

107TH CONGRESS
2^D SESSION

H. R. 5005

AN ACT

To establish the Department of Homeland Security, and
for other purposes.

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

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

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

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

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1 **SEC. 2. DEFINITIONS.**

2 In this Act, the following definitions apply:

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

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

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

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

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

20 (6) The term “emergency response providers”
21 includes Federal, State, and local emergency public
22 safety, law enforcement, emergency response, emer-
23 gency medical (including hospital emergency facili-
24 ties), and related personnel, agencies, and authori-
25 ties.

1 (7) The term “executive agency” means an ex-
2 ecutive agency and a military department, as de-
3 fined, respectively, in sections 105 and 102 of title
4 5, United States Code.

5 (8) The term “functions” includes authorities,
6 powers, rights, privileges, immunities, programs,
7 projects, activities, duties, and responsibilities.

8 (9) The term “key resources” means publicly or
9 privately controlled resources essential to the mini-
10 mal operations of the economy and government.

11 (10) The term “local government” means—

12 (A) a county, municipality, city, town,
13 township, local public authority, school district,
14 special district, intrastate district, council of
15 governments (regardless of whether the council
16 of governments is incorporated as a nonprofit
17 corporation under State law), regional or inter-
18 state government entity, or agency or instru-
19 mentality of a local government;

20 (B) an Indian tribe or authorized tribal or-
21 ganization, or Alaska Native village or organi-
22 zation; and

23 (C) a rural community, unincorporated
24 town or village, or other public entity.

1 (11) The term “major disaster” has the mean-
2 ing given in section 102(2) of the Robert T. Stafford
3 Disaster Relief and Emergency Assistance Act (42
4 U.S.C. 5122).

5 (12) The term “personnel” means officers and
6 employees.

7 (13) The term “Secretary” means the Secretary
8 of Homeland Security.

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

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

17 (A) involves an act that—

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

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

24 (B) appears to be intended—

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

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

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

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

16 **SEC. 3. CONSTRUCTION; SEVERABILITY.**

17 Any provision of this Act held to be invalid or unen-
18 forceable by its terms, or as applied to any person or cir-
19 cumstance, shall be construed so as to give it the max-
20 imum effect permitted by law, unless such holding shall
21 be one of utter invalidity or unenforceability, in which
22 event such provision shall be deemed severable from this
23 Act and shall not affect the remainder thereof, or the ap-
24 plication of such provision to other persons not similarly
25 situated or to other, dissimilar circumstances.

1 **SEC. 4. EFFECTIVE DATE.**

2 This Act shall take effect thirty days after the date
3 of enactment or, if enacted within thirty days before Janu-
4 ary 1, 2003, on January 1, 2003.

5 **TITLE I—DEPARTMENT OF**
6 **HOMELAND SECURITY**

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

8 (a) **ESTABLISHMENT.**—There is established a De-
9 partment of Homeland Security, as an executive depart-
10 ment of the United States within the meaning of title 5,
11 United States Code.

12 (b) **MISSION.**—

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

15 (A) prevent terrorist attacks within the
16 United States;

17 (B) reduce the vulnerability of the United
18 States to terrorism;

19 (C) minimize the damage, and assist in the
20 recovery, from terrorist attacks that do occur
21 within the United States;

22 (D) carry out all functions of entities
23 transferred to the Department, including by
24 acting as a focal point regarding natural and
25 manmade crises and emergency planning;

1 (E) ensure that the functions of the agen-
2 cies and subdivisions within the Department
3 that are not related directly to securing the
4 homeland are not diminished or neglected ex-
5 cept by a specific explicit Act of Congress;

6 (F) ensure that the overall economic secu-
7 rity of the United States is not diminished by
8 efforts, activities, and programs aimed at secur-
9 ing the homeland; and

10 (G) monitor connections between illegal
11 drug trafficking and terrorism, coordinate ef-
12 forts to sever such connections, and otherwise
13 contribute to efforts to interdict illegal drug
14 trafficking.

15 (2) RESPONSIBILITY FOR INVESTIGATING AND
16 PROSECUTING TERRORISM.—Except as specifically
17 provided by law with respect to entities transferred
18 to the Department under this Act, primary responsi-
19 bility for investigating and prosecuting acts of ter-
20 rorism shall be vested not in the Department, but
21 rather in Federal, State, and local law enforcement
22 agencies with jurisdiction over the acts in question.

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

2 (a) SECRETARY.—(1) There is a Secretary of Home-
3 land Security, appointed by the President, by and with the
4 advice and consent of the Senate.

5 (2) The Secretary is the head of the Department and
6 shall have direction, authority, and control over it.

7 (3) All functions of all officers, employees, and orga-
8 nizational units of the Department are vested in the Sec-
9 retary.

10 (b) FUNCTIONS.—The Secretary—

11 (1) except as otherwise provided by this Act,
12 may delegate any of the Secretary's functions to any
13 officer, employee, or organizational unit of the De-
14 partment;

15 (2) shall have the authority to make contracts,
16 grants, and cooperative agreements, and to enter
17 into agreements with other executive agencies, as
18 may be necessary and proper to carry out the Sec-
19 retary's responsibilities under this Act or otherwise
20 provided by law; and

21 (3) shall take reasonable steps to ensure that
22 information systems and databases of the Depart-
23 ment are compatible with each other and with ap-
24 propriate databases of other Departments.

25 (c) COORDINATION WITH NON-FEDERAL ENTI-
26 TIES.—With respect to homeland security, the Secretary

1 shall coordinate (including the provision of training and
2 equipment) with State and local government personnel,
3 agencies, and authorities, with the private sector, and with
4 other entities, including by—

5 (1) coordinating with State and local govern-
6 ment personnel, agencies, and authorities, and with
7 the private sector, to ensure adequate planning,
8 equipment, training, and exercise activities;

9 (2) coordinating and, as appropriate, consoli-
10 dating, the Federal Government's communications
11 and systems of communications relating to homeland
12 security with State and local government personnel,
13 agencies, and authorities, the private sector, other
14 entities, and the public; and

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

19 (d) MEETINGS OF NATIONAL SECURITY COUNCIL.—

20 The Secretary may, subject to the direction of the Presi-
21 dent, attend and participate in meetings of the National
22 Security Council.

23 (e) ISSUANCE OF REGULATIONS.—The issuance of
24 regulations by the Secretary shall be governed by the pro-
25 visions of chapter 5 of title 5, United States Code, except

1 as specifically provided in this Act, in laws granting regu-
2 latory authorities that are transferred by this Act, and in
3 laws enacted after the date of enactment of this Act.

4 (f) SPECIAL ASSISTANT TO THE SECRETARY.—The
5 Secretary shall appoint a Special Assistant to the Sec-
6 retary who shall be responsible for—

7 (1) creating and fostering strategic communica-
8 tions with the private sector to enhance the primary
9 mission of the Department to protect the American
10 homeland;

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

14 (3) interfacing with other relevant Federal
15 agencies with homeland security missions to assess
16 the impact of these agencies’ actions on the private
17 sector;

18 (4) creating and managing private sector advi-
19 sory councils composed of representatives of indus-
20 tries and associations designated by the Secretary
21 to—

22 (A) advise the Secretary on private sector
23 products, applications, and solutions as they re-
24 late to homeland security challenges; and

1 (B) advise the Secretary on homeland se-
2 curity policies, regulations, processes, and ac-
3 tions that affect the participating industries
4 and associations;

5 (5) working with Federal laboratories, Federally
6 funded research and development centers, other Fed-
7 erally funded organizations, academia, and the pri-
8 vate sector to develop innovative approaches to ad-
9 dress homeland security challenges to produce and
10 deploy the best available technologies for homeland
11 security missions;

12 (6) promoting existing public-private partner-
13 ships and developing new public-private partnerships
14 to provide for collaboration and mutual support to
15 address homeland security challenges; and

16 (7) assisting in the development and promotion
17 of private sector best practices to secure critical in-
18 frastructure.

19 (g) STANDARDS POLICY.—All standards activities of
20 the Department shall be conducted in accordance with sec-
21 tion 12(d) of the National Technology Transfer Advance-
22 ment Act of 1995 (15 U.S.C. 272 note) and Office of
23 Management and Budget Circular A–119.

1 **SEC. 103. OTHER OFFICERS.**

2 (a) DEPUTY SECRETARY; UNDER SECRETARIES.—

3 There are the following officers, appointed by the Presi-
4 dent, by and with the advice and consent of the Senate:

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

9 (2) An Under Secretary for Information Anal-
10 ysis and Infrastructure Protection.

11 (3) An Under Secretary for Science and Tech-
12 nology.

13 (4) An Under Secretary for Border and Trans-
14 portation Security.

15 (5) An Under Secretary for Emergency Pre-
16 paredness and Response.

17 (6) An Under Secretary for Management.

18 (7) Not more than four Assistant Secretaries.

19 (8) A Chief Financial Officer.

20 (b) INSPECTOR GENERAL.—There is an Inspector
21 General, who shall be appointed as provided in section
22 3(a) of the Inspector General Act of 1978.

23 (c) COMMANDANT OF THE COAST GUARD.—To assist
24 the Secretary in the performance of the Secretary's func-
25 tions, there is a Commandant of the Coast Guard, who
26 shall be appointed as provided in section 44 of title 14,

1 United States Code, and who shall report directly to the
2 Secretary. In addition to such duties as may be provided
3 in this Act and as assigned to the Commandant by the
4 Secretary, the duties of the Commandant shall include
5 those required by section 2 of title 14, United States Code.

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

9 (1) A General Counsel, who shall be the chief
10 legal officer of the Department.

11 (2) Not more than eight Assistant Secretaries.

12 (3) A Director of the Secret Service.

13 (4) A Chief Information Officer.

14 (e) PERFORMANCE OF SPECIFIC FUNCTIONS.—Sub-
15 ject to the provisions of this Act, every officer of the De-
16 partment shall perform the functions specified by law for
17 the official’s office or prescribed by the Secretary.

18 **SEC. 104. NATIONAL COUNCIL OF FIRST RESPONDERS.**

19 (a) FINDINGS.—The Congress finds the following:

20 (1) First responders are key to protecting the
21 health and safety of our citizens against disasters.

22 (2) First responders are the Nation’s ready re-
23 action force of dedicated and brave people who save
24 lives and property when catastrophe strikes.

1 (3) First responders have the knowledge, train-
2 ing, and experience to save lives, often under the
3 most difficult conditions imaginable.

4 (4) First responders play an important role in
5 helping to develop and implement advances in life
6 saving technology.

7 (5) First responders are uniquely qualified to
8 advise the Department of Homeland Security on the
9 role of first responders in defending our Nation
10 against terrorism.

11 (b) ESTABLISHMENT AND ADMINISTRATION.—

12 (1) There is established within the Department
13 of Homeland Security a National Council of First
14 Responders (in this section referred to as the
15 “Council”).

16 (2) The President shall appoint the members of
17 the Council. The Council shall consist of not less
18 than 100 members, no more than 10 of whom may
19 be residents of the same State. Members of the
20 Council shall be selected from among the ranks of
21 police, firefighters, emergency medical technicians,
22 rescue workers, and hospital personnel who are em-
23 ployed in communities, tribal governments, and po-
24 litical subdivisions of various regions and population
25 sizes.

1 (3) The President shall appoint a Chairman of
2 the Council.

3 (4) Members shall be appointed to the Council
4 for a term of 3 years.

5 (5) Membership shall be staggered to provide
6 continuity.

7 (6) The Council shall meet no fewer than 2
8 times each year.

9 (7) Members of the Council shall receive no
10 compensation for service on the Council.

11 (8) The Secretary shall detail a single employee
12 from the Department of Homeland Security to the
13 Council for the purposes of:

14 (A) Choosing meeting dates and locations.

15 (B) Coordinating travel.

16 (C) Other administrative functions as
17 needed.

18 (c) DUTIES.—The Council shall have the following
19 duties:

20 (1) Develop a plan to disseminate information
21 on first response best practices.

22 (2) Identify and educate the Secretary on the
23 latest technological advances in the field of first re-
24 sponse.

1 (3) Identify probable emerging threats to first
2 responders.

3 (4) Identify needed improvements to first re-
4 sponse techniques and training.

5 (5) Identify efficient means of communication
6 and coordination between first responders and local,
7 State, and Federal officials.

8 (6) Identify areas in which the Department can
9 assist first responders.

10 (7) Evaluate the adequacy and timeliness of re-
11 sources being made available to local first respond-
12 ers.

13 (d) REPORTING REQUIREMENT.—The Council shall
14 report to the Congress by October 1 of each year on how
15 first responders can continue to be most effectively used
16 to meet the ever-changing challenges of providing home-
17 land security for the United States.

1 **TITLE II—INFORMATION ANAL-**
2 **YSIS AND INFRASTRUCTURE**
3 **PROTECTION**

4 **Subtitle A—Under Secretary for In-**
5 **formation Analysis and Infra-**
6 **structure Protection**

7 **SEC. 201. UNDER SECRETARY FOR INFORMATION ANALYSIS**
8 **AND INFRASTRUCTURE PROTECTION.**

9 The Secretary, acting through the Under Secretary
10 for Information Analysis and Infrastructure Protection,
11 shall be responsible for the following:

12 (1) Conducting analysis of information, includ-
13 ing foreign intelligence and open source information,
14 lawfully collected by Federal, State and local law en-
15 forcement agencies and by elements of the intel-
16 ligence community with respect to threats of ter-
17 rorist acts against the United States.

18 (2) Integrating information, intelligence, and
19 intelligence analyses to produce and disseminate in-
20 frastructure vulnerability assessments with respect
21 to such threats.

22 (3) Identifying priorities for protective and sup-
23 port measures by the Department, by other execu-
24 tive agencies, by State and local governments, by the
25 private sector, and by other entities.

1 (4) Reviewing, analyzing, and recommending
2 improvements in law, policy, and procedure for the
3 sharing of intelligence and other information with
4 respect to threats against the United States within
5 the Federal Government and between the Federal
6 Government and State and local governments.

7 (5) Developing a comprehensive national plan
8 to provide for the security of key resources and crit-
9 ical infrastructures including, but not limited to,
10 power production, generation, and distribution sys-
11 tems, information technology and telecommuni-
12 cations systems (including satellites), electronic fi-
13 nancial and property record storage and trans-
14 mission systems, emergency preparedness commu-
15 nications systems, and the physical and technological
16 assets that support such systems.

17 (6) Coordinating with other executive agencies,
18 State and local government personnel, agencies, and
19 authorities, and the private sector, to provide advice
20 on implementation of such comprehensive national
21 plan.

22 (7) Supporting the intelligence and information
23 requirements of the Department.

24 (8) Administering the Homeland Security Advi-
25 sory System, exercising primary responsibility for

1 public advisories relating to terrorist threats, and (in
2 coordination with other executive agencies) providing
3 specific warning information to State and local gov-
4 ernment personnel, agencies, and authorities, the
5 private sector, other entities, and the public, as well
6 as advice about appropriate protective actions and
7 countermeasures.

8 **SEC. 202. FUNCTIONS TRANSFERRED.**

9 In accordance with title VIII, there shall be trans-
10 ferred to the Secretary the functions, personnel, assets,
11 and obligations of the following:

12 (1) The National Infrastructure Protection
13 Center of the Federal Bureau of Investigation (other
14 than the Computer Investigations and Operations
15 Section), including the functions of the Attorney
16 General relating thereto.

17 (2) The National Communications System of
18 the Department of Defense, including the functions
19 of the Secretary of Defense relating thereto.

20 (3) The Critical Infrastructure Assurance Of-
21 fice of the Department of Commerce, including the
22 functions of the Secretary of Commerce relating
23 thereto.

24 (4) The Energy Security and Assurance Pro-
25 gram of the Department of Energy, including the

1 National Infrastructure Simulation and Analysis
2 Center and the functions of the Secretary of Energy
3 relating thereto.

4 (5) The Federal Computer Incident Response
5 Center of the General Services Administration, in-
6 cluding the functions of the Administrator of Gen-
7 eral Services relating thereto.

8 **SEC. 203. ACCESS TO INFORMATION.**

9 The Secretary shall have access to all reports, assess-
10 ments, and analytical information relating to threats of
11 terrorism in the United States, and to all information con-
12 cerning infrastructure vulnerabilities or other
13 vulnerabilities of the United States to terrorism, whether
14 or not such information has been analyzed, that may be
15 collected, possessed, or prepared by any executive agency,
16 except as otherwise directed by the President. The Sec-
17 retary shall also have access to other information relating
18 to the foregoing matters that may be collected, possessed,
19 or prepared by an executive agency, as the President may
20 further provide. With respect to the material to which the
21 Secretary has access under this section—

22 (1) the Secretary may obtain such material by
23 request, and may enter into cooperative arrange-
24 ments with other executive agencies to share such
25 material on a regular or routine basis, including re-

1 quests or arrangements involving broad categories of
2 material;

3 (2) regardless of whether the Secretary has
4 made any request or entered into any cooperative ar-
5 rangement pursuant to paragraph (1), all executive
6 agencies promptly shall provide to the Secretary—

7 (A) all reports, assessments, and analytical
8 information relating to threats of terrorism in
9 the United States;

10 (B) all information concerning infrastruc-
11 ture vulnerablilites or other vulnerablities of the
12 United States to terrorism, whether or not such
13 information has been analyzed;

14 (C) all information relating to significant
15 and credible threats of terrorism in the United
16 States, whether or not such information has
17 been analyzed, if the President has provided
18 that the Secretary shall have access to such in-
19 formation; and

20 (D) such other material as the President
21 may further provide;

22 (3) the Secretary shall have full access and
23 input with respect to information from any national
24 collaborative information analysis capability (as re-
25 ferred to in section 924 of the National Defense Au-

1 thorization Act for Fiscal Year 2002 (Public Law
2 107–107; 115 Stat. 1199)) established jointly by the
3 Secretary of Defense and the Director of Central In-
4 telligence; and

5 (4) the Secretary shall ensure that any material
6 received pursuant to this section is protected from
7 unauthorized disclosure and handled and used only
8 for the performance of official duties, and that any
9 intelligence information shared under this section
10 shall be transmitted, retained, and disseminated con-
11 sistent with the authority of the Director of Central
12 Intelligence to protect intelligence sources and meth-
13 ods under the National Security Act and related pro-
14 cedures or, as appropriate, similar authorities of the
15 Attorney General concerning sensitive law enforce-
16 ment information.

17 **SEC. 204. PROCEDURES FOR SHARING INFORMATION.**

18 The Secretary shall establish procedures on the use
19 of information shared under this title that—

20 (1) limit the redissemination of such informa-
21 tion to ensure that it is not used for an unauthor-
22 ized purpose;

23 (2) ensure the security and confidentiality of
24 such information;

1 (3) protect the constitutional and statutory
2 rights of any individuals who are subjects of such in-
3 formation; and

4 (4) provide data integrity through the timely re-
5 moval and destruction of obsolete or erroneous
6 names and information.

7 **SEC. 205. PRIVACY OFFICER.**

8 The Secretary shall appoint a senior official in the
9 Department to assume primary responsibility for privacy
10 policy, including—

11 (1) assuring that the use of technologies sus-
12 tain, and do not erode, privacy protections relating
13 to the use, collection, and disclosure of personal in-
14 formation;

15 (2) assuring that personal information con-
16 tained in Privacy Act systems of records is handled
17 in full compliance with fair information practices as
18 set out in the Privacy Act of 1974;

19 (3) evaluating legislative and regulatory pro-
20 posals involving collection, use, and disclosure of
21 personal information by the Federal Government;

22 (4) conducting a privacy impact assessment of
23 proposed rules of the Department or that of the De-
24 partment on the privacy of personal information, in-

1 including the type of personal information collected
2 and the number of people affected; and

3 (5) preparing a report to Congress on an an-
4 nual basis on activities of the Department that af-
5 fect privacy, including complaints of privacy viola-
6 tions, implementation of the Privacy Act of 1974, in-
7 ternal controls, and other matters.

8 **SEC. 206. FEDERAL CYBERSECURITY PROGRAM.**

9 (a) IN GENERAL.—The Secretary, acting through the
10 Under Secretary for Information Analysis and Infrastruc-
11 ture Protection, shall establish and manage a program to
12 improve the security of Federal critical information sys-
13 tems, including carrying out responsibilities under para-
14 graphs (2) and (3) of section 201 that relate to such sys-
15 tems.

16 (b) DUTIES.—The duties of the Secretary under sub-
17 section (a) are—

18 (1) to evaluate the increased use by civilian ex-
19 ecutive agencies of techniques and tools to enhance
20 the security of Federal critical information systems,
21 including, as appropriate, consideration of cryptog-
22 raphy;

23 (2) to provide assistance to civilian executive
24 agencies in protecting the security of Federal critical

1 information systems, including identification of sig-
2 nificant risks to such systems; and

3 (3) to coordinate research and development for
4 critical information systems relating to supervisory
5 control and data acquisition systems, including, as
6 appropriate, the establishment of a test bed.

7 (c) FEDERAL INFORMATION SYSTEM SECURITY
8 TEAM.—

9 (1) IN GENERAL.—In carrying out subsection
10 (b)(2), the Secretary shall establish, manage, and
11 support a Federal information system security team
12 whose purpose is to provide technical expertise to ci-
13 vilian executive agencies to assist such agencies in
14 securing Federal critical information systems by con-
15 ducting information security audits of such systems,
16 including conducting tests of the effectiveness of in-
17 formation security control techniques and per-
18 forming logical access control tests of interconnected
19 computer systems and networks, and related vulner-
20 ability assessment techniques.

21 (2) TEAM MEMBERS.—The Secretary shall en-
22 sure that the team under paragraph (1) includes
23 technical experts and auditors, computer scientists,
24 and computer forensics analysts whose technical

1 competence enables the team to conduct audits
2 under such paragraph.

3 (3) AGENCY AGREEMENTS REGARDING AU-
4 DITS.—Each civilian executive agency may enter into
5 an agreement with the team under paragraph (1) for
6 the conduct of audits under such paragraph of the
7 Federal critical information systems of the agency.
8 Such agreement shall establish the terms of the
9 audit and shall include provisions to minimize the
10 extent to which the audit disrupts the operations of
11 the agency.

12 (4) REPORTS.—Promptly after completing an
13 audit under paragraph (1) of a civilian executive
14 agency, the team under such paragraph shall pre-
15 pare a report summarizing the findings of the audit
16 and making recommendations for corrective action.
17 Such report shall be submitted to the Secretary, the
18 head of such agency, and the Inspector General of
19 the agency (if any), and upon request of any con-
20 gressional committee with jurisdiction over such
21 agency, to such committee.

22 (d) DEFINITION.—For purposes of this section, the
23 term “Federal critical information system” means an “in-
24 formation system” as defined in section 3502 of title 44,
25 United States Code, that—

1 (1) is, or is a component of, a key resource or
2 critical infrastructure;

3 (2) is used or operated by a civilian executive
4 agency or by a contractor of such an agency; and

5 (3) does not include any national security sys-
6 tem as defined in section 5142 of the Clinger-Cohen
7 Act of 1996.

8 **SEC. 207. ENHANCEMENT OF NON-FEDERAL**
9 **CYBERSECURITY.**

10 In carrying out the responsibilities under section 201,
11 the Under Secretary for Information Analysis and Infra-
12 structure Protection shall—

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

17 (A) analysis and warnings related to
18 threats to, and vulnerabilities of, critical infor-
19 mation systems; and

20 (B) in coordination with the Under Sec-
21 retary for Emergency Preparedness and Re-
22 sponse, crisis management support in response
23 to threats to, or attacks on, critical information
24 systems; and

1 (2) as appropriate, provide technical assistance,
2 upon request, to the private sector and other govern-
3 ment entities, in coordination with the Under Sec-
4 retary for Emergency Preparedness and Response,
5 with respect to emergency recovery plans to respond
6 to major failures of critical information systems.

7 **SEC. 208. INFORMATION SECURITY.**

8 In carrying out the responsibilities under section 201,
9 the Under Secretary for Information Analysis and Infra-
10 structure Protection shall—

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

15 (A) analysis and warnings related to
16 threats to, and vulnerabilities of, critical infor-
17 mation systems; and

18 (B) in coordination with the Under Sec-
19 retary for Emergency Preparedness and Re-
20 sponse, crisis management support in response
21 to threats to, or attacks on, critical information
22 systems; and

23 (2) as appropriate, provide technical assistance,
24 upon request, to the private sector and with other
25 government entities, in coordination with the Under

1 Secretary for Emergency Preparedness and Re-
2 sponse, with respect to emergency recovery plans to
3 respond to major failures of critical information sys-
4 tems.

5 **Subtitle B—Intelligence Analysis** 6 **Center**

7 **SEC. 211. INTELLIGENCE ANALYSIS CENTER.**

8 (a) ESTABLISHMENT; NFIP AGENCY.—(1) There is
9 established within the Department the Intelligence Anal-
10 ysis Center. The Under Secretary for Information Anal-
11 ysis and Infrastructure Protection shall be the head of the
12 Intelligence Analysis Center.

13 (2) The Intelligence Analysis Center is a program of
14 the intelligence community for purposes of the National
15 Foreign Intelligence Program (as defined in section 3(6)
16 of the National Security Act of 1947 (50 U.S.C.
17 401a(6))).

18 (b) FUNCTIONS.—The Under Secretary for Informa-
19 tion Analysis and Infrastructure Protection, through the
20 Intelligence Analysis Center, shall carry out the duties
21 specified in paragraphs (1), (2), (3), (6), and (7) of section
22 201(b).

23 (c) DETAIL OF CERTAIN PERSONNEL.—

24 (1) IN GENERAL.—The Secretary and the Di-
25 rector of Central Intelligence, the Secretary of De-

1 fense, the Attorney General, the Secretary of State,
2 or the head of another agency or department as the
3 case may be, shall enter into cooperative arrange-
4 ments to provide for an appropriate number of indi-
5 viduals to be detailed to the Under Secretary to per-
6 form analytical functions and duties with respect to
7 the mission of the Department from the following
8 agencies:

9 (A) The Central Intelligence Agency.

10 (B) The Federal Bureau of Investigation.

11 (C) The National Security Agency.

12 (D) The National Imagery and Mapping
13 Agency.

14 (E) The Department of State.

15 (F) The Defense Intelligence Agency.

16 (G) Any other agency or department that
17 the President determines appropriate.

18 (2) TERMS OF DETAIL.—Any officer or em-
19 ployee of the United States or a member of the
20 Armed Forces who is detailed to the Under Sec-
21 retary under paragraph (1) shall be detailed on a re-
22 imburseable basis for a period of less than two years
23 for the performance of temporary functions as re-
24 quired by the Under Secretary.

1 (d) INCLUSION OF OFFICE OF INTELLIGENCE AS AN
2 ELEMENT OF THE INTELLIGENCE COMMUNITY.—Section
3 3(4) of the National Security Act of 1947 (50 U.S.C.
4 401a(4)) is amended—

5 (1) by striking “and” at the end of subpara-
6 graph (I);

7 (2) by redesignating subparagraph (J) as sub-
8 paragraph (K); and

9 (3) by inserting after subparagraph (I) the fol-
10 lowing new subparagraph:

11 “(J) the Intelligence Analysis Center of the
12 Department of Homeland Security; and”.

13 **SEC. 212. MISSION OF THE INTELLIGENCE ANALYSIS CEN-**
14 **TER.**

15 (a) IN GENERAL.—The mission of the Intelligence
16 Analysis Center is as follows:

17 (1) ANALYSIS AND PRODUCTION.—

18 (A) Correlating and evaluating information
19 and intelligence related to the mission of the
20 Department collected from all sources available.

21 (B) Producing all-source collaborative in-
22 telligence analysis, warnings, tactical assess-
23 ments, and strategic assessments of the ter-
24 rorist threat and infrastructure vulnerabilities
25 of the United States.

1 (C) Providing appropriate dissemination of
2 such assessments.

3 (D) Improving the lines of communication
4 with respect to homeland security between the
5 Federal Government and State and local public
6 safety agencies and the private sector through
7 the timely dissemination of information per-
8 taining to threats of acts of terrorism against
9 the United States.

10 (2) COORDINATION OF INFORMATION.—Coordi-
11 nating with elements of the intelligence community
12 and with Federal, State, and local law enforcement
13 agencies, and the private sector as appropriate.

14 (3) ADDITIONAL DUTIES.—Performing such
15 other functions as the Secretary may direct.

16 (b) STRATEGIC AND TACTICAL MISSIONS OF THE IN-
17 TELLIGENCE ANALYSIS CENTER.—The Under Secretary
18 shall conduct strategic and tactical assessments and warn-
19 ings through the Intelligence Analysis Center, including
20 research, analysis, and the production of assessments on
21 the following as they relate to the mission of the Depart-
22 ment:

23 (1) Domestic terrorism.

24 (2) International terrorism.

25 (3) Counterintelligence.

1 (4) Transnational crime.

2 (5) Proliferation of weapons of mass destruc-
3 tion.

4 (6) Illicit financing of terrorist activities.

5 (7) Cybersecurity and cybercrime.

6 (8) Key resources and critical infrastructures.

7 (c) STAFFING OF THE INTELLIGENCE ANALYSIS
8 CENTER.—

9 (1) FUNCTIONS TRANSFERRED.—In accordance
10 with title VIII, for purposes of carrying out this
11 title, there is transferred to the Under Secretary the
12 functions, personnel, assets, and liabilities of the fol-
13 lowing entities:

14 (A) The National Infrastructure Protection
15 Center of the Federal Bureau of Investigation
16 (other than the Computer Investigations and
17 Operations Section).

18 (B) The Critical Infrastructure Assurance
19 Office of the Department of Commerce.

20 (C) The Federal Computer Incident Re-
21 sponse Center of the General Services Adminis-
22 tration.

23 (D) The National Infrastructure Simula-
24 tion and Analysis Center of the Department of
25 Energy.

1 (E) The National Communications System
2 of the Department of Defense.

3 (F) The intelligence element of the Coast
4 Guard.

5 (G) The intelligence element of the United
6 States Customs Service.

7 (H) The intelligence element of the Immi-
8 gration and Naturalization Service.

9 (I) The intelligence element of the Trans-
10 portation Security Administration.

11 (J) The intelligence element of the Federal
12 Protective Service.

13 (2) STRUCTURE.—It is the sense of Congress
14 that the Under Secretary should model the Intel-
15 ligence Analysis Center on the technical, analytic ap-
16 proach of the Information Dominance Center of the
17 Department of the Army to the maximum extent
18 feasible and appropriate.

19 **SEC. 213. NET GUARD.**

20 The Under Secretary for Information Analysis and
21 Infrastructure Protection may establish a national tech-
22 nology guard, to be known as “NET Guard”, comprised
23 of local teams of volunteers with expertise in relevant
24 areas of science and technology, to assist local commu-

1 nities to respond and recover from attacks on information
2 systems and communications networks.

3 **TITLE III—SCIENCE AND** 4 **TECHNOLOGY**

5 **SEC. 301. UNDER SECRETARY FOR SCIENCE AND TECH-** 6 **NOLOGY.**

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

9 (1) developing, in consultation with other ap-
10 propriate executive agencies, a national policy and
11 strategic plan for, identifying priorities, goals, objec-
12 tives and policies for, and coordinating the Federal
13 Government’s civilian efforts to identify and develop
14 countermeasures to chemical, biological radiological,
15 nuclear and other emerging terrorist threats, includ-
16 ing the development of comprehensive, research-
17 based definable goals for such efforts and develop-
18 ment of annual measurable objectives and specific
19 targets to accomplish and evaluate the goals for
20 such efforts;

21 (2) establishing and administering the primary
22 research and development activities of the Depart-
23 ment, including the long-term research and develop-
24 ment needs and capabilities for all elements of the
25 Department;

1 (3) conducting basic and applied research, de-
2 velopment, demonstration, testing, and evaluation
3 activities that are relevant to any or all elements of
4 the Department, through both intramural and extra-
5 mural programs; provided that such responsibility
6 does not extend to human health-related research
7 and development activities;

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

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

15 (6) establishing Federal priorities for research,
16 development, demonstration, testing, and, as appro-
17 priate, procurement and transitional operation of
18 technology and systems—

19 (A) for preventing the importation of
20 chemical, biological, radiological, and nuclear
21 weapons and related materials;

22 (B) for detecting, preventing, and pro-
23 tecting against terrorist attacks that involve
24 such weapons or related materials; and

1 (C) for interoperability of communications
2 systems for emergency response providers;

3 (7) ensuring that the research, development,
4 demonstration, testing, and evaluation activities of
5 the Department are aligned with the Department's
6 procurement needs;

7 (8) facilitating the deployment of technology
8 that will serve to enhance homeland security; and

9 (9) developing and overseeing the administra-
10 tion of guidelines for merit review of research and
11 development projects throughout the Department,
12 and for the dissemination of research conducted or
13 sponsored by the Department.

14 **SEC. 302. FUNCTIONS TRANSFERRED.**

15 In accordance with title VIII, there shall be trans-
16 ferred to the Secretary the functions, personnel, assets,
17 and obligations of the following:

18 (1) Programs and activities of the Department
19 of Energy, including the functions of the Secretary
20 of Energy relating thereto (but not including pro-
21 grams and activities relating to the strategic nuclear
22 defense posture of the United States), as follows:

23 (A) The programs and activities relating to
24 chemical and biological national security, and
25 supporting programs and activities directly re-

1 lated to homeland security, of the non-prolifera-
2 tion and verification research and development
3 program.

4 (B) The programs and activities relating to
5 nuclear smuggling, and other programs and ac-
6 tivities directly related to homeland security,
7 within the proliferation detection program of
8 the non-proliferation and verification research
9 and development program.

10 (C) Those aspects of the nuclear assess-
11 ment program of the international materials
12 protection and cooperation program that are di-
13 rectly related to homeland security.

14 (D) Such life sciences activities of the bio-
15 logical and environmental research program re-
16 lated to microbial pathogens as may be des-
17 ignated by the President for transfer to the De-
18 partment and that are directly related to home-
19 land security.

20 (E) The Environmental Measurements
21 Laboratory.

22 (F) The advanced scientific computing re-
23 search program and activities at Lawrence
24 Livermore National Laboratory.

1 (2) The homeland security projects within the
2 Chemical Biological Defense Program of the Depart-
3 ment of Defense known as the Biological Defense
4 Homeland Security Support Program and the Bio-
5 logical Counter-Terrorism Research Program.

6 **SEC. 303. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED**
7 **ACTIVITIES.**

8 With respect to civilian human health-related re-
9 search and development activities relating to counter-
10 measures for chemical, biological, radiological, and nuclear
11 and other emerging terrorist threats carried out by the
12 Department of Health and Human Services (including the
13 Public Health Service), the Secretary of Health and
14 Human Services shall set priorities, goals, objectives, and
15 policies and develop a coordinated strategy for such activi-
16 ties in collaboration with the Secretary of Homeland Secu-
17 rity to ensure consistency with the national policy and
18 strategic plan developed pursuant to section 301(1).

19 **SEC. 304. FEDERALLY FUNDED RESEARCH AND DEVELOP-**
20 **MENT CENTER.**

21 The Secretary, acting through the Under Secretary
22 for Science and Technology, shall have the authority to
23 establish or contract with one or more federally funded
24 research and development centers to provide independent
25 analysis of homeland security issues, or to carry out other

1 responsibilities under this Act, including coordinating and
2 integrating both the extramural and intramural programs
3 described in section 307.

4 **SEC. 305. MISCELLANEOUS PROVISIONS.**

5 (a) CLASSIFICATION.—To the greatest extent prac-
6 ticable, research conducted or supported by the Depart-
7 ment shall be unclassified.

8 (b) CONSTRUCTION.—Nothing in this title shall be
9 construed to preclude any Under Secretary of the Depart-
10 ment from carrying out research, development, demonstra-
11 tion, or deployment activities, as long as such activities
12 are coordinated through the Under Secretary for Science
13 and Technology.

14 (c) REGULATIONS.—The Secretary, acting through
15 the Under Secretary for Science and Technology, may
16 issue necessary regulations with respect to research, devel-
17 opment, demonstration, testing, and evaluation activities
18 of the Department, including the conducting, funding, and
19 reviewing of such activities.

20 (d) NOTIFICATION OF PRESIDENTIAL LIFE
21 SCIENCES DESIGNATIONS.—Not later than 60 days before
22 effecting any transfer of Department of Energy life
23 sciences activities pursuant to section 302(1)(D) of this
24 Act, the President shall notify the appropriate congres-
25 sional committees of the proposed transfer and shall in-

1 clude the reasons for the transfer and a description of the
2 effect of the transfer on the activities of the Department
3 of Energy.

4 **SEC. 306. HOMELAND SECURITY SCIENCE AND TECH-**
5 **NOLOGY COORDINATION COUNCIL.**

6 (a) ESTABLISHMENT AND COMPOSITION.—There is
7 established within the Department a Homeland Security
8 Science and Technology Coordination Council (in this sec-
9 tion referred to as the “Coordination Council”). The Co-
10 ordination Council shall be composed of all the Under Sec-
11 retaries of the Department and any other Department of-
12 ficials designated by the Secretary, and shall be chaired
13 by the Under Secretary for Science and Technology. The
14 Coordination Council shall meet at the call of the chair.

15 (b) RESPONSIBILITIES.—The Coordination Council
16 shall—

17 (1) establish priorities for research, develop-
18 ment, demonstration, testing, and evaluation activi-
19 ties conducted or supported by the Department;

20 (2) ensure that the priorities established under
21 paragraph (1) reflect the acquisition needs of the
22 Department; and

23 (3) assist the Under Secretary for Science and
24 Technology in carrying out his responsibilities under
25 section 301(4).

1 **SEC. 307. CONDUCT OF RESEARCH, DEVELOPMENT, DEM-**
2 **ONSTRATION, TESTING AND EVALUATION.**

3 (a) IN GENERAL.—The Secretary, acting through the
4 Under Secretary for Science and Technology, shall carry
5 out the responsibilities under section 301(3) through both
6 extramural and intramural programs.

7 (b) EXTRAMURAL PROGRAMS.—(1) The Secretary,
8 acting through the Under Secretary for Science and Tech-
9 nology, shall operate extramural research, development,
10 demonstration, testing, and evaluation programs so as
11 to—

12 (A) ensure that colleges, universities, private re-
13 search institutes, and companies (and consortia
14 thereof) from as many areas of the United States as
15 practicable participate;

16 (B) ensure that the research funded is of high
17 quality, as determined through merit review proc-
18 esses developed under section 301(10); and

19 (C) distribute funds through grants, cooperative
20 agreements, and contracts through competitions that
21 are as open as possible.

22 (2)(A) The Secretary, acting through the Under Sec-
23 retary for Science and Technology, shall establish within
24 1 year of the date of enactment of this Act a university-
25 based center or centers for homeland security. The pur-
26 pose of this center or centers shall be to establish a coordi-

1 nated, university-based system to enhance the Nation's
2 homeland security.

3 (B) In selecting colleges or universities as centers for
4 homeland security, the Secretary shall consider the fol-
5 lowing criteria:

6 (i) Demonstrated expertise in the training of
7 first responders.

8 (ii) Demonstrated expertise in responding to in-
9 cidents involving weapons of mass destruction and
10 biological warfare.

11 (iii) Demonstrated expertise in emergency med-
12 ical services.

13 (iv) Demonstrated expertise in chemical, bio-
14 logical, radiological, and nuclear countermeasures.

15 (v) Strong affiliations with animal and plant di-
16 agnostic laboratories.

17 (vi) Demonstrated expertise in food safety.

18 (vii) Affiliation with Department of Agriculture
19 laboratories or training centers.

20 (viii) Demonstrated expertise in water and
21 wastewater operations.

22 (ix) Demonstrated expertise in port and water-
23 way security.

24 (x) Demonstrated expertise in multi-modal
25 transportation.

1 (xi) Nationally recognized programs in informa-
2 tion security.

3 (xii) Nationally recognized programs in engi-
4 neering.

5 (xiii) Demonstrated expertise in educational
6 outreach and technical assistance.

7 (xiv) Demonstrated expertise in border trans-
8 portation and security.

9 (xv) Demonstrated expertise in interdisciplinary
10 public policy research and communication outreach
11 regarding science, technology, and public policy.

12 (C) The Secretary shall have the discretion to estab-
13 lish such centers and to consider additional criteria as nec-
14 essary to meet the evolving needs of homeland security
15 and shall report to Congress concerning the implementa-
16 tion of this paragraph as necessary.

17 (D) There are authorized to be appropriated such
18 sums as may be necessary to carry out this paragraph.

19 (c) INTRAMURAL PROGRAMS.—(1) In carrying out
20 the duties under section 301, the Secretary, acting
21 through the Under Secretary for Science and Technology,
22 may draw upon the expertise of any laboratory of the Fed-
23 eral Government, whether operated by a contractor or the
24 Government.

1 (2) The Secretary, acting through the Under Sec-
2 retary for Science and Technology, may establish a head-
3 quarters laboratory for the Department at any national
4 laboratory and may establish additional laboratory units
5 at other national laboratories.

6 (3) If the Secretary chooses to establish a head-
7 quarters laboratory pursuant to paragraph (2), then the
8 Secretary shall do the following:

9 (A) Establish criteria for the selection of the
10 headquarters laboratory in consultation with the Na-
11 tional Academy of Sciences, appropriate Federal
12 agencies, and other experts.

13 (B) Publish the criteria in the Federal Register.

14 (C) Evaluate all appropriate national labora-
15 tories against the criteria.

16 (D) Select a national laboratory on the basis of
17 the criteria.

18 (E) Report to the appropriate congressional
19 committees on which laboratory was selected, how
20 the selected laboratory meets the published criteria,
21 and what duties the headquarters laboratory shall
22 perform.

23 (4) No laboratory shall begin operating as the head-
24 quarters laboratory of the Department until at least 30

1 days after the transmittal of the report required by para-
2 graph (3)(E).

3 **SEC. 308. TRANSFER OF PLUM ISLAND ANIMAL DISEASE**
4 **CENTER, DEPARTMENT OF AGRICULTURE.**

5 (a) **TRANSFER REQUIRED.**—In accordance with title
6 VIII, the Secretary of Agriculture shall transfer to the
7 Secretary of Homeland Security the Plum Island Animal
8 Disease Center of the Department of Agriculture, includ-
9 ing the assets and liabilities of the Center.

10 (b) **CONTINUED DEPARTMENT OF AGRICULTURE AC-**
11 **CESS.**—Upon the transfer of the Plum Island Animal Dis-
12 ease Center, the Secretary of Homeland Security and the
13 Secretary of Agriculture shall enter into an agreement to
14 ensure Department of Agriculture access to the center for
15 research, diagnostic, and other activities of the Depart-
16 ment of Agriculture.

17 (c) **NOTIFICATION.**—At least 180 days before any
18 change in the biosafety level at the facility described in
19 subsection (a), the President shall notify the Congress of
20 the change and describe the reasons therefor. No such
21 change may be made until at least 180 days after the com-
22 pletion of the transition period defined in section 801(2).

1 **SEC. 309. HOMELAND SECURITY SCIENCE AND TECH-**
2 **NOLOGY ADVISORY COMMITTEE.**

3 (a) ESTABLISHMENT.—There is established within
4 the Department a Homeland Security Science and Tech-
5 nology Advisory Committee (in this section referred to as
6 the “Advisory Committee”). The Advisory Committee
7 shall make recommendations with respect to the activities
8 of the Under Secretary for Science and Technology, in-
9 cluding identifying research areas of potential importance
10 to the security of the Nation.

11 (b) MEMBERSHIP.—

12 (1) APPOINTMENT.—The Advisory Committee
13 shall consist of 20 members appointed by the Under
14 Secretary for Science and Technology, which shall
15 include emergency first-responders or representatives
16 of organizations or associations of emergency first-
17 responders. The Advisory Committee shall also in-
18 clude representatives of citizen groups, including
19 economically disadvantaged communities. The indi-
20 viduals appointed as members of the Advisory
21 Committee—

22 (A) shall be eminent in fields such as
23 emergency response, research, engineering, new
24 product development, business, and manage-
25 ment consulting;

1 (B) shall be selected solely on the basis of
2 established records of distinguished service;

3 (C) shall not be employees of the Federal
4 Government; and

5 (D) shall be so selected as to provide rep-
6 resentation of a cross-section of the research,
7 development, demonstration, and deployment
8 activities supported by the Under Secretary for
9 Science and Technology.

10 (2) NATIONAL RESEARCH COUNCIL.—The
11 Under Secretary for Science and Technology may
12 enter into an arrangement for the National Research
13 Council to select members of the Advisory Com-
14 mittee, but only if the panel used by the National
15 Research Council reflects the representation de-
16 scribed in paragraph (1).

17 (c) TERMS OF OFFICE.—

18 (1) IN GENERAL.—Except as otherwise pro-
19 vided in this subsection, the term of office of each
20 member of the Advisory Committee shall be 3 years.

21 (2) ORIGINAL APPOINTMENTS.—The original
22 members of the Advisory Committee shall be ap-
23 pointed to three classes of three members each. One
24 class shall have a term of one year, one a term of
25 two years, and the other a term of three years.

1 (3) VACANCIES.—A member appointed to fill a
2 vacancy occurring before the expiration of the term
3 for which the member’s predecessor was appointed
4 shall be appointed for the remainder of such term.

5 (d) ELIGIBILITY.—A person who has completed two
6 consecutive full terms of service on the Advisory Com-
7 mittee shall thereafter be ineligible for appointment during
8 the one-year period following the expiration of the second
9 such term.

10 (e) MEETINGS.—The Advisory Committee shall meet
11 at least quarterly at the call of the Chair or whenever one-
12 third of the members so request in writing. Each member
13 shall be given appropriate notice of the call of each meet-
14 ing, whenever possible not less than 15 days before the
15 meeting.

16 (f) QUORUM.—A majority of the members of the Ad-
17 visory Committee not having a conflict of interest in the
18 matter being considered by the Advisory Committee shall
19 constitute a quorum.

20 (g) CONFLICT OF INTEREST RULES.—The Advisory
21 Committee shall establish rules for determining when one
22 of its members has a conflict of interest in a matter being
23 considered by the Advisory Committee.

24 (h) REPORTS.—

1 (1) ANNUAL REPORT.—The Advisory Com-
2 mittee shall render an annual report to the Under
3 Secretary for Science and Technology for transmittal
4 to the Congress on or before January 31 of each
5 year. Such report shall describe the activities and
6 recommendations of the Advisory Committee during
7 the previous year.

8 (2) ADDITIONAL REPORTS.—The Advisory
9 Committee may render to the Under Secretary for
10 transmittal to the Congress such additional reports
11 on specific policy matters as it considers appro-
12 priate.

13 (i) FACA EXEMPTION.—Section 14 of the Federal
14 Advisory Committee Act shall not apply to the Advisory
15 Committee.

16 **SEC. 310. HOMELAND SECURITY INSTITUTE.**

17 (a) ESTABLISHMENT.—The Secretary shall establish
18 a federally funded research and development center to be
19 known as the “Homeland Security Institute” (in this sec-
20 tion referred to as the “Institute”).

21 (b) ADMINISTRATION.—The Institute shall be admin-
22 istered as a separate entity by the Secretary.

23 (c) DUTIES.—The duties of the Institute shall be de-
24 termined by the Secretary, and may include the following:

1 (1) Systems analysis, risk analysis, and simula-
2 tion and modeling to determine the vulnerabilities of
3 the Nation's critical infrastructures and the effec-
4 tiveness of the systems deployed to reduce those
5 vulnerabilities.

6 (2) Economic and policy analysis to assess the
7 distributed costs and benefits of alternative ap-
8 proaches to enhancing security.

9 (3) Evaluation of the effectiveness of measures
10 deployed to enhance the security of institutions, fa-
11 cilities, and infrastructure that may be terrorist tar-
12 gets.

13 (4) Identification of instances when common
14 standards and protocols could improve the interoper-
15 ability and effective utilization of tools developed for
16 field operators and first responders.

17 (5) Assistance for Federal agencies and depart-
18 ments in establishing testbeds to evaluate the effec-
19 tiveness of technologies under development and to
20 assess the appropriateness of such technologies for
21 deployment.

22 (6) Design of metrics and use of those metrics
23 to evaluate the effectiveness of homeland security
24 programs throughout the Federal Government, in-
25 cluding all national laboratories.

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

3 (8) Creation of strategic technology develop-
4 ment plans to reduce vulnerabilities in the Nation's
5 critical infrastructure and key resources.

6 (d) CONSULTATION ON INSTITUTE ACTIVITIES.—In
7 carrying out the duties described in subsection (c), the In-
8 stitute shall consult widely with representatives from pri-
9 vate industry, institutions of higher education, and non-
10 profit institutions.

11 (e) ANNUAL REPORTS.—The Institute shall transmit
12 to the Secretary and the Congress an annual report on
13 the activities of the Institute under this section.

14 **SEC. 311. TECHNOLOGY CLEARINGHOUSE TO ENCOURAGE**
15 **AND SUPPORT INNOVATIVE SOLUTIONS TO**
16 **ENHANCE HOMELAND SECURITY.**

17 (a) ESTABLISHMENT OF PROGRAM.—The Secretary,
18 acting through the Under Secretary for Science and Tech-
19 nology, shall establish and promote a program to encour-
20 age technological innovation in facilitating the mission of
21 the Department (as described in section 101).

22 (b) ELEMENTS OF PROGRAM.—The program de-
23 scribed in subsection (a) shall include the following compo-
24 nents:

1 (1) The establishment of a centralized Federal
2 clearinghouse for information relating to tech-
3 nologies that would further the mission of the De-
4 partment for dissemination, as appropriate, to Fed-
5 eral, State, and local government and private sector
6 entities for additional review, purchase, or use.

7 (2) The issuance of announcements seeking
8 unique and innovative technologies to advance the
9 mission of the Department.

10 (3) The establishment of a technical assistance
11 team to assist in screening, as appropriate, pro-
12 posals submitted to the Secretary (except as pro-
13 vided in subsection (c)(2)) to assess the feasibility,
14 scientific and technical merits, and estimated cost of
15 such proposals, as appropriate.

16 (4) The provision of guidance, recommenda-
17 tions, and technical assistance, as appropriate, to as-
18 sist Federal, State, and local government and pri-
19 vate sector efforts to evaluate and implement the use
20 of technologies described in paragraph (1) or (2).

21 (5) The provision of information for persons
22 seeking guidance on how to pursue proposals to de-
23 velop or deploy technologies that would enhance
24 homeland security, including information relating to
25 Federal funding, regulation, or acquisition.

1 (c) MISCELLANEOUS PROVISIONS.—

2 (1) IN GENERAL.—Nothing in this section shall
3 be construed as authorizing the Secretary or the
4 technical assistance team established under sub-
5 section (b)(3) to set standards for technology to be
6 used by the Department, any other executive agency,
7 any State or local government entity, or any private
8 sector entity.

9 (2) CERTAIN PROPOSALS.—The technical as-
10 sistance team established under subsection (b)(3)
11 shall not consider or evaluate proposals submitted in
12 response to a solicitation for offers for a pending
13 procurement or for a specific agency requirement.

14 (3) COORDINATION.—In carrying out this sec-
15 tion, the Secretary shall coordinate with the Tech-
16 nical Support Working Group (organized under the
17 April 1982 National Security Decision Directive
18 Numbered 30).

1 **TITLE IV—BORDER AND**
2 **TRANSPORTATION SECURITY**
3 **Subtitle A—General Provisions**

4 **SEC. 401. UNDER SECRETARY FOR BORDER AND TRANS-**
5 **PORTATION SECURITY.**

6 The Secretary, acting through the Under Secretary
7 for Border and Transportation Security, shall be respon-
8 sible for the following:

9 (1) Preventing the entry of terrorists and the
10 instruments of terrorism into the United States.

11 (2) Securing the borders, territorial waters,
12 ports, terminals, waterways, and air, land, and sea
13 transportation systems of the United States, includ-
14 ing managing and coordinating governmental activi-
15 ties at ports of entry.

16 (3) Carrying out the immigration enforcement
17 functions vested by statute in, or performed by, the
18 Commissioner of Immigration and Naturalization (or
19 any officer, employee, or component of the Immigra-
20 tion and Naturalization Service) immediately before
21 the date on which the transfer of functions specified
22 under section 411 takes effect.

23 (4) Establishing and administering rules, in ac-
24 cordance with section 403, governing the granting of
25 visas or other forms of permission, including parole,

1 to enter the United States to individuals who are not
2 a citizen or an alien lawfully admitted for permanent
3 residence in the United States.

4 (5) Except as provided in subtitle C, admin-
5 istering the customs laws of the United States.

6 (6) Conducting the inspection and related ad-
7 ministrative functions of the Department of Agri-
8 culture transferred to the Secretary of Homeland
9 Security under section 404.

10 (7) In carrying out the foregoing responsibil-
11 ities, ensuring the speedy, orderly, and efficient flow
12 of lawful traffic and commerce.

13 **SEC. 402. FUNCTIONS TRANSFERRED.**

14 In accordance with title VIII, there shall be trans-
15 ferred to the Secretary the functions, personnel, assets,
16 and obligations of the following:

17 (1) The United States Customs Service, except
18 as provided in subtitle C.

19 (2) The Coast Guard of the Department of
20 Transportation, which shall be maintained as a dis-
21 tinct entity within the Department, including the
22 functions of the Secretary of Transportation relating
23 thereto.

24 (3) The Transportation Security Administration
25 of the Department of Transportation, including the

1 functions of the Secretary of Transportation, and of
2 the Under Secretary of Transportation for Security,
3 relating thereto.

4 (4) The Federal Protective Service of the Gen-
5 eral Services Administration, including the functions
6 of the Administrator of General Services relating
7 thereto.

8 (5) The Office for Domestic Preparedness of
9 the Office of Justice Programs of the Department of
10 Justice, including the functions of the Attorney Gen-
11 eral relating thereto.

12 (6) The National Domestic Preparedness Office
13 of the Federal Bureau of Investigation, including the
14 functions of the Attorney General relating thereto.

15 (7) The Domestic Emergency Support Teams
16 of the Department of Justice, including the func-
17 tions of the Attorney General relating thereto.

18 **SEC. 403. VISA ISSUANCE.**

19 (a) IN GENERAL.—Notwithstanding section 104(a)
20 of the Immigration and Nationality Act (8 U.S.C.
21 1104(a)) or any other provision of law, and except as pro-
22 vided in subsection (b) of this section, the Secretary—

23 (1) shall be vested exclusively with all authori-
24 ties to issue regulations with respect to, administer,
25 and enforce the provisions of such Act, and of all

1 other immigration and nationality laws, relating to
2 the functions of consular officers of the United
3 States in connection with the granting or refusal of
4 visas, and shall have the authority to refuse visas in
5 accordance with law and to develop programs of
6 homeland security training for consular officers (in
7 addition to consular training provided by the Sec-
8 retary of State), which authorities shall be exercised
9 through the Secretary of State, except that the Sec-
10 retary shall not have authority to alter or reverse the
11 decision of a consular officer to refuse a visa to an
12 alien; and

13 (2) shall have authority to confer or impose
14 upon any officer or employee of the United States,
15 with the consent of the head of the executive agency
16 under whose jurisdiction such officer or employee is
17 serving, any of the functions specified in paragraph
18 (1).

19 (b) AUTHORITY OF THE SECRETARY OF STATE.—

20 (1) IN GENERAL.—Notwithstanding subsection
21 (a), the Secretary of State may direct a consular of-
22 ficer to refuse a visa to an alien if the Secretary of
23 State deems such refusal necessary or advisable in
24 the foreign policy or security interests of the United
25 States.

1 (2) CONSTRUCTION REGARDING AUTHORITY.—

2 Nothing in this section shall be construed as affect-
3 ing the authorities of the Secretary of State under
4 the following provisions of law:

5 (A) Section 101(a)(15)(A) of the Immigra-
6 tion and Nationality Act (8 U.S.C.
7 1101(a)(15)(A)).

8 (B) Section 204(d)(2) of the Immigration
9 and Nationality Act (8 U.S.C. 1154) (as it will
10 take effect upon the entry into force of the Con-
11 vention on Protection of Children and Coopera-
12 tion in Respect to Inter-Country Adoption).

13 (C) Section 212(a)(3)(B)(vi)(II) of the Im-
14 migration and Nationality Act.

15 (D) Section 212(a)(3)(C) of the Immigra-
16 tion and Nationality Act (8 U.S.C.
17 1182(a)(3)(C)).

18 (E) Section 212(a)(10)(C) of the Immigra-
19 tion and Nationality Act (8 U.S.C.
20 1182(a)(10)(C)).

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

23 (G) Section 237(a)(4)(C) of the Immigra-
24 tion and Nationality Act (8 U.S.C.
25 1227(a)(4)(C)).

1 (H) Section 401 of the Cuban Liberty and
2 Democratic Solidarity (LIBERTAD) Act of
3 1996 (22 U.S.C. 6034; Public Law 104–114).

4 (I) Section 613 of the Departments of
5 Commerce, Justice, and State, the Judiciary,
6 and Related Agencies Appropriations Act, 1999
7 (as contained in section 101(b) of division A of
8 Public Law 105–277) (Omnibus Consolidated
9 and Emergency Supplemental Appropriations
10 Act, 1999; 112 Stat. 2681; H.R. 4328 (origi-
11 nally H.R. 4276) as amended by section 617 of
12 Public Law 106–553).

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

18 (K) Section 568 of the Foreign Operations,
19 Export Financing, and Related Programs Ap-
20 propriations Act, 2002 (Public Law 107–115).

21 (3) CONSTRUCTION REGARDING DELEGATION
22 OF AUTHORITY.—Nothing in this section shall be
23 construed to affect any delegation of authority to the
24 Secretary of State by the President pursuant to any

1 proclamation issued under section 212(f) of the Im-
2 migration and Nationality Act (8 U.S.C. 1182(f)).

3 (c) ASSIGNMENT OF HOMELAND SECURITY EMPLOY-
4 EES TO DIPLOMATIC AND CONSULAR POSTS.—

5 (1) IN GENERAL.—The Secretary is authorized
6 to assign employees of the Department of Homeland
7 Security to any diplomatic and consular posts
8 abroad to perform the following functions:

9 (A) Provide expert advice and training to
10 consular officers regarding specific security
11 threats relating to individual visa applications
12 or classes of applications.

13 (B) Review any or all such applications
14 prior to their adjudication, either on the initia-
15 tive of the employee of the Department of
16 Homeland Security or upon request by a con-
17 sular officer or other person charged with adju-
18 dicating such applications.

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

21 (2) PERMANENT ASSIGNMENT; PARTICIPATION
22 IN TERRORIST LOOKOUT COMMITTEE.—When appro-
23 priate, employees of the Department of Homeland
24 Security assigned to perform functions described in
25 paragraph (1) may be assigned permanently to over-

1 seas diplomatic or consular posts with country-spe-
2 cific or regional responsibility. If the Secretary so di-
3 rects, any such employee, when present at an over-
4 seas post, shall participate in the terrorist lookout
5 committee established under section 304 of the En-
6 hanced Border Security and Visa Entry Reform Act
7 of 2002 (8 U.S.C. 1733).

8 (3) TRAINING AND HIRING.—

9 (A) The Secretary shall ensure that any
10 employees of the Department of Homeland Se-
11 curity assigned to perform functions described
12 in paragraph (1) shall be provided all necessary
13 training to enable them to carry out such func-
14 tions, including training in foreign languages,
15 interview techniques, fraud detection tech-
16 niques, and other skills required by such em-
17 ployees, in conditions in the particular country
18 where each employee is assigned, and in other
19 appropriate areas of study.

20 (B) The Secretary shall promulgate regula-
21 tions within 60 days of the enactment of this
22 Act establishing foreign language proficiency re-
23 quirements for employees of the Department
24 performing the functions described in para-
25 graph (1) and providing that preference shall be

1 given to individuals who meet such require-
2 ments in hiring employees for the performance
3 of such functions.

4 (C) The Secretary is authorized to use the
5 National Foreign Affairs Training Center, on a
6 reimbursable basis, to obtain the training de-
7 scribed in subparagraph (A).

8 (d) NO CREATION OF PRIVATE RIGHT OF ACTION.—
9 Nothing in this section shall be construed to create or au-
10 thorize a private right of action to challenge a decision
11 of a consular officer or other United States official or em-
12 ployee to grant or deny a visa.

13 (e) STUDY REGARDING USE OF FOREIGN NATION-
14 ALS.—

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

20 (A) The proper role, if any, of foreign na-
21 tionals in the process of rendering decisions on
22 such grants and refusals.

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

1 (C) Whether there are cost-effective alter-
2 natives to the use of foreign nationals.

3 (2) REPORT.—Not later than 1 year after the
4 date of the enactment of this Act, the Secretary
5 shall submit a report containing the findings of the
6 study conducted under paragraph (1) to the Com-
7 mittee on the Judiciary, the Committee on Inter-
8 national Relations, and the Committee on Govern-
9 ment Reform of the House of Representatives, and
10 the Committee on the Judiciary, the Committee on
11 Foreign Relations, and the Committee on Govern-
12 ment Affairs of the Senate.

13 (f) REPORT.—Not later than 120 days after the date
14 of the enactment of this Act, the Director of the Office
15 of Science and Technology Policy shall submit to the Con-
16 gress a report on how the provisions of this section will
17 affect procedures for the issuance of student visas.

18 (g) VISA ISSUANCE PROGRAM FOR SAUDI ARABIA.—
19 Notwithstanding any other provision of law, after the date
20 of the enactment of this Act all third party screening,
21 interview waiver, or other non-interview visa issuance pro-
22 grams in Saudi Arabia shall be terminated. On-site per-
23 sonnel of the Department of Homeland Security shall re-
24 view all visa applications prior to adjudication. All visa ap-
25 plicants in Saudi Arabia shall be interviewed unless on-

1 site personnel of the Department of Homeland Security
2 determine, in writing and pursuant to written guidelines
3 issued by the Secretary of Homeland Security, that the
4 alien is unlikely to present a risk to homeland security.
5 The Secretary of Homeland Security shall promulgate
6 such guidelines not later than 30 days after the date of
7 the enactment of this Act.

8 **SEC. 404. TRANSFER OF CERTAIN AGRICULTURAL INSPEC-**
9 **TION FUNCTIONS OF THE DEPARTMENT OF**
10 **AGRICULTURE.**

11 (a) TRANSFER OF AGRICULTURAL IMPORT AND
12 ENTRY INSPECTION FUNCTIONS.—There shall be trans-
13 ferred to the Secretary of Homeland Security the func-
14 tions of the Secretary of Agriculture relating to agricul-
15 tural import and entry inspection activities under the laws
16 specified in subsection (b).

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

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

1 (2) Section 1 of the Act of August 31, 1922
2 (commonly known as the Honeybee Act; 7 U.S.C.
3 281).

4 (3) Title III of the Federal Seed Act (7 U.S.C.
5 1581 et seq.).

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

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

11 (6) The Lacey Act Amendments of 1981 (16
12 U.S.C. 3371 et seq.).

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

15 (c) EXCLUSION OF QUARANTINE ACTIVITIES.—For
16 purposes of this section, the term “functions” does not
17 include any quarantine activities carried out under the
18 laws specified in subsection (b).

19 (d) EFFECT OF TRANSFER.—

20 (1) COMPLIANCE WITH DEPARTMENT OF AGRI-
21 CULTURE REGULATIONS.—The authority transferred
22 pursuant to subsection (a) shall be exercised by the
23 Secretary of Homeland Security in accordance with
24 the regulations, policies, and procedures issued by

1 the Secretary of Agriculture regarding the adminis-
2 tration of the laws specified in subsection (b).

3 (2) RULEMAKING COORDINATION.—The Sec-
4 retary of Agriculture shall coordinate with the Sec-
5 retary of Homeland Security whenever the Secretary
6 of Agriculture prescribes regulations, policies, or
7 procedures for administering the laws specified in
8 subsection (b) at the locations referred to in sub-
9 section (a).

10 (3) EFFECTIVE ADMINISTRATION.—The Sec-
11 retary of Homeland Security, in consultation with
12 the Secretary of Agriculture, may issue such direc-
13 tives and guidelines as are necessary to ensure the
14 effective use of personnel of the Department of
15 Homeland Security to carry out the functions trans-
16 ferred pursuant to subsection (a).

17 (e) TRANSFER AGREEMENT.—

18 (1) AGREEMENT REQUIRED; REVISION.—Before
19 the end of the transition period, as defined in section
20 801(2), the Secretary of Agriculture and the Sec-
21 retary of Homeland Security shall enter into an
22 agreement to effectuate the transfer of functions re-
23 quired by subsection (a). The Secretary of Agri-
24 culture and the Secretary of Homeland Security may
25 jointly revise the agreement as necessary thereafter.

1 (2) REQUIRED TERMS.—The agreement re-
2 quired by this subsection shall specifically address
3 the following:

4 (A) The supervision by the Secretary of
5 Agriculture of the training of employees of the
6 Secretary of Homeland Security to carry out
7 the functions transferred pursuant to sub-
8 section (a).

9 (B) The transfer of funds to the Secretary
10 of Homeland Security under subsection (f).

11 (3) COOPERATION AND RECIPROCITY.—The
12 Secretary of Agriculture and the Secretary of Home-
13 land Security may include as part of the agreement
14 the following:

15 (A) Authority for the Secretary of Home-
16 land Security to perform functions delegated to
17 the Animal and Plant Health Inspection Service
18 of the Department of Agriculture regarding the
19 protection of domestic livestock and plants, but
20 not transferred to the Secretary of Homeland
21 Security pursuant to subsection (a).

22 (B) Authority for the Secretary of Agri-
23 culture to use employees of the Department of
24 Homeland Security to carry out authorities del-
25 egated to the Animal and Plant Health Inspec-

1 tion Service regarding the protection of domes-
2 tic livestock and plants.

3 (f) PERIODIC TRANSFER OF FUNDS TO DEPART-
4 MENT OF HOMELAND SECURITY.—

5 (1) TRANSFER OF FUNDS.—Out of funds col-
6 lected by fees authorized under sections 2508 and
7 2509 of the Food, Agriculture, Conservation, and
8 Trade Act of 1990 (21 U.S.C. 136, 136a), the Sec-
9 retary of Agriculture shall transfer, from time to
10 time in accordance with the agreement under sub-
11 section (e), to the Secretary of Homeland Security
12 funds for activities carried out by the Secretary of
13 Homeland Security for which such fees were col-
14 lected.

15 (2) LIMITATION.—The proportion of fees col-
16 lected pursuant to such sections that are transferred
17 to the Secretary of Homeland Security under this
18 subsection may not exceed the proportion of the
19 costs incurred by the Secretary of Homeland Secu-
20 rity to all costs incurred to carry out activities fund-
21 ed by such fees.

22 (g) TRANSFER OF DEPARTMENT OF AGRICULTURE
23 EMPLOYEES.—During the transition period, the Secretary
24 of Agriculture shall transfer to the Secretary of Homeland

1 Security not more than 3,200 full-time equivalent posi-
2 tions of the Department of Agriculture.

3 (h) PROTECTION OF INSPECTION ANIMALS.—Title V
4 of the Agricultural Risk Protection Act of 2000 (7 U.S.C.
5 2279e, 2279f) is amended—

6 (1) in section 501(a)—

7 (A) by inserting “or the Department of
8 Homeland Security” after “Department of Ag-
9 riculture”; and

10 (B) by inserting “or the Secretary of
11 Homeland Security” after “Secretary of Agri-
12 culture”;

13 (2) by striking “Secretary” each place it ap-
14 pears (other than in sections 501(a) and 501(e))
15 and inserting “Secretary concerned”; and

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

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

20 “(1) the Secretary of Agriculture, with respect
21 to an animal used for purposes of official inspections
22 by the Department of Agriculture; and

23 “(2) the Secretary of Homeland Security, with
24 respect to an animal used for purposes of official in-

1 spections by the Department of Homeland Secu-
2 rity.”.

3 **SEC. 405. FUNCTIONS OF ADMINISTRATOR OF GENERAL**
4 **SERVICES.**

5 (a) OPERATION, MAINTENANCE, AND PROTECTION
6 OF FEDERAL BUILDINGS AND GROUNDS.—Nothing in
7 this Act may be construed to affect the functions or au-
8 thorities of the Administrator of General Services with re-
9 spect to the operation, maintenance, and protection of
10 buildings and grounds owned or occupied by the Federal
11 Government and under the jurisdiction, custody, or control
12 of the Administrator. Except for the law enforcement and
13 related security functions transferred under section
14 402(4), the Administrator shall retain all powers, func-
15 tions, and authorities vested in the Administrator under
16 the Federal Property and Administrative Services Act of
17 1949 (40 U.S.C. 471 et seq.) and other provisions of law
18 that are necessary for the operation, maintenance, and
19 protection of such buildings and grounds.

20 (b) COLLECTION OF RENTS AND FEES; FEDERAL
21 BUILDINGS FUND.—

22 (1) STATUTORY CONSTRUCTION.—Nothing in
23 this Act may be construed—

24 (A) to direct the transfer of, or affect, the
25 authority of the Administrator of General Serv-

1 ices to collect rents and fees, including fees col-
2 lected for protective services; or

3 (B) to authorize the Secretary or any other
4 official in the Department to obligate amounts
5 in the Federal Buildings Fund established by
6 section 210(f) of the Federal Property and Ad-
7 ministrative Services Act of 1949 (40 U.S.C.
8 490(f)).

9 (2) USE OF TRANSFERRED AMOUNTS.—Any
10 amounts transferred by the Administrator of Gen-
11 eral Services to the Secretary out of rents and fees
12 collected by the Administrator shall be used by the
13 Secretary solely for the protection of buildings or
14 grounds owned or occupied by the Federal Govern-
15 ment.

16 **SEC. 406. FUNCTIONS OF TRANSPORTATION SECURITY AD-**
17 **MINISTRATION.**

18 (a) CONSULTATION WITH FEDERAL AVIATION AD-
19 MINISTRATION.—The Secretary and other officials in the
20 Department shall consult with the Administrator of the
21 Federal Aviation Administration before taking any action
22 that might affect aviation safety, air carrier operations,
23 aircraft airworthiness, or the use of airspace. The Sec-
24 retary shall establish a liaison office within the Depart-

1 ment for the purpose of consulting with the Administrator
2 of the Federal Aviation Administration.

3 (b) REPORT TO CONGRESS.—Not later than 60 days
4 after the date of enactment of this Act, the Secretary of
5 Transportation shall transmit to Congress a report con-
6 taining a plan for complying with the requirements of sec-
7 tion 44901(d) of title 49, United States Code.

8 (c) LIMITATIONS ON STATUTORY CONSTRUCTION.—

9 (1) GRANT OF AUTHORITY.—Nothing in this
10 Act may be construed to vest in the Secretary or any
11 other official in the Department any authority over
12 transportation security that is not vested in the
13 Under Secretary of Transportation for Security, or
14 in the Secretary of Transportation under chapter
15 449 of title 49, United States Code, on the day be-
16 fore the date of enactment of this Act.

17 (2) OBLIGATION OF AIP FUNDS.—Nothing in
18 this Act may be construed to authorize the Secretary
19 or any other official in the Department to obligate
20 amounts made available under section 48103 of title
21 49, United States Code.

22 **SEC. 407. PRESERVATION OF TRANSPORTATION SECURITY**
23 **ADMINISTRATION AS A DISTINCT ENTITY.**

24 (a) IN GENERAL.—Notwithstanding any other provi-
25 sion of this Act, and subject to subsection (b), the Trans-

1 portation Security Administration shall be maintained as
2 a distinct entity within the Department under the Under
3 Secretary for Border Transportation and Security.

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

6 **SEC. 408. ANNUAL ASSESSMENT OF TERRORIST-RELATED**
7 **THREATS TO PUBLIC TRANSPORTATION.**

8 On an annual basis, the Secretary, in consultation
9 with the heads of other appropriate Federal departments
10 and agencies, shall conduct an assessment of terrorist-re-
11 lated threats to all forms of public transportation, includ-
12 ing public gathering areas related to public transportation.

13 **SEC. 409. EXPLOSIVE DETECTION SYSTEMS.**

14 (a) INSTALLATION OF SYSTEMS.—Section 44901(d)
15 of title 49, United States Code, is amended by adding at
16 the end the following:

17 “(2) MODIFICATION OF AIRPORT TERMINAL
18 BUILDINGS TO ACCOMMODATE EXPLOSIVE DETEC-
19 TION SYSTEMS.—

20 “(A) NOTIFICATION OF AIRPORTS.—Not
21 later than October 1, 2002, the Under Sec-
22 retary shall notify the owner or operator of each
23 United States airport described in section
24 44903(c) of the number and type of explosive
25 detection systems that will be required to be de-

1 employed at the airport in order to screen all
2 checked baggage by explosive detection systems
3 without imposing unreasonable delays on the
4 passengers using the airport.

5 “(B) ASSESSMENTS OF AIRPORT TER-
6 MINAL BUILDINGS.—If the owner or operator of
7 a United States airport described in section
8 44903(c) determines that the airport will not be
9 able to make the modifications to the airport’s
10 terminal buildings that are necessary to accom-
11 modate the explosive detection systems required
12 under subparagraph (A) in a cost-effective
13 manner on or before December 31, 2002, the
14 owner or operator shall provide notice of that
15 determination to the Under Secretary not later
16 than November 1, 2002.

17 “(C) PLANS FOR MAKING MODIFICATIONS
18 TO AIRPORT TERMINAL BUILDINGS.—

19 “(i) IN GENERAL.—If the owner or
20 operator of an airport provides notice to
21 the Under Secretary under subparagraph
22 (B), the Under Secretary, in consultation
23 with the owner or operator, shall develop,
24 not later than December 1, 2002, a plan
25 for making necessary modifications to the

1 airport’s terminal buildings so as to deploy
2 and fully utilize explosive detection systems
3 to screen all checked baggage.

4 “(ii) DEADLINE.—A plan developed
5 under this subparagraph shall include a
6 date for executing the plan. All such plans
7 shall be executed as expeditiously as prac-
8 ticable but not later than December 31,
9 2003.

10 “(iii) TRANSMISSION OF PLANS TO
11 CONGRESS.—On the date of completion of
12 a plan under this subparagraph, the Under
13 Secretary shall transmit a copy of the plan
14 to Congress. For security purposes, infor-
15 mation contained in the plan shall not be
16 disclosed to the public.

17 “(D) REQUIREMENTS FOR PLANS.—A plan
18 developed and published under subparagraph
19 (C), shall provide for, to the maximum extent
20 practicable—

21 “(i) the deployment of explosive detec-
22 tion systems in the baggage sorting area or
23 other non-public area rather than the lobby
24 of an airport terminal building; and

1 “(ii) the deployment of state of the
2 art explosive detection systems that have
3 high throughput, low false alarm rates,
4 and high reliability without reducing detec-
5 tion rates.

6 “(E) USE OF SCREENING METHODS OTHER
7 THAN EDS.—Notwithstanding the deadline in
8 paragraph (1)(A), after December 31, 2002, if
9 explosive detection systems are not screening all
10 checked baggage at a United States airport de-
11 scribed in section 44903(c), such baggage shall
12 be screened by the methods described in sub-
13 section (e) until such time as all checked
14 baggage is screened by explosive detection sys-
15 tems at the airport.

16 “(3) PURCHASE OF EXPLOSIVE DETECTION
17 SYSTEMS.—Any explosive detection system required
18 to be purchased under paragraph (2)(A) shall be
19 purchased by the Under Secretary.

20 “(4) EXPLOSIVE DETECTION SYSTEM DE-
21 FINED.—In this subsection, the term ‘explosive de-
22 tection system’ means a device, or combination of
23 devices, that can detect different types of explo-
24 sives.”.

1 (b) CORRECTION OF REFERENCE.—Section 44901(e)
2 of title 49, United States Code, is amended by striking
3 “(b)(1)(A)” and inserting “(d)(1)(A)”.

4 **SEC. 410. TRANSPORTATION SECURITY.**

5 (a) TRANSPORTATION SECURITY OVERSIGHT
6 BOARD.—

7 (1) ESTABLISHMENT.—Section 115(a) of title
8 49, United States Code, is amended by striking “De-
9 partment of Transportation” and inserting “Depart-
10 ment of Homeland Security”.

11 (2) MEMBERSHIP.—Section 115(b)(1) of title
12 49, United States Code, is amended—

13 (A) by striking subparagraph (G);

14 (B) by redesignating subparagraphs (A)
15 through (F) as subparagraphs (B) through (G),
16 respectively; and

17 (C) by inserting before subparagraph (B)
18 (as so redesignated) the following:

19 “(A) The Secretary of Homeland Security,
20 or the Secretary’s designee.”.

21 (3) CHAIRPERSON.—Section 115(b)(2) of title
22 49, United States Code, is amended by striking
23 “Secretary of Transportation” and inserting “Sec-
24 retary of Homeland Security”.

1 (b) APPROVAL OF AIP GRANT APPLICATIONS FOR
2 SECURITY ACTIVITIES.—Section 47106 of title 49, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

5 “(g) CONSULTATION WITH SECRETARY OF HOME-
6 LAND SECURITY.—The Secretary shall consult with the
7 Secretary of Homeland Security before approving an ap-
8 plication under this subchapter for an airport development
9 project grant for activities described in section
10 47102(3)(B)(ii) (relating to security equipment) or section
11 47102(3)(B)(x) (relating to installation of bulk explosive
12 detection systems).”.

13 **Subtitle B—Immigration and**

14 **Nationality Functions**

15 **CHAPTER 1—IMMIGRATION**

16 **ENFORCEMENT**

17 **SEC. 411. TRANSFER OF FUNCTIONS TO UNDER SECRETARY**
18 **FOR BORDER AND TRANSPORTATION SECU-**
19 **RITY.**

20 In accordance with title VIII, there shall be trans-
21 ferred from the Commissioner of Immigration and Natu-
22 ralization to the Under Secretary for Border and Trans-
23 portation Security all functions performed under the fol-
24 lowing programs, and all personnel, assets, and liabilities

1 pertaining to such programs, immediately before such
2 transfer occurs:

- 3 (1) The Border Patrol program.
- 4 (2) The detention and removal program.
- 5 (3) The intelligence program.
- 6 (4) The investigations program.
- 7 (5) The inspections program.

8 **SEC. 412. ESTABLISHMENT OF BUREAU OF BORDER SECU-**
9 **RITY.**

10 (a) ESTABLISHMENT OF BUREAU.—

11 (1) IN GENERAL.—There is established in the
12 Department of Homeland Security a bureau to be
13 known as the “Bureau of Border Security”.

14 (2) ASSISTANT SECRETARY.—The head of the
15 Bureau of Border Security shall be the Assistant
16 Secretary of the Bureau of Border Security, who—

17 (A) shall report directly to the Under Sec-
18 retary for Border and Transportation Security;
19 and

20 (B) shall have a minimum of 10 years pro-
21 fessional experience in law enforcement, at least
22 5 of which shall have been years of service in
23 a managerial capacity.

24 (3) FUNCTIONS.—The Assistant Secretary of
25 the Bureau of Border Security—

1 (A) shall establish the policies for per-
2 forming such functions as are—

3 (i) transferred to the Under Secretary
4 for Border and Transportation Security by
5 section 411 and delegated to the Assistant
6 Secretary by the Under Secretary for Bor-
7 der and Transportation Security; or

8 (ii) otherwise vested in the Assistant
9 Secretary by law;

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

12 (C) shall advise the Under Secretary for
13 Border and Transportation Security with re-
14 spect to any policy or operation of the Bureau
15 of Border Security that may affect the Bureau
16 of Citizenship and Immigration Services of the
17 Department of Justice established under chap-
18 ter 2, including potentially conflicting policies
19 or operations.

20 (4) PROGRAM TO COLLECT INFORMATION RE-
21 LATING TO FOREIGN STUDENTS.—The Assistant
22 Secretary of the Bureau of Border Security shall be
23 responsible for administering the program to collect
24 information relating to nonimmigrant foreign stu-
25 dents and other exchange program participants de-

1 scribed in section 641 of the Illegal Immigration Re-
2 form and Immigrant Responsibility Act of 1996 (8
3 U.S.C. 1372), including the Student and Exchange
4 Visitor Information System established under that
5 section, and shall use such information to carry out
6 the enforcement functions of the Bureau.

7 (5) MANAGERIAL ROTATION PROGRAM.—

8 (A) IN GENERAL.—Not later than 1 year
9 after the date on which the transfer of func-
10 tions specified under section 411 takes effect,
11 the Assistant Secretary of the Bureau of Bor-
12 der Security shall design and implement a man-
13 agerial rotation program under which employees
14 of such bureau holding positions involving su-
15 pervisory or managerial responsibility and clas-
16 sified, in accordance with chapter 51 of title 5,
17 United States Code, as a GS-14 or above, shall,
18 as a condition on further promotion—

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

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

24 (B) REPORT.—Not later than 2 years after
25 the date on which the transfer of functions

1 specified under section 411 takes effect, the
2 Secretary shall submit a report to the Congress
3 on the implementation of such program.

4 (b) CHIEF OF POLICY AND STRATEGY.—

5 (1) IN GENERAL.—There shall be a position of
6 Chief of Policy and Strategy for the Bureau of Bor-
7 der Security.

8 (2) FUNCTIONS.—In consultation with Bureau
9 of Border Security personnel in local offices, the
10 Chief of Policy and Strategy shall be responsible
11 for—

12 (A) establishing national immigration en-
13 forcement policies and priorities;

14 (B) performing policy research and anal-
15 ysis on immigration enforcement issues; and

16 (C) coordinating immigration policy issues
17 with the Chief of Policy and Strategy for the
18 Bureau of Citizenship and Immigration Services
19 of the Department of Justice (established under
20 chapter 2), and the Assistant Attorney General
21 for Citizenship and Immigration Services, as
22 appropriate.

23 (c) CITIZENSHIP AND IMMIGRATION SERVICES LIAI-
24 SON.—

1 (1) IN GENERAL.—There shall be a position of
2 Citizenship and Immigration Services Liaison for the
3 Bureau of Border Security.

4 (2) FUNCTIONS.—The Citizenship and Immi-
5 gration Services Liaison shall be responsible for the
6 appropriate allocation and coordination of resources
7 involved in supporting shared support functions for
8 the Bureau of Citizenship and Immigration Services
9 of the Department of Justice (established under
10 chapter 2) and the Bureau of Border Security,
11 including—

12 (A) information resources management, in-
13 cluding computer databases and information
14 technology;

15 (B) records and file management; and

16 (C) forms management.

17 **SEC. 413. PROFESSIONAL RESPONSIBILITY AND QUALITY**
18 **REVIEW.**

19 The Under Secretary for Border and Transportation
20 Security shall be responsible for—

21 (1) conducting investigations of noncriminal al-
22 legations of misconduct, corruption, and fraud in-
23 volving any employee of the Bureau of Border Secu-
24 rity that are not subject to investigation by the In-
25 specter General for the Department;

1 (2) inspecting the operations of the Bureau of
2 Border Security and providing assessments of the
3 quality of the operations of such bureau as a whole
4 and each of its components; and

5 (3) providing an analysis of the management of
6 the Bureau of Border Security.

7 **SEC. 414. EMPLOYEE DISCIPLINE.**

8 The Under Secretary for Border and Transportation
9 Security may, notwithstanding any other provision of law,
10 impose disciplinary action, including termination of em-
11 ployment, pursuant to policies and procedures applicable
12 to employees of the Federal Bureau of Investigation, on
13 any employee of the Bureau of Border Security who will-
14 fully deceives the Congress or agency leadership on any
15 matter.

16 **SEC. 415. REPORT ON IMPROVING ENFORCEMENT FUNC-**
17 **TIONS.**

18 (a) IN GENERAL.—The Secretary, not later than 1
19 year after being sworn into office, shall submit to the
20 Committees on Appropriations and the Judiciary of the
21 United States House of Representatives and of the Senate
22 a report with a plan detailing how the Bureau of Border
23 Security, after the transfer of functions specified under
24 section 411 takes effect, will enforce comprehensively, ef-
25 fectively, and fairly all the enforcement provisions of the

1 Immigration and Nationality Act (8 U.S.C. 1101 et seq.)
2 relating to such functions.

3 (b) CONSULTATION.—In carrying out subsection (a),
4 the Secretary of Homeland Security shall consult with the
5 Attorney General, the Secretary of State, the Assistant
6 Attorney General for Citizenship and Immigration Serv-
7 ices, the Director of the Federal Bureau of Investigation,
8 the Secretary of the Treasury, the Secretary of Labor, the
9 Commissioner of Social Security, the Director of the Exec-
10 utive Office for Immigration Review, and the heads of
11 State and local law enforcement agencies to determine how
12 to most effectively conduct enforcement operations.

13 **SEC. 416. SENSE OF CONGRESS REGARDING CONSTRUC-**
14 **TION OF FENCING NEAR SAN DIEGO, CALI-**
15 **FORNIA.**

16 It is the sense of the Congress that completing the
17 14-mile border fence project required to be carried out
18 under section 102(b) of the Illegal Immigration Reform
19 and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103
20 note) should be a priority for the Secretary.

1 **CHAPTER 2—CITIZENSHIP AND**
2 **IMMIGRATION SERVICES**
3 **Subchapter A—Transfers of Functions**
4 **SEC. 421. ESTABLISHMENT OF BUREAU OF CITIZENSHIP**
5 **AND IMMIGRATION SERVICES.**

6 (a) ESTABLISHMENT OF BUREAU.—

7 (1) IN GENERAL.—There is established in the
8 Department of Justice a bureau to be known as the
9 “Bureau of Citizenship and Immigration Services”.

10 (2) ASSISTANT ATTORNEY GENERAL.—The
11 head of the Bureau of Citizenship and Immigration
12 Services shall be the Assistant Attorney General for
13 Citizenship and Immigration Services, who—

14 (A) shall report directly to the Deputy At-
15 torney General; and

16 (B) shall have a minimum of 10 years pro-
17 fessional experience in the rendering of adju-
18 dications on the provision of government bene-
19 fits or services, at least 5 of which shall have
20 been years of service in a managerial capacity
21 or in a position affording comparable manage-
22 ment experience.

23 (3) FUNCTIONS.—The Assistant Attorney Gen-
24 eral for Citizenship and Immigration Services—

1 (A) shall establish the policies for per-
2 forming such functions as are transferred to the
3 Assistant Attorney General by this section or
4 this Act or otherwise vested in the Assistant At-
5 torney General by law;

6 (B) shall oversee the administration of
7 such policies;

8 (C) shall advise the Deputy Attorney Gen-
9 eral with respect to any policy or operation of
10 the Bureau of Citizenship and Immigration
11 Services that may affect the Bureau of Border
12 Security of the Department of Homeland Secu-
13 rity, including potentially conflicting policies or
14 operations;

15 (D) shall meet regularly with the Ombuds-
16 man described in section 422 to correct serious
17 service problems identified by the Ombudsman;
18 and

19 (E) shall establish procedures requiring a
20 formal response to any recommendations sub-
21 mitted in the Ombudsman's annual report to
22 the Congress within 3 months after its submis-
23 sion to the Congress.

24 (4) MANAGERIAL ROTATION PROGRAM.—

1 (A) IN GENERAL.—Not later than 1 year
2 after the effective date specified in section 427,
3 the Assistant Attorney General for Citizenship
4 and Immigration Services shall design and im-
5 plement a managerial rotation program under
6 which employees of such bureau holding posi-
7 tions involving supervisory or managerial re-
8 sponsibility and classified, in accordance with
9 chapter 51 of title 5, United States Code, as a
10 GS–14 or above, shall, as a condition on further
11 promotion—

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

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

17 (B) REPORT.—Not later than 2 years after
18 the effective date specified in section 427, the
19 Attorney General shall submit a report to the
20 Congress on the implementation of such pro-
21 gram.

22 (5) PILOT INITIATIVES FOR BACKLOG ELIMI-
23 NATION.—The Assistant Attorney General for Citi-
24 zenship and Immigration Services is authorized to
25 implement innovative pilot initiatives to eliminate

1 any remaining backlog in the processing of immigra-
2 tion benefit applications, and to prevent any backlog
3 in the processing of such applications from recur-
4 ring, in accordance with section 204(a) of the Immi-
5 gration Services and Infrastructure Improvements
6 Act of 2000 (8 U.S.C. 1573(a)). Such initiatives
7 may include measures such as increasing personnel,
8 transferring personnel to focus on areas with the
9 largest potential for backlog, and streamlining pa-
10 perwork.

11 (b) TRANSFER OF FUNCTIONS FROM COMMIS-
12 SIONER.—There are transferred from the Commissioner
13 of Immigration and Naturalization to the Assistant Attor-
14 ney General for Citizenship and Immigration Services the
15 following functions, and all personnel, infrastructure, and
16 funding provided to the Commissioner in support of such
17 functions immediately before the effective date specified
18 in section 427:

- 19 (1) Adjudications of immigrant visa petitions.
- 20 (2) Adjudications of naturalization petitions.
- 21 (3) Adjudications of asylum and refugee appli-
22 cations.
- 23 (4) Adjudications performed at service centers.

1 (5) All other adjudications performed by the
2 Immigration and Naturalization Service immediately
3 before the effective date specified in section 427.

4 (c) CHIEF OF POLICY AND STRATEGY.—

5 (1) IN GENERAL.—There shall be a position of
6 Chief of Policy and Strategy for the Bureau of Citi-
7 zenship and Immigration Services.

8 (2) FUNCTIONS.—In consultation with Bureau
9 of Citizenship and Immigration Services personnel in
10 field offices, the Chief of Policy and Strategy shall
11 be responsible for—

12 (A) establishing national immigration serv-
13 ices policies and priorities;

14 (B) performing policy research and anal-
15 ysis on immigration services issues; and

16 (C) coordinating immigration policy issues
17 with the Chief of Policy and Strategy for the
18 Bureau of Border Security of the Department
19 of Homeland Security.

20 (d) GENERAL COUNSEL.—

21 (1) IN GENERAL.—There shall be a position of
22 General Counsel for the Bureau of Citizenship and
23 Immigration Services.

24 (2) FUNCTIONS.—The General Counsel shall
25 serve as the principal legal advisor to the Assistant

1 Attorney General for Citizenship and Immigration
2 Services. The General Counsel shall be responsible
3 for—

4 (A) providing specialized legal advice, opin-
5 ions, determinations, regulations, and any other
6 assistance to the Assistant Attorney General for
7 Citizenship and Immigration Services with re-
8 spect to legal matters affecting the Bureau of
9 Citizenship and Immigration Services; and

10 (B) representing the Bureau of Citizenship
11 and Immigration Services in visa petition ap-
12 peal proceedings before the Executive Office for
13 Immigration Review and in other legal or ad-
14 ministrative proceedings involving immigration
15 services issues.

16 (e) CHIEF BUDGET OFFICER.—

17 (1) IN GENERAL.—There shall be a position of
18 Chief Budget Officer for the Bureau of Citizenship
19 and Immigration Services.

20 (2) FUNCTIONS.—

21 (A) IN GENERAL.—The Chief Budget Offi-
22 cer shall be responsible for—

23 (i) formulating and executing the
24 budget of the Bureau of Citizenship and
25 Immigration Services;

1 (ii) financial management of the Bu-
2 reau of Citizenship and Immigration Serv-
3 ices; and

4 (iii) collecting all payments, fines, and
5 other debts for the Bureau of Citizenship
6 and Immigration Services.

7 (3) AUTHORITY AND FUNCTIONS OF AGENCY
8 CHIEF FINANCIAL OFFICERS.—The Chief Budget
9 Officer for the Bureau of Citizenship and Immigra-
10 tion Services shall have the authorities and functions
11 described in section 902 of title 31, United States
12 Code, in relation to financial activities of such bu-
13 reau.

14 (f) CHIEF OF CONGRESSIONAL, INTERGOVERN-
15 MENTAL, AND PUBLIC AFFAIRS.—

16 (1) IN GENERAL.—There shall be a position of
17 Chief of Congressional, Intergovernmental, and Pub-
18 lic Affairs for the Bureau of Citizenship and Immi-
19 gration Services.

20 (2) FUNCTIONS.—The Chief of Congressional,
21 Intergovernmental, and Public Affairs shall be re-
22 sponsible for—

23 (A) providing information relating to immi-
24 gration services to the Congress, including in-

1 formation on specific cases relating to immigra-
2 tion services issues;

3 (B) serving as a liaison with other Federal
4 agencies on immigration services issues; and

5 (C) responding to inquiries from the media
6 and the general public on immigration services
7 issues.

8 (g) BORDER SECURITY LIAISON.—

9 (1) IN GENERAL.—There shall be a position of
10 Border Security Liaison for the Bureau of Citizen-
11 ship and Immigration Services.

12 (2) FUNCTIONS.—The Border Security Liaison
13 shall be responsible for the appropriate allocation
14 and coordination of resources involved in supporting
15 shared support functions for the Bureau of Border
16 Security of the Department of Homeland Security
17 and the Bureau of Citizenship and Immigration
18 Services, including—

19 (A) information resources management, in-
20 cluding computer databases and information
21 technology;

22 (B) records and file management; and

23 (C) forms management.

24 (h) CHIEF OF OFFICE OF CITIZENSHIP.—

1 (1) IN GENERAL.—There shall be a position of
2 Chief of the Office of Citizenship for the Bureau of
3 Citizenship and Immigration Services.

4 (2) FUNCTIONS.—The Chief of the Office of
5 Citizenship for the Bureau of Citizenship and Immi-
6 gration Services shall be responsible for promoting
7 instruction and training on citizenship responsibil-
8 ities for aliens interested in becoming naturalized
9 citizens of the United States, including the develop-
10 ment of educational materials.

11 **SEC. 422. CITIZENSHIP AND IMMIGRATION SERVICES OM-**
12 **BUDSMAN.**

13 (a) IN GENERAL.—Within the Department of Jus-
14 tice, there shall be a position of Citizenship and Immigra-
15 tion Services Ombudsman (in this section referred to as
16 the “Ombudsman”). The Ombudsman shall report directly
17 to the Deputy Attorney General. The Ombudsman shall
18 have a background in customer service as well as immigra-
19 tion law.

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

22 (1) to assist individuals and employers in re-
23 solving problems with the Bureau of Citizenship and
24 Immigration Services;

1 (2) to identify areas in which individuals and
2 employers have problems in dealing with the Bureau
3 of Citizenship and Immigration Services;

4 (3) to the extent possible, to propose changes in
5 the administrative practices of the Bureau of Citi-
6 zenship and Immigration Services to mitigate prob-
7 lems identified under paragraph (2); and

8 (4) to identify potential legislative changes that
9 may be appropriate to mitigate such problems.

10 (c) ANNUAL REPORTS.—

11 (1) OBJECTIVES.—Not later than June 30 of
12 each calendar year, the Ombudsman shall report to
13 the Committee on the Judiciary of the United States
14 House of Representatives and the Senate on the ob-
15 jectives of the Office of the Ombudsman for the fis-
16 cal year beginning in such calendar year. Any such
17 report shall contain full and substantive analysis, in
18 addition to statistical information, and—

19 (A) shall identify the initiatives the Office
20 of the Ombudsman has taken on improving
21 services and responsiveness of the Bureau of
22 Citizenship and Immigration Services;

23 (B) shall contain a summary of the most
24 pervasive and serious problems encountered by

1 individuals and employers, including a descrip-
2 tion of the nature of such problems;

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

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

12 (E) shall contain an inventory of the items
13 described in subparagraphs (A) and (B) for
14 which no action has been taken, the period dur-
15 ing which each item has remained on such in-
16 ventory, the reasons for the inaction, and shall
17 identify any official of the Bureau of Citizen-
18 ship and Immigration Services who is respon-
19 sible for such inaction;

20 (F) shall contain recommendations for
21 such administrative and legislative action as
22 may be appropriate to resolve problems encoun-
23 tered by individuals and employers, including
24 problems created by excessive backlogs in the

1 adjudication and processing of immigration ben-
2 efit petitions and applications; and

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

5 (2) REPORT TO BE SUBMITTED DIRECTLY.—

6 Each report required under this subsection shall be
7 provided directly to the committees described in
8 paragraph (1) without any prior review or comment
9 from the Attorney General, Deputy Attorney Gen-
10 eral, Assistant Attorney General for Citizenship and
11 Immigration Services, or any other officer or em-
12 ployee of the Department of Justice or the Office of
13 Management and Budget.

14 (d) OTHER RESPONSIBILITIES.—The Ombudsman—

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

17 (2) shall develop guidance to be distributed to
18 all officers and employees of the Bureau of Citizen-
19 ship and Immigration Services outlining the criteria
20 for referral of inquiries to local offices of the Om-
21 budsman;

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

1 (4) shall meet regularly with the Assistant At-
2 torney General for Citizenship and Immigration
3 Services to identify serious service problems and to
4 present recommendations for such administrative ac-
5 tion as may be appropriate to resolve problems en-
6 countered by individuals and employers.

7 (e) PERSONNEL ACTIONS.—

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

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

13 (B) to evaluate and take personnel actions
14 (including dismissal) with respect to any em-
15 ployee of any local office of the Ombudsman.

16 (2) CONSULTATION.—The Ombudsman may
17 consult with the appropriate supervisory personnel of
18 the Bureau of Citizenship and Immigration Services
19 in carrying out the Ombudsman’s responsibilities
20 under this subsection.

21 (f) RESPONSIBILITIES OF BUREAU OF CITIZENSHIP
22 AND IMMIGRATION SERVICES.—The Assistant Attorney
23 General for Citizenship and Immigration Services shall es-
24 tablish procedures requiring a formal response to all rec-
25 ommendations submitted to such Assistant Attorney Gen-

1 eral by the Ombudsman within 3 months after submission
2 to such director.

3 (g) OPERATION OF LOCAL OFFICES.—

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

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

7 (B) may consult with the appropriate su-
8 pervisory personnel of the Bureau of Citizen-
9 ship and Immigration Services regarding the
10 daily operation of the local office of such om-
11 budsman;

12 (C) shall, at the initial meeting with any
13 individual or employer seeking the assistance of
14 such local office, notify such individual or em-
15 ployer that the local offices of the Ombudsman
16 operate independently of any other component
17 of the Department of Justice and report di-
18 rectly to the Congress through the Ombudsman;
19 and

20 (D) at the local ombudsman's discretion,
21 may determine not to disclose to the Bureau of
22 Citizenship and Immigration Services contact
23 with, or information provided by, such indi-
24 vidual or employer.

1 (2) MAINTENANCE OF INDEPENDENT COMMU-
2 NICATIONS.—Each local office of the Ombudsman
3 shall maintain a phone, facsimile, and other means
4 of electronic communication access, and a post office
5 address, that is separate from those maintained by
6 the Bureau of Citizenship and Immigration Services,
7 or any component of the Bureau of Citizenship and
8 Immigration Services.

9 **SEC. 423. PROFESSIONAL RESPONSIBILITY AND QUALITY**
10 **REVIEW.**

11 (a) IN GENERAL.—The Assistant Attorney General
12 for Citizenship and Immigration Services shall be respon-
13 sible for—

14 (1) conducting investigations of noncriminal al-
15 legations of misconduct, corruption, and fraud in-
16 volving any employee of the Bureau of Citizenship
17 and Immigration Services that are not subject to in-
18 vestigation by the Department of Justice Office of
19 the Inspector General;

20 (2) inspecting the operations of the Bureau of
21 Citizenship and Immigration Services and providing
22 assessments of the quality of the operations of such
23 bureau as a whole and each of its components; and

24 (3) providing an analysis of the management of
25 the Bureau of Citizenship and Immigration Services.

1 (b) SPECIAL CONSIDERATIONS.—In providing assess-
2 ments in accordance with subsection (a)(2) with respect
3 to a decision of the Bureau of Citizenship and Immigra-
4 tion Services, or any of its components, consideration shall
5 be given to—

6 (1) the accuracy of the findings of fact and con-
7 clusions of law used in rendering the decision;

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

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

12 **SEC. 424. EMPLOYEE DISCIPLINE.**

13 The Assistant Attorney General for Citizenship and
14 Immigration Services may, notwithstanding any other pro-
15 vision of law, impose disciplinary action, including termi-
16 nation of employment, pursuant to policies and procedures
17 applicable to employees of the Federal Bureau of Inves-
18 tigation, on any employee of the Bureau of Citizenship and
19 Immigration Services who willfully deceives the Congress
20 or agency leadership on any matter.

21 **SEC. 425. OFFICE OF IMMIGRATION STATISTICS WITHIN BU-**
22 **REAU OF JUSTICE STATISTICS.**

23 (a) IN GENERAL.—Part C of title I of the Omnibus
24 Crime Control and Safe Streets Act of 1968 (42 U.S.C.

1 3731 et seq.) is amended by adding at the end the fol-
2 lowing:

3 “OFFICE OF IMMIGRATION STATISTICS

4 “SEC. 305. (a) There is established within the Bu-
5 reau of Justice Statistics of the Department of Justice
6 an Office of Immigration Statistics (in this section re-
7 ferred to as the ‘Office’), which shall be headed by a Direc-
8 tor who shall be appointed by the Attorney General and
9 who shall report to the Director of Justice Statistics.

10 “(b) The Director of the Office shall be responsible
11 for the following:

12 “(1) Maintenance of all immigration statistical
13 information of the Bureau of Citizenship and Immi-
14 gration Services and the Executive Office for Immi-
15 gration Review. Such statistical information shall in-
16 clude information and statistics of the type con-
17 tained in the publication entitled ‘Statistical Year-
18 book of the Immigration and Naturalization Service’
19 prepared by the Immigration and Naturalization
20 Service (as in effect on the day prior to the effective
21 date specified in section 427 of the Homeland Secu-
22 rity Act of 2002), including region-by-region statis-
23 tics on the aggregate number of applications and pe-
24 titions filed by an alien (or filed on behalf of an
25 alien) and denied by such offices and bureaus, and

1 the reasons for such denials, disaggregated by cat-
2 egory of denial and application or petition type.

3 “(2) Establishment of standards of reliability
4 and validity for immigration statistics collected by
5 the Bureau of Citizenship and Immigration Services
6 and the Executive Office for Immigration Review.

7 “(c) The Bureau of Citizenship and Immigration
8 Services and the Executive Office for Immigration Review
9 shall provide statistical information to the Office of Immi-
10 gration Statistics from the operational data systems con-
11 trolled by the Bureau of Citizenship and Immigration
12 Services and the Executive Office for Immigration Review,
13 respectively, for the purpose of meeting the responsibilities
14 of the Director.”.

15 (b) TRANSFER OF FUNCTIONS.—There are trans-
16 ferred to the Office of Immigration Statistics established
17 under section 305 of the Omnibus Crime Control and Safe
18 Streets Act of 1968, as added by subsection (a), the func-
19 tions performed immediately before such transfer occurs
20 by the Statistics Branch of the Office of Policy and Plan-
21 ning of the Immigration and Naturalization Service with
22 respect to the following:

- 23 (1) Adjudications of immigrant visa petitions.
- 24 (2) Adjudications of naturalization petitions.

1 (3) Adjudications of asylum and refugee appli-
2 cations.

3 (4) Adjudications performed at service centers.

4 (5) All other adjudications performed by the
5 Immigration and Naturalization Service.

6 (c) CONFORMING AMENDMENTS.—Section 302(c) of
7 the Omnibus Crime Control and Safe Streets Act of 1968
8 (42 U.S.C. 3732(c)) is amended—

9 (1) by striking “and” at the end of paragraph
10 (22);

11 (2) by striking the period at the end of para-
12 graph (23) and inserting “; and”; and

13 (3) by adding at the end the following:

14 “(24) collect, maintain, compile, analyze, pub-
15 lish, and disseminate information and statistics in-
16 volving the functions of the Bureau of Citizenship
17 and Immigration Services and the Executive Office
18 for Immigration Review.”.

19 **SEC. 426. PRESERVATION OF ATTORNEY GENERAL’S AU-**
20 **THORITY.**

21 (a) IN GENERAL.—Any function for which this sub-
22 chapter vests responsibility in an official other than the
23 Attorney General, or which is transferred by this sub-
24 chapter to such an official, may, notwithstanding any pro-
25 vision of this subchapter, be performed by the Attorney

1 General, or the Attorney General's delegate, in lieu of such
2 official.

3 (b) REFERENCES.—In a case in which the Attorney
4 General performs a function described in subsection (a),
5 any reference in any other Federal law, Executive order,
6 rule, regulation, document, or delegation of authority to
7 the official otherwise responsible for the function is
8 deemed to refer to the Attorney General.

9 **SEC. 427. EFFECTIVE DATE.**

10 Notwithstanding section 4, this subchapter, and the
11 amendments made by this subchapter, shall take effect on
12 the date on which the transfer of functions specified under
13 section 411 takes effect.

14 **SEC. 428. TRANSITION.**

15 (a) REFERENCES.—With respect to any function
16 transferred by this subchapter to, and exercised on or
17 after the effective date specified in section 427 by, the As-
18 sistant Attorney General for Citizenship and Immigration
19 Services, any reference in any other Federal law, Execu-
20 tive order, rule, regulation, or delegation of authority, or
21 any document of or pertaining to a component of govern-
22 ment from which such function is transferred—

23 (1) to the head of such component is deemed to
24 refer to the Assistant Attorney General for Citizen-
25 ship and Immigration Services; or

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

3 (b) OTHER TRANSITION ISSUES.—

4 (1) EXERCISE OF AUTHORITIES.—Except as
5 otherwise provided by law, a Federal official to
6 whom a function is transferred by this subchapter
7 may, for purposes of performing the function, exer-
8 cise all authorities under any other provision of law
9 that were available with respect to the performance
10 of that function to the official responsible for the
11 performance of the function immediately before the
12 effective date specified in section 427.

13 (2) SAVINGS PROVISIONS.—Subsections (a), (b),
14 and (c) of section 812 shall apply to a transfer of
15 functions under this subchapter in the same manner
16 as such provisions apply to a transfer of functions
17 under this Act to the Department of Homeland Se-
18 curity.

19 (3) TRANSFER AND ALLOCATION OF APPRO-
20 PRIATIONS AND PERSONNEL.—The personnel of the
21 Department of Justice employed in connection with
22 the functions transferred by this subchapter (and
23 functions that the Attorney General determines are
24 properly related to the functions of the Bureau of
25 Citizenship and Immigration Services), and the as-

1 sets, liabilities, contracts, property, records, and un-
2 expended balance of appropriations, authorizations,
3 allocations, and other funds employed, held, used,
4 arising from, available to, or to be made available to,
5 the Immigration and Naturalization Service in con-
6 nection with the functions transferred by this sub-
7 chapter, subject to section 202 of the Budget and
8 Accounting Procedures Act of 1950, shall be trans-
9 ferred to the Assistant Attorney General for Citizen-
10 ship and Immigration Services for allocation to the
11 appropriate component of the Department of Jus-
12 tice. Unexpended funds transferred pursuant to this
13 paragraph shall be used only for the purposes for
14 which the funds were originally authorized and ap-
15 propriated. The Attorney General shall have the
16 right to adjust or realign transfers of funds and per-
17 sonnel effected pursuant to this subchapter for a pe-
18 riod of 2 years after the effective date specified in
19 section 427.

20 (4) AUTHORITIES OF ATTORNEY GENERAL.—
21 The Attorney General (or a delegate of the Attorney
22 General), at such time or times as the Attorney Gen-
23 eral (or the delegate) shall provide, may make such
24 determinations as may be necessary with regard to
25 the functions transferred by this subchapter, and

1 may make such additional incidental dispositions of
2 personnel, assets, liabilities, grants, contracts, prop-
3 erty, records, and unexpended balances of appropria-
4 tions, authorizations, allocations, and other funds
5 held, used, arising from, available to, or to be made
6 available in connection with such functions, as may
7 be necessary to carry out the provisions of this sub-
8 chapter. The Attorney General shall provide for such
9 further measures and dispositions as may be nec-
10 essary to effectuate the purposes of this subchapter.

11 **Subchapter B—Other Provisions**

12 **SEC. 431. FUNDING FOR CITIZENSHIP AND IMMIGRATION** 13 **SERVICES.**

14 (a) ESTABLISHMENT OF FEES FOR ADJUDICATION
15 AND NATURALIZATION SERVICES.—Section 286(m) of the
16 Immigration and Nationality Act (8 U.S.C. 1356(m)) is
17 amended by striking “services, including the costs of simi-
18 lar services provided without charge to asylum applicants
19 or other immigrants.” and inserting “services.”.

20 (b) AUTHORIZATION OF APPROPRIATIONS FOR REF-
21 UGEE AND ASYLUM ADJUDICATIONS.—There are author-
22 ized to be appropriated such sums as may be necessary
23 to carry out the provisions of sections 207 through 209
24 of the Immigration and Nationality Act (8 U.S.C. 1157–
25 1159). All funds appropriated under this subsection shall

1 be deposited into the Immigration Examinations Fee Ac-
2 count established under section 286(m) of the Immigra-
3 tion and Nationality Act (8 U.S.C. 1356(m)) and shall
4 remain available until expended.

5 **SEC. 432. BACKLOG ELIMINATION.**

6 Section 204(a)(1) of the Immigration Services and
7 Infrastructure Improvements Act of 2000 (8 U.S.C.
8 1573(a)(1)) is amended by striking “not later than one
9 year after the date of enactment of this Act;” and insert-
10 ing “1 year after the date of the enactment of the Home-
11 land Security Act of 2002;”.

12 **SEC. 433. REPORT ON IMPROVING IMMIGRATION SERVICES.**

13 (a) IN GENERAL.—The Attorney General, not later
14 than 1 year after the effective date of this Act, shall sub-
15 mit to the Committees on the Judiciary and Appropria-
16 tions of the United States House of Representatives and
17 of the Senate a report with a plan detailing how the Bu-
18 reau of Citizenship and Immigration Services, after the
19 transfer of functions specified in subchapter 1 takes effect,
20 will complete efficiently, fairly, and within a reasonable
21 time, the adjudications described in paragraphs (1)
22 through (5) of section 421(b).

23 (b) CONTENTS.—For each type of adjudication to be
24 undertaken by the Assistant Attorney General for Citizen-

1 ship and Immigration Services, the report shall include the
2 following:

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

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

8 (3) Any statutory modifications with respect to
9 the adjudication that the Attorney General considers
10 advisable.

11 (c) CONSULTATION.—In carrying out subsection (a),
12 the Attorney General shall consult with the Secretary of
13 State, the Secretary of Labor, the Assistant Secretary of
14 the Bureau of Border Security of the Department of
15 Homeland Security, and the Director of the Executive Of-
16 fice for Immigration Review to determine how to stream-
17 line and improve the process for applying for and making
18 adjudications described in section 421(b) and related proc-
19 esses.

20 **SEC. 434. REPORT ON RESPONDING TO FLUCTUATING**
21 **NEEDS.**

22 Not later than 30 days after the date of the enact-
23 ment of this Act, the Attorney General shall submit to
24 the Congress a report on changes in law, including
25 changes in authorizations of appropriations and in appro-

1 priations, that are needed to permit the Immigration and
2 Naturalization Service, and, after the transfer of functions
3 specified in subchapter 1 takes effect, the Bureau of Citi-
4 zenship and Immigration Services, to ensure a prompt and
5 timely response to emergent, unforeseen, or impending
6 changes in the number of applications for immigration
7 benefits, and otherwise to ensure the accommodation of
8 changing immigration service needs.

9 **SEC. 435. APPLICATION OF INTERNET-BASED TECH-**
10 **NOLOGIES.**

11 (a) **ESTABLISHMENT OF TRACKING SYSTEM.**—The
12 Attorney General, not later than 1 year after the effective
13 date of this Act, in consultation with the Technology Advi-
14 sory Committee established under subsection (c), shall es-
15 tablish an Internet-based system, that will permit a per-
16 son, employer, immigrant, or nonimmigrant who has fil-
17 ings with the Attorney General for any benefit under the
18 Immigration and Nationality Act (8 U.S.C. 1101 et seq.),
19 access to online information about the processing status
20 of the filing involved.

21 (b) **FEASIBILITY STUDY FOR ONLINE FILING AND**
22 **IMPROVED PROCESSING.**—

23 (1) **ONLINE FILING.**—The Attorney General, in
24 consultation with the Technology Advisory Com-
25 mittee established under subsection (c), shall con-

1 duct a feasibility study on the online filing of the fil-
2 ings described in subsection (a). The study shall in-
3 clude a review of computerization and technology of
4 the Immigration and Naturalization Service relating
5 to the immigration services and processing of filings
6 related to immigrant services. The study shall also
7 include an estimate of the timeframe and cost and
8 shall consider other factors in implementing such a
9 filing system, including the feasibility of fee payment
10 online.

11 (2) REPORT.—A report on the study under this
12 subsection shall be submitted to the Committees on
13 the Judiciary of the United States House of Rep-
14 resentatives and the Senate not later than 1 year
15 after the effective date of this Act.

16 (c) TECHNOLOGY ADVISORY COMMITTEE.—

17 (1) ESTABLISHMENT.—The Attorney General
18 shall establish, not later than 60 days after the ef-
19 fective date of this Act, an advisory committee (in
20 this section referred to as the “Technology Advisory
21 Committee”) to assist the Attorney General in—

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

24 (B) conducting the study under subsection

25 (b).

1 The Technology Advisory Committee shall be estab-
2 lished after consultation with the Committees on the
3 Judiciary of the United States House of Representa-
4 tives and the Senate.

5 (2) COMPOSITION.—The Technology Advisory
6 Committee shall be composed of representatives
7 from high technology companies capable of estab-
8 lishing and implementing the system in an expedi-
9 tious manner, and representatives of persons who
10 may use the tracking system described in subsection
11 (a) and the online filing system described in sub-
12 section (b)(1).

13 **SEC. 436. CHILDREN'S AFFAIRS.**

14 (a) TRANSFER OF FUNCTIONS.—There are trans-
15 ferred to the Director of the Office of Refugee Resettle-
16 ment of the Department of Health and Human Services
17 functions under the immigration laws of the United States
18 with respect to the care of unaccompanied alien children
19 that were vested by statute in, or performed by, the Com-
20 missioner of Immigration and Naturalization (or any offi-
21 cer, employee, or component of the Immigration and Nat-
22 uralization Service) immediately before the effective date
23 specified in subsection (d).

24 (b) FUNCTIONS.—

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

4 (A) coordinating and implementing the
5 care and placement of unaccompanied alien
6 children who are in Federal custody by reason
7 of their immigration status, including devel-
8 oping a plan to be submitted to the Congress
9 on how to ensure that qualified and inde-
10 pendent legal counsel is timely appointed to
11 represent the interests of each such child, con-
12 sistent with the law regarding appointment of
13 counsel that is in effect on the date of the en-
14 actment of this Act;

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

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

23 (D) implementing the placement deter-
24 minations;

1 (E) implementing policies with respect to
2 the care and placement of unaccompanied alien
3 children;

4 (F) identifying a sufficient number of
5 qualified individuals, entities, and facilities to
6 house unaccompanied alien children;

7 (G) overseeing the infrastructure and per-
8 sonnel of facilities in which unaccompanied
9 alien children reside;

10 (H) reuniting unaccompanied alien chil-
11 dren with a parent abroad in appropriate cases;

12 (I) compiling, updating, and publishing at
13 least annually a state-by-state list of profes-
14 sionals or other entities qualified to provide
15 guardian and attorney representation services
16 for unaccompanied alien children;

17 (J) maintaining statistical information and
18 other data on unaccompanied alien children for
19 whose care and placement the Director is re-
20 sponsible, which shall include—

21 (i) biographical information, such as a
22 child's name, gender, date of birth, country
23 of birth, and country of habitual residence;

1 (ii) the date on which the child came
2 into Federal custody by reason of his or
3 her immigration status;

4 (iii) information relating to the child's
5 placement, removal, or release from each
6 facility in which the child has resided;

7 (iv) in any case in which the child is
8 placed in detention or released, an expla-
9 nation relating to the detention or release;
10 and

11 (v) the disposition of any actions in
12 which the child is the subject;

13 (K) collecting and compiling statistical in-
14 formation from the Department of Justice, the
15 Department of Homeland Security, and the De-
16 partment of State on each department's actions
17 relating to unaccompanied alien children; and

18 (L) conducting investigations and inspec-
19 tions of facilities and other entities in which un-
20 accompanied alien children reside.

21 (2) COORDINATION WITH OTHER ENTITIES; NO
22 RELEASE ON OWN RECOGNIZANCE.—In making de-
23 terminations described in paragraph (1)(C), the Di-
24 rector of the Office of Refugee Resettlement—

1 (A) shall consult with appropriate juvenile
2 justice professionals, the Director of the Bureau
3 of Citizenship and Immigration Services of the
4 Department of Justice, and the Assistant Sec-
5 retary of the Bureau of Border Security of the
6 Department of Homeland Security to ensure
7 that such determinations ensure that unaccom-
8 panied alien children described in such
9 subparagraph—

10 (i) are likely to appear for all hearings
11 or proceedings in which they are involved;

12 (ii) are protected from smugglers,
13 traffickers, or others who might seek to
14 victimize or otherwise engage them in
15 criminal, harmful, or exploitive activity;
16 and

17 (iii) are placed in a setting in which
18 they not likely to pose a danger to them-
19 selves or others; and

20 (B) shall not release such children upon
21 their own recognizance.

22 (3) DUTIES WITH RESPECT TO FOSTER CARE.—

23 In carrying out the duties described in paragraph
24 (1)(G), the Director of the Office of Refugee Reset-
25 tlement is encouraged to use the refugee children

1 foster care system established pursuant to section
2 412(d) of the Immigration and Nationality Act (8
3 U.S.C. 1522(d)) for the placement of unaccom-
4 panied alien children.

5 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
6 tion may be construed to transfer the responsibility for
7 adjudicating benefit determinations under the Immigra-
8 tion and Nationality Act (8 U.S.C. 1101 et seq.) from the
9 authority of any official of the Department of Justice, the
10 Department of Homeland Security, or the Department of
11 State.

12 (d) EFFECTIVE DATE.—Notwithstanding section 4,
13 this section shall take effect on the date on which the
14 transfer of functions specified under section 411 takes ef-
15 fect.

16 (e) REFERENCES.—With respect to any function
17 transferred by this section, any reference in any other
18 Federal law, Executive order, rule, regulation, or delega-
19 tion of authority, or any document of or pertaining to a
20 component of government from which such function is
21 transferred—

22 (1) to the head of such component is deemed to
23 refer to the Director of the Office of Refugee Reset-
24 tlement; or

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

4 (f) OTHER TRANSITION ISSUES.—

5 (1) EXERCISE OF AUTHORITIES.—Except as
6 otherwise provided by law, a Federal official to
7 whom a function is transferred by this section may,
8 for purposes of performing the function, exercise all
9 authorities under any other provision of law that
10 were available with respect to the performance of
11 that function to the official responsible for the per-
12 formance of the function immediately before the ef-
13 fective date specified in subsection (d).

14 (2) SAVINGS PROVISIONS.—Subsections (a), (b),
15 and (c) of section 812 shall apply to a transfer of
16 functions under this section in the same manner as
17 such provisions apply to a transfer of functions
18 under this Act to the Department of Homeland Se-
19 curity.

20 (3) TRANSFER AND ALLOCATION OF APPRO-
21 PRIATIONS AND PERSONNEL.—The personnel of the
22 Department of Justice employed in connection with
23 the functions transferred by this section, and the as-
24 sets, liabilities, contracts, property, records, and un-
25 expended balance of appropriations, authorizations,

1 allocations, and other funds employed, held, used,
2 arising from, available to, or to be made available to,
3 the Immigration and Naturalization Service in con-
4 nection with the functions transferred by this sec-
5 tion, subject to section 202 of the Budget and Ac-
6 counting Procedures Act of 1950, shall be trans-
7 ferred to the Director of the Office of Refugee Re-
8 settlement for allocation to the appropriate compo-
9 nent of the Department of Health and Human Serv-
10 ices. Unexpended funds transferred pursuant to this
11 paragraph shall be used only for the purposes for
12 which the funds were originally authorized and ap-
13 propriated.

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

15 (1) the term “placement” means the placement
16 of an unaccompanied alien child in either a deten-
17 tion facility or an alternative to such a facility; and

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

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

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

23 (C) with respect to whom—

24 (i) there is no parent or legal guard-
25 ian in the United States; or

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

4 **CHAPTER 3—GENERAL PROVISIONS**

5 **SEC. 441. ABOLISHMENT OF INS.**

6 The Immigration and Naturalization Service of the
7 Department of Justice is abolished.

8 **SEC. 442. VOLUNTARY SEPARATION INCENTIVE PAYMENTS.**

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

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

13 (A) has completed at least 3 years of cur-
14 rent continuous service with 1 or more covered
15 entities; and

16 (B) is serving under an appointment with-
17 out time limitation;

18 but does not include any person under subpara-
19 graphs (A)–(G) of section 663(a)(2) of Public Law
20 104–208 (5 U.S.C. 5597 note);

21 (2) the term “covered entity” means—

22 (A) the Immigration and Naturalization
23 Service;

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

1 (C) the Bureau of Citizenship and Immi-
2 gration Services of the Department of Justice;
3 and

4 (3) the term “transfer date” means the date on
5 which the transfer of functions specified under sec-
6 tion 411 takes effect.

7 (b) STRATEGIC RESTRUCTURING PLAN.—Before the
8 Attorney General or the Secretary obligates any resources
9 for voluntary separation incentive payments under this
10 section, such official shall submit to the appropriate com-
11 mittees of Congress a strategic restructuring plan, which
12 shall include—

13 (1) an organizational chart depicting the cov-
14 ered entities after their restructuring pursuant to
15 this Act;

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

19 (3) the information specified in section
20 663(b)(2) of Public Law 104–208 (5 U.S.C. 5597
21 note).

22 As used in the preceding sentence, the “appropriate com-
23 mittees of Congress” are the Committees on Appropria-
24 tions, Government Reform, and the Judiciary of the
25 House of Representatives, and the Committees on Appro-

1 priations, Governmental Affairs, and the Judiciary of the
2 Senate.

3 (c) AUTHORITY.—The Attorney General and the Sec-
4 retary may, to the extent necessary to help carry out their
5 respective strategic restructuring plan described in sub-
6 section (b), make voluntary separation incentive payments
7 to employees. Any such payment—

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

10 (2) shall be paid from appropriations or funds
11 available for the payment of basic pay of the em-
12 ployee;

13 (3) shall be equal to the lesser of—

14 (A) the amount the employee would be en-
15 titled to receive under section 5595(c) of title 5,
16 United States Code; or

17 (B) an amount not to exceed \$25,000, as
18 determined by the Attorney General or the Sec-
19 retary;

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

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

4 (B) the 3-year period beginning on the
5 date of the enactment of this Act,

6 whichever occurs first;

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

10 (6) shall not be taken into account in deter-
11 mining the amount of any severance pay to which
12 the employee may be entitled under section 5595 of
13 title 5, United States Code, based on any other sepa-
14 ration.

15 (d) ADDITIONAL AGENCY CONTRIBUTIONS TO THE
16 RETIREMENT FUND.—

17 (1) IN GENERAL.—In addition to any payments
18 which it is otherwise required to make, the Depart-
19 ment of Justice and the Department of Homeland
20 Security shall, for each fiscal year with respect to
21 which it makes any voluntary separation incentive
22 payments under this section, remit to the Office of
23 Personnel Management for deposit in the Treasury
24 of the United States to the credit of the Civil Service

1 Retirement and Disability Fund the amount re-
2 quired under paragraph (2).

3 (2) AMOUNT REQUIRED.—The amount required
4 under this paragraph shall, for any fiscal year, be
5 the amount under subparagraph (A) or (B), which-
6 ever is greater.

7 (A) FIRST METHOD.—The amount under
8 this subparagraph shall, for any fiscal year, be
9 equal to the minimum amount necessary to off-
10 set the additional costs to the retirement sys-
11 tems under title 5, United States Code (payable
12 out of the Civil Service Retirement and Dis-
13 ability Fund) resulting from the voluntary sepa-
14 ration of the employees described in paragraph
15 (3), as determined under regulations of the Of-
16 fice of Personnel Management.

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

22 (3) COMPUTATIONS TO BE BASED ON SEPARA-
23 TIONS OCCURRING IN THE FISCAL YEAR IN-
24 VOLVED.—The employees described in this para-
25 graph are those employees who receive a voluntary

1 separation incentive payment under this section
2 based on their separating from service during the
3 fiscal year with respect to which the payment under
4 this subsection relates.

5 (4) FINAL BASIC PAY DEFINED.—In this sub-
6 section, the term “final basic pay” means, with re-
7 spect to an employee, the total amount of basic pay
8 which would be payable for a year of service by such
9 employee, computed using the employee’s final rate
10 of basic pay, and, if last serving on other than a
11 full-time basis, with appropriate adjustment there-
12 for.

13 (e) EFFECT OF SUBSEQUENT EMPLOYMENT WITH
14 THE GOVERNMENT.—An individual who receives a vol-
15 untary separation incentive payment under this section
16 and who, within 5 years after the date of the separation
17 on which the payment is based, accepts any compensated
18 employment with the Government or works for any agency
19 of the Government through a personal services contract,
20 shall be required to pay, prior to the individual’s first day
21 of employment, the entire amount of the incentive pay-
22 ment. Such payment shall be made to the covered entity
23 from which the individual separated or, if made on or after
24 the transfer date, to the Deputy Attorney General (for
25 transfer to the appropriate component of the Department

1 of Justice, if necessary) or the Under Secretary for Border
2 and Transportation Security (for transfer to the appro-
3 priate component of the Department of Homeland Secu-
4 rity, if necessary).

5 (f) EFFECT ON EMPLOYMENT LEVELS.—

6 (1) INTENDED EFFECT.—Voluntary separations
7 under this section are not intended to necessarily re-
8 duce the total number of full-time equivalent posi-
9 tions in any covered entity.

10 (2) USE OF VOLUNTARY SEPARATIONS.—A cov-
11 ered entity may redeploy or use the full-time equiva-
12 lent positions vacated by voluntary separations
13 under this section to make other positions available
14 to more critical locations or more critical occupa-
15 tions.

16 **SEC. 443. AUTHORITY TO CONDUCT A DEMONSTRATION**
17 **PROJECT RELATING TO DISCIPLINARY AC-**
18 **TION.**

19 (a) IN GENERAL.—The Attorney General and the
20 Secretary may each, during a period ending not later than
21 5 years after the date of the enactment of this Act, con-
22 duct a demonstration project for the purpose of deter-
23 mining whether one or more changes in the policies or pro-
24 cedures relating to methods for disciplining employees
25 would result in improved personnel management.

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

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

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

7 (c) PROCEDURES.—Under the demonstration
8 project—

9 (1) the use of alternative means of dispute reso-
10 lution (as defined in section 571 of title 5, United
11 States Code) shall be encouraged, whenever appro-
12 priate; and

13 (2) each covered entity under the jurisdiction of
14 the official conducting the project shall be required
15 to provide for the expeditious, fair, and independent
16 review of any action to which section 4303 or sub-
17 chapter II of chapter 75 of such title 5 would other-
18 wise apply (except an action described in section
19 7512(5) thereof).

20 (d) ACTIONS INVOLVING DISCRIMINATION.—Not-
21 withstanding any other provision of this section, if, in the
22 case of any matter described in section 7702(a)(1)(B) of
23 title 5, United States Code, there is no judicially review-
24 able action under the demonstration project within 120
25 days after the filing of an appeal or other formal request

1 for review (referred to in subsection (c)(2)), an employee
2 shall be entitled to file a civil action to the same extent
3 and in the same manner as provided in section 7702(e)(1)
4 of such title 5 (in the matter following subparagraph (C)
5 thereof).

6 (e) CERTAIN EMPLOYEES.—Employees shall not be
7 included within any project under this section if such em-
8 ployees are—

9 (1) neither managers nor supervisors; and

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

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

19 (f) REPORTS.—The General Accounting Office shall
20 prepare and submit to the Committees on Government Re-
21 form and the Judiciary of the House of Representatives
22 and the Committees on Governmental Affairs and the Ju-
23 diciary of the Senate periodic reports on any demonstra-
24 tion project conducted under this section, such reports to
25 be submitted after the second and fourth years of its oper-

1 ation. Upon request, the Attorney General or the Sec-
2 retary shall furnish such information as the General Ac-
3 counting Office may require to carry out this subsection.

4 (g) DEFINITION.—In this section, the term “covered
5 entity” has the meaning given such term in section
6 442(a)(2).

7 **SEC. 444. SENSE OF CONGRESS.**

8 It is the sense of the Congress that—

9 (1) the missions of the Bureau of Border Secu-
10 rity of the Department of Homeland Security and
11 the Bureau of Citizenship and Immigration Services
12 of the Department of Justice are equally important
13 and, accordingly, they each should be adequately
14 funded; and

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

19 **SEC. 445. REPORTS AND IMPLEMENTATION PLANS.**

20 (a) DIVISION OF FUNDS.—The Attorney General and
21 the Secretary, not later than 120 days after the effective
22 date of this Act, shall each submit to the Committees on
23 Appropriations and the Judiciary of the United States
24 House of Representatives and of the Senate a report on
25 the proposed division and transfer of funds, including un-

1 expended funds, appropriations, and fees, between the Bu-
2 reau of Citizenship and Immigration Services and the Bu-
3 reau of Border Security.

4 (b) DIVISION OF PERSONNEL.—The Attorney Gen-
5 eral and the Secretary, not later than 120 days after the
6 effective date of this Act, shall each submit to the Commit-
7 tees on Appropriations and the Judiciary of the United
8 States House of Representatives and of the Senate a re-
9 port on the proposed division of personnel between the Bu-
10 reau of Citizenship and Immigration Services and the Bu-
11 reau of Border Security.

12 (c) IMPLEMENTATION PLAN.—

13 (1) IN GENERAL.—The Attorney General and
14 the Secretary, not later than 120 days after the ef-
15 fective date of this Act, and every 6 months there-
16 after until the termination of fiscal year 2005, shall
17 each submit to the Committees on Appropriations
18 and the Judiciary of the United States House of
19 Representatives and of the Senate an implementa-
20 tion plan to carry out this Act.

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

1 (A) Organizational structure, including the
2 field structure.

3 (B) Chain of command.

4 (C) Procedures for interaction among such
5 bureaus.

6 (D) Fraud detection and investigation.

7 (E) The processing and handling of re-
8 moval proceedings, including expedited removal
9 and applications for relief from removal.

10 (F) Recommendations for conforming
11 amendments to the Immigration and Nation-
12 ality Act (8 U.S.C. 1101 et seq.).

13 (G) Establishment of a transition team.

14 (H) Methods to phase in the costs of sepa-
15 rating the administrative support systems of
16 the Immigration and Naturalization Service in
17 order to provide for separate administrative
18 support systems for the Bureau of Citizenship
19 and Immigration Services and the Bureau of
20 Border Security.

21 (d) COMPTROLLER GENERAL STUDIES AND RE-
22 PORTS.—

23 (1) STATUS REPORTS ON TRANSITION.—Not
24 later than 18 months after the date on which the
25 transfer of functions specified under section 411

1 takes effect, and every 6 months thereafter, until
2 full implementation of this subtitle has been com-
3 pleted, the Comptroller General of the United States
4 shall submit to the Committees on Appropriations
5 and on the Judiciary of the United States House of
6 Representatives and the Senate a report containing
7 the following:

8 (A) A determination of whether the trans-
9 fers of functions made by chapters 1 and 2
10 have been completed, and if a transfer of func-
11 tions has not taken place, identifying the rea-
12 sons why the transfer has not taken place.

13 (B) If the transfers of functions made by
14 chapters 1 and 2 have been completed, an iden-
15 tification of any issues that have arisen due to
16 the completed transfers.

17 (C) An identification of any issues that
18 may arise due to any future transfer of func-
19 tions.

20 (2) REPORT ON MANAGEMENT.—Not later than
21 4 years after the date on which the transfer of func-
22 tions specified under section 411 takes effect, the
23 Comptroller General of the United States shall sub-
24 mit to the Committees on Appropriations and on the
25 Judiciary of the United States House of Representa-

1 tives and the Senate a report, following a study, con-
2 taining the following:

3 (A) Determinations of whether the transfer
4 of functions from the Immigration and Natu-
5 ralization Service to the Bureau of Citizenship
6 and Immigration Services and the Bureau of
7 Border Security have improved, with respect to
8 each function transferred, the following:

9 (i) Operations.

10 (ii) Management, including account-
11 ability and communication.

12 (iii) Financial administration.

13 (iv) Recordkeeping, including informa-
14 tion management and technology.

15 (B) A statement of the reasons for the de-
16 terminations under subparagraph (A).

17 (C) Any recommendations for further im-
18 provements to the Bureau of Citizenship and
19 Immigration Services and the Bureau of Border
20 Security.

21 (3) REPORT ON FEES.—Not later than 1 year
22 after the date of the enactment of this Act, the
23 Comptroller General of the United States shall sub-
24 mit to the Committees on the Judiciary of the
25 House of Representatives and of the Senate a report

1 examining whether the Bureau of Citizenship and
2 Immigration Services is likely to derive sufficient
3 funds from fees to carry out its functions in the ab-
4 sence of appropriated funds.

5 **SEC. 446. IMMIGRATION FUNCTIONS.**

6 (a) ANNUAL REPORT.—

7 (1) IN GENERAL.—One year after the date of
8 the enactment of this Act, and each year thereafter,
9 the Attorney General shall submit a report to the
10 President, to the Committees on the Judiciary and
11 Government Reform of the United States House of
12 Representatives, and to the Committees on the Judi-
13 ciary and Government Affairs of the Senate, on the
14 impact the transfers made by this subtitle has had
15 on immigration functions.

16 (2) MATTER INCLUDED.—The report shall ad-
17 dress the following with respect to the period cov-
18 ered by the report:

19 (A) The aggregate number of all immigra-
20 tion applications and petitions received, and
21 processed, by the Department;

22 (B) Region-by-region statistics on the ag-
23 gregate number of immigration applications and
24 petitions filed by an alien (or filed on behalf of

1 an alien) and denied, disaggregated by category
2 of denial and application or petition type.

3 (C) The quantity of backlogged immigra-
4 tion applications and petitions that have been
5 processed, the aggregate number awaiting proc-
6 essing, and a detailed plan for eliminating the
7 backlog.

8 (D) The average processing period for im-
9 migration applications and petitions,
10 disaggregated by application or petition type.

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

15 (F) Plans to address grievances and im-
16 prove immigration services.

17 (G) Whether immigration-related fees were
18 used consistent with legal requirements regard-
19 ing such use.

20 (H) Whether immigration-related questions
21 conveyed by customers to the Department of
22 Justice (whether conveyed in person, by tele-
23 phone, or by means of the Internet) were an-
24 swered effectively and efficiently.

1 (b) SENSE OF THE CONGRESS REGARDING IMMIGRA-
2 TION SERVICES.—It is the sense of the Congress that—

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

7 (2) the Attorney General should undertake ef-
8 forts to guarantee that concerns regarding the qual-
9 ity and efficiency of immigration services are ad-
10 dressed after such effective date.

11 **Subtitle C—United States Customs** 12 **Service**

13 **SEC. 451. ESTABLISHMENT; COMMISSIONER OF CUSTOMS.**

14 (a) ESTABLISHMENT.—There is established in the
15 Department the United States Customs Service, under the
16 authority of the Under Secretary for Border and Trans-
17 portation Security, which shall be vested with those func-
18 tions set forth in section 457(7), and the personnel, assets,
19 and liabilities attributable to those functions.

20 (b) COMMISSIONER OF CUSTOMS.—

21 (1) IN GENERAL.—There shall be at the head
22 of the Customs Service a Commissioner of Customs,
23 who shall be appointed by the President, by and
24 with the advice and consent of the Senate.

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

3 “Commissioner of Customs, Department of the
4 Treasury”

5 and inserting

6 “Commissioner of Customs, Department of
7 Homeland Security.”.

8 (3) CONTINUATION IN OFFICE.—The individual
9 serving as the Commissioner of Customs on the day
10 before the effective date of this Act may serve as the
11 Commissioner of Customs on and after such effec-
12 tive date until a Commissioner of Customs is ap-
13 pointed under paragraph (1).

14 **SEC. 452. RETENTION OF CUSTOMS REVENUE FUNCTIONS**
15 **BY SECRETARY OF THE TREASURY.**

16 (a) RETENTION BY SECRETARY OF THE TREAS-
17 URY.—

18 (1) RETENTION OF AUTHORITY.—Notwith-
19 standing sections 401(5), 402(1), and 808(e)(2), au-
20 thority that was vested in the Secretary of the
21 Treasury by law before the effective date of this Act
22 under those provisions of law set forth in paragraph
23 (2) shall not be transferred to the Secretary by rea-
24 son of this Act, and on and after the effective date
25 of this Act, the Secretary of the Treasury may dele-

1 gate any such authority to the Secretary at the dis-
2 cretion of the Secretary of the Treasury. The Sec-
3 retary of the Treasury shall consult with the Sec-
4 retary regarding the exercise of any such authority
5 not delegated to the Secretary.

6 (2) STATUTES.—The provisions of law referred
7 to in paragraph (1) are the following: the Tariff Act
8 of 1930; section 249 of the Revised Statutes of the
9 United States (19 U.S.C. 3); section 2 of the Act of
10 March 4, 1923 (19 U.S.C. 6); section 13031 of the
11 Consolidated Omnibus Budget Reconciliation Act of
12 1985 (19 U.S.C. 58c); section 251 of the Revised
13 Statutes of the United States (19 U.S.C. 66); sec-
14 tion 1 of the Act of June 26, 1930 (19 U.S.C. 68);
15 the Foreign Trade Zones Act (19 U.S.C. 81a et
16 seq.); section 1 of the Act of March 2, 1911 (19
17 U.S.C. 198); the Trade Act of 1974; the Trade
18 Agreements Act of 1979; the North American Free
19 Trade Area Implementation Act; the Uruguay
20 Round Agreements Act; the Caribbean Basin Eco-
21 nomic Recovery Act; the Andean Trade Preference
22 Act; the African Growth and Opportunity Act; and
23 any other provision of law vesting customs revenue
24 functions in the Secretary of the Treasury.

1 (b) MAINTENANCE OF CUSTOMS REVENUE FUNC-
2 TIONS.—

3 (1) MAINTENANCE OF FUNCTIONS.—Notwith-
4 standing any other provision of this Act, the Sec-
5 retary may not consolidate, alter, discontinue, or di-
6 minish those functions described in paragraph (2)
7 performed by the United States Customs Service (as
8 established under section 451) on or after the effec-
9 tive date of this Act, reduce the staffing level, or the
10 compensation or benefits under title 5, United
11 States Code, of personnel attributable to such func-
12 tions, or reduce the resources attributable to such
13 functions, and the Secretary shall ensure that an ap-
14 propriate management structure is implemented to
15 carry out such functions.

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

1 (c) NEW PERSONNEL.—The Secretary of the Treas-
2 ury is authorized to appoint up to 20 new personnel to
3 work with personnel of the Department in performing cus-
4 toms revenue functions.

5 **SEC. 453. ESTABLISHMENT AND IMPLEMENTATION OF**
6 **COST ACCOUNTING SYSTEM; REPORTS.**

7 (a) ESTABLISHMENT AND IMPLEMENTATION.—

8 (1) IN GENERAL.—Not later than September
9 30, 2003, the Commissioner of Customs shall, in ac-
10 cordance with the audit of the Customs Service’s fis-
11 cal years 2000 and 1999 financial statements (as
12 contained in the report of the Office of the Inspector
13 General of the Department of the Treasury issued
14 on February 23, 2001), establish and implement a
15 cost accounting system for expenses incurred in the
16 operation of the Customs Service.

17 (2) ADDITIONAL REQUIREMENT.—The cost ac-
18 counting system described in paragraph (1) shall
19 provide for an identification of expenses based on
20 the type of operation, the port at which the oper-
21 ation took place, the amount of time spent on the
22 operation by personnel of the Customs Service, and
23 an identification of expenses based on any other ap-
24 propriate classification necessary to provide for an
25 accurate and complete accounting of the expenses.

1 (3) USE OF MERCHANDISE PROCESSING
2 FEES.—The cost accounting system described in
3 paragraph (1) shall provide for an identification of
4 all amounts expended pursuant to section
5 13031(f)(2) of the Consolidated Omnibus Budget
6 Reconciliation Act of 1985.

7 (b) REPORTS.—Beginning on the date of the enact-
8 ment of this Act and ending on the date on which the
9 cost accounting system described in subsection (a) is fully
10 implemented, the Commissioner of Customs shall prepare
11 and submit to the Committee on Ways and Means of the
12 House of Representatives and the Committee on Finance
13 of the Senate on a quarterly basis a report on the progress
14 of implementing the cost accounting system pursuant to
15 subsection (a).

16 **SEC. 454. PRESERVATION OF CUSTOMS FUNDS.**

17 Notwithstanding any other provision of this Act, no
18 funds available to the United States Customs Service or
19 collected under paragraphs (1) through (8) of section
20 13031(a) of the Consolidated Omnibus Budget Reconcili-
21 ation Act of 1985 may be transferred for use by any other
22 agency or office in the Department.

23 **SEC. 455. SEPARATE BUDGET REQUEST FOR CUSTOMS.**

24 The President shall include in each budget trans-
25 mitted to the Congress under section 1105 of title 31,

1 United States Code, a separate budget request for the
2 United States Customs Service.

3 **SEC. 456. PAYMENT OF DUTIES AND FEES.**

4 Section 505(a) of the Tariff Act of 1930 (19 U.S.C.
5 1505(a)) is amended—

6 (1) in the first sentence—

7 (A) by striking “Unless merchandise” and
8 inserting “Unless the entry of merchandise is
9 covered by an import activity summary state-
10 ment, or the merchandise”; and

11 (B) by inserting after “by regulation” the
12 following: “(but not to exceed 10 working days
13 after entry or release, whichever occurs first)”;
14 and

15 (2) by striking the second and third sentences
16 and inserting the following: “If an import activity
17 summary statement is filed, the importer of record
18 shall deposit estimated duties and fees for entries of
19 merchandise covered by the import activity summary
20 statement no later than the 15th day of the month
21 following the month in which the merchandise is en-
22 tered or released, whichever occurs first.”.

23 **SEC. 457. DEFINITION.**

24 In this subtitle, the term “customs revenue function”
25 means the following:

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

7 (2) Processing and denial of entry of persons,
8 baggage, cargo, and mail, with respect to the assess-
9 ment and collection of import duties.

10 (3) Detecting and apprehending persons en-
11 gaged in fraudulent practices designed to circumvent
12 the customs laws of the United States.

13 (4) Enforcing section 337 of the Tariff Act of
14 1930 and provisions relating to import quotas and
15 the marking of imported merchandise, and providing
16 Customs Recordations for copyrights, patents, and
17 trademarks.

18 (5) Collecting accurate import data for compila-
19 tion of international trade statistics.

20 (6) Enforcing reciprocal trade agreements.

21 (7) Functions performed by the following per-
22 sonnel, and associated support staff, of the United
23 States Customs Service on the day before the effec-
24 tive date of this Act: Import Specialists, Entry Spe-
25 cialists, Drawback Specialists, National Import Spe-

1 cialist, Fines and Penalties Specialists, attorneys of
2 the Office of Regulations and Rulings, Customs
3 Auditors, International Trade Specialists, Financial
4 Systems Specialists.

5 (8) Functions performed by the following of-
6 fices, with respect to any function described in any
7 of paragraphs (1) through (7), and associated sup-
8 port staff, of the United States Customs Service on
9 the day before the effective date of this Act: the Of-
10 fice of Information and Technology, the Office of
11 Laboratory Services, the Office of the Chief Counsel,
12 the Office of Congressional Affairs, the Office of
13 International Affairs, and the Office of Training and
14 Development.

15 **SEC. 458. GAO REPORT TO CONGRESS.**

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

21 **SEC. 459. ALLOCATION OF RESOURCES BY THE SECRETARY.**

22 (a) IN GENERAL.—The Secretary shall ensure that
23 adequate staffing is provided to assure that levels of cus-
24 toms revenue services provided on the day before the effec-
25 tive date of this Act shall continue to be provided.

1 (b) NOTIFICATION OF CONGRESS.—The Secretary
2 shall notify the Committee on Ways and Means of the
3 House of Representatives and the Committee on Finance
4 of the Senate at least 180 days prior to taking any action
5 which would—

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

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

13 (3) eliminate any port of entry.

14 (c) DEFINITION.—In this section, the term “customs
15 revenue services” means those customs revenue functions
16 described in paragraphs (1) through (6) and (8) of section
17 457.

18 **SEC. 460. REPORTS TO CONGRESS.**

19 The United States Customs Service shall, on and
20 after the effective date of this Act, continue to submit to
21 the Committee on Ways and Means of the House of Rep-
22 resentatives and the Committee on Finance of the Senate
23 any report required, on the day before such the effective
24 date of this Act, to be so submitted under any provision
25 of law.

1 **SEC. 461. CUSTOMS USER FEES.**

2 Section 13031(f) of the Consolidated Omnibus Budg-
3 et Reconciliation Act of 1985 (19 U.S.C. 58c(f)) is
4 amended—

5 (1) in paragraph (1), by striking subparagraph
6 (B) and inserting the following:

7 “(B) amounts deposited into the Customs
8 Commercial and Homeland Security Automa-
9 tion Account under paragraph (5).”;

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

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

15 “(5)(A) There is created within the general fund of
16 the Treasury a separate account that shall be known as
17 the ‘Customs Commercial and Homeland Security Auto-
18 mation Account’. In each of fiscal years 2003, 2004, and
19 2005 there shall be deposited into the Account from fees
20 collected under subsection (a)(9)(A), \$350,000,000.

21 “(B) There is authorized to be appropriated from the
22 Account in fiscal years 2003 through 2005 such amounts
23 as are available in that Account for the development, es-
24 tablishment, and implementation of the Automated Com-
25 mercial Environment computer system for the processing
26 of merchandise that is entered or released and for other

1 purposes related to the functions of the Department of
2 Homeland Security. Amounts appropriated pursuant to
3 this subparagraph are authorized to remain available until
4 expended.

5 “(C) In adjusting the fee imposed by subsection
6 (a)(9)(A) for fiscal year 2006, the Secretary of the Treas-
7 ury shall reduce the amount estimated to be collected in
8 fiscal year 2006 by the amount by which total fees depos-
9 ited to the Account during fiscal years 2003, 2004, and
10 2005 exceed total appropriations from that Account.”.

11 **TITLE V—EMERGENCY**
12 **PREPAREDNESS AND RESPONSE**

13 **SEC. 501. UNDER SECRETARY FOR EMERGENCY PREPARED-**
14 **NESS AND RESPONSE.**

15 The Secretary, acting through the Under Secretary
16 for Emergency Preparedness and Response, shall be re-
17 sponsible for the following:

18 (1) Helping to ensure the preparedness of
19 emergency response providers for terrorist attacks,
20 major disasters, and other emergencies.

21 (2) With respect to the Nuclear Incident Re-
22 sponse Team (regardless of whether it is operating
23 as an organizational unit of the Department pursu-
24 ant to this title)—

1 (A) establishing standards and certifying
2 when those standards have been met;

3 (B) conducting joint and other exercises
4 and training and evaluating performance; and

5 (C) providing funds to the Department of
6 Energy and the Environmental Protection
7 Agency, as appropriate, for homeland security
8 planning, exercises and training, and equip-
9 ment.

10 (3) Providing the Federal Government's re-
11 sponse to terrorist attacks and major disasters,
12 including—

13 (A) managing such response;

14 (B) directing the Domestic Emergency
15 Support Team, the Strategic National Stock-
16 pile, the National Disaster Medical System, and
17 (when operating as an organizational unit of
18 the Department pursuant to this title) the Nu-
19 clear Incident Response Team;

20 (C) overseeing the Metropolitan Medical
21 Response System; and

22 (D) coordinating other Federal response
23 resources in the event of a terrorist attack or
24 major disaster.

1 (4) Aiding the recovery from terrorist attacks
2 and major disasters, including interventions to treat
3 the psychological consequences of terrorist attacks or
4 major disasters, and provision for training for men-
5 tal health workers to allow them to respond effec-
6 tively to such attacks or disasters.

7 (5) Building a comprehensive national incident
8 management system with Federal, State, and local
9 government personnel, agencies, and authorities, to
10 respond to such attacks and disasters.

11 (6) Consolidating existing Federal Government
12 emergency response plans into a single, coordinated
13 national response plan.

14 (7) Developing comprehensive programs for de-
15 veloping interoperative communications technology,
16 and helping to ensure that emergency response pro-
17 viders acquire such technology.

18 **SEC. 502. FUNCTIONS TRANSFERRED.**

19 In accordance with title VIII, there shall be trans-
20 ferred to the Secretary the functions, personnel, assets,
21 and obligations of the following:

22 (1) The Federal Emergency Management Agen-
23 cy, including the functions of the Director of the
24 Federal Emergency Management Agency relating

1 thereto, and the Integrated Hazard Information Sys-
2 tem of the Department of Defense.

3 (2) The Office of Emergency Preparedness, the
4 National Disaster Medical System, and the Metro-
5 politan Medical Response System of the Department
6 of Health and Human Services, including the func-
7 tions of the Secretary of Health and Human Serv-
8 ices and the Assistant Secretary for Public Health
9 Emergency Preparedness relating thereto.

10 (3) The Strategic National Stockpile of the De-
11 partment of Health and Human Services, including
12 the functions of the Secretary of Health and Human
13 Services relating thereto.

14 **SEC. 503. NUCLEAR INCIDENT RESPONSE.**

15 (a) NUCLEAR INCIDENT RESPONSE TEAM.—At the
16 direction of the Secretary (in connection with an actual
17 or threatened terrorist attack, major disaster, or other
18 emergency within the United States), the Nuclear Incident
19 Response Team shall operate as an organizational unit of
20 the Department. While so operating, the Nuclear Incident
21 Response Team shall be subject to the direction, authority,
22 and control of the Secretary.

23 (b) CONSTRUCTION.—Nothing in this title shall be
24 understood to limit the ordinary responsibility of the Sec-
25 retary of Energy and the Administrator of the Environ-

1 mental Protection Agency for organizing, training, equip-
2 ping, and utilizing their respective entities in the Nuclear
3 Incident Response Team, or (subject to the provisions of
4 this title) from exercising direction, authority, and control
5 over them when they are not operating as a unit of the
6 Department.

7 (c) INDEMNIFICATION OF CONTRACTORS DURING
8 TRANSITION PERIOD.—(1) To the extent the Department
9 of Energy has a duty under a covered contract to indem-
10 nify an element of the Nuclear Incident Response Team,
11 the Department and the Department of Energy shall each
12 have that duty, whether or not the Nuclear Incident Re-
13 sponse Team is operating as an organizational element of
14 the Department.

15 (2) Paragraph (1) applies only to a contract in effect
16 on the date of the enactment of this Act, and not to any
17 extension or renewal of such contract carried out after the
18 date of the enactment of this Act.

19 **SEC. 504. DEFINITION.**

20 For purposes of this title, the term “Nuclear Incident
21 Response Team” means a resource that includes—

22 (1) those entities of the Department of Energy
23 that perform nuclear or radiological emergency sup-
24 port functions (including accident response, search
25 response, advisory, and technical operations func-

1 tions), radiation exposure functions at the medical
2 assistance facility known as the Radiation Emer-
3 gency Assistance/Training Site (REAC/TS), radio-
4 logical assistance functions, and related functions;
5 and

6 (2) those entities of the Environmental Protec-
7 tion Agency that perform radiological emergency re-
8 sponse and support functions.

9 **SEC. 505. CONDUCT OF CERTAIN PUBLIC-HEALTH RELATED**
10 **ACTIVITIES.**

11 (a) **IN GENERAL.**—With respect to all public health-
12 related activities to improve State, local, and hospital pre-
13 paredness and response to chemical, biological, radio-
14 logical, and nuclear and other emerging terrorist threats
15 carried out by the Department of Health and Human
16 Services (including the Public Health Service), the Sec-
17 retary of Health and Human Services shall set priorities
18 and preparedness goals and further develop a coordinated
19 strategy for such activities in collaboration with the Sec-
20 retary of Homeland Security.

21 (b) **EVALUATION OF PROGRESS.**—In carrying out
22 subsection (a), the Secretary of Health and Human Serv-
23 ices shall collaborate with the Secretary of Homeland Se-
24 curity in developing specific benchmarks and outcome

1 measurements for evaluating progress toward achieving
2 the priorities and goals described in such subsection.

3 **SEC. 506. ROLE OF FEDERAL EMERGENCY MANAGEMENT**
4 **AGENCY.**

5 (a) IN GENERAL.—The functions of the Federal
6 Emergency Management Agency include, but are not lim-
7 ited to, the following:

8 (1) All functions and authorities prescribed by
9 the Robert T. Stafford Disaster Relief and Emer-
10 gency Assistance Act (42 U.S.C. 5121 et seq.).

11 (2) Carrying out its mission to reduce the loss
12 of life and property and protect the Nation from all
13 hazards by leading and supporting the Nation in a
14 comprehensive, risk-based emergency management
15 program—

16 (A) of mitigation, by taking sustained ac-
17 tions to reduce or eliminate long-term risk to
18 people and property from hazards and their ef-
19 fects;

20 (B) of preparedness, by building the emer-
21 gency management profession to prepare effec-
22 tively for, mitigate against, respond to, and re-
23 cover from any hazard by planning, training,
24 and exercising;

1 (C) of response, by conducting emergency
2 operations to save lives and property through
3 positioning emergency equipment and supplies,
4 through evacuating potential victims, through
5 providing food, water, shelter, and medical care
6 to those in need, and through restoring critical
7 public services;

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

12 (E) of increased efficiencies, by coordi-
13 nating efforts relating to preparedness and re-
14 sponse activities to maximize efficiencies.

15 (b) FEDERAL RESPONSE PLAN.—

16 (1) ROLE OF FEMA.—Notwithstanding any
17 other provision of this Act, the Federal Emergency
18 Management Agency shall remain the lead agency
19 for the Federal Response Plan established under Ex-
20 ecutive Order 12148 (44 Fed. Reg. 43239) and Ex-
21 ecutive Order 12656 (53 Fed. Reg. 47491).

22 (2) REVISION OF RESPONSE PLAN.—Not later
23 than 60 days after the date of enactment of this
24 Act, the Director of the Federal Emergency Man-
25 agement Agency shall revise the Federal Response

1 Plan to reflect the establishment of and incorporate
2 the Department.

3 **SEC. 507. SENSE OF CONGRESS REGARDING FUNDING OF**
4 **TRAUMA SYSTEMS.**

5 It is the sense of the Congress that States should give
6 particular emphasis to developing and implementing the
7 trauma care and burn center care components of the State
8 plans for the provision of emergency medical services
9 using funds authorized through Public Law 107–188 for
10 grants to improve State, local, and hospital preparedness
11 for and response to bioterrorism and other public health
12 emergencies.

13 **TITLE VI—MANAGEMENT**

14 **SEC. 601. UNDER SECRETARY FOR MANAGEMENT.**

15 (a) IN GENERAL.—The Secretary, acting through the
16 Under Secretary for Management, shall be responsible for
17 the management and administration of the Department,
18 including the following:

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

21 (2) Procurement.

22 (3) Human resources and personnel.

23 (4) Information technology and communications
24 systems.

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

3 (6) Security for personnel, information tech-
4 nology and communications systems, facilities, prop-
5 erty, equipment, and other material resources.

6 (7) Identification and tracking of performance
7 measures relating to the responsibilities of the De-
8 partment.

9 (8) Grants and other assistance management
10 programs.

11 (9) The transition and reorganization process,
12 to ensure an efficient and orderly transfer of func-
13 tions and personnel to the Department, including
14 the development of a transition plan.

15 (10) The conduct of internal audits and man-
16 agement analyses of the programs and activities of
17 the Department.

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

20 (b) IMMIGRATION ENFORCEMENT.—

21 (1) IN GENERAL.—In addition to the respon-
22 sibilities described in subsection (a), the Under Sec-
23 retary for Management shall be responsible for the
24 following:

1 (A) Maintenance of all immigration statis-
2 tical information of the Bureau of Border Secu-
3 rity. Such statistical information shall include
4 information and statistics of the type contained
5 in the publication entitled “Statistical Yearbook
6 of the Immigration and Naturalization Service”
7 prepared by the Immigration and Naturaliza-
8 tion Service (as in effect immediately before the
9 date on which the transfer of functions specified
10 under section 411 takes effect), including re-
11 gion-by-region statistics on the aggregate num-
12 ber of applications and petitions filed by an
13 alien (or filed on behalf of an alien) and denied
14 by such bureau, and the reasons for such deni-
15 als, disaggregated by category of denial and ap-
16 plication or petition type.

17 (B) Establishment of standards of reli-
18 ability and validity for immigration statistics
19 collected by the Bureau of Border Security.

20 (2) TRANSFER OF FUNCTIONS.—In accordance
21 with title VIII, there shall be transferred to the
22 Under Secretary for Management all functions per-
23 formed immediately before such transfer occurs by
24 the Statistics Branch of the Office of Policy and

1 Planning of the Immigration and Naturalization
2 Service with respect to the following programs:

3 (A) The Border Patrol program.

4 (B) The detention and removal program.

5 (C) The intelligence program.

6 (D) The investigations program.

7 (E) The inspections program.

8 **SEC. 602. CHIEF FINANCIAL OFFICER.**

9 Notwithstanding section 902(a)(1) of title 31, United
10 States Code, the Chief Financial Officer shall report to
11 the Secretary, or to another official of the Department,
12 as the Secretary may direct.

13 **SEC. 603. CHIEF INFORMATION OFFICER.**

14 Notwithstanding section 3506(a)(2) of title 44,
15 United States Code, the Chief Information Officer shall
16 report to the Secretary, or to another official of the De-
17 partment, as the Secretary may direct.

18 **SEC. 604. ESTABLISHMENT OF OFFICE FOR CIVIL RIGHTS**

19 **AND CIVIL LIBERTIES.**

20 The Secretary shall establish in the Department an
21 Office for Civil Rights and Civil Liberties, the head of
22 which shall be the Director for Civil Rights and Civil Lib-
23 erties. The Director shall—

24 (1) review and assess information alleging
25 abuses of civil rights, civil liberties, and racial and

1 ethnic profiling by employees and officials of the De-
2 partment;

3 (2) make public through the Internet, radio, tel-
4 evision, or newspaper advertisements information on
5 the responsibilities and functions of, and how to con-
6 tact, the Office; and

7 (3) submit to the President of the Senate, the
8 Speaker of the House of Representatives, and the
9 appropriate committees and subcommittees of the
10 Congress on a semiannual basis a report on the im-
11 plementation of this section, including the use of
12 funds appropriated to carry out this section, and de-
13 tailing any allegations of abuses described in para-
14 graph (1) and any actions taken by the Department
15 in response to such allegations.

16 **SEC. 605. CONSOLIDATION AND CO-LOCATION OF OFFICES.**

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

20 (1) any regional offices or field offices of agen-
21 cies that are transferred to the Department under
22 this Act, if such officers are located in the same mu-
23 nicipality; and

24 (2) portions of regional and field offices of
25 other Federal agencies, to the extent such offices

1 perform functions that are transferred to the Sec-
2 retary under this Act.

3 **TITLE VII—MISCELLANEOUS**

4 **Subtitle A—Inspector General**

5 **SEC. 701. AUTHORITY OF THE SECRETARY.**

6 (a) IN GENERAL.—Notwithstanding the last two sen-
7 tences of section 3(a) of the Inspector General Act of
8 1978, the Inspector General shall be under the authority,
9 direction, and control of the Secretary with respect to au-
10 dits or investigations, or the issuance of subpoenas, that
11 require access to sensitive information concerning—

12 (1) intelligence, counterintelligence, or
13 counterterrorism matters;

14 (2) ongoing criminal investigations or pro-
15 ceedings;

16 (3) undercover operations;

17 (4) the identity of confidential sources, includ-
18 ing protected witnesses;

19 (5) other matters the disclosure of which would,
20 in the Secretary's judgment, constitute a serious
21 threat to the protection of any person or property
22 authorized protection by section 3056 of title 18,
23 United States Code, section 202 of title 3 of such
24 Code, or any provision of the Presidential Protection
25 Assistance Act of 1976; or

1 (6) other matters the disclosure of which would,
2 in the Secretary's judgment, constitute a serious
3 threat to national security.

4 (b) PROHIBITION OF CERTAIN INVESTIGATIONS.—

5 With respect to the information described in subsection
6 (a), the Secretary may prohibit the Inspector General
7 from carrying out or completing any audit or investiga-
8 tion, or from issuing any subpoena, after such Inspector
9 General has decided to initiate, carry out, or complete
10 such audit or investigation or to issue such subpoena, if
11 the Secretary determines that such prohibition is nec-
12 essary to prevent the disclosure of any information de-
13 scribed in subsection (a), to preserve the national security,
14 or to prevent a significant impairment to the interests of
15 the United States.

16 (c) NOTIFICATION REQUIRED.—If the Secretary ex-
17 ercises any power under subsection (a) or (b), the Sec-
18 retary shall notify the Inspector General of the Depart-
19 ment in writing stating the reasons for such exercise.
20 Within 30 days after receipt of any such notice, the In-
21 specter General shall transmit a copy of such notice and
22 a written response thereto that includes (1) a statement
23 as to whether the Inspector General agrees or disagrees
24 with such exercise and (2) the reasons for any disagree-
25 ment, to the President of the Senate and the Speaker of

1 the House of Representatives and to appropriate commit-
2 tees and subcommittees of the Congress.

3 (d) ACCESS TO INFORMATION BY CONGRESS.—The
4 exercise of authority by the Secretary described in sub-
5 section (b) should not be construed as limiting the right
6 of Congress or any committee of Congress to access any
7 information it seeks.

8 (e) OVERSIGHT RESPONSIBILITY—The Inspector
9 General Act of 1978 (5 U.S.C. App.) is amended by insert-
10 ing after section 8I the following:

11 “SPECIAL PROVISIONS CONCERNING THE DEPARTMENT
12 OF HOMELAND SECURITY

13 “SEC. 8J. Notwithstanding any other provision of
14 law, in carrying out the duties and responsibilities speci-
15 fied in this Act, the Inspector General of the Department
16 of Homeland Security shall have oversight responsibility
17 for the internal investigations performed by the Office of
18 Internal Affairs of the United States Customs Service and
19 the Office of Inspections of the United States Secret Serv-
20 ice. The head of each such office shall promptly report
21 to the Inspector General the significant activities being
22 carried out by such office.”.

1 **Subtitle B—United States Secret**
2 **Service**

3 **SEC. 711. FUNCTIONS TRANSFERRED.**

4 In accordance with title VIII, there shall be trans-
5 ferred to the Secretary the functions, personnel, assets,
6 and obligations of the United States Secret Service, which
7 shall be maintained as a distinct entity within the Depart-
8 ment, including the functions of the Secretary of the
9 Treasury relating thereto.

10 **Subtitle C—Critical Infrastructure**
11 **Information**

12 **SEC. 721. SHORT TITLE.**

13 This subtitle may be cited as the “Critical Infrastruc-
14 ture Information Act of 2002”.

15 **SEC. 722. DEFINITIONS.**

16 In this subtitle:

17 (1) AGENCY.—The term “agency” has the
18 meaning given it in section 551 of title 5, United
19 States Code.

20 (2) COVERED FEDERAL AGENCY.—The term
21 “covered Federal agency” means the Department of
22 Homeland Security.

23 (3) CRITICAL INFRASTRUCTURE INFORMA-
24 TION.—The term “critical infrastructure informa-
25 tion” means information not customarily in the pub-

1 lic domain and related to the security of critical in-
2 frastructure or protected systems—

3 (A) actual, potential, or threatened inter-
4 ference with, attack on, compromise of, or inca-
5 pacitation of critical infrastructure or protected
6 systems by either physical or computer-based
7 attack or other similar conduct (including the
8 misuse of or unauthorized access to all types of
9 communications and data transmission systems)
10 that violates Federal, State, or local law, harms
11 interstate commerce of the United States, or
12 threatens public health or safety;

13 (B) the ability of any critical infrastruc-
14 ture or protected system to resist such inter-
15 ference, compromise, or incapacitation, includ-
16 ing any planned or past assessment, projection,
17 or estimate of the vulnerability of critical infra-
18 structure or a protected system, including secu-
19 rity testing, risk evaluation thereto, risk man-
20 agement planning, or risk audit; or

21 (C) any planned or past operational prob-
22 lem or solution regarding critical infrastructure
23 or protected systems, including repair, recovery,
24 reconstruction, insurance, or continuity, to the

1 extent it is related to such interference, com-
2 promise, or incapacitation.

3 (4) CRITICAL INFRASTRUCTURE PROTECTION
4 PROGRAM.—The term “critical infrastructure protec-
5 tion program” means any component or bureau of a
6 covered Federal agency that has been designated by
7 the President or any agency head to receive critical
8 infrastructure information.

9 (5) INFORMATION SHARING AND ANALYSIS OR-
10 GANIZATION.—The term “Information Sharing and
11 Analysis Organization” means any formal or infor-
12 mal entity or collaboration created or employed by
13 public or private sector organizations, for purposes
14 of—

15 (A) gathering and analyzing critical infra-
16 structure information in order to better under-
17 stand security problems and interdependencies
18 related to critical infrastructure and protected
19 systems, so as to ensure the availability, integ-
20 rity, and reliability thereof;

21 (B) communicating or disclosing critical
22 infrastructure information to help prevent, de-
23 tect, mitigate, or recover from the effects of a
24 interference, compromise, or a incapacitation

1 problem related to critical infrastructure or pro-
2 tected systems; and

3 (C) voluntarily disseminating critical infra-
4 structure information to its members, State,
5 local, and Federal Governments, or any other
6 entities that may be of assistance in carrying
7 out the purposes specified in subparagraphs (A)
8 and (B).

9 (6) PROTECTED SYSTEM.—The term “protected
10 system”—

11 (A) means any service, physical or com-
12 puter-based system, process, or procedure that
13 directly or indirectly affects the viability of a fa-
14 cility of critical infrastructure; and

15 (B) includes any physical or computer-
16 based system, including a computer, computer
17 system, computer or communications network,
18 or any component hardware or element thereof,
19 software program, processing instructions, or
20 information or data in transmission or storage
21 therein, irrespective of the medium of trans-
22 mission or storage.

23 (7) VOLUNTARY.—

24 (A) IN GENERAL.—The term “voluntary”,
25 in the case of any submittal of critical infra-

1 structure information to a covered Federal
2 agency, means the submittal thereof in the ab-
3 sence of such agency’s exercise of legal author-
4 ity to compel access to or submission of such
5 information and may be accomplished by a sin-
6 gle entity or an Information Sharing and Anal-
7 ysis Organization on behalf of itself or its mem-
8 bers.

9 (B) EXCLUSIONS.—The term
10 “voluntary”—

11 (i) in the case of any action brought
12 under the securities laws as is defined in
13 section 3(a)(47) of the Securities Ex-
14 change Act of 1934 (15 U.S.C.
15 78c(a)(47))—

16 (I) does not include information
17 or statements contained in any docu-
18 ments or materials filed with the Se-
19 curities and Exchange Commission, or
20 with Federal banking regulators, pur-
21 suant to section 12(i) of the Securities
22 Exchange Act of 1934 (15 U.S.C.
23 781(I)); and

24 (II) with respect to the submittal
25 of critical infrastructure information,

1 does not include any disclosure or
2 writing that when made accompanied
3 the solicitation of an offer or a sale of
4 securities; and

5 (ii) does not include information or
6 statements submitted or relied upon as a
7 basis for making licensing or permitting
8 determinations, or during regulatory pro-
9 ceedings.

10 **SEC. 723. DESIGNATION OF CRITICAL INFRASTRUCTURE**
11 **PROTECTION PROGRAM.**

12 A critical infrastructure protection program may be
13 designated as such by one of the following:

14 (1) The President.

15 (2) The Secretary of Homeland Security.

16 **SEC. 724. PROTECTION OF VOLUNTARILY SHARED CRIT-**
17 **ICAL INFRASTRUCTURE INFORMATION.**

18 (a) PROTECTION.—

19 (1) IN GENERAL.—Notwithstanding any other
20 provision of law, critical infrastructure information
21 (including the identity of the submitting person or
22 entity) that is voluntarily submitted to a covered
23 Federal agency for use by that agency regarding the
24 security of critical infrastructure and protected sys-
25 tems, if analysis, warning, interdependency study,

1 recovery, reconstitution, or other informational pur-
2 pose, when accompanied by an express statement
3 specified in paragraph (2)—

4 (A) shall be exempt from disclosure under
5 section 552 of title 5, United States Code (com-
6 monly referred to as the Freedom of Informa-
7 tion Act);

8 (B) shall not be subject to any agency
9 rules or judicial doctrine regarding ex parte
10 communications with a decision making official;

11 (C) shall not, without the written consent
12 of the person or entity submitting such infor-
13 mation, be used directly by such agency, any
14 other Federal, State, or local authority, or any
15 third party, in any civil action arising under
16 Federal or State law if such information is sub-
17 mitted in good faith;

18 (D) shall not, without the written consent
19 of the person or entity submitting such infor-
20 mation, be used or disclosed by any officer or
21 employee of the United States for purposes
22 other than the purposes of this subtitle,
23 except—

24 (i) in furtherance of an investigation
25 or the prosecution of a criminal act; or

1 (ii) when disclosure of the information
2 would be—

3 (I) to either House of Congress,
4 or to the extent of matter within its
5 jurisdiction, any committee or sub-
6 committee thereof, any joint com-
7 mittee thereof or subcommittee of any
8 such joint committee; or

9 (II) to the Comptroller General,
10 or any authorized representative of
11 the Comptroller General, in the course
12 of the performance of the duties of
13 the General Accounting Office.

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

16 (i) be made available pursuant to any
17 State or local law requiring disclosure of
18 information or records;

19 (ii) otherwise be disclosed or distrib-
20 uted to any party by said State or local
21 government or government agency without
22 the written consent of the person or entity
23 submitting such information; or

24 (iii) be used other than for the pur-
25 pose of protecting critical infrastructure or

1 protected systems, or in furtherance of an
2 investigation or the prosecution of a crimi-
3 nal act; and

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

7 (2) EXPRESS STATEMENT.—For purposes of
8 paragraph (1), the term “express statement”, with
9 respect to information or records, means—

10 (A) in the case of written information or
11 records, a written marking on the information
12 or records substantially similar to the following:
13 “This information is voluntarily submitted to
14 the Federal Government in expectation of pro-
15 tection from disclosure as provided by the provi-
16 sions of the Critical Infrastructure Information
17 Act of 2002.”; or

18 (B) in the case of oral information, a simi-
19 lar written statement submitted within a rea-
20 sonable period following the oral communica-
21 tion.

22 (b) LIMITATION.—No communication of critical in-
23 frastructure information to a covered Federal agency
24 made pursuant to this subtitle shall be considered to be

1 an action subject to the requirements of the Federal Advi-
2 sory Committee Act (5 U.S.C. App. 2).

3 (c) INDEPENDENTLY OBTAINED INFORMATION.—

4 Nothing in this section shall be construed to limit or other-
5 wise affect the ability of a State, local, or Federal Govern-
6 ment entity, agency, or authority, or any third party,
7 under applicable law, to obtain critical infrastructure in-
8 formation in a manner not covered by subsection (a), in-
9 cluding any information lawfully and properly disclosed
10 generally or broadly to the public and to use such informa-
11 tion in any manner permitted by law.

12 (d) TREATMENT OF VOLUNTARY SUBMITTAL OF IN-
13 FORMATION.—The voluntary submittal to the Government
14 of information or records that are protected from disclo-
15 sure by this subtitle shall not be construed to constitute
16 compliance with any requirement to submit such informa-
17 tion to a Federal agency under any other provision of law.

18 (e) PROCEDURES.—

19 (1) IN GENERAL.—The Secretary of the De-
20 partment of Homeland Security shall, in consulta-
21 tion with appropriate representatives of the National
22 Security Council and the Office of Science and Tech-
23 nology Policy, establish uniform procedures for the
24 receipt, care, and storage by Federal agencies of
25 critical infrastructure information that is voluntarily

1 submitted to the Government. The procedures shall
2 be established not later than 90 days after the date
3 of the enactment of this subtitle.

4 (2) ELEMENTS.—The procedures established
5 under paragraph (1) shall include mechanisms
6 regarding—

7 (A) the acknowledgement of receipt by
8 Federal agencies of critical infrastructure infor-
9 mation that is voluntarily submitted to the Gov-
10 ernment;

11 (B) the maintenance of the identification
12 of such information as voluntarily submitted to
13 the Government for purposes of and subject to
14 the provisions of this subtitle;

15 (C) the care and storage of such informa-
16 tion; and

17 (D) the protection and maintenance of the
18 confidentiality of such information so as to per-
19 mit the sharing of such information within the
20 Federal Government and with State and local
21 governments, and the issuance of notices and
22 warnings related to the protection of critical in-
23 frastructure and protected systems, in such
24 manner as to protect from public disclosure the
25 identity of the submitting person or entity, or

1 information that is proprietary, business sen-
2 sitive, relates specifically to the submitting per-
3 son or entity, and is otherwise not appropriately
4 in the public domain.

5 (f) PENALTIES.—Whoever, being an officer or em-
6 ployee of the United States or of any department or agen-
7 cy thereof, knowingly publishes, divulges, discloses, or
8 makes known in any manner or to any extent not author-
9 ized by law, any critical infrastructure information pro-
10 tected from disclosure by this subtitle coming to him in
11 the course of this employment or official duties or by rea-
12 son of any examination or investigation made by, or re-
13 turn, report, or record made to or filed with, such depart-
14 ment or agency or officer or employee thereof, shall be
15 fined under title 18 of the United States Code, imprisoned
16 not more than one year, or both, and shall be removed
17 from office or employment.

18 (g) AUTHORITY TO ISSUE WARNINGS.—The Federal
19 Government may provide advisories, alerts, and warnings
20 to relevant companies, targeted sectors, other govern-
21 mental entities, or the general public regarding potential
22 threats to critical infrastructure as appropriate. In issuing
23 a warning, the Federal Government shall take appropriate
24 actions to protect from disclosure—

1 (1) the source of any voluntarily submitted crit-
2 ical infrastructure information that forms the basis
3 for the warning; or

4 (2) information that is proprietary, business
5 sensitive, relates specifically to the submitting per-
6 son or entity, or is otherwise not appropriately in
7 the public domain.

8 (h) **AUTHORITY TO DELEGATE.**—The President may
9 delegate authority to a critical infrastructure protection
10 program, designated under subsection (e), to enter into
11 a voluntary agreement to promote critical infrastructure
12 security, including with any Information Sharing and
13 Analysis Organization, or a plan of action as otherwise
14 defined in section 708 of the Defense Production Act of
15 1950 (50 U.S.C. App. 2158).

16 **SEC. 725. NO PRIVATE RIGHT OF ACTION.**

17 Nothing in this subtitle may be construed to create
18 a private right of action for enforcement of any provision
19 of this Act.

20 **Subtitle D—Acquisitions**

21 **SEC. 731. RESEARCH AND DEVELOPMENT PROJECTS.**

22 (a) **AUTHORITY.**—During the five-year period fol-
23 lowing the effective date of this Act, the Secretary may
24 carry out a pilot program under which the Secretary may
25 exercise the following authorities:

1 (1)(A) In carrying out basic, applied, and ad-
2 vanced research and development projects for re-
3 sponse to existing or emerging terrorist threats, the
4 Secretary may exercise the same authority (subject
5 to the same limitations and conditions) with respect
6 to such research and projects as the Secretary of
7 Defense may exercise under section 2371 of title 10,
8 United States Code (except for subsections (b) and
9 (f) of such section), after making a determination
10 that—

11 (i) the use of a contract, grant, or coopera-
12 tive agreement for such projects is not feasible
13 or appropriate; and

14 (ii) use of other authority to waive Federal
15 procurement laws or regulations would not be
16 feasible or appropriate to accomplish such
17 projects.

18 (B) The annual report required under sub-
19 section (h) of such section 2371, as applied to the
20 Secretary by this paragraph, shall be submitted to
21 the President of the Senate and the Speaker of the
22 House of Representatives.

23 (2)(A) Under the authority of paragraph (1)
24 and subject to the limitations of such paragraph, the
25 Secretary may carry out prototype projects, in ac-

1 cordance with the requirements and conditions pro-
2 vided for carrying out prototype projects under sec-
3 tion 845 of the National Defense Authorization Act
4 for Fiscal Year 1994 (Public Law 103–160; 10
5 U.S.C. 2371 note).

6 (B) In applying the authorities of such section
7 845—

8 (i) subsection (c) thereof shall apply with
9 respect to prototype projects under this para-
10 graph, except that in applying such subsection
11 any reference in such subsection to the Comp-
12 troller General shall be deemed to refer to the
13 Comptroller General and the Inspector General
14 of the Department; and

15 (ii) the Secretary shall perform the func-
16 tions of the Secretary of Defense under sub-
17 section (d) thereof.

18 (b) REPORT.—Not later than one year after the effec-
19 tive date of this Act, and annually thereafter, the Comp-
20 troller General shall report to the Committee on Govern-
21 ment Reform of the House of Representatives and the
22 Committee on Governmental Affairs of the Senate on—

23 (1) whether use of the authorities described in
24 subsection (a) attracts nontraditional Government

1 contractors and results in the acquisition of needed
2 technologies; and

3 (2) if such authorities were to be made perma-
4 nent, whether additional safeguards are needed with
5 respect to the use of such authorities.

6 (c) DEFINITION OF NONTRADITIONAL GOVERNMENT
7 CONTRACTOR.—In this section, the term “nontraditional
8 Government contractor” has the same meaning as the
9 term “nontraditional defense contractor” as defined in
10 section 845(e) of the National Defense Authorization Act
11 for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C.
12 2371 note).

13 **SEC. 732. PERSONAL SERVICES.**

14 The Secretary—

15 (1) may procure the temporary or intermittent
16 services of experts or consultants (or organizations
17 thereof) in accordance with section 3109 of title 5,
18 United States Code; and

19 (2) may, whenever necessary due to an urgent
20 homeland security need, procure temporary (not to
21 exceed 1 year) or intermittent personal services, in-
22 cluding the services of experts or consultants (or or-
23 ganizations thereof), without regard to the pay limi-
24 tations of such section 3109.

1 **SEC. 733. SPECIAL STREAMLINED ACQUISITION AUTHOR-**
2 **ITY.**

3 (a) **AUTHORITY.**—(1) The Secretary may use the au-
4 thorities set forth in this section with respect to any pro-
5 curement made during the period beginning on the effec-
6 tive date of this Act and ending September 30, 2007, if
7 the Secretary determines in writing that the mission of
8 the Department (as described in section 101) would be
9 seriously impaired without the use of such authorities.

10 (2) The authority to make the determination de-
11 scribed in paragraph (1) may not be delegated by the Sec-
12 retary to an officer of the Department who is not ap-
13 pointed by the President with the advice and consent of
14 the Senate.

15 (3) Not later than the date that is seven days after
16 the date of any determination under paragraph (1), the
17 Secretary shall submit to the Committee on Government
18 Reform of the House of Representatives and the Com-
19 mittee on Governmental Affairs of the Senate—

20 (A) notification of such determination; and

21 (B) the justification for such determination.

22 (b) **INCREASED MICRO-PURCHASE THRESHOLD FOR**
23 **CERTAIN PROCUREMENTS.**—(1) The Secretary may des-
24 ignate certain employees of the Department to make pro-
25 curements described in subsection (a) for which in the ad-
26 ministration of section 32 of the Office of Federal Pro-

1 curement Policy Act (41 U.S.C. 428) the amount specified
2 in subsections (c), (d), and (f) of such section 32 shall
3 be deemed to be \$5,000.

4 (2) The number of employees designated under para-
5 graph (1) shall be—

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

11 (B) sufficient to ensure the geographic dispersal
12 of the availability of the use of the procurement au-
13 thority under such paragraph at locations reasonably
14 considered to be potential terrorist targets; and

15 (C) sufficiently limited to allow for the careful
16 monitoring of employees designated under such
17 paragraph.

18 (3) Procurements made under the authority of this
19 subsection shall be subject to review by a designated su-
20 pervisor on not less than a monthly basis. The supervisor
21 responsible for the review shall be responsible for no more
22 than 7 employees making procurements under this sub-
23 section.

24 (c) SIMPLIFIED ACQUISITION PROCEDURES.—(1)
25 With respect to a procurement described in subsection (a),

1 the Secretary may deem the simplified acquisition thresh-
2 old referred to in section 4(11) of the Office of Federal
3 Procurement Policy Act (41 U.S.C. 403(11)) to be
4 \$175,000.

5 (2) Section 18(c)(1) of the Office of Federal Procure-
6 ment Policy Act is amended—

7 (A) by striking “or” at the end of subparagraph
8 (F);

9 (B) by striking the period at the end of sub-
10 paragraph (G) and inserting “; or”; and

11 (C) by adding at the end the following new sub-
12 paragraph:

13 “(H) the procurement is by the Secretary of
14 Homeland Security pursuant to the special proce-
15 dures provided in section 733(c) of the Homeland
16 Security Act of 2002.”.

17 (d) APPLICATION OF CERTAIN COMMERCIAL ITEMS
18 AUTHORITIES.—(1) With respect to a procurement de-
19 scribed in subsection (a), the Secretary may deem any
20 item or service to be a commercial item for the purpose
21 of Federal procurement laws.

22 (2) The \$5,000,000 limitation provided in section
23 31(a)(2) of the Office of Federal Procurement Policy Act
24 (41 U.S.C. 427(a)(2)) and section 303(g)(1)(B) of the
25 Federal Property and Administrative Services Act of 1949

1 (41 U.S.C. 253(g)(1)(B)) shall be deemed to be
2 \$7,500,000 for purposes of property or services under the
3 authority of this subsection.

4 (3) Authority under a provision of law referred to in
5 paragraph (2) that expires under section 4202(e) of the
6 Clinger-Cohen Act of 1996 (divisions D and E of Public
7 Law 104–106; 10 U.S.C. 2304 note) shall, notwith-
8 standing such section, continue to apply for a procurement
9 described in subsection (a).

10 (e) REPORT.—Not later than 180 days after the end
11 of fiscal year 2005, the Comptroller General shall submit
12 to the Committee on Governmental Affairs of the Senate
13 and the Committee on Government Reform of the House
14 of Representatives a report on the use of the authorities
15 provided in this section. The report shall contain the fol-
16 lowing:

17 (1) An assessment of the extent to which prop-
18 erty and services acquired using authorities provided
19 under this section contributed to the capacity of the
20 Federal workforce to facilitate the mission of the
21 Department as described in section 101.

22 (2) An assessment of the extent to which prices
23 for property and services acquired using authorities
24 provided under this section reflected the best value.

1 (3) The number of employees designated by
2 each executive agency under subsection (b)(1).

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

7 (5) Any recommendations of the Comptroller
8 General for improving the effectiveness of the imple-
9 mentation of the provisions of this section.

10 **SEC. 734. PROCUREMENTS FROM SMALL BUSINESSES.**

11 (a) OFFICE OF SMALL AND DISADVANTAGED BUSI-
12 NESS UTILIZATION.—There is established in the Depart-
13 ment an office to be known as the “Office of Small and
14 Disadvantaged Business Utilization”. The management of
15 such office shall be vested in the manner described in sec-
16 tion 15(k) of the Small Business Act (15 U.S.C. 644(k))
17 and shall carry out the functions described in such section.

18 (b) SMALL BUSINESS PROCUREMENT GOALS.—

19 (1) IN GENERAL.—The Secretary shall annually
20 establish goals for the participation by small busi-
21 ness concerns, by small business concerns owned and
22 controlled by service-disabled veterans, by qualified
23 HUBZone small business concerns, by small busi-
24 ness concerns owned and controlled by socially and
25 economically disadvantaged individuals, and by small

1 business concerns owned and controlled by women
2 (as such terms are defined pursuant to the Small
3 Business Act (15 U.S.C. 631 et seq.) and relevant
4 regulations promulgated thereunder) in procurement
5 contracts of the Department.

6 (2) DEPARTMENT GOALS NOT LESS THAN GOV-
7 ERNMENT-WIDE GOALS.—Notwithstanding section
8 15(g) of the Small Business Act (15 U.S.C. 644(g)),
9 each goal established under paragraph (1) shall be
10 equal to or greater than the corresponding Govern-
11 ment-wide goal established by the President under
12 section 15(g)(1) of the Small Business Act (15
13 U.S.C. 644(g)(1)).

14 (3) INCENTIVE FOR GOAL ACHIEVEMENT.—
15 Achievement of the goals established under para-
16 graph (1) shall be an element in the performance
17 standards for employees of the Department who
18 have the authority and responsibility for achieving
19 such goals.

20 **SEC. 735. PROHIBITION ON CONTRACTING WITH COR-**
21 **PORATE EXPATRIATES.**

22 (a) IN GENERAL.—The Secretary may not enter into
23 any contract with a subsidiary of a publicly traded cor-
24 poration if the corporation is incorporated in a tax haven

1 country but the United States is the principal market for
2 the public trading of the corporation's stock.

3 (b) TAX HAVEN COUNTRY DEFINED.—For purposes
4 of subsection (a), the term “tax haven country” means
5 each of the following: Barbados, Bermuda, British Virgin
6 Islands, Cayman Islands, Commonwealth of the Bahamas,
7 Cyprus, Gibraltar, Isle of Man, the Principality of
8 Monaco, and the Republic of the Seychelles.

9 (c) WAIVER.—The President may waive subsection
10 (a) with respect to any specific contract if the President
11 certifies to the Congress that the waiver is required in the
12 interest of national security.

13 **Subtitle E—Property**

14 **SEC. 741. DEPARTMENT HEADQUARTERS.**

15 (a) IN GENERAL.—Subject to the requirements of the
16 Public Buildings Act of 1959 (40 U.S.C. 601 et seq.), the
17 Administrator of General Services shall construct a public
18 building to serve as the headquarters for the Department.

19 (b) LOCATION AND CONSTRUCTION STANDARDS.—
20 The headquarters facility shall be constructed to such
21 standards and specifications and at such a location as the
22 Administrator of General Services decides. In selecting a
23 site for the headquarters facility, the Administrator shall
24 give preference to parcels of land that are federally owned.

1 (c) USE OF HEADQUARTERS FACILITY.—The Admin-
2 istrator of General Services shall make the headquarter
3 facility, as well as other Government-owned or leased fa-
4 cilities, available to the Secretary pursuant to the Admin-
5 istrator’s authorities under section 210 of the Federal
6 Property and Administrative Services Act of 1949 (40
7 U.S.C. 490 et seq.) and there is authorized to be appro-
8 priated to the Secretary such amounts as may be nec-
9 essary to pay the annual charges for General Services Ad-
10 ministration furnished space and services.

11 **Subtitle F—Support Anti-terrorism**
12 **by Fostering Effective Tech-**
13 **nologies Act of 2002 (the SAFE-**
14 **TY Act)**

15 **SEC. 751. SHORT TITLE.**

16 This subtitle may be cited as the “Support Anti-ter-
17 rorism by Fostering Effective Technologies Act of 2002”
18 or the “SAFETY Act”.

19 **SEC. 752. ADMINISTRATION.**

20 (a) IN GENERAL.—The Secretary shall be responsible
21 for the administration of this subtitle.

22 (b) DESIGNATION OF QUALIFIED ANTI-TERRORISM
23 TECHNOLOGIES.—The Secretary may designate anti-ter-
24 rorism technologies that qualify for protection under the
25 system of risk management set forth in this subtitle in

1 accordance with criteria that shall include, but not be lim-
2 ited to, the following:

3 (1) Prior United States government use or
4 demonstrated substantial utility and effectiveness.

5 (2) Availability of the technology for immediate
6 deployment in public and private settings.

7 (3) Existence of extraordinarily large or ex-
8 traordinarily unquantifiable potential third party li-
9 ability risk exposure to the Seller or other provider
10 of such anti-terrorism technology.

11 (4) Substantial likelihood that such anti-ter-
12 rorism technology will not be deployed unless protec-
13 tions under the system of risk management provided
14 under this subtitle are extended.

15 (5) Magnitude of risk exposure to the public if
16 such anti-terrorism technology is not deployed.

17 (6) Evaluation of all scientific studies that can
18 be feasibly conducted in order to assess the capa-
19 bility of the technology to substantially reduce risks
20 of harm.

21 (7) Anti-terrorism technology that would be ef-
22 fective in facilitating the defense against acts of ter-
23 rorism.

24 (c) REGULATIONS.—The Secretary may issue such
25 regulations, after notice and comment in accordance with

1 section 553 of title 5, United States, Code, as may be nec-
2 essary to carry out this subtitle.

3 **SEC. 753. LITIGATION MANAGEMENT.**

4 (a) FEDERAL CAUSE OF ACTION.—(1) There shall
5 exist a Federal cause of action for claims arising out of,
6 relating to, or resulting from an act of terrorism when
7 qualified anti-terrorism technologies have been deployed in
8 defense against such act and such claims result or may
9 result in loss to the Seller. The substantive law for deci-
10 sion in any such action shall be derived from the law, in-
11 cluding choice of law principles, of the State in which such
12 acts of terrorism occurred, unless such law is inconsistent
13 with or preempted by Federal law.

14 (2) Such appropriate district court of the United
15 States shall have original and exclusive jurisdiction over
16 all actions for any claim for loss of property, personal in-
17 jury, or death arising out of, relating to, or resulting from
18 an act of terrorism when qualified anti-terrorism tech-
19 nologies have been deployed in defense against such act
20 and such claims result or may result in loss to the Seller.

21 (b) SPECIAL RULES.—In an action brought under
22 this section for damages the following provisions apply:

23 (1) No punitive damages intended to punish or
24 deter, exemplary damages, or other damages not in-
25 tended to compensate a plaintiff for actual losses

1 may be awarded, nor shall any party be liable for in-
2 terest prior to the judgment.

3 (2)(A) Noneconomic damages may be awarded
4 against a defendant only in an amount directly pro-
5 portional to the percentage of responsibility of such
6 defendant for the harm to the plaintiff, and no
7 plaintiff may recover noneconomic damages unless
8 the plaintiff suffered physical harm.

9 (B) For purposes of subparagraph (A), the
10 term “noneconomic damages” means damages for
11 losses for physical and emotional pain, suffering, in-
12 convenience, physical impairment, mental anguish,
13 disfigurement, loss of enjoyment of life, loss of soci-
14 ety and companionship, loss of consortium, hedonic
15 damages, injury to reputation, and any other non-
16 pecuniary losses.

17 (c) COLLATERAL SOURCES.—Any recovery by a
18 plaintiff in an action under this section shall be reduced
19 by the amount of collateral source compensation, if any,
20 that the plaintiff has received or is entitled to receive as
21 a result of such acts of terrorism that result or may result
22 in loss to the Seller.

23 (d) GOVERNMENT CONTRACTOR DEFENSE.—(1)
24 Should a product liability or other lawsuit be filed for
25 claims arising out of, relating to, or resulting from an act

1 of terrorism when qualified anti-terrorism technologies ap-
2 proved by the Secretary, as provided in paragraphs (2)
3 and (3) of this subsection, have been deployed in defense
4 against such act and such claims result or may result in
5 loss to the Seller, there shall be a rebuttable presumption
6 that the government contractor defense applies in such
7 lawsuit. This presumption shall only be overcome by evi-
8 dence showing that the Seller acted fraudulently or with
9 willful misconduct in submitting information to the Sec-
10 retary during the course of the Secretary's consideration
11 of such technology under this subsection. This presump-
12 tion of the government contractor defense shall apply re-
13 gardless of whether the claim against the Seller arises
14 from a sale of the product to Federal Government or non-
15 Federal Government customers.

16 (2) The Secretary will be exclusively responsible for
17 the review and approval of anti-terrorism technology for
18 purposes of establishing a government contractor defense
19 in any product liability lawsuit for claims arising out of,
20 relating to, or resulting from an act of terrorism when
21 qualified anti-terrorism technologies approved by the Sec-
22 retary, as provided in this paragraph and paragraph (3),
23 have been deployed in defense against such act and such
24 claims result or may result in loss to the Seller. Upon the
25 Seller's submission to the Secretary for approval of anti-

1 terrorism technology, the Secretary will conduct a com-
2 prehensive review of the design of such technology and de-
3 termine whether it will perform as intended, conforms to
4 the Seller's specifications, and is safe for use as intended.
5 The Seller will conduct safety and hazard analyses on such
6 technology and will supply the Secretary with all such in-
7 formation.

8 (3) For anti-terrorism technology reviewed and ap-
9 proved by the Secretary, the Secretary will issue a certifi-
10 cate of conformance to the Seller and place the anti-ter-
11 rorism technology on an Approved Product List for Home-
12 land Security.

13 (e) EXCLUSION.—Nothing in this section shall in any
14 way limit the ability of any person to seek any form of
15 recovery from any person, government, or other entity
16 that—

17 (1) attempts to commit, knowingly participates
18 in, aids and abets, or commits any act of terrorism,
19 or any criminal act related to or resulting from such
20 act of terrorism; or

21 (2) participates in a conspiracy to commit any
22 such act of terrorism or any such criminal act.

23 **SEC. 754. RISK MANAGEMENT.**

24 (a) IN GENERAL.—(1) Any person or entity that sells
25 or otherwise provides a qualified anti-terrorism technology

1 to Federal and non-Federal government customers (“Sell-
2 er”) shall obtain liability insurance of such types and in
3 such amounts as shall be required in accordance with this
4 section and certified by the Secretary to satisfy otherwise
5 compensable third-party claims arising out of, relating to,
6 or resulting from an act of terrorism when qualified anti-
7 terrorism technologies have been deployed in defense
8 against such act.

9 (2) For the total claims related to one such act of
10 terrorism, the Seller is not required to obtain liability in-
11 surance of more than the maximum amount of liability
12 insurance reasonably available from private sources on the
13 world market at prices and terms that will not unreason-
14 ably distort the sales price of Seller’s anti-terrorism tech-
15 nologies.

16 (3) Liability insurance obtained pursuant to this sub-
17 section shall, in addition to the Seller, protect the fol-
18 lowing, to the extent of their potential liability for involve-
19 ment in the manufacture, qualification, sale, use, or oper-
20 ation of qualified anti-terrorism technologies deployed in
21 defense against an act of terrorism:

22 (A) contractors, subcontractors, suppliers, ven-
23 dors and customers of the Seller.

24 (B) contractors, subcontractors, suppliers, and
25 vendors of the customer.

1 (4) Such liability insurance under this section shall
2 provide coverage against third party claims arising out of,
3 relating to, or resulting from the sale or use of anti-ter-
4 rorism technologies.

5 (b) RECIPROCAL WAIVER OF CLAIMS.—The Seller
6 shall enter into a reciprocal waiver of claims with its con-
7 tractors, subcontractors, suppliers, vendors and cus-
8 tomers, and contractors and subcontractors of the cus-
9 tomers, involved in the manufacture, sale, use or operation
10 of qualified anti-terrorism technologies, under which each
11 party to the waiver agrees to be responsible for losses, in-
12 cluding business interruption losses, that it sustains, or
13 for losses sustained by its own employees resulting from
14 an activity resulting from an act of terrorism when quali-
15 fied anti-terrorism technologies have been deployed in de-
16 fense against such act.

17 (c) EXTENT OF LIABILITY.—Notwithstanding any
18 other provision of law, liability for all claims against a
19 Seller arising out of, relating to, or resulting from an act
20 of terrorism when qualified anti-terrorism technologies
21 have been deployed in defense against such act and such
22 claims result or may result in loss to the Seller, whether
23 for compensatory or punitive damages or for contribution
24 or indemnity, shall not be in an amount greater than the

1 limits of liability insurance coverage required to be main-
2 tained by the Seller under this section.

3 **SEC. 755. DEFINITIONS.**

4 For purposes of this subtitle, the following definitions
5 apply:

6 (1) **QUALIFIED ANTI-TERRORISM TECH-**
7 **NOLOGY.**—For purposes of this subtitle, the term
8 “qualified anti-terrorism technology” means any
9 product, equipment, service (including support serv-
10 ices), device, or technology (including information
11 technology) designed, developed, modified, or pro-
12 cured for the specific purpose of preventing, detect-
13 ing, identifying, or deterring acts of terrorism or
14 limiting the harm such acts might otherwise cause,
15 that is designated as such by the Secretary.

16 (2) **ACT OF TERRORISM.**—(A) The term “act of
17 terrorism” means any act that the Secretary deter-
18 mines meets the requirements under subparagraph
19 (B), as such requirements are further defined and
20 specified by the Secretary.

21 (B) **REQUIREMENTS.**—An act meets the re-
22 quirements of this subparagraph if the act—

23 (i) is unlawful;

24 (ii) causes harm to a person, property, or
25 entity, in the United States, or in the case of

1 a domestic United States air carrier or a
2 United States-flag vessel (or a vessel based
3 principally in the United States on which
4 United States income tax is paid and whose in-
5 surance coverage is subject to regulation in the
6 United States), in or outside the United States;
7 and

8 (iii) uses or attempts to use instrumental-
9 ities, weapons or other methods designed or in-
10 tended to cause mass destruction, injury or
11 other loss to citizens or institutions of the
12 United States.

13 (3) INSURANCE CARRIER.—The term “insur-
14 ance carrier” means any corporation, association, so-
15 ciety, order, firm, company, mutual, partnership, in-
16 dividual aggregation of individuals, or any other
17 legal entity that provides commercial property and
18 casualty insurance. Such term includes any affiliates
19 of a commercial insurance carrier.

20 (4) LIABILITY INSURANCE.—

21 (A) IN GENERAL.—The term “liability in-
22 surance” means insurance for legal liabilities
23 incurred by the insured resulting from—

24 (i) loss of or damage to property of
25 others;

1 (ii) ensuing loss of income or extra ex-
2 pense incurred because of loss of or dam-
3 age to property of others;

4 (iii) bodily injury (including) to per-
5 sons other than the insured or its employ-
6 ees; or

7 (iv) loss resulting from debt or default
8 of another.

9 (5) LOSS.—The term “loss” means death, bod-
10 ily injury, or loss of or damage to property, includ-
11 ing business interruption loss.

12 (6) NON-FEDERAL GOVERNMENT CUS-
13 TOMERS.—The term “non-Federal Government cus-
14 tomers” means any customer of a Seller that is not
15 an agency or instrumentality of the United States
16 Government with authority under Public Law 85-
17 804 to provide for indemnification under certain cir-
18 cumstances for third-party claims against its con-
19 tractors, including but not limited to State and local
20 authorities and commercial entities.

21 **Subtitle G—Other Provisions**

22 **SEC. 761. ESTABLISHMENT OF HUMAN RESOURCES MAN- 23 AGEMENT SYSTEM.**

24 (a) AUTHORITY.—

1 (1) SENSE OF CONGRESS.—It is the sense of
2 the Congress that—

3 (A) it is extremely important that employ-
4 ees of the Department be allowed to participate
5 in a meaningful way in the creation of any
6 human resources management system affecting
7 them;

8 (B) such employees have the most direct
9 knowledge of the demands of their jobs and
10 have a direct interest in ensuring that their
11 human resources management system is condu-
12 cive to achieving optimal operational effi-
13 ciencies;

14 (C) the 21st century human resources
15 management system envisioned for the Depart-
16 ment should be one that benefits from the input
17 of its employees; and

18 (D) this collaborative effort will help se-
19 cure our homeland.

20 (2) IN GENERAL.—Subpart I of part III of title
21 5, United States Code, is amended by adding at the
22 end the following:

23 **“CHAPTER 97—DEPARTMENT OF HOMELAND**
24 **SECURITY**

“Sec.

“9701. Establishment of human resources management system.

1 **“§ 9701. Establishment of human resources manage-**
2 **ment system**

3 “(a) IN GENERAL.—Notwithstanding any other pro-
4 vision of this title, the Secretary of Homeland Security
5 may, in regulations prescribed jointly with the Director
6 of the Office of Personnel Management, establish, and
7 from time to time adjust, a human resources management
8 system for some or all of the organizational units of the
9 Department of Homeland Security.

10 “(b) SYSTEM REQUIREMENTS.—Any system estab-
11 lished under subsection (a) shall—

12 “(1) be flexible;

13 “(2) be contemporary;

14 “(3) not waive, modify, or otherwise affect—

15 “(A) the public employment principles of
16 merit and fitness set forth in section 2301, in-
17 cluding the principles of hiring based on merit,
18 fair treatment without regard to political affili-
19 ation or other non-merit considerations, equal
20 pay for equal work, and protection of employees
21 against reprisal for whistleblowing;

22 “(B) any provision of section 2302, relat-
23 ing to prohibited personnel practices;

24 “(C)(i) any provision of law referred to in
25 section 2302(b)(1); or

1 “(ii) any provision of law implementing
2 any provision of law referred to in section
3 2302(b)(1) by—

4 “(I) providing for equal employment
5 opportunity through affirmative action; or

6 “(II) providing any right or remedy
7 available to any employee or applicant for
8 employment in the civil service;

9 “(D) any other provision of this part (as
10 described in subsection (c)); or

11 “(E) any rule or regulation prescribed
12 under any provision of law referred to in any of
13 the preceding subparagraphs of this paragraph;

14 “(4) ensure that employees may organize, bar-
15 gain collectively, and participate through labor orga-
16 nizations of their own choosing in decisions which
17 affect them, subject to any exclusion from coverage
18 or limitation on negotiability established by law; and

19 “(5) permit the use of a category rating system
20 for evaluating applicants for positions in the com-
21 petitive service.

22 “(c) OTHER NONWAIVABLE PROVISIONS.—The other
23 provisions of this part, as referred to in subsection
24 (b)(3)(D), are (to the extent not otherwise specified in
25 subparagraph (A), (B), (C), or (D) of subsection (b)(3))—

1 “(1) subparts A, B, E, G, and H of this part;
2 and

3 “(2) chapters 41, 45, 47, 55, 57, 59, 72, 73,
4 and 79, and this chapter.

5 “(d) LIMITATIONS RELATING TO PAY.—Nothing in
6 this section shall constitute authority—

7 “(1) to modify the pay of any employee who
8 serves in—

9 “(A) an Executive Schedule position under
10 subchapter II of chapter 53 of title 5, United
11 States Code; or

12 “(B) a position for which the rate of basic
13 pay is fixed in statute by reference to a section
14 or level under subchapter II of chapter 53 of
15 such title 5;

16 “(2) to fix pay for any employee or position at
17 an annual rate greater than the maximum amount
18 of cash compensation allowable under section 5307
19 of such title 5 in a year; or

20 “(3) to exempt any employee from the applica-
21 tion of such section 5307.

22 “(e) PROVISIONS TO ENSURE COLLABORATION WITH
23 EMPLOYEE REPRESENTATIVES.—

24 “(1) IN GENERAL.—In order to ensure that the
25 authority of this section is exercised in collaboration

1 with, and in a manner that ensures the direct par-
2 ticipation of employee representatives in the plan-
3 ning, development, and implementation of any
4 human resources management system or adjust-
5 ments under this section, the Secretary of Homeland
6 Security and the Director of the Office of Personnel
7 Management shall provide for the following:

8 “(A) NOTICE OF PROPOSAL, ETC.—The
9 Secretary and the Director shall, with respect
10 to any proposed system or adjustment—

11 “(i) provide to each employee rep-
12 resentative representing any employees
13 who might be affected, a written descrip-
14 tion of the proposed system or adjustment
15 (including the reasons why it is considered
16 necessary);

17 “(ii) give each representative at least
18 60 days (unless extraordinary cir-
19 cumstances require earlier action) to re-
20 view and make recommendations with re-
21 spect to the proposal; and

22 “(iii) give any recommendations re-
23 ceived from any such representative under
24 clause (ii) full and fair consideration in de-

1 ciding whether or how to proceed with the
2 proposal.

3 “(B) PRE-IMPLEMENTATION REQUIRE-
4 MENTS.—If the Secretary and the Director de-
5 cide to implement a proposal described in sub-
6 paragraph (A), they shall before
7 implementation—

8 “(i) give each employee representative
9 details of the decision to implement the
10 proposal, together with the information
11 upon which the decision was based;

12 “(ii) give each representative an op-
13 portunity to make recommendations with
14 respect to the proposal; and

15 “(iii) give such recommendations full
16 and fair consideration, including the pro-
17 viding of reasons to an employee represent-
18 ative if any of its recommendations are re-
19 jected.

20 “(C) CONTINUING COLLABORATION.—If a
21 proposal described in subparagraph (A) is im-
22 plemented, the Secretary and the Director
23 shall—

24 “(i) develop a method for each em-
25 ployee representative to participate in any

1 further planning or development which
2 might become necessary; and

3 “(ii) give each employee representative
4 adequate access to information to make
5 that participation productive.

6 “(2) PROCEDURES.—Any procedures necessary
7 to carry out this subsection shall be established by
8 the Secretary and the Director jointly. Such proce-
9 dures shall include measures to ensure—

10 “(A) in the case of employees within a unit
11 with respect to which a labor organization is ac-
12 corded exclusive recognition, representation by
13 individuals designated or from among individ-
14 uals nominated by such organization;

15 “(B) in the case of any employees who are
16 not within such a unit, representation by any
17 appropriate organization which represents a
18 substantial percentage of those employees or, if
19 none, in such other manner as may be appro-
20 priate, consistent with the purposes of this sub-
21 section; and

22 “(C) the selection of representatives in a
23 manner consistent with the relative numbers of
24 employees represented by the organizations or
25 other representatives involved.

1 “(f) PROVISIONS RELATING TO APPELLATE PROCE-
2 DURES.—

3 “(1) SENSE OF CONGRESS.—It is the sense of
4 the Congress that—

5 “(A) employees of the Department of
6 Homeland Security are entitled to fair treat-
7 ment in any appeals that they bring in decisions
8 relating to their employment; and

9 “(B) in prescribing regulations for any
10 such appeals procedures, the Secretary of
11 Homeland Security and the Director of the Of-
12 fice of Personnel Management—

13 “(i) should ensure that employees of
14 the Department are afforded the protec-
15 tions of due process; and

16 “(ii) toward that end, should be re-
17 quired to consult with the Merit Systems
18 Protection Board before issuing any such
19 regulations.

20 “(2) REQUIREMENTS.—Any regulations under
21 this section which relate to any matters within the
22 purview of chapter 77—

23 “(A) shall be issued only after consultation
24 with the Merit Systems Protection Board; and

1 “(B) shall ensure the availability of proce-
2 dures which shall—

3 “(i) be consistent with requirements
4 of due process; and

5 “(ii) provide, to the maximum extent
6 practicable, for the expeditious handling of
7 any matters involving the Department of
8 Homeland Security.

9 “(g) SUNSET PROVISION.—Effective 5 years after
10 the date of the enactment of this section, all authority to
11 issue regulations under this section (including regulations
12 which would modify, supersede, or terminate any regula-
13 tions previously issued under this section) shall cease to
14 be available.”.

15 (3) CLERICAL AMENDMENT.—The table of
16 chapters for part III of title 5, United States Code,
17 is amended by adding at the end the following:

“97. Department of Homeland Security 9701”.

18 (b) EFFECT ON PERSONNEL.—

19 (1) NON-SEPARATION OR NON-REDUCTION IN
20 GRADE OR COMPENSATION OF FULL-TIME PER-
21 SONNEL AND PART-TIME PERSONNEL HOLDING PER-
22 MANENT POSITIONS.—Except as otherwise provided
23 in this Act, the transfer pursuant to this Act of full-
24 time personnel (except special Government employ-
25 ees) and part-time personnel holding permanent po-

1 sitions shall not cause any such employee to be sepa-
2 rated or reduced in grade or compensation for one
3 year after the date of transfer to the Department.

4 (2) POSITIONS COMPENSATED IN ACCORDANCE
5 WITH EXECUTIVE SCHEDULE.—Any person who, on
6 the day preceding such person’s date of transfer
7 pursuant to this Act, held a position compensated in
8 accordance with the Executive Schedule prescribed
9 in chapter 53 of title 5, United States Code, and
10 who, without a break in service, is appointed in the
11 Department to a position having duties comparable
12 to the duties performed immediately preceding such
13 appointment shall continue to be compensated in
14 such new position at not less than the rate provided
15 for such previous position, for the duration of the
16 service of such person in such new position.

17 (3) COORDINATION RULE.—Any exercise of au-
18 thority under chapter 97 of title 5, United States
19 Code (as amended by subsection (a)), including
20 under any system established under such chapter,
21 shall be in conformance with the requirements of
22 this subsection.

23 **SEC. 762. LABOR-MANAGEMENT RELATIONS.**

24 (a) LIMITATION ON EXCLUSIONARY AUTHORITY.—

1 (1) IN GENERAL.—No agency or subdivision of
2 an agency which is transferred to the Department
3 pursuant to this Act shall be excluded from the cov-
4 erage of chapter 71 of title 5, United States Code,
5 as a result of any order issued under section
6 7103(b)(1) of such title 5 after June 18, 2002,
7 unless—

8 (A) the mission and responsibilities of the
9 agency (or subdivision) materially change; and

10 (B) a majority of the employees within
11 such agency (or subdivision) have as their pri-
12 mary duty intelligence, counterintelligence, or
13 investigative work directly related to terrorism
14 investigation.

15 (2) EXCLUSIONS ALLOWABLE.—Nothing in
16 paragraph (1) shall affect the effectiveness of any
17 order to the extent that such order excludes any por-
18 tion of an agency or subdivision of an agency as to
19 which—

20 (A) recognition as an appropriate unit has
21 never been conferred for purposes of chapter 71
22 of such title 5; or

23 (B) any such recognition has been revoked
24 or otherwise terminated as a result of a deter-
25 mination under subsection (b)(1).

1 (b) PROVISIONS RELATING TO BARGAINING
2 UNITS.—

3 (1) LIMITATION RELATING TO APPROPRIATE
4 UNITS.—Each unit which is recognized as an appro-
5 priate unit for purposes of chapter 71 of title 5,
6 United States Code, as of the day before the effec-
7 tive date of this Act (and any subdivision of any
8 such unit) shall, if such unit (or subdivision) is
9 transferred to the Department pursuant to this Act,
10 continue to be so recognized for such purposes,
11 unless—

12 (A) the mission and responsibilities of such
13 unit (or subdivision) materially change; and

14 (B) a majority of the employees within
15 such unit (or subdivision) have as their primary
16 duty intelligence, counterintelligence, or inves-
17 tigative work directly related to terrorism inves-
18 tigation.

19 (2) LIMITATION RELATING TO POSITIONS OR
20 EMPLOYEES.—No position or employee within a unit
21 (or subdivision of a unit) as to which continued rec-
22 ognition is given in accordance with paragraph (1)
23 shall be excluded from such unit (or subdivision), for
24 purposes of chapter 71 of such title 5, unless the
25 primary job duty of such position or employee—

1 (A) materially changes; and

2 (B) consists of intelligence, counterintel-
3 ligence, or investigative work directly related to
4 terrorism investigation.

5 In the case of any positions within a unit (or sub-
6 division) which are first established on or after the
7 effective date of this Act and any employees first ap-
8 pointed on or after such date, the preceding sentence
9 shall be applied disregarding subparagraph (A).

10 (c) HOMELAND SECURITY.—Subsections (a), (b), and
11 (d) of this section shall not apply in circumstances where
12 the President determines in writing that such application
13 would have a substantial adverse impact on the Depart-
14 ment's ability to protect homeland security.

15 (d) COORDINATION RULE.—No other provision of
16 this Act or of any amendment made by this Act may be
17 construed or applied in a manner so as to limit, supersede,
18 or otherwise affect the provisions of this section, except
19 to the extent that it does so by specific reference to this
20 section.

21 **SEC. 763. ADVISORY COMMITTEES.**

22 The Secretary may establish, appoint members of,
23 and use the services of, advisory committees, as the Sec-
24 retary may deem necessary. An advisory committee estab-
25 lished under this section may be exempted by the Sec-

1 reitary from Public Law 92–463, but the Secretary shall
2 publish notice in the Federal Register announcing the es-
3 tablishment of such a committee and identifying its pur-
4 pose and membership. Notwithstanding the preceding sen-
5 tence, members of an advisory committee that is exempted
6 by the Secretary under the preceding sentence who are
7 special Government employees (as that term is defined in
8 section 202 of title 18, United States Code) shall be eligi-
9 ble for certifications under subsection (b)(3) of section
10 208 of title 18, United States Code, for official actions
11 taken as a member of such advisory committee.

12 **SEC. 764. REORGANIZATION; TRANSFER OF APPROPRIA-**
13 **TIONS.**

14 (a) REORGANIZATION.—

15 (1) IN GENERAL.—The Secretary may allocate
16 or reallocate functions among the officers of the De-
17 partment, and may establish, consolidate, alter, or
18 discontinue organizational units within the Depart-
19 ment, but only—

20 (A) pursuant to section 802; or

21 (B) after the expiration of 60 days after
22 providing notice of such action to the appro-
23 priate congressional committees, which shall in-
24 clude an explanation of the rationale for the ac-
25 tion.

1 (2) LIMITATIONS.—(A) Authority under para-
2 graph (1)(A) does not extend to the abolition of any
3 agency, entity, organizational unit, program, or
4 function established or required to be maintained by
5 this Act.

6 (B) Authority under paragraph (1)(B) does not
7 extend to the abolition of any agency, entity, organi-
8 zational unit, program, or function established or re-
9 quired to be maintained by statute.

10 (b) TRANSFER OF APPROPRIATIONS.—

11 (1) IN GENERAL.—Except as otherwise specifi-
12 cally provided by law, not to exceed two percent of
13 any appropriation available to the Secretary in any
14 fiscal year may be transferred between such appro-
15 priations, except that not less than 15 days' notice
16 shall be given to the Committees on Appropriations
17 of the Senate and House of Representatives before
18 any such transfer is made.

19 (2) EXPIRATION OF AUTHORITY.—The author-
20 ity under paragraph (1) shall expire two years after
21 the date of enactment of this Act.

22 **SEC. 765. MISCELLANEOUS AUTHORITIES.**

23 (a) SEAL.—The Department shall have a seal, whose
24 design is subject to the approval of the President.

1 (b) GIFTS, DEVISES, AND BEQUESTS.—With respect
2 to the Department, the Secretary shall have the same au-
3 thorities that the Attorney General has with respect to the
4 Department of Justice under section 524(d) of title 28,
5 United States Code.

6 (c) PARTICIPATION OF MEMBERS OF THE ARMED
7 FORCES.—With respect to the Department, the Secretary
8 shall have the same authorities that the Secretary of
9 Transportation has with respect to the Department of
10 Transportation under section 324 of title 49, United
11 States Code.

12 (d) REDELEGATION OF FUNCTIONS.—Unless other-
13 wise provided in the delegation or by law, any function
14 delegated under this Act may be redelegated to any subor-
15 dinate.

16 **SEC. 766. MILITARY ACTIVITIES.**

17 Nothing in this Act shall confer upon the Secretary
18 any authority to engage in warfighting, the military de-
19 fense of the United States, or other military activities, nor
20 shall anything in this Act limit the existing authority of
21 the Department of Defense or the Armed Forces to engage
22 in warfighting, the military defense of the United States,
23 or other military activities.

1 **SEC. 767. REGULATORY AUTHORITY AND PREEMPTION.**

2 (a) REGULATORY AUTHORITY.—Except as otherwise
3 provided in sections 305(c) and 752(c) of this Act, this
4 Act vests no new regulatory authority in the Secretary or
5 any other Federal official, and transfers to the Secretary
6 or another Federal official only such regulatory authority
7 as exists on the date of enactment of this Act within any
8 agency, program, or function transferred to the Depart-
9 ment pursuant to this Act, or that on such date of enact-
10 ment is exercised by another official of the executive
11 branch with respect to such agency, program, or function.
12 Any such transferred authority may not be exercised by
13 an official from whom it is transferred upon transfer of
14 such agency, program, or function to the Secretary or an-
15 other Federal official pursuant to this Act. This Act may
16 not be construed as altering or diminishing the regulatory
17 authority of any other executive agency, except to the ex-
18 tent that this Act transfers such authority from the agen-
19 cy.

20 (b) PREEMPTION OF STATE OR LOCAL LAW.—Ex-
21 cept as otherwise provided in this Act, this Act preempts
22 no State or local law, except that any authority to preempt
23 State or local law vested in any Federal agency or official
24 transferred to the Department pursuant to this Act shall
25 be transferred to the Department effective on the date of

1 the transfer to the Department of that Federal agency or
2 official.

3 **SEC. 768. PROVISIONS REGARDING TRANSFERS FROM DE-**
4 **PARTMENT OF ENERGY.**

5 (a) SEPARATE CONTRACTING.—To the extent that
6 programs or activities transferred by this Act from the De-
7 partment of Energy to the Department of Homeland Se-
8 curity are being carried out through contracts with the
9 operator of a national laboratory of the Department of
10 Energy, the Secretary of Homeland Security and the Sec-
11 retary of Energy shall ensure that contracts for such pro-
12 grams and activities between the Department of Home-
13 land Security and such operator are separate from the
14 contracts of the Department of Energy with such oper-
15 ator.

16 (b) HOMELAND SECURITY CENTER.—(1) Notwith-
17 standing section 307, the Secretary, acting through the
18 Under Secretary for Science and Technology, shall estab-
19 lish at a national security laboratory of the National Nu-
20 clear Security Administration, a center to serve as the pri-
21 mary location for carrying out research, development, test,
22 and evaluation activities of the Department related to the
23 goals described in section 301(6)(A) and (B). The Sec-
24 retary shall establish, in concurrence with the Secretary
25 of Energy, such additional centers at one or more national

1 laboratories of the Department of Energy as the Secretary
2 considers appropriate to serve as secondary locations for
3 carrying out such activities.

4 (2) Each center established under paragraph (1) shall
5 be composed of such facilities and assets as are required
6 for the performance of such activities. The particular fa-
7 cilities and assets shall be designated and transferred by
8 the Secretary of Energy with the concurrence of the Sec-
9 retary.

10 (c) REIMBURSEMENT OF COSTS.—In the case of an
11 activity carried out by the operator of a national labora-
12 tory of the Department of Energy but under contract with
13 the Department of Homeland Security, the Department
14 of Homeland Security shall reimburse the Department of
15 Energy for costs of such activity through a method under
16 which the Secretary of Energy waives any requirement for
17 the Department of Homeland Security to pay administra-
18 tive charges or personnel costs of the Department of En-
19 ergy or its contractors in excess of the amount that the
20 Secretary of Energy pays for an activity carried out by
21 such contractor and paid for by the Department of En-
22 ergy.

23 (d) LABORATORY DIRECTED RESEARCH AND DEVEL-
24 OPMENT BY THE DEPARTMENT OF ENERGY.—No funds
25 authorized to be appropriated or otherwise made available

1 to the Department in any fiscal year may be obligated or
2 expended for laboratory directed research and develop-
3 ment activities carried out by the Department of Energy
4 unless such activities support the mission of the Depart-
5 ment described in section 101.

6 (e) DEPARTMENT OF ENERGY COORDINATION ON
7 HOMELAND SECURITY RELATED RESEARCH.—The Sec-
8 retary of Energy shall ensure that any research, develop-
9 ment, test, and evaluation activities conducted within the
10 Department of Energy that are directly or indirectly re-
11 lated to homeland security are fully coordinated with the
12 Secretary to minimize duplication of effort and maximize
13 the effective application of Federal budget resources.

14 **SEC. 769. COUNTERNARCOTICS OFFICER.**

15 The Secretary shall appoint a senior official in the
16 Department to assume primary responsibility for coordi-
17 nating policy and operations within the Department and
18 between the Department and other Federal departments
19 and agencies with respect to interdicting the entry of ille-
20 gal drugs into the United States, and tracking and sev-
21 ering connections between illegal drug trafficking and ter-
22 rorism. Such official shall—

23 (1) ensure the adequacy of resources within the
24 Department for illicit drug interdiction; and

1 (2) serve as the United States Interdiction Co-
2 ordinator for the Director of National Drug Control
3 Policy.

4 **SEC. 770. OFFICE OF INTERNATIONAL AFFAIRS.**

5 (a) ESTABLISHMENT.—There is established within
6 the Office of the Secretary an Office of International Af-
7 fairs. The Office shall be headed by a Director, who shall
8 be a senior official appointed by the Secretary.

9 (b) DUTIES OF THE DIRECTOR.—The Director shall
10 have the following duties:

11 (1) To promote information and education ex-
12 change with nations friendly to the United States in
13 order to promote sharing of best practices and tech-
14 nologies relating to homeland security. Such infor-
15 mation exchange shall include the following:

16 (A) Joint research and development on
17 countermeasures.

18 (B) Joint training exercises of first re-
19 sponders.

20 (C) Exchange of expertise on terrorism
21 prevention, response, and crisis management.

22 (2) To identify areas for homeland security in-
23 formation and training exchange where the United
24 States has a demonstrated weakness and another

1 friendly nation or nations have a demonstrated ex-
2 pertise.

3 (3) To plan and undertake international con-
4 ferences, exchange programs, and training activities.

5 (4) To manage international activities within
6 the Department in coordination with other Federal
7 officials with responsibility for counter-terrorism
8 matters.

9 **SEC. 771. PROHIBITION OF THE TERRORISM INFORMATION**
10 **AND PREVENTION SYSTEM.**

11 Any and all activities of the Federal Government to
12 implement the proposed component program of the Citizen
13 Corps known as Operation TIPS (Terrorism Information
14 and Prevention System) are hereby prohibited.

15 **SEC. 772. REVIEW OF PAY AND BENEFIT PLANS.**

16 Notwithstanding any other provision of this Act, the
17 Secretary shall, in consultation with the Director of the
18 Office of Personnel Management, review the pay and ben-
19 efit plans of each agency whose functions are transferred
20 under this Act to the Department and, within 90 days
21 after the date of enactment, submit a plan to the Presi-
22 dent of the Senate and the Speaker of the House of Rep-
23 resentatives and the appropriate committees and sub-
24 committees of the Congress, for ensuring, to the maximum
25 extent practicable, the elimination of disparities in pay

1 and benefits throughout the Department, especially among
2 law enforcement personnel, that are inconsistent with
3 merit system principles set forth in section 2301 of title
4 5, United States Code.

5 **SEC. 773. ROLE OF THE DISTRICT OF COLUMBIA.**

6 The Secretary (or the Secretary's designee) shall
7 work in cooperation with the Mayor of the District of Co-
8 lumbia (or the Mayor's designee) for the purpose of inte-
9 grating the District of Columbia into the planning, coordi-
10 nation, and execution of the activities of the Federal Gov-
11 ernment for the enhancement of domestic preparedness
12 against the consequences of terrorist attacks.

13 **SEC. 774. TRANSFER OF THE FEDERAL LAW ENFORCEMENT**
14 **TRAINING CENTER.**

15 There shall be transferred to the Attorney General
16 the functions, personnel, assets, and liabilities of the Fed-
17 eral Law Enforcement Training Center, including any
18 functions of the Secretary of the Treasury relating there-
19 to.

1 **SEC. 775. REQUIREMENT TO COMPLY WITH LAWS PRO-**
2 **TECTING EQUAL EMPLOYMENT OPPOR-**
3 **TUNITY AND PROVIDING WHISTLEBLOWER**
4 **PROTECTIONS.**

5 Nothing in this Act shall be construed as exempting
6 the Department from requirements applicable with respect
7 to executive agencies—

8 (1) to provide equal employment protection for
9 employees of the Department (including pursuant to
10 the provisions in section 2302(b)(1) of title 5,
11 United States Code, and the Notification and Fed-
12 eral Employee Antidiscrimination and Retaliation
13 Act of 2002 (Pub. L. 107–174)); or

14 (2) to provide whistleblower protections for em-
15 ployees of the Department (including pursuant to
16 the provisions in section 2302(b)(8) of such title and
17 the Notification and Federal Employee Antidiscrimi-
18 nation and Retaliation Act of 2002).

19 **SEC. 776. FEDERAL LAW ENFORCEMENT TRAINING CENTER.**

20 (a) IN GENERAL.—The transfer of an authority or
21 an agency under this Act to the Department of Homeland
22 Security does not affect training agreements already en-
23 tered into with the Federal Law Enforcement Training
24 Center with respect to the training of personnel to carry
25 out that authority or the duties of that transferred agency.

1 (b) CONTINUITY OF OPERATIONS.—All activities of
2 the Federal Law Enforcement Training Center trans-
3 ferred to the Department of Justice under this Act shall
4 continue to be carried out at the locations such activities
5 were carried out before such transfer.

6 **SEC. 777. OFFICE FOR STATE AND LOCAL GOVERNMENT**
7 **COORDINATION.**

8 (a) ESTABLISHMENT.—There is established within
9 the Office of the Secretary the Office for State and Local
10 Government Coordination, to oversee and coordinate de-
11 partmental programs for and relationships with State and
12 local governments.

13 (b) RESPONSIBILITIES.—The Office established
14 under subsection (a) shall—

15 (1) coordinate the activities of the Department
16 relating to State and local government;

17 (2) assess, and advocate for, the resources
18 needed by State and local government to implement
19 the national strategy for combating terrorism;

20 (3) provide State and local government with
21 regular information, research, and technical support
22 to assist local efforts at securing the homeland; and

23 (4) develop a process for receiving meaningful
24 input from State and local government to assist the

1 development of the national strategy for combating
2 terrorism and other homeland security activities.

3 **SEC. 778. REPORTING REQUIREMENTS.**

4 (a) BIENNIAL REPORTS.—Every 2 years the Sec-
5 retary shall submit to Congress—

6 (1) a report assessing the resources and re-
7 quirements of executive agencies relating to border
8 security and emergency preparedness issues;

9 (2) a report certifying the preparedness of the
10 United States to prevent, protect against, and re-
11 spond to natural disasters, cyber attacks, and inci-
12 dents involving weapons of mass destruction; and

13 (3) a report assessing the emergency prepared-
14 ness of each State, including an assessment of each
15 State's coordination with the Department with re-
16 spect to the responsibilities specified in section 501.

17 (b) ADDITIONAL REPORT.—Not later than 1 year
18 after the effective date of this Act, the Secretary shall sub-
19 mit to Congress a report—

20 (1) assessing the progress of the Department
21 in—

22 (A) implementing this Act; and

23 (B) ensuring the core functions of each en-
24 tity transferred to the Department are main-
25 tained and strengthened; and

1 (2) recommending any conforming changes in
2 law necessary as a result of the enactment and im-
3 plementation of this Act.

4 **SEC. 779. JOINT INTERAGENCY TASK FORCE.**

5 (a) ESTABLISHMENT.—The Secretary may establish
6 and operate a permanent Joint Interagency Homeland Se-
7 curity Task Force composed of representatives from mili-
8 tary and civilian agencies of the United States Govern-
9 ment for the purposes of anticipating terrorist threats
10 against the United States and taking appropriate actions
11 to prevent harm to the United States.

12 (b) STRUCTURE.—It is the sense of Congress that the
13 Secretary should model the Joint Interagency Homeland
14 Security Task Force on the approach taken by the Joint
15 Interagency Task Forces for drug interdiction at Key
16 West, Florida and Alameda, California, to the maximum
17 extent feasible and appropriate.

18 **SEC. 780. SENSE OF CONGRESS REAFFIRMING THE CONTIN-**
19 **UED IMPORTANCE AND APPLICABILITY OF**
20 **THE POSSE COMITATUS ACT.**

21 (a) FINDINGS.—The Congress finds the following:

22 (1) Section 1385 of title 18, United States
23 Code (commonly known as the “Posse Comitatus
24 Act”), prohibits the use of the Armed Forces as a
25 posse comitatus to execute the laws except in cases

1 and under circumstances expressly authorized by the
2 Constitution or Act of Congress.

3 (2) Enacted in 1878, the Posse Comitatus Act
4 was expressly intended to prevent United States
5 Marshals, on their own initiative, from calling on the
6 Army for assistance in enforcing Federal law.

7 (3) The Posse Comitatus Act has served the
8 Nation well in limiting the use of the Armed Forces
9 to enforce the law.

10 (4) Nevertheless, by its express terms, the
11 Posse Comitatus Act is not a complete barrier to the
12 use of the Armed Forces for a range of domestic
13 purposes, including law enforcement functions, when
14 the use of the Armed Forces is authorized by Act of
15 Congress or the President determines that the use of
16 the Armed Forces is required to fulfill the Presi-
17 dent's obligations under the Constitution to respond
18 promptly in time of war, insurrection, or other seri-
19 ous emergency.

20 (5) Existing laws, including chapter 15 of title
21 10, United States Code (commonly known as the
22 "Insurrection Act"), and the Robert T. Stafford
23 Disaster Relief and Emergency Assistance Act (42
24 U.S.C. 5121 et seq.), grant the President broad
25 powers that may be invoked in the event of domestic

1 emergencies, including an attack against the Nation
2 using weapons of mass destruction, and these laws
3 specifically authorize the President to use the Armed
4 Forces to help restore public order.

5 (b) SENSE OF CONGRESS.—The Congress reaffirms
6 the continued importance of section 1385 of title 18,
7 United States Code, and it is the sense of the Congress
8 that nothing in this Act should be construed to alter the
9 applicability of such section to any use of the Armed
10 Forces as a posse comitatus to execute the laws.

11 **SEC. 781. AIR TRANSPORTATION SAFETY AND SYSTEM STA-**
12 **BILIZATION ACT AMENDMENTS.**

13 The Air Transportation Safety and System Stabiliza-
14 tion Act (49 U.S.C. 40101 note) is amended—

15 (1) in section 408 by striking the last sentence
16 of subsection (c); and

17 (2) in section 402 by striking paragraph (1)
18 and inserting the following:

19 “(1) AIR CARRIER.—The term ‘air carrier’
20 means a citizen of the United States undertaking by
21 any means, directly or indirectly, to provide air
22 transportation and includes employees and agents
23 (including persons engaged in the business of pro-
24 viding air transportation security and their affili-
25 ates) of such citizen. For purposes of the preceding

1 sentence, the term ‘agent’, as applied to persons en-
2 gaged in the business of providing air transportation
3 security, shall only include persons that have con-
4 tracted directly with the Federal Aviation Adminis-
5 tration on or after February 17, 2002, to provide
6 such security, or are not debarred.”.

7 **Subtitle H—Information Sharing**

8 **SEC. 790. SHORT TITLE.**

9 This subtitle may be cited as the “Homeland Security
10 Information Sharing Act”.

11 **SEC. 791. FINDINGS AND SENSE OF CONGRESS.**

12 (a) FINDINGS.—The Congress finds the following:

13 (1) The Federal Government is required by the
14 Constitution to provide for the common defense,
15 which includes terrorist attack.

16 (2) The Federal Government relies on State
17 and local personnel to protect against terrorist at-
18 tack.

19 (3) The Federal Government collects, creates,
20 manages, and protects classified and sensitive but
21 unclassified information to enhance homeland secu-
22 rity.

23 (4) Some homeland security information is
24 needed by the State and local personnel to prevent
25 and prepare for terrorist attack.

1 (5) The needs of State and local personnel to
2 have access to relevant homeland security informa-
3 tion to combat terrorism must be reconciled with the
4 need to preserve the protected status of such infor-
5 mation and to protect the sources and methods used
6 to acquire such information.

7 (6) Granting security clearances to certain
8 State and local personnel is one way to facilitate the
9 sharing of information regarding specific terrorist
10 threats among Federal, State, and local levels of
11 government.

12 (7) Methods exist to declassify, redact, or other-
13 wise adapt classified information so it may be shared
14 with State and local personnel without the need for
15 granting additional security clearances.

16 (8) State and local personnel have capabilities
17 and opportunities to gather information on sus-
18 picious activities and terrorist threats not possessed
19 by Federal agencies.

20 (9) The Federal Government and State and
21 local governments and agencies in other jurisdictions
22 may benefit from such information.

23 (10) Federal, State, and local governments and
24 intelligence, law enforcement, and other emergency
25 preparation and response agencies must act in part-

1 nership to maximize the benefits of information
2 gathering and analysis to prevent and respond to
3 terrorist attacks.

4 (11) Information systems, including the Na-
5 tional Law Enforcement Telecommunications Sys-
6 tem and the Terrorist Threat Warning System, have
7 been established for rapid sharing of classified and
8 sensitive but unclassified information among Fed-
9 eral, State, and local entities.

10 (12) Increased efforts to share homeland secu-
11 rity information should avoid duplicating existing in-
12 formation systems.

13 (b) SENSE OF CONGRESS.—It is the sense of Con-
14 gress that Federal, State, and local entities should share
15 homeland security information to the maximum extent
16 practicable, with special emphasis on hard-to-reach urban
17 and rural communities.

18 **SEC. 792. FACILITATING HOMELAND SECURITY INFORMA-**
19 **TION SHARING PROCEDURES.**

20 (a) PROCEDURES FOR DETERMINING EXTENT OF
21 SHARING OF HOMELAND SECURITY INFORMATION.—

22 (1) The President shall prescribe and imple-
23 ment procedures under which relevant Federal
24 agencies—

1 (A) share relevant and appropriate home-
2 land security information with other Federal
3 agencies, including the Department, and appro-
4 priate State and local personnel;

5 (B) identify and safeguard homeland secu-
6 rity information that is sensitive but unclassi-
7 fied; and

8 (C) to the extent such information is in
9 classified form, determine whether, how, and to
10 what extent to remove classified information, as
11 appropriate, and with which such personnel it
12 may be shared after such information is re-
13 moved.

14 (2) The President shall ensure that such proce-
15 dures apply to all agencies of the Federal Govern-
16 ment.

17 (3) Such procedures shall not change the sub-
18 stantive requirements for the classification and safe-
19 guarding of classified information.

20 (4) Such procedures shall not change the re-
21 quirements and authorities to protect sources and
22 methods.

23 (b) PROCEDURES FOR SHARING OF HOMELAND SE-
24 CURITY INFORMATION.—

1 (1) Under procedures prescribed by the Presi-
2 dent, all appropriate agencies, including the intel-
3 ligence community, shall, through information shar-
4 ing systems, share homeland security information
5 with Federal agencies and appropriate State and
6 local personnel to the extent such information may
7 be shared, as determined in accordance with sub-
8 section (a), together with assessments of the credi-
9 bility of such information.

10 (2) Each information sharing system through
11 which information is shared under paragraph (1)
12 shall—

13 (A) have the capability to transmit unclas-
14 sified or classified information, though the pro-
15 cedures and recipients for each capability may
16 differ;

17 (B) have the capability to restrict delivery
18 of information to specified subgroups by geo-
19 graphic location, type of organization, position
20 of a recipient within an organization, or a re-
21 cipient's need to know such information;

22 (C) be configured to allow the efficient and
23 effective sharing of information; and

24 (D) be accessible to appropriate State and
25 local personnel.

1 (3) The procedures prescribed under paragraph
2 (1) shall establish conditions on the use of informa-
3 tion shared under paragraph (1)—

4 (A) to limit the redissemination of such in-
5 formation to ensure that such information is
6 not used for an unauthorized purpose;

7 (B) to ensure the security and confiden-
8 tiality of such information;

9 (C) to protect the constitutional and statu-
10 tory rights of any individuals who are subjects
11 of such information; and

12 (D) to provide data integrity through the
13 timely removal and destruction of obsolete or
14 erroneous names and information.

15 (4) The procedures prescribed under paragraph
16 (1) shall ensure, to the greatest extent practicable,
17 that the information sharing system through which
18 information is shared under such paragraph include
19 existing information sharing systems, including, but
20 not limited to, the National Law Enforcement Tele-
21 communications System, the Regional Information
22 Sharing System, and the Terrorist Threat Warning
23 System of the Federal Bureau of Investigation.

24 (5) Each appropriate Federal agency, as deter-
25 mined by the President, shall have access to each in-

1 formation sharing system through which information
2 is shared under paragraph (1), and shall therefore
3 have access to all information, as appropriate,
4 shared under such paragraph.

5 (6) The procedures prescribed under paragraph
6 (1) shall ensure that appropriate State and local
7 personnel are authorized to use such information
8 sharing systems—

9 (A) to access information shared with such
10 personnel; and

11 (B) to share, with others who have access
12 to such information sharing systems, the home-
13 land security information of their own jurisdic-
14 tions, which shall be marked appropriately as
15 pertaining to potential terrorist activity.

16 (7) Under procedures prescribed jointly by the
17 Director of Central Intelligence and the Attorney
18 General, each appropriate Federal agency, as deter-
19 mined by the President, shall review and assess the
20 information shared under paragraph (6) and inte-
21 grate such information with existing intelligence.

22 (c) SHARING OF CLASSIFIED INFORMATION AND
23 SENSITIVE BUT UNCLASSIFIED INFORMATION WITH
24 STATE AND LOCAL PERSONNEL.—

1 (1) The President shall prescribe procedures
2 under which Federal agencies may, to the extent the
3 President considers necessary, share with appro-
4 priate State and local personnel homeland security
5 information that remains classified or otherwise pro-
6 tected after the determinations prescribed under the
7 procedures set forth in subsection (a).

8 (2) It is the sense of Congress that such proce-
9 dures may include one or more of the following
10 means:

11 (A) Carrying out security clearance inves-
12 tigations with respect to appropriate State and
13 local personnel.

14 (B) With respect to information that is
15 sensitive but unclassified, entering into non-
16 disclosure agreements with appropriate State
17 and local personnel.

18 (C) Increased use of information-sharing
19 partnerships that include appropriate State and
20 local personnel, such as the Joint Terrorism
21 Task Forces of the Federal Bureau of Inves-
22 tigation, the Anti-Terrorism Task Forces of the
23 Department of Justice, and regional Terrorism
24 Early Warning Groups.

1 (d) RESPONSIBLE OFFICIALS.—For each affected
2 Federal agency, the head of such agency shall designate
3 an official to administer this Act with respect to such
4 agency.

5 (e) FEDERAL CONTROL OF INFORMATION.—Under
6 procedures prescribed under this section, information ob-
7 tained by a State or local government from a Federal
8 agency under this section shall remain under the control
9 of the Federal agency, and a State or local law authorizing
10 or requiring such a government to disclose information
11 shall not apply to such information.

12 (f) DEFINITIONS.—As used in this section:

13 (1) The term “homeland security information”
14 means any information possessed by a Federal,
15 State, or local agency that—

16 (A) relates to the threat of terrorist activ-
17 ity;

18 (B) relates to the ability to prevent, inter-
19 dict, or disrupt terrorist activity;

20 (C) would improve the identification or in-
21 vestigation of a suspected terrorist or terrorist
22 organization; or

23 (D) would improve the response to a ter-
24 rorist act.

1 (2) The term “intelligence community” has the
2 meaning given such term in section 3(4) of the Na-
3 tional Security Act of 1947 (50 U.S.C. 401a(4)).

4 (3) The term “State and local personnel”
5 means any of the following persons involved in pre-
6 vention, preparation, or response for terrorist attack:

7 (A) State Governors, mayors, and other lo-
8 cally elected officials.

9 (B) State and local law enforcement per-
10 sonnel and firefighters.

11 (C) Public health and medical profes-
12 sionals.

13 (D) Regional, State, and local emergency
14 management agency personnel, including State
15 adjutant generals.

16 (E) Other appropriate emergency response
17 agency personnel.

18 (F) Employees of private-sector entities
19 that affect critical infrastructure, cyber, eco-
20 nomic, or public health security, as designated
21 by the Federal government in procedures devel-
22 oped pursuant to this section.

23 (4) The term “State” includes the District of
24 Columbia and any commonwealth, territory, or pos-
25 session of the United States.

1 (g) CONSTRUCTION.—Nothing in this Act shall be
2 construed as authorizing any department, bureau, agency,
3 officer, or employee of the Federal Government to request,
4 receive, or transmit to any other Government entity or
5 personnel, or transmit to any State or local entity or per-
6 sonnel otherwise authorized by this Act to receive home-
7 land security information, any information collected by the
8 Federal Government solely for statistical purposes in vio-
9 lation of any other provision of law relating to the con-
10 fidentiality of such information.

11 **SEC. 793. REPORT.**

12 (a) REPORT REQUIRED.—Not later than 12 months
13 after the date of the enactment of this Act, the President
14 shall submit to the congressional committees specified in
15 subsection (b) a report on the implementation of section
16 792. The report shall include any recommendations for ad-
17 ditional measures or appropriation requests, beyond the
18 requirements of section 792, to increase the effectiveness
19 of sharing of information between and among Federal,
20 State, and local entities.

21 (b) SPECIFIED CONGRESSIONAL COMMITTEES.—The
22 congressional committees referred to in subsection (a) are
23 the following committees:

1 (1) The Permanent Select Committee on Intel-
2 ligence and the Committee on the Judiciary of the
3 House of Representatives.

4 (2) The Select Committee on Intelligence and
5 the Committee on the Judiciary of the Senate.

6 **SEC. 794. AUTHORIZATION OF APPROPRIATIONS.**

7 There are authorized to be appropriated such sums
8 as may be necessary to carry out section 792.

9 **SEC. 795. AUTHORITY TO SHARE GRAND JURY INFORMA-**
10 **TION.**

11 Rule 6(e) of the Federal Rules of Criminal Procedure
12 is amended—

13 (1) in paragraph (2), by inserting “, or of
14 guidelines jointly issued by the Attorney General and
15 Director of Central Intelligence pursuant to Rule 6,”
16 after “Rule 6”; and

17 (2) in paragraph (3)—

18 (A) in subparagraph (A)(ii), by inserting
19 “or of a foreign government” after “(including
20 personnel of a state or subdivision of a state”;

21 (B) in subparagraph (C)(i)—

22 (i) in subclause (I), by inserting be-
23 fore the semicolon the following: “or, upon
24 a request by an attorney for the govern-
25 ment, when sought by a foreign court or

1 prosecutor for use in an official criminal
2 investigation”;

3 (ii) in subclause (IV)—

4 (I) by inserting “or foreign”
5 after “may disclose a violation of
6 State”;

7 (II) by inserting “or of a foreign
8 government” after “to an appropriate
9 official of a State or subdivision of a
10 State”; and

11 (III) by striking “or” at the end;

12 (iii) by striking the period at the end
13 of subclause (V) and inserting “; or”; and

14 (iv) by adding at the end the fol-
15 lowing:

16 “(VI) when matters involve a threat
17 of actual or potential attack or other grave
18 hostile acts of a foreign power or an agent
19 of a foreign power, domestic or inter-
20 national sabotage, domestic or inter-
21 national terrorism, or clandestine intel-
22 ligence gathering activities by an intel-
23 ligence service or network of a foreign
24 power or by an agent of a foreign power,
25 within the United States or elsewhere, to

1 any appropriate federal, state, local, or for-
2 eign government official for the purpose of
3 preventing or responding to such a
4 threat.”; and

5 (C) in subparagraph (C)(iii)—

6 (i) by striking “Federal”;

7 (ii) by inserting “or clause (i)(VI)”
8 after “clause (i)(V)”; and

9 (iii) by adding at the end the fol-
10 lowing: “Any state, local, or foreign official
11 who receives information pursuant to
12 clause (i)(VI) shall use that information
13 only consistent with such guidelines as the
14 Attorney General and Director of Central
15 Intelligence shall jointly issue.”.

16 **SEC. 796. AUTHORITY TO SHARE ELECTRONIC, WIRE, AND**
17 **ORAL INTERCEPTION INFORMATION.**

18 Section 2517 of title 18, United States Code, is
19 amended by adding at the end the following:

20 “(7) Any investigative or law enforcement officer, or
21 other Federal official in carrying out official duties as such
22 Federal official, who by any means authorized by this
23 chapter, has obtained knowledge of the contents of any
24 wire, oral, or electronic communication, or evidence de-
25 rived therefrom, may disclose such contents or derivative

1 evidence to a foreign investigative or law enforcement offi-
2 cer to the extent that such disclosure is appropriate to
3 the proper performance of the official duties of the officer
4 making or receiving the disclosure, and foreign investiga-
5 tive or law enforcement officers may use or disclose such
6 contents or derivative evidence to the extent such use or
7 disclosure is appropriate to the proper performance of
8 their official duties.

9 “(8) Any investigative or law enforcement officer, or
10 other Federal official in carrying out official duties as such
11 Federal official, who by any means authorized by this
12 chapter, has obtained knowledge of the contents of any
13 wire, oral, or electronic communication, or evidence de-
14 rived therefrom, may disclose such contents or derivative
15 evidence to any appropriate Federal, State, local, or for-
16 eign government official to the extent that such contents
17 or derivative evidence reveals a threat of actual or poten-
18 tial attack or other grave hostile acts of a foreign power
19 or an agent of a foreign power, domestic or international
20 sabotage, domestic or international terrorism, or clandes-
21 tine intelligence gathering activities by an intelligence
22 service or network of a foreign power or by an agent of
23 a foreign power, within the United States or elsewhere,
24 for the purpose of preventing or responding to such a
25 threat. Any official who receives information pursuant to

1 this provision may use that information only as necessary
2 in the conduct of that person’s official duties subject to
3 any limitations on the unauthorized disclosure of such in-
4 formation, and any State, local, or foreign official who re-
5 ceives information pursuant to this provision may use that
6 information only consistent with such guidelines as the At-
7 torney General and Director of Central Intelligence shall
8 jointly issue.”.

9 **SEC. 797. FOREIGN INTELLIGENCE INFORMATION.**

10 (a) DISSEMINATION AUTHORIZED.—Section
11 203(d)(1) of the Uniting and Strengthening America by
12 Providing Appropriate Tools Required to Intercept and
13 Obstruct Terrorism Act (USA PATRIOT ACT) of 2001
14 (Public Law 107–56; 50 U.S.C. 403–5d) is amended by
15 adding at the end the following: “Consistent with the re-
16 sponsibility of the Director of Central Intelligence to pro-
17 tect intelligence sources and methods, and the responsi-
18 bility of the Attorney General to protect sensitive law en-
19 forcement information, it shall be lawful for information
20 revealing a threat of actual or potential attack or other
21 grave hostile acts of a foreign power or an agent of a for-
22 eign power, domestic or international sabotage, domestic
23 or international terrorism, or clandestine intelligence gath-
24 ering activities by an intelligence service or network of a
25 foreign power or by an agent of a foreign power, within

1 the United States or elsewhere, obtained as part of a
2 criminal investigation to be disclosed to any appropriate
3 Federal, State, local, or foreign government official for the
4 purpose of preventing or responding to such a threat. Any
5 official who receives information pursuant to this provision
6 may use that information only as necessary in the conduct
7 of that person's official duties subject to any limitations
8 on the unauthorized disclosure of such information, and
9 any State, local, or foreign official who receives informa-
10 tion pursuant to this provision may use that information
11 only consistent with such guidelines as the Attorney Gen-
12 eral and Director of Central Intelligence shall jointly
13 issue.”.

14 (b) CONFORMING AMENDMENTS.—Section 203(c) of
15 that Act is amended—

16 (1) by striking “section 2517(6)” and inserting
17 “paragraphs (6) and (8) of section 2517 of title 18,
18 United States Code,”; and

19 (2) by inserting “and (VI)” after “Rule
20 6(e)(3)(C)(i)(V)”.

21 **SEC. 798. INFORMATION ACQUIRED FROM AN ELECTRONIC**
22 **SURVEILLANCE.**

23 Section 106(k)(1) of the Foreign Intelligence Surveil-
24 lance Act of 1978 (50 U.S.C. 1806) is amended by insert-
25 ing after “law enforcement officers” the following: “or law

1 enforcement personnel of a State or political subdivision
2 of a State (including the chief executive officer of that
3 State or political subdivision who has the authority to ap-
4 point or direct the chief law enforcement officer of that
5 State or political subdivision)”).

6 **SEC. 799. INFORMATION ACQUIRED FROM A PHYSICAL**
7 **SEARCH.**

8 Section 305(k)(1) of the Foreign Intelligence Surveil-
9 lance Act of 1978 (50 U.S.C. 1825) is amended by insert-
10 ing after “law enforcement officers” the following: “or law
11 enforcement personnel of a State or political subdivision
12 of a State (including the chief executive officer of that
13 State or political subdivision who has the authority to ap-
14 point or direct the chief law enforcement officer of that
15 State or political subdivision)”).

16 **TITLE VIII—TRANSITION**
17 **Subtitle A—Reorganization Plan**

18 **SEC. 801. DEFINITIONS.**

19 For purposes of this title:

20 (1) The term “agency” includes any entity, or-
21 ganizational unit, program, or function.

22 (2) The term “transition period” means the 12-
23 month period beginning on the effective date of this
24 Act.

1 **SEC. 802. REORGANIZATION PLAN.**

2 (a) SUBMISSION OF PLAN.—Not later than 60 days
3 after the date of the enactment of this Act, the President
4 shall transmit to the appropriate congressional committees
5 a reorganization plan regarding the following:

6 (1) The transfer of agencies, personnel, assets,
7 and obligations to the Department pursuant to this
8 Act.

9 (2) Any consolidation, reorganization, or
10 streamlining of agencies transferred to the Depart-
11 ment pursuant to this Act.

12 (b) PLAN ELEMENTS.—The plan transmitted under
13 subsection (a) shall contain, consistent with this Act, such
14 elements as the President deems appropriate, including
15 the following:

16 (1) Identification of any functions of agencies
17 transferred to the Department pursuant to this Act
18 that will not be transferred to the Department under
19 the plan.

20 (2) Specification of the steps to be taken by the
21 Secretary to organize the Department, including the
22 delegation or assignment of functions transferred to
23 the Department among officers of the Department
24 in order to permit the Department to carry out the
25 functions transferred under the plan.

1 (3) Specification of the funds available to each
2 agency that will be transferred to the Department as
3 a result of transfers under the plan.

4 (4) Specification of the proposed allocations
5 within the Department of unexpended funds trans-
6 ferred in connection with transfers under the plan.

7 (5) Specification of any proposed disposition of
8 property, facilities, contracts, records, and other as-
9 sets and obligations of agencies transferred under
10 the plan.

11 (6) Specification of the proposed allocations
12 within the Department of the functions of the agen-
13 cies and subdivisions that are not related directly to
14 securing the homeland.

15 (c) MODIFICATION OF PLAN.—The President may,
16 on the basis of consultations with the appropriate congres-
17 sional committees, modify or revise any part of the plan
18 until that part of the plan becomes effective in accordance
19 with subsection (d).

20 (d) EFFECTIVE DATE.—

21 (1) IN GENERAL.—The reorganization plan de-
22 scribed in this section, including any modifications
23 or revisions of the plan under subsection (d), shall
24 become effective for an agency on the earlier of—

1 (A) the date specified in the plan (or the
2 plan as modified pursuant to subsection (d)),
3 except that such date may not be earlier than
4 90 days after the date the President has trans-
5 mitted the reorganization plan to the appro-
6 priate congressional committees pursuant to
7 subsection (a); or

8 (B) the end of the transition period.

9 (2) STATUTORY CONSTRUCTION.—Nothing in
10 this subsection may be construed to require the
11 transfer of functions, personnel, records, balances of
12 appropriations, or other assets of an agency on a
13 single date.

14 (3) SUPERSEDES EXISTING LAW.—Paragraph
15 (1) shall apply notwithstanding section 905(b) of
16 title 5, United States Code.

17 **Subtitle B—Transitional Provisions**

18 **SEC. 811. TRANSITIONAL AUTHORITIES.**

19 (a) PROVISION OF ASSISTANCE BY OFFICIALS.—
20 Until the transfer of an agency to the Department, any
21 official having authority over or functions relating to the
22 agency immediately before the effective date of this Act
23 shall provide to the Secretary such assistance, including
24 the use of personnel and assets, as the Secretary may re-

1 quest in preparing for the transfer and integration of the
2 agency into the Department.

3 (b) SERVICES AND PERSONNEL.—During the transi-
4 tion period, upon the request of the Secretary, the head
5 of any executive agency may, on a reimbursable basis, pro-
6 vide services or detail personnel to assist with the transi-
7 tion.

8 (c) TRANSFER OF FUNDS.—Until the transfer of an
9 agency to the Department, the President is authorized to
10 transfer to the Secretary to fund the purposes authorized
11 in this Act—

12 (1) for administrative expenses related to the
13 establishment of the Department of Homeland Secu-
14 rity, not to exceed two percent of the unobligated
15 balance of any appropriation enacted prior to Octo-
16 ber 1, 2002, available to such agency; and

17 (2) for purposes for which the funds were ap-
18 propriated, not to exceed three percent of the unobli-
19 gated balance of any appropriation available to such
20 agency;

21 except that not less than 15 days' notice shall be given
22 to the Committees on Appropriations of the House of Rep-
23 resentatives and the Senate before any such funds transfer
24 is made.

1 (d) ACTING OFFICIALS.—(1) During the transition
2 period, pending the advice and consent of the Senate to
3 the appointment of an officer required by this Act to be
4 appointed by and with such advice and consent, the Presi-
5 dent may designate any officer whose appointment was re-
6 quired to be made by and with such advice and consent
7 and who was such an officer immediately before the effec-
8 tive date of this Act (and who continues in office) or im-
9 mediately before such designation, to act in such office
10 until the same is filled as provided in this Act. While so
11 acting, such officers shall receive compensation at the
12 higher of—

13 (A) the rates provided by this Act for the re-
14 spective offices in which they act; or

15 (B) the rates provided for the offices held at
16 the time of designation.

17 (2) Nothing in this Act shall be understood to require
18 the advice and consent of the Senate to the appointment
19 by the President to a position in the Department of any
20 officer whose agency is transferred to the Department
21 pursuant to this Act and whose duties following such
22 transfer are germane to those performed before such
23 transfer.

1 (e) TRANSFER OF PERSONNEL, ASSETS, OBLIGA-
2 TIONS, AND FUNCTIONS.—Upon the transfer of an agency
3 to the Department—

4 (1) the personnel, assets, and obligations held
5 by or available in connection with the agency shall
6 be transferred to the Secretary for appropriate allo-
7 cation, subject to the approval of the Director of the
8 Office of Management and Budget and in accord-
9 ance with the provisions of section 1531(a)(2) of
10 title 31, United States Code; and

11 (2) the Secretary shall have all functions relat-
12 ing to the agency that any other official could by law
13 exercise in relation to the agency immediately before
14 such transfer, and shall have in addition all func-
15 tions vested in the Secretary by this Act or other
16 law.

17 Paragraph (1) shall not apply to appropriations trans-
18 ferred pursuant to section 763(b).

19 (f) PROHIBITION ON USE OF TRANSPORTATION
20 TRUST FUNDS.—

21 (1) IN GENERAL.—Notwithstanding any other
22 provision of this Act, no funds derived from the
23 Highway Trust Fund, Airport and Airway Trust
24 Fund, Inland Waterway Trust Fund, or Harbor
25 Maintenance Trust Fund, may be transferred to,

1 made available to, or obligated by the Secretary or
2 any other official in the Department.

3 (2) **LIMITATION.**—This subsection shall not
4 apply to security-related funds provided to the Fed-
5 eral Aviation Administration for fiscal years pre-
6 ceding fiscal year 2003 for (A) operations, (B) facili-
7 ties and equipment, or (C) research, engineering,
8 and development.

9 **SEC. 812. SAVINGS PROVISIONS.**

10 (a) **COMPLETED ADMINISTRATIVE ACTIONS.**—(1)
11 Completed administrative actions of an agency shall not
12 be affected by the enactment of this Act or the transfer
13 of such agency to the Department, but shall continue in
14 effect according to their terms until amended, modified,
15 superseded, terminated, set aside, or revoked in accord-
16 ance with law by an officer of the United States or a court
17 of competent jurisdiction, or by operation of law.

18 (2) For purposes of paragraph (1), the term “com-
19 pleted administrative action” includes orders, determina-
20 tions, rules, regulations, personnel actions, permits, agree-
21 ments, grants, contracts, certificates, licenses, registra-
22 tions, and privileges.

23 (b) **PENDING PROCEEDINGS.**—Subject to the author-
24 ity of the Secretary under this Act—

1 (1) pending proceedings in an agency, including
2 notices of proposed rulemaking, and applications for
3 licenses, permits, certificates, grants, and financial
4 assistance, shall continue notwithstanding the enact-
5 ment of this Act or the transfer of the agency to the
6 Department, unless discontinued or modified under
7 the same terms and conditions and to the same ex-
8 tent that such discontinuance could have occurred if
9 such enactment or transfer had not occurred; and

10 (2) orders issued in such proceedings, and ap-
11 peals therefrom, and payments made pursuant to
12 such orders, shall issue in the same manner and on
13 the same terms as if this Act had not been enacted
14 or the agency had not been transferred, and any
15 such orders shall continue in effect until amended,
16 modified, superseded, terminated, set aside, or re-
17 voked by an officer of the United States or a court
18 of competent jurisdiction, or by operation of law.

19 (c) PENDING CIVIL ACTIONS.—Subject to the author-
20 ity of the Secretary under this Act, pending civil actions
21 shall continue notwithstanding the enactment of this Act
22 or the transfer of an agency to the Department, and in
23 such civil actions, proceedings shall be had, appeals taken,
24 and judgments rendered and enforced in the same manner

1 and with the same effect as if such enactment or transfer
2 had not occurred.

3 (d) REFERENCES.—References relating to an agency
4 that is transferred to the Department in statutes, Execu-
5 tive orders, rules, regulations, directives, or delegations of
6 authority that precede such transfer or the effective date
7 of this Act shall be deemed to refer, as appropriate, to
8 the Department, to its officers, employees, or agents, or
9 to its corresponding organizational units or functions.
10 Statutory reporting requirements that applied in relation
11 to such an agency immediately before the effective date
12 of this Act shall continue to apply following such transfer
13 if they refer to the agency by name.

14 (e) EMPLOYMENT PROVISIONS.—(1) Notwith-
15 standing the generality of the foregoing (including sub-
16 sections (a) and (d)), in and for the Department the Sec-
17 retary may, in regulations prescribed jointly with the Di-
18 rector of the Office of Personnel Management, adopt the
19 rules, procedures, terms, and conditions, established by
20 statute, rule, or regulation before the effective date of this
21 Act, relating to employment in any agency transferred to
22 the Department pursuant to this Act; and

23 (2) except as otherwise provided in this Act, or under
24 authority granted by this Act, the transfer pursuant to
25 this Act of personnel shall not alter the terms and condi-

1 tions of employment, including compensation, of any em-
2 ployee so transferred.

3 **SEC. 813. TERMINATIONS.**

4 Except as otherwise provided in this Act, whenever
5 all the functions vested by law in any agency have been
6 transferred pursuant to this Act, each position and office
7 the incumbent of which was authorized to receive com-
8 pensation at the rates prescribed for an office or position
9 at level II, III, IV, or V, of the Executive Schedule, shall
10 terminate.

11 **SEC. 814. NATIONAL IDENTIFICATION SYSTEM NOT AU-**
12 **THORIZED.**

13 Nothing in this Act shall be construed to authorize
14 the development of a national identification system or
15 card.

16 **SEC. 815. CONTINUITY OF INSPECTOR GENERAL OVER-**
17 **SIGHT.**

18 Notwithstanding the transfer of an agency to the De-
19 partment pursuant to this Act, the Inspector General that
20 exercised oversight of such agency prior to such transfer
21 shall continue to exercise oversight of such agency during
22 the period of time, if any, between the transfer of such
23 agency to the Department pursuant to this Act and the
24 appointment of the Inspector General of the Department

1 of Homeland Security in accordance with section 103(b)
2 of this Act.

3 **SEC. 816. REFERENCE.**

4 With respect to any function transferred by or under
5 this Act (including under a reorganization plan that be-
6 comes effective under section 802) and exercised on or
7 after the effective date of this Act, reference in any other
8 Federal law to any department, commission, or agency or
9 any officer or office the functions of which are so trans-
10 ferred shall be deemed to refer to the Secretary, other offi-
11 cial, or component of the Department to which such func-
12 tion is so transferred.

13 **TITLE IX—CONFORMING AND**
14 **TECHNICAL AMENDMENTS**

15 **SEC. 901. INSPECTOR GENERAL ACT OF 1978.**

16 Section 11 of the Inspector General Act of 1978
17 (Public Law 95–452) is amended—

18 (1) by inserting “Homeland Security,” after
19 “Transportation,” each place it appears; and

20 (2) by striking “; and” each place it appears in
21 paragraph (1) and inserting “;”;

22 **SEC. 902. EXECUTIVE SCHEDULE.**

23 (a) IN GENERAL.—Title 5, United States Code, is
24 amended—

1 (1) in section 5312, by inserting “Secretary of
2 Homeland Security.” as a new item after “Affairs.”;

3 (2) in section 5313, by inserting “Deputy Sec-
4 retary of Homeland Security.” as a new item after
5 “Affairs.”;

6 (3) in section 5314, by inserting “Under Secre-
7 taries, Department of Homeland Security.” as a new
8 item after “Affairs.” the third place it appears;

9 (4) in section 5315, by inserting “Assistant
10 Secretaries, Department of Homeland Security.”,
11 “General Counsel, Department of Homeland Secu-
12 rity.”, “Chief Financial Officer, Department of
13 Homeland Security.”, “Chief Information Officer,
14 Department of Homeland Security.”, and “Inspector
15 General, Department of Homeland Security.” as new
16 items after “Affairs.” the first place it appears; and

17 (5) in section 5315, by striking “Commissioner
18 of Immigration and Naturalization, Department of
19 Justice.”.

20 (b) SPECIAL EFFECTIVE DATE.—Notwithstanding
21 section 4, the amendment made by subsection (a)(5) shall
22 take effect on the date on which the transfer of functions
23 specified under section 411 takes effect.

1 **SEC. 903. UNITED STATES SECRET SERVICE.**

2 (a) IN GENERAL.—(1) The United States Code is
3 amended in section 202 of title 3, and in section 3056
4 of title 18, by striking “of the Treasury”, each place it
5 appears and inserting “of Homeland Security”.

6 (2) Section 208 of title 3, United States Code, is
7 amended by striking “of Treasury” each place it appears
8 and inserting “of Homeland Security”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 this section shall take effect on the date of transfer of
11 the United States Secret Service to the Department.

12 **SEC. 904. COAST GUARD.**

13 (a) TITLE 14, U.S.C.—Title 14, United States Code,
14 is amended in sections 1, 3, 53, 95, 145, 516, 666, 669,
15 673, 673a (as redesignated by subsection (e)(1)), 674,
16 687, and 688 by striking “of Transportation” each place
17 it appears and inserting “of Homeland Security”.

18 (b) TITLE 10, U.S.C.—(1) Title 10, United States
19 Code, is amended in sections 101(9), 130b(a), 130b(c)(4),
20 130e(h)(1), 379, 513(d), 575(b)(2), 580(e)(6), 580a(e),
21 651(a), 671(c)(2), 708(a), 716(a), 717, 806(d)(2), 815(e),
22 888, 946(c)(1), 973(d), 978(d), 983(b)(1), 985(a),
23 1033(b)(1), 1033(d), 1034, 1037(c), 1044d(f), 1058(c),
24 1059(a), 1059(k)(1), 1073(a), 1074(c)(1), 1089(g)(2),
25 1090, 1091(a), 1124, 1143, 1143a(h), 1144, 1145(e),
26 1148, 1149, 1150(c), 1152(a), 1152(d)(1), 1153, 1175,

1 1212(a), 1408(h)(2), 1408(h)(8), 1463(a)(2), 1482a(b),
2 1510, 1552(a)(1), 1565(f), 1588(f)(4), 1589, 2002(a),
3 2302(1), 2306b(b), 2323(j)(2), 2376(2), 2396(b)(1),
4 2410a(a), 2572(a), 2575(a), 2578, 2601(b)(4), 2634(e),
5 2635(a), 2734(g), 2734a, 2775, 2830(b)(2), 2835, 2836,
6 4745(a), 5013a(a), 7361(b), 10143(b)(2), 10146(a),
7 10147(a), 10149(b), 10150, 10202(b), 10203(d),
8 10205(b), 10301(b), 12103(b), 12103(d), 12304,
9 12311(c), 12522(c), 12527(a)(2), 12731(b), 12731a(e),
10 16131(a), 16136(a), 16301(g), and 18501 by striking “of
11 Transportation” each place it appears and inserting “of
12 Homeland Security”.

13 (2) Section 801(1) of such title is amended by strik-
14 ing “the General Counsel of the Department of Transpor-
15 tation” and inserting “an official designated to serve as
16 Judge Advocate General of the Coast Guard by the Sec-
17 retary of Homeland Security”.

18 (3) Section 983(d)(2)(B) of such title is amended by
19 striking “Department of Transportation” and inserting
20 “Department of Homeland Security”.

21 (4) Section 2665(b) of such title is amended by strik-
22 ing “Department of Transportation” and inserting “De-
23 partment in which the Coast Guard is operating”.

24 (5) Section 7045 of such title is amended—

1 (A) in subsections (a)(1) and (b), by striking
2 “Secretaries of the Army, Air Force, and Transpor-
3 tation” both places it appears and inserting “Sec-
4 retary of the Army, the Secretary of the Air Force,
5 and the Secretary of Homeland Security”; and

6 (B) in subsection (b), by striking “Department
7 of Transportation” and inserting “Department of
8 Homeland Security”.

9 (6) Section 7361(b) of such title is amended in the
10 subsection heading by striking “TRANSPORTATION” and
11 inserting “HOMELAND SECURITY”.

12 (7) Section 12522(c) of such title is amended in the
13 subsection heading by striking “TRANSPORTATION” and
14 inserting “HOMELAND SECURITY”.

15 (c) TITLE 37, U.S.C.—Title 37, United States Code,
16 is amended in sections 101(5), 204(i)(4), 301a(a)(3),
17 306(d), 307(c), 308(a)(1), 308(d)(2), 308(f), 308b(e),
18 308c(e), 308d(a), 308e(f), 308g(g), 308h(f), 308i(e),
19 309(d), 316(d), 323(b), 323(g)(1), 325(i), 402(d),
20 402a(g)(1), 403(f)(3), 403(l)(1), 403b(i)(5), 406(b)(1),
21 417(a), 417(b), 418(a), 703, 1001(c), 1006(f), 1007(a),
22 and 1011(d) by striking “of Transportation” each place
23 it appears and inserting “of Homeland Security”.

1 (d) OTHER DEFENSE-RELATED LAWS.—(1) Section
2 363 of Public Law 104–193 (110 Stat. 2247) is
3 amended—

4 (A) in subsection (a)(1) (10 U.S.C. 113 note),
5 by striking “of Transportation” and inserting “of
6 Homeland Security”; and

7 (B) in subsection (b)(1) (10 U.S.C. 704 note),
8 by striking “of Transportation” and inserting “of
9 Homeland Security”.

10 (2) Section 721(1) of Public Law 104–201 (10
11 U.S.C. 1073 note) is amended by striking “of Transpor-
12 tation” and inserting “of Homeland Security”.

13 (3) Section 4463(a) of Public Law 102–484 (10
14 U.S.C. 1143a note) is amended by striking “after con-
15 sultation with the Secretary of Transportation”.

16 (4) Section 4466(h) of Public Law 102–484 (10
17 U.S.C. 1143 note) is amended by striking “of Transpor-
18 tation” and inserting “of Homeland Security”.

19 (5) Section 542(d) of Public Law 103–337 (10
20 U.S.C. 1293 note) is amended by striking “of Transpor-
21 tation” and inserting “of Homeland Security”.

22 (6) Section 740 of Public Law 106–181 (10 U.S.C.
23 2576 note) is amended in subsections (b)(2), (c), and
24 (d)(1) by striking “of Transportation” each place it ap-
25 pears and inserting “of Homeland Security”.

1 (7) Section 1407(b)(2) of the Defense Dependents'
2 Education Act of 1978 (20 U.S.C. 926(b)) is amended by
3 striking “of Transportation” both places it appears and
4 inserting “of Homeland Security”.

5 (8) Section 2301(5)(D) of the Elementary and Sec-
6 ondary Education Act of 1965 (20 U.S.C. 6671(5)(D))
7 is amended by striking “of Transportation” and inserting
8 “of Homeland Security”.

9 (9) Section 2307(a) of of the Elementary and Sec-
10 ondary Education Act of 1965 (20 U.S.C. 6677(a)) is
11 amended by striking “of Transportation” and inserting
12 “of Homeland Security”.

13 (10) Section 1034(a) of Public Law 105–85 (21
14 U.S.C. 1505a(a)) is amended by striking “of Transpor-
15 tation” and inserting “of Homeland Security”.

16 (11) The Military Selective Service Act is amended—

17 (A) in section 4(a) (50 U.S.C. App. 454(a)), by
18 striking “of Transportation” in the fourth para-
19 graph and inserting “of Homeland Security”;

20 (B) in section 4(b) (50 U.S.C. App. 454(b)), by
21 striking “of Transportation” both places it appears
22 and inserting “of Homeland Security”;

23 (C) in section 6(d)(1) (50 U.S.C. App.
24 456(d)(1)), by striking “of Transportation” both

1 places it appears and inserting “of Homeland Secu-
2 rity”;

3 (D) in section 9(c) (50 U.S.C. App. 459(c)), by
4 striking “Secretaries of Army, Navy, Air Force, or
5 Transportation” and inserting “Secretary of a mili-
6 tary department, and the Secretary of Homeland Se-
7 curity with respect to the Coast Guard,”; and

8 (E) in section 15(e) (50 U.S.C. App. 465(e)),
9 by striking “of Transportation” both places it ap-
10 pears and inserting “of Homeland Security”.

11 (e) TECHNICAL CORRECTION.—(1) Title 14, United
12 States Code, is amended by redesignating section 673 (as
13 added by section 309 of Public Law 104–324) as section
14 673a.

15 (2) The table of sections at the beginning of chapter
16 17 of such title is amended by redesignating the item re-
17 lating to such section as section 673a.

18 (f) EFFECTIVE DATE.—The amendments made by
19 this section (other than subsection (e)) shall take effect
20 on the date of transfer of the Coast Guard to the Depart-
21 ment.

22 **SEC. 905. STRATEGIC NATIONAL STOCKPILE AND SMALL-**
23 **POX VACCINE DEVELOPMENT.**

24 (a) IN GENERAL.—Section 121 of the Public Health
25 Security and Bioterrorism Preparedness and Response

1 Act of 2002 (Public Law 107–188; 42 U.S.C. 300hh–12)
2 is amended—

3 (1) in subsection (a)(1)—

4 (A) by striking “Secretary of Health and
5 Human Services” and inserting “Secretary of
6 Homeland Security”;

7 (B) by inserting “the Secretary of Health
8 and Human Services and” between “in coordi-
9 nation with” and “the Secretary of Veterans
10 Affairs”; and

11 (C) by inserting “of Health and Human
12 Services” after “as are determined by the Sec-
13 retary”; and

14 (2) in subsections (a)(2) and (b), by inserting
15 “of Health and Human Services” after “Secretary”
16 each place it appears.

17 (b) EFFECTIVE DATE.—The amendments made by
18 this section shall take effect on the date of transfer of
19 the Strategic National Stockpile of the Department of
20 Health and Human Services to the Department.

21 **SEC. 906. TRANSFER OF CERTAIN SECURITY AND LAW EN-**
22 **FORCEMENT FUNCTIONS AND AUTHORITIES.**

23 (a) AMENDMENT TO PROPERTY ACT.—Section
24 210(a)(2) of the Federal Property and Administrative
25 Services Act of 1949 (40 U.S.C. 490(a)(2)) is repealed.

1 (b) LAW ENFORCEMENT AUTHORITY.—The Act of
2 June 1, 1948 (40 U.S.C. 318–318d; chapter 359; 62 Stat.
3 281) is amended to read as follows:

4 **“SECTION 1. SHORT TITLE.**

5 “This Act may be cited as the ‘Protection of Public
6 Property Act’.

7 **“SEC. 2. LAW ENFORCEMENT AUTHORITY OF SECRETARY**
8 **OF HOMELAND SECURITY FOR PROTECTION**
9 **OF PUBLIC PROPERTY.**

10 “(a) IN GENERAL.—The Secretary of Homeland Se-
11 curity (in this Act referred to as the ‘Secretary’) shall pro-
12 tect the buildings, grounds, and property that are owned,
13 occupied, or secured by the Federal Government (includ-
14 ing any agency, instrumentality, or wholly owned or
15 mixed-ownership corporation thereof) and the persons on
16 the property.

17 “(b) OFFICERS AND AGENTS.—

18 “(1) DESIGNATION.—The Secretary may des-
19 ignate employees of the Department of Homeland
20 Security, including employees transferred to the De-
21 partment from the Office of the Federal Protective
22 Service of the General Services Administration pur-
23 suant to the Homeland Security Act of 2002, as offi-
24 cers and agents for duty in connection with the pro-
25 tection of property owned or occupied by the Federal

1 Government and persons on the property, including
2 duty in areas outside the property to the extent nec-
3 essary to protect the property and persons on the
4 property.

5 “(2) POWERS.—While engaged in the perform-
6 ance of official duties, an officer or agent designated
7 under this subsection may—

8 “(A) enforce Federal laws and regulations
9 for the protection of persons and property;

10 “(B) carry firearms;

11 “(C) make arrests without a warrant for
12 any offense against the United States com-
13 mitted in the presence of the officer or agent or
14 for any felony cognizable under the laws of the
15 United States if the officer or agent has reason-
16 able grounds to believe that the person to be ar-
17 rested has committed or is committing a felony;

18 “(D) serve warrants and subpoenas issued
19 under the authority of the United States; and

20 “(E) conduct investigations, on and off the
21 property in question, of offenses that may have
22 been committed against property owned or oc-
23 cupied by the Federal Government or persons
24 on the property.

1 “(F) carry out such other activities for the
2 promotion of homeland security as the Sec-
3 retary may prescribe.

4 “(c) REGULATIONS.—

5 “(1) IN GENERAL.—The Secretary, in consulta-
6 tion with the Administrator of General Services, may
7 prescribe regulations necessary for the protection
8 and administration of property owned or occupied by
9 the Federal Government and persons on the prop-
10 erty. The regulations may include reasonable pen-
11 alties, within the limits prescribed in paragraph (2),
12 for violations of the regulations. The regulations
13 shall be posted and remain posted in a conspicuous
14 place on the property.

15 “(2) PENALTIES.—A person violating a regula-
16 tion prescribed under this subsection shall be fined
17 under title 18, United States Code, imprisoned for
18 not more than 30 days, or both.

19 “(d) DETAILS.—

20 “(1) REQUESTS OF AGENCIES.—On the request
21 of the head of a Federal agency having charge or
22 control of property owned or occupied by the Federal
23 Government, the Secretary may detail officers and
24 agents designated under this section for the protec-
25 tion of the property and persons on the property.

1 “(2) APPLICABILITY OF REGULATIONS.—The
2 Secretary may—

3 “(A) extend to property referred to in
4 paragraph (1) the applicability of regulations
5 prescribed under this section and enforce the
6 regulations as provided in this section; or

7 “(B) utilize the authority and regulations
8 of the requesting agency if agreed to in writing
9 by the agencies.

10 “(3) FACILITIES AND SERVICES OF OTHER
11 AGENCIES.—When the Secretary determines it to be
12 economical and in the public interest, the Secretary
13 may utilize the facilities and services of Federal,
14 State, and local law enforcement agencies, with the
15 consent of the agencies.

16 “(e) AUTHORITY OUTSIDE FEDERAL PROPERTY.—
17 For the protection of property owned or occupied by the
18 Federal Government and persons on the property, the Sec-
19 retary may enter into agreements with Federal agencies
20 and with State and local governments to obtain authority
21 for officers and agents designated under this section to
22 enforce Federal laws and State and local laws concurrently
23 with other Federal law enforcement officers and with
24 State and local law enforcement officers.

1 “(f) SECRETARY AND ATTORNEY GENERAL AP-
2 PROVAL.—The powers granted to officers and agents des-
3 ignated under this section shall be exercised in accordance
4 with guidelines approved by the Secretary and the Attor-
5 ney General.

6 “(g) LIMITATION ON STATUTORY CONSTRUCTION.—
7 Nothing in this section shall be construed to—

8 “(1) preclude or limit the authority of any Fed-
9 eral law enforcement agency; or

10 “(2) restrict the authority of the Administrator
11 of General Services to promulgate regulations affect-
12 ing property under the Administrator’s custody and
13 control.”.

14 **SEC. 907. TRANSPORTATION SECURITY REGULATIONS.**

15 Title 49, United States Code, is amended—

16 (1) in section 114(l)(2)(B), by inserting “for a
17 period not to exceed 30 days” after “effective”; and

18 (2) in section 114(l)(2)(B), by inserting “rati-
19 fied or” after “unless”.

20 **SEC. 908. RAILROAD SECURITY LAWS.**

21 Title 49, United States Code, is amended—

22 (1) in section 20106 by inserting in the second
23 sentence, “, including security,” after “railroad safe-
24 ty” and “or the Secretary of Homeland Security”
25 after “Secretary of Transportation”; and

1 (2) in section 20105—

2 (A) by inserting “or the Secretary of
3 Homeland Security” after “Secretary of Trans-
4 portation” in subsection (a);

5 (B) by inserting “of Transportation or the
6 Secretary of Homeland Security” after “issued
7 by the Secretary” in subsection (a);

8 (C) by inserting “of Transportation or the
9 Secretary of Homeland Security, as appro-
10 priate,” after “to the Secretary” in subsection
11 (a), and after “Secretary” in subsection
12 (b)(1)(A)(iii) and (B)(iv), the first place it ap-
13 pears in subsections (b)(1)(B) and (B)(iii) and
14 (d), each place it appears in subsections (c)(1),
15 (c)(2), (e), and (f), and the first four times it
16 appears in subsection (b)(3);

17 (D) by inserting “of Transportation or the
18 Secretary of Homeland Security, as appro-
19 priate” after “Secretary” in subsection
20 (b)(1)(A)(ii), (b)(1)(B)(ii), the second place it
21 appears in subsection (b)(1)(B)(iii), and the
22 last place it appears in subsection (b)(3);

23 (E) in subsection (d), by replacing “Sec-
24 retary’s” with “Secretary of Transportation’s”
25 and adding before the period at the end “or the

1 Secretary of Homeland Security’s duties under
2 section 114”; and

3 (F) in subsection (f), by adding before the
4 period at the end “or section 114”.

5 **SEC. 909. OFFICE OF SCIENCE AND TECHNOLOGY POLICY.**

6 The National Science and Technology Policy, Organi-
7 zation, and Priorities Act of 1976 is amended—

8 (1) in section 204(b)(1) (42 U.S.C.
9 6613(b)(1)), by inserting “homeland security,” after
10 “national security,”; and

11 (2) in section 208(a)(1) (42 U.S.C.
12 6617(a)(1)), by inserting “the Office of Homeland
13 Security,” after “National Security Council,”.

14 **SEC. 910. NATIONAL OCEANOGRAPHIC PARTNERSHIP PRO-**
15 **GRAM.**

16 Section 7902(b) of title 10, United States Code, is
17 amended by adding at the end the following new para-
18 graphs:

19 “(13) The Under Secretary for Science and
20 Technology of the Department of Homeland Secu-
21 rity.

22 “(14) Other Federal officials the Council con-
23 siders appropriate.”.

1 **SEC. 911. CHIEF FINANCIAL OFFICER.**

2 Section 901(b)(1) of title 31, United States Code, is
3 amended—

4 (1) by redesignating subparagraphs (G)
5 through (P) as subparagraphs (H) through (Q), re-
6 spectively; and

7 (2) by inserting the following new subparagraph
8 after subparagraph (F):

9 “(G) The Department of Homeland Security.”.

10 **SEC. 912. CHIEF INFORMATION OFFICER.**

11 (a) CLINGER–COHEN ACT.—(1) The provisions en-
12 acted in section 5125 of the Clinger–Cohen Act of 1996
13 (division E of Public Law 104–106; 110 Stat. 684) shall
14 apply with respect to the Chief Information Officer of the
15 Department.

16 (2) Section 5131(c) of the Clinger-Cohen Act of 1996
17 (40 U.S.C. 1441(c)) is amended by inserting “or ap-
18 pointed” after “a Chief Information Officer designated”.

19 (b) TITLE 44.—Chapter 35 of title 44, United States
20 Code, is amended—

21 (1) in section 3506(a)(2)—

22 (A) in subparagraph (A) by striking “sub-
23 paragraph (B)” and inserting “subparagraphs
24 (B) and (C)”; and

25 (B) by adding at the end the following:

1 “(C) The Chief Information Officer of the Depart-
2 ment of Homeland Security shall be an individual who is
3 appointed by the President.”;

4 (2) in each of subsections (a)(4) and (c)(1) of
5 section 3506, by inserting “or appointed” after “the
6 Chief Information Officer designated”; and

7 (3) in subsection (a)(3) of section 3506, by in-
8 serting “or appointed” after “The Chief Information
9 Officer designated”.

10 **TITLE X—NATIONAL HOMELAND** 11 **SECURITY COUNCIL**

12 **SEC. 1001. NATIONAL HOMELAND SECURITY COUNCIL.**

13 There is established within the Executive Office of
14 the President a council to be known as the “Homeland
15 Security Council” (in this title referred to as the “Coun-
16 cil”).

17 **SEC. 1002. FUNCTION.**

18 The function of the Council shall be to advise the
19 President on homeland security matters.

20 **SEC. 1003. MEMBERSHIP.**

21 The members of the Council shall be the following:

22 (1) The President.

23 (2) The Vice President.

24 (3) The Secretary of Homeland Security.

25 (4) The Attorney General.

1 (5) The Secretary of Health and Human Serv-
2 ices.

3 (6) The Director of Central Intelligence.

4 (7) The Secretary of Defense.

5 (8) The Secretary of the Treasury.

6 (9) The Secretary of State.

7 (10) The Secretary of Energy.

8 (11) The Secretary of Agriculture.

9 (12) Such other individuals as may be des-
10 ignated by the President.

11 **SEC. 1004. OTHER FUNCTIONS AND ACTIVITIES.**

12 For the purpose of more effectively coordinating the
13 policies and functions of the United States Government
14 relating to homeland security, the Council shall—

15 (1) assess the objectives, commitments, and
16 risks of the United States in the interest of home-
17 land security and to make resulting recommenda-
18 tions to the President;

19 (2) oversee and review homeland security poli-
20 cies of the Federal Government and to make result-
21 ing recommendations to the President; and

22 (3) perform such other functions as the Presi-
23 dent may direct.

1 **SEC. 1005. HOMELAND SECURITY BUDGET.**

2 The Director of the Office of Management and Budg-
3 et shall prepare for the President a Federal homeland se-
4 curity budget to be delivered to the Congress as part of
5 the President’s annual budget request.

6 **SEC. 1006. STAFF COMPOSITION.**

7 The Council shall have a staff, the head of which shall
8 be a civilian Executive Secretary, who shall be appointed
9 by the President. The President is authorized to fix the
10 pay of the Executive Secretary at a rate not to exceed
11 the rate of pay payable to the Executive Secretary of the
12 National Security Council.

13 **SEC. 1007. RELATION TO THE NATIONAL SECURITY COUN-**
14 **CIL.**

15 The President may convene joint meetings of the
16 Homeland Security Council and the National Security
17 Council with participation by members of either Council
18 or as the President may otherwise direct.

19 **TITLE XI—INFORMATION**
20 **SECURITY**

21 **SEC. 1101. INFORMATION SECURITY.**

22 (a) **SHORT TITLE.**—The amendments made by this
23 title may be cited as the “Federal Information Security
24 Management Act of 2002”.

25 (b) **INFORMATION SECURITY.**—

1 (1) IN GENERAL.—Subchapter II of chapter 35
2 of title 44, United States Code, is amended to read
3 as follows:

4 **“SUBCHAPTER II—INFORMATION**
5 **SECURITY**

6 **“§ 3531. Purposes**

7 “The purposes of this subchapter are to—

8 “(1) provide a comprehensive framework for en-
9 suring the effectiveness of information security con-
10 trols over information resources that support Fed-
11 eral operations and assets;

12 “(2) recognize the highly networked nature of
13 the current Federal computing environment and pro-
14 vide effective governmentwide management and over-
15 sight of the related information security risks, in-
16 cluding coordination of information security efforts
17 throughout the civilian, national security, and law
18 enforcement communities;

19 “(3) provide for development and maintenance
20 of minimum controls required to protect Federal in-
21 formation and information systems;

22 “(4) provide a mechanism for improved over-
23 sight of Federal agency information security pro-
24 grams;

1 “(5) acknowledge that commercially developed
2 information security products offer advanced, dy-
3 namic, robust, and effective information security so-
4 lutions, reflecting market solutions for the protection
5 of critical information infrastructures important to
6 the national defense and economic security of the
7 nation that are designed, built, and operated by the
8 private sector; and

9 “(6) recognize that the selection of specific
10 technical hardware and software information secu-
11 rity solutions should be left to individual agencies
12 from among commercially developed products.”.

13 **“§ 3532. Definitions**

14 “(a) IN GENERAL.—Except as provided under sub-
15 section (b), the definitions under section 3502 shall apply
16 to this subchapter.

17 “(b) ADDITIONAL DEFINITIONS.—As used in this
18 subchapter—

19 “(1) the term ‘information security’ means pro-
20 tecting information and information systems from
21 unauthorized access, use, disclosure, disruption,
22 modification, or destruction in order to provide—

23 “(A) integrity, which means guarding
24 against improper information modification or

1 destruction, and includes ensuring information
2 nonrepudiation and authenticity;

3 “(B) confidentiality, which means pre-
4 serving authorized restrictions on access and
5 disclosure, including means for protecting per-
6 sonal privacy and proprietary information;

7 “(C) availability, which means ensuring
8 timely and reliable access to and use of infor-
9 mation; and

10 “(D) authentication, which means utilizing
11 digital credentials to assure the identity of
12 users and validate their access;

13 “(2) the term ‘national security system’ means
14 any information system (including any telecommuni-
15 cations system) used or operated by an agency or by
16 a contractor of an agency, or other organization on
17 behalf of an agency, the function, operation, or use
18 of which—

19 “(A) involves intelligence activities;

20 “(B) involves cryptologic activities related
21 to national security;

22 “(C) involves command and control of mili-
23 tary forces;

24 “(D) involves equipment that is an integral
25 part of a weapon or weapons system; or

1 “(E) is critical to the direct fulfillment of
2 military or intelligence missions provided that
3 this definition does not apply to a system that
4 is used for routine administrative and business
5 applications (including payroll, finance, logis-
6 tics, and personnel management applications);

7 “(3) the term ‘information technology’ has the
8 meaning given that term in section 5002 of the
9 Clinger-Cohen Act of 1996 (40 U.S.C. 1401); and

10 “(4) the term ‘information system’ means any
11 equipment or interconnected system or subsystems
12 of equipment that is used in the automatic acquisi-
13 tion, storage, manipulation, management, movement,
14 control, display, switching, interchange, trans-
15 mission, or reception of data or information, and
16 includes—

17 “(A) computers and computer networks;

18 “(B) ancillary equipment;

19 “(C) software, firmware, and related proce-
20 dures;

21 “(D) services, including support services;

22 and

23 “(E) related resources.”.

1 **“§ 3533. Authority and functions of the Director**

2 “(a) The Director shall oversee agency information
3 security policies and practices, by—

4 “(1) promulgating information security stand-
5 ards under section 5131 of the Clinger-Cohen Act of
6 1996 (40 U.S.C. 1441);

7 “(2) overseeing the implementation of policies,
8 principles, standards, and guidelines on information
9 security;

10 “(3) requiring agencies, consistent with the
11 standards promulgated under such section 5131 and
12 the requirements of this subchapter, to identify and
13 provide information security protections commensu-
14 rate with the risk and magnitude of the harm result-
15 ing from the unauthorized access, use, disclosure,
16 disruption, modification, or destruction of—

17 “(A) information collected or maintained
18 by or on behalf of an agency; or

19 “(B) information systems used or operated
20 by an agency or by a contractor of an agency
21 or other organization on behalf of an agency;

22 “(4) coordinating the development of standards
23 and guidelines under section 20 of the National In-
24 stitute of Standards and Technology Act (15 U.S.C.
25 278g-3) with agencies and offices operating or exer-
26 cising control of national security systems (including

1 the National Security Agency) to assure, to the maximum extent feasible, that such standards and
2 guidelines are complementary with standards and
3 guidelines developed for national security systems;
4

5 “(5) overseeing agency compliance with the requirements of this subchapter, including through
6 any authorized action under section 5113(b)(5) of the Clinger-Cohen Act of 1996 (40 U.S.C.
7 1413(b)(5)) to enforce accountability for compliance
8 with such requirements;
9

10 “(6) reviewing at least annually, and approving or disapproving, agency information security programs required under section 3534(b);
11

12 “(7) coordinating information security policies and procedures with related information resources
13 management policies and procedures; and
14

15 “(8) reporting to Congress no later than March
16 1 of each year on agency compliance with the requirements of this subchapter, including—
17

18 “(A) a summary of the findings of evaluations required by section 3535;
19

20 “(B) significant deficiencies in agency information security practices;
21

22 “(C) planned remedial action to address such deficiencies; and
23
24
25

1 “(D) a summary of, and the views of the
2 Director on, the report prepared by the Na-
3 tional Institute of Standards and Technology
4 under section 20(e)(7) of the National Institute
5 of Standards and Technology Act (15 U.S.C.
6 278g-3).”.

7 “(b) Except for the authorities described in para-
8 graphs (4) and (7) of subsection (a), the authorities of
9 the Director under this section shall not apply to national
10 security systems.

11 **“§ 3534. Federal agency responsibilities**

12 “(a) The head of each agency shall—

13 “(1) be responsible for—

14 “(A) providing information security protec-
15 tions commensurate with the risk and mag-
16 nitude of the harm resulting from unauthorized
17 access, use, disclosure, disruption, modification,
18 or destruction of—

19 “(i) information collected or main-
20 tained by or on behalf of the agency; and

21 “(ii) information systems used or op-
22 erated by an agency or by a contractor of
23 an agency or other organization on behalf
24 of an agency;

1 “(B) complying with the requirements of
2 this subchapter and related policies, procedures,
3 standards, and guidelines, including—

4 “(i) information security standards
5 promulgated by the Director under section
6 5131 of the Clinger-Cohen Act of 1996 (40
7 U.S.C. 1441); and

8 “(ii) information security standards
9 and guidelines for national security sys-
10 tems issued in accordance with law and as
11 directed by the President; and

12 “(C) ensuring that information security
13 management processes are integrated with
14 agency strategic and operational planning pro-
15 cesses;

16 “(2) ensure that senior agency officials provide
17 information security for the information and infor-
18 mation systems that support the operations and as-
19 sets under their control, including through—

20 “(A) assessing the risk and magnitude of
21 the harm that could result from the unauthor-
22 ized access, use, disclosure, disruption, modi-
23 fication, or destruction of such information or
24 information systems;

1 “(B) determining the levels of information
2 security appropriate to protect such information
3 and information systems in accordance with
4 standards promulgated under section 5131 of
5 the Clinger-Cohen Act of 1996 (40 U.S.C.
6 1441) for information security classifications
7 and related requirements;

8 “(C) implementing policies and procedures
9 to cost-effectively reduce risks to an acceptable
10 level; and

11 “(D) periodically testing and evaluating in-
12 formation security controls and techniques to
13 ensure that they are effectively implemented;

14 “(3) delegate to the agency Chief Information
15 Officer established under section 3506 (or com-
16 parable official in an agency not covered by such
17 section) the authority to ensure compliance with the
18 requirements imposed on the agency under this sub-
19 chapter, including—

20 “(A) designating a senior agency informa-
21 tion security officer who shall—

22 “(i) carry out the Chief Information
23 Officer’s responsibilities under this section;

24 “(ii) possess professional qualifica-
25 tions, including training and experience,

1 required to administer the functions de-
2 scribed under this section;

3 “(iii) have information security duties
4 as that official’s primary duty; and

5 “(iv) head an office with the mission
6 and resources to assist in ensuring agency
7 compliance with this section;

8 “(B) developing and maintaining an agen-
9 cywide information security program as re-
10 quired by subsection (b);

11 “(C) developing and maintaining informa-
12 tion security policies, procedures, and control
13 techniques to address all applicable require-
14 ments, including those issued under section
15 3533 of this title, and section 5131 of the
16 Clinger-Cohen Act of 1996 (40 U.S.C. 1441);

17 “(D) training and overseeing personnel
18 with significant responsibilities for information
19 security with respect to such responsibilities;
20 and

21 “(E) assisting senior agency officials con-
22 cerning their responsibilities under subpara-
23 graph (2);

24 “(4) ensure that the agency has trained per-
25 sonnel sufficient to assist the agency in complying

1 with the requirements of this subchapter and related
2 policies, procedures, standards, and guidelines; and

3 “(5) ensure that the agency Chief Information
4 Officer, in coordination with other senior agency of-
5 ficials, reports annually to the agency head on the
6 effectiveness of the agency information security pro-
7 gram, including progress of remedial actions.

8 “(b) Each agency shall develop, document, and imple-
9 ment an agencywide information security program, ap-
10 proved by the Director under section 3533(a)(5), to pro-
11 vide information security for the information and informa-
12 tion systems that support the operations and assets of the
13 agency, including those provided or managed by another
14 agency, contractor, or other source, that includes—

15 “(1) periodic assessments of the risk and mag-
16 nitude of the harm that could result from the unau-
17 thorized access, use, disclosure, disruption, modifica-
18 tion, or destruction of information and information
19 systems that support the operations and assets of
20 the agency;

21 “(2) policies and procedures that—

22 “(A) are based on the risk assessments re-
23 quired by subparagraph (1);

24 “(B) cost-effectively reduce information se-
25 curity risks to an acceptable level;

1 “(C) ensure that information security is
2 addressed throughout the life cycle of each
3 agency information system; and

4 “(D) ensure compliance with—

5 “(i) the requirements of this sub-
6 chapter;

7 “(ii) policies and procedures as may
8 be prescribed by the Director, and infor-
9 mation security standards promulgated
10 under section 5131 of the Clinger-Cohen
11 Act of 1996 (40 U.S.C. 1441);

12 “(iii) minimally acceptable system
13 configuration requirements, as determined
14 by the agency; and

15 “(iv) any other applicable require-
16 ments, including standards and guidelines
17 for national security systems issued in ac-
18 cordance with law and as directed by the
19 President;

20 “(3) subordinate plans for providing adequate
21 information security for networks, facilities, and sys-
22 tems or groups of information systems, as appro-
23 priate;

24 “(4) security awareness training to inform per-
25 sonnel, including contractors and other users of in-

1 formation systems that support the operations and
2 assets of the agency, of—

3 “(A) information security risks associated
4 with their activities; and

5 “(B) their responsibilities in complying
6 with agency policies and procedures designed to
7 reduce these risks;

8 “(5) periodic testing and evaluation of the ef-
9 fectiveness of information security policies, proce-
10 dures, and practices, to be performed with a fre-
11 quency depending on risk, but no less than annually,
12 of which such testing—

13 “(A) shall include testing of management,
14 operational, and technical controls of every in-
15 formation system identified in the inventory re-
16 quired under section 3505(c); and

17 “(B) may include testing relied on in a
18 evaluation under section 3535;

19 “(6) a process for planning, implementing, eval-
20 uating, and documenting remedial action to address
21 any deficiencies in the information security policies,
22 procedures, and practices of the agency;

23 “(7) procedures for detecting, reporting, and re-
24 sponding to security incidents, including—

1 “(A) mitigating risks associated with such
2 incidents before substantial damage is done;
3 and

4 “(B) notifying and consulting with, as
5 appropriate—

6 “(i) law enforcement agencies and rel-
7 evant Offices of Inspector General;

8 “(ii) an office designated by the Presi-
9 dent for any incident involving a national
10 security system; and

11 “(iii) any other agency or office, in ac-
12 cordance with law or as directed by the
13 President; and

14 “(8) plans and procedures to ensure continuity
15 of operations for information systems that support
16 the operations and assets of the agency.

17 “(c) Each agency shall—

18 “(1) report annually to the Director, the Com-
19 mittees on Government Reform and Science of the
20 House of Representatives, the Committees on Gov-
21 ernmental Affairs and Commerce, Science, and
22 Transportation of the Senate, the appropriate au-
23 thorization and appropriations committees of Con-
24 gress, and the Comptroller General on the adequacy
25 and effectiveness of information security policies,

1 procedures, and practices, and compliance with the
2 requirements of this subchapter, including compli-
3 ance with each requirement of subsection (b);

4 “(2) address the adequacy and effectiveness of
5 information security policies, procedures, and prac-
6 tices in plans and reports relating to—

7 “(A) annual agency budgets;

8 “(B) information resources management
9 under subchapter 1 of this chapter;

10 “(C) information technology management
11 under the Clinger-Cohen Act of 1996 (40
12 U.S.C. 1401 et seq.);

13 “(D) program performance under sections
14 1105 and 1115 through 1119 of title 31, and
15 sections 2801 and 2805 of title 39;

16 “(E) financial management under chapter
17 9 of title 31, and the Chief Financial Officers
18 Act of 1990 (31 U.S.C. 501 note; Public Law
19 101–576) (and the amendments made by that
20 Act);

21 “(F) financial management systems under
22 the Federal Financial Management Improve-
23 ment Act (31 U.S.C. 3512 note); and

24 “(G) internal accounting and administra-
25 tive controls under section 3512 of title 31,

1 United States Code, (known as the ‘Federal
2 Managers Financial Integrity Act’); and

3 “(3) report any significant deficiency in a pol-
4 icy, procedure, or practice identified under para-
5 graph (1) or (2)—

6 “(A) as a material weakness in reporting
7 under section 3512 of title 31, United States
8 Code; and

9 “(B) if relating to financial management
10 systems, as an instance of a lack of substantial
11 compliance under the Federal Financial Man-
12 agement Improvement Act (31 U.S.C. 3512
13 note).

14 “(d)(1) In addition to the requirements of subsection
15 (c), each agency, in consultation with the Director, shall
16 include as part of the performance plan required under
17 section 1115 of title 31 a description of—

18 “(A) the time periods, and

19 “(B) the resources, including budget, staffing,
20 and training,

21 that are necessary to implement the program required
22 under subsection (b).

23 “(2) The description under paragraph (1) shall be
24 based on the risk assessments required under subsection
25 (b)(2)(1).

1 “(e) Each agency shall provide the public with timely
2 notice and opportunities for comment on proposed infor-
3 mation security policies and procedures to the extent that
4 such policies and procedures affect communication with
5 the public.

6 **“§ 3535. Annual independent evaluation**

7 “(a)(1) Each year each agency shall have performed
8 an independent evaluation of the information security pro-
9 gram and practices of that agency to determine the effec-
10 tiveness of such program and practices.

11 “(2) Each evaluation by an agency under this section
12 shall include—

13 “(A) testing of the effectiveness of information
14 security policies, procedures, and practices of a rep-
15 resentative subset of the agency’s information sys-
16 tems;

17 “(B) an assessment (made on the basis of the
18 results of the testing) of compliance with—

19 “(i) the requirements of this subchapter;
20 and

21 “(ii) related information security policies,
22 procedures, standards, and guidelines; and

23 “(C) separate presentations, as appropriate, re-
24 garding information security relating to national se-
25 curity systems.

1 “(b) Subject to subsection (c)—

2 “(1) for each agency with an Inspector General
3 appointed under the Inspector General Act of 1978,
4 the annual evaluation required by this section shall
5 be performed by the Inspector General or by an
6 independent external auditor, as determined by the
7 Inspector General of the agency; and

8 “(2) for each agency to which paragraph (1)
9 does not apply, the head of the agency shall engage
10 an independent external auditor to perform the eval-
11 uation.

12 “(c) For each agency operating or exercising control
13 of a national security system, that portion of the evalua-
14 tion required by this section directly relating to a national
15 security system shall be performed—

16 “(1) only by an entity designated by the agency
17 head; and

18 “(2) in such a manner as to ensure appropriate
19 protection for information associated with any infor-
20 mation security vulnerability in such system com-
21 mensurate with the risk and in accordance with all
22 applicable laws.

23 “(d) The evaluation required by this section—

24 “(1) shall be performed in accordance with gen-
25 erally accepted government auditing standards; and

1 “(2) may be based in whole or in part on an
2 audit, evaluation, or report relating to programs or
3 practices of the applicable agency.

4 “(e) Each year, not later than such date established
5 by the Director, the head of each agency shall submit to
6 the Director the results of the evaluation required under
7 this section.

8 “(f) Agencies and evaluators shall take appropriate
9 steps to ensure the protection of information which, if dis-
10 closed, may adversely affect information security. Such
11 protections shall be commensurate with the risk and com-
12 ply with all applicable laws and regulations.

13 “(g)(1) The Director shall summarize the results of
14 the evaluations conducted under this section in the report
15 to Congress required under section 3533(a)(8).

16 “(2) The Director’s report to Congress under this
17 subsection shall summarize information regarding infor-
18 mation security relating to national security systems in
19 such a manner as to ensure appropriate protection for in-
20 formation associated with any information security vulner-
21 ability in such system commensurate with the risk and in
22 accordance with all applicable laws.

23 “(3) Evaluations and any other descriptions of infor-
24 mation systems under the authority and control of the Di-
25 rector of Central Intelligence or of National Foreign Intel-

1 ligen­ce Programs systems under the authority and control
2 of the Secretary of Defense shall be made available to Con-
3 gress only through the appropriate oversight committees
4 of Congress, in accordance with applicable laws.

5 “(h) The Comptroller General shall periodically
6 evaluate and report to Congress on—

7 “(1) the adequacy and effectiveness of agency
8 information security policies and practices; and

9 “(2) implementation of the requirements of this
10 subchapter.

11 **“§ 3536. National security systems**

12 “The head of each agency operating or exercising
13 control of a national security system shall be responsible
14 for ensuring that the agency—

15 “(1) provides information security protections
16 commensurate with the risk and magnitude of the
17 harm resulting from the unauthorized access, use,
18 disclosure, disruption, modification, or destruction of
19 the information contained in such system;

20 “(2) implements information security policies
21 and practices as required by standards and guide-
22 lines for national security systems, issued in accord-
23 ance with law and as directed by the President; and

24 “(3) complies with the requirements of this sub-
25 chapter.

1 **“§ 3537. Authorization of appropriations**

2 “There are authorized to be appropriated to carry out
3 the provisions of this subchapter such sums as may be
4 necessary for each of fiscal years 2003 through 2007.

5 **“§ 3538. Effect on existing law**

6 “Nothing in this subchapter, section 5131 of the
7 Clinger-Cohen Act of 1996 (40 U.S.C. 1441), or section
8 20 of the National Standards and Technology Act (15
9 U.S.C. 278g–3) may be construed as affecting the author-
10 ity of the President, the Office of Management and Budg-
11 et or the Director thereof, the National Institute of Stand-
12 ards and Technology, or the head of any agency, with re-
13 spect to the authorized use or disclosure of information,
14 including with regard to the protection of personal privacy
15 under section 552a of title 5, the disclosure of information
16 under section 552 of title 5, the management and disposi-
17 tion of records under chapters 29, 31, or 33 of title 44,
18 the management of information resources under sub-
19 chapter I of chapter 35 of this title, or the disclosure of
20 information to the Congress or the Comptroller General
21 of the United States.”.

22 (2) CLERICAL AMENDMENT.—The items in the
23 table of sections at the beginning of such chapter 35
24 under the heading “SUBCHAPTER II” are amend-
25 ed to read as follows:

“3531. Purposes.

“3532. Definitions.

“3533. Authority and functions of the Director.

“3534. Federal agency responsibilities.

“3535. Annual independent evaluation.

“3536. National security systems.

“3537. Authorization of appropriations.

“3538. Effect on existing law.”.

1 (c) INFORMATION SECURITY RESPONSIBILITIES OF
2 CERTAIN AGENCIES.—

3 (1) NATIONAL SECURITY RESPONSIBILITIES.—

4 (A) Nothing in this Act (including any amendment
5 made by this Act) shall supersede any authority of
6 the Secretary of Defense, the Director of Central In-
7 telligence, or other agency head, as authorized by
8 law and as directed by the President, with regard to
9 the operation, control, or management of national
10 security systems, as defined by section 3532(3) of
11 title 44, United States Code.

12 (B) Section 2224 of title 10, United States
13 Code, is amended—

14 (i) in subsection 2224(b), by striking “(b)
15 OBJECTIVES AND MINIMUM REQUIREMENTS.—
16 (1)” and inserting “(b) OBJECTIVES OF THE
17 PROGRAM.—”;

18 (ii) in subsection 2224(b), by striking “(2)
19 the program shall at a minimum meet the re-
20 quirements of section 3534 and 3535 of title
21 44, United States Code.”; and

1 (iii) in subsection 2224(c), by inserting
2 “, including through compliance with subtitle II
3 of chapter 35 of title 44” after “infrastruc-
4 ture”.

5 (2) ATOMIC ENERGY ACT OF 1954.—Nothing in
6 this Act shall supersede any requirement made by or
7 under the Atomic Energy Act of 1954 (42 U.S.C.
8 2011 et seq.). Restricted Data or Formerly Re-
9 stricted Data shall be handled, protected, classified,
10 downgraded, and declassified in conformity with the
11 Atomic Energy Act of 1954 (42 U.S.C. 2011 et
12 seq.).

13 **SEC. 1102. MANAGEMENT OF INFORMATION TECHNOLOGY.**

14 Section 5131 of the Clinger-Cohen Act of 1996 (40
15 U.S.C. 1441) is amended to read as follows:

16 **“SEC. 5131. RESPONSIBILITIES FOR FEDERAL INFORMA-**
17 **TION SYSTEMS STANDARDS.**

18 “(a)(1)(A) Except as provided under paragraph (2),
19 the Director of the Office of Management and Budget
20 shall, on the basis of proposed standards developed by the
21 National Institute of Standards and Technology pursuant
22 to paragraphs (2) and (3) of section 20(a) of the National
23 Institute of Standards and Technology Act (15 U.S.C.
24 278g–3(a)) and in consultation with the Secretary of

1 Homeland Security, promulgate information security
2 standards pertaining to Federal information systems.

3 “(B) Standards promulgated under subparagraph
4 (A) shall include—

5 “(i) standards that provide minimum informa-
6 tion security requirements as determined under sec-
7 tion 20(b) of the National Institute of Standards
8 and Technology Act (15 U.S.C. 278g-3(b)); and

9 “(ii) such standards that are otherwise nec-
10 essary to improve the efficiency of operation or secu-
11 rity of Federal information systems.

12 “(C) Information security standards described under
13 subparagraph (B) shall be compulsory and binding.

14 “(2) Standards and guidelines for national security
15 systems, as defined under section 3532(3) of title 44,
16 United States Code, shall be developed, promulgated, en-
17 forced, and overseen as otherwise authorized by law and
18 as directed by the President.

19 “(b) The head of an agency may employ standards
20 for the cost-effective information security for all oper-
21 ations and assets within or under the supervision of that
22 agency that are more stringent than the standards pro-
23 mulgated by the Director under this section, if such
24 standards—

1 “(1) contain, at a minimum, the provisions of
2 those applicable standards made compulsory and
3 binding by the Director; and

4 “(2) are otherwise consistent with policies and
5 guidelines issued under section 3533 of title 44,
6 United States Code.

7 “(c)(1) The decision regarding the promulgation of
8 any standard by the Director under subsection (a) shall
9 occur not later than 6 months after the submission of the
10 proposed standard to the Director by the National Insti-
11 tute of Standards and Technology, as provided under sec-
12 tion 20 of the National Institute of Standards and Tech-
13 nology Act (15 U.S.C. 278g-3).

14 “(2) A decision by the Director to significantly mod-
15 ify, or not promulgate, a proposed standard submitted to
16 the Director by the National Institute of Standards and
17 Technology, as provided under section 20 of the National
18 Institute of Standards and Technology Act (15 U.S.C.
19 278g-3), shall be made after the public is given an oppor-
20 tunity to comment on the Director’s proposed decision.”.

21 “(d) In this section, the term ‘information security’
22 has the meaning given that term in section 3532(b)(1) of
23 title 44, United States Code.”.

1 **SEC. 1103. NATIONAL INSTITUTE OF STANDARDS AND**
2 **TECHNOLOGY.**

3 Section 20 of the National Institute of Standards and
4 Technology Act (15 U.S.C. 278g-3), is amended by strik-
5 ing the text and inserting the following:

6 “(a) The Institute shall—

7 “(1) have the mission of developing standards,
8 guidelines, and associated methods and techniques
9 for information systems;

10 “(2) develop standards and guidelines, includ-
11 ing minimum requirements, for information systems
12 used or operated by an agency or by a contractor of
13 an agency or other organization on behalf of an
14 agency, other than national security systems (as de-
15 fined in section 3532(b)(2) of title 44, United States
16 Code);

17 “(3) develop standards and guidelines, includ-
18 ing minimum requirements, for providing adequate
19 information security for all agency operations and
20 assets, but such standards and guidelines shall not
21 apply to national security systems; and

22 “(4) carry out the responsibilities described in
23 paragraph (3) through the Computer Security Divi-
24 sion.

25 “(b) The standards and guidelines required by sub-
26 section (a) shall include, at a minimum—

1 “(1)(A) standards to be used by all agencies to
2 categorize all information and information systems
3 collected or maintained by or on behalf of each agen-
4 cy based on the objectives of providing appropriate
5 levels of information security according to a range of
6 risk levels;

7 “(B) guidelines recommending the types of in-
8 formation and information systems to be included in
9 each such category; and

10 “(C) minimum information security require-
11 ments for information and information systems in
12 each such category;

13 “(2) a definition of and guidelines concerning
14 detection and handling of information security inci-
15 dents; and

16 “(3) guidelines developed in coordination with
17 the National Security Agency for identifying an in-
18 formation system as a national security system con-
19 sistent with applicable requirements for national se-
20 curity systems, issued in accordance with law and as
21 directed by the President.

22 “(c) In developing standards and guidelines required
23 by subsections (a) and (b), the Institute shall—

24 “(1) consult with other agencies and offices (in-
25 cluding, but not limited to, the Director of the Office

1 of Management and Budget, the Departments of
2 Defense and Energy, the National Security Agency,
3 the General Accounting Office, and the Secretary of
4 Homeland Security) to assure—

5 “(A) use of appropriate information secu-
6 rity policies, procedures, and techniques, in
7 order to improve information security and avoid
8 unnecessary and costly duplication of effort;
9 and

10 “(B) that such standards and guidelines
11 are complementary with standards and guide-
12 lines employed for the protection of national se-
13 curity systems and information contained in
14 such systems;

15 “(2) provide the public with an opportunity to
16 comment on proposed standards and guidelines;

17 “(3) submit to the Director of the Office of
18 Management and Budget for promulgation under
19 section 5131 of the Clinger-Cohen Act of 1996 (40
20 U.S.C. 1441)—

21 “(A) standards, as required under sub-
22 section (b)(1)(A), no later than 12 months after
23 the date of the enactment of this section; and

24 “(B) minimum information security re-
25 quirements for each category, as required under

1 subsection (b)(1)(C), no later than 36 months
2 after the date of the enactment of this section;

3 “(4) issue guidelines as required under sub-
4 section (b)(1)(B), no later than 18 months after the
5 date of the enactment of this Act;

6 “(5) ensure that such standards and guidelines
7 do not require specific technological solutions or
8 products, including any specific hardware or soft-
9 ware security solutions;

10 “(6) ensure that such standards and guidelines
11 provide for sufficient flexibility to permit alternative
12 solutions to provide equivalent levels of protection
13 for identified information security risks; and

14 “(7) use flexible, performance-based standards
15 and guidelines that, to the greatest extent possible,
16 permit the use of off-the-shelf commercially devel-
17 oped information security products.

18 “(d) The Institute shall—

19 “(1) submit standards developed pursuant to
20 subsection (a), along with recommendations as to
21 the extent to which these should be made compul-
22 sory and binding, to the Director of the Office of
23 Management and Budget for promulgation under
24 section 5131 of the Clinger-Cohen Act of 1996 (40
25 U.S.C. 1441);

1 “(2) provide assistance to agencies regarding—

2 “(A) compliance with the standards and
3 guidelines developed under subsection (a);

4 “(B) detecting and handling information
5 security incidents; and

6 “(C) information security policies, proce-
7 dures, and practices;

8 “(3) conduct research, as needed, to determine
9 the nature and extent of information security
10 vulnerabilities and techniques for providing cost-ef-
11 fective information security;

12 “(4) develop and periodically revise performance
13 indicators and measures for agency information se-
14 curity policies and practices;

15 “(5) evaluate private sector information secu-
16 rity policies and practices and commercially available
17 information technologies to assess potential applica-
18 tion by agencies to strengthen information security;

19 “(6) evaluate security policies and practices de-
20 veloped for national security systems to assess po-
21 tential application by agencies to strengthen infor-
22 mation security;

23 “(7) periodically assess the effectiveness of
24 standards and guidelines developed under this sec-
25 tion and undertake revisions as appropriate;

1 “(8) solicit and consider the recommendations
2 of the Information Security and Privacy Advisory
3 Board, established by section 21, regarding stand-
4 ards and guidelines developed under subsection (a)
5 and submit such recommendations to the Director of
6 the Office of Management and Budget with such
7 standards submitted to the Director; and

8 “(9) prepare an annual public report on activi-
9 ties undertaken in the previous year, and planned
10 for the coming year, to carry out responsibilities
11 under this section.

12 “(e) As used in this section—

13 “(1) the term ‘agency’ has the same meaning as
14 provided in section 3502(1) of title 44, United
15 States Code;

16 “(2) the term ‘information security’ has the
17 same meaning as provided in section 3532(1) of
18 such title;

19 “(3) the term ‘information system’ has the
20 same meaning as provided in section 3502(8) of
21 such title;

22 “(4) the term ‘information technology’ has the
23 same meaning as provided in section 5002 of the
24 Clinger-Cohen Act of 1996 (40 U.S.C. 1401); and

1 “(5) the term ‘national security system’ has the
2 same meaning as provided in section 3532(b)(2) of
3 such title.”.

4 **SEC. 1104. INFORMATION SECURITY AND PRIVACY ADVI-**
5 **SORY BOARD.**

6 Section 21 of the National Institute of Standards and
7 Technology Act (15 U.S.C. 278g-4), is amended—

8 (1) in subsection (a), by striking “Computer
9 System Security and Privacy Advisory Board” and
10 inserting “Information Security and Privacy Advi-
11 sory Board”;

12 (2) in subsection (a)(1), by striking “computer
13 or telecommunications” and inserting “information
14 technology”;

15 (3) in subsection (a)(2)—

16 (A) by striking “computer or telecommuni-
17 cations technology” and inserting “information
18 technology”; and

19 (B) by striking “computer or telecommuni-
20 cations equipment” and inserting “information
21 technology”;

22 (4) in subsection (a)(3)—

23 (A) by striking “computer systems” and
24 inserting “information system”; and

1 (B) by striking “computer systems secu-
2 rity” and inserting “information security”;

3 (5) in subsection (b)(1) by striking “computer
4 systems security” and inserting “information secu-
5 rity”;

6 (6) in subsection (b) by striking paragraph (2)
7 and inserting the following:

8 “(2) to advise the Institute and the Director of
9 the Office of Management and Budget on informa-
10 tion security and privacy issues pertaining to Fed-
11 eral Government information systems, including
12 through review of proposed standards and guidelines
13 developed under section 20; and”;

14 (7) in subsection (b)(3) by inserting “annually”
15 after “report”;

16 (8) by inserting after subsection (e) the fol-
17 lowing new subsection:

18 “(f) The Board shall hold meetings at such locations
19 and at such time and place as determined by a majority
20 of the Board.”;

21 (9) by redesignating subsections (f) and (g) as
22 subsections (g) and (h), respectively; and

23 (10) by striking subsection (h), as redesignated
24 by paragraph (9), and inserting the following:

1 “(h) As used in this section, the terms “information
2 system” and “information technology” have the meanings
3 given in section 20.”.

4 **SEC. 1105. TECHNICAL AND CONFORMING AMENDMENTS.**

5 (a) **COMPUTER SECURITY ACT.**—Sections 5 and 6 of
6 the Computer Security Act of 1987 (40 U.S.C. 1441 note)
7 are repealed.

8 (b) **FLOYD D. SPENCE NATIONAL DEFENSE AU-**
9 **THORIZATION ACT FOR FISCAL YEAR 2001.**—The Floyd
10 D. Spence National Defense Authorization Act for Fiscal
11 Year 2001 (Public Law 106–398) is amended by striking
12 subtitle G of title X.

13 (c) **PAPERWORK REDUCTION ACT.**—(1) Section
14 3504(g) of title 44, United States Code, is amended—

15 (A) by adding “and” at the end of paragraph
16 (1);

17 (B) in paragraph (2)—

18 (i) by striking “sections 5 and 6 of the
19 Computer Security Act of 1987 (40 U.S.C. 759
20 note)” and inserting “subchapter II of this
21 title”; and

22 (ii) by striking the semicolon and inserting
23 a period; and

24 (C) by striking paragraph (3).

1 (2) Section 3505 of such title is amended by adding
2 at the end—

3 “(c)(1) The head of each agency shall develop and
4 maintain an inventory of the information systems (includ-
5 ing national security systems) operated by or under the
6 control of such agency;

7 “(2) The identification of information systems in an
8 inventory under this subsection shall include an identifica-
9 tion of the interfaces between each such system and all
10 other systems or networks, including those not operated
11 by or under the control of the agency;

12 “(3) Such inventory shall be—

13 “(A) updated at least annually;

14 “(B) made available to the Comptroller Gen-
15 eral; and

16 “(C) used to support information resources
17 management, including—

18 “(i) preparation and maintenance of the
19 inventory of information resources under sec-
20 tion 3506(b)(4);

21 “(ii) information technology planning,
22 budgeting, acquisition, and management under
23 section 3506(h), the Clinger-Cohen Act of
24 1996, and related laws and guidance;

1 “(iii) monitoring, testing, and evaluation of
2 information security controls under subchapter
3 II;

4 “(iv) preparation of the index of major in-
5 formation systems required under section
6 552(g) of title 5, United States Code; and

7 “(v) preparation of information system in-
8 ventories required for records management
9 under chapters 21, 29, 31, and 33.

10 “(4) The Director shall issue guidance for and over-
11 see the implementation of the requirements of this sub-
12 section.”.

13 (3) Section 3506(g) of such title is amended—

14 (A) by adding “and” at the end of paragraph
15 (1);

16 (B) in paragraph (2)—

17 (i) by striking “the Computer Security Act
18 of 1987 (40 U.S.C. 759 note)” and inserting
19 “subchapter II of this title”; and

20 (ii) by striking the semicolon and inserting
21 a period; and

22 (C) by striking paragraph (3).

23 **SEC. 1106. CONSTRUCTION.**

24 Nothing in this Act, or the amendments made by this
25 Act, affects the authority of the National Institute of

1 Standards and Technology or the Department of Com-
2 merce relating to the development and promulgation of
3 standards or guidelines under paragraphs (1) and (2) of
4 section 20(a) of the National Institute of Standards and
5 Technology Act (15 U.S.C. 278g-3(a)).

Passed the House of Representatives July 26, 2002.

Attest:

Clerk.

107TH CONGRESS
2^D SESSION

H. R. 5005

AN ACT

To establish the Department of Homeland Security,
and for other purposes.