterrorism cooperation between the  
25 Governments of the United States and Saudi Arabia

1       has improved significantly since the terrorist bomb-  
2       ing attacks in Riyadh, Saudi Arabia, on May 12,  
3       2003.

4               (5) The Government of Saudi Arabia is now ag-  
5       gressively pursuing al Qaeda and appears to be act-  
6       ing to build a domestic consensus for some internal  
7       reforms.

8       (b) SENSE OF CONGRESS.—It is the sense of Con-  
9       gress that—

10              (1) the problems in the relationship between the  
11       United States and Saudi Arabia must be confronted  
12       openly, and the opportunities for cooperation be-  
13       tween the countries must be pursued openly by those  
14       governments;

15              (2) both governments must build a relationship  
16       that they can publicly defend and that is based on  
17       other national interests in addition to their national  
18       interests in oil;

19              (3) this relationship should include a shared  
20       commitment to political and economic reform in  
21       Saudi Arabia; and

22              (4) this relationship should also include a  
23       shared interest in greater tolerance and respect for  
24       other cultures in Saudi Arabia and a commitment to

1 fight the violent extremists who foment hatred in the  
2 Middle East.

3 (c) REPORT.—

4 (1) REPORT REQUIRED.—Not later than 180  
5 days after the date of the enactment of this Act, the  
6 President shall submit to Congress a strategy for ex-  
7 panding collaboration with the Government of Saudi  
8 Arabia on subjects of mutual interest and of impor-  
9 tance to the United States.

10 (2) SCOPE.—As part of this strategy, the Presi-  
11 dent shall consider the utility of undertaking a peri-  
12 odic, formal, and visible high-level dialogue between  
13 senior United States Government officials of cabinet  
14 level or higher rank and their counterparts in the  
15 Government of Saudi Arabia to address challenges  
16 in the relationship between the 2 governments and  
17 to identify areas and mechanisms for cooperation.

18 (3) CONTENT.—The strategy under this sub-  
19 section shall encompass—

20 (A) intelligence and security cooperation in  
21 the fight against Islamist terrorism;

22 (B) ways to advance the Middle East peace  
23 process;

24 (C) political and economic reform in Saudi  
25 Arabia and throughout the Middle East; and

1 (D) the promotion of greater tolerance and  
2 respect for cultural and religious diversity in  
3 Saudi Arabia and throughout the Middle East.

4 **SEC. 244. EFFORTS TO COMBAT ISLAMIC TERRORISM BY**  
5 **ENGAGING IN THE STRUGGLE OF IDEAS IN**  
6 **THE ISLAMIC WORLD.**

7 (a) FINDINGS.—Consistent with the report of the Na-  
8 tional Commission on Terrorist Attacks Upon the United  
9 States, Congress makes the following findings:

10 (1) While support for the United States has  
11 plummeted in the Islamic world, many negative  
12 views are uninformed, at best, and, at worst, are in-  
13 formed by coarse stereotypes and caricatures.

14 (2) Local newspapers in Islamic countries and  
15 influential broadcasters who reach Islamic audiences  
16 through satellite television often reinforce the idea  
17 that the people and Government of the United  
18 States are anti-Muslim.

19 (b) SENSE OF CONGRESS.—It is the sense of Con-  
20 gress that—

21 (1) the Government of the United States should  
22 offer an example of moral leadership in the world  
23 that includes a commitment to treat all people hu-  
24 manely, abide by the rule of law, and be generous



1 and caring to the people and governments of other  
2 countries;

3 (2) the United States should cooperate with  
4 governments of Islamic countries to foster agree-  
5 ment on respect for human dignity and opportunity,  
6 and to offer a vision of a better future that includes  
7 stressing life over death, individual educational and  
8 economic opportunity, widespread political participa-  
9 tion, contempt for indiscriminate violence, respect  
10 for the rule of law, openness in discussing dif-  
11 ferences, and tolerance for opposing points of view;

12 (3) the United States should encourage reform,  
13 freedom, democracy, and opportunity for Arabs and  
14 Muslims and promote moderation in the Islamic  
15 world; and

16 (4) the United States should work to defeat ex-  
17 tremist ideology in the Islamic world by providing  
18 assistance to moderate Arabs and Muslims to com-  
19 bat extremist ideas.

20 (c) REPORT ON THE STRUGGLE OF IDEAS IN THE  
21 ISLAMIC WORLD.—

22 (1) REPORT REQUIRED.—Not later than 180  
23 days after the date of the enactment of this Act, the  
24 President shall submit to Congress a report that  
25 contains a cohesive long-term strategy for the

1 United States Government to help win the struggle  
2 of ideas in the Islamic world.

3 (2) CONTENT.—The report required under this  
4 section shall include the following:

5 (A) A description of specific goals related  
6 to winning this struggle of ideas.

7 (B) A description of the range of tools  
8 available to the United States Government to  
9 accomplish these goals and the manner in which  
10 such tools will be employed.

11 (C) A list of benchmarks for measuring  
12 success and a plan for linking resources to the  
13 accomplishment of these goals.

14 (D) A description of any additional re-  
15 sources that may be necessary to help win this  
16 struggle of ideas.

17 (E) Any recommendations for the creation  
18 of, and United States participation in, inter-  
19 national institutions for the promotion of de-  
20 mocracy and economic diversification in the Is-  
21 lamic world, and intra-regional trade in the  
22 Middle East.

23 (F) An estimate of the level of United  
24 States financial assistance that would be suffi-  
25 cient to convince United States allies and peo-

ple in the Islamic world that engaging in the struggle of ideas in the Islamic world is a top priority of the United States and that the United States intends to make a substantial and sustained commitment toward winning this struggle.

**SEC. 245. UNITED STATES POLICY TOWARD DICTATORSHIPS.**

(a) FINDING.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress finds that short-term gains enjoyed by the United States through cooperation with the world's most repressive and brutal governments are too often outweighed by long-term setbacks for the stature and interests of the United States.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) United States foreign policy should promote the value of life and the importance of individual educational and economic opportunity, encourage widespread political participation, condemn indiscriminate violence, and promote respect for the rule of law, openness in discussing differences among people, and tolerance for opposing points of view; and

1           (2) the United States Government must prevail  
2       upon the governments of all predominantly Muslim  
3       countries, including those that are friends and allies  
4       of the United States, to condemn indiscriminate vio-  
5       lence, promote the value of life, respect and promote  
6       the principles of individual education and economic  
7       opportunity, encourage widespread political partici-  
8       pation, and promote the rule of law, openness in dis-  
9       cussing differences among people, and tolerance for  
10      opposing points of view.

11 **SEC. 246. PROMOTION OF UNITED STATES VALUES**  
12 **THROUGH BROADCAST MEDIA.**

13       (a) FINDINGS.—Consistent with the report of the Na-  
14 tional Commission on Terrorist Attacks Upon the United  
15 States, Congress makes the following findings:

16           (1) Although the United States has dem-  
17 onstrated and promoted its values in defending Mus-  
18 lims against tyrants and criminals in Somalia, Bos-  
19 nia, Kosovo, Afghanistan, and Iraq, this message is  
20 not always clearly presented in the Islamic world.

21           (2) If the United States does not act to vigor-  
22 ously define its message in the Islamic world, the  
23 image of the United States will be defined by Is-  
24 lamic extremists who seek to demonize the United  
25 States.

1           (3) Recognizing that many Arab and Muslim  
2           audiences rely on satellite television and radio, the  
3           United States Government has launched promising  
4           initiatives in television and radio broadcasting to the  
5           Arab world, Iran, and Afghanistan.

6           (b) SENSE OF CONGRESS.—It is the sense of Con-  
7   gress that—

8           (1) the United States must do more to defend  
9           and promote its values and ideals to the broadest  
10          possible audience in the Islamic world;

11          (2) United States efforts to defend and promote  
12          these values and ideals are beginning to ensure that  
13          accurate expressions of these values reach large au-  
14          diences in the Islamic world and should be robustly  
15          supported;

16          (3) the United States Government could and  
17          should do more to engage the Muslim world in the  
18          struggle of ideas; and

19          (4) the United States Government should more  
20          intensively employ existing broadcast media in the  
21          Islamic world as part of this engagement.

22          (c) REPORT ON OUTREACH STRATEGY.—

23          (1) REPORT REQUIRED.—Not later than 180  
24          days after the date of the enactment of this Act, the  
25          President shall submit to Congress a report on the

1 strategy of the United States Government for ex-  
2 panding its outreach to foreign Muslim audiences  
3 through broadcast media.

4 (2) CONTENT.—The report shall include the  
5 following:

6 (A) The initiatives of the Broadcasting  
7 Board of Governors and the public diplomacy  
8 activities of the Department of State with re-  
9 spect to outreach to foreign Muslim audiences.

10 (B) An outline of recommended actions  
11 that the United States Government should take  
12 to more regularly and comprehensively present  
13 a United States point of view through indige-  
14 nous broadcast media in countries with sizable  
15 Muslim populations, including increasing ap-  
16 pearances by United States Government offi-  
17 cials, experts, and citizens.

18 (C) An assessment of potential incentives  
19 for, and costs associated with, encouraging  
20 United States broadcasters to dub or subtitle  
21 into Arabic and other relevant languages their  
22 news and public affairs programs broadcast in  
23 the Muslim world in order to present those pro-  
24 grams to a much broader Muslim audience than  
25 is currently reached.

1           (D) Any recommendations the President  
2           may have for additional funding and legislation  
3           necessary to achieve the objectives of the strat-  
4           egy.

5           (d) AUTHORIZATIONS OF APPROPRIATIONS.—There  
6           are authorized to be appropriated to the President to carry  
7           out United States Government broadcasting activities  
8           under the United States Information and Educational Ex-  
9           change Act of 1948 (22 U.S.C. 1431 et seq.), the United  
10          States International Broadcasting Act of 1994 (22 U.S.C.  
11          6201 et seq.), and the Foreign Affairs Reform and Re-  
12          structuring Act of 1998 (22 U.S.C. 6501 et seq.), and to  
13          carry out other activities under this section consistent with  
14          the purposes of such Acts, the following amounts:

15               (1) INTERNATIONAL BROADCASTING OPER-  
16               ATIONS.—For International Broadcasting Oper-  
17               ations—

18                       (A) \$717,160,000 for fiscal year 2005; and

19                       (B) such sums as may be necessary for  
20               each of the fiscal years 2006 through 2009.

21               (2) BROADCASTING CAPITAL IMPROVEMENTS.—  
22               For Broadcasting Capital Improvements—

23                       (A) \$11,040,000 for fiscal year 2005; and

24                       (B) such sums as may be necessary for  
25               each of the fiscal years 2006 through 2009.

1 **SEC. 247. USE OF UNITED STATES SCHOLARSHIP AND EX-**  
2 **CHANGE PROGRAMS IN THE ISLAMIC WORLD.**

3 (a) FINDINGS.—Consistent with the report of the Na-  
4 tional Commission on Terrorist Attacks Upon the United  
5 States, Congress makes the following findings:

6 (1) Exchange, scholarship, and library pro-  
7 grams are effective ways for the United States Gov-  
8 ernment to promote internationally the values and  
9 ideals of the United States.

10 (2) Exchange, scholarship, and library pro-  
11 grams can expose young people from other countries  
12 to United States values and offer them knowledge  
13 and hope.

14 (b) SENSE OF CONGRESS.—It is the sense of Con-  
15 gress that the United States should expand its exchange,  
16 scholarship, and library programs, especially those that  
17 benefit people in the Arab and Muslim worlds.

18 (c) DEFINITIONS.—In this section:

19 (1) ELIGIBLE COUNTRY.—The term “eligible  
20 country” means a country or entity in Africa, the  
21 Middle East, Central Asia, South Asia, or Southeast  
22 Asia that—

23 (A) has a sizable Muslim population; and

24 (B) is designated by the Secretary of State  
25 as eligible to participate in programs under this  
26 section.



1           (2) SECRETARY.—Except as otherwise specifi-  
2 cally provided, the term “Secretary” means the Sec-  
3 retary of State.

4           (3) UNITED STATES ENTITY.—The term  
5 “United States entity” means an entity that is orga-  
6 nized under the laws of the United States, any  
7 State, the District of Columbia, the Commonwealth  
8 of Puerto Rico, Guam, the United States Virgin Is-  
9 lands, the Commonwealth of the Northern Mariana  
10 Islands, American Samoa, or any other territory or  
11 possession of the United States.

12           (4) UNITED STATES SPONSORING ORGANIZA-  
13 TION.—The term “United States sponsoring organi-  
14 zation” means a nongovernmental organization that  
15 is—

16                   (A) based in the United States; and

17                   (B) controlled by a citizen of the United  
18 States or a United States entity that is des-  
19 ignated by the Secretary, pursuant to regula-  
20 tions, to carry out a program authorized by  
21 subsection (e).

22           (d) EXPANSION OF EDUCATIONAL AND CULTURAL  
23 EXCHANGES.—

24           (1) PURPOSE.—The purpose of this subsection  
25 is to provide for the expansion of international edu-

1        cational and cultural exchange programs between  
2        the United States and eligible countries.

3            (2) SPECIFIC PROGRAMS.—In carrying out this  
4        subsection, the Secretary is authorized to conduct or  
5        initiate programs in eligible countries as follows:

6            (A) FULBRIGHT EXCHANGE PROGRAM.—

7                    (i)        INCREASED        NUMBER        OF  
8                    AWARDS.—The Secretary is authorized to  
9                    substantially increase the number of  
10                   awards under the J. William Fulbright  
11                   Educational Exchange Program.

12                   (ii)        INTERNATIONAL SUPPORT FOR  
13                   FULBRIGHT PROGRAM.—The Secretary  
14                   shall work to increase support for the J.  
15                   William Fulbright Educational Exchange  
16                   Program in eligible countries in order to  
17                   enhance academic and scholarly exchanges  
18                   with those countries.

19            (B) HUBERT H. HUMPHREY FELLOW-  
20        SHIPS.—The Secretary is authorized to sub-  
21        stantially increase the number of Hubert H.  
22        Humphrey Fellowships awarded to candidates  
23        from eligible countries.

24            (C) SISTER INSTITUTIONS PROGRAMS.—

25        The Secretary is authorized to facilitate the es-

1           tablishment of sister institution programs be-  
2           tween cities and municipalities and other insti-  
3           tutions in the United States and in eligible  
4           countries in order to enhance mutual under-  
5           standing at the community level.

6           (D) LIBRARY TRAINING EXCHANGES.—The  
7           Secretary is authorized to develop a demonstra-  
8           tion program, including training in the library  
9           sciences, to assist governments in eligible coun-  
10          tries to establish or upgrade the public library  
11          systems of such countries for the purpose of im-  
12          proving literacy.

13          (E) INTERNATIONAL VISITORS PRO-  
14          GRAM.—The Secretary is authorized to expand  
15          the number of participants from eligible coun-  
16          tries in the International Visitors Program.

17          (F) YOUTH AMBASSADORS.—

18           (i) IN GENERAL.—The Secretary is  
19           authorized to establish a youth ambas-  
20           sadors program for visits by middle and  
21           secondary school students from eligible  
22           countries to the United States to partici-  
23           pate in activities, including cultural and  
24           educational activities, that are designed to

1 familiarize participating students with  
2 United States society and values.

3 (ii) VISITS.—The visits of students  
4 who are participating in the youth ambas-  
5 sador program under clause (i) shall be  
6 scheduled during the school holidays in the  
7 home countries of the students and may  
8 not exceed 4 weeks.

9 (iii) CRITERIA.—Students selected to  
10 participate in the youth ambassador pro-  
11 gram shall reflect the economic and geo-  
12 graphic diversity of eligible countries.

13 (G) EDUCATION REFORM.—The Secretary  
14 is authorized—

15 (i) to expand programs that seek to  
16 improve the quality of primary and sec-  
17 ondary school systems in eligible countries;  
18 and

19 (ii) in order to foster understanding of  
20 the United States, to promote civic edu-  
21 cation through teacher exchanges, teacher  
22 training, textbook modernization, and  
23 other efforts.

24 (H) PROMOTION OF RELIGIOUS FREE-  
25 DOM.—The Secretary is authorized to establish

1 a program to promote dialogue and exchange  
2 among leaders and scholars of all faiths from  
3 the United States and eligible countries.

4 (I) BRIDGING THE DIGITAL DIVIDE.—The  
5 Secretary is authorized to establish a program  
6 to help foster access to information technology  
7 among underserved populations and by civil so-  
8 ciety groups in eligible countries.

9 (J) PEOPLE-TO-PEOPLE DIPLOMACY.—The  
10 Secretary is authorized to expand efforts to  
11 promote United States public diplomacy inter-  
12 ests in eligible countries through cultural, arts,  
13 entertainment, sports and other exchanges.

14 (K) COLLEGE SCHOLARSHIPS.—

15 (i) IN GENERAL.—The Secretary is  
16 authorized to establish a program to offer  
17 scholarships to permit individuals to attend  
18 eligible colleges and universities.

19 (ii) ELIGIBILITY FOR PROGRAM.—To  
20 be eligible for the scholarship program, an  
21 individual shall be a citizen or resident of  
22 an eligible country who has graduated  
23 from a secondary school in an eligible  
24 country.

1 (iii) ELIGIBLE COLLEGE OR UNIVER-  
2 SITY DEFINED.—In this subparagraph, the  
3 term “eligible college or university” means  
4 a college or university that is organized  
5 under the laws of the United States, a  
6 State, or the District of Columbia, accred-  
7 ited by an accrediting agency recognized by  
8 the Secretary of Education, and primarily  
9 located in, but not controlled by, an eligible  
10 country.

11 (L) LANGUAGE TRAINING PROGRAM.—The  
12 Secretary is authorized to provide travel and  
13 subsistence funding for students who are  
14 United States citizens to travel to eligible coun-  
15 tries to participate in immersion training pro-  
16 grams in languages used in such countries and  
17 to develop regulations governing the provision  
18 of such funding.

19 (e) SECONDARY SCHOOL EXCHANGE PROGRAM.—

20 (1) IN GENERAL.—The Secretary is authorized  
21 to establish an international exchange visitor pro-  
22 gram, modeled on the Future Leaders Exchange  
23 Program established under the FREEDOM Support  
24 Act (22 U.S.C. 5801 et seq.), for eligible students  
25 to—

1 (A) attend public secondary school in the  
2 United States;

3 (B) live with a host family in the United  
4 States; and

5 (C) participate in activities designed to  
6 promote a greater understanding of United  
7 States and Islamic values and culture.

8 (2) ELIGIBLE STUDENT DEFINED.—In this sub-  
9 section, the term “eligible student” means an indi-  
10 vidual who—

11 (A) is a national of an eligible country;

12 (B) is at least 15 years of age but not  
13 more than 18 years and 6 months of age at the  
14 time of enrollment in the program;

15 (C) is enrolled in a secondary school in an  
16 eligible country;

17 (D) has completed not more than 11 years  
18 of primary and secondary education, exclusive  
19 of kindergarten;

20 (E) demonstrates maturity, good char-  
21 acter, and scholastic aptitude, and has the pro-  
22 ficiency in the English language necessary to  
23 participate in the program;

24 (F) has not previously participated in an  
25 exchange program in the United States spon-

1           sored by the Government of the United States;  
2           and

3           (G) is not prohibited from entering the  
4           United States under any provision of the Immi-  
5           gration and Nationality Act (8 U.S.C. 1101 et  
6           seq.) or any other provision of law related to  
7           immigration and nationality.

8           (3) COMPLIANCE WITH VISA REQUIREMENTS.—

9           An eligible student may not participate in the ex-  
10          change visitor program authorized by paragraph (1)  
11          unless the eligible student has the status of non-  
12          immigrant under section 101(a)(15)(J) of the Immi-  
13          gration and Nationality Act (8 U.S.C.  
14          1101(a)(15)(J)).

15          (4) BROAD PARTICIPATION.—Whenever appro-

16          priate, the Secretary shall make special provisions to  
17          ensure the broadest possible participation in the ex-  
18          change visitor program authorized by paragraph (1),  
19          particularly among females and less advantaged citi-  
20          zens of eligible countries.

21          (5) DESIGNATED EXCHANGE VISITOR PRO-

22          GRAM.—The exchange visitor program authorized by  
23          paragraph (1) shall be a designated exchange visitor  
24          program for the purposes of section 641 of the Ille-



1 gal Immigration Reform and Immigrant Responsi-  
2 bility Act of 1996 (8 U.S.C. 1372).

3 (6) REGULAR REPORTING TO THE SEC-  
4 RETARY.—If the Secretary utilizes a United States  
5 sponsoring organization to carry out the exchange  
6 visitor program authorized by paragraph (1), such  
7 United States sponsoring organization shall report  
8 regularly to the Secretary on the progress it has  
9 made to implement such program.

10 (f) REPORT ON EXPEDITING VISAS FOR PARTICI-  
11 PANTS IN EXCHANGE, SCHOLARSHIP, AND VISITORS PRO-  
12 GRAMS.—

13 (1) REQUIREMENT.—Not later than 180 days  
14 after the date of the enactment of this Act, the Sec-  
15 retary and the Secretary of Homeland Security shall  
16 submit to Congress a report on expediting the  
17 issuance of visas to individuals who are entering the  
18 United States for the purpose of participating in a  
19 scholarship, exchange, or visitor program authorized  
20 in subsection (d) or (e) without compromising the  
21 security of the United States.

22 (2) RECOMMENDATIONS.—The report required  
23 by paragraph (1) shall include—

24 (A) the recommendations of the Secretary  
25 and the Secretary of Homeland Security, if any,

1           for methods to expedite the processing of re-  
2           quests for such visas; and

3                   (B) a proposed schedule for implementing  
4           any recommendations described in subpara-  
5           graph (A).

6       (g) AUTHORIZATION OF APPROPRIATIONS.—Of the  
7   amounts authorized to be appropriated for educational  
8   and cultural exchange programs for fiscal year 2005, there  
9   is authorized to be appropriated to the Department of  
10   State \$60,000,000 to carry out programs under this sec-  
11   tion.

12   **SEC. 248. INTERNATIONAL YOUTH OPPORTUNITY FUND.**

13       (a) FINDINGS.—Consistent with the report of the Na-  
14   tional Commission on Terrorist Attacks Upon the United  
15   States, Congress makes the following findings:

16           (1) Education that teaches tolerance, the dig-  
17       nity and value of each individual, and respect for  
18       different beliefs is a key element in any global strat-  
19       egy to eliminate Islamist terrorism.

20           (2) Education in the Middle East about the  
21       world outside that region is weak.

22           (3) The United Nations has rightly equated lit-  
23       eracy with freedom.

24           (4) The international community is moving to-  
25       ward setting a concrete goal of reducing by half the

1 illiteracy rate in the Middle East by 2010, through  
2 the implementation of education programs targeting  
3 women and girls and programs for adult literacy,  
4 and by other means.

5 (5) To be effective, the effort to improve edu-  
6 cation in the Middle East must also include—

7 (A) support for the provision of basic edu-  
8 cation tools, such as textbooks that translate  
9 more of the world’s knowledge into local lan-  
10 guages and local libraries to house such mate-  
11 rials; and

12 (B) more vocational education in trades  
13 and business skills.

14 (6) The Middle East can benefit from some of  
15 the same programs to bridge the digital divide that  
16 already have been developed for other regions of the  
17 world.

18 (b) INTERNATIONAL YOUTH OPPORTUNITY FUND.—

19 (1) ESTABLISHMENT.—

20 (A) IN GENERAL.—The President shall es-  
21 tablish an International Youth Opportunity  
22 Fund (hereafter in this section referred to as  
23 the “Fund”).

24 (B) INTERNATIONAL PARTICIPATION.—

25 The President shall seek the cooperation of the

1 international community in establishing and  
2 generously supporting the Fund.

3 (2) PURPOSE.—The purpose of the Fund shall  
4 be to provide financial assistance for the improve-  
5 ment of public education in the Middle East, includ-  
6 ing assistance for the construction and operation of  
7 primary and secondary schools in countries that  
8 have a sizable Muslim population and that commit  
9 to sensibly investing their own financial resources in  
10 public education.

11 (3) ELIGIBILITY FOR ASSISTANCE.—

12 (A) DETERMINATION.—The Secretary of  
13 State, in coordination with the Administrator of  
14 the United States Agency for International De-  
15 velopment, shall determine which countries are  
16 eligible for assistance through the Fund.

17 (B) CRITERIA.—In determining whether a  
18 country is eligible for assistance, the Secretary  
19 shall consider whether the government of that  
20 country is sensibly investing financial resources  
21 in public education and is committed to pro-  
22 moting a system of education that teaches toler-  
23 ance, the dignity and value of each individual,  
24 and respect for different beliefs.

1           (4) USE OF FUNDS.—Financial assistance pro-  
2       vided through the Fund shall be used for expanding  
3       literacy programs, providing textbooks, reducing the  
4       digital divide, expanding vocational and business  
5       education, constructing and operating public schools,  
6       establishing local libraries, training teachers in mod-  
7       ern education techniques, and promoting public edu-  
8       cation that teaches tolerance, the dignity and value  
9       of each individual, and respect for different beliefs.

10       (c) REPORT.—

11           (1) IN GENERAL.—Not later than 180 days  
12       after the date of the enactment of this Act, and an-  
13       nually thereafter, the Secretary of State and the Ad-  
14       ministrator of the United States Agency for Inter-  
15       national Development shall jointly prepare and sub-  
16       mit to Congress a report on the improvement of edu-  
17       cation in the Middle East.

18           (2) CONTENT.—Reports submitted under this  
19       subsection shall include the following:

20                   (A) A general strategy for working with el-  
21       igible host governments in the Middle East to-  
22       ward establishing the International Youth Op-  
23       portunity Fund and related programs.

24                   (B) A listing of countries that are eligible  
25       for assistance under such programs.

1 (C) A description of the specific programs  
2 initiated in each eligible country and the  
3 amount expended in support of such programs.

4 (D) A description of activities undertaken  
5 to close the digital divide and expand vocational  
6 and business skills in eligible countries.

7 (E) A listing of activities that could be un-  
8 dertaken if additional funding were provided  
9 and the amount of funding that would be nec-  
10 essary to carry out such activities.

11 (F) A strategy for garnering programmatic  
12 and financial support from international organi-  
13 zations and other countries in support of the  
14 Fund and activities related to the improvement  
15 of public education in eligible countries.

16 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
17 are authorized to be appropriated to the President for the  
18 establishment of the International Youth Opportunity  
19 Fund, in addition to any amounts otherwise available for  
20 such purpose, \$40,000,000 for fiscal year 2005 and such  
21 sums as may be necessary for fiscal years 2006 through  
22 2009.

1 **SEC. 249. REPORT ON THE USE OF ECONOMIC POLICIES TO**  
2 **COMBAT TERRORISM.**

3 (a) FINDINGS.—Consistent with the report of the Na-  
4 tional Commission on Terrorist Attacks Upon the United  
5 States, Congress makes the following findings:

6 (1) While terrorism is not caused by poverty,  
7 breeding grounds for terrorism are created by back-  
8 ward economic policies and repressive political re-  
9 gimes.

10 (2) Policies that support economic development  
11 and reform also have political implications, as eco-  
12 nomic and political liberties are often linked.

13 (3) The United States is working toward cre-  
14 ating a Middle East Free Trade Area by 2013 and  
15 implementing a free trade agreement with Bahrain,  
16 and free trade agreements exist between the United  
17 States and Israel and the United States and Jordan.

18 (4) Existing and proposed free trade agree-  
19 ments between the United States and Islamic coun-  
20 tries are drawing interest from other countries in  
21 the Middle East region, and Islamic countries can  
22 become full participants in the rules-based global  
23 trading system, as the United States considers low-  
24 ering its barriers to trade with the poorest Arab  
25 countries.

1       (b) SENSE OF CONGRESS.—It is the sense of Con-  
2 gress that—

3           (1) a comprehensive United States strategy to  
4 counter terrorism should include economic policies  
5 that encourage development, open societies, and op-  
6 portunities for people to improve the lives of their  
7 families and to enhance prospects for their children’s  
8 future;

9           (2) 1 element of such a strategy should encom-  
10 pass the lowering of trade barriers with the poorest  
11 countries that have a significant population of Arab  
12 or Muslim individuals;

13          (3) another element of such a strategy should  
14 encompass United States efforts to promote eco-  
15 nomic reform in countries that have a significant  
16 population of Arab or Muslim individuals, including  
17 efforts to integrate such countries into the global  
18 trading system; and

19          (4) given the importance of the rule of law in  
20 promoting economic development and attracting in-  
21 vestment, the United States should devote an in-  
22 creased proportion of its assistance to countries in  
23 the Middle East to the promotion of the rule of law.

24       (c) REPORT.—



1           (1) IN GENERAL.—Not later than 180 days  
2       after the date of the enactment of this Act, the  
3       President shall submit to Congress a report on the  
4       efforts of the United States Government to encour-  
5       age development and promote economic reform in  
6       countries that have a significant population of Arab  
7       or Muslim individuals.

8           (2) CONTENT.—The report required under this  
9       subsection shall describe—

10           (A) efforts to integrate countries with sig-  
11       nificant populations of Arab or Muslim individ-  
12       uals into the global trading system; and

13           (B) actions that the United States Govern-  
14       ment, acting alone and in partnership with  
15       other governments in the Middle East, can take  
16       to promote intra-regional trade and the rule of  
17       law in the region.

18   **SEC. 250. MIDDLE EAST PARTNERSHIP INITIATIVE.**

19       (a) AUTHORIZATION OF APPROPRIATIONS.—There is  
20       authorized to be appropriated for fiscal year 2005  
21       \$200,000,000 for the Middle East Partnership Initiative.

22       (b) SENSE OF CONGRESS.—It is the sense of Con-  
23       gress that, given the importance of the rule of law and  
24       economic reform to development in the Middle East, a sig-  
25       nificant portion of the funds authorized to be appropriated

1 under subsection (a) should be made available to promote  
2 the rule of law in the Middle East.

3 **SEC. 251. COMPREHENSIVE COALITION STRATEGY FOR**  
4 **FIGHTING TERRORISM.**

5 (a) FINDINGS.—Consistent with the report of the Na-  
6 tional Commission on Terrorist Attacks Upon the United  
7 States, Congress makes the following findings:

8 (1) Almost every aspect of the counterterrorism  
9 strategy of the United States relies on international  
10 cooperation.

11 (2) Since September 11, 2001, the number and  
12 scope of United States Government contacts with  
13 foreign governments concerning counterterrorism  
14 have expanded significantly, but such contacts have  
15 often been ad hoc and not integrated as a com-  
16 prehensive and unified approach.

17 (b) INTERNATIONAL CONTACT GROUP ON  
18 COUNTERTERRORISM.—

19 (1) SENSE OF CONGRESS.—It is the sense of  
20 Congress that the President—

21 (A) should seek to engage the leaders of  
22 the governments of other countries in a process  
23 of advancing beyond separate and uncoordi-  
24 nated national counterterrorism strategies to  
25 develop with those other governments a com-

1           prehensive coalition strategy to fight Islamist  
2           terrorism; and

3                 (B) to that end, should seek to establish  
4           an international counterterrorism policy contact  
5           group with the leaders of governments pro-  
6           viding leadership in global counterterrorism ef-  
7           forts and governments of countries with sizable  
8           Muslim populations, to be used as a ready and  
9           flexible international means for discussing and  
10          coordinating the development of important  
11          counterterrorism policies by the participating  
12          governments.

13          (2) AUTHORITY.—The President is authorized  
14          to establish an international counterterrorism policy  
15          contact group with the leaders of governments re-  
16          ferred to in paragraph (1) for purposes as follows:

17                 (A) To develop in common with such other  
18           countries important policies and a strategy that  
19           address the various components of international  
20           prosecution of the war on terrorism, including  
21           policies and a strategy that address military  
22           issues, law enforcement, the collection, analysis,  
23           and dissemination of intelligence, issues relating  
24           to interdiction of travel by terrorists,  
25           counterterrorism-related customs issues, finan-

1           cial issues, and issues relating to terrorist sanc-  
2           tuaries.

3                   (B) To address, to the extent (if any) that  
4           the President and leaders of other participating  
5           governments determine appropriate, such long-  
6           term issues as economic and political reforms  
7           that can contribute to strengthening stability  
8           and security in the Middle East.

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